



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-2021-00062
Public Notice No.

February 26, 2021
Public Notice Date

March 28, 2021
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

Application No. SWT-2021-00062

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. Dean Roberts
U.S. Army Corps of Engineers, Tulsa District
8568 Highway 251A
Fort Gibson, OK 74434

Location: The proposed project is in Section 16, Township 10 North, Range 26 East, or at Latitude 35.3336 and Longitude -94.5620, above W.D. Mayo Lock & Dam 14, in Sequoyah County, Oklahoma. The project site can be found on the Fort Coffee, OK 7.5 Minute USGS Quadrangle.

Project Description: The application is for the discharge of fill material into Cherokee Chute (an oxbow of the Arkansas River) for the construction of an approximately 1,000 linear foot rock dike.

Purpose: The overall purpose is to construct a dike to prevent potential river bypass of the W.D. Mayo Lock & Dam during high flow events caused by flooding. This is not a water dependent activity.

The basic purpose and need of the proposed action is to construct a rock dike to protect adjacent uplands and maintain river flows within the Lock & Dam navigation channel.

Summary Table of Impacts:

Original Proposal					
Number or Location	Impact Activity	Type of Water	Type of Fill Material	Qty of Material cys below OHWM	Footprint (ac and/or lf)
Cherokee Chute	Fill	Open Water	18" Rip Rap	2,300 cys	1,000 lf
			Total:	2,300 cys	(1,000 lf)
cubic yards (cys), ordinary high water mark (OHWM), acre (ac), linear feet (lf)					

Description of Work: The Corps proposes to construct a rock dike in order to prevent bypass of the Lock & Dam during high flow events. The approximately 1,000 linear foot dike will be constructed with 18" riprap along the left descending bank of Cherokee Chute, an oxbow of the Arkansas River.

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: This activity is necessary to maintain the operational functionality of the W.D. Mayo Lock & Dam. The project has been designed to prevent the loss of access and usage of the L&D during high flow events and to prevent/stop future erosion of the shoreline. The activity will result in the minimum amount of fill material placed below the ordinary high water mark as deemed necessary by Corps engineering staff to fulfill the purpose embankment construction.

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

A mitigation plan has not been submitted.

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.

Project Setting: Cherokee Chute is located within the Arkansas River Floodplain ecoregion 37b. The Arkansas River Floodplain is characteristically veneered with Holocene alluvium and includes natural levees, meander scars, oxbow lakes, point bars, swales and backswamps. It is lithologically and physiographically distinct from the surrounding uplands of the Arkansas Valley (37). Mollisols, Entisols, Alfisols and Inceptisols are common; the soil mosaic sharply contrasts with nearby, higher elevation ecoregions where Ultisols developed under upland oaks, hickory and pine. Potential

natural vegetation is southern floodplain forest. Bottomland oaks including bur oak, American sycamore, sweetgum, willows, eastern cottonwood, green ash, pecan, hackberry and elm were once extensive. They have been widely cleared for pastureland, hayland and cropland. However, some forest remains in frequently flooded or poorly-drained areas.

Existing Condition: During the flood of 2019 the Arkansas River experienced extreme flooding causing high flows to erode the left descending bank of the oxbow, allowing flows to travel through (and around) the Cherokee Chute bypassing the Lock & Dam structure. Construction activities commenced prior to a regulatory review/authorization under Section 404 of the CWA and Section 10 of the Rivers and Harbors Act of 1899. All construction activities at this location have ceased until a full environmental review has been completed for the proposed project.

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.

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: northern long-eared bat (*Myotis septentrionalis*), gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus (=Plecotus) townsendii ingens*), American burying beetle (*Nicrophorus americanus*), piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*). 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.

