What should a federal guidance document say to encourage placement of compensatory mitigation where it would have the greatest benefit and probability for long-term sustainability in a district with extensive watershed planning?
Guidance on implementing compensatory mitigation in the watershed context.

1. Guidance for the Corps regulatory program:
   a. The Corps regulatory program can be a tool for implementing the watershed plan/CCMP
   b. Publish a public notice to inform the regulated public of the CCMP and watershed approach to regulatory actions
   c. Maximize avoidance and minimization of impacts to waters/wetlands and upland buffers deemed critical by the CCMP
d. Use *incentives* to encourage conformance with the watershed approach/CCMP:

(1) Authorize regional general permits for expedited processing of projects that are in conformance with the watershed approach/CCMP.

(2) Provide for expedited approval of compensatory mitigation that is in conformance with the watershed approach/CCMP. For example, bank sponsors would be advised to site and design bank sites in accordance with the watershed approach/CCMP.
e. **Disincentives:**

(1) Require individual permit reviews for projects not in conformance with CCMP. Special condition permits to protect the resource. Denial of 10/404 permits may be appropriate

(2) Consider rejecting, or crediting at a lower value, compensatory mitigation that does not conform with the watershed approach/CCMP
f. Legal challenges:

Involving stakeholders
Public noticing
Developing GPs
Making decisions consistent with the plan
Etc.

Demonstrate that the agency’s actions are not “arbitrary and capricious” and should be given deference by the courts
Authorization of Incidental Take
Under the Endangered Species Act
GUIDANCE…

1. Require siting of compensatory mitigation in accordance with wetland restoration priorities identified by the CCMP

2. Although in-kind compensation is typically preferred, include flexibility to incorporate out-of-kind compensation based on priorities identified by the CCMP

3. While CCMP is used to identify compensation priorities for site and kind, each applicant remains responsible for design and planning of their compensatory mitigation