Public Notice

U.S. Army Corps
of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
2488 East 81St Street
Tulsa, Oklahoma 74137-4290

SWT-2019-317
Public Notice No.

November 8, 2019
Public Notice Date

December 7, 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 U.S.C. 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 U.S.C. 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

This public notice has been provided as a public service and may be reprinted at your discretion. However, any cost incurred as a result of reprinting or further distribution shall not be a basis for claim against the Government.

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

Application No. SWT-2019-317

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

Interested parties are hereby notified that the District Engineer (DE) has received an application for a Department of the Army (DA) permit and water quality certification pursuant to Sections 404 and 401 of the Clean Water Act (CWA). The ODEQ hereby incorporates this public notice and procedure as its own public notice and procedure by reference thereto.

Applicant: Mr. R. Shane Fidler
7335 South Lewis Avenue, Suite 306
Tulsa, OK 74163

Agent: Mr. Deren M. Ertugrul
E&E Engineering and Associates, LLC
2301 North Yellowood Ave.
Broken Arrow, OK 74012

Location: The proposed project is in the Northeast 1/4, Northwest 1/4 of Section 35, Township 20 North, Range 24 East, known as Fidlers Bend, Delaware County, Oklahoma. The project site can be found on the Siloam Springs NW, Oklahoma 7.5 Minute USGS Quadrangle map at North Latitude 36.1757 and West Longitude -94.7197.

Project Description: The application is for the reclamation of Flint Creek riparian area and associated bank stabilization. The project will also include the excavation of a temporary diverted channel. The placement of fill material along the right descending bank of Flint Creek for the reclamation the 1.48 acre (1,400 linear feet) and bank stabilization. The project also includes a temporary diversion of channel (requiring excavation) for 1,100 linear feet (1.37 acre).

Purpose: The overall purpose of the work is to repair bank erosion that is encroaching and endangering the adjacent local road (E. 580 Road) and structures owned by the applicant. The project is intended to restore the stream bank within its historical limits and configuration of its normal meander channel and to provide bank stabilization and erosion protection. The project is not a water dependent activity and there are no special aquatic sites are located within the project site.

Summary Table of Impacts:

Original Proposal					
Number or Location	Impact Activity	Type of Water	Type of Fill Material	Quantity of Material (CY) below OHWM	Footprint (AC and/or LF)
Reclaim Area - (Red)	Placement of Fill Material	Stream	Earthen Material	7,000	675 LF 0.65 AC
Standard Concrete Gravity Retaining Wall Block (RWB) (2 foot by 2 foot by 6 foot)	Placement of Fill Material	Stream	Concrete	622	1,400 LF 0.38 AC RWB
Bank Stabilization for slopes (Green)	Placement of Fill Material	Stream	Earthen Material		1,400 LF 0.45 AC
Temporary diversion channel	Excavation	Stream	Redistribution		1,100 LF 1.37 AC
cubic yards (cy), ordinary high water mark (OHWM), acre (ac), linear feet (lf)					

Description of Work: The applicant's proposal would require the placement of 7,000 CY of earthen material, retaining wall blocks using concrete and steel that would be stacked three levels for approximately 1,400 LF (0.38 AC), and proposed compacted earthen fill material and vegetated slope using 3:1 (0.45 AC). The reclamation of the bank varies up to 80 lateral feet of the upland to Flint Creek. The applicant also proposes to excavate a 1,100 LF trapezoidal channel for a temporary diversion channel that varies up to 50 LF wide with 3:1 slope banks within the existing stream bed of Flint Creek. The fill material may consist of earthen material, natural stream gravel, and retaining wall blocks. The work would be performed using conventional earth moving equipment.

Avoidance and Minimization Information: The applicant provided the following statement with regard to how avoidance and minimization of impacts to aquatic resources was incorporated into the project plan:

The applicant did not provided a statement of avoidance and minimization for the proposed impacts to aquatic resources. The proposed project would be performed during

low flow conditions and low water flow will be diverted within historical creek bed to allow for reclamation/stabilization activities. The application proposes to use Best Management Practices to ensure that storm water run-off from construction activities are minimal.

Mitigation: Furthermore, the applicant proposes the following as compensatory mitigation for the unavoidable impacts to aquatic resources expected from the proposed project:

> Compensatory mitigation should not be required because the project is intended to reclaim property which Flint Creek has encroached upon within the previous 6 years and to further stabilize the bank upstream and downstream of the primary area of concern.

