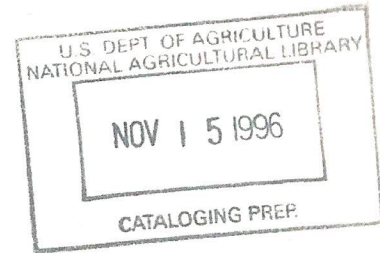


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1988

National Food Security Act Manual

Title 180
Second Edition





United States
Department of
Agriculture

Soil
Conservation
Service

P.O. Box 2890
Washington, D.C.
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NATIONAL FOOD SECURITY ACT MANUAL (NFSAM), Second Edition
180-V-NFSAM, Issue 1

SUBJECT: CPA - NATIONAL FOOD SECURITY ACT MANUAL (NFSAM)


Purpose. To transmit the second edition of the NFSAM.

Effective date. This edition is effective when received.

Explanation of changes. This edition provides some policy changes, corrects and clarifies several items in the NFSAM, and provides copies of the law and rules for Part 518 - Appendix. Vertical lines are used to show changes in all but Part 518.

A copy of this second edition is being mailed directly to each field, area, and other SCS office. State offices and NTC's will receive a small supply for their own use. Additional copies can be ordered from IRM Division, Records Management Branch, NHQ. NHQ will make direct distribution of the NFSAM to cooperating federal agencies.

Filing Instructions: Field and area offices may discard the March 1988 edition of the NFSAM. This second edition replaces the first edition and becomes effective on the date received. The state office will mark one copy as "out of date" and retain it for future reference. Decision and actions taken based on the March 1988 edition of this manual will remain in effect and need not be changed as a result of this manual.


WILSON SCALING
Chief

DIST: NFSAM



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Title 180 - SCS National Food Security Act Manual

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512.14(b)(4)

(4) The measure was installed on HEL adjacent to the wetland area that caused the conversion by reducing water. However, the structures used must be evaluated against alternative measures and decisions documented as to the need for the measures used. The measure used must be a practicable alternative for erosion control in accordance with the FOTG.

§512.15 Criteria for Identifying Prior Converted Croplands (PC) before December 23, 1985.

(a) Definition. Prior converted croplands are wetlands that before December 23, 1985 were drained, dredged, filled, leveled, or otherwise manipulated for the purpose, or to have the effect of, making the production of an agricultural commodity possible. This applies if (i) such production was not possible before the action, (ii) an agricultural commodity has been produced (planted) at least once, and (iii) the area has not been abandoned. This includes areas that are:

(1) Potholes or playas that have been completely drained and no longer meet the hydric soils flooding, ponding, or water table criteria or do not meet hydrophytic vegetation criteria,

(2) Flooded and ponded areas that are less than seasonally flooded that have been drained, diked, or otherwise altered so that they do not flood or pond for extended periods during the growing season. If drainage or other altering activity is not clearly discernable, SCS will compare the site in question to nearby comparison sites containing the same hydric soil in a natural condition to determine if:

(i) these areas of hydric soil can or cannot be used to produce an agricultural commodity under natural conditions, and

(ii) if these areas of hydric soil are wetland in their natural state. If the soil on similar comparison sites cannot produce an agricultural commodity under natural conditions and are wetlands in their natural state, the wetland will be considered a prior conversion. If a crop could be produced on the comparison site without manipulation of the water regime, and it is a wetland in its natural state, the subject area will be determined to be a wetland that is not a prior conversion.

(3) Hydric soils that met only the water table (saturation) criteria, if prior to December 23, 1985 they were either drained or otherwise manipulated or had the woody vegetation removed, and:

(i) have been used to produce an agricultural commodity,

and

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512.15(b)(4)

(ii) have not been abandoned, and

(iii) do not currently flood or pond seasonally.

(iv) In areas where the natural vegetation is woody and the area is a wetland in long-term pasture and not in a crop rotation, the conversion of the pasture to an agricultural commodity after December 23, 1985 will cause the area to become a converted wetland (CW). These areas cannot be farmed under natural conditions, since woody vegetation has been removed.

