



Chapter 6

Other Tools and Resources to Know About

The previous chapter identified the primary tools that are directly available to Montana county or municipal governments for the protection of wetlands and riparian areas. This chapter identifies additional tools and resources that can assist in carrying out protection efforts where the program is administered by an entity other than a city council, town council, or county commission. These tools are organized in the following way:

- **Private Covenants** (page 6-1) and **Deed Restrictions** (page 6-3) are placed on land by private landowners;
- **Conservation easements** are held in **perpetuity** (page 6-4) or for a limited amount of time (**term easements**) (page 6-6) by nonprofit organizations, or state or federal agencies (although local governments could retain conservation easements on a piece of land);
- The **Natural Streambed and Land Preservation Act (310 Permit Program)** (page 6-7) is administered by Conservation District Boards, which are independently elected for each county;
- **Watershed Groups** (page 6-8) are initiated by local landowners, government agencies, and other interested citizens.
- The **Montana Department of Environmental Quality (DEQ) Wetland Program** (page 6-10), **Water Pollution Control State Revolving Fund** (page 6-11), **Source Water Protection Program** (page 6-12), and **Montana Wetlands Legacy** (page 6-13) are all administered by the state of Montana; and
- The **Advanced Identification Process (ADID)** (page 6-14) and **Special Area Management Plan (SAMP)** (page 6-15) are administered by the Army Corps of Engineers. The Army Corps of Engineer 404 permit program, discussed in Appendix IV, which regulates the filling of wetlands, is not included in this chapter because it is a regulatory program and not a land use planning tool. The ADID and SAMP programs, which can impact the way a 404 program is implemented in a geographic area, are included because they are planning tools that can assist local governments in understanding and managing local wetland resources.

Each tool is described, with information about how the tool can specifically be used to protect wetlands and riparian areas. Strengths and weaknesses of using these tools to protect these areas are discussed in order to give decision makers a clear understanding of the limitations and possibilities offered by each tool for resource protection.

Private Covenants

There are two types of covenants. **Private covenants** are held and enforced by landowners. Those required by, held, and/or enforced by local governments, are **public interest covenants** (*see Public Interest Covenants, page 5-11*).

Purpose:

To impose conditions, restrictions, or mandated actions on property owners as a result of the subdivision approval process. A governing body is a party to public interest covenants, and the local government must typically approve changes to the covenants.

Who Enacts This Tool:

Landowners selling lots or tracts impose private covenants. Also, a group of landowners in a property owners association can establish and enforce covenants that place restrictions or conditions on the properties owned by those landowners.

Authority for Tool:

Covenants are authorized under Servitudes, Easements and Covenants Running With the Land (Title 70, Chapter 17, MCA). They are also referenced in the Montana Subdivision and Platting Act (Title 76, Chapter 3, Part 3, MCA).

How it Works:

Private covenants are conditions, restrictions or mandated actions that are imposed on property owners by a private party, usually the owner of a subdivision or other land development. The developer imposes restrictions on the lots to maintain the attractiveness of the development as a place to live, and thus maintains or increases the market value of the lots. Typical private covenants set restrictions on the type and minimum size of homes, keeping of horses and other livestock, and keeping pets enclosed or leashed (to avoid harassing wildlife). Covenants may also require certain actions of lot owners: for example, controlling weeds or limiting wildfire risk. The covenants usually detail a process for amendments and for enforcing the restrictions or conditions of the covenants. Any party to the covenants (the individual lot owners, property owner association, or developer) can enforce their conditions and requirements. Typically these same individuals or associations can modify or remove covenants by a majority vote. Covenants may be written to be effective in perpetuity or for some defined period of time. Typically covenants “run with the land,” that is, they apply to all present and subsequent property owners.

Private covenants may provide long-term protection of wetlands and riparian areas by placing restrictions preventing construction, filling, development, or other adverse activities within lands identified as wetlands or riparian areas. If a developer is motivated to protect these resources, setbacks can be established that would enhance property values, protect public open space, or provide other amenities to the development.

Strengths:

Private covenants can provide long-term protection of wetlands and riparian areas by placing restrictions on the development of these sites. These covenants are relatively easy to establish. Property owner associations typically are responsible for enforcing the covenants within a subdivision. If a violation of a covenant occurs, officers of the association usually inform the property owner of the infraction so the problem can be corrected. In other words, violations are handled by neighbors talking to neighbors—an approach preferred by some landowners. If a covenant is violated, the beneficiary of the covenant is most often authorized to impose a lien on the offending owner’s property, which will remain a burden on that landowner’s property title until the covenant violation is corrected.

Weaknesses:

Because private covenants are usually initiated by the developer of a subdivision, wetland and riparian protection covenants would not be established unless the developer had a specific interest in protecting these resources. Any party to the covenants can legally enforce their conditions and requirements (the individual lot owners, property owners association, or developer). As a practical matter, however, confronting or suing a neighbor regarding a covenant violation is personal and uncomfortable, and it is expensive to file a lawsuit. A property owners association can more easily enforce covenants because the association has the financial support of the property owners, and can deal with the violation on a less personal basis. However, poorly-managed associations do not enforce covenants. Additionally, covenants are usually written so that they can be changed by a certain percentage of property owners. Therefore, long-term protection of wetlands and

riparian areas is not assured as future associations may remove protection measures without any input from 1) the public or 2) elected officials who approved the protection measure as a condition of the subdivision. If enforcement actions are taken, restoration of the wetland or riparian area will not necessarily be required. Historically, the law favors payment of damages for violation of covenants, not land restoration. Although covenant law has evolved to permit injunctive relief as well as damages for

covenant violations, a bias in favor of monetary relief still exists in the courts and case law. Finally, developers may not feel the need to enforce covenants once lots are sold.

