



REPLY TO
ATTENTION OF

CESAM-RD-I

DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2288
MOBILE, AL 36628-0001

Date: August 24, 2010

JOINT PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS AND
NATURAL RESOURCES CONSERVATION
SERVICE OF ALABAMA

PROPOSED FIELD LEVEL AGREEMENT

TO WHOM IT MAY CONCERN: Regulatory Division, USACE, Mobile and Nashville Districts and Natural Resources Conservation Service, Alabama announce a proposed Field Level Agreement (FLA) pertaining to farm pond exemptions. The FLA was developed to establish procedures for farmers to follow when requesting ponds on their property.

We are specifically soliciting comments from the public, Federal, State and local agencies and officials; and other interested parties in order to consider and evaluate the criteria set forth in the FLA.

Comments: Comments must be submitted by September 24, 2010, to Mr. Joseph Tanko (CESAM-RD-I), 218 Summit Parkway #222, Homewood, Alabama 35209 or Mr. Perry Oakes (NRCS) P.O. Box 311, Auburn, Alabama 36831

Attachments

DRAFT

FIELD LEVEL AGREEMENT BETWEEN THE US ARMY CORPS OF ENGINEERS, MOBILE AND NASHVILLE DISTRICTS AND THE NATURAL RESOURCES CONSERVATION SERVICE CONCERNING FARM POND EXEMPTIONS IN ALABAMA

I. Introduction:

On February 25, 2005, joint guidance between the Department of Agriculture, Natural Resources Conservation Service (NRCS) and the US Army Corps of Engineers (USACE) reaffirmed their commitment to ensuring that Federal wetlands programs are administered in a manner that minimizes the impacts on affected landowners consistent with the important goal of protecting wetlands. NRCS and USACE offices were encouraged to develop local partnerships to provide timely and accurate information to the public and to address other wetland issues.

In support of this joint guidance; NRCS, Alabama and USACE, Mobile and Nashville Districts have adopted a Field Level Agreement (FLA) pertaining to farm pond exemptions. The FLA establishes procedures for farmers to follow when requesting ponds on their property.

II. Terms:

- A. Wetland Delineations depict the boundaries of waters of the US, such as wetlands and streams.
- B. Verified Wetland Delineations depict the boundaries of waters of the US, such as wetlands and streams, and have been certified as accurate in writing from the NRCS or USACE for Food Security Act (FSA) or Clean Water Act (CWA) purposes, respectively.
- C. Jurisdictional Determination by the NRCS or USACE identifies the areas and/or activities subject to jurisdiction under provisions of the FSA or CWA, respectively.
- D. Preliminary Jurisdictional Determination is a USACE document indicating that there may be waters of the United States on a parcel or indications of the approximate location(s) of waters of the United States on the parcel.
- E. Approved Jurisdictional Determination is a USACE document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel.

III. Procedures:

- A. Jurisdictional Determinations
 - 1. Jurisdictional Determinations performed by the NRCS must be verified by the USACE for purposes of the CWA.

2. The NRCS will inform land owners that Jurisdictional Determinations verified by the NRCS are not valid for CWA purposes.

3. The USACE will inform land owners that Jurisdictional Determinations by the USACE may not be valid for FSA purposes. All USACE Jurisdictional Determinations will include the statement "This delineation/determination has been conducted to identify the limits of the US Army Corps of Engineers' Clean Water Act jurisdiction for the particular site identified in this request. This delineation /determination may not be valid for the wetland conservation provisions of the FSA of 1985, as amended. If the land owner is a US Department of Agriculture (USDA) program participant, or anticipates participation in USDA programs, he/she should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work."

4. The NRCS will inform land owners that Jurisdictional Determinations by the NRCS may not be valid for CWA purposes. All NRCS Jurisdictional Determinations will include the statement "This delineation/determination has been conducted for the purpose of implementing the wetland conservation provisions of the FSA of 1985. This determination/delineation may not be valid for identifying the extent of the USACE CWA jurisdiction of this site. If the landowner intends to conduct any activity that constitutes a discharge of dredge or fill material into wetland or other waters, he/she shall request a jurisdictional determination from the local office of the USACE prior to starting work."