This mitigation plan is the applicant's proposal. The Corps has made no determination at this time with regard to the adequacy of the proposed mitigation relative to the federal mitigation rules and guidance, including Tulsa District's Mitigation and Monitoring Guidelines Compensatory Mitigation for unavoidable impacts may be required to ensure that this activity requiring a Section 404 permit, if issued complies with the Section 404 (b)(1) Guidelines. The Corps bears the final decision on the need for and extent of mitigation required if the project proposed herein is authorized.

Government Authorizations obtained or received: The Corps has not reviewed any copies of other required permits.

Project Setting: This project is located within the Oklahoma Ecoregion of Dissected Springfield Plateau - Elk River Hills Transition, which is part of the Ozark Highlands geomorphic province. The Transition is characterized by a series of grasslands and prairies. The project is in the floodplain of Flint Creek.

Existing Condition: The parcel of land is comprised mostly of improved pasture in the uplands. The perennial stream channel is jurisdictional waters of the United States. The primary use for the land historically was for agriculture purposes, comprised mostly of grazing activities.

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 of the state's records has been completed 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. There are no known historic properties, as defined by the NHPA, in or within the vicinity of the proposed permit area.

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:

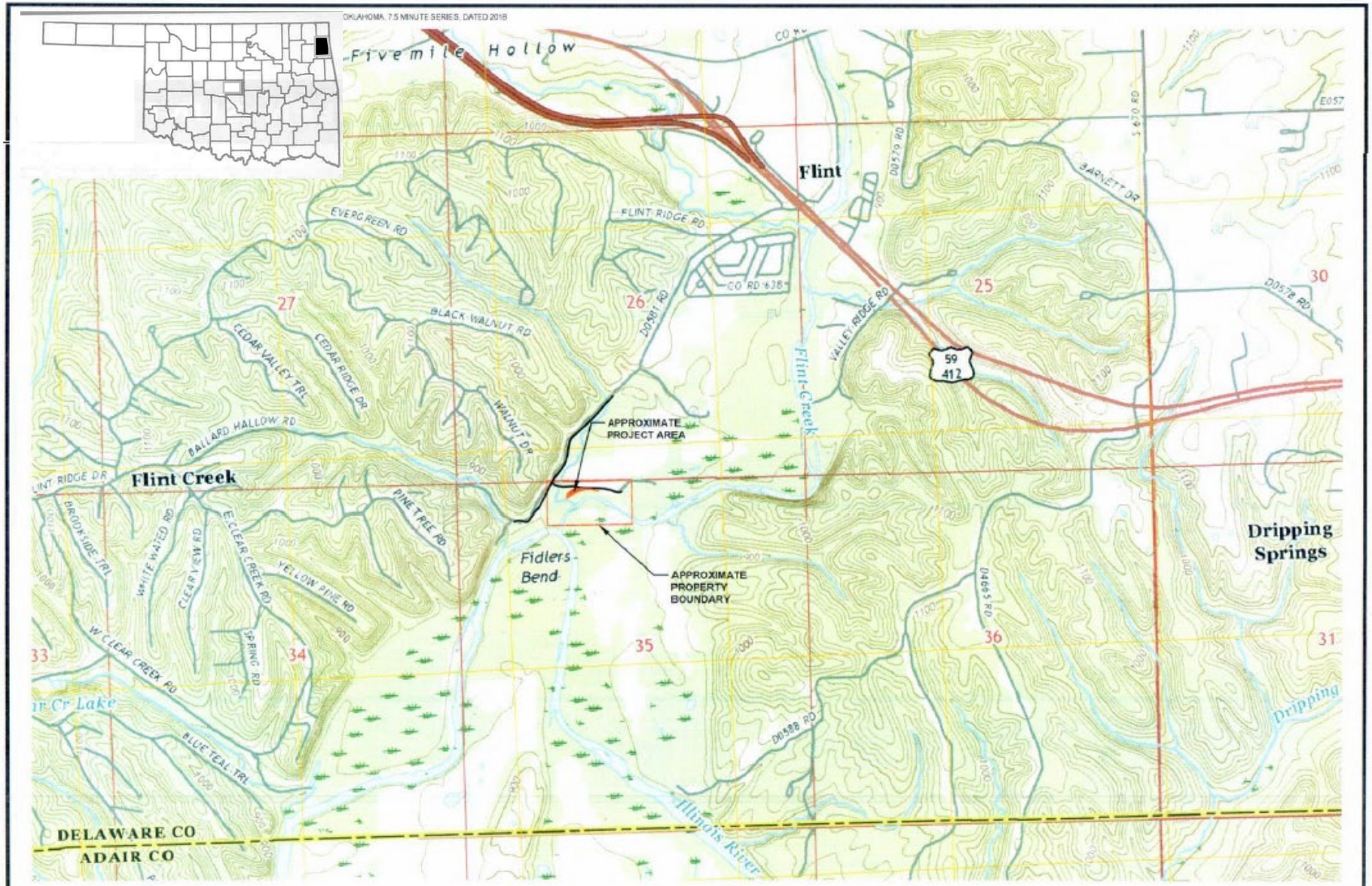
gray bat *(Myotis grisescens),* indiana bat *(Myotis sodalis)*, northern long-eared bat (*Myotis septentrionalis*), ozark big-eared bat *(corynorhinus (plecotus) townsendii ingens),* least tern (*Sterna antillarum),* piping plover (*Charadrius melodus),* red knot *(Calidris canutus rufa), n*eosho mucket *(Lampsills rafinesqueana),* rabbitsfoot *(Quaddrula cylindrical cylindrical)* and American burying beetle *(Nicrophorus americanus*). 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.

