

State of Montana

Natural Resource Damage Program

MEMORANDUM

TO: Members of the Interested Public

FROM: Montana Natural Resource Damage Program and United States Fish and Wildlife Service

DATE: January 6, 2023

SUBJECT: 2015 Bridger Yellowstone River Oil Spill Natural Resource Restoration Plan
Soliciting Restoration Project Ideas

The State of Montana Natural Resource Damage Program (NRDP) and U.S. Department of the Interior (DOI), as represented by the U.S. Fish and Wildlife Service (USFWS) are preparing a restoration plan for the natural resources that were injured by the Bridger Pipeline LLC oil spill from its Poplar Pipeline in January 2015. NRDP, on behalf of the Governor of Montana, and DOI (the Trustees) are seeking public input on the preparation of the plan by soliciting proposals for restoration projects from interested individuals and entities and scoping the issues that may be associated with implementation of any proposed restoration projects. The Trustees are engaging in this scoping process to ensure that all impacts on the human environment associated with the restoration plan are identified.

Bridger Settlement Background and Natural Resource Damages

The Trustees and Bridger Pipeline LLC negotiated a settlement agreement between October 2018 and September 2020. A Consent Decree was entered on January 13, 2022 that provided a total of \$2,000,000 to the Trustees in natural resource damages. The State was allocated \$1,739,975 to be paid into the State of Montana's Yellowstone River 2015 Oil Spill Account. USFWS was allocated \$260,205 to be paid into a distinct account within DOI's Natural Resource Damage Assessment and Restoration Fund. The Consent Decree required that all interest and earnings accrued on these damages also be paid into the accounts. A portion of the settlement money was used to refund the Trustees for past costs incurred during site investigation and settlement negotiations. After refunding these costs, the State has approximately \$1.5 million and USFWS has approximately \$190,000 available to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and the lost use of those natural resources.

Natural resource damages under the Oil Pollution Act (OPA; 33 U. S. C. §§ 2701, *et. seq.*) are designed to compensate Trustees for injury to natural resources. The Governor, on behalf of the State of Montana (State), is the Trustee of natural resources within the state (33 U.S.C § 2706(b)(3)). Federal Trustees are designated pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.600 and Executive Orders 12580 and 12777. For this incident, the federal Trustee is the Secretary of the U.S. DOI, as represented by the USFWS. The State also has natural resource damage authority under state law pursuant to the Comprehensive Environmental Cleanup and Responsibility Act (CECRA; 75-10-

701 MCA, *et. seq.*). As Trustees, the State and DOI are authorized to recover, on behalf of the public, “damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage,” that results from a discharge of oil (33 U. S. C. § 2702). Natural resources include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or any State, among other entities (33 U. S. C. § 2701(20)). In other words, the Trustees can recover money damages related to the natural resources, such as the Yellowstone River, fish, and birds, that were injured by the oil spill and then use these funds to restore the injured natural resources.

Purpose and Scope of Natural Resource Restoration Plan

The overall goal of the restoration plan is to identify actions that restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and the services provided by these natural resources. The Trustees have identified three main categories of natural resources injured by the 2015 oil spill:

- Surface water
- Fish
- Birds

Though surface water is a separate injured natural resource, the restoration plan will not address water quality as a separate restoration category, and instead will focus on restoration of fish habitat. The goal for fish habitat restoration will be to enhance aquatic habitat for fish production and other aquatic organisms. The goal for bird injury will be to conserve and restore upland (grassland/shrubland) and riparian habitat for avian species in the Yellowstone Basin, and/or the Prairie Pothole Region of northern Montana, northern and eastern North Dakota, and eastern South Dakota. Because the oil spill also impacted the public’s opportunities for recreational fishing and birding, the restoration plan will include recreational use as a separate restoration category. The goal for recreation compensation will be to enhance public access to the Yellowstone River within the impacted area near Glendive.

Preliminary Projects

The Trustees have met with resource managers familiar with the 2015 Bridger Yellowstone River Pipeline spill area and solicited project ideas for all three categories. Fish habitat and recreation compensation projects were identified by Montana Fish, Wildlife, and Parks (FWP) Region 7, and synthesized by NRDP. Bird habitat compensation projects were identified by USFWS, with collaboration from NRDP. The core principle for fish habitat, bird habitat, and recreation compensation project selection will be to base decisions in sound scientific and engineering information that will lead to achievement of the goals for those injury categories.