Montana Case History: We were unable to find examples of private covenants used to protect wetlands or riparian areas in Montana; therefore, no case study is presented.

Deed Restrictions

Purpose:

To place restrictions on a property buyer's use of the land. A deed restriction is an agreement between the seller and buyer of a property that certain uses or activities are restricted on the property.

Who Enacts This Tool:

Deed restrictions are two-party agreements between the seller and buyer regarding the use of property transferred by deed.

Authority for Tool:

The authority for deed restrictions comes from common law, not statute.

How it Works:

Deed restrictions, like covenants, place restrictions on a property buyer's use of the land. A deed restriction is an agreement between the seller and buyer of a property that certain uses or activities are restricted on the property. For example, a seller can restrict the height or location of buildings on land that he sells (to preserve his own view, for example). While covenants usually place conditions on a number of properties, such as those in a subdivision, deed restrictions are two-party agreements (between the seller and buyer) regarding the use of property transferred by the deed. Deed restrictions run with the land in perpetuity unless the original seller specifies a date or circumstances under which the restriction would lapse or be amended. When a violation of a deed restriction occurs and the property owner is unwilling to correct the problem, the seller (who wanted and imposed the restriction in the first

place) must sue in civil court to enforce the terms of the deed restriction. Deed restrictions are usually written to be perpetual and unchanged. However, when both the buyer and seller agree, a deed restriction can be removed from a parcel.

Deed restrictions can use setbacks, no-build zones, no improvement zones, or building envelopes to ensure that building sites will not encroach into riparian corridors or wetlands.

Strengths:

As with covenants, a landowner can try to establish long-term protection of wetlands and riparian areas by placing deed restrictions preventing construction, filling, development or other adverse activities within lands identified as wetlands or riparian.

Weaknesses:

Perhaps the biggest drawback with using deed restrictions is their enforcement. Because they are two-party agreements, if the seller of the property does not want to enforce the deed restriction, it does not get enforced. As land transfers from one owner to another, it is unclear whether the deed restriction will be binding. Consequently, deed restrictions may not provide long-term protection for wetlands or riparian areas. Accordingly, property owners who want to restrict use of their property after title passes are usually better assured of long-term protection if they use covenants, servitudes or easements that are specifically authorized by Montana statutes. (*see Public Interest Covenants, page 5-11; and Private Covenants, page 6-1*).

Montana Case Histories:

We were unable to find examples of deed restrictions

used to protect wetlands or riparian areas in Montana; therefore, no case study is presented.

Conservation Easements

Conservation easements are one of the most effective tools available to protect wetlands and riparian areas. They are also the most commonly accepted private land protection tool available. These easements are voluntary agreements where landowners retain ownership of the land, but agree to limit the types of activities that will be allowed in the future. Two main types of conservation easements are discussed below: **perpetual easements** and **term easements**. An example of easement language to protect wetlands and riparian areas appears in Appendix V. A list of private land trusts appears in Appendix VI.

Perpetual (Permanent) Conservation Easements

Purpose:

To permanently protect open space, agricultural lands, forested lands, wildlife habitat, streams, and other natural resources, including wetlands and riparian habitat. Protection is achieved by restricting the type and amount of development and/or activity on individual parcels of land.

Who Enacts This Tool:

An individual landowner negotiates the terms of the easement with a land trust, conservation organization, or a government agency, which holds the easement. Executing a conservation easement may be initiated by the landowner, an agency, conservation organization, or land trust.

Authority for Tool:

Permanent conservation easements are authorized in the Open-Space Land and Voluntary Conservation Easement Act (Title 76, Chapter 6, Part 2, MCA).

How it Works:

Permanent conservation easements are voluntary legal agreement that landowners enter into to restrict the type and amount of development that may occur on their property. Landowners retain ownership of their land, but agree to limit their future activities to protect resource values on the land. Each easement is different, tailored to the specific needs of the landowner, yet assuring that conservation objectives are met. Conservation easements may restrict or prohibit subdivision development; construction of new structures; mining or logging; or degradation of fish and wildlife habitat. Easements are donated or purchased by a qualified land trust, conservation

organization, or public agency:

- **Donated Easements.** Under donated easements, the landowner agrees to forego certain development or use rights without receiving compensation. The economic benefit to landowners under donated easements is that they may be entitled to substantial reductions in estate and federal income taxes. To qualify for these tax advantages, easements must be granted in perpetuity. Donated easements are appropriate for landowners that have income and can benefit from a reduction in income taxes or landowners that need to reduce or avoid estate taxes. Typically, donated easements are made to private conservation or land trust organizations.
- **Purchased Easements.** Under purchased conservation easements, a landowner receives direct financial compensation for giving up certain development and use rights. When landowners receive full compensation for a conservation easement, they are not eligible for tax breaks. A tax break may be available for a purchased easement if the landowner receives only partial compensation for the easement. Purchased easements are appropriate for landowners, such as family farmers, where sheltering income is not needed, but supplemental income is helpful. Typically, government agencies purchase conservation easements. *For more information* about agency's that purchase conservation easements, see Montana Watercourse's *A Landowners' Guide to Montana Wetlands*. This publication can be obtained from Montana

Watercourse, P.O. Box 170575, Montana State University, Bozeman, MT 59717, (406) 994-6671; or electronically <http://nris.state.mt.us/wis/wetlands/LandownerGWetlands.pdf>.

Conservation easements can be used to protect wetlands and riparian areas by: prohibiting development near these areas through setbacks, building envelopes or zones of non-development (*see Zones of Non-development, page 4-5*); fencing buffer strips around an area; and/or prohibiting certain uses from occurring in the area (such as prohibiting grazing in a wetland).