(4) Pocosins and other similar areas converted only if prior to December 23, 1985--

(i) the woody vegetation was removed,

(ii) a complete drainage system was installed,

(iii) an agricultural commodity has been produced, and

(iv) they have not been abandoned.

(b) Areas not considered to be prior converted croplands.

(1) Potholes and playas that have been manipulated prior to December 23, 1985 but otherwise continue to meet wetland criteria shall not be determined to be prior converted croplands.

(2) Other wetland areas that are seasonally flooded or ponded that have been manipulated prior to December 23, 1985 but otherwise continue to meet cropland criteria shall not be determined to be prior converted croplands.

(3) Surface water must be present for extended periods in the growing season to qualify as seasonally flooded or ponded. Extended periods occur if surface water is continually present for at least 15 consecutive days or 10 percent of the growing season whichever is less under average conditions (50 percent chance of occurrence). Growing season is defined in Hydric Soils of the United States.

(4) States, with NTC concurrence and in consultation with FWS, are authorized to determine locations where extended periods will be longer than the definition above. Such determinations will be based on the degree of ponding or flooding required to protect seasonal wetland wildlife values. The purpose of defining existing seasonally flooded or ponded areas as wetlands despite previous manipulations (e.g., clearing woody vegetation, planting an agricultural commodity) is to maintain remaining seasonal wetland wildlife values.

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§512.16 Criteria for determination of abandonment.

(a) Abandonment is the cessation of cropping, management, or maintenance operations on prior converted croplands or farmed wetland. Cropping means the use of the area for aquaculture, grasses, or legumes, or pasture production in a commonly used rotation related to the production of an agricultural commodity, or is in a USDA set-aside or similar program of conserving use or wetland restoration approved by FWS or State wildlife agency. Management or maintenance means carrying out those operations which support the cropping use such as tillage, planting, mowing, harvesting, repair of drainage system, etc.

(b) A prior converted cropland or farmed wetland is considered abandoned if wetland criteria are present, and

(1) the prior converted cropland or farmed wetland has not been used, managed or maintained for cropping purposes for 5 successive years; and

(2) was not enrolled in a USDA set-aside or similar program of conserving use or wetland restoration. However, if it is clear that the area was not farmable for the past 5 years and was not farmable at the time it entered set-aside, the area will be called wetland. SCS should inform ASCS, the farmer, and notify the state conservationist through channels that the area is now determined to be wetland due to abandonment of crop production, or

(3) the person indicates an intent to abandon. However, after five successive years of no use or participation in USDA set-aside or similar programs the area is automatically considered to be abandoned regardless of intent. In those cases where production on the area has been abandoned and not used as set-aside due to lack of maintenance of a related drainage facility by the drainage district or county, the farmer may request a reconsideration or appeal of the wetland determination based on the inability of the farmers to maintain production on the area due to circumstances beyond the farmers' control and which are not the farmers' fault. Using the information provided by the farmer, and if the Fish and Wildlife Service (FWS) concurs, the DC may determine that the presumption of abandonment has been rebutted by this showing of an intention not to abandon. The state conservationist may make such determination in consultation with FWS.

(c) Prior converted croplands or farmed wetlands that SCS determines are abandoned and reverted to wetlands are classified as wetland and all wetland provisions will apply.

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PART 512 - WETLAND CONSERVATION

SUBPART C - WETLAND EXEMPTIONS

512.20(e)

§512.20 Wetland exemptions determined by SCS.

The following wetland exemptions are to be made and recorded on the Form SCS-CPA-026 by the DC. These areas will be delineated and identified on the ASCS aerial photocopies and returned to ASCS along with Form SCS-CPA-026. ASCS will outline these areas on their official maps. This process will eliminate the need for persons to complete a new Form AD-1026 each year that maintenance is done on prior converted wetlands or other exempted wetlands. Wetland exemptions include the following:

(a) Prior conversion (PC) A prior conversion is a wetland alteration that was completed prior to December 23, 1985. Such areas, unless abandoned, will be labeled prior conversion (PC) and are not subject to FSA.

