



# Public Notice

---

U.S. Army Corps  
of Engineers  
Tulsa District

Reply To:

U.S. Army Corps of Engineers  
ATTN: Regulatory Office  
2488 East 81<sup>st</sup> Street  
Tulsa, Oklahoma 74137-4290

SWT-2022-00597  
Public Notice No.

February 21, 2023  
Public Notice Date

March 22, 2023  
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**  
**U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT**  
**2488 EAST 81ST STREET**  
**TULSA, OKLAHOMA 74137-4290**

Application No. SWT-2022-00597

**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. Joe Brutsché  
Director, Environmental Program Division  
Oklahoma Department of Transportation (ODOT)  
200 Northeast 21<sup>st</sup> Street  
Oklahoma City, OK 73105

Agent: Mr. Jared Bechtol  
ODOT  
200 Northeast 21st Street  
Oklahoma City, OK 73105

Mr. Ben Hagood  
Freese and Nichols, Inc.  
801 Cherry Street, Suite 2800  
Fort Worth, TX 76102

Location: The proposed bank protection project [Job Piece 28969(04)] is located at 7600 OK-10, along SH-10 Highway in Section 5, Township 18 North, Range 23 East, on Illinois River, Cherokee County, Oklahoma. The project site can be found on the Tahlequah, Oklahoma 7.5 Minute USGS Quadrangle map at North Latitude 36.069403 and West Longitude 94.880902.

Project Description: The application is for the placement of dredged or fill material into the Illinois River. Phase 1 of the proposed project consists of a temporary work platform using gabion wall baskets and riprap. Phase 2 of the proposed project would install backfill rock riprap and retaining wall consisting of concrete using soldier pile wall along the Illinois River. Soldier piled walls are a form of embedded retaining wall that are used to retain the soil behind to allow the ground level in front of the wall to be lowered, the retained height can be increased with the use of propping or anchoring. A temporary buoy system would be used for public safety.

Purpose: ODOT, in cooperation with the Federal Highway Administration (FHWA) states the purpose of the proposed project would provide long-term fortification

protection and prevent bank failure along this reach of SH-10. The river has caused bank instability along the embankment and threatens the safety of the highway. The overall purpose of this work is to bring this portion of SH-10 Highway in compliance with the Federal Safety Slope Standards to ensure the proposed improvements correct roadway deficiencies, efficiently accommodate traffic, enhance public safety and efficient traffic flow.

The project is not a water dependent activity.

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)
Sta. 12+20 to 904+70 Upstream (North) OHWM	Placement of Rock/Backfill/ Bank Stabilization for Soldier Pile Wall	Open Water (Illinois River)	1-in to 12-in Rock Riprap and stone	3,152 344 <u>Total</u> 3,496	0.65 ac and 1,777 lf
Sta. 12+20 to 904+30 Upstream (North) OHWM	Soldier Pile Wall	Open Water (Illinois River)	Concrete	588	1,730 lf
Sta. 00+00 to Sta. 20+80 Downstream (North) OHWM	Placement of Rock/Backfill/ Gabion Basket	Open Water (unnamed tributary of Illinois River)	Dirt, 1-in to 12-in Rock Riprap, and stone	90 50 <u>Total</u> 140	0.04 ac and 379 lf
Sta. 12+20 to 904+70 Upstream (North) OHWM Temporary	Temporary Work Platform (Gabion Baskets and Riprap)	Open Water (Illinois River)	1-in to 12-in Rock Riprap and 3-in Stone	8,310 2,651 <u>Total</u> 10,961	1.44 ac and 1,801 lf

Sta. 00+00 to 12+20 Upstream (North) OHWM	Gabion Baskets	Open Water (Peavine Hollow Creek)	3-inch Stone	34	0.05 ac and 26 lf
inches (in), cubic yards (cys), ordinary high-water mark (OHWM), acre (ac), and linear feet (lf)					

**Description of Work:** The applicant proposes the placement of dredged or fill material consisting of concrete (588 cys) for construction of the soldier pile wall for approximately 1,730 lf. The soldier pile wall would be approximately 2.5 wide ft and the wall height would vary approximately 6 ft to 15 ft high and would be in the form of panels held in place by vertical piles. The permanent impacts for the soldier pile wall totals 0.65 ac (1,777 lf). The applicant also proposes the placement of dredged or fill material using 3,152 cys of 3-in rock riprap. Additionally, various sizes of rock totaling 344 cys ranging from approximately 1-in to 12-in that would be used to backfill behind the proposed soldier pile wall.