Strengths:

When conservation easements are made in perpetuity, the easement stays with the land, ensuring the resources and the land value will be retained indefinitely, even if land ownership changes. Because conservation easements are voluntary, they are well accepted by landowners and the general public. Increasingly, Montana property owners are willing to enter into easements to protect resource values. As a result, significant acreage is being protected through this conservation tool.

Purchased easements provide direct compensation to participating landowners, whereas future tax breaks constitute the compensation under a donated easement. The direct, up-front payment of a purchased easement is usually more attractive to those landowners who need cash to continue their agricultural operation. Landowners often are more willing to include management restrictions that would protect wetlands and riparian areas with purchased easements.

Weaknesses:

Wetlands and riparian areas are only protected in a conservation easement if a landowner is willing to protect these areas, and if specific protection provisions are contained in the easement. In donated easements, it can be more difficult to include the management restrictions necessary to protect a wetland or riparian area because the landowner is not being compensated for what is given up. Although

these easements are gaining acceptance, they are still resisted by some private landowners.

Montana Case History:

1. Whitefish Area. A family just outside Whitefish has protected almost 200 contiguous acres of land, most of it wetlands, in three



easements held by The Nature Conservancy. The first two easements, protecting a total of 136 acres, were donated in 1989; the last easement, protecting 55 acres, was donated in 1996. The property contains one rare wetland plant community, five rare plant species (all wetland species), and one rare species of bird (which nests in the wet meadow portion of the property). These easements prevent subdivision of the property; limit timber harvest; do not allow drainage of the wetlands; and, to protect water quality, limit farming on historically farmed areas to organic methods. An existing drainage ditch can be maintained so long as it doesn't negatively impact the rare species or communities. **For more information**, contact The Nature Conservancy, 32 South Ewing, Helena, MT 59601; (406) 443-0303.

2. Missoula County. A family living on the Swan River has protected 80 acres of land with an easement held by the Montana



Land Reliance. The property contains a total of 26 acres of wetlands and riparian area, including approximately 1/3-mile of frontage along the Swan River. In addition to the riparian area, the property has 31 acres of upland forest and 20.5 acres of agricultural land and pasture. The easement prevents subdivision of the property. A 15-acre building envelope has been designated in the upland forest and agricultural areas where one new single family residence can be constructed, allowing a total of two single family residences on the property, plus associated garage, shop and tack shed structures. The 26-acre riparian area has been delineated; there

can be no structures, commercial timber harvest, agriculture, or ranching activities in this zone. **For more information**, contact the Montana Land Reliance 324 Fuller Ave, P.O. Box 355, Helena, MT 59624-0355; Phone: (406) 443-7027.

3. U. S. Fish and Wildlife Service (USFWS). The USFWS has a program to purchase easements. The Service's main program is their Wetland Easement Program which pays landowners for perpetual wetland easements that protect natural depressional wetlands, often called "prairie potholes," from being drained, filled, leveled, or burned. The program applies to designated counties located in the Blackfoot Valley, along the Rocky Mountain Front, and along

Montana's Hi-Line (Glacier to Sheridan County). Riparian areas are not generally eligible for protection under this program. In addition, landowners can enroll upland areas adjacent to protected wetlands into the USFWS's Grassland Easement Program, which pays landowners to permanently keep their land in grass cover. Montana wetland and grassland easement projects can involve properties ranging from 80 acres to several thousand acres. The amount paid for an easement varies, but generally runs from 20% to 40% of the property's full fee title value. **For more information**, contact Gary L. Sullivan, State Coordinator, U. S. Fish and Wildlife Service, 922 Bootlegger Trail, Great Falls, MT 59404; (406) 727-7400.

Temporary (Term) Conservation Easements

Purpose:

To temporarily restrict the type and amount of development on individual parcels of land, or management strategies for the land.

Who enacts it:

Term easements are usually only available through contractual agreements with a state or federal agency. Individual landowners negotiate an agreement on the terms of the easement with the appropriate government agency.

Authority for Tool:

Term conservation easements are authorized in the Open-Space Land and Voluntary Conservation Easement Act (Title 76, Chapter 6, Part 2, MCA).

How it works:

Term easements are appropriate for landowners, who are not certain that they want to enter into a permanent conservation easement. They are virtually always purchased for a fee. Landowners retain ownership of their land, but agree to limit certain types of development and activities for a designated time period. Under Montana law, 15 years is the shortest amount of time a term easement is permitted. Each easement is different, tailored to the specific needs of the landowner, while assuring that conservation objectives are met. Because the easement does not

protect the land in perpetuity, landowners are not eligible for tax breaks. Term easements use the same methods of protecting wetlands and riparian areas as perpetual easements (*see Perpetual (Permanent) Conservation Easements, page 6-4*).

Strengths:

Landowners receive direct payments in cases where term easements are purchased. Areas protected under a term easement are protected for a specified period of time. Because these easements are purchased, it is easier to include the management restrictions necessary to protect a wetland or riparian area because the landowner is being compensated for what will be given up. If a landowner feels comfortable with a term easement, they may opt for an easement with permanent protection of the land when the term is through.

Weaknesses:

Term easements protect resource values for only a defined period of time, rather than perpetually. This can create problems for estate planning. If, for example, the landowner should die during the easement term, relatives would inherit a piece of property that is in the middle of an easement term, and would receive no reduced tax value. Because the land is not protected in perpetuity, landowners are not eligible for income or estate tax breaks.

Finally, landowners may not get much money for term easements, which are very similar to leases. Although term easements are gaining acceptance from landowners and agricultural organizations, some individuals still resist easements.

