

## **CHAPTER 5: CONSULTATION, REVIEW, AND PERMITS**

### **5.1 NATIONAL ENVIRONMENTAL POLICY**

This EIS was prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and its implementing regulations. Because this EIS explores, identifies, and discloses many of the environmental impacts expected from watershed management projects, environmental review of future individual projects would have a narrower, more project-specific focus. Additional environmental analysis (including NEPA) would be required if anticipated impacts or project components were to differ substantially from those evaluated and addressed in this EIS.

### **5.2 WILDLIFE, PLANTS, AND HABITAT**

#### **5.2.1 Threatened and Endangered Species and Critical Habitat**

Under all alternatives, project managers would comply with the Endangered Species Act (ESA) and consult with the USFWS and with the NMFS and appropriate state agencies about the potential presence of listed and proposed threatened and endangered (T&E) species or designated critical habitat within the area of potential effect. If T&E species are present at proposed projects or if there is a question of potential impacts on T&E species, BPA and/or the project manager (e.g., State or tribal agency) would prepare Biological Assessments and consult with USFWS or NMFS according to the interagency coordination rules set forth in 40 CFR Part 402.

#### **5.2.2 Fish and Wildlife Conservation**

The Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901 *et seq.*) encourages Federal agencies to conserve and promote conservation of non-game fish and wildlife species and their habitats. All alternatives considered for funding under the Watershed Management Program would have the goal of conserving fish and wildlife. As mentioned above, the USFWS will be consulted regarding all major construction projects, including those affecting water resources, as required by the Fish and Wildlife Conservation Act.

#### **5.2.3 State Fish Agencies**

The appropriate state agency would be contacted for any construction in or near Waters of the State to establish acceptable construction periods. Where species protected by ESA listing may be affected, BPA will consult with the appropriate agency (USFWS or NMFS).

## **5.3 HERITAGE CONSERVATION/NATIVE AMERICANS**

### **5.3.1 Historic Places**

The National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470) requires Federal agencies to take into account the potential effects of projects on registered properties or properties eligible for listing in the National Register of Historic Places. Projects involving property acquisition would first receive an overview to determine the potential existence of historic and cultural resources. Under all alternatives, where a project requires construction on lands that contain currently listed or eligible historical resources, a cultural resources management plan would be prepared in consultation with the State Historic Preservation Officer (SHPO) and/or affected tribes. This draft EIS is part of the review process, and may result in one or more Programmatic Agreements in accordance with 36 CFR Part 800.

### **5.3.2 Native Americans**

Under all alternatives, project management plans would avoid disturbance of Native American cultural items or religious places, or adverse effects on the exercise of Native American religion, pending consultation with the appropriate tribe(s). (See Section 4.6.1.)

## **5.4 STATE, AREA-WIDE, AND LOCAL PLAN AND PROGRAM CONSISTENCY**

Under all alternatives, project managers would consult with local county and city authorities to address possible conflicts with local plans or programs, including coastal zone management plans, if applicable.

## **5.5 ENVIRONMENTAL JUSTICE**

There is no evidence to suggest that the Watershed Management Program would have disproportionately high and adverse human health or environmental effects on minority or low-income populations. However, the Base Response alternative (Alternative 2) includes steps to ensure that such effects would not occur, in accordance with Executive Order 12898. Actions listed under Alternative 2 are included in every Action Alternative. These steps would also be undertaken on a case-by-case basis under No Action.

## **5.6 FLOODPLAINS AND WETLANDS**

### **5.6.1 Floodplain/Wetlands Assessment**

This Assessment constitutes the Federal review required by 10 CFR 1022 and Executive Orders 11988 and 11990.

Under 10 CFR 1022 and Executive Order 11988, Federal agencies are required to avoid or minimize adverse impacts associated with short-term or long-term modification and occupancy of floodplains. Watershed management activities are typically consistent with floodplain values, and would often benefit many of those values (i.e., water-quality maintenance, moderation of floods, and natural resources). However, potential floodplain effects would include placing new structures or materials in streams that could be dislodged in a flood and disturbing existing streambanks and channels, which would make them more susceptible to erosion and failure during flooding until they were stabilized and revegetated.

The proposed actions would have long-term, net positive effects on the floodplains affected. Channel restoration, revegetation, and erosion control and stabilization actions would be specifically designed to lessen the impacts of future flooding on lives and property, and would help restore natural and beneficial floodplain values.

Under 10 CFR 1022 and Executive Order 11990, Federal agencies are required to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking. Because wetlands provide valuable habitat for many wildlife species and water storage and filtering functions, watershed management projects are more likely to maintain or improve existing wetlands, or to create new wetlands; net loss of wetlands is unlikely under any alternative. Potential negative effects on wetlands would be minimal. Riparian wetlands may be temporarily affected by disturbance, but the proposed actions would help stabilize streambanks, thereby reducing erosion and sedimentation. Project areas would be surveyed to determine the extent and location of any wetlands present before disturbance; wetlands would be avoided wherever practicable. Projects would be designed to minimize negative impacts on the survival, quality, and natural and beneficial values of any wetlands present. Long-term effects would be to improve the function of, and potentially to expand the size of, both the floodplains and wetlands associated with the streams.

