



**US Army Corps  
of Engineers** ®  
Omaha District

## **PUBLIC NOTICE**

**Application No:** NWO-2012-01040-MTB  
**Applicant:** Yellowstone Mitigation, LLC  
**Waterways:** Yellowstone River, O’Fallon Creek, and wetlands  
**Issue Date:** January 23, 2013  
**Expiration Date:** February 22, 2013

**30 DAY NOTICE**

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**Billings Regulatory Office**

**Post Office Box 2256**

**Billings, Montana 59103**

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### **JOINT PUBLIC NOTICE**

**For the Lower-Middle Yellowstone Mitigation Banking Umbrella Agreement in Treasure, Rosebud,  
and Carter Counties, Montana**

**Submitted to the US Army Corps of Engineers, in cooperation with the Interagency Review Team**

For the proposed mitigation bank the Interagency Review Team (IRT) will consist of the following agencies: US Army Corps of Engineers (Corps), US Environmental Protection Agency (EPA), US Fish and Wildlife Service (USFWS), Montana Department of Environmental Quality (MT DEQ), and Montana Fish, Wildlife, and Parks (FWP).

**History and Purpose:** Section 404 of the Clean Water Act establishes a permit requirement, administered by the Corps, for projects that involve discharging dredged or fill material into waters of the United States. The Corps requires compensatory mitigation as a permit condition for stream or wetland losses that are determined to have greater than minimal effects. The goal of mitigation is to replace the physical, chemical, and biological functions of these waters of the US. The mitigation banking concept was established to provide alternatives to applicant-provided mitigation and ease the regulatory burden of mitigating permitted impacts to waters of the US.

**Description and Scope of Agreement:** Yellowstone Mitigation, LLC proposes development of several stream and wetland mitigation bank sites under the Lower-Middle Yellowstone Umbrella Agreement (LMYUA). The Bank Sites include wetlands (PEM, PSS and PFO), stream and riparian resources at three initial locations in Treasure, Rosebud and Carter Counties, Montana. The purpose of the LMYUA is to provide compensatory mitigation for unavoidable adverse impacts to wetlands and aquatic habitats that may occur in the Primary Geographic Service Areas (GSA) of each of the Bank Sites as described below, and throughout the Secondary GSA of the Bank Sites, established as the combined Middle Yellowstone Major Basin (MDT District 14, including 8-digit HUCs 10070007 and 10070008; 10080010, 10080014, 10080015, 10080016; 10090101 and 10090102; and 10100001, 10100002, and 10100003) and Lower Yellowstone Major Basin (MDT District 15, including HUCs 10090207 – 10090210; and 10100004 and 10100005).

The overall objectives of the Agreement and its initial Bank Sites are to provide stream and wetland credits produced from the restoration and protection of the following resources:

Cole Ranch – restoration, through Russian olive and saltcedar control, and vegetation community improvements such as native grass and shrub plantings, of 130 acres of riparian habitat along 7,320 linear feet of the south bank of the Yellowstone River, generating 18,794 stream credits (no wetland credits proposed);

Waage-Schwarzkopf Property – restoration, through Russian olive and saltcedar control, and vegetation community improvements such as native grass and shrub plantings, of 100 acres of riparian habitat along 8,820 linear feet of the north bank of the Yellowstone River, generating 22,645 stream credits; AND further restoration, through Russian olive and saltcedar control, and vegetation community improvements such as native grass and shrub plantings, of 58 acres of wetland habitat located on the Yellowstone River, generating 23.08 wetland credits;

Ringling Ranch – restoration and protection of 257 acres, through channel geomorphology improvements, levee removal, vegetation community improvements (such as native grass and shrub plantings) and eliminated grazing of 30,607 linear feet of O’Fallon Creek, and an associated 600-foot total riparian buffer, generating 149,515 stream credits; AND restoration of 5.6 acres of prairie wetlands and 32.6 acres of upland buffers and inclusions along O’Fallon Creek, generating 5.26 wetland credits.

The underlying real estate for all Bank Sites will be protected via a special condition of the 404 permit authorization issued for restoration and enhancement efforts at each Bank Site. Financial assurances which guarantee success of each Bank Site will be established commensurate with the risk (both financial and ecological) associated with the Bank Site development strategy. In cases of low risk strategy, no financial assurance will be provided (such as nuisance species control). Bank Sites will be managed by the landowner, Montana Land Reliance, or other third-party long-term manager acceptable to the Corps, in consultation with the IRT, thus ensuring appropriate management of the land in perpetuity.

A copy of the Lower-Middle Yellowstone Mitigation Banking Umbrella Agreement Prospectus can be found at <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Montana/PublicNotices.aspx>

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**Cultural Resources:** The Omaha District, as the lead federal agency for determining compliance with Section 106 of the National Historic Preservation Act, will consult with the Montana Historic Preservation Office, Federally recognized Indian Tribes, and other interested parties as appropriate. The Omaha District's initial review, based on currently available information, indicates there are no recorded properties within the permit area. It has been determined that the project has no potential to cause effects to properties listed, or eligible for listing, on the National Register of Historic Properties.

**Threatened / Endangered Species:** In compliance with the Endangered Species Act, a preliminary determination has been made that the described work will not affect species designated as threatened or endangered, or adversely affect critical habitat. In order to complete our evaluation of this activity, comments are solicited from the U.S. Fish and Wildlife Service and other interested agencies and individuals.

**Comments:** The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this mitigation bank. Any comments received will be considered by the Corps of Engineers and the Interagency Review Team. To make their decisions, comments are used to assess the suitability of the proposed mitigation bank, impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Comments, both favorable and unfavorable, will be accepted, made a part of the record and will receive full consideration in subsequent actions. Comments will be accepted during this comment period and may be provided via e-mail, standard mail, or fax using the contact information listed below. Any agency or

individual having an objection to the work should identify it as an objection with clear and specific reasons. All replies to the public notice should be sent to the **U.S. Army Corps of Engineers, Billings Regulatory Office ATTN: Cathy Juhas, Post Office Box 2256, Billings, Montana 59103**. For additional information please contact Cathy Juhas at **Catherine.d.juhas@usace.army.mil** or (406) 657-5910 or see the website listed above for a copy of the Prospectus.

Any person may request, in writing and within the comment period specified in this notice, that a public hearing be held for the purpose of gathering additional information. Requests for public hearings must be identified as such and shall state specifically the reasons for holding a public hearing and what additional information would be obtained. Should the District Engineer decide that additional information is required and that a public hearing should be held, interested parties will be notified of the date, time and location.

Comments postmarked after the expiration date of this public notice, or received by fax or e-mail after the closing date, will not be considered. Comments left on our voicemail system will not be considered.