(b) Artificial wetlands (AW) An area is an artificial wetland if the area was formerly nonwetland or prior converted wetland, but now exhibits wetland characteristics because of human activities.

(c) Irrigation-induced wetlands (AW) A wetland area is an irrigation-induced wetland if it was created by irrigation or seepage from an irrigation delivery system; but was nonwetland in its natural state.

(d) Wetlands (W) farmed under natural conditions. The production of an agricultural commodity is possible on wetland as a result of a natural condition, such as drought, without the person destroying a natural wetland characteristic. A wetland that is farmed under natural conditions is labeled (W).

(e) Minimal effect (MW). The production of an agricultural commodity on a converted wetland, in connection with all other similar actions in the area, would have minimal effect on the hydrological and biological functions of the wetland.

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512.21

§512.21 Minimal effect determination (MW).

(a) Requirements. The minimal effect determinations may be made with FWS concurrence by the District Conservationist or by the State Conservationist in consultation with FWS. Minimal effect determinations will be made after:

(1) making an onsite environmental evaluation which is supported by documentation that indicates minimum effect on hydrological and biological values of the wetland (§516.13), and

(2) consulting with the FWS on each site (FWS may elect not to review some). SCS will make arrangements for FWS consultation.

(b) Mitigation. Mitigation can only be considered when making decisions to exempt converted wetlands or wetlands to be converted from wetland conservation provisions under certain limited circumstances. In these cases, benefits provided as a result of mitigation will be considered when conducting an environmental evaluation prior to making a decision on minimal effect.

(1) Plans for mitigation action shall be reviewed and approved by the District Conservationist and concurred in by the FWS prior to installation if it is to be considered part of the minimal effect determination.

(2) Where mitigation features support a minimal effect determination, these features become a part of the minimal effect determination and cannot be changed or eliminated without approval by SCS and concurrence of FWS.

(c) Area of consideration for minimal effect. In making minimal effect determinations the environmental evaluation will assess the effects of the wetland conversion on the wetland to be converted as well as other wetland and nonwetlands in the area that will be affected by the conversion.

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512.22(a)

(d) Procedure for making a minimal effects determination. Generally, a request in writing for a minimal effect determination will be made prior to conversion of the wetland. In cases where a wetland is converted prior to the request in writing for the MW determination, the person must demonstrate to the satisfaction of SCS that the effect was minimal. (In this latter case there is a risk of ineligibility if an agricultural commodity is produced prior to the determination). SCS may provide available information but not technical assistance to enable the person to demonstrate that the effect was minimal.

(1) The District Conservationist will process a request for a minimal effect determination by completing an onsite environmental evaluation using the procedures contained in Section 515.13. If after completing the evaluation it is determined that a minimal effect determination is appropriate, the DC may make a minimal effect determination with concurrence from FWS. However, if FWS does not concur that the effect is minimal, the determination will be raised to the STC for a decision to be made in consultation with FWS. If the DC determines a minimal effect determination is not appropriate, the data will not be forwarded to the STC. In the latter case, the person's only recourse is through the SCS appeals process.

(2) For wetland appeals reaching Level III, the State Conservationist will consider whether the minimal effect determination procedures should be implemented.

(3) A minimal effects determination is effective only when the SCS has reviewed all the alternatives that were evaluated and agrees with the selected alternative.

(4) A minimal effects determination is granted only after the person agrees to and signs the minimal effect agreement (Exhibit §516.12).

§512.22 Wetland exemptions determined by ASCS.

(a) Third party conversion. These are wetlands that are converted after December 23, 1985 by actions of persons other than the person applying for USDA benefits, or any of the person's predecessors in interest. The conversion cannot be the result of a scheme or device. Further drainage improvements cannot be made without loss of USDA benefits. The third party conversion must be for purposes other than the conversion of wetland for agricultural production. In cases where the conversion is done by a drainage district, watershed district or similar entity, the action will be attributed to the person and the person applying for benefits will be considered to have caused or permitted the drainage. These will not be considered third party conversions.

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512.22(b)

(b) Commenced Conversions (CC). Where the conversion of a wetland began before December 23, 1985, a person may apply for a determination that would enable the person to complete the conversion and produce an agricultural commodity on the converted wetland without losing USDA benefits.