The applicant proposal includes placement of dredged or fill material totaling 0.04 acre (379 lf) of permanent impacts for the construction of the gabion baskets. The backfill material for the gabion basket (totaling 90 cys and riprap totaling 50 cys) would be placed in open water within the unnamed tributary of Illinois River at the upstream end of the project.

The applicant also proposes the placement of dredge or fill material consisting of 0.05 acre (26 lf) using gabion baskets (34 cys) as permanent impacts to protect the unnamed tributary of Peavine Hollow Creek at the downstream end of the project.

The applicant proposes to construct a temporary work platform approximately 25-ft wide using 1.44 ac (approximately 2,465 lf total length). This platform would consist of the placement of dredged or fill material using various rock riprap totaling 8,310 cys and 3-in rock totaling 2,651 cys. Approximately 10,961 cys would be used riprap for backfill. The temporary work platform is approximately 1,801 lf in Illinois River.

The temporary work platform would be held in place with gabions baskets and 3-inch stone backfill placed along the surface of the work platform within geocell mats, which would be anchored into the gabion basket wall. The separator fabric, and geocell matt would be installed from Sta. 12+20 to Sta. 904+70. The purpose of the geocell mats is to provide a solid work platform for the construction vehicles and to keep the rock in place. The rock and stone used for the proposed platform would likely be limestone rock sourced from the region. A floating buoy system would be along the proposed work platform. The buoy would be held in place at the edge of the construction area by a chain laid on the riverbed and anchored into the work platform. A rope would connect the chain to the bottom of the buoy. All temporary fill materials and the buoy system would be removed following construction.

The work would be performed using conventional earthmoving equipment for excavator, wheeled dump trucks and track 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:

“ODOT considered avoidance of impacts to the aquatic resources but based on the purpose and need of the project, avoidance was not reasonable. ODOT has designed a retaining wall (Soldier Pile Wall) in a manner to minimize the loss of waters of the United States from future bank failures.” [JP28969(04) Cherokee Co, Oklahoma Department of Transportation, February 14, 2023].

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

“ODOT did not provide compensatory mitigation for waters of the United States because the proposed soldier pile wall would be placed at the toe of the previously disturbed road embankment that already lost the natural condition of the riverbank.” [JP28969(04) Cherokee Co, Oklahoma Department of Transportation, February 8, 2023].

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: N/A

Project Setting: This project is located in rural Cherokee County within the Oklahoma Eco-Region of Dissected Springfield Plateau - Elk River Hills. The Dissected Springfield Plateau - Elk River Hills is underlain by cherty limestone and containing many karst features. Cold, spring-fed streams, and scattered limestone glades occur remains dominated by forest and woodland. Primary uses are logging, livestock farming, woodland grazing, recreation, quarrying, and housing.

Existing Condition: SH-10 is a scenic highway which provides vital access to economically significant recreation and tourism areas, including multiple resorts and businesses, in the mountains of northeast Oklahoma.

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.

ODOT completed Section 106 consultation on behalf of FHWA for this proposed road improvements project along SH-10. A total of 13 ac was surveyed. ODOT determined the proposed project would have “no effect on historic properties”. Consultation with the State Historic Preservation Office (File #1724-19) and the State Archaeologist (File #FY19-1924) resulted in concurrence with their assessment and determination.

ODOT and FHWA also consulted with the following tribes: Caddo Nation, Cherokee Nation, Osage Nation, United Keetoowah Band of Cherokee, and Wichita & Affiliated Tribes.

