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lands, the FS will determine the existence of the impairment, assume the lead, provide assistance and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

§ 624.6 Program administration.

(a) *Sponsors.* (1) When the State Conservationist declares that a watershed impairment exists, NRCS may, upon request, make assistance available to a sponsor which must be a State or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government. Private entities or individuals may receive assistance only through the sponsorship of a governmental entity.

(2) Sponsors must:

(i) Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:

(A) Cash;

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits; and

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures.

(b) *Eligibility.* NRCS will provide assistance based upon the NRCS State Conservationist's determination that the current condition of the land or watershed impairment poses a threat to health, life, or property. This assistance includes EWP practices associated with the removal of public health and safety threats, and restoration of the natural environment after disasters, including acquisition of floodplain easements.

(1) Priority EWP assistance is available to alleviate exigency situations. NRCS may approve assistance for temporary correction practices to relieve

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an exigency situation until a more acceptable solution can be designed and implemented.

(2) *Limitations.* (i) In cases where the same type of natural event occurs within a 10-year period and a structural measure has been installed or repaired twice within that period using EWP assistance, then EWP assistance is limited to those sites eligible for the purchase of a floodplain easement as described in § 624.10 of this part.

(ii) EWP assistance will not be used to perform operation or maintenance, such as the periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed.

(iii) EWP assistance will not be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(iv) EWP assistance, funded by NRCS, will not be provided on any Federal lands if such assistance is found to augment the appropriations of other Federal agencies.

(v) EWP assistance is not available for repair or rehabilitation of non-structural management practices, such as conservation tillage and other similar practices.

(3) *Repair of structural, enduring, and long-life conservation practices.* (i) Sponsors may receive EWP assistance for structural, enduring, and long-life conservation practices including, but not limited to, grassed waterways, terraces, embankment ponds, diversions, and water conservation systems, except where the recovery measures are eligible for assistance under the Emergency Conservation Program administered by the Farm Service Agency.

(ii) EWP assistance may be available for the repair of certain structural practices (*i.e.*, dams and channels) originally constructed under Public Law 83-566; Public Law 78-534; Subtitle H of Title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 *et seq.*, commonly known as the Resource Conservation and Development Program); and the Pilot Watershed Program of the Department of Agriculture Appropriation Act of 1954 (Pub. L. 83-156; 67 Stat. 214). EWP assistance may not be

used to perform operation and maintenance activities specified in the agreement for the covered structure project entered into with the eligible local organization responsible for the works of improvement.

(iii) NRCS may authorize EWP assistance for modifying damaged practices when technology advances or construction techniques warrant modifications, including when modifications are the result of federal permitting or other requirements necessary to implement the recovery measure, and will be cost-shared as described in §624.7.

(iv) EWP assistance is only available when public or private landowners, land managers, land users, or others document they have exhausted or have insufficient funding or other resources available to provide adequate relief from applicable hazards.

(4) Increased level of protection. In cases other than those described in paragraph (b)(3)(iii) of this section, if the sponsor desires to increase the level of protection that would be provided by the EWP practice, the sponsor will be responsible for paying 100 percent of the costs of the upgrade or additional work.

(c) *Eligible practices.* NRCS will only provide assistance for measures that:

(1) Provide protection from additional flooding or soil erosion; and,

(2) Reduce threats to life or property from a watershed impairment, including sediment and debris removal in floodplains and uplands; and

(3) Restore the hydraulic capacity to the natural environment to the maximum extent practical; and

(4) Are economically and environmentally defensible and technically sound.

(d) *Documentation.* NRCS will document the economic rationale of proposed practices in appropriate detail before the allocation of emergency funding, including projects under consideration for floodplain easements in §624.10. Generally, the expected value of the property restored should exceed the cost of emergency measures, including taking into consideration environmental benefits. Documentation will include, but is not limited to:

(1) Number of locations and extent of damage, including environmental and

cultural resources at risk, because of the watershed impairment;

(2) Estimated damages to the values at risk if the threat is imminent but not yet realized;

(3) Events that must occur for any imminent threat to be realized and the estimated probability of their occurrence both individually and collectively;

(4) Estimates of the nature, extent, and costs of the emergency practices to be constructed to recover from an actual threat or relieve an imminent threat;

(5) Thorough description of the beneficial and adverse effects on environmental resources, including fish and wildlife habitat;

(6) Description of water quality and water conservation impacts, as appropriate;

(7) Analysis of effects on downstream water rights; and

(8) Other information deemed appropriate by NRCS to describe adequately the environmental impacts to comply with the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and related requirements.