Standard erosion control practices would be employed during construction. All applicable permits, including Corps of Engineers Section 10 and 404 permits, and state water quality and shoreline protection permits, would be obtained, and conditions for these permits would be adhered to. Designs for permanent structures to be installed in streams would be reviewed by qualified engineers, and the structures would be floodproofed to the extent practicable.

Any wetlands that must be altered, filled or destroyed would be mitigated as a condition of the Corps or NRCS Section 404 permit.

## **5.7 FARMLANDS**

Consistent with the Farmland Protection Policy Act (7 U.S.C. 4201, et seq.), project managers would use the USDA rating system (7 CFR 658.4) if farmland were to be converted. A rating of 160 or greater would require project managers to consider alternatives to conversion, such as using crops to achieve watershed management objectives such as soil conservation. Most agricultural techniques that would be used would have benefits to farmland quality such as retention of soil, groundwater maintenance, and so on.

## **5.8 GLOBAL WARMING**

Although watershed management projects might involve prescribed burning for habitat or fire management, it would not likely be greater than would occur if the land were managed for other purposes. Managing land for water quality, soil, and aquatic habitat conservation is likely to conserve biomass. Catastrophic fires that could occur without prescribed burning could actually result in a greater release of carbon dioxide (the most important contributor to global warming) than would be released with controlled burning. Therefore, there would likely be no warming effect on global climate from projects considered for funding/implementation.

## **5.9 WATER RESOURCES**

### **5.9.1 Permits for Structures in Navigable Waters**

Some watershed management activities, such as irrigation diversions or pump stations in navigable waters, might require a permit from the Corps under Section 10 of the Rivers and Harbors Act of 1899. Consultation requirements of all alternatives would ensure that project managers acquire necessary permits.

### **5.9.2 Permits for Discharges into Waters of the United States**

Some watershed management activities (if they require dredging or filling of waters of the United States) might require a permit from the Corps under provisions of the Clean Water Act. In-channel improvements that could result in temporary water quality impairment might also require state permits such as the Temporary Modification of Water Quality Criteria (Chapter 90.48 RCW and Chapters 173-201; 173-222 WAC) required in Washington State. Consultation requirements of all alternatives would ensure that project managers acquire necessary permits.

Stormwater discharge permits are required in each state for construction (if more than 2 hectares or 5 acres are involved) or for operation if any project discharges stormwater into Waters of the United States.

## **5.10 PUBLIC LANDS**

### **5.10.1 Permits for Rights-of-Way on Public Land**

Consultation requirements of all alternatives would ensure that project managers acquire permits or agreements for rights-of-way on lands not owned by BPA.

### **5.10.2 Outdoor Recreation Resources**

Consultation requirements of all alternatives would ensure consistency with all public recreation resources, including Wild and Scenic Rivers, National Trails, Wilderness Areas, parks, campgrounds, and scenic areas.

## **5.11 ENERGY CONSERVATION AT FEDERAL FACILITIES**

Federal facilities are not likely to be involved in or affected by watershed management activities.

## **5.12 POLLUTION CONTROL**

### **5.12.1 Contract Compliance with the Clean Air and Water Acts**

Neither the proposed action nor the alternatives would require BPA to enter into a procurement contract with any entity convicted of an offense under the Clean Air or Water Acts.

All alternatives would require project managers to obtain appropriate permits for prescribed burns and in-channel stream improvements, thus ensuring compliance with applicable air and water quality standards.

### **5.12.2 Hazardous Waste and Toxic Substances**

Some properties on which mitigation projects are implemented might contain solid and/or hazardous waste. For example, land that has been used for ranching might have dilapidated structures, junked vehicles or machinery, fuel tanks, pesticide containers, oil drums, or other refuse. BPA or project managers would survey for such materials to determine whether they were present within project footprints or staging areas. Project managers would be required to dispose of any solid waste at approved landfills. For hazardous and toxic waste, project managers would consult with the EPA and with the appropriate State regulatory agency to determine proper disposal methods and procedures.

### **5.12.3 Drinking Water**

Watershed management activities are unlikely to release contaminants into groundwater. Techniques presented for pesticide application restrict its use near surface waters and minimize the risk of groundwater contamination. Some agricultural techniques that increase soil water infiltration could leach salts to shallow groundwater tables. Land application of animal wastes might cause nitrates to move into groundwater. However, most watershed management activities would actually reduce the opportunity for pollutants to enter surface water or groundwater.

### **5.12.4 Noise**

Watershed management activities might involve use of heavy equipment that can generate noise. Compliance with noise standards might require restrictions on where and when heavy equipment may be used.

### **5.12.5 Herbicides/Pesticides**

All alternatives would require the use of EPA-approved pesticides only, and only in the manner prescribed by the EPA.

### **5.12.6 Asbestos/Radon**

Watershed management activities are not expected to involve use, transportation, or disposal of asbestos; the release of radon gas; or the violation of regulations concerning radon gas.

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