5. Approved Jurisdictional Determinations by the USACE for CWA purposes will remain valid for a period of 5 years unless new information warrants revision prior to that date.

B. Exemption Determinations

1. Activities for the purpose of maintaining existing farm ponds, farm roads, center pivot crossings or irrigation ditches (returning it to a pre-existing condition) in waters of the United States are exempt from CWA jurisdiction provided they meet the criteria outlined in Section 404(f) of the Clean Water Act and Section 323.4, Title 33 of the Code of Federal Regulations (CFR).

2. NRCS and USACE will follow procedures outlined in the "Alabama Farm Pond Exemption Guide" when providing assistance to land owners requesting technical assistance in construction of farm ponds or land owners requesting assistance with a determination as to whether a proposed farm pond is or is not regulated under the CWA.

3. NRCS will maintain a log in each field office for ponds that, based on information provided by the farmer, would most likely not be regulated under the CWA. The logs will identify the following information: landowner's name, address, pond size, purpose of the pond, county, and lat/long coordinates of the proposed pond. A copy of the logs will be forwarded to the NRCS State Conservation Engineer for submittal to the appropriate USACE District Office on a quarterly basis. An annual meeting to discuss past, present and future projects will also be scheduled.

4. In order for center pivot crossing construction in wetlands/streams to be considered exempt and not regulated under the CWA, the project must meet the criteria outlined in Section 404(f) of the Clean Water Act and Section 323.4, Title 33 of the CFR. In addition, crossings shall not exceed 8-feet in width at the top, side slopes shall not exceed 3:1, and water crossings shall either be bridged or have culverts in place sufficiently sized to maintain normal surface water flows.

5. In order for irrigation ditch construction in wetlands/streams to be considered exempt and not regulated under the CWA, the project must meet the criteria outlined in Section 404(f) of the Clean Water Act and Section 323.4, Title 33 of the CFR. In addition, all excavated material shall be disposed of on high ground if at all possible or placed alternately in piles on either side of the ditch to maintain normal

surface water flows. Excavated material shall not be converted into a road unless that road could be separately exempted as a farm road.

6. In order for farm road construction in wetland/streams to be considered exempt and not regulated under the CWA, the project must meet the criteria outlined in Section 404(f) of the Clean Water Act and Section 323.4, Title 33 of the CFR. In addition, the land owner must demonstrate it is not possible to access the area from any other high ground (upland) access point even if that point is on other property. Road widths shall be the minimum necessary for the intended farm purpose. Road length shall be the minimum necessary to cross the wetland/stream (at the narrowest point of the wetland), land clearing (stump removal) shall be confined to the footprint of the road, and water crossings shall either be bridged or have culverts in place sufficiently sized to maintain normal surface water flows.

IV. General:

A. The policy and procedures contained in this FLA do not create any rights either substantive or procedural to a jurisdictional determination or a farm pond exemption determination by either agency or the United States.

B. This agreement will take effect ten (10) days after the date of the last signature below and will continue until modified or revoked by agreement of any of the parties or until revoked by any party alone upon written notice.

C. USACE Mobile and Nashville District and the NRCS in Alabama will review this FLA on an annual basis for the purpose of modification or extension. If this FLA is not modified or revoked it will automatically be extended.

William E. Puckett, PhD (date)
State Conservationist
NRCS

Craig L. Litteken (date)
Chief, Regulatory Division
Corps of Engineers, Mobile District

Ronald E. Gatlin (date)
Chief, Regulatory Branch
Corps of Engineers, Nashville District

ALABAMA FARM POND EXEMPTION GUIDE

A. Pond Construction: Pond size shall not exceed the need shown through a water budget. In waters of the US, the placement of fill material shall be limited to dam or berm construction. Land clearing (stump removal) shall be limited to the dam or berm, including auxiliary spillway entry and exit sections, and normal pool footprint. No fill shall be placed in wetlands to build up areas around the pond.