Threatened and Endangered Species: FHWA coordinated with the U.S. Fish and Wildlife Service and appropriate state agencies. The IPAC consultation number is 02EKOK00-219-F-0049 dated March 17, 2021, and November 23, 2021, Programmatic Biological Opinion for federally funded or approved transportation project that may effect the federally-listed endangered Indiana bat. FHWA determined that this project will not affect the federally-listed piping plover (*Charadrius melodus*) and red knot (*Calidris canutus rufa*). Formal consultation has been requested for potential impacts to the federally-listed Neosho mucket (*Lampsilis rafinesqueana*), its critical habitat, and the rabbitsfoot (*Quadrula cylindrica cylindrica*) mussel. The Service's responded that FHWA can use the February 5, 2018, Programmatic Biological Opinion (Consultation Code 09E00000-2016-F-0001) for federally funded or approved transportation projects to determine affect on the federally-listed endangered Indiana bat (*Myotis sodalis*) and threatened northern long-eared bat (*Myotis septentrionalis*). FHWA is based on information contained in the January 17, 2020, likely to adversely affect consistency verification request form submitted by the ODOT and ensures compliance with section 7(a)(2) of the Act for the Project's effects to the northern long-eared bat. (JP28969(04) Cherokee Co, Oklahoma Department of Transportation, February 8, 2023).

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 (Enclosures 1 of 6). If additional information is desired, it may be obtained from Mr. Marcus Ware, Tulsa District, U.S. Army Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137; or telephone 918-669-7400.

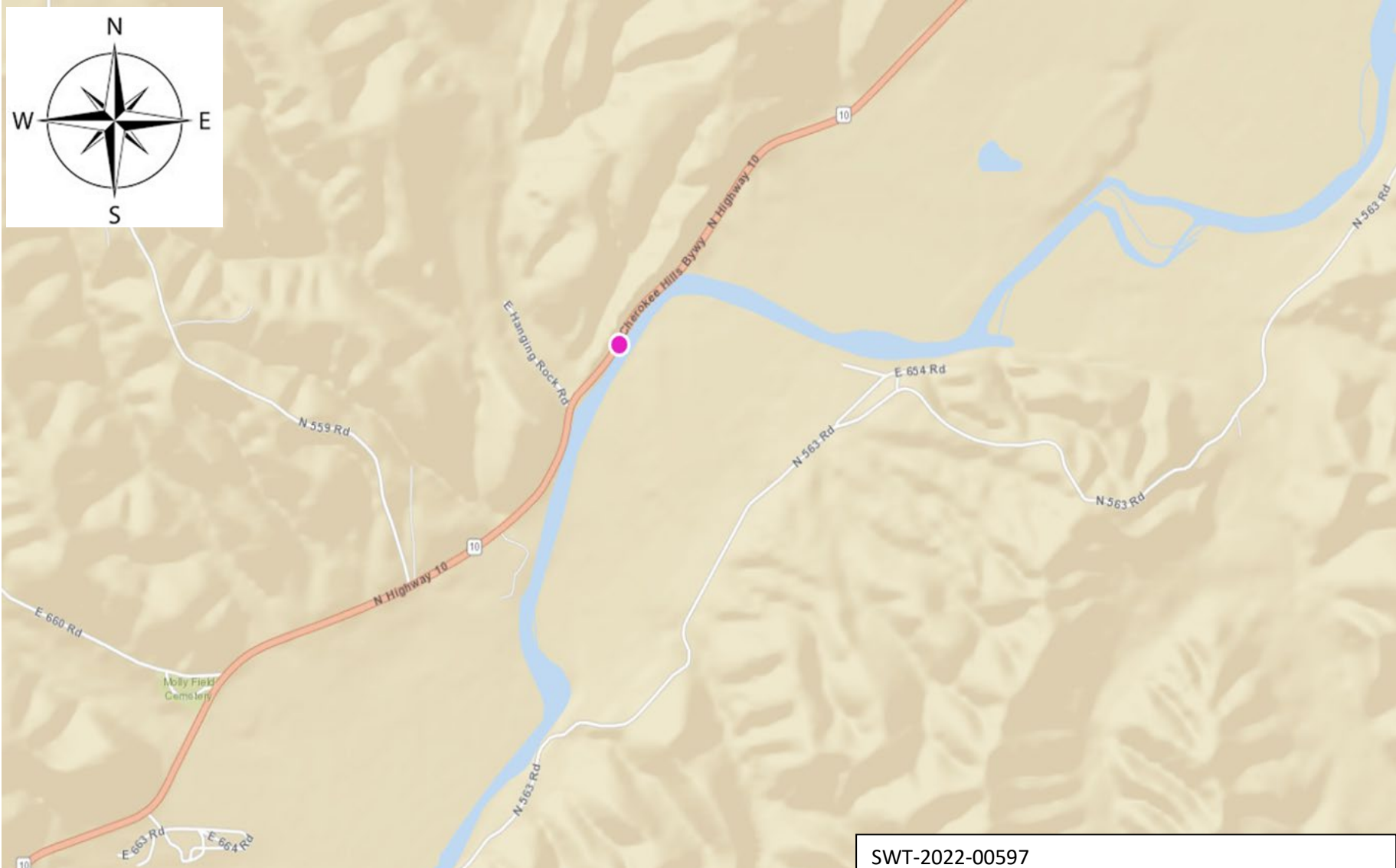
Comments: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine 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-2022-00597 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 404.

