

WYOMING
STATEWIDE WETLAND MITIGATION BANK

GUIDELINES
FOR
INTERPRETATION AND IMPLEMENTATION



Wyoming Department of Environmental Quality

FINAL
April, 1995
...About This Document

In 1991, the Wyoming Legislature passed the "Wyoming Wetlands Act". The Act was further amended and refined in the 1994 legislative session. The purpose of the statute is to establish a statewide wetland mitigation bank to improve the administration of wetland protection, permitting and restoration programs in the state. These guidelines describe the operation of the statewide bank and the procedures for establishing accounts and depositing and withdrawing wetland credits.

The procedures described in this document are not rules or regulations. They are "guidelines" which are essentially an expression of departmental policy. As guidelines, they do not change the substantive requirements of any existing state or federal regulations or permitting requirements. They can, however, affect the delivery of services by providing options to agencies and the regulated public for meeting the wetland mitigation requirements associated with the regulatory programs.

The state wetland bank provides essentially the same services as any other bank. The currency of the bank, however, will be "wetland credits" rather than money. Any person who has earned a credit can deposit it in the bank until it is needed to pay off a wetland debt (mitigation). One notable exception is that loans from the bank are not possible. Withdrawals are available only to credit holders and are limited to the actual amount and type of credit recorded.

The options made possible by the wetland bank are available to both public and private entities. Any individual landowner, organization or public agency can earn credits for wetland creation, restoration or enhancement. Once the credits are recorded in the bank, they can be withdrawn by the owner or transferred to another party to meet mitigation requirements. The State of Wyoming, through the Department of Environmental Quality will maintain all bank records and produce periodic reports concerning wetland gains and losses and credit and debit transactions for each account.

These guidelines have been produced as a cooperative effort among the following state agencies: Department of Environmental Quality, Department of Agriculture, State Engineer's Office,

Transportation Department, Game & Fish Department and the Water Development Commission. The Program will be administered, however, solely by the Department of Environmental Quality, Water Quality Division.

For additional information contact :

**Wetlands Program
Wyoming DEQ/WQD
Herschler Building, 4th Floor West
Cheyenne, Wyoming 82002**

Requests for additional information or applications for wetland credit can be made by calling (307) 777-7081 or by writing to the address above.

TABLE OF CONTENTS

	<u>Subject</u>	<u>Page</u>
	Introduction	1
Section 1.	Authority	1
Section 2.	Goals	2
Section 3.	Definitions	3
Section 4.	Eligibility	4
Section 5.	Deposit	4
Section 6.	Calculation of Credit	5
Section 7.	Letter of Credit	8
Section 8.	Use of Credits	8
Section 9.	Limitations	9
Section 10.	Sale and Transfer	16
Section 11.	Records	17
Section 12.	Disputes	18
	 <u>FIGURES</u>	
	Geographic Limitations	13
	Biotic Regions	14
	Appendix A (<i>Wetlands Act</i>)	A-1

INTRODUCTION

The purpose of this document is to provide guidance for the interpretation and implementation of the Wyoming Wetland Banking System. For the effective implementation of the bank, it is essential that policies remain clear and consistent, regardless of changes in the personnel implementing the program. Furthermore, because the system provided for in the Wyoming Wetlands Act creates "real value credits" to be attached to qualifying lands in the State, the implementing procedures must not only be consistent and fair, but also stand the test of time.

The bulk of this document provides detailed section-by-section guidance on the structure and operation of the Wetland Bank, however, the following general principle should always direct the staff:

The purpose of the wetland bank is to facilitate wetland mitigation required by existing and future federal, state, and local regulations.

This document shall be made available for inspection by the general public and no alteration of its content may be made without the approval of the Director of the Department of Environmental Quality in consultation with the other Cabinet officers who have been instrumental in its development. These include the Director of the Department of Agriculture, the State Engineer, the Director of the Water Development Commission, the Director of the Department of Transportation, and the Director of the Game and Fish Department. A public review process will also be instituted prior to any substantive changes in the guidelines.

Section 1. Authority

Wyoming Statutes 35-11-308 through 35-11-311 provide the legislative authority to establish the Wyoming Wetland Bank. Specifically, 35-11-311 requires the development of this document;

WS 35-11-311. Mitigation; guidelines.