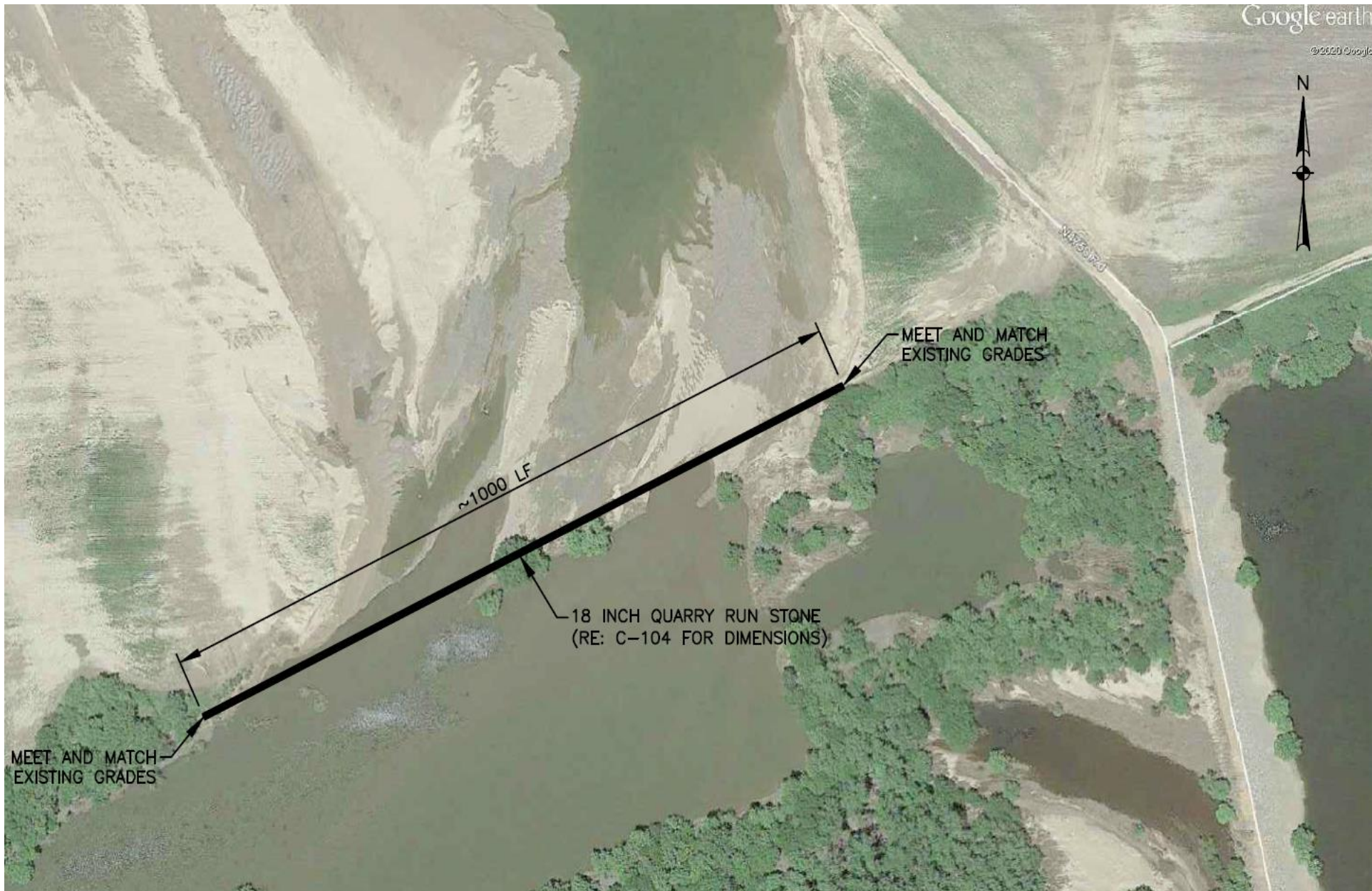
Plans and Data: Plans showing the location of the activity and other data are enclosed with this notice. If additional information is desired, it may be obtained from Mr. Brett Adams, Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137; or telephone 918-669-7400.

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 of Engineers 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 person may request in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. 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-2021-00062 in the subject line of the message.

