



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT
2488 EAST 81ST STREET
TULSA, OKLAHOMA 74137-4290

PUBLIC NOTICE

REQUEST FOR PERMISSION TO ALTER A U.S. ARMY CORPS OF ENGINEERS PROJECT UNDER SECTION 408

TITLE: KAMO Electric Cooperative Inc./KPowernet LLC, Fiber Optic Relocation Boring under Arkansas River on U.S. Highway 62, Muskogee County, Oklahoma

PUBLIC NOTICE COMMENT PERIOD:

Begins: May 11, 2023

Ends: May 26, 2023

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, KAMO Electric Cooperative Inc. under the parent company KPowernet LLC (requester) has requested permission from the U.S. Army Corps of Engineers (USACE) to relocate their existing fiber optic cable by directionally boring a 4" line paralleling the south side of Highway 62 bridge crossing the Arkansas River.

LOCATION: Sections 16 and 21, Township 15 North, Range 19 East over the Arkansas River, Muskogee County, Oklahoma.

REQUESTERS PROPOSED ACTION: KAMO Electric is proposing to directionally bore one 4" steel casing with two 1.25" conduits and place one Fiber Optic cable under the Arkansas River. The proposed construction will require ground disturbance of an area slightly bigger than 24"x36"x24" for the placement of a hand hole and for the beginning and ending points of the bore. The bore will then traverse under the riverbed and surface on the other side of the river. KAMO anticipates the project will be complete by 2024.

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: USACE conducted an environmental compliance review for this project and made a Categorical Exclusion determination in accordance with the National Environmental Policy Act of 1969. It was determined this project is categorically excluded under the provisions of 33 CFR 230, paragraph 9, subparagraph (I), which covers renewal and minor amendments of existing real estate grants evidencing authority to use Government-owned real property. It was determined there is no suitable habitat for federally listed species under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). Therefore, USACE determined activities associated with the proposed project are not likely to cause adverse effects to federally listed species or designated critical habitat under the jurisdiction of the USFWS and a determination of No Effect was made for each listed species.

The proposed project is currently under review for cultural resources in accordance with Section 106 of the National Historic Preservation Act. Final Section 106 review and authorizations will be incorporated into this Section 408 review.

AUTHORITY: The authority to grant permission for a temporary or permanent use, occupation, or alteration of any USACE civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 (Section 408). Section 408 authorized the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a public interest and will not impair the usefulness of the project. The Secretary of Army's authority under Section 408 has been delegated to the USACE, Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE, Directorate of Civil Works and Division and District Engineers, depending upon the nature of the activity.

LIMITS OF SECTION 408 AUTHORITY: A requester has the responsibility to acquire all other permissions or authorizations required by federal, state, and local laws or regulations, including any required permits from the USACE Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344), and/or Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413). In addition, an approval under Section 408 does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

EVALUATION FACTORS: The decision whether to grant the requested permission for project alteration under Section 408 will be based on several factors. 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. Review of requests for alteration will be reviewed by a USACE technical review team considering the following factors:

- 1) Impair the Usefulness of the Project Determination. The review team will determine if the proposed alteration would limit the ability of the USACE project to function as authorized, or would compromise or change any authorized project conditions, purposes, or outputs. In order for an alteration to be approved, the Requester must demonstrate that the alteration does not impair the usefulness of the federally authorized project.
- 2) Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest evaluation depend upon the type of USACE project being altered and the nature of the proposed alteration and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages,

navigation, shore erosion or accretion, and recreation. This evaluation will consider information received from the interested parties, including tribes, agencies, and the public. The benefits that reasonably may be expected to accrue from the proposal must be compared against its reasonably foreseeable detriments. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks and by the net impact of the alteration on the public interest using the public interest factors.

- 3) Environmental Compliance. A decision on a Section 408 request is a federal action, and therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements. While USACE is responsible for ensuring environmental compliance, the requester is responsible for providing all information that the Tulsa District identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and procedures. NEPA and other analysis completed to comply with other environmental statutes (e.g., Endangered Species Act) should be commensurate with the scale and potential effects of the activity that would alter the USACE project. The Tulsa District will work with the requester to determine the requirements, which will be scaled to the likely impacts of the proposed alteration and should convey the relevant considerations and impacts in a concise and effective manner.

PUBLIC INVOLVEMENT: The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding KAMO Electric relocating their existing fiber optic cable by directional boring under the Arkansas River. Comments received within 15 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources and in the evaluation of whether the proposed alteration would be injurious to the public interest and/or would impair the usefulness of the authorized project. Only the specific activities that have the potential to occupy, use, or alter lands and waters associated with the McClellan-Kerr Arkansas River Navigation System will be evaluated. Please limit comments to the area of the utility relocation.

SUBMITTING COMMENTS: Written comments, referencing Identification Number 408-SWT-2023-0009 must be submitted to the office listed below on or before May 26, 2023.

Tony Clyde, Project Manager – 408 Coordinator
U.S. Army Corps of Engineers, Tulsa District
2488 E 81st Street
Tulsa, Oklahoma 74137

Email: Tony.Clyde@usace.army.mil

Attachment 1: Project vicinity.



Attachment 2: Project Location.