B. Producer Eligibility: To be eligible for the farm pond exemption, the land owner must be a producer who engages in either agriculture or livestock production. Land owners who **propose** new agricultural or livestock operations will be deferred to the USACE for an exemption determination. Proposed operations are those that do not have the required crops, existing irrigation equipment, or livestock at the time of the exemption request. The USACE will determine whether to exempt the pond from the Section 404 permit process. Agricultural and livestock production are defined below:

C. Agricultural production: Agricultural production is defined as a farm or ranch operation involving the production of crops including but not limited to:

- Field-grown ornamentals (not containerized)
- Flowers or bulbs
- Grains or row crops
- Hay, forage or pasture
- Naval stores
- Orchards or vineyards
- Seed Crops
- Plant materials
- Tobacco
- Trees
- Turf Farms
- Vegetables or fruits

Note: Trees will require case specific justification from the AL Forestry Commission and acceptance by the NRCS or USACE defining the need and quantity of irrigation water.

D. Livestock production: Livestock production is defined as a farm or ranch operation involving the production, growing, raising, or reproducing of livestock or livestock products, including but not limited to:

- Beef cattle
- Buffalo
- Dairy cattle
- Horses
- Ostriches or Emu
- Poultry
- Sheep or goats
- Swine
- Turkeys

E. Water Budgets: For a pond to supply a permanent water supply, it is necessary to provide sufficient water depth to meet the intended use taking into account seepage and evaporation losses. During severe drought conditions in Alabama, ponds can lose 4 ft. of water depth. For this reason, embankment ponds for irrigation and livestock purposes should always have at least 8 ft. of water at the deepest part of the pond. In Alabama, the maximum storage period is normally 180 days or 6 months (dry months of the year) for animals.

1. Estimated water needs for common crops in Alabama:

<i>Ag. Production^{1,2}</i>	<i>Crop Water Needs (Ac-ft / acre of crop)</i>
Row crops	1.5
Tobacco	1.0
Hay, Forage or Pasture	1.25
Vegetables ³	1.25
Orchards	1.5

¹ Documentation of water needs for crops not shown in this table shall be provided to NRCS.

² The land owner must have existing irrigation equipment. All new operations or operations without irrigation equipment shall be required to submit an exemption determination request to the USACE.

³ Land owners that produce multiple crops during a year may include crop water needs for each crop when predicting water needs.

2. Examples of situations where ponds meet crop water budgets:

Example 1: A land owner irrigates 50 acres of cotton and would like to have a 20 acre irrigation pond. The proposed 20 acre pond site would

have 16 ft. of water at the dam and a 15 acre surface at the 12 ft. depth (drought level).

Crop Acreage	=	50 acres
Water needs	=	1.5 ac-ft/ac
Total water needs	=	75 ac-ft
Available water at 12 ft drought level 0.4 X 15 ac. X 12 ft.	=	72 acre-ft (defensible)
Pond total volume 0.4 X 20 ac. X 16 ft.		128 acre-ft

Example 2: A land owner irrigates 100 acres of pasture. The land owner wants a 25 acre pond. The pond will need to have 20 ft. of water at the dam to produce a 25 acre pond. At the 16 ft. depth (drought level) the water surface would cover 19 acres.

Pasture Acreage	=	100 acres
Water needs	=	1.25 ac-ft/ac
Total water needs	=	125 ac-ft
Available water at 16 ft drought level 0.4 X 19 ac. X 16 ft.	=	121.6 acre-ft (defensible*)

3. Estimated livestock water requirements in Alabama:

<i>Livestock Production</i> ¹	<i>Drinking Water Needs</i> (gallons/day/hd)
Dairy cattle	25
Beef cattle	12
Sheep or Goats	1.5
Horses	12

¹ Other livestock may be used with proper documentation to NRCS to predict water needs.

4. Examples of situations where ponds meet livestock water budgets:

Example 1: A land owner with a 50-head beef cattle operation has requested a pond exemption. An excavated pond site is not feasible. An embankment pond site with 8 ft. of water at the dam would have 0.6 acre of surface area. At a 4 ft. depth (drought level) the water surface would be 0.25 acres.

