Compensatory Wetland and Stream Mitigation: Information that You can Take to the Bank

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Wetlands and streams can bring challenges and add costs to all aspects of rail construction projects from initial engineering through permit close-out. To reduce potential impacts to schedule, it's always best to start early and to identify wetland (and stream) impacts within a project's limits of disturbance. These impacts must be reduced where practicable, but if wetlands and stream impacts cannot be avoided, the U.S. Army Corps of Engineers (USACE) will require a permit (State permits will also likely be required). Wetland impacts exceeding 0.1 acre will require compensatory mitigation. Additionally, impacts to streams (i.e., relocation) may require compensatory mitigation, even if the stream is small and only flows periodically as a result of storm water...that's right, impacts to ephemeral streams may also require compensatory mitigation. For project planning, it is critical to identify potential wetland and stream impacts early in the process, determine if compensatory mitigation will be required, and determine how to comply with compensatory mitigation requirements to avoid potentially substantial delays in schedule due to the permitting process and ultimately issuance. What is Compensatory Mitigation? Compensatory mitigation refers to the restoration, creation, enhancement, or in certain circumstances preservation of wetlands, streams or other aquatic resources for the purpose of offsetting unavoidable, adverse impacts. How do you comply with your Compensatory Mitigation Requirement? The USACE typically allows compensatory mitigation requirements to be met through one of the following:

- 1) Purchasing credits from an established wetland mitigation bank
- 2) Paying into an in-lieu-fee program
- 3) Permittee-Responsible Mitigation

Since Railroads are in the business to move freight and commodities, and not typically equipped, nor wish to be in the business, to manage mitigation sites in the long-term, Options 1 and 2 provide a relatively easy solution with no long-term responsibilities. Up-front costs can be relatively high (\$50K - \$200K+/acre of wetland impact, \$200-\$400+/linear foot of stream impact), but there are no long-term or recurring costs. Unfortunately, wetland banks and in-lieu fee programs are not available in all areas and sometimes your only option is Permittee-Responsible Mitigation, meaning YOU have to provide a site, method of mitigation, and long-term management. Monitoring for at least 3-5 years (sometimes longer if mitigation site requires additional plantings or other maintenance) is typically required to ensure success of the mitigation site prior to permit close-out. Additionally, the site must be protected in perpetuity, typically through deed restriction or other legal instrument. This undoubtedly has the ability to cause recurring costs and headaches for the railroad, long after project construction is complete. If you do not want to take on the responsibility of acquiring property, creating a mitigation site (i.e., grading, planting, etc.), you may be able to find a third party to take on this responsibility through legal contract. However, it should be noted that the Permittee (You) are still ultimately responsible for the success of the mitigation site, which will be required prior to permit close-out.