- (a) The department, after consultation with the Wyoming department of agriculture, state engineer, game and fish department, Wyoming water development commission and the department of transportation shall adopt guidelines for evaluating ecological function and values and for establishing and administering a mitigation credit banking system for compensatory mitigation. The guidelines shall, at a minimum, provide for:
 - (i) Criteria under which mitigation credits may be earned, with credit to be recognized for man-made wetlands created after July 1, 1991;
 - (ii) Geographical and other appropriate limitations for the application of mitigation bank credits;
 - (iii) Criteria for the use, banking or sale of banked credits;
 - (iv) The approval by the department for the earning, using, banking, transfer or selling of mitigation bank credits; and
 - (v) Requirements for the maintenance and submission by the department of records concerning ecological function and wetland value losses, and credit and debit accounts for each mitigation bank."

The legislation clearly recognizes the ecological importance of wetlands and their inherent values. The intent is to maintain those values for present and future generations. The procedures and programs developed to achieve this goal, however, should not erode private property rights, water rights, or economic opportunity.

Section 2. Goals

The overall goal of the Department's wetland program is to achieve no net loss of wetland function and value in the state. The following goals of the wetland bank are more specific but are intended to

support the overall no net loss goal:

1. To provide a means for mitigation that is sensitive to the needs of the resource, the economy of the state and the individual rights of property owners;
2. To provide an element of planning, flexibility and foresight to the process of mitigation;
3. To provide incentives for wetland creation and restoration;
4. To create a system for wetland management that can serve as a tool for industry, private individuals, organizations and government agencies in the pursuit of their interests and missions;

Section 3. Definitions

"Compensatory mitigation" means replacement, substitution or enhancement of ecological functions and wetland values to offset anticipated losses of those values caused by filling, draining or otherwise damaging wetland;

"Ecological function" means the ability of an area to support vegetation and fish and wildlife populations, recharge aquifers, stabilize base flows, attenuate flooding, trap sediment and remove or transform nutrients and other pollutants;

"Man-made wetlands" means those wetlands that are created intentionally or occur incidental to human activities, and includes any enhancement made to an existing wetland which increases its function and value.

"Natural Wetlands" means those wetlands that occur independently of human manipulation of the landscape.

"Permitting agency" means the government agency that requires wetland mitigation in any particular circumstance even though an actual "permit" might not be involved.

"State Wetland Bank (SWB)" means the state sanctioned depository for wetland credits generated in Wyoming. Any person owning eligible wetlands can set up an individual account. The bank is operated by the Department of Environmental Quality.

"Wetland credit" means a numerical representation of the ecological function and value of a banked wetland. Wetland credits are the property of the landowner and, like a water right, are attached to the land.

"Wetland Value" means those socially significant attributes of wetlands such as uniqueness, heritage, recreation, aesthetics and a variety of economic values.

"Wetlands" means those areas in Wyoming having all three (3) essential characteristics:

- (A) Hydrophytic vegetation;
- (B) Hydric soils; and
- (C) Wetland hydrology.

Section 4. Eligibility

Man-made wetlands which are created or enhanced after July 1, 1991 are eligible for deposit in the Statewide Wetland Bank, subject to evidence of the actual improvements made as per section 5 of this document. An exception is made for those persons found to be in non-compliance with WS 35-11-310. This section requires all persons to notify the department before draining any wetland greater than 5 acres in size. An exemption from the notification requirement is made for wetland disturbances resulting from mining operations which have been permitted by the department.

Credit will only be given for new acres created or restored or for measurable enhancements of ecological function. Credit will not be awarded for wetlands created in response to a state or federal regulatory action (permit condition), administrative order or court order. Credit may be awarded for wetland improvements which are associated with, but are in excess of the permit condition or order.

Participation in the Wetland Banking is voluntary. Credit will only be awarded or withdrawn upon the request or consent of the landowner.

Section 5. Deposit

Any person wishing to deposit wetlands in the State Bank must notify the department before beginning the creation, restoration or enhancement project. An on-site pre-construction evaluation will be made by the department or their designated representative. The purpose of this inspection will be to document the pre-project condition so a calculation of actual post-project credits can be made. Failure to complete the pre-project evaluation or to provide documentation which accurately describes the pre-project condition negates eligibility for deposit.

Wyoming water rights are required for water supply needed for the development or enhancement of wetland areas. These water rights are administered in accordance with Wyoming state law and water supply is not guaranteed. It will be available as determined by the priority date of the water right. Water supply for wetlands is considered a beneficial use by the State Engineer's Office, but no

preference over other uses will be recognized. Along with a request for deposit, the applicant must provide proof of legal water rights.

Once construction is complete, a post construction inspection will be made at the request of the applicant. The purpose of this inspection is to document the actual wetland improvements made. The amount of eligible credit will then be calculated and deposited in the bank.