Montana Case History:

Teton County. The Natural Resources Conservation Service (NRCS) holds a 30-year term easement through its Wetland Reserve Program (WRP) on 4,798 acres near Choteau. This easement protects a wet meadow and stream complex, both dominated by sedges, grasses, and forbs. As stated in the easement language, NRCS



retains the right to protect the area for wildlife habitat, which means that no haying or agriculture production can occur in the wetland or stream area except as determined through a compatible use process and then approved by the NRCS State Conservationist. The landowner receives 75% of the appraised agricultural value of the land for an easement payment. This Teton County agreement also contained a significant restoration project, where a portion of the stream was restored and four ponds were built. WRP restoration projects are cost-shared at a rate of 75% from NRCS and 25% from the landowner. *For more information*, contact a local NRCS office or Dennis Dellwo, Wetland Reserve Program, NRCS, 10 East Babcock Street, Bozeman, MT 59715; (406) 522-4000.

— Natural Streambed and Land Preservation Act (310 Permit Program) —

Purpose:

To minimize soil erosion and sedimentation, maintain water quality and stream channel integrity, protect and preserve streams and rivers in their natural state, and prevent property damage to adjacent landowners.

Who Enacts It:

The board of supervisors of the local Conservation District administers the 310 permit program within the district boundaries. A person proposing work in or near a stream must apply for and receive a 310 permit before proceeding with the project.

Authority for Tool:

The Montana Natural Streambed and Land Preservation Act (Title 75, Chapter 7, Part 1, MCA) requires a 310 permit from the local conservation district for projects in or near streams. Each conservation district adopts its own rules guiding the 310 permit process.

How it Works:

A person planning any activity that will alter or affect the bed or banks of a natural stream or river must apply for a 310 permit from the local Conservation District. After the application is accepted, an on-site inspection is conducted. Inspectors make

recommendations to the Conservation District board of supervisors, who must approve, modify, or deny the application within 60 days. Applications are evaluated to determine if the proposed project will reasonably accomplish the purpose of the project, and its effects on soil erosion and sedimentation, stream channel alteration, stream flows, water quality, and fish and aquatic habitat. Additionally, the Conservation District determines whether the project could be modified in a way that reduces the disturbance to the stream and its environment. Permit conditions may limit the time and duration of construction to minimize impacts to the stream or associated aquatic life. Conservation districts must adopt rules to guide them in their deliberations at the local level. Most districts have adopted the model rules provided by the State of Montana.

Wetlands and riparian areas are only protected if they exist on the banks of streams and rivers. However, Conservation Districts have the ability to adopt additional protections that would provide greater protection to riparian areas. Examples of protection measures currently being considered by Montana Conservation Districts include: banning blanket riprap on streams less than 50 feet wide; prohibiting the clearing of riparian vegetation within the ordinary high

water mark of a river or stream; prohibiting the use of waste concrete, tires and other unconventional materials in all projects; requiring new bridges to at least span the bank-full width of the stream so that bank stabilization is not needed to protect either end of the bridge; prohibiting new levees and requiring that replacement of historic levees only be allowed after analysis of the potential of setback levees; limiting the amount of rock allowed in bank stabilization projects; and requiring that all projects have a riparian vegetation component which is not considered successful unless the vegetation survives for two years after the project is completed.

Strengths:

Projects that alter natural streams directly impact aquatic and riparian vegetation. The 310 permit program is specifically designed to minimize the adverse impacts of projects on stream beds, stream banks, and their associated vegetation. Therefore, the 310 program provides direct protection for riparian

vegetation located on stream banks.

Weaknesses:

The 310 permit does not govern projects outside the stream channel and stream bank, and therefore provides protection for only a narrow corridor of riparian vegetation and wetlands.

Montana Case Histories/Contact Information:

Although there are several conservation districts looking at revisions to their rules to increase protection of riparian areas, no district has adopted these rules to date. *For more information* contact Laurie Zeller, Conservation Districts Bureau, Montana Department of Natural Resources and Conservation, 1625 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, (406) 444-6667, website: <http://www.dnrc.state.mt.us/cardd/cardd.html>; or Sarah Carlson, Montana Association of Conservation Districts, 501 N. Sanders, Suite 2, Helena, MT 59601, (406) 443-5711, website: <http://www.macdnet.org/>.

Watershed Groups

Purpose:

To provide a forum for public discussion and action on natural resource issues affecting a watershed. Each individual watershed group determines its own purpose, projects, and direction.

Who Enacts This Tool:

Watershed groups are local, voluntary partnerships that usually form because of a driving issue of concern to members of the watershed. The groups have a broad base of participation, generally representing all people with an interest in the watershed (stakeholders), including private landowners, all levels of government (local, state and federal), local elected officials, environmental and conservation organizations, and other interested individuals, corporations, or organizations.

Authority for Tool:

There is no statutory authority for most watershed groups, although some participating government agencies have authorities pertaining to natural resource protection of a watershed. A few watershed groups

have formed their own nonprofit organization.

How it Works:

Montana currently has over 60 watershed groups. Each group is an independent manifestation of local people and their interest, energy, activism, and character. These groups generally organize to work on natural resource issues within a watershed, where groups commonly focus on a diverse set of identified issues: water quality or quantity, weeds, land use development, fisheries, and the local economy. They can directly participate in decision-making, problem solving, resource assessment projects, and projects designed to address watershed concerns.

The Montana Watershed Coordination Council (MWCC) is the state network that can assist with the development of new watershed groups, as well as with support for existing groups. The Council also acts as a clearinghouse for information and resources for watershed groups. *For more information* about the MWCC, see their website at <http://water.montana.edu/watersheds/default.htm>. *For*

more information about individual watershed groups, contact Karen Filipovich, Montana Watercourse, 201 Culbertson, Montana State University, Bozeman, MT 59717; (406) 994-6671.