(1) The conversion of a wetland may be determined by ASCS to be commenced if:

(i) any of the construction activities including flood water reductions that would convert wetland were actually started; or

(ii) the person applying for benefits has expended or legally committed substantial funds either by entering into a contract, or by purchasing construction supplies or material for the direct purpose of converting the wetland.

(2) For lands which are within the boundaries of a drainage district or similar entity, the conversion of a wetland is considered to have been commenced if before December 23, 1985:

(i) a project drainage plan which includes detailed planned drainage measures, has been officially adopted,

(ii) the district or other entity started installation of the drainage measures, or legally committed substantial funds toward the conversion of wetlands by entering into a contract or by purchasing construction supplies and/or materials to convert wetland(s), and

(iii) the person applying for benefits can show that the wetland conversion with which they are associated was the basis of a financial obligation to the district or other entity and a specific assessment for the project construction or a legal obligation to pay a specific assessment was made for the person's land prior to December 23, 1985.

(3) The following requirements shall apply to all determinations of commencement.

(i) All persons who have a wetland or converted wetland on which conversion began before December 23, 1985 may, by September 19, 1988, request ASCS to make a determination of commencement. Otherwise, the person forfeits the right to have such a determination made in the future.

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512.22(b)(3)(vii)

(ii) The persons must show that the commenced activity has been actively pursued. "Actively pursued" means that efforts to complete the conversion have actively continued on a regular basis since initiation of the conversion, except for delays due to circumstances beyond the person's control.

(iii) Any conversion activity considered to be commenced must be completed on or before January 1, 1995, or the exempt status will be lost unless there are justifiable circumstances.

(iv) Only those wetlands for which the construction has begun or to which the contract or purchased supplies and materials relate may qualify for a determination of commencement.

(v) ASCS is required to consult with the FWS on each commenced determination.

(vi) Federally assisted project activities which convert wetlands or provide outlets for persons to convert wetlands for the production of an agricultural commodity may cause a person to become ineligible for USDA program benefits. Federally assisted projects started before December 23, 1985 need to have a commenced determination made by ASCS. In addition to the need to have a commenced determination for the project, individuals within the project will need to request a commenced determination and/or a third party determination on their own land in addition to the commenced determination for the project.

(vii) SCS will determine the extent of the area on which conversion has commenced. The determination is based on the extent of work done, contracted for, or supplies or materials purchased prior to December 23, 1985. The extent of work allowed is limited to the physical extent of work done, contracted for or materials purchased.

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PART 512 - WETLAND CONSERVATION

SUBPART D - USE, MAINTENANCE, AND IMPROVEMENTS

512.30(b)

§512.30 Maintenance and improvement of drainage.

(a) Persons may maintain drainage systems on farmed wetlands in the same manner as they did prior to December 23, 1985 without loss of USDA benefits as long as such actions do not bring additional wetland into the production of an agricultural commodity. The scope and effect of the original drainage system is the major consideration. These conditions apply:

(1) The person is responsible for providing data to support the existence of a prior drainage system and the extent of the system.

(2) SCS will document the prior or existing extent, considering maintenance conditions of drainage when wetland determinations are made. As long as the area has not been abandoned, the original scope and effect of drainage is to be documented.

(3) SCS will make the determination as to whether the planned actions are maintenance or additional drainage.

(4) For documentation of prior drainage facilities, the following facts are considered:

(i) Use of notes in case files,

(ii) Field borings to define original construction limits,

(iii) Aerial photos to verify location and effectiveness, and

(iv) Data provided by landowners or contractors.

(b) Documented prior drainage facilities may or may not meet SCS standards and specification criteria but in either case the person may reconstruct or maintain the original system. However, a redesigned system is appropriate only as long as it is within the scope and effect of the original system. If the person would rather reinstall a more permanent or lower maintenance cost system in line with present farming operations, a modified proposal can be designed. An example is a wider bottom width ditch at the original grade on straight alignment.

512.30(c)

(c) Maintenance only or reconstruction having the same scope and effect as original drainage activities is appropriate for third party drainage.

