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20 April 2007

Todd Tillinger
Montana Regulatory Office
U.S. Army Corps of Engineers
10 West 15th Street, Suite 2200
Helena, MT 59626

Re: scoping comments on Upper Yellowstone River SAMP

Dear Todd:

Thanks for the opportunity to provide scoping comments on the Corps' Upper Yellowstone River Special Area Management Plan. Montana TU represents 3,400 conservation-minded anglers organized in 13 chapters around the state, including chapters based in Bozeman, Livingston and Billings that have an acute interest in conservation of the Yellowstone River. We were also lead plaintiff in the 1999 litigation in federal district court resulting in direction from the bench to the Corps to prepare a legally and scientifically sufficient cumulative effects analysis to guide its permitting activities on the Yellowstone River. We are hoping the SAMP helps in the development of the long-overdue Yellowstone River Corridor Study and other cumulative effects analyses.

Conservation of the Yellowstone River is of national interest. This has been amply demonstrated by the national focus in the 1960s over the proposal to dam the river near the mouth of the Paradise Valley. Members of the public from across the nation also dialed in on the river when the State of Montana, anglers and conservationists endeavored in the 1970s to protect the Yellowstone from large-scale energy development. This resulted in state-based instream flow reservations for the river and some of its tributaries. Montana Fish, Wildlife and Parks' flow reservations, in fact, provide the legal basis for demonstrating to downstream states that covet the river's water that fish, wildlife and water quality in the Yellowstone River have equal weight with development and water markets. National interest in conservation of the river has also risen as the river has become increasingly more popular as a destination for anglers around the nation. Finally, the river attracted much media attention in 1996-7 when high water motivated some landowners, with Corps approval, to accelerate and expand bank stabilization along the Yellowstone, potentially at the expense of nationally acclaimed wildlife, fish and recreational values.

Because the Yellowstone River is not only Montana's river, but also the nation's, and so much of the interest in it is for wildlife, recreation and fishery values, we believe the Corps' SAMP should focus primarily on how best to protect these values and less on how to accommodate additional permits for stabilization and development of the river's bed and banks.

We are pleased the Corps plans to incorporate recommendations from the 2003 Final Report of the Montana Governor's Upper Yellowstone River Task Force. Many of the 43 recommendations clearly exhort the Corps and other agencies to better balance land uses with conservation of habitat and water quality. However, because the recommendations largely call for voluntary measures, we believe the Corps could help prod volunteerism with some appropriate regulatory beef that will help the task force's recommendations reach fruition. And thus the permit structure developed for the SAMP should focus on preventing a repeat of the recent history of development in flood-and erosion prone reaches of the upper river. According to at least one report, published by the Greater Yellowstone Coalition, development of structures in the 100-year floodplain between Corwin Springs and Livingston increased by 57 percent between 1990 and 2000. This type if not rate, of development continues today. Homes are still being built on highly erosive banks, or in areas that will be inundated at some high flows. This means the Corps will be continue facing requests for approving additional bank stabilization.

The SAMP needs to include a permitting program that diverges from the standard agency permitting practices found on other rivers. We recommend:

- The Corps establish an objective for the upper Yellowstone River of **no net gain of bank stabilization projects.** This does not mean requests to permit new bank stabilization projects could not be accommodated. The Corps could accommodate new requests for bank stabilization by establishing a "bank stabilization bank," wherein landowners desiring new projects could be approved if they and the agency identify stabilization structures, or stream bank restoration opportunities, elsewhere in the same reach that could offset the new project. The Corps' could identify and "bank" these restoration sites as potential offsets for future stabilization. Certain reaches of the upper river, such as that from Springdale upstream to around Mallard's Rest Fishing Access Site, already exhibit undue amounts of unnatural hydrological alteration because of bank stabilization and highway bridges (See Dalby and Robertson 2003; and, USGS 2004). If this "bank stabilization bank" approach was accepted, w could consider accepting exemptions from this proposed offset requirement, but only for those projects demonstrated as necessary for protecting public infrastructure and existing dwellings from imminent harm that cannot be avoided and which can only be addressed with bank stabilization (We do not propose exempting these activities from the Corps' existing and developing 404 mitigation regulations, however.).

- Some activities within the bed, banks and floodplain of the upper river should be prohibited and not eligible under any circumstances for general permits, nationwide permits or individual permits. These, include hydraulic and dredge mining, as well as new impoundments and dams for flood control, power generation or water diversion (largely recommended by the Upper Yellowstone Task Force).

- Because it will be necessary to replace existing bank stabilization structures that are failing, the Corps will have opportunities to help reduce existing and future cumulative and local impacts caused by these features. When faced with a 404 application for replacing a structure along the upper Yellowstone River, the Corps should: 1.) determine if the structure is still necessary; 2.) determine if the same length of bank stabilization is necessary; and 3.) evaluate alternatives,

including less intrusive stabilization measures (ie., riparian restoration instead of rip rap) or the potential for relocation of the structures needing protection, bank easements or fee-simple purchases that could obviate the justification for bank stabilization of any sort.

- 404 Permits for new bridges, or bridge replacements, should require spans that pass flows of all reasonably expected or previously experienced flood recurrence intervals, accommodate projected channel migration, pass bedload and not induce scouring of the bed. The fundamental hydraulic and hydrological goal should be to avoid impeding the river's natural tendencies – including the need to access a floodplain -- as much as possible.

- Replacement or new bendway weirs, barbs and jetties, if they are necessary and no less intrusive alternatives available, should be designed to be of the minimum length and height, designed at the appropriate angle to the bank and bed to shift velocity towards the center of the channel (but not induce eddy scouring on the downstream side), and constructed so as not to impede navigation by boats at low flows.

- Replacement or new irrigation diversion structures, especially in side-channels, should be designed to pass fish at all appropriate life stages. Further, the Corps should urge that all diversion points be screened or otherwise designed to minimize entrainment of fish.

- Because Corps' guidance for SAMPs includes provisions for developing a general permit for specific activities where no significant environmental impacts are expected, the agency will have to determine which activities are specifically appropriate for the upper Yellowstone. Moreover, the agency will have to demonstrate that these activities indeed will have minimal harmful effects on the environment when used separately and when considered cumulatively with other activities. As a start, we recommend the Corps consider general permits for the following activities, which currently are covered under nationwide permits:

    - Maintenance
    - fish and wildlife harvesting
    - scientific measurement devices
    - survey activities
    - outfall structures and their maintenance
    - minor discharges
    - minor dredging
    - wetland restoration
    - wildlife management
    - enforcement actions
    - boat ramps
    - watershed protection
    - hazardous waste cleanup
    - stormwater management
    - oil spill remediation
    - removal of vessels.

- Individual 404 permits should be required in the upper Yellowstone for major new bank stabilization projects, major repairs to existing bank stabilization projects, new bridge construction, bridge replacement and pipeline and utility line crossings.

We believe the development of this SAMP is a unique opportunity for the Corps to create incentives that better balance conservation of the Yellowstone River and its fish, wildlife and recreational values with the needs of private landowners to use their property without undue constraints. Further, if the Corps' permitting process focuses on a no net-gain in bank stabilization objective, it will reduce the need for future wrangling over how new projects can be assessed for cumulative effects. We believe, and scientific inquiry is bearing this out, some reaches of the upper Yellowstone River are already approaching, if not exceeding, thresholds for acceptable cumulative effects to fish and wildlife habitat, hydrological alteration (especially that which can affect downstream landowners) and recreational value. A SAMP with vision can help arrest further declines in the health of the Yellowstone River.

Again, thank you for the opportunity to comment.

Sincerely,

Bruce Farling
Executive Director