Andrew R. Commer  
Chief, Regulatory Office

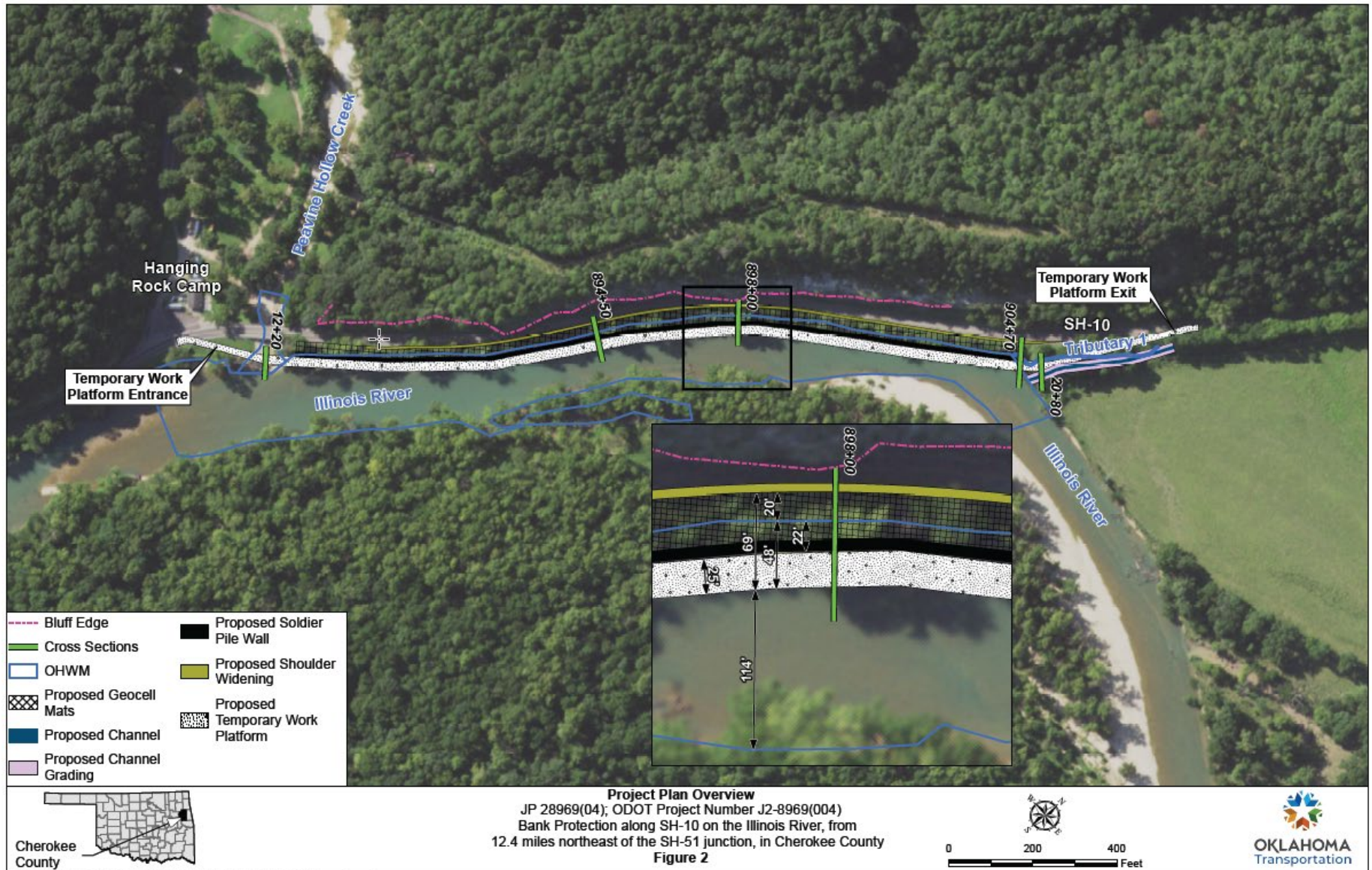
Enclosures



SWT-2022-00597  
Oklahoma Department of Transportation  
State Highway 10 (Hanging Rock), Illinois River  
Cherokee County, Oklahoma

