



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Determination of Compensatory Mitigation Credits for the Removal of Obsolete Dams and Other Structures from Rivers and Streams: U.S. Army Corps of Engineers Regulatory Guidance Letter No. 18-01.

11/02/2018

The United States Army Corps of Engineers (“Corps”) issued on September 25th a Regulatory Guidance Letter No. 18-01 titled:

Determination of Compensatory mitigation Credits for the Removal of Obsolete Dams and Other Structures from Rivers and Streams (“RGL 18-01”)

The Corps states that *RGL 18-01* provides direction to its District Engineers on factors to consider when determining the number of mitigation credits produced by the removal of obsolete dams and other structures to restore stream structure, functions, and dynamics.

The Corps may require that Section 404 Clean Water Act and Sections 9 and 10 Rivers and Harbors Act permits be issued on condition that compensatory mitigation is provided to offset unavoidable impacts to waters of the United States. *RGL 18-01* states that:

The removal of obsolete dams and other obsolete in-stream structures can be an effective approach to restoring river and stream structure, functions, and dynamics. These restoration activities may be performed by mitigation banks and in-lieu fee programs to generate mitigation credits that can be sold or transferred to permittees to fulfill compensatory mitigation requirements in DA permits. These restoration activities can also be conducted as permittee-responsible mitigation. The regulatory requirements for compensatory mitigation by mitigation banks, in-lieu fee programs, and permittee-responsible mitigation are provided in 33 CFR Part 332.

RGL-18-01 provides guidance to Corps District Engineers addressing:

1. factors they should consider when determining the amount of mitigation credit generated from the removal of obsolete dams or other structures;
2. recommendations for quantifying mitigation credits; and
3. recommendations for the treatment of losses of wetlands that result from the removal of dams and other structures.

The components of *RGL-18-01* include:

- Purposes, Applicability, and Definitions
- Background
- Effects of dams and other obstructions on streams
- Effects of removing dams and other obstructions from streams
- Discussion
- Guidance
- Credit Determinations
- Long Term Protection
- Quantifying Compensatory Mitigation Credits for the Removal of Obsolete Dams and Other Structures
- Losses of Wetlands as a Result of the Removal of Dams or Other Structures
- Duration

The Corps uses Regulatory Guidance Letters as a system to organize and track written guidance issued to its field agencies. It states that these documents are normally issued as a result of evolving policy, judicial decisions and changes to the Corps regulations or another agency's regulation which affects the permit program. The Corps considers their use to be limited to interpretation or clarification of existing Regulatory Program policy, but do provide mandatory guidance to the Corps District Offices.

A copy of *RGL-18-01* can be found [here](#).