(e) *Implementation.* When planning emergency recovery practices, NRCS will emphasize measures that are the most economical and are to be accomplished by using the least damaging practical construction techniques and equipment that retain as much of the existing characteristics of the landscape and habitat as possible. Construction of emergency practices may include, but are not limited to, timing of the construction to avoid impacting fish spawning, clearing of right-of-ways, reshaping spoil, debris removal, use of bioengineering techniques, and revegetation of disturbed areas. Mitigation actions needed to offset potential adverse impacts of the EWP Program practices should be planned for installation before, or concurrent with, the installation of the EWP Program practices. In rare occurrences where mitigation cannot be installed concurrently, plans will require mitigation be accomplished as soon as practical.

(f) NRCS may determine that a measure is not eligible for assistance for

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any reason, including economic and environmental factors or technical feasibility.

§ 624.7 Cost-sharing.

(a) Except as provided in paragraph (b) of this section, the Federal contribution toward the implementation of emergency measures may not exceed 75 percent of the construction cost of such emergency measures, including work done to offset or mitigate adverse impacts as a result of the emergency measures.

(b) If NRCS determines that an area qualifies as a limited resource area, the Federal contribution toward the implementation of emergency measures may not exceed 90 percent of the construction cost of such emergency measures.

§ 624.8 Assistance.

(a) Sponsors must submit a formal request to the State Conservationist for assistance within 60 days of the natural disaster occurrence, or 60 days from the date when access to the sites becomes available. Requests must include a statement that the sponsors understand their responsibilities and are willing to pay its cost-shared percentage as well as information pertaining to the natural disaster, including the nature, location, and scope of the problems and the assistance needed.

(b) On receipt of a formal request for EWP assistance, the State Conservationist or designee shall immediately investigate the emergency situation to determine whether EWP is applicable and to prepare an initial cost estimation for submission to the NRCS Chief or designee. The cost estimation will be submitted no later than 60 days from receipt of the formal request from the sponsor. The State Conservationist will take into account the funding priorities identified in paragraph (c) (3) of this section. The State Conservationist will forward the damage survey report, which provides the information pertaining to proposed EWP practice(s) and indicates the amount of funds necessary to undertake the Federal portion, to the NRCS Chief or designee. This information will be submitted no later than 60 days from receipt of the formal request from the sponsor, or no

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later than 60 days from the date funding is made available to the State Conservationist, whichever is later. NRCS may not commit funds until notified by the Chief, or designee, of the availability of funds.

(c) Before the release of financial assistance, NRCS will enter into a Cooperative Agreement with a sponsor that specifies the responsibilities of the sponsor under this part, including any required operation and maintenance responsibilities. NRCS will not provide funding for activities undertaken by a sponsor prior to the signing of the agreement between NRCS and the sponsor.

(1) NRCS will only provide funding for work that is necessary to reduce applicable threats.

(2) Efforts must be made to avoid or minimize adverse environmental impacts associated with the implementation of emergency measures, to the extent practicable, giving special attention to protecting cultural resources and fish and wildlife habitat.

(3) Funding priorities for recovery measures. NRCS will provide EWP assistance based on the following criteria, which are ranked in the order of importance:

- (i) Exigency situations;
- (ii) Sites where there is a serious, but not immediate threat to human life;
- (iii) Sites where buildings, utilities, or other important infrastructure components are threatened;
- (iv) When reviewing paragraphs (c)(3)(i) through (iii) of this section, NRCS will take into account the following resources as they may affect the priority, including, but not limited to:

(A) Sites inhabited by federally listed threatened and endangered species or containing federally designated critical habitat where the species or the critical habitat could be jeopardized, destroyed, or adversely modified without the EWP practice;

(B) Sites that contain or are in the proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the EWP practice were not installed;

(C) Sites where prime farmland supporting high value crops is threatened;