Watershed groups can assist with the protection of wetlands and riparian areas by conducting restoration projects, facilitating the use of conservation easements, providing public education workshops about the importance of conserving these areas, and more.

Strengths:

Watershed Groups are cooperative and collaborative in nature. They build relationships between people in a watershed. Because these groups are voluntary, they depend upon developing a good working relationships between participants. Once this relationship is established, diverse organizations, individuals, and agencies can work together to solve local natural resource issues. Partnerships can lead to important conservation projects and/or resolution of natural resource issues in a watershed.

Weaknesses:

The process used by Watershed Groups often moves slowly because it depends upon people developing relationships and then working on a common goal or project. The hope is that time spent in the beginning forming relationships and defining goals will be recouped by steady program implementation later. If group dynamics don't work amongst participants, the group may not accomplish their established goals or projects. Some Watershed Groups do not do on-the-ground projects, which can frustrate participants who want to see progress made on an identified problem.

Montana Case Histories:

1. Blackfoot River Valley.

The Blackfoot Challenge is focused on conservation of the natural resources and rural lifestyle of the 132-mile Blackfoot River Valley. The group is composed of private landowners; federal, state, and



local government officials; conservation organizations; and corporate landowners. The main tools used by the Challenge to accomplish work include private-public forums, collaborative partnerships, and information and education outreach. Their accomplishments include placing perpetual conservation easements on 75,000 acres of private land; acquiring 3,700 acres of land; restoring 73 miles of streams and riparian vegetation, and 2,100 acres of wetlands; removing over 300 miles of fish passage barriers; and implementing grazing systems on more than 35,000 acres. The Challenge is an incorporated nonprofit organization, with part-time staff. **For more information**, contact Tina Bernd-Cohen, Blackfoot Challenge, P.O. Box 563, Helena, MT 59624; (406) 442-4002; Email: blkfootchallenge@aol.com.

2. Lewistown Area.

The Big Spring Creek Watershed Partnership, located in and around Lewistown, is focused on nonpoint source



water pollution. There are approximately 440 miles of stream in the watershed. Membership in the group consists of private landowners; federal, state, and local government officials; and conservation organizations. Their accomplishments include protecting 80 acres rich in wetlands as a public, natural park; restoring a severely channelized creek, including establishing a conservation easement on 65 acres surrounding this stream section; improving riparian vegetation on land owned by 21 landowners, including installing 15 miles of riparian and cross fencing; developing 34 off-stream water sources for livestock; and restoring eroding banks on about 7,000 feet of stream with 29 landowners. The NRCS District Conservationist provides coordination to the group. **For more information**, contact Ted Hawn, Natural Resources and Conservation Service, 211 McKinley Street, Suite 3, Lewistown, MT 59457-2020, (406) 538-7401.

- Montana Department of Environmental Quality (DEQ) Wetlands Program -

Purpose:

To promote cooperative wetland resource management in Montana through administration of a wetlands grant program; coordinating the state's efforts to get National Wetland Inventory (NWI) maps completed for the state; and staffing the Montana Wetlands Council, which was established to coordinate efforts in the state to protect, conserve, and enhance Montana's wetland resources.

Who Enacts This Tool:

This program is administered out of the Planning, Prevention and Assistance Division of DEQ.

Authority for Tool:

The DEQ Wetlands Program takes its direction from the Montana Wetlands Council. Current program priorities were established in the draft *Montana Wetland Conservation Strategy* (Montana Wetlands Council, 1997) and the *Situation Assessment and Recommendations* (Mueller, 1998).

How It Works:

The DEQ Wetlands Program offers a variety of programs to assist with the protection, conservation, and enhancement of Montana's wetland resources. Riparian resources are generally included in all wetland protection efforts of the program. Of particular interest to local governments are two programs: the wetlands grant program, and the program to complete National Wetland Inventory maps for the state of Montana.

I. Wetlands Grant Program. The DEQ Wetlands Program has administered a grant program annually since 1991. The program is funded through the Environmental Protection Agency (EPA); DEQ administers the grants for the state. Eligible projects for local governments include: wetland inventories and assessments; and education and outreach programs that address local wetland issues and/or provide wetland related watershed protection, conservation, and development planning. Priority is given to projects that involve cooperative restoration,

voluntary efforts, incentive programs, joint public/private partnerships, and consensus-based watershed and wetland planning. All projects must clearly demonstrate a direct link to improving the local government's ability to protect its wetland resources. Local government entities that can apply for the grants include, but are not limited to city, county, and regional government agencies; flood control districts; water management districts; and planning commissions. The grant program is competitive, involving 6 states and 27 Indian Reservations. Montana DEQ typically receives \$250,000 to \$350,000 annually, funding 6 to 9 projects. Once grants are awarded, the DEQ Wetlands Program administers project contracts. Sample grants are available, upon request.

II. National Wetland Inventory (NWI) Maps.

An important part of wetland and riparian protection is identifying where these areas are located. The NWI maps, a project of the U.S. Fish and Wildlife Service, provides baseline wetland maps. These maps are interpretations of aerial photographs, overlain on a U.S. Geological Survey topographic map. NWI maps have been completed for only a portion of Montana. As these maps are finished for the state, they will become available on the website of the Natural Resource Information System (NRIS, Montana State Library, P.O. Box 201800, 1515 East Sixth Ave., Helena, MT 59620; (406) 444-3009; website: <http://nr.is.state.mt.us/wis/wetlands/mtnwi.html>. Several local governments have been able to complete NWI maps for a portion of their county through the Wetlands Grant Program above. More information regarding NWI maps appears Appendix III.