Evaluation Factors: The decision whether to issue a permit 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: 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. A permit will be denied if the discharge 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.

Plans and Data: Plans showing the location of the proposed activity and other data are enclosed with this notice (Enclosure 1 of 5). If additional information is desired, it may be obtained from Mr. Marcus Ware, Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137; or telephone 918-669-7400.

Comments: In order to consider and evaluate the impacts of this proposed activity the Corps is soliciting comments from the public, federal, state, and local agencies and officials, floodplain administrators, state historic preservation officers, Indian tribes, and other interested parties. Comments concerning the issuance of this permit should be received by the DE no later than the expiration date of this public notice. 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-2019-317 in the subject line of the message.



0 1000 2000
SCALE IN FEET

N
W E
S

SWT-2019-317
Fidlers Bend Creek
Bank Restoration Project
Flint Creek
Delaware County, Oklahoma
Enclosure 1 of 5

VICINITY MAP

FIDLERS BEND CREEK BANK RESTORATION PROJECT

MR. SHANE FIDLER
DELAWARE COUNTY, OKLAHOMA

E&E ENGINEERING
and Associates

DESIGNED BY:	
DRAWN BY:	DME
CHECKED BY:	TME
APPROVED BY:	DME
ISSUE DATE:	10/02/2019
PROJECT NO:	121-801
SCALE:	AS SHOWN

FIGURE 1

SOURCE MAP: GOOGLE EARTH AERIAL PHOTOGRAPH DATED OCTOBER 27, 2017.

NOTES:

1) APPROXIMATE TOP EDGE OF CREEK BANK LINES HAVE BEEN INTERPRETED FROM HISTORICAL AERIAL PHOTOGRAPHS.
2) APPROXIMATE EXTENT OF BANK LOSS IS DATE IS BASED ON VISUAL OBSERVATION.

APPROXIMATE EXTENT OF BANK LOSS TO DATE

APPROXIMATE PROPERTY BOUNDARY

EAST 580 ROAD

COUNTY ROAD 658

APPROXIMATE HISTORICAL CREEK BANK EDGE AS INTERPRETED FROM AERIAL PHOTOGRAPHS

2017

2013

2011

FLINT CREEK

ILLINOIS RIVER

0 100 200
SCALE IN FEET

N
W E
S

SWT-2019-317
Fidlers Bend Creek
Bank Restoration Project
Flint Creek
Delaware County, Oklahoma
Enclosure 2 of 5