Enclosure 1 of 6

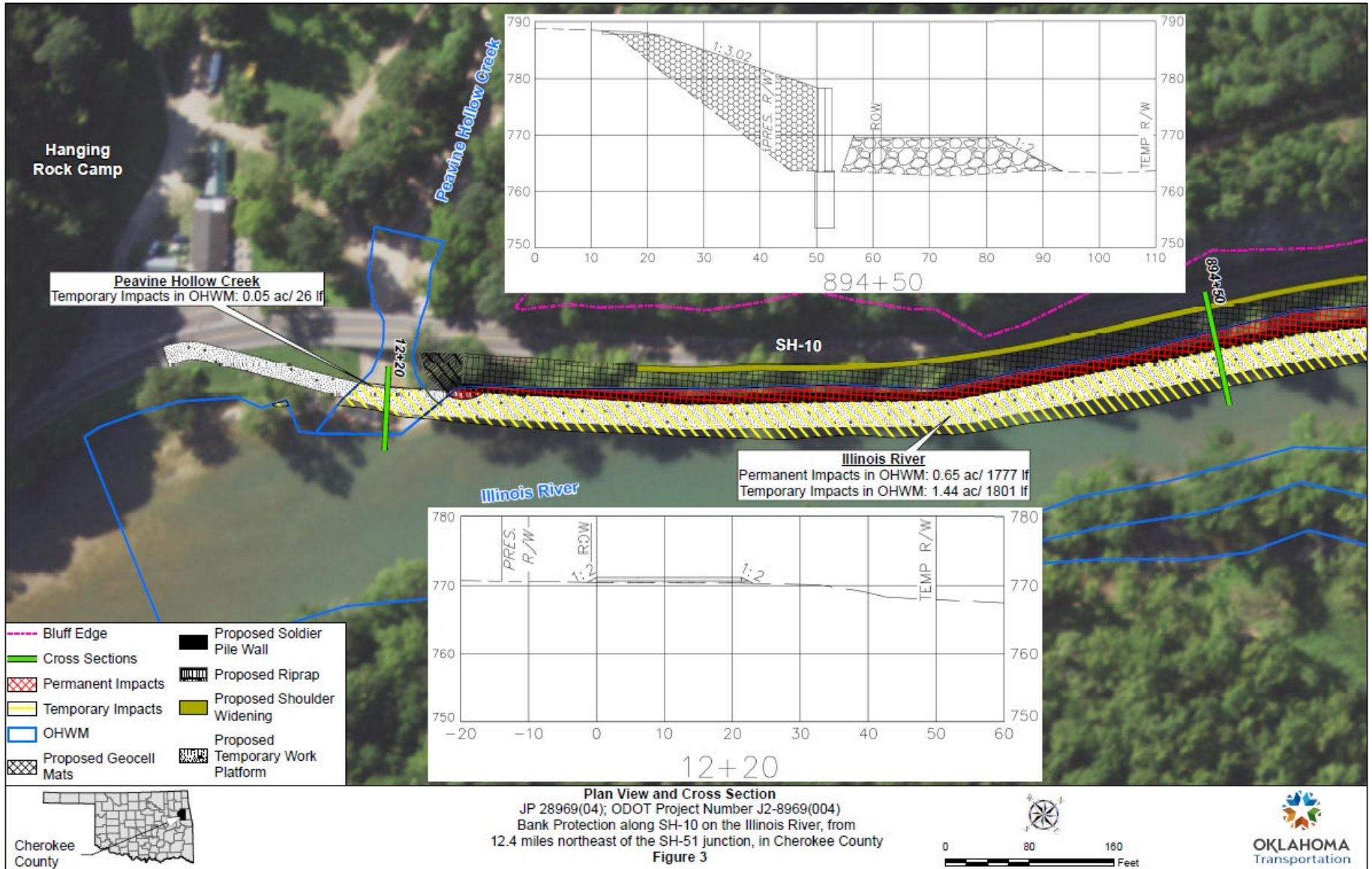




SWT-2022-00597  
 Oklahoma Department of Transportation  
 State Highway 10 (Hanging Rock), Illinois River  
 Cherokee County, Oklahoma

