

ATTACHMENT 2 TO APPENDIX 1

LETTERS, 23 JUNE 2005 AND 11 MAY 2004, FROM
NATURAL RESOURCES CONSERVATION SERVICE
TO MISSISSIPPI LEVEE
BOARD

United States Department of Agriculture



Natural Resources Conservation Service
Suite 1321, Federal Building
100 West Capitol Street
Jackson, MS 39208

May 11, 2004

Board of Mississippi Levee Commissioners
James E. Wanamaker, Chief Engineer
P. O. Box 637
Greenville, MS 38702-0637

This is in response to your letter requesting the position of NRCS on how the Swampbuster provisions of the Farm Bill would impact flood control activities in the Delta conducted by a third party such as the US Army Corps of Engineers, NRCS, MS Levee Board, etc.

In the Code of Federal Regulations (CFR), Title 7, Part 12.5 (b) (vii) (D) provides that activities of a water resource district, drainage district, or similar entity will be attributed to all persons within the jurisdiction of the district or other 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 drainage. . .

Clearly, a third party exemption does not apply to community-wide drainage projects. It is limited to actions of predecessors in interest and individuals, not drainage districts, Corps, NRCS projects or similar entities. As directed by CFR activities resulting in converted wetlands (CW), as defined in statute, will be attributed to the persons benefiting from the project.

The specific question you raised is "if we have forested jurisdictional wetlands and a project is completed and this forestland is no longer a jurisdictional wetland and the landowner came in and cleared the trees would Swampbuster prevent him from getting additional farm benefits?" As defined in CFR, Title 7, Part 12.2 a Converted Wetland is a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) for the purpose of or to have the effect of making possible the production of an agricultural commodity. . . To answer your question, USDA program participant making production possible will be in violation of the Wetland Conservation Provisions. The actual "trigger" in the case of forested sites is the removal of woody vegetation, not the drainage.

If you need any additional information, please advise.

A handwritten signature in cursive script that reads "Al Garner".

Al Garner
Assistant State Conservationist

cc: Homer L. Wilkes, State Conservationist, NRCS, Jackson, MS
James Johnson, Area Conservationist, NRCS, Greenwood, MS