(d) A person may maintain, improve, replace, or install new drainage systems on prior converted croplands (PC) and artificial wetlands (AW), including irrigation induced, since prior converted or artificial wetlands are not subject to the wetland provisions of the FSA. Drainage facilities may be installed on commenced conversion (CC) or minimal effect (MW) areas as may be stipulated on a site specific basis.

(e) Abandonment applies to the land area involved and not to the drainage or other system that caused the prior conversion. Therefore, drainage systems can be reinstalled or maintained to the original extent and scope as installed prior to the FSA, providing the land area has not been abandoned.

§512.31 Use of prior converted croplands (PC).

Except for potholes, playas, and seasonally flooded or ponded areas that still meet the wetland criteria, wetlands that were converted prior to December 23, 1985 are not subject to the provisions of FSA. Therefore, drainage facilities installed on prior converted croplands may be improved or maintained as desired by the person provided no new wetland is converted or cropping or management of the prior conversion of land is not abandoned. See Exhibit §516.09 for a precedent diagram.

(a) Wetlands that have been given a commenced conversion determination are considered prior conversions when the commenced activities are completed and the area meets the criteria for prior converted croplands. Otherwise, the area will be mapped according to the conditions found. All commenced activities must be completed before January 1, 1995 to receive the (PC) determination.

(b) The person may not convert additional wetland acres beyond that which has been determined to be commenced.

§512.32 Use of converted wetlands (CW).

(a) Wetlands that were converted after December 23, 1985, and are not subject to one or more of the exemptions cannot be used to produce an agricultural commodity without causing the person to lose eligibility for USDA benefits. These areas may be used for production of non-agricultural commodities, such as pears, apples, or oranges. However, wetlands converted for production of crops that are not agricultural commodities that are later used for production of agricultural commodity crops will cause the producer to become ineligible.

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512.34(d)

(b) Once a wetland has been converted and the person decides to abandon the production of an agricultural commodity, eligibility may be restored for any crop year that an agricultural commodity is not planted on a converted wetland.

§512.33 Use of converted wetland with minimal effect (MW).

(a) For areas where the conversion of wetland has been determined to have minimal effect, the person shall check with SCS prior to taking any additional action that will change the hydrological or biological characteristics of wetland. SCS will determine, in consultation with FWS, whether the effect continues to be minimal. The loss of a minimal effect determination will cause a person who produces an agricultural commodity on the converted wetland to be ineligible for USDA benefits. The person will sign the minimal effect agreement, and will agree with the stated stipulations. (See Exhibit §516.13).

(b) Restoration of converted wetlands through a minimal effect determination is permitted in order to bring a person into compliance who has inadvertently converted a wetland. The advantage of restoration through a minimal effect determination is that a person may be able to farm the restored wetland under natural conditions.

§512.34 Use of third party converted wetlands (TP).

A third party is any person, organization, or unit of government other than the person applying for USDA benefits or the person's predecessors in interest. Wetlands that are converted by actions of a third party (entities other than the person applying for USDA benefits or any of the person's predecessors in interest) may be used to produce an agricultural commodity on the land of the person without loss of USDA benefits.

(a) Further drainage improvement on such lands is not permitted by the person without loss of eligibility for USDA program benefits, unless SCS determines that further drainage activities applied to such lands would have minimal effect on any remaining wetland values.

(b) Converted wetlands are presumed to have been converted by the person applying for USDA program benefits unless the person can show that the conversion was caused by a third party with whom the person was not associated through a scheme or device.

(c) The person is responsible for providing support information on the extent to which a third party drained subject wetlands.

(d) The District Conservationist will document the scope and effect of third party conversions of wetland in the case file at the time the wetland determinations are made.

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512.34(e)

(e) Actions of a water resource district, drainage district, or similar entity are not considered third party actions if the purpose of the action is improvement of land for agricultural purposes, and the actions will be attributed to all persons within the jurisdiction of the district or other entity who are assessed for the activities of the district or entity. Accordingly, where a person's wetland is converted due to the actions of the district or entity, the person shall be considered to have caused or permitted the conversion.