EDGE OF CREEK BANK MAP

FIDLERS BEND CREEK BANK RESTORATION PROJECT

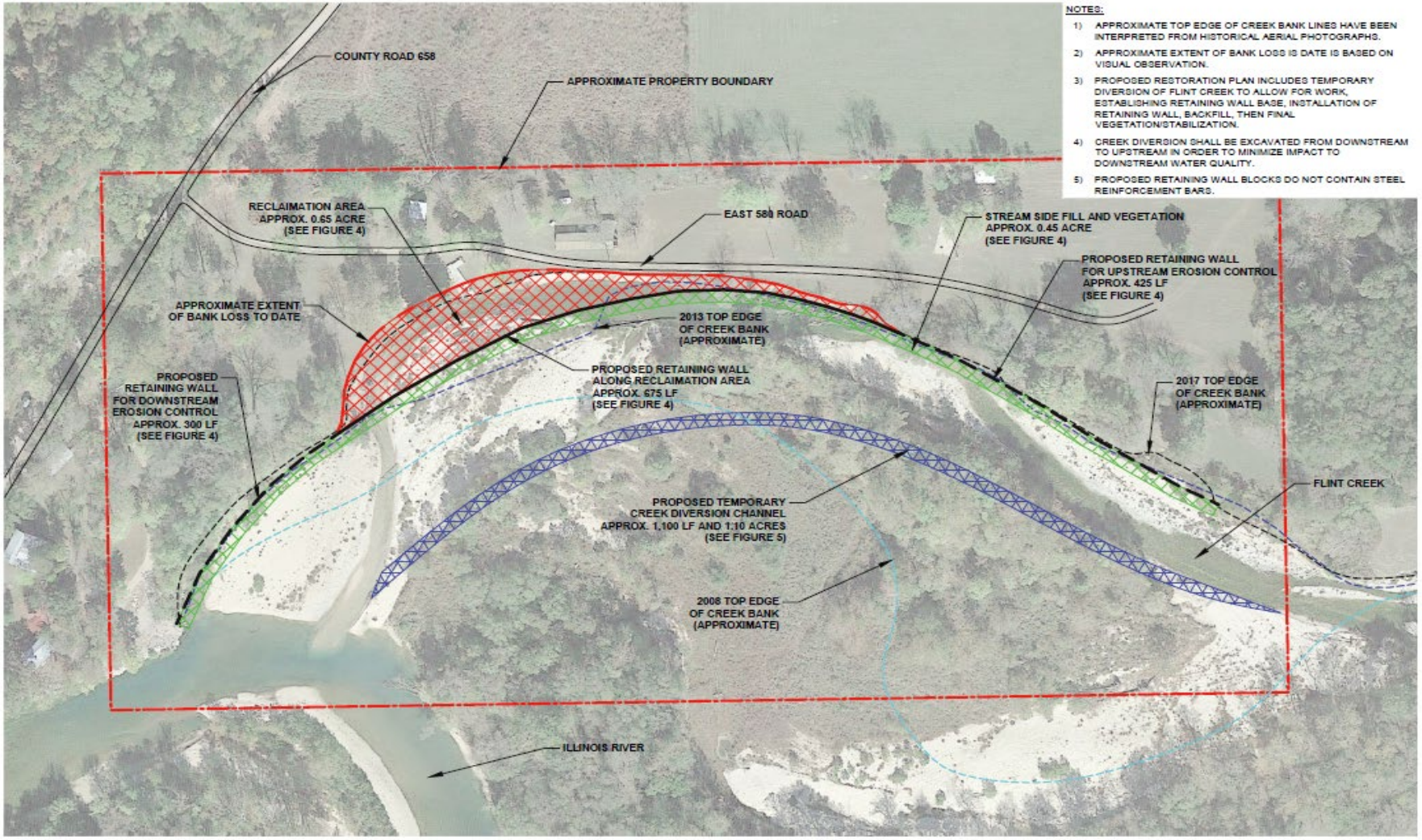
MR. SHANE FIDLER
DELAWARE COUNTY, OKLAHOMA

E&E ENGINEERING and Associates

DESIGNED BY:	
DRAWN BY:	DME
CHECKED BY:	TME
APPROVED BY:	DME
ISSUE DATE:	10/02/2019
PROJECT NO:	121-001
SCALE:	AS SHOWN

FIGURE 2

SOURCE MAP: GOOGLE EARTH AERIAL PHOTOGRAPH DATED OCTOBER 27, 2017.