Strengths:

The DEQ Wetlands Program offers a variety of tools that can assist local governments in their efforts to protect wetlands. The grants program is a viable source of funds for work on wetlands, floodplains, and similar resources. Completing NWI maps for Montana will substantially increase knowledge of the location of the state's wetlands.

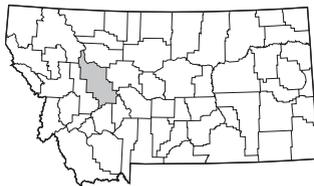
Weaknesses:

The grants program is available for local governments, although it is becoming increasingly competitive. The limitations of NWI maps are discussed in Appendix III.

Montana Case Histories:

1. Lewis & Clark

County. The Lewis & Clark County Water Quality Protection District and others received a DEQ



wetlands grant to complete a wetland resource assessment of the Helena Valley in 2001 (*see Lewis and Clark County, page 5- 21*). As part of the project, four quadrangles of the National Wetland Inventory maps were completed for the Helena Valley. The grant received was \$60,533; a \$20,178 match was provided. **For more information**, contact Kathy Moore at the Lewis & Clark County Water Quality Protection District, 1930-9th Ave., Helena, MT 59601, (406) 447-8926.

2. Gallatin County.

The Gallatin County Water Quality Protection District received a DEQ wetlands grant in 2001



similar to the work described above for Lewis &

Clark County. As part of this grant, National Wetland Inventory maps will be completed for a portion of the Gallatin Valley. The Gallatin County grant was for \$53,989; a \$24,921 match will be provided. **For more information**, contact Alan English at the Gallatin County Local Water Quality District, 311 West Main Street, Room 104, Bozeman, MT 59715, (406) 582-3148.

3. Missoula County.

The Office of Planning and Grants Floodplain Program for Missoula County received a DEQ wetlands grant to



complete a multi-pronged approach to protect wetlands in the county (*see Missoula County, page 5- 18*). National Wetland Inventory maps are being completed for selected portions of Missoula County. The grant received was \$42,087; a \$36,700 match will be provided. **For more information**, contact the Office of Planning and Grants, 200 West Broadway, Missoula, MT 59802-4292, (406) 523-4657.

For more information about the DEQ Wetlands Program, contact Lynda Saul, Wetlands Coordinator, Dept. of Environmental Quality, 1520 East 6th Ave., Helena, MT 59620, (406) 444-6652, website: <http://nris.state.mt.us/wis/wetlands>.

Water Pollution Control State Revolving Fund (WPCSRF)

Purpose:

To provide affordable long-term financing to municipalities and local districts for projects that maintain, restore, or enhance water quality. A broad range of water quality projects are eligible for financing, such as wastewater treatment facilities, and non-point source projects that include stream bank restoration, and wetlands preservation and restoration projects.

Who Enacts This Tool:

The WPCSRF program is cooperatively administered

by the Montana Department of Environmental Quality (DEQ) and the Department of Natural Resources and Conservation (DNRC). Applications for WPCSRF loans may be submitted to either DEQ or DNRC.

Authority for Tool:

General authority comes from Title 75, Chapter 5, Part 11, Section 1101, MCA, which authorizes DEQ and DNRC to provide loans to local governments, nonprofit organizations, and others for water quality projects.

How it Works:

The WPCSRF program offers long-term loans to cities, towns, water and sewer districts, conservation districts, irrigation districts, special improvement districts, rural improvement districts, nonprofit organizations, and other agencies to help finance water quality projects. The loans currently carry an interest rate of 4%, and the term of the loan may be up to 20 years. Because of the great need to improve wastewater facilities, approximately 90% of Montana's applications are for wastewater projects.

WPCSRF loans can benefit wetlands and riparian areas in several ways. Constructing artificial wetlands can be part of a wastewater treatment system, adding to Montana's wetland resources. Restoration and preservation of wetlands and streams are eligible activities for loans. In other states WPCSRF loans have been used for: land acquisition, conservation easements in high priority areas to protect a water supply area; floodplain restoration projects, and riparian restoration activities such as planting vegetation for bank stabilization.

Strengths:

Montana's local governments have a great need to improve public water and wastewater facilities, and will move forward on these projects. As a result, wetlands and riparian areas in the vicinity of water and wastewater treatment facilities could benefit from reduced pollution. Wastewater treatment plants that contain a wetland component provide for advanced treatment and enhance local wetland resources, including providing wetland habitat for wildlife. There are opportunities in the future for local governments and others to secure WPCSRF loans for the purchase of properties or conservation easements that will protect wetlands and riparian areas, or for loans to

provide money for the restoration of these resources.

Weaknesses:

Because of limited resources available to local governments in Montana, borrowing money for the protection of wetlands and riparian areas may not be a priority. To date, there are no examples in the state of the use of WPCSRF loans for protection of these areas through purchase of property or conservation easements, or the restoration of stream bank or wetland resources.

Montana Case Study:

City of Ronan.

Wetlands have been used in Ronan's wastewater treatment



system since 1996. The two-cell constructed wetlands are approximately two feet deep and cover a total of 7.5 acres. The wetlands function as the tertiary treatment system, reducing ammonia, nitrates, phosphorous, and total suspended solids concentrations in the treated water. Constructed wetlands can be an effective way for a community to meet non-degradation requirements. The system works more effectively in the spring and summer; treatment in the fall and winter occurs but at a reduced rate. Currently, the only other wastewater treatment facility utilizing wetlands is in Corvallis; their system came on-line in the fall of 2001. Design guidelines for constructed wetlands in wastewater treatment facilities are available. **For more information**, contact Mike Abrahamson, Montana Water Pollution Control State Revolving Fund Loan Program, Technical and Financial Assistance Bureau, Montana Department of Environmental Quality, 1520 East 6th Ave., Helena, MT 59620-0901; (406) 444-5324; <http://deq.state.mt.us/wqinfo/wpcsrf/>.