The Trustees are soliciting additional project ideas for consideration according to necessary criteria, including those criteria outlined in OPA and the associated natural resource damage regulations. OPA criteria are provided in 15 CFR 990.54(a). Briefly, OPA requires the following criteria be evaluated:

- Project cost and cost effectiveness;
- Project goals and objectives;
- Likelihood of project success;
- Avoidance of adverse impact;
- Multiple resource and service benefits; and

- Public health and safety.

The following is the preliminary list of projects identified for each category.

- *Fish habitat restoration* projects were identified in consultation with FWP and informed by the Yellowstone River Cumulative Effects Analysis, the Yellowstone River Recommended Practices and Position Statements, Recommendations for Improving Public Access, Habitat Conservation, and Management of the Lower Yellowstone River Corridor, and Revised Recovery Plan for the Pallid Sturgeon. Projects include:
 - Projects to increase channel complexity by reconnecting side channels, activating old oxbows, and providing additional backwater habitat;
 - Projects to enhance floodplain connectivity through channel migration zone easements and removal of levees, dikes, or berms;
 - Projects to increase fish production by improving fish passage on the Yellowstone River and tributaries.
- *Bird habitat restoration* projects were identified by USFWS and include:
 - Projects to restore injured upland and riparian habitat to compensate for bottomland impacted by oil and response activities in the Yellowstone Basin;
 - Projects to procure conservation easements and develop/implement restoration strategies for enhancing upland and riparian habitat in the Prairie Pothole Region. Although outside the area directly impacted by oil and response activities, projects in the Prairie Pothole Region would benefit waterfowl and other migratory bird populations impacted by the spill.
- *Lost recreational services* projects were identified in consultation with FWP and informed by the Yellowstone River Cumulative Effects Analysis, the Yellowstone River Recommended Practices and Position Statements, Recommendations for Improving Public Access, Habitat Conservation, and Management of the Lower Yellowstone River Corridor, and Revised Recovery Plan for the Pallid Sturgeon. Projects include:
 - Acquire, develop and construct a fishing access site;
 - Increase public access through conservation easements or public access land agreements.

How You Can Participate

- Attend a meeting to hear more about the proposed restoration plan. The meeting will be held at:

6:00 PM on Thursday, January 19, 2023
Glendive Public Library
200 S Kendrick Ave
Glendive, MT

There will also be a remote option to attend the meeting via Microsoft Teams. See below for the virtual meeting information.

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 219 150 006 390

Passcode: Cpxznq

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291818717@t.plcm.vc

Video Conference ID: 112 922 446 3

[Alternate VTC instructions](#)

Or call in (audio only)

[+1 406-318-5487,,962448783#](#) United States, Billings

Phone Conference ID: 962 448 783#

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NRDP will make reasonable accommodations for persons with disabilities who wish to participate in this public meeting. For questions about accessibility or to request accommodations, please call Meranda Flugge at 406-444-0229 or email at meranda.flugge@mt.gov as soon as possible but no later than 3:00 PM Tuesday January 17, 2023.

- Submit an abstract for a restoration project idea. See the attached Restoration Concept Abstract Submittal Form (Attachment A).
- Submit your concerns about impacts to the human environment, including cumulative and secondary impacts, from the implementation of the restoration projects. See the attached Guidance for Project Ideas Submittal (Attachment B) for information on project evaluation criteria under OPA, the National Environmental Policy Act (NEPA) and the Montana Environmental Policy Act (MEPA).

Attachment A
2015 BRIDGER YELLOWSTONE RIVER OIL SPILL RESTORATION CONCEPT ABSTRACT FORM

The State of Montana, through the Natural Resource Damage Program (NRDP), and United States Fish and Wildlife Service (USFWS) are soliciting restoration project concepts for potential inclusion in the 2015 Bridger Yellowstone River Oil Spill Restoration Plan. The plan will be released for public comment, and the Trustees will make a final decision on restoration actions.

For restoration project concepts to be considered, submit a project abstract that covers the basic information indicated below to NRDP **no later than 11:59 PM on February 10, 2023**. Since proposals are being requested as abstracts, submittals should not be more than four pages. For additional information, call or e-mail NRDP (see contact information below).

Your Name and Contact Information: Provide mailing address, phone number, and e-mail contact information.

Project Purpose and Benefits: Indicate why the project is being proposed. Include the expected goals, objectives, and outcome of the project. Describe how the project would compensate for lost natural resource services in the 2015 Bridger Yellowstone River oil spill area and/or benefit the public's use and enjoyment of those resources.

Project Location: Provide a short description of the project location, along with a project map.

Project Description: Describe the components of the project and how it will be implemented. Also indicate any suggested lead entity (must be the State or a governmental entity) and project partners for implementing the project. Indicate what progress, if any, has been accomplished to date on the project.