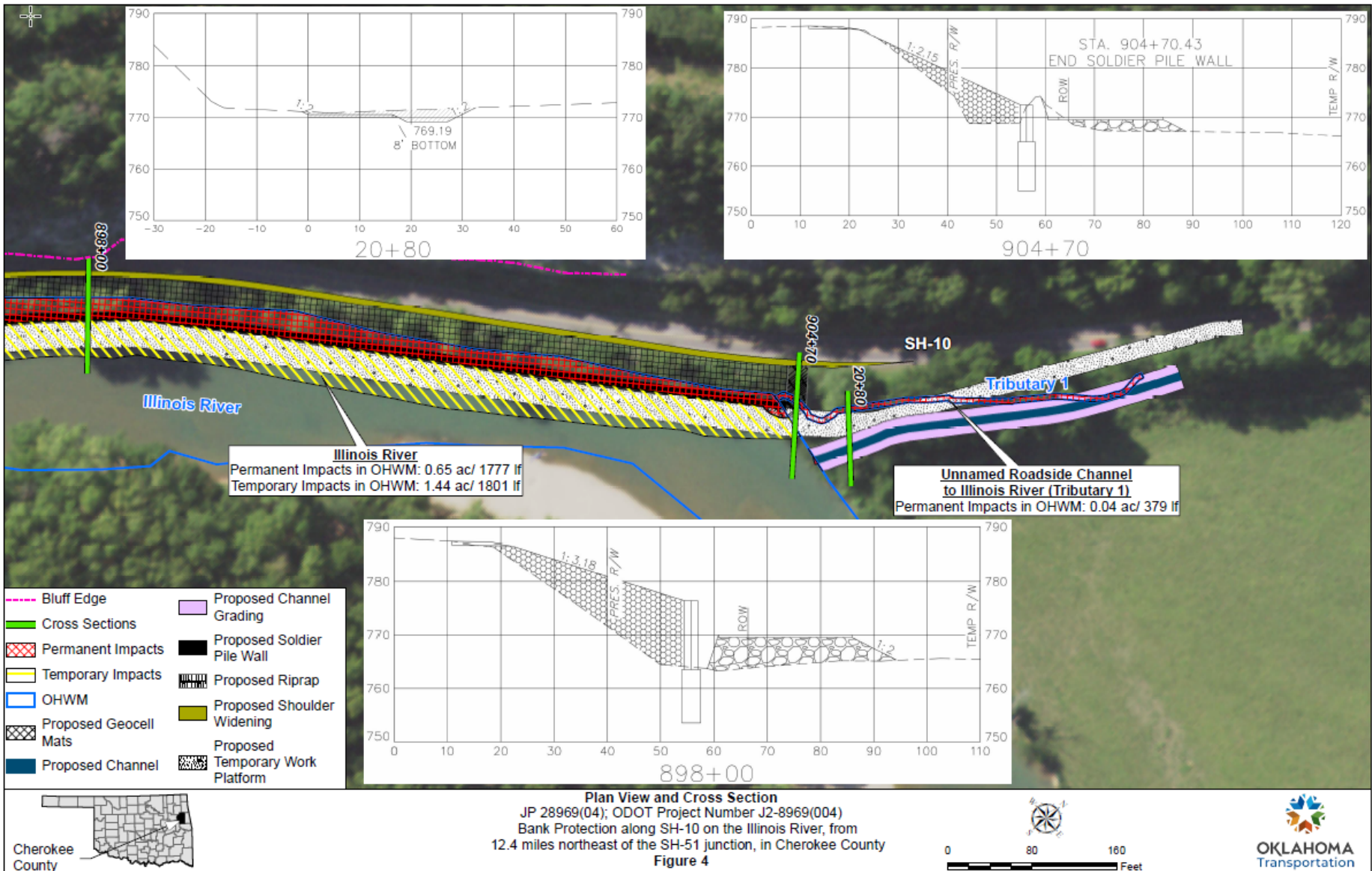
Enclosure 2 of 6



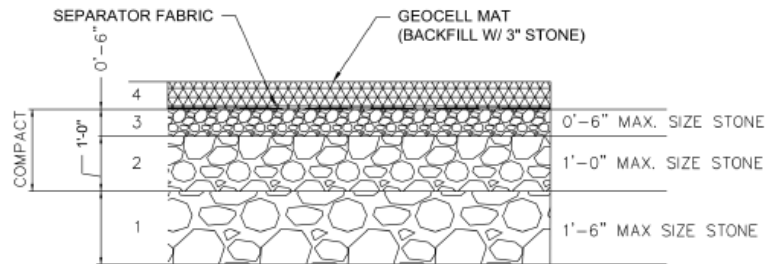
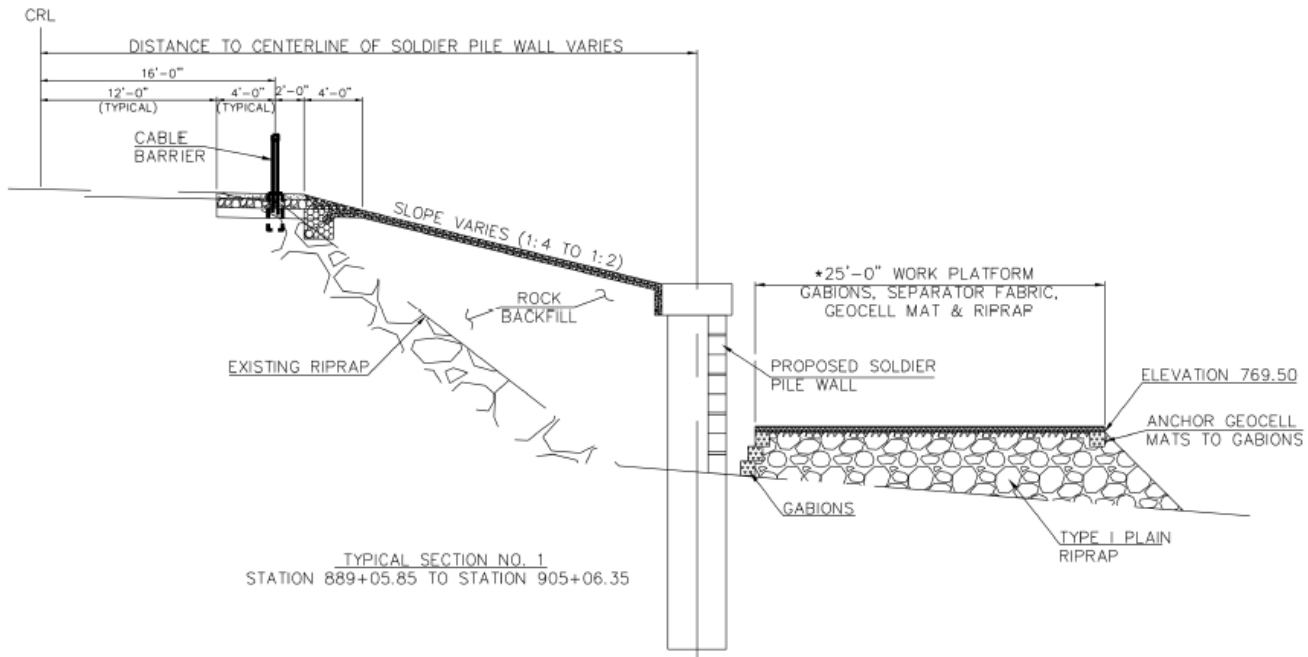


SWT-2022-00597  
 Oklahoma Department of Transportation  
 State Highway 10 (Hanging Rock), Illinois River  
 Cherokee County, Oklahoma

Enclosure 3 of 6



SWT-2022-00597  
 Oklahoma Department of Transportation  
 State Highway 10 (Hanging Rock), Illinois River  
 Cherokee County, Oklahoma



STONE EMBANKMENT DETAIL  
NOT TO SCALE

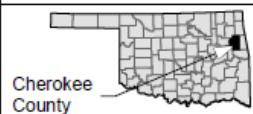