Source Water Protection Program

Purpose:

To provide communities with an assessment of public water systems to determine the system's susceptibility to contamination.

Who Enacts This Tool:

The Montana Source Water Protection Program is administered by Montana DEQ. The program sets priorities among public water systems for completing source water assessments, and reviews and certifies

locally developed source water protection plans.

Authority for Tool:

General authority comes from the Montana Source Water Protection Program (Title 75, Chapter 6, Part 1, MCA), enacted to meet mandates under the federal Safe Drinking Water Act.

How It Works:

The Source Water Protection Program completes assessments of public water systems to determine the system’s vulnerability to contamination. There are approximately 2,000 public water systems in Montana, defined as water supplies that provide drinking water to 25 or more people. Each assessment must: 1) identify and describe the water source; 2) assess the water source’s susceptibility to contaminants and the origin of those contaminants; and 3) develop information to make the public aware of the potential for contamination. Based on this assessment, a public water system or community can develop a plan to protect the water source.

The planning process of the Source Water Protection Program can benefit wetlands and riparian areas when communities learn where drinking water supplies are vulnerable to contamination—and the relationship of wetlands and riparian areas to public water system supplies becomes apparent. As more communities complete their Source Water Protection Plans and adopt ordinances to protect their drinking water, more opportunities will arise for protection of surface water by requiring setbacks from activities

that may pollute drinking water sources.

Strengths:

Source Water Protection Plans can become an important educational tool for communities on how local water supplies are vulnerable to contaminants. Because of the natural filtering capacity of wetlands and riparian areas, their protection may eventually be built into programs designed by local communities to protect their drinking water.

Weaknesses:

Source Water Protection Plans in and of themselves will not result in protection of drinking waters—and wetlands and riparian areas; it is their implementation through locally adopted ordinances to protect public water sources that will protect wetlands and riparian areas. With over 2,000 public water systems in the state and only approximately 10 Source Water Protection Plans completed, it will take many years before the plans are completed and implemented.

Montana Case History/Contact Information:

Because so few Source Water Protection plans have been completed in Montana, there are no case studies available in the state that show how these programs will be implemented to benefit wetlands and riparian areas. *For more information* contact Joe Meek, Source Water Protection Program, Pollution Prevention Bureau, Montana Department of Environmental Quality, 1520 East 6th Ave., Helena, MT 59620; (406) 444-4806; <http://deq.state.mt.us/wqinfo/swp>.

Montana Wetlands Legacy

Purpose:

To protect, restore, and enhance Montana’s wetlands, riparian areas, and associated uplands through a fully integrated, voluntary partnership.

Who Enacts This Tool:

The Montana Wetlands Legacy partnership, which includes agencies, conservation organizations, and interested individuals, is involved in on-the-ground wetlands and riparian conservation activities in Montana.

Authority for Tool:

There is no statutory authority for the Montana Wetlands Legacy, although partner agencies have individual authorities and mitigation responsibilities for wetland protection. The Montana Wetlands Council (*see DEQ Wetlands Program, page 6- 10*) identified the need to establish the Montana Wetlands Legacy to fulfill its goal for non-regulatory “on-the-ground, incentive based partnerships protecting priority wetlands in the state.”

How It Works:

Partners in the Montana Wetlands Legacy work to protect wetlands, riparian areas, and associated uplands through cooperative projects, incentives and voluntary means. Assistance is provided for individual projects through donations of staff time, technological and financial resources, and knowledge and understanding. An important function of the Legacy is to bring people together with diverse backgrounds, training, and experience to share information and expertise. The Legacy is committed to helping its Montana partners and interested landowners locate funding, including new funding sources for wetland and riparian projects, and assists partners in applying for grants.

State and federal agencies in Montana are currently working on a payment-in-lieu-fee program to provide an option for mitigation of wetland and stream impacts resulting from activities under 404 of the Clean Water Act, administered by the Army Corps of Engineers (*see Appendix IV*). This program may allow developers to pay a fee for each acre of resource impacted. The funds would be collected, and made available for larger mitigation projects. The Montana Wetlands Legacy will be the likely administrator of this in-lieu-fee program.

Strengths:

The Legacy represents a point of contact for anyone involved or interested in protecting Montana's wetlands and riparian areas. As a result, it can bring people and resources together to work on specific projects. This service can provide access to existing and new resources.

Weaknesses:

The Legacy works to pull together resources for high priority wetlands, which are wetlands and riparian areas of local and/or statewide concern. Because of limited resources, the Legacy may not have the resources to work toward protection or restoration of lower priority wetlands at this time.

Montana Case Histories/Contact Information:

As of November 1, 2001, Legacy partners had protected over 73,000 acres of wetlands, riparian areas, and associated uplands on their way to accomplishing their 5-year 250,000-acre goal. Examples of projects completed to date, which include conservation easements, wetland restorations, and fee title acquisitions, can be found on the Legacy website. *For more information* contact Tom Hinz, Coordinator, Montana Wetlands Legacy, 1400 South 19th, Bozeman, MT 59718; (406) 994-7889; website: www.wetlandslegacy.org.

Advanced Identification Process (ADID)

Purpose:

A planning process where cooperating government agencies map and identify wetlands and other waters that are generally suitable or unsuitable for filling under Section 404 of the Clean Water Act.

Who Enacts This Tool:

Local governments can initiate the ADID program in order to facilitate local planning efforts. This program is implemented by the Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps), and after consultation with the involved state or tribal government.