50hd @ 12 g/day/hd	=	600 gal/day
Maximum storage period	=	180 days
1 acre-ft	=	325,851 gal
Therefore, cattle water needs	=	0.331 acre-ft
Available water at 4 ft drought level 0.4 X 0.25 ac. X 4 ft.	=	0.40 acre-ft (defensible*)
Pond total volume 0.4 X 0.6ac. X 8 ft.		1.92 acre-ft

* Even though the available water at the drought level is more than the cattle needs for the storage period, the site is still defensible since there is only 8 ft. of water at the dam.

Example 2: A land owner with a 300-head beef cattle operation has requested a pond exemption. The land owner wants a 1 acre pond. The pond will need to have 12 ft. of water at the dam to produce a 1 acre pond. At the 8 ft. depth (drought level) the water surface would cover 0.6 acres

300 hd @ 12 g/day/hd	=	3,600 gal/day
Maximum storage period	=	180 days
1 acre-ft	=	325,851 gal
Therefore, cattle water needs	=	2 acre-ft
Available water at 8 ft drought level 0.4 X 0.6 ac. X 8 ft.	=	1.9 acre-ft (defensible)

F. Farm Pond Exemption application procedures for land owners by pond category:

1. For ponds being used for the irrigation of crops or the watering of livestock that have a normal pool area less than 10 acres, the following information shall be submitted to the NRCS:
 - a. Farm Pond Exemption Information Paper (AL-ENG-378-EX1) completed and signed by the land owner (Exhibit 1).
 - b. Water budget
 - c. Completed Form AD-1026A from FSA

- d. Site map with pond coordinates, i.e. USGS topographic, county, DOT map or other map source as appropriate.
2. For ponds being used for the irrigation of crops or the watering of livestock that have a normal pool area **greater** than 10 acres, the land owner shall provide the information on the attached "USACE Checklist for Farm Pond Exemption Determination" (Exhibit 2) to the USACE.
3. For ponds whose purpose is not providing water for the irrigation of crops or the watering of livestock, the land owner shall contact the USACE to discuss project feasibility and requirements for authorization.
4. For ponds that require a pump station and/or access road to facilitate water supply, the land owner shall provide the information on the "USACE Checklist for Farm Pond Exemption Determination".
5. For work on existing farm ponds the following information is required;
 - a. If the proposed work will not cause the cumulative acreage of the pond to exceed 10 acres, the land owner shall provide the following information to the NRCS:
 1. Farm Pond Exemption Information Paper (AL-ENG-378-EX1) completed and signed by the land owner (Exhibit 1).
 2. Water budget
 3. Completed Form AD-1026A from FSA
 4. Site map with pond coordinates, i.e. USGS topographic map, county, DOT map or other map source as appropriate.
 - b. If the proposed work causes the cumulative acreage of the pond to exceed 10 acres, the land owner shall provide the information on the attached "USACE Checklist for Farm Pond Exemption Determination" (Exhibit 2) to the USACE.
 - c. If the proposed work does not cause an increase in the cumulative acreage of the pond, such as maintenance or a decrease in pond size, no authorization will be required from the USACE. Work under this category is subject to oversight and approval by the NRCS.

Definitions:

Drought Level – During a severe drought in Alabama, ponds can lose 4 ft. of water. The drought level for a pond is therefore assumed to be 4 ft. below the normal pool elevation. Storage at the drought level is considered available water for irrigation or livestock purposes.

Field Level Agreement (FLA) – Governing agreement between the USACE and NRCS concerning jurisdictional determinations and farm pond exemptions.

Farm Pond – For the purpose of the FLA, a farm pond is defined as an impounded water source created by constructing an embankment or excavating a pit that is intended to provide water for the irrigation of crops or livestock operations.

Farm Pond Exemption – Frees a land owner from the requirement of obtaining a Section 404 Clean Water Act permit through the USACE for construction of a farm pond (33 CFR 323.4).

Water Budget – A water budget establishes a baseline of water quantity required to sustain the normal livestock or irrigation operation. Crop water requirements or livestock requirements will be based on the land owner's records, but will be close to published requirements. To be eligible for the farm pond exemption, a water budget will be developed for all requests. The water budget will define the pond storage requirements in acre-feet at the pond drought level.