NOTES:

1) APPROXIMATE TOP EDGE OF CREEK BANK LINES HAVE BEEN INTERPRETED FROM HISTORICAL AERIAL PHOTOGRAPHS.
2) APPROXIMATE EXTENT OF BANK LOSS IS DATE IS BASED ON VISUAL OBSERVATION.
3) PROPOSED RESTORATION PLAN INCLUDES TEMPORARY DIVERSION OF FLINT CREEK TO ALLOW FOR WORK, ESTABLISHING RETAINING WALL BASE, INSTALLATION OF RETAINING WALL, BACKFILL, THEN FINAL VEGETATION/STABILIZATION.
4) CREEK DIVERSION SHALL BE EXCAVATED FROM DOWNSTREAM TO UPSTREAM IN ORDER TO MINIMIZE IMPACT TO DOWNSTREAM WATER QUALITY.
5) PROPOSED RETAINING WALL BLOCKS DO NOT CONTAIN STEEL REINFORCEMENT BARS.

0 80 160
SCALE IN FEET

N W E S

SWT-2019-317
Fidlers Bend Creek
Bank Restoration Project
Flint Creek
Delaware County, Oklahoma
Enclosure 3 of 5

PROPOSED RESTORATION MAP

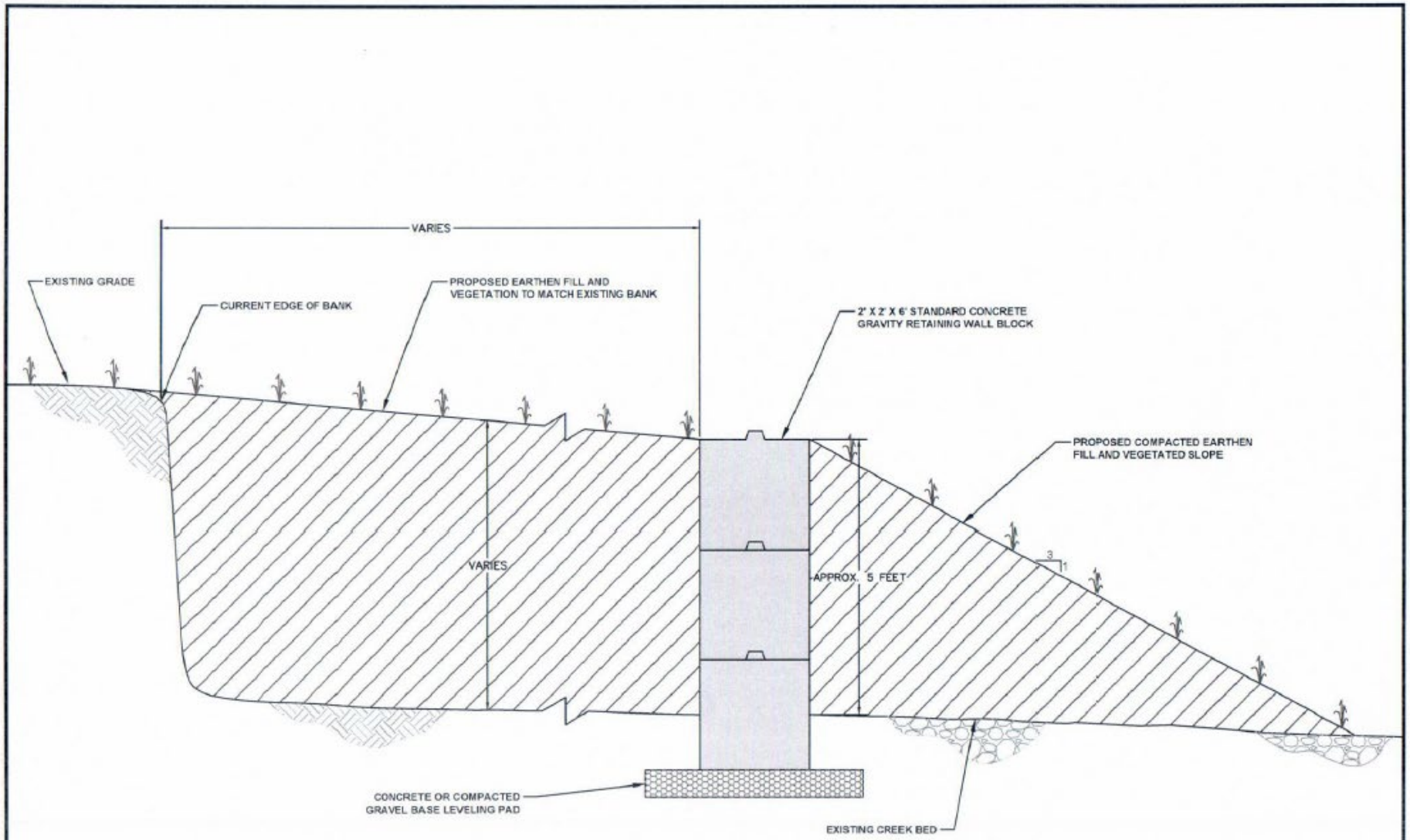
FIDLERS BEND CREEK BANK RESTORATION PROJECT

MR. SHANE FIDLER
DELAWARE COUNTY, OKLAHOMA

E&E ENGINEERING and Associates

DESIGNED BY:	JEE
DRAWN BY:	DME
CHECKED BY:	TME