Authority for Tool:

Guidelines for the federal Clean Water Act (40 C.F.R.

§230.90) authorize this program.

How It Works:

The ADID program gathers information about wetland resources in a defined area, maps those resources, and collects information about the function and significance of identified resources. This program provides local communities with information the location, quality, and vulnerability of their wetland resources. The ADID program directly relates to the Army Corps of Engineer's (Corps) 404 permit. An overview of this program appears in Appendix IV. Under the 404 program, it is unlawful to discharge dredged or fill materials into waters of the United States without first receiving authorization (known as a "404 permit") from the Corps. The ADID

process is intended to add predictability to the wetlands permitting process, as well as better account for the impacts of losses from multiple projects within a specific geographic area. An ADID study generally classifies wetlands as suitable or unsuitable for filling, development, or other activities involving the “discharge of dredged or fill material.”

Local governments can initiate ADID projects to facilitate local planning efforts. Project areas have ranged in size from less than 100 acres to greater than 4,000 square miles. Such studies can be designed to aid local zoning and planning efforts in preservation of wetland resources. An ADID project in Pennsylvania inventoried the wetlands in a 500-acre area under increased threat from urbanization. The resulting maps enabled all parties to determine which wetlands were generally suitable for filling, and provided the community with technical information on the area’s wetland values and functions.

Strengths:

The ADID program could be an important informational and educational tool for local

governments involved in planning or zoning. It has also proven to be a successful way to generate support for wetlands protection in a community. The program can be used to develop a Special Area Management Plan (*see below*). It is designed to improve predictability for the public and streamline the process when dealing with the Corps’s 404 program that regulates the filling of wetlands.

Weaknesses:

Because the ADID program is advisory and informational only, it does not lead to direct protection of wetland resources. Nationwide, the ADID program has only been used on a limited basis.

Montana Case Histories/Contact Information:

Because no ADID program has been conducted in Montana, there are no case studies available. *For more information* contact the Army Corps of Engineers, Helena Regulatory Office, 10 West 15th Street, Suite 2200, Helena, MT 59626, (406) 441-1374; or the Environmental Protection Agency, 10 West 15th Street, Suite 2200, Helena, MT 59626, (406) 441-1123.

Special Area Management Plan (SAMP)

Purpose:

To provide an interagency collaborative process for ensuring natural resource protection and reasonable economic development within sensitive areas.

Who Enacts This Tool:

A local or state agency can initiate the formation of a SAMP. Local sponsorship is required before the SAMP process proceeds.

Authority for Tool:

The federal Coastal Zone Management Act provides the authority for SAMPs. The Army Corps of Engineers (Corps) adopted SAMPs under a 1986 Regulatory Guidance letter.

How It Works:

The focus of a SAMP is on the Corps’ 404 permit process that regulates the filling of wetlands,

therefore the Corps determines if a SAMP is necessary and feasible. The goal of a SAMP is to provide a streamlined process for individuals to receive permits under the 404 permit process, which regulates the filling of wetlands, while allowing evaluation of individual and cumulative impacts of projects. A brief description of the Corps 404 permit program appears in Appendix IV. Two products may be obtained from a SAMP: 1) appropriate state, local, and Corps permit approvals for defined activities; and 2) a local, state, or federal restriction on undesirable activities. The SAMP process is most beneficial in areas that are environmentally sensitive and under strong developmental pressure. Full public involvement should be an integral part of the SAMP planning and development process.

Because the SAMP process is designed to ultimately direct the Corps’ management of the 404 permit

program, it directly affects protection of wetlands, and some riparian areas. SAMPs may address such issues as flood control and storm water management, wetlands protection and enhancement, wetland mitigation banks, parks and recreation, environmental enforcement, and more. They can also contained specific policies to guide remediation, enhancement, and protection of the area’s natural resources, while simultaneously allowing development in less sensitive areas.

Strengths:

A SAMP, and the process of its drafting, greatly increases the coordination among regulatory agencies, affected development, and public interests. With a SAMP in place, the permitting process for projects is simplified and more efficient. At the same time, wetlands and some riparian areas are carefully analyzed and given proper protection. The SAMP itself should be comprehensive and in-depth.

Weaknesses:

Developing SAMPs that are comprehensive take much time and patient work by the involved parties. Many riparian areas are not considered “waters of the United States” and consequently are not considered in the SAMP process.

Montana Case History:

Upper Yellowstone River. Although no SAMP has been completed in Montana, one is currently underway in Park



County. Floods on the Yellowstone River in 1996 and 1997 modified the floodplains and resulted in property losses for many private landowners along the river. As a result, many landowners requested permits for bank stabilization projects (*see Bank Stabilization and Land Use Planning, page 4-2*). The number of bank stabilization projects, with little or no regard for the cumulative effects, convinced many individuals of the need for a more comprehensive planning effort for the area. In 1997, the Upper Yellowstone Task Force was created to address the

flood issue. In cooperation with the Task Force, the Corps initiated the development of a SAMP for the upper Yellowstone River, from Gardiner to Springdale. Parties to the SAMP include the Corps, DNRC, Park County, the City of Livingston, local businesses, property owners along the river, conservation group representatives, and the general public. Montana’s congressional delegation persuaded the Corps to provide \$320,000 to begin to develop the SAMP. Specific language in the appropriation stated that the SAMP include an assessment of the long-term effects of bank stabilization, and potentially conclude the process with a general permit (a general permit is a type of permit issued under the Corps’ 404 permit program). The SAMP is scheduled for completion in 2005. ***For more information,*** contact the Army Corps of Engineers, Helena Regulatory Office, 10 West 15th Street, Suite 2200, Helena, MT 59626, (406) 441-1374.

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