Exemption Information Paper – A document provided by NRCS to land owners requesting a farm pond exemption that identifies the operation size, water requirements and site information.

CHECKLIST FOR USACE FARM POND EXEMPTION DETERMINATION FOR PONDS OVER 10 ACRES IN ALABAMA

1. ___ Land owner's full name, mailing address and day time telephone number. Also include the name of a contact person if owner is a company or other organization.
2. ___ If the land owner is not the farmer, the farmer's full name, mailing address, day time telephone number and relationship with the owner. Also include the name of a contact person if owner is a company or other organization.
3. ___ The latitude/longitude coordinates for the pond location in decimal degrees.
4. ___ A water budget demonstrating the land owners need to provide water for livestock operations or irrigation of crops including the size pond needed.
5. ___ Vicinity and location maps showing the proposed pond site. Excerpts of US Geological Survey topographical quadrangle maps, county road maps, or other similar maps may be used. Vicinity maps should be of an appropriate scale to locate the site by nearby landmarks.
6. ___ A completed and signed NRCS AL-ENG-378EX1 "Farm Pond Exemption Information Paper" form.
7. ___ A written statement documenting all other water sources and stating why those sources are inadequate.
8. For an irrigation pond:
 - a. ___ An aerial photograph identifying areas to be irrigated with acreages.
 - b. ___ The method/s of irrigation to be used (center pivot, etc.).

Note: All information must be on 8 1/2 " X 11" paper and must be legible and reproducible. The use of color in exhibits is not acceptable because color does not reproduce in black and white (color infra-red aerial photographs are the only exception).

Mail to:

USACE, Mobile District
 Attn: RD, Regulatory Division
 109 Saint Joseph Street
 Mobile, AL 36602

Or

USACE, Nashville District
 Attn: RD, Regulatory Branch
 3701 Bell Road
 Nashville, TN 37214

FARM POND EXEMPTION INFORMATION PAPER

LAND OWNER PRODUCER INFORMATION					
Name:					
Mailing Address:					
City, State, Zip Code:				County:	
POND INFORMATION ^{1/}					
Primary Purpose: (Ag, Livestock, Recreation, etc.)		Location:	Lon	Lat	
Size at Normal Pool (acres):		Estimated Storage at normal pool (Ac-ft):			
<i>^{1/} Non-Farm Ponds and ponds having a normal pool size larger than 10 acres must be directed to the USACE.</i>					
AGRICULTURE OR LIVESTOCK PRODUCTION INFORMATION ^{2/, 3/}					
Crop Type:		Cropped Acreage (ac.):		Crop Water Needs (ac-ft)	
Livestock Type:		Herd Size (hd):		Livestock Water Needs (ac-ft)	
			Additional Water Needs (ac-ft)		
			Total Farm Water Needs (ac-ft)		
<i>^{2/} A water budget must be attached to this document justifying the above values.</i>					
<i>^{3/} Land owners requesting exemption by crop water needs but do not currently irrigate their crops must be directed to the USACE for exemption.</i>					

Land Owner Certification: I certify that the above information is accurate to the best of my knowledge. I understand that this exemption does **NOT** free me from obtaining any other federal, state or local permits for construction of the proposed pond. I understand that if any

revisions are made to the project or its intended use, this exemption determination may be invalidated. Should it be determined that the pond has been converted to a non-agricultural use at any point, I may be required to obtain a Department of the Army permit in order to maintain the pond. Any Department of the Army permit application must include an alternatives analysis and mitigation and should a permit not be issued, restoration of the site may be required. A pond exempt from the need for a Department of the Army permit is not exempt from regulations required by the State of Alabama.

(Type or print name)

(Signature)

(Date)

NRCS Certification: I certify that this land owner has been advised of the requirements as outlined in the NRCS Farm Pond Exemption Guide and in the Field Level Agreement between USACE and NRCS. Sufficient documentation has been provided that defends the need and size of the proposed pond.

(Type or print name and title)

(Signature)

(Date)