§512.35 Use of other wetlands.

(a) Natural wetland (W). These are wetlands that have not had the water regime altered or woody vegetation removed. Persons may farm such wetlands and maintain eligibility only if water regimes are not altered or the woody vegetation is not removed. An agricultural commodity may be produced on wetlands where the production was made possible as a result of natural conditions, such as drought; and, the production is possible without an action by the person that destroys a natural wetland characteristic. Persons may continue to farm such wetlands under natural conditions as they did prior to December 23, 1985. However, no action can be taken to alter the water regime beyond that which existed on or before December 23, 1985. When determinations are made on wetland that is being used to produce agricultural commodities, SCS will document the conditions other than natural conditions (drained, dredged, leveled, filled, pumped or otherwise manipulated) under which the wetlands are being farmed.

(b) Abandoned wetlands (W). Abandoned wetlands are those that have resulted from the abandonment of cropping and/or management on prior converted or farmed wetland. Persons may produce agricultural commodities on such wetlands only if water regimes are not altered or woody vegetation removed.

(c) Farmed wetlands (FW).

(1) Farmed wetlands are certain wetlands that were manipulated and used to produce an agricultural commodity prior to December 23, 1985, but had not been completely converted prior to that date and therefore are not prior converted wetlands. These areas still meet the wetland criteria and include potholes and playas that still meet the wetland criteria, or areas that are seasonally ponded or flooded for an extended period of time. These areas can be farmed and maintained as they were prior to December 23, 1985 if they are not abandoned.

512.35(c)(2)(v)

(2) Persons may maintain drainage systems on farmed wetland but cannot improve drainage on such areas without loss of USDA program benefits. This includes potholes, playas or seasonally flooded or ponded wetland where alterations prior to December 23, 1985 made the production of an agricultural commodity possible, but did not completely drain the wetland. The purpose for considering potholes, playas, and some ponded and flooded areas that continue to meet the wetland criteria as wetlands is to protect their remaining biological and hydrological values. This applies even though they have been manipulated, but not determined to be prior converted cropland (PC).

(i) The person is responsible for providing information to support the extent to which those areas have been drained.

(ii) SCS will document the extent of drainage in the case file when wetland determinations are made.

(iii) Manipulated and farmed potholes and playas must meet wetland criteria after consideration of the drainage facilities as originally installed. If the pothole or playa was originally manipulated to the point of being a prior converted cropland, then it is (PC).

(iv) Available data and maps from flood frequency studies, such as flood insurance surveys, may be used to document the seasonally flooded condition for extended periods in the growing season (a 50 percent chance of occurrence).

(v) Documentation of seasonally ponded areas may be handled by reviewing a series of growing season photos to verify the percent chance of occurrence along with analytical evaluations to determine length of ponding for a single occurrence. The average depth of ponding in a depression can be evaluated using DRAINMOD for length of time required for water to be used by evapotranspiration.

512.36

\$512.36 Summary of use, maintenance and improvements of various wetland conditions.

Wetland condition	Use	Maintenance	Improvement
Prior conversion (PC) converted prior to 12/23/85 but not abandoned	Produce ag. commodities	Yes	Yes
Farmed wetland (FW) that still meets the wetland criteria including seasonal ponded wetland, seasonal flooded wetland, potholes, and playas	May be farmed as it was prior to 12/23/85	May maintain the degree of drainage that existed prior to 12/23/85	None
Wetland (W) Includes natural conditions and abandoned wetland	May be used to produce ag commodities when weather permits without removing woody vegetation	None	None
Commenced conversion (CC)	Same as prior conversion when completed	Yes	Yes
Third party	Produce ag commodities	May maintain the degree of drainage that existed as of date of third party action	None unless determined by SCS to have minimal effects
Converted wetland (CW) converted after 12/23/85	Production of ag commodities will cause a person to be ineligible for USDA benefits	None	None
Minimal Effect (MW)	Produce ag commodities	As per minimal effect agreement	As per minimal effect agreement
Artificial (AW) including irrigation induced wetland	Produce Ag commodity	Yes	Yes

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