Electric Power Research Institute (EPRI)

Wetland and Conservation Banking in Transmission Corridor Rights-of-Way: Policy and Opportunities (Summary)

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**Abstract**

Electric transmission line rights-of-way (ROWs) encompass millions of acres. Some of these lands include aquatic resources and land suitable for threatened or endangered species habitat. Wetland mitigation banking and habitat conservation banking provide legally recognized ways to offset permitted impacts to aquatic resources and wildlife by providing compensatory mitigation "credits" generated by conservation activities. Because ROW corridor lands traverse a variety of aquatic resources and habitats, and are already under active management, they provide potential locations for wetland mitigation banks and conservation banks. This report investigates whether transmission ROWs are a realistic prospect for banking and the generation of mitigation credits.

**Approach**

 The goal of the study was to examine the current framework for wetland banking and conservation banking, and to examine whether transmission ROWs offer a realistic prospect for establishment of banks and generation of valuable mitigation credits. The report relies on substantial research by the Environmental Law Institute and others on bank siting and locations, trends, and the development of the regulatory process governing both forms of banking.

**Results**

 Federal and state agencies have recently defined and specified procedures for reviewing and approving wetland mitigation banks and conservation banks, and defined the content of banking instruments. The suitability of ROW lands for banking will vary based on the presence or absence of lands suitable for aquatic resource compensation and if the habitat within the ROW can support threatened or endangered species. It will also depend on whether the watershed or habitat conservation "service area" within which the ROW lands are located offers sufficient demand for compensatory mitigation to make wetland or conservation banking economically viable. This report examines the factors that may be of particular concern to ROW owners and managers in establishing a wetland mitigation bank or conservation bank, including long term protection of the site, consistency with the electric transmission ROW operations, and cooperation with underlying landowners.

Qualitatively, it would appear that transmission corridor ROWs offer potentially important locations for wetland mitigation banks and conservation banks. They are already under active management; require attention to real estate and easement status; manage liability and other issues; and occupy substantial areas of land. ROW holders may benefit from partnerships with other organizations that have experience in establishing wetland or conservation banks or joint conservation/wetland mitigation banks. The existence of multi-site umbrella banks where managers have already secured banking instrument approvals may offer a way to include transmission corridor ROWs in wetland mitigation banking operations that already have an approved relationship with regulatory agencies. Since building and development are less likely to occur on ROW lands, they offer fewer conflicts than many other potential sites for compensatory mitigation and conservation. In urbanized areas, where compensatory mitigation may be particularly necessary, transmission corridor ROWs include some of the few areas of open land available for mitigation. Potential obstacles to banking include whether the ROW operator has **authority** (particularly on easement lands) to manage ROW lands for wetland and habitat benefits; and **credit definition** issues relating to whether ROW lands already protected from certain uses and encroachments can generate sufficient additional credits through management. Other obstacles may include **site protection** issues dealing with the ability of the ROW holder to guarantee long term aquatic or habitat function, particularly if there is an underlying fee simple landowner; **financial assurance** issues related to guaranteeing performance; and management of **liability** for the credits.

**Application, Value and Use**

 Regulators expect that reliance on both wetland mitigation banking and conservation banking will increase in the future. The 2008 compensatory wetland mitigation rule specifies a federal regulatory preference for wetland mitigation banking over other forms of compensatory mitigation for aquatic resources. ROW managers and environmental staff could benefit by taking into account opportunities for banking within their own managed lands as part of a portfolio of compensatory mitigation.

**EPRI Perspective**

 Electric utilities principally manage electric transmission line rights-of-way to control vegetation. However, it is not uncommon for utilities to also manage for other uses, such as hunting. Incorporating wetland mitigation banking and conservation banking to increase biodiversity and to secure compensatory mitigation "credits" for internal use or sale would be a natural extension of current uses. A subsequent EPRI report (1015598), will explore challenges associated with establishing banks within electric transmission line rights-of-way.

**Program**

 2007 ROW: Siting Vegetation Management and Avian Issues

**Keywords**

 Electric transmission line rights-of-way  
Wetlands  
Wetland mitigation banking  
Conservation banking

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