Any improvements, enhancements or newly created wetlands are not required to be maintained under these guidelines unless the credit is withdrawn for mitigation purposes. One of the goals of the State Bank is to provide an incentive for wetland creation, restoration or enhancement where there is no legal requirement to do so. If voluntary wetland creation becomes an irreversible decision, much of this incentive is lost. The areas will, however, be protected from discharges of pollutants or toxic substances as are any other waters of the state. Once a credit has been used, though the wetland created is man-made, it will be treated as a "natural wetland" for all regulatory purposes.

It must also be recognized that wetlands created for the purpose of banking may be "jurisdictional" under various federal regulations. Because of this, federal authorization may be required (404 permits etc.) before disturbing a banked wetland even though the area is not protected under the state program. The Department of Environmental Quality will negotiate with the federal agencies on behalf of the credit holder in those situations where there is a dispute concerning jurisdiction.

The pre-project evaluation will remain a matter of record. The wetland values that were on site at that time will be protected by the applicable federal, state and local laws.

Section 6. Calculation of Credit

There are two distinct types of credit - "enhancement credit" and "creation/restoration credit". Enhancement credit is earned for improving conditions on an existing wetland without increasing its size and creation/restoration credit is earned for increasing wetland acreage.

All wetland credit will be expressed in acre-units. These units will have modifiers relating to function, value and classification. An example of a wetland bank account might include "4 acres of palustrine, seasonally flooded, emergent" wetland. Expressing credits in terms of acres is the most easily understandable method and is probably the most useful for determining compliance with all federal wetland policies and regulations. Acre unit credits, however, may not necessarily represent the actual spatial reality on the ground.

Determining the values or functions of a wetland is to a large extent, a subjective matter. At this point in time, it is generally acknowledged that wetlands perform the following ecological functions:

- Groundwater Recharge
- Groundwater Discharge
- Floodflow Alteration/Desynchronization
- Sediment Stabilization
- Sediment/Toxicant Retention
- Nutrient Removal/Transformation
- Production Export
- Fish & Wildlife Habitat
- Threatened & Endangered Species Habitat
- Aquatic Diversity/Abundance

Additionally, many wetlands have socially significant values such as:

- Uniqueness/Heritage
- Recreation
- Aesthetics
- Variety of Economic Values.

Not all wetlands perform all of the above functions, and the importance or "value" of any particular function depends upon other local environmental and social factors. Furthermore, current technology is more advanced in objectively measuring wildlife habitat and flood flow retention and is much less capable of quantifying the other functions. Because methods and computer models have been developed for wildlife purposes, wetland value is most often based upon the area's importance to wildlife. There is a danger that this type of thinking can lead to faulty wetland policy decisions and a general degradation to the health of a watershed. It is arguable, nonetheless, that it is the most defensible means of making wetland decisions at this point in time.

For example, the effectiveness of a wetland to perform any of the first seven functions on the above list is directly related to the size or volume of the wetland. This is not necessarily true for the wildlife functions. It is often possible to dramatically increase a wetland's value to wildlife without increasing its size. Doing so will not improve the other functions. If banked credit which was earned specifically for wildlife enhancement is used as mitigation for the loss of wetlands providing the other functions, a net loss of wetland function will occur in the watershed. This is in opposition to the goals of the state program and should be avoided.

It is also important to recognize that the decline in habitat is one of the most serious problems associated with historic wetland losses. The state wishes to encourage habitat enhancement wherever it is possible and to give appropriate credit for the activity even if it is the only function

which can be quantified.

In an effort to balance these potentially conflicting concepts, the following procedure for the calculation of credit will be used:

1. In instances where the credit earned is the result of the creation of new wetlands on a previously dry site, or the restoration of wetlands on a previously drained site, the acre-unit credit will represent the on-the-ground reality.
2. Credit can also be earned, however, by the enhancement of existing wetlands without actually increasing their size. This enhancement credit will be awarded for the percent increase in measurable values, but will be limited to a 50% increase. Acre-units of credit will be calculated by multiplying the percent increase in value (*as measured by the most appropriate model*) by the number of acres enhanced.

Example: An applicant proposes to enhance an existing 10 acre wetland by a variety of measures such as the construction of nesting sites, improved livestock management, flow enhancement, etc. The wetland will not be physically increased in size. A pre-project evaluation is performed utilizing a model which measures habitat units. This information is recorded and dated. When the enhancement is completed, a post project evaluation is performed utilizing the same methods.

- (a) The post-project evaluation shows that habitat units were increased from 300 to 400, a 33% increase. Since the area under consideration is 10 acres, the acre-unit credit deposited in the bank is 3.3 acres.
- (b) Similarly, if habitat units were increased from 300 to 600, the percent increase is 100%. Because of the 50% limitation for enhancements, the amount of credit awarded is 5.0 acre-units.

