Public Notice

U.S. Army Corps of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
2488 E 81st Street
Tulsa, OK 74137

SWT-2019-12
SWT-2019-14
Public Notice No.

July 12, 2019
Public Notice Date

August 12, 2019
Expiration Date

PURPOSE
The purpose of this public notice is to inform you of a proposal for work in which you might be interested and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

SECTION 10
The U.S. Army Corps of Engineers is directed by Congress through Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition, or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404
The U.S. Army Corps of Engineers is directed by Congress through Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharges of dredged and fill material into all waters of the United States. These waters include lakes, rivers, streams, mudflats, sandflats, sloughs, wet meadows, natural ponds, and wetlands adjacent to other waters. The intent of the law is to protect these waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical, and biological integrity.

NOTICE TO PUBLISHERS
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DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, TULSA DISTRICT
2488 EAST 81ST STREET
TULSA, OKLAHOMA 74137-4290

Applications No. SWT-2019-12 and SWT-2019-14

JOINT PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS
AND
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY (ODEQ)
(30-DAY COMMENT PERIOD)

In accordance with Title 33 CFR 325.5(c), published November 13, 1986, in the Federal Register, the District Engineer (DE), U.S. Army Corps of Engineers, Tulsa District, proposes to renew Department of the Army General Permits No. 12 Utility Line Activities and No. 14 Transportation Crossings, in Critical Resource Waters (CRW) in Oklahoma. CRW include Outstanding Resource Waters (ORW) and their watersheds and High Quality Waters (HQW) as identified and designated in Oklahoma Water Quality Standards (OWQS), OAC 785: Chapter 45, Appendix A. If renewed, these GPs would be reissued pursuant to Section 404 of the Clean Water Act (33 USC 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403).

Scope of Work: Work authorized by GP12 will be limited to activities required for the construction, maintenance, repair, and protection of utility lines and associated facilities in waters of the United States. These activities generally include utility lines, foundations for overhead utility line towers and anchors, and access roads.

Work authorized by GP14 would be limited to activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the United States.

Both GP's are proposed to be unchanged except for the addition of the statement "Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon the GP will remain authorized provided the activity is completed within twelve months of the date of the GPs expiration, modification, or revocation." And the deletion of the wetland delineation manual regional supplements, which by now have become common knowledge.

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

Location of Work: This GP is applicable to all CRW within the state of Oklahoma, as identified in the GPs, excluding: (1) defined archeological and historical sites, (2) sites listed in the National Register of Historic Places, and (3) State historic sites. The list below represents the up to date listing of CRW.

ORW: Waters of the United States designated ORW in Appendix A of the OWQS (July 1, 2014) include the following, and all associated water bodies located in their respective watersheds:
(1) Flint Creek (all) in Adair County and the following tributary: Sager Creek.
(2) Upper Illinois River, upstream from the confluence of the Barren Fork in Cherokee, Adair, and Delaware Counties, east to the Arkansas State line and the following tributaries: Tahlequah Creek and Ballard Creek.
(3) Barren (Baron) Fork in Cherokee and Adair Counties, from its confluence with the Illinois River, upstream to the Arkansas State line, and including the following tributaries: Tyner Creek, Dennison Hollow, Peacheater Creek, Scraper Hollow, England Hollow, Green Creek, Shell Branch, and Evansville Creek.
(4) Upper Mountain Fork River, upstream of the 600 feet above mean sea level (msl) elevation (upstream of Broken Bow Reservoir) in McCurtain and Le Flore Counties, and the following tributaries: Boktuklo Creek, Blue Creek, Big Eagle Creek, Little Eagle Creek, Cucumber Creek, Beech (Beach) Creek, Cow Creek, and Panther Creek.
(5) Big Lee Creek, upstream from 420 feet msl elevation in Sequoyah County, and the following tributaries: Webbers Creek and Briar Creek (Bear Creek).
(6) Little Lee Creek, in Adair and Sequoyah Counties, and the following tributary: Jenkins Creek.

