

If you visit the EPA website you are bombarded with why we need the clean water rule to protect our streams and wetlands. Ironically on August 4 EPA workers accidentally caused a toxic wastewater release in Colorado. When they finally did report it over a day later, they grossly underestimated the volume of the release. And these are the folks that regulate our actions! If this had happened to any of us in the industry we would soon be out of business and in handcuffs.

For the past 22 years my firm has either had a controlling interest or outright ownership of 300 acres of heavy industrial zoned land in Fairbanks. We have developed this property to serve the construction needs of the greater Fairbanks area. Originally, all that was required for a wetland permit was to submit a written development plan to show the purpose and need. Over the years things became gradually more difficult. The first change was the requirement that any plan for pit development had to include a restoration plan to include littoral zones. Restricting development of a 20' wide zone around an old pit may not sound like much, but it adds up quick. A 20' strip around a 5 acre pond amounts to about 0.85 acres! A geometric calculation of this set-aside equals a volume of 205,700 cubic yards with a potential value of over $615,000!

Requirements gradually worsened to the point we are at today with the requirement of compensatory mitigation. In 2006 my firm needed to update our existing wetlands permit. The U.S. Army Corps of Engineers required that we contribute $55,000 to The Conservation Fund to provide for offsite mitigation of 16 acres of lost wetlands. We were also required to permanently set aside an additional 10.64 acres of our land to be protected wetlands in perpetuity. As we were aware of two U.S. Supreme Court rulings that might affect our determination (Rapanos & Carabell) we held off executing the permit. After those rulings were published we requested on July 12, 2006 the Corps revisit the jurisdictional determination for our property. This remained unanswered until March 28, 2007 when the Corps offered a proffered permit which included a condition that the in-lieu fee for compensatory mitigation would be held in escrow until a new jurisdictional determination was issued under the new guidance. On July 28, 2008 the Corps determined that this property was jurisdictional wetlands. With the help of the Pacific Legal Foundation we fought this determination on our property all the way to the 9th Circuit Court and won at a cost of $89,205. The new rulemaking by the EPA will reverse that determination potentially forcing us to re-enter the permitting process for our ongoing development. To hopefully protect ourselves from that situation, we have cleared and disked much of this land at a cost of $73,000 to convert it to uplands beyond the EPA's reach.

In other private cost impacts a business associate of mine with a development on North Slope Borough leased land in Deadhorse was required to pay $90,000 in fees to develop 7.5 acres in 2011. Three years later he applied to develop an adjoining 7.5 acre parcel. The price doubled to $180,000 without any explanation ($24,000 per acre).

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This impact is not limited to private landowners. Our ability to improve public infrastructure is also impacted by these rules. Mayor Brower has previously testified that the Barrow landfill project had to pay $1 million compensatory mitigation. I would like to add that Northern region transportation projects have paid $3.4M mitigation payments in 2014 and $1.3M mitigation payments in 2015 to date. During 2014 the credit cost increased from $2,200 per credit to as much as $33,000 per credit. Last but not least is an agreement reached in December 2007 whereby the Juneau Airport project paid $5.3M to the Southeast Alaska Land Trust as compensatory mitigation for impacts to 72.84 acres of wetlands ($72,826 per acre).

Another interesting note is the government's failure to recognize court rulings. Several of us individually own property upstream of the Great Northwest property that was deemed non-jurisdictional wetlands. The Government claimed jurisdiction over my property last week, just as they have done to other property owners in the same neighborhood.

To further complicate matters the EPA has shut down The Conservation Fund until they do an audit of the expenditures. Permits cannot now be obtained as there is no organization to receive the required funds. Progress for future projects is now at risk.

These payments are impacting our ability to deliver worthwhile infrastructure improvements, predominately within long dedicated rights of way. Additionally, these payments are re-directing taxpayer dollars to N.G.O.'s with their own self-serving interests, salaries and expenses. One could even argue these payments constitute extortion due to the fact you will not get a permit to fill your wetlands without making the appropriate payment.

Alaska is in a bit of a unique position here. Wetland mitigation rules and permits should not apply to the State of Alaska. Over 43% of Alaska's surface area is considered wetlands. In the lower 48, wetlands occupy 5.2% of the surface area. Over 88% of Alaska's wetlands are already under public management which includes vast tracts of land in our park and refuge system. Wetlands contained within public transportation facilities, as well as wetlands in private ownership should be exempted. We already have regulations to control pollution, and the designer of any project is ultimately responsible for a functioning product. In the case of public projects, these rules constitute extortion. In the case of private projects they also take land for public benefit without any compensation to the landowner, or in many cases, force the landowner to pay compensatory mitigation to obtain permits to fill private wetlands at values that are multiples of the value of the property being filled. After all, what are the land trusts and conservation funds doing but using public funds to purchase private lands thus shrinking the 10.9% of Alaska currently available land for private development thereby reducing our local governments' tax rolls.