This evaluation method allows credit to be expressed in understandable terms (acres) while still ultimately addressing the concept of function and value, as is intended by the legislation.

Because wetlands are successional systems, the amount of credit recorded might not be the amount of credit that is available at the time of withdrawal. The credits deposited in the bank will only represent the amount of credit at the date of deposit.

The calculated size and value of the existing wetland at the time of the pre-project evaluation will serve as the baseline for that specific site until credits are used for mitigation. This is to help assure that the "no net loss" goal is maintained.

Example: In scenario (b) above, 5 acre-units of credit were earned for the enhancements made.

These credits are then withdrawn for mitigation of impacts at another site. Once the credits are withdrawn, the enhanced condition (*600 habitat units*) becomes the baseline. Since the maximum amount of enhancement credits for that site has already been awarded and used, any future credits can only be earned for wetland enlargement.

**ENHANCEMENT CREDIT
CALCULATION**

Enhancement credits are calculated by multiplying the percent
Increase in measured values by the number of acres increased.

$$\frac{\Delta \text{Habitat Units}}{\text{Baseline Habitat Units}} \times \text{Acres Enhanced}$$

Enhancement credits are limited to 50% of the baseline acreage.

Section 7. Letter of Credit

Upon completion of the post project inspection, the department will issue to the applicant a letter of credit which will contain:

1. The amount and type of credit deposited in the bank;
2. A description of the minimum condition which must be maintained on the site (*pre-project evaluation*).
3. A map showing the exact location of the banked wetlands;
4. A map describing the geographic area, watershed, biotic region and wetland classification for which the credits are eligible for use as mitigation;
5. Any limitations which may be applied to the use, transfer or sale of wetland credits;
6. Information concerning water rights and possible requirements for maintaining those rights on the site once credit is withdrawn; and
7. Procedures for the use, transfer, or sale of banked credits.
8. Any known information relating to third-party agreements which may influence the use, withdrawal, transfer or sale of the banked credits.

Section 8. Use of Wetland Credits for Mitigation, (Withdrawal)

Since all wetland credits are attached to the land, credit can only be withdrawn from the bank by the landowner in accordance with any third-party agreements attached to the deed. Proof of ownership

must accompany all requests for withdrawal. Additionally, credits can only be withdrawn for use as mitigation as required by federal, state, or local laws and ordinances.

A final on-site inspection will be made with each request for withdrawal. The purpose of this inspection is:

1. To verify that the area has not been degraded since the time of deposit;
2. To assess additional credit which may have developed since the time of deposit;
3. To calculate the amount of credit remaining in the bank (if any) after withdrawal.

The amount of credit that is required and the applicability of using banked credits for mitigation is ultimately the determination of the agency requiring the mitigation. If mitigation is required by an agency of the state of Wyoming, use of banked credits will be determined solely by the procedures established under these guidelines. Presently, DEQ is the only state agency that may require wetland mitigation through mining or water quality permits.

The department will negotiate with the permitting agency on behalf of the credit holder for appropriate consideration of the use of the banked credits in instances where:

1. The amount and use of banked credits is determined by the department to be both sufficient and appropriate for mitigation under the procedures established in these guidelines; and
2. The federal or local agency requiring the mitigation does not agree.

In no instance will the department guarantee the use of banked credits for mitigation applications that are not under its control.

Once credit has been withdrawn for use as mitigation, the area will be treated as a "natural wetland" and all existing wetland regulations will apply. The condition of the wetland at the time of withdrawal will become the baseline against which all future improvements or degradations will be measured. Depending upon the specific mitigation circumstances for which the withdrawal was made, long term commitments to preserve the area may be required. For example, changing the use of the dedicated water right from wetland creation to some other use may not be possible.

Section 9. Limitations

Geographic Limitations

The basic concept behind the geographic limitation is to confine the use of banked credits to the Wyoming river basin in which the impacts will occur. However, in order to equalize the

size differentials of the basins, the largest basins have been divided and the smaller ones consolidated. Banked wetland credits can only be withdrawn for use as mitigation within the areas listed below:

South Platte & Lower North Platte
Upper North Platte & Great Divide
Cheyenne, Belle Fourche & Little Missouri
Powder & Tongue
Big Horn
Wind
Green & Little Snake
Bear & Snake
Yellowstone & Madison

Ecological Limitations

Unless there is a convincing argument to the contrary, credits will only be applicable within the same biotic region and for impacts to the same wetland System and Class (*Cowardin System*). For the purposes of wetland banking, there are three broadly defined biotic regions:

Mountain Range;
Plains; or
High Desert.

