

THE
NATIONAL LAW REVIEW

Army Corps Issues Guidance for Dam and Culvert Removal Credits

Wednesday, October 31, 2018

The Army Corps of Engineers recently issued a [Regulatory Guidance Letter](#) (RGL) that sets out factors that should be considered by district engineers when determining the amount of mitigation credits that may be allowed for removal of dams or other structures in rivers and streams. These mitigation credits may be used or sold as compensatory mitigation required by Army Corps permits issued for projects that result in impacts to waters of the United States.

There are approximately 14,000 dams in New England, many of which were built in the 19th century, and thousands of undersized or poorly designed culverts. These dams and culverts impair river and stream values. The Corps' mitigation credit RGL is significant because, in the past, when a dam was removed or culvert replaced the positive environmental effects were not easily quantified. Further complicating the mitigation credit analysis is the fact that dam removal or culvert replacement sometimes results in short-term wetland loss.

The new RGL describes specific considerations for making credit determinations. Further, the RGL makes it clear that wetland loss resulting from dam removal will not require compensatory mitigation. Perhaps most importantly, the RGL gives district engineers latitude to determine the number of mitigation credits produced and to consider local conditions in their determinations, although they will still prefer on-site and in-kind mitigation (meaning, to mitigate impacts that occur nearby and are of the same type as the mitigation project, e.g., fish passage credits could be used for fish passage impacts).

For owners that have been considering removing dams or other in-water structures, this guidance may offer opportunities, but we should caution that those opportunities are constrained by limited availability of mitigation banks and the effort needed to create one, by the need for close coordination and agreement with any available in lieu fee programs, and by limited availability of in-kind permittee-responsible mitigation needs. If those constraints can be overcome, the RGL will allow the long-term value of the removal to be considered and more consistently credited and monetized through mitigation banks or in-lieu fee programs or, if such programs are not available, for the dam owner's own mitigation responsibilities.

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