



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

PUBLIC NOTICE

Application No: NWO-2012-02382-MTB
Applicant: Andrew Feltenstein
Waterway: Yellowstone River
Issue Date: December 3, 2012
Expiration Date: December 24, 2012

21 DAY NOTICE

Billings Regulatory Office

Post Office Box 2256

Billings, Montana 59103

**JOINT PUBLIC NOTICE
FOR PERMIT APPLICATION SUBMITTED TO
U.S. ARMY CORPS OF ENGINEERS
AND
MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

The application of Andrew Feltenstein for approval of plans and issuance of a permit under authority of the Secretary of the Army is being considered by the District Engineer, U.S. Army Corps of Engineers, Omaha, Nebraska. **The project described herein is not being proposed by the Corps, but by the applicant; the Corps will evaluate the proposed work to determine if it is permissible under current laws and regulations.**

Description of Proposed Project: The Feltenstein property borders the Yellowstone River on the western edge of the property (see attached location map). During previous high flow events (spring runoff, 2011 flows) the river has migrated towards the property and is threatening the only access road to the home site and orchard, as well as threatening existing agricultural lands on the property. Rock riprap armoring below the ordinary high water mark and a vegetative non-rigid armoring above the ordinary high water mark is being proposed for several sections of river bank. A total of 2,655 linear feet of bank is proposed to be stabilized, of which 170 linear feet is maintenance of existing riprap.

All work would be completed during low-water runoff periods. This would limit the extent of potential erosion, sedimentation, and turbidity issues on the Yellowstone River. The inclusion of vegetative armoring and a 50-foot riparian buffer zone would help establish native species adjacent to the river, providing additional erosion and sedimentation protection.

A location map, project design drawings, and mitigation location map are attached to this notice. A copy of this public notice is also available at <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Montana.aspx>.

Location: The proposed project is located in Section 1, Township 3 South, Range 9 East in Park County, Montana.

Purpose: The project proposes to place riprap and vegetative armoring on sections of the Yellowstone River to protect existing access and agricultural resources located on the Feltenstein property.

Mitigation: The proposed impact to the Yellowstone River has been minimized to the fullest extent possible. Compensatory mitigation is required for the 2,485 linear feet of new riprap. An on-site, in-kind

compensatory wetland mitigation plan has been submitted. The applicant is proposing several mitigation and preservation reaches located near the proposed impact sites (see the attached Exhibit 2).

Riparian Mitigation

Two mitigation reaches will be held in restrictive covenants for riparian preservation. Reach 1 is an island located across the river from the existing homesite. Mitigation Reach 2 is located just downstream of the proposed armoring and is a 300-foot-wide by 1,000-foot-long buffer that will also be held in restrictive covenants.

Stream Mitigation

Two mitigation reaches are proposed for stream restoration. The applicant proposes to incorporate plantings via live staking in the riprap armoring and tree groupings behind the riprap for Mitigation Reach 1. Mitigation Reach 2 is approximately 100 linear feet of bank which has large boulders located in the active stream channel which may be contributing to bank erosion. These boulders are remnants of previous riprap projects which the river has undercut and left the large rocks in place. The applicant proposes to remove these boulders for mitigation credit.

401 Water Quality Certification: The Montana Department of Environmental Quality, 1520 East 6th Avenue, PO Box 200901, Helena, Montana 59620-0901 will review the proposed project with the intent to certify in accordance with the provisions of Section 401 of the Clean Water Act. The certification, if issued, will express the State's opinion that the operations undertaken by the applicant will not result in a violation of applicable water quality standards. The Montana Department of Environmental Quality hereby incorporates this public notice as its own public notice and procedures by reference thereto.

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.

Evaluation Factors: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of work on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act (40 C.F.R.; Part 230).

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 proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. All public notice comments will be considered public information and will be subject to review by the applicant.

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. The request must be submitted to the U.S. Army Corps of Engineers, 10 West 15th Street, Suite 2200, Helena, Montana 59626. If it is decided that additional information is required and that a public hearing should be held, interested parties will be notified of the date, time and location.

Any interested party (particularly officials of any town, city, county, state, or Federal agency; Indian tribe; or local association whose interests may be affected by the work) is invited to submit to this office written facts, arguments, or objections on or before the expiration date listed on the front of this notice. Any agency or individual having an objection to the work should specifically identify it as an objection with clear and specific reasons. Comments, both favorable and unfavorable, will be accepted, made a part of the record and will receive full consideration in subsequent actions on this application. All replies to the public notice should be addressed to the **U.S. Army Corps of Engineers, Post Office Box 2256, Billings, Montana 59103. Please reference the Application Number found on the first page of this notice in any correspondence.** Cathy Juhas, telephone number (406) 657-5910, may be contacted for additional information. You may also fax your comments to (406) 657-5911, or email to: **Catherine.d.juhas@usace.army.mil**

Comments postmarked after the expiration date of this public notice will not be considered. Comments left on our voicemail system will not be considered.

Statutory Authorities: A permit, if issued, will be under the provisions of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.



Figure 1: NWO-2012-02382-MTB Location Map