Conservation of Wetland Acreage

As discussed in section 6 (Calculation of Credit), the loss of wetland acreage cannot be completely mitigated with credit earned through the enhancement of existing wetlands. Because the conservation of wetland acreage is the most important factor in achieving no net loss of wetland function and value, the following limitation is set on the use of enhancement credits to mitigate losses of acreage:

In projects which will result in the loss of wetland acreage, only 25% of the total area lost can be mitigated with enhancement credits. The remaining 75% can only be mitigated with restoration or creation credits.

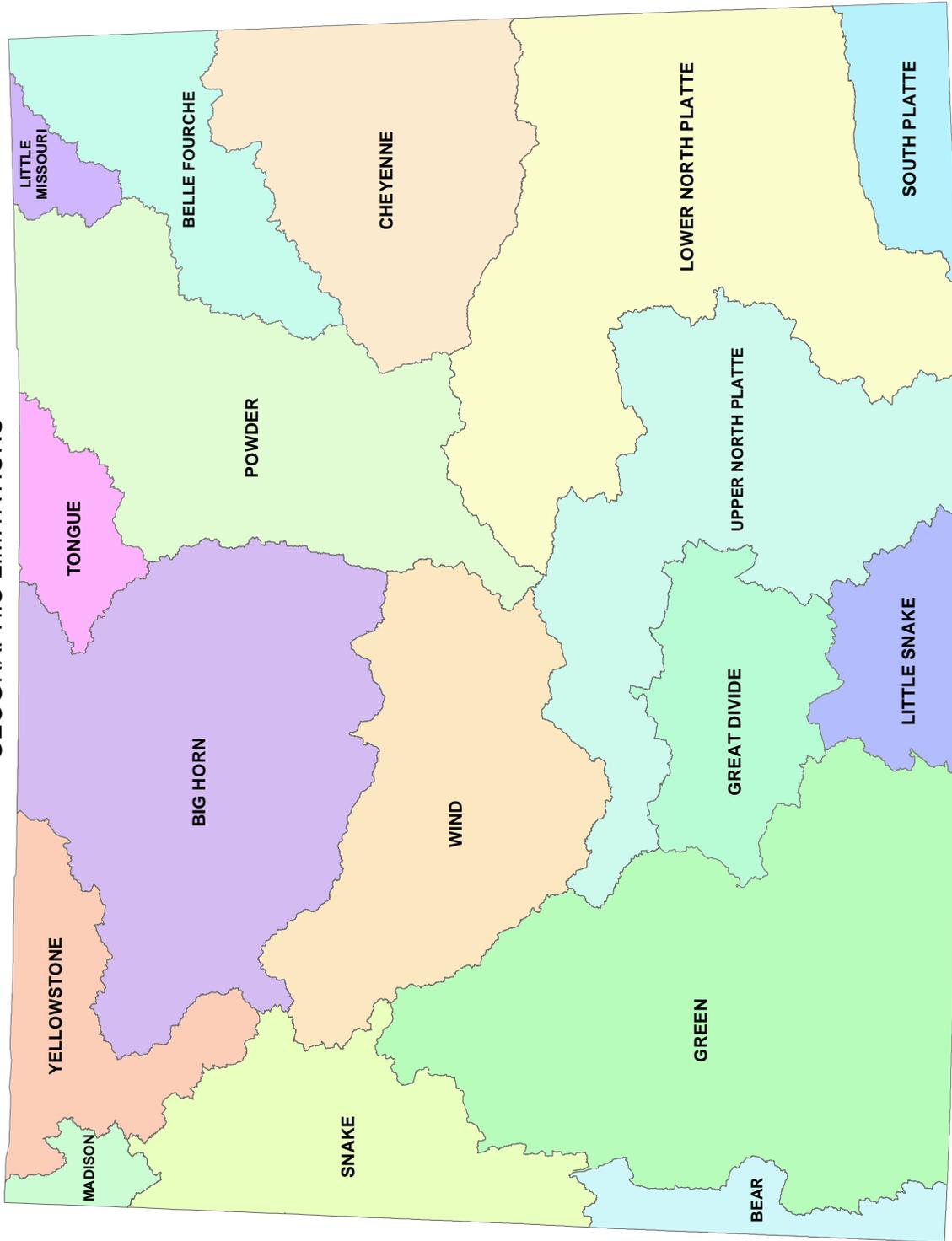
Projects which result in a loss of wetland value without a loss of acreage can be mitigated in full with enhancement credits, restoration and creation credits, or any combination thereof.