These new regulations will take large tracts of land not currently under the authority of the Clean Water Act and redefine them as waters of the U.S. This egregious Federal overreach has more to do with the largest land grab in history than with expanding protection under the Clean Water Act. The net result will be changing the Clean Water Act into a Wetlands Protection Act. If there is a need for a Wetlands Protection Act, then Congress should enact one, and leave public rights of way and privately held properties out of it. If the public wants to set these areas aside then the public should purchase the land outright at fair market value.

Respectfully,
Randy Brand



Google earth

miles 3
km 5

Great Northwest, Inc. Fairbanks gravel pit

Randy Brand

From: Miller, David J (DOT) <david.miller@alaska.gov>
Sent: Monday, August 10, 2015 1:05 PM
To: Randy Brand
Subject: FW: NR Wetland mitigation payments 2014 - updated to 2015

Let me know if you need anything else.

From: Nelson, Brett D (DOT)
Sent: Monday, August 10, 2015 12:44 PM
To: Miller, David J (DOT)
Cc: Anderson, Ryan (DOT); Hill, Jason J (DOT); Woster, Timothy J (DOT); Hooper, Barry L (DOT); Bailey, Meadow P (DOT)
Subject: NR Wetland mitigation payments 2014 - updated to 2015

Dave,

Here is the updated wetland mitigation payment information, now including 2015 payments. Please let me know if you have any questions.

Thanks,
Brett

Brett Nelson
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Alaska Dept. of Transportation & Public Facilities
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2014 NR Wetland Mitigation ILF Payments

Project Name	Project No.	Mitigation Cost	Date Paid	Credits	Credit Cost	Funding Source
Parks Hwy MP 194-195 RR Overpass	61277	$12,430	7/2/2014	1.13*	$11,000	FHWA
Parks Hwy MP 163-305 Passing Lanes - Stage II	63515	$12,375	4/28/2014	1.125*	$11,000	FHWA
Richardson Hwy New Weigh Station	60552	$33,000	7/2/2014	3.0*	$11,000	FHWA
Nome Airport RSA	61413	$1,417,350	5/8/2014	128.85*	$11,000	FAA
St. Mary's-Mountain Village Road	60240	$262,350	6/23/2014	22.35*	$11,000	FHWA
Goldstream Road - permit mod	63513	$6,390	6/23/2014	0.63*	$11,000	FHWA
Deadhorse Airport ARFF	61447	$77,550	12/1/2014	3.525*	$22,000	FAA
Dalton MP 401-414 - road only	61366	$579,150	11/17/2014	52.65*	$11,000	FHWA
Ambler Airport Rehab	61303	$533,060	10/20/2014	48.46*	$11,000	FAA
Elliott Hwy MP 107.7-120.5	62227	$147,070	9/25/2014	13.13*	$11,201	FHWA
Parks Hwy Passing Lanes - Stage III	63515	$4,620	8/5/2014	0.42*	$11,000	FHWA
Plack Rd Bike Path	77248	$26,400	7/29/2014	2.4*	$11,000	FHWA
Elliott Hwy MP 97.7-106.6	M&O	$104,500	8/6/2014	9.5*	$11,000	State
Dalton MP 274-289 - permit mod	67018	$40,260	8/5/2014	3.66*	$11,000	FHWA
Road to Tanana	61759	$118,140	4/8/2014	53.7*	$2,200	State
		$3,374,645				

2015 NR Wetland Mitigation ILF Payments

Project Name	Project No.	Mitigation Cost	Date Paid	Credits	Credit Cost	Funding Source
Parks Hwy Rest Areas	61074	$8,250	2/11/2015	0.75*	$11,000	FHWA
Coldfoot Airport	60851	$24,750	5/4/2015	2.25*	$11,000	FAA
Yankovich Miller Hill Bike Path	76707	$52,800	4/27/2015	3.0*	$17,600	State
Dalton MP 401-414 - mod & material sites	61366	$1,252,250	8/10/2015	114.75*	$11,000	FHWA
		$1,338,050				

*credits calculated from acres x wetland category ratio