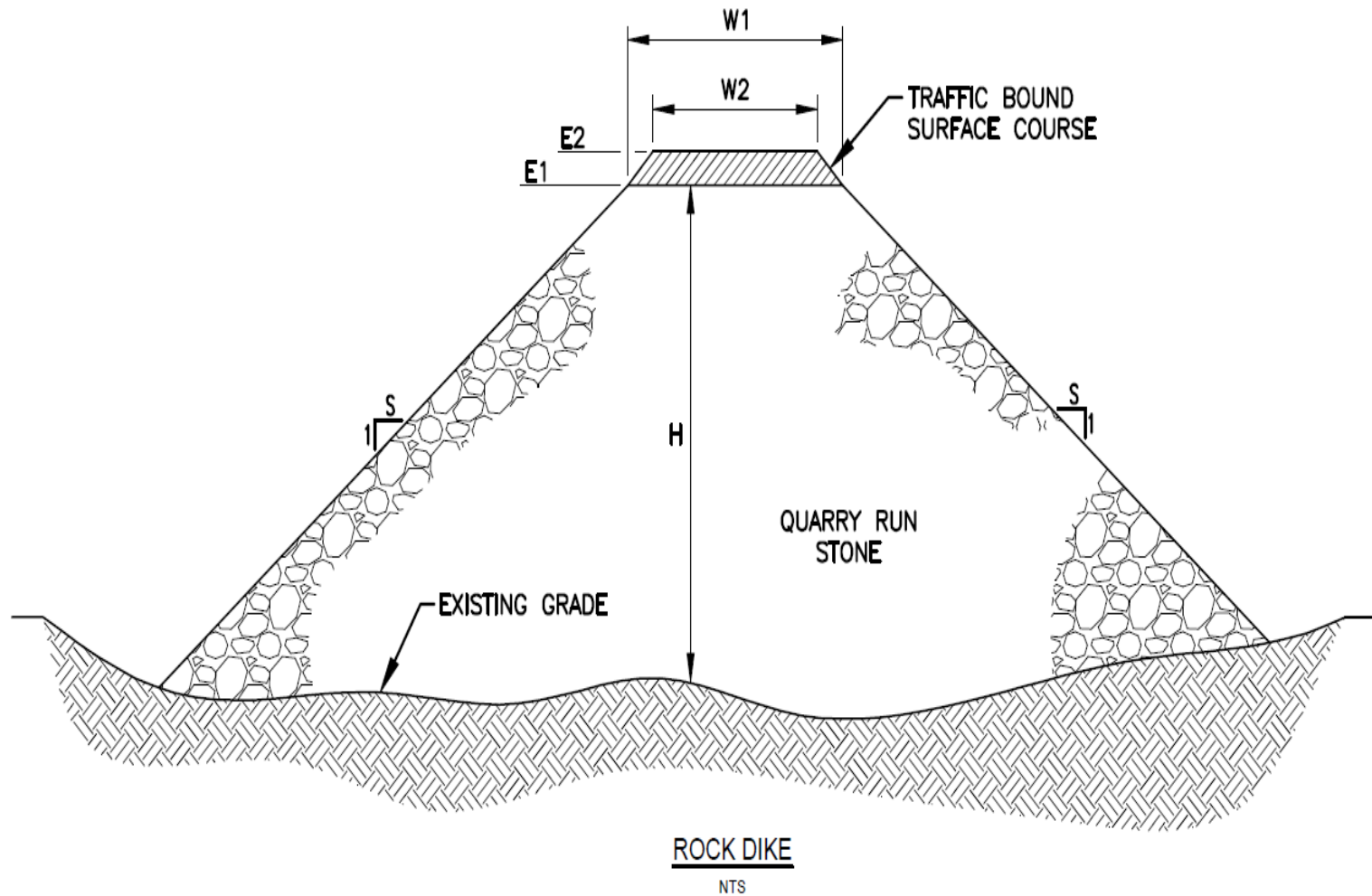
Comments concerning water quality impacts will be forwarded to ODEQ for consideration in issuing a Section 401 Water Quality Certification for the proposed project. Work may **not** commence until decisions have been made on both Sections 401 and 404.

Andrew R. Commer
Chief, Regulatory Office

Enclosures



SWT-2021-00062
U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT
DIKE CONSTRUCTION, CHEROKEE CHUTE
W.D. MAYO LOCK & DAM 14, SEQUOYAH COUNTY, OKLAHOMA
ENCLOSURE 1 OF 2



SWT-2021-00062
 U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT
 DIKE CONSTRUCTION, CHEROKEECHUTE
 W.D. MAYO LOCK & DAM 14, SEQUOYAH COUNTY, OKLAHOMA
 ENCLOSURE 2 OF 2