General Limitations

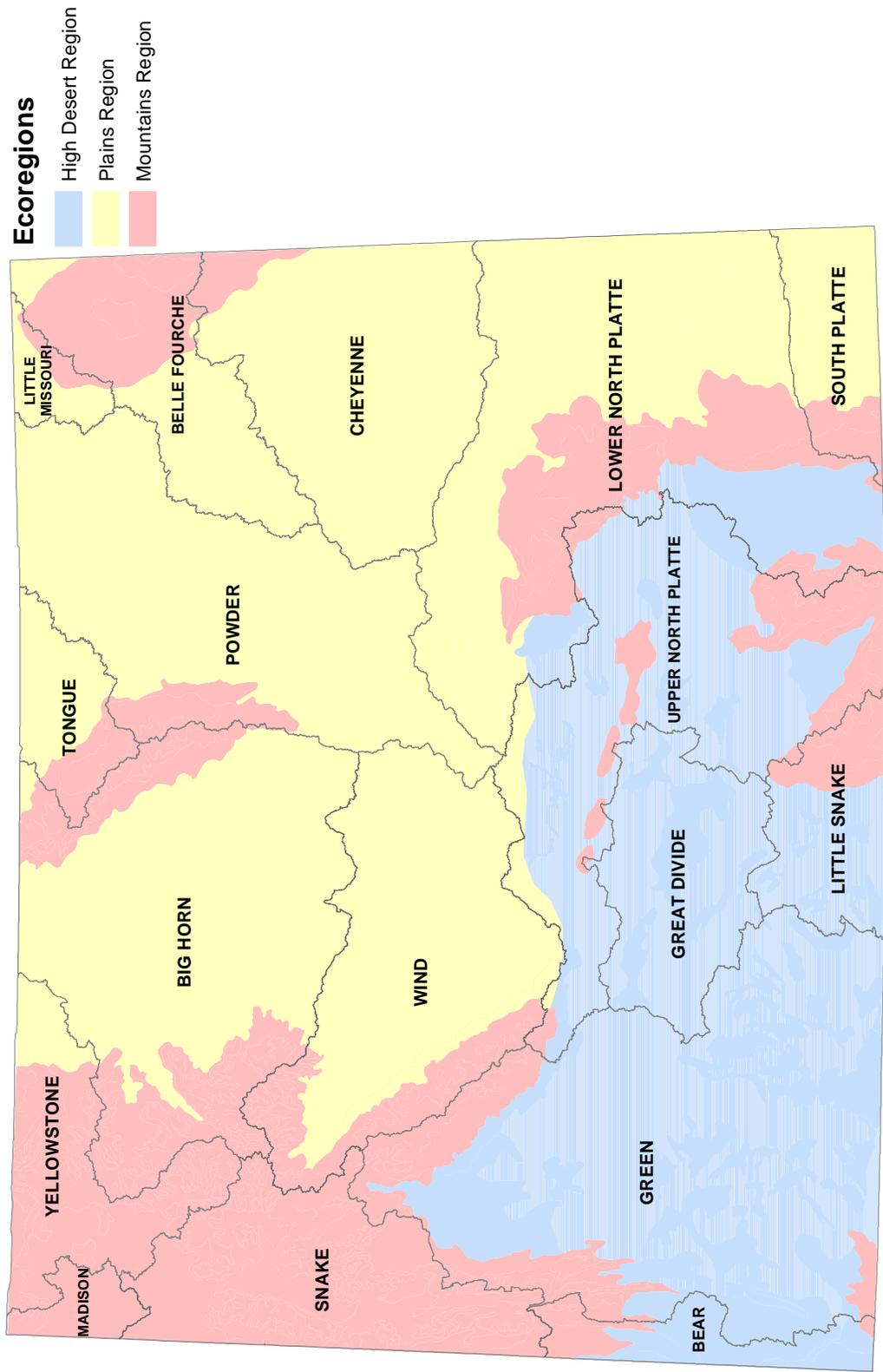
Man-Made Wetlands

There will be no restriction placed on the use of banked credits as mitigation for impacts to man-made wetlands other than the above limitations. If the use of banked credits under this

GEOGRAPHIC LIMITATIONS



WYOMING RIVER BASINS AND BIOTIC REGIONS



circumstance is disputed by the permitting agency, the department will negotiate on behalf of the applicant.