Project Schedule: Indicate the timeframe needed to complete the project and any specific completion deadlines that would apply.

General Cost Information: Provide an estimate of total project costs. If possible, provide a categorical breakdown of the costs for the following categories: salaries/benefits; contracted services; supplies and materials; travel and communication; equipment; or other (specify). Indicate committed or anticipated matching funds.

Send Information **no later than 11:59 PM on February 10, 2023**, to:

Natural Resource Damage Program

1720 9th Ave

P.O. Box 201425

Helena, MT 59620-1425

Phone: (406) 444-0205

E-mail: nrdp@mt.gov

Please put "2015 Bridger Yellowstone River Oil Spill Scoping" in the subject line.

Attachment B
GUIDANCE FOR PROJECT IDEA SUBMITALLS

Under OPA, natural resource damage (NRD) settlement funds can only be spent to restore, replace, or acquire the equivalent of injured natural resources or compensate for the lost use of injured natural resources, and natural resource trustees must complete a restoration plan and consider public input before NRD settlement funds can be spent (15 CFR 990.55(a)). The restoration plan must specify how funds will be spent and include an evaluation of various restoration alternatives according to criteria specified in OPA NRD regulations (15 CFR 990.54 and 990.55). Projects must also comply with the National Environmental Policy Act (NEPA; 42 USC §§ 4321, *et seq.*) and the Montana Environmental Policy Act (MEPA; 75-1-102, MCA, *et seq.*). Criteria for evaluating projects under OPA, NEPA, and MEPA are described below.

Evaluation of Alternatives Under OPA

Natural Resource Damage Assessment regulations under OPA provide six criteria to be used when evaluating restoration options (15 CFR 990.54(a)). In applying these criteria to evaluate proposed restoration projects, the criteria will be evaluated qualitatively rather than quantitatively. The importance of each criterion as applied to individual alternatives will vary depending upon the nature of the alternatives. The criteria to be used are:

1. Project cost and cost effectiveness
The cost of a project, both implementation cost, long term maintenance, and monitoring will be considered against the relative benefits of a project to the injured natural resources and service losses. Projects that return the greatest and longest lasting benefits for the cost will be preferred. The Trustees will also consider the time necessary before the project benefits are achieved, and the sustainability of those benefits. Projects will be reviewed for their public acceptance and support, and additional consideration given to projects that leverage the financial resources of partner organizations.
2. Project goals and objectives
This criterion considers the extent to which each restoration project helps to return injured natural resources and services to at least baseline conditions that were present prior to the oil spill or compensate for interim service loss. Projects should demonstrate a clear relationship to the resources and services injured. Projects located within the area affected by the spill are preferred, but projects located within the Yellowstone River watershed or Prairie Pothole Region that provide benefit to the resources injured in the affected area will also be considered.
3. Likelihood of project success
The Trustees will consider the technical feasibility of each project in achieving the restoration project goals and the risk of failure or uncertainty that the goals can be met and sustained. The Trustees will generally not support projects or techniques that are unproven or projects that are designed primarily to test or demonstrate unproven technology.
4. Avoidance of adverse impact
Projects will be evaluated for the extent to which they prevent future injury as a result of the oil spill and avoid collateral injury as a result of implementing the alternative. All projects shall be lawful and likely to receive any necessary permits or other approvals prior to implementation.

5. Multiple resource and service benefits

Projects that provide benefits that address multiple resource injuries or service losses, or that provide ancillary benefits to other resources or resource uses are preferred.

6. Public health and safety

This criterion is used to ensure that the projects will not pose unacceptable risks to public health and safety.

Evaluation of Alternatives Under NEPA and MEPA

Any restoration of natural resources under OPA must comply with NEPA, as amended (42 USC 4321 *et seq.*), and its implementing regulations (40 CFR § 1500-1508) with respect to Federal actions that may significantly impact the human environment. In addition, restoration actions undertaken in the State of Montana must comply with MEPA (75-1-102, MCA, *et seq.*). NEPA and MEPA require an analysis of direct, indirect, and cumulative impacts of each alternative and appropriate mitigations. Restoration alternatives should consider direct and indirect impacts on the following:

- Injured resources (fish, birds, and recreation);
- Construction, sound, and air pollution;
- Threatened and endangered species and Montana species of concern;
- Water quality and sediment;
- Visual resources;
- Archaeological and cultural resources;
- Economic, historic, land use, and transportation resources;
- Regulatory restrictions;
- Climate change; and
- Cumulative impacts.