APPROVED BY:	DME
ISSUE DATE:	10/02/2019
PROJECT NO:	121-001
SCALE:	AS SHOWN

FIGURE 3



SWT-2019-317
Fidlers Bend Creek
Bank Restoration Project
Flint Creek
Delaware County, Oklahoma
Enclosure 4 of 5

RECLAMATION AREA
TYPICAL CROSS-SECTION

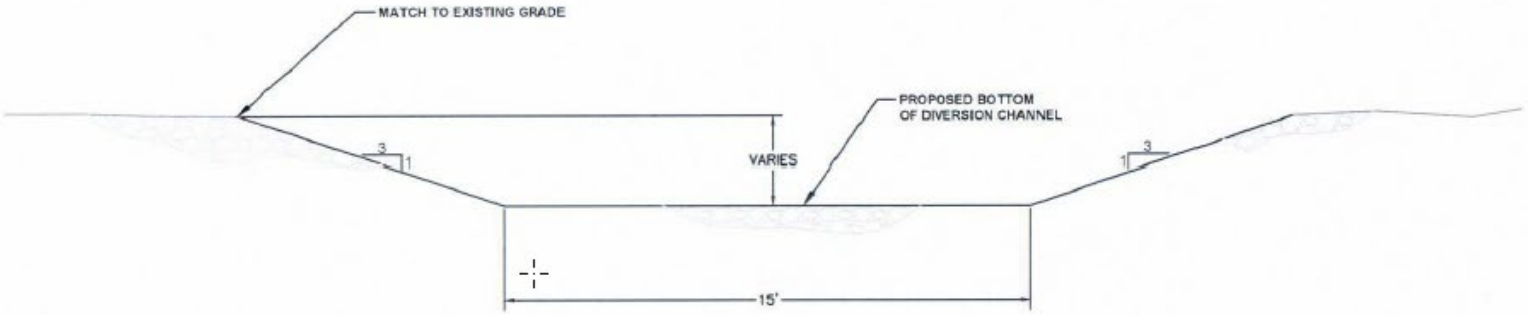
FIDLERS BEND
CREEK BANK RESTORATION PROJECT

MR. SHANE FIDLER
DELAWARE COUNTY, OKLAHOMA

E&E ENGINEERING
and Associates

DESIGNED BY:	JEE
DRAWN BY:	DME
CHECKED BY:	TME
APPROVED BY:	DME
ISSUE DATE:	10/02/2019
PROJECT NO:	121-001
SCALE:	NOT TO SCALE

FIGURE 4



SWT-2019-317
Fidlers Bend Creek
Bank Restoration Project
Flint Creek
Delaware County, Oklahoma
Enclosure 5 of 5

TEMPORARY DIVERSION CHANNEL
TYPICAL CROSS-SECTION

FIDLERS BEND
CREEK BANK RESTORATION PROJECT

MR. SHANE FIDLER
DELAWARE COUNTY, OKLAHOMA

E&E ENGINEERING
and Associates

DESIGNED BY:	DME
DRAWN BY:	DME
CHECKED BY:	TME
APPROVED BY:	DME
ISSUE DATE:	10/01/4/2019
PROJECT NO:	121-001
SCALE:	NOT TO SCALE

FIGURE 5