Natural Wetlands

The applicability of using banked credits to mitigate impacts to natural wetlands can only be determined on a case by case basis. The department will consider all factors which reasonably apply in each situation. These factors include but are not limited to general watershed condition, wetland status and trends within the watershed, and existing and potential pressures on the resource. Specific points for consideration include: water quality, aesthetics, scenery, recreation, ecology, agriculture, vegetation, municipal considerations, industrial activities, history, geology, cultural elements, archaeology, fish and wildlife, the presence of significant quantities of developable water, the presence of endangered species, and other values of present and future benefit to the people.

The final determination of applicability is necessarily made by the permitting agency. If, after consideration of the above, the department concludes that use of a banked credit is appropriate, it will provide the permitting agency written notice of this determination and will negotiate on behalf of the applicant. If the permitting agency approves the use of banked credits, the use will also automatically be approved under these procedures regardless of whether they meet any of the previously established criteria.

Section 10. Sale and Transfer of Wetland Credits

The sale and transfer of wetland credits is on a willing seller/willing buyer basis.

Since the credits are attached to the land, the transfer of credit will occur automatically with land sales and property exchanges and in accordance with any third-party agreements and easements recorded on the deed.

It is anticipated that in many instances the credit holder will want to sell or transfer credits without selling his property. Likewise, there will be people who wish to buy or trade for credits without acquiring property. These types of transactions are always private contractual matters between the buyers and sellers. The department will not be party to any such transactions in which it is not either the buyer or seller.

The department is only concerned with deposit/withdrawal transactions and all of these must be initiated by the property owner. It is incumbent upon the parties involved in any other type of transaction, or where the banked credits are for the use by those other than the landowner, to assure that their own interests are protected through third-party agreements.

The department, however, will make available to all interested parties public information concerning the location and status of all banked wetlands. This includes all information which is not otherwise protected as confidential or proprietary by any other provision of state or federal law.

Section 11. Records

The department will maintain records, in perpetuity, of all Wetland Bank accounts and credit transactions. These records will be public information and will be made available to any interested person upon request.

A separate account will be entered for each credit holder and each wetland site. Each account will contain, at a minimum, the following information:

1. Name of the landowner;
2. Pre-project evaluation;
3. Amount of credit in acres;
4. Record of whether the credit is for enhancement or creation;
5. Type and classification of banked wetlands;
6. Value of the banked wetlands;
7. Specific location of the banked wetlands;
8. Geographic area which is eligible for withdrawal;
9. Date of deposit;
10. Limitations (if any) on withdrawal, transfer or sale;
11. All pertinent information known concerning any of the wetland factors listed in section 9.
12. Withdrawal information containing all pertinent data on the area of impact for which the credits were used to mitigate. This includes location, size, type, value and the extent and cause of the impact.
13. Information relating to third party agreements.

At least annually, the department will publish a report concerning ecological gains and losses, and credit and debit transactions for each account.

The annual report will also contain information relating to general statewide status and trends in an effort to direct wetland creation or enhancement to areas known to be deficient.

Section 12. Disputes

The administrator of the Water Quality Division shall provide an opportunity for an applicant, credit holder, or any person or party with an interest in the bank to request a hearing on any administrative decision made under these guidelines. Any such request shall be filed within 60 days of the

administrative decision and shall indicate the interest of the party and the reasons why a hearing is warranted. If the administrator finds that there is a significant degree of public interest, he will request that the Environmental Quality Council hold a hearing in the geographic area of the dispute or other appropriate area. All public hearings will be conducted as provided for in the "Wyoming Administrative Procedures Act".

APPENDIX A

**WYOMING
WETLANDS ACT**

The Wyoming Wetlands Act was originally enacted in the 1991 legislative session and became effective on July 1, 1991. It was amended in the 1994 budget session and appears here in its current form. The 1994 amendments become effective on July 1, 1994.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-11-308 through 35-11-311 are created to read:

35-11-308. Short title. This act, W.S. 35-11-308 through 35-11-311, may be known and shall be cited as the "Wyoming Wetlands Act".

35-11-309. Legislative policy and intent.

(a) The legislature declares that all water, including collections of still water and waters associated with wetlands within the borders of this state are property of the state. The legislature further declares that water is one of Wyoming's most important natural resources, and the protection, development and management of Wyoming's water resources is essential for the long-term public health, safety, general welfare and economic security of Wyoming and its citizens.

(b) The legislature finds that agriculture, energy development, mining, highway construction and timbering are important industries in this state and that industrial concerns must be accommodated in the protection of wetlands. Wetlands can have an impact on industry practices. Even though property taxes are generally paid on such lands, wetlands provide limited economic return to the landowner. Wetland policies can obstruct water development projects and water management projects for private industry as well as public entities and can affect other developments.