HQW: Waters of the United States designated HQW listed in Appendix A of the OWQS (July 1, 2013) include the following:
(1) Water Quality Management Basin 1: the Illinois River from headwater of Robert S. Kerr Reservoir to Barren Fork confluence, Fourteen Mile Creek, Spring Creek, Snake Creek, Little Spring Creek, Saline Creek, Little Saline Creek, Brush Creek, Beaty Creek, Honey Creek, Cave Springs Branch, and Warren Branch.
(2) Water Quality Management Basin 2: Lee Creek downstream from 420 feet msl elevation, Black Fork upstream from Cedar Creek, Sallisaw Creek upstream from U.S. Route 64.
(3) Water Quality Management Basin 3: Pennington Creek, Guy Sandy Creek, Honey Creek, Crater Creek, Panther Creek, West Cache Creek upstream from Panther Creek.
(4) Water Quality Management Basin 4: Little River from the Arkansas State line to Pine Creek Dam, Mountain Fork River downstream from the Broken Bow Dam, Lukfata Creek, Glover River, Cedar Creek above Glover River, Carter Creek, Pine Creek, West Fork of Glover River, Bluff Creek, East Fork of Glover River, Cedar Creek, Carter Creek, Pine Creek, West Fork, Bluff Creek, East Fork, Cypress Creek, Little River upstream from and including the Pine Creek Reservoir, Pine Creek, Terrapin Creek, Houston Creek, Cloudy Creek, Jack Creek, Black Fork, Cedar Creek, Blue River upstream from State Hwy 48A bridge.
(5) Water Quality Management Basin 7: North Canadian (Beaver) River upstream from Texas State line to New Mexico State line, Cimarron River upstream from the Colorado State line to the New Mexico State line.

Plans and Data: Plans typical for utility line activities or linear transportation crossings are to be submitted with each request. If additional information is desired, it may be

obtained from Mr. Bryan Noblitt or Mr. Shane Charlson, U.S. Army Corps of Engineers, Tulsa District, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137, or telephone 918-669 7400.

Purpose and Need for GP: Nationwide Permit (NWP) General Condition 22 provides for the designation of CRW by the Corps. The Tulsa District CRW designation applies to all HQW and ORW specifically listed in the OWQS, OAC 785: Chapter 45, Appendix A; which also includes all waters located in the watersheds of ORW. General Condition 22 prohibits the use of specific NWPs, including the NWP for Utility Line Activities and Linear Transportation Activities, within CRW and adjacent wetlands. Without a GP for utility line activities and linear transportation activities as proposed herein, the regulated public is required to obtain an individual permit for those activities requiring a Section 404 permit. The Tulsa District has issued 1 authorizations for utility line activities and 27 authorizations for linear transportation activities within CRW since June 2014. There is no clear reason that only one GP12 permit was issued for this time frame. GP12 and GP14 are designed to provide an expeditious review and authorization, where appropriate and applicable environmental impacts are minimal. By reissuing GP12 and GP14, the Corps believes that the proposed provisions and conditions address the environmental and water quality issues particular to CRW.

Cultural Resources: The DE is responsible to ensure compliance with the National Historic Preservation Act of 1966 (NHPA) (Public Law 89-665), as amended, and other cultural resources laws and Executive Orders. A preliminary review has been completed of the state's records for the presence of sites included in, or eligible for, inclusion in the National Register of Historic Places, as well as the Oklahoma Landmark Inventory Database. Based on the preliminary information, there may be historic properties, as defined by the NHPA, in or within the vicinity of the proposed permit area. The Corps will comply with the NHPA to resolve any potential effects.

General Condition 20 of GP12 and GP14 states "No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee shall immediately notify the DE, if the authorized activity might affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe might be eligible for listing on the National Register of Historic Places, including previously unidentified properties, and shall not begin the activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property."

Threatened and Endangered Species: The following federally listed species are known to occur in the vicinity or are listed for the county in which the proposed action is located: Common name (Scientific name), Common name (Scientific name) etc.... A copy of this notice is being furnished to the U.S. Fish and Wildlife Service and appropriate state agencies. We are currently assessing the potential effects of the proposed action on these species and will comply with the Endangered Species Act with regard to any effect of our decision on this permit application.

Endangered Species: The following listed species are associated with CRW in Oklahoma:

• Leopard darter (Percina pantherina) in Choctaw, Le Flore, Pushmataha, and McCurtain Counties.
• Arkansas darter (Etheostoma cragini) in Cherokee, Delaware, Ottawa, and Mayes Counties.
• Neosho madtom (Noturus placidus) in Ottawa County.
• Ozark cavefish (Amblyopsis rosae) in Delaware and Ottawa Counties.
• Rabbitsfoot (Quadrula cylindrica cylindrical) in Adair, Cherokee, Delaware, Le Flore, Pushmataha, and McCurtain Counties.
• Quachita rock pocketbook mussel (Arkansia wheeleri) in Le Flore, Pushmataha, and McCurtain Counties.
• Scaleshell mussel (Leptodea leptodon) in Le Flore, Pushmataha, and McCurtain Counties.
• Winged mapleleaf mussel (Quadrula fragosa) in Le Flore, Pushmataha, and McCurtain Counties.
• Neosho mucket mussel (Lampsilis rafinesqueana) in Adair, Cherokee, Delaware, and Ottawa Counties.
• Gray bat (Myotis grisescens) in Adair, Cherokee, Delaware, Mayes, Ottawa, and Sequoyah Counties.
• Indiana bat (Myotis sodalist) in Choctaw, Delaware Le Flore, McCurtain, and Pushmataha Counties.
• Ozark big-eared bat (Corynorhinus townsendii ingens) in Adair, Cherokee, Delaware, Mayes, Ottawa, and Sequoyah Counties.
• American alligator (Alligator mississippiensis) in McCurtain and Choctaw Counties.
• Whooping crane (Grus Americana) in Adair, Cherokee, Comanche, Delaware, Garvin, Johnston, Mayes, Murray, Pontotoc, and Sequoyah Counties.
• Interior least tern (Sterna antillarum) in Adair, Cherokee, Cimarron, Choctaw, Comanche, Delaware, Garvin, Johnston, Le Flore, Mayes, McCurtain, Murray, Ottawa, Pontotoc, Pushmataha, and Sequoyah Counties.
• Piping plover (Charadrius melodus) in Adair, Cimarron, Cherokee, Choctaw, Comanche, Delaware, Garvin, Johnston, Le Flore, Mayes, McCurtain, Murray, Ottawa, Pontotoc, Pushmataha, and Sequoyah Counties.
• Sprague's pipit (Anthus spragueii) in Adair, Cherokee, Choctaw, Comanche, Delaware, Garvin, Johnston, Le Flore, Mayes, McCurtain, Murray, Pontotoc, Pushmataha, and Sequoyah Counties.
• Black-capped vireo (Vireo atricapilla) in Comanche County.

• Red-cockaded woodpecker (Picoides borealis) in Choctaw, Le Flore, McCurtain, and Pushmataha Counties.
• Lesser prairie chicken (Tympanuchus pallidicinctus) in Cimarron County.
• American burying beetle (Nicrophorus americanus) in Adair, Cherokee, Choctaw, Delaware, Garvin, Johnston, Le Flore, Mayes, McCurtain, Murray, Ottawa, Pontotoc, Pushmataha, and Sequoyah Counties.
• Harperella (Ptilimnium nodosum) in Choctaw, Le Flore, McCurtain, and Pushmataha Counties.

The USFWS may list additional species or designate additional critical habitat in the future. General Condition 18 of GP12 and GP14 states "No activity is authorized under any GP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, the permittee shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and that the activity is authorized."

Evaluation Factors: The decision to reissue GP 12 and GP14 will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal 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 ownerships, and, in general, the needs and welfare of the people. The proposed permit will be denied if the GP does not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the 404(b)(1) guidelines and any other applicable guidelines or criteria, a permit will be granted unless the DE determines that it would be contrary to the public interest.

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 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.

Any comments on this proposal must be submitted to be received by the Corps by the expiration date of this public notice comment period. Comments received after this date will not be considered in our decision. You may submit comments to mailing address Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137 or email CESWT-RO@usace.army.mil. Please include the public notice number SWT-2019-307 in the subject line of your email message.

Comments concerning water quality impacts will be forwarded to ODEQ for consideration in issuing a Section 401 Water Quality Certification for the proposed project. Work may not commence until decisions have been made on both Sections 401 and 10/404.

Andrew R. Commer
Chief, Regulatory Office

Enclosures