



# PUBLIC NOTICE

**U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT**

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## **AVAILABILITY OF PROSPECTUS FOR Mojave River Watershed Mitigation Bank**

**Public Notice/Corps File No.: SPL-2014-00332-VCC**

**Project:** Mojave River Watershed Mitigation Bank

**Comment Period:** February 5, 2016 through March 5, 2016

**Project Manager:** Susan A. Meyer Gayagas

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### **Bank Sponsor**

Richard and Laurie Prange Lyons  
P.O. Box 808  
Santa Paula, California 93061

### **Contact**

David L. Magney  
David Magney Environmental Consulting  
P.O. Box 1346  
Ojai, California 93024-1346  
(805) 646-6045

### **Location**

The proposed mitigation bank would consist of six separate parcels located in the Cronese Basin, Mojave Desert, east of the City of Barstow and west of the community of Baker along Interstate 15 (I-15) in San Bernardino County, California (35.111° N latitude and 116.292° W longitude). Together the six parcels total approximately 436 acres (Assessor's Parcel Numbers 054-3-161-44, 054-3-161-46, 054-3-201-34, 054-3-171-54, 054-3-201-41, and 054-3-201-42). The proposed service area for the mitigation bank would encompass the Mojave River Watershed (HUC-8 sub-basin) plus portions of the Mojave Basin and Range Ecoregion (EPA Level III Ecoregion). The total size of the proposed service area is approximately 11,771,400 acres.

### **Activity**

As presented in its Prospectus, dated November 23, 2015, the mitigation bank sponsor proposes to establish, use, and operate a wetlands and other waters of the United States (U.S.) mitigation bank for projects and activities that would result in unavoidable adverse impacts to waters of the U.S. authorized by Department of the Army (DA) permits. This public notice is requesting comments on the Prospectus. For more information see the Additional Information section below (pages 2 through 5 of this notice). Supporting documents are available online or at the address below.

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Interested parties are hereby notified that a Prospectus has been received in order to

establish a mitigation bank for the purpose of providing compensatory mitigation for unavoidable impacts to waters of the United States (U.S.) authorized by the Corps, or enforcement (includes non-compliance) actions resolved under Section 404 of the Clean Water Act. Interested parties are invited to provide their comments on the proposed mitigation bank, which will become a part of the administrative record and will be considered by the Corps in making its determination whether there is potential for the bank to provide compensatory mitigation for unavoidable losses of waters of the U.S.

Comments should be mailed to:

Los Angeles District, U.S. Army Corps of Engineers  
Regulatory Division  
ATTN: Susan A. Meyer Gayagas  
Transportation and Special Projects Branch (CESPL-RG-T)  
915 Wilshire Boulevard, Suite 930  
Los Angeles, California 90017

Alternatively, comments can be sent electronically to: [susan.a.meyer@usace.army.mil](mailto:susan.a.meyer@usace.army.mil)

## **Additional Information**

### **Background**

Richard and Laurie Prange Lyons (“Sponsor”) are private citizens who own the surface, mineral, and water rights to the aforementioned six parcels that would comprise the mitigation bank.

The Sponsor has submitted a Prospectus to the Corps for the establishment of the Mojave River Watershed Mitigation Bank (“Bank”). If authorized, this Bank would receive monies from individuals or entities (“project proponent”) receiving Corps authorization under Section 404 of the Clean Water Act and, when appropriate, to provide compensatory mitigation credit as part of Section 404 enforcement actions within the proposed service area (see attached map). Additionally, the proposed mitigation bank may be utilized to offset unavoidable impacts to waters of the State that are regulated by the Regional Water Quality Control Board under Section 401 of the Clean Water Act.

The Mitigation Rule (“Rule”) established a process and defined requirements for the establishment and management of mitigation banks, in-lieu fee (ILF) programs, and permittee-responsible mitigation (33 C.F.R. § 332). In addition, the Rule established a public review process and timeline for the development of mitigation banks and in-lieu fee programs. This mitigation bank establishment process includes the following: 1) public review and comment on the Prospectus, 2) Interagency Review Team (IRT)<sup>1</sup> coordination on the Prospectus and the Bank Enabling Instrument (BEI), 3) development of a mitigation credit

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<sup>1</sup> The Interagency Review Team (IRT) consists of member Agencies, and may include U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Game, and the Regional Water Quality Control Board(s).

production approach and credit release schedule, 4) long-term site protection and management measures, and 5) financial assurances estimation approach.

Based on the preliminary jurisdictional determination, the proposed Mojave River Watershed Mitigation Bank contains approximately 419.7 acres of potential jurisdictional waters of the U.S., including wetlands. The wetland habitats within the six parcels that would make up the Bank property contain Riverine (streambed), Palustrine (scrub-shrub wetlands and emergent wetlands), and lacustrine (unconsolidated bottom) habitats, as classified by Cowardin et al. (1979). The Sponsor proposes to establish restoration (rehabilitation) credits and preservation credits. Restoration (rehabilitation) credits are proposed by the Sponsor for areas with high cover of invasive plants, primarily salt cedar (*Tamarix ramosissima*). Preservation credits are proposed by the Sponsor for areas with low cover of invasive plants; these areas would be protected from future disturbances and preserved as what the sponsor considers intact wetlands. The table below depicts the Sponsor's estimate of the wetland habitats and the type of proposed mitigation for the Bank. Additionally, the property supports approximately 16.3 acres of upland habitat that may be proposed by the Sponsor as buffer habitat credits.

Wetland Type	Restoration (Rehabilitation) Area (acres)	Preservation Area (acres)	Total
Riverine (Streambed)	11.36	8.2	19.56
Palustrine (Scrub-shrub wetland)	172.21	140.02	312.23
Palustrine (Emergent wetland)	23.58	43.61	67.19
Lacustrine (Unconsolidated bottom)	0	19.42	19.42
<b>Total:</b>	<b>206.72</b>	<b>211.73</b>	<b>418.4</b>

### **Mitigation Approval and Permitting Processes**

Mitigation requirements for a particular project are negotiated between the project proponent and the Corps. The project proponent must therefore first submit a compensatory mitigation proposal to the Corps that describes the proposed use of an ILF Program or Mitigation Bank. Per the Mitigation Rule, in general, preference is first given to use of Mitigation Banks over ILF Programs and permittee-responsible mitigation types, as Bank credits are usually in place prior to the permitting of a proposed project.

A Mitigation Bank contains wetlands, streams, and/or other aquatic resources that have been restored, established, enhanced, or preserved. The Bank area is then utilized to compensate for future impacts to aquatic resources resulting from permitted activities. The value of a Bank is determined by quantifying the aquatic resource functions restored, established, enhanced, and/or preserved in terms of "credits." If appropriate credits are available at a Mitigation Bank located within the service area, and the Corps determines that the Bank is the most appropriate approach to mitigation implementation, then the project proponent would contact the Bank sponsor to discuss mitigation options. The Bank sponsor would review copies of all permits issued to the project proponent and then submit a proposal to the project proponent, including the estimated cost of the proposed mitigation credits.

Prior to acceptance of payment (“credit sale”), the Bank sponsor would also contact the Corps in order to verify the Corps’ compensatory mitigation requirements.

As part of the process of establishing a Bank, the IRT would determine the types and number of potential Bank credits that may be generated. Upon meeting either administrative milestones (e.g., BEI completion, funding of long-term management endowment) or performance-based milestones (e.g., 1-year, 3-year, 5-year conditional assessments), potential credits then become released credits and are available for sale. The sponsor proposes to generate wetlands restoration (rehabilitation) and preservation credits. In addition to the final IRT approvals of the Prospectus, the Corps determination of the potential for the Bank to provide compensatory mitigation, and completion of the final BEI, the sponsor would also need to obtain the appropriate federal, state, and local permits required to implement the Bank restoration and management activities. The Bank sponsor would submit an application for Corps permit(s)<sup>2</sup> should the proposed bank mitigation activities involve a discharge of dredged or fill material within waters of the U.S. The Corps would complete consultation, if appropriate, under the Endangered Species Act, the National Historic Preservation Act, and other applicable federal laws, prior to any DA permit authorization.

Bank funds would be held in a Bank account, and all credit sales would be tracked and reported by the Bank sponsor to the Corps at a minimum on an annual basis, and also uploaded to the Corps’ Regulatory In-lieu Fee and Banking Information Tracking System (RIBITS).

To ensure permanent protection of the Bank mitigation site, in coordination with the Corps, the Bank sponsor would secure phased, in-perpetuity conservation easements, to be recorded at the appropriate County’s Registry of Deeds following Corps approval. Each phased conservation easement, as required by the Mitigation Rule, would be recorded by the Bank sponsor prior to the release of any Bank credits for the respective phase area. An endowment would be provided by the Bank sponsor to a third party, non-profit, conservation entity that would fund long-term management of the Bank property.

To ensure a high level of confidence that the Sponsor’s Mitigation Plan<sup>3</sup> would be successfully completed in accordance with applicable mitigation performance standards, the Bank Sponsor, in coordination with the Corps, would secure sufficient financial assurances following Corps approval. Examples of financial assurances include performance bonds, letters of credit, and escrow accounts, although the Corps would determine what type of financial assurance is acceptable as part of the mitigation plan and BEI development.

The Corps is soliciting comments from the public; federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to help inform the Corps and the IRT as to the overall merits of the proposed Bank, the scope of the proposed mitigation bank, the delineation of the service area, the ecological suitability of the individual sites to achieve wetlands restoration, and to identify project aspects that should be addressed during the

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<sup>2</sup> The proposed mitigation activities may also require separate approvals from the Regional Water Quality Control Board and California Department of Fish and Wildlife.

<sup>3</sup> The content of a complete Mitigation Plan is described in the Mitigation Rule, at 33 CFR 332.4(c)(2-14).

development of a draft BEI. Any comments received will be considered by the Corps to determine whether the proposal has the potential to provide mitigation opportunities for project proponents (permittees) authorized to impact waters of the U.S. under Section 404 of the Clean Water Act or as a means of resolving Section 404 enforcement actions.

Additional details and project plans are provided in the Prospectus, available online at the following link: [https://ribits.usace.army.mil/ribits\\_apex/f?p=107:2](https://ribits.usace.army.mil/ribits_apex/f?p=107:2). After clicking on the link, please follow the below steps:

- Under the Navigation Heading, click on “Banks & ILF Sites”
- Using the yellow drop-down arrow under the Banks and ILF Sites heading, filter state to “CA”
- Scroll down the alphabetized listing and click on “Mojave River Watershed Mitigation Bank”
- Click on “Cyber Repository” located underneath the frog image
- Click on “Documents for Review”
- Both the Prospectus and associated support/technical documents are available in this folder. Please note that the Prospectus is a large file and may take several minutes to download.

Additionally, these documents are also available at the Corps' Los Angeles office at the address above. For additional information please contact Susan A. Meyer Gayagas at (808) 835-4599 or via e-mail at [susan.a.meyer@usace.army.mil](mailto:susan.a.meyer@usace.army.mil).

This public notice is issued by the Chief, Regulatory Division.



*Regulatory Program Goals:*

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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