(c) The legislature finds that wetlands are considered important for a variety of reasons. Wetlands provide the habitat base for the production and maintenance of waterfowl and are sometimes critical to the survival of endangered plants and animals. Wetlands also serve to moderate water flow and have value as natural flood control mechanisms, can aid in water purification by trapping, filtering and storing sediment and other pollutants and by recycling nutrients, and can serve as ground water recharge and discharge areas. Wetlands also function as nursery areas for numerous aquatic animal species, and provide vital habitat for resident wildlife. Wetlands also can provide scientific, aesthetic and recreational benefits. The legislature therefore concludes that wetlands and values associated therewith deserve to be effectively managed, protected and preserved.

(d) The legislature recognizes that significant differences exist in Wyoming between naturally occurring wetlands and those wetlands that result from human activities. Because portions of Wyoming are arid or semiarid, water was diverted from streams and rivers for irrigating cropland, resulting in the creation of wetlands. These wetlands have partially compensated for wetlands losses. Additionally, road and highway construction, petroleum industry operations and other human activities have created wetlands where none previously existed. While these man-made wetlands are equally as important as naturally occurring wetlands, having the same characteristics and providing the same values and functions, management flexibility is required to acknowledge their different origins and to protect the property rights of landowners and water right holders.

(e) In view of the legislative findings and conclusions of the importance of wetlands, water development and management, and industry in Wyoming it is hereby declared to be the wetlands policy of this state that water management and development and wetland preservation activities should be balanced to protect and accommodate private property, industry, water and wetland interests and objectives.

35-11-310. Notice to drain waters required; exception.

(a) Except as provided in subsection (b) of this section, after July 1, 1996, no person shall drain water from a naturally occurring or man-made wetland, or any series thereof, which has an area comprising five (5) acres or more, without first notifying the department that the water which will be drained from the wetland, or any series thereof, will not flood or adversely affect downstream lands. Notification shall include the size and location of the wetland, and whether the wetland is natural or man-made.

(b) Subsection (a) and (c) of this section do not apply to disturbances of wetlands resulting from mining operations conducted pursuant to mining permits issued by the department of environmental quality.

(c) Any person draining, or causing to be drained, water of a naturally occurring wetland, or any series thereof, which has an area comprising five (5) acres or more, without first notifying the department as required by subsection (a) of this section, shall not be eligible to participate in the mitigation credit banking system as provided by W.S. 35-11-311. Failure to notify the department pursuant to this section does not constitute a violation for purposes of W.S. 35-11-901.

35-11-311. Mitigation; guidelines.

(a) The department, after consultation with the Wyoming department of agriculture, Wyoming state engineer, Wyoming game & fish department, Wyoming water development commission and the Wyoming department of transportation shall adopt guidelines for evaluating ecological function and values and for establishing and administering a mitigation credit banking system for compensatory mitigation. The guidelines shall, at a minimum, provide for:

(i) Criteria under which mitigation credits may be earned., with credit to be recognized for man made wetlands created after July 1, 1991;

(ii) Geographical and other appropriate limitations for the application of mitigation bank credits;

(iii) Criteria for the use, banking or sale of banked credits;

(iv) The approval by the department for the earning, using, banking, transfer or selling of mitigation bank credits; and

(v) Requirements for the maintenance and submission by the department of records concerning ecological function and wetland value losses, and credit and debit accounts for each mitigation bank.

35-11-103. Definitions.

(c) Specific definitions applying to water quality:

(vi) "Waters of the state" means all surface and ground water, including waters associated with wetlands, within Wyoming;

(x) "Wetlands" means those areas in Wyoming having all three (3) essential characteristics:

- (A) Hydrophytic vegetation;
- (B) Hydric soils; and
- (C) Wetland hydrology;

(xi) "Compensatory mitigation" means replacement, substitution or enhancement of ecological functions and wetland values to offset anticipated losses of those values caused by filling, draining or otherwise damaging a wetland;

(xii) "Ecological function" means the ability of an area to support vegetation and fish and wildlife populations, recharge aquifers, stabilize base flows, attenuate flooding, trap sediment and remove or transform nutrients and other pollutants;

(xiii) "Wetland value" means those socially significant attributes of wetlands such as uniqueness/heritage, recreation, aesthetics and a variety of economic values.

(xiv) "Mitigation" means all actions to avoid, minimize, restore and compensate for ecological functions or wetland values lost;

(xv) "Natural wetlands" means those wetlands that occur independently of human manipulation of the landscape;

(xvi) "Man-made wetlands" means those wetlands that are created intentionally or occur incidental to human activities. This includes any enhancement made to an existing wetland which increases its function or value;

Section 3. This act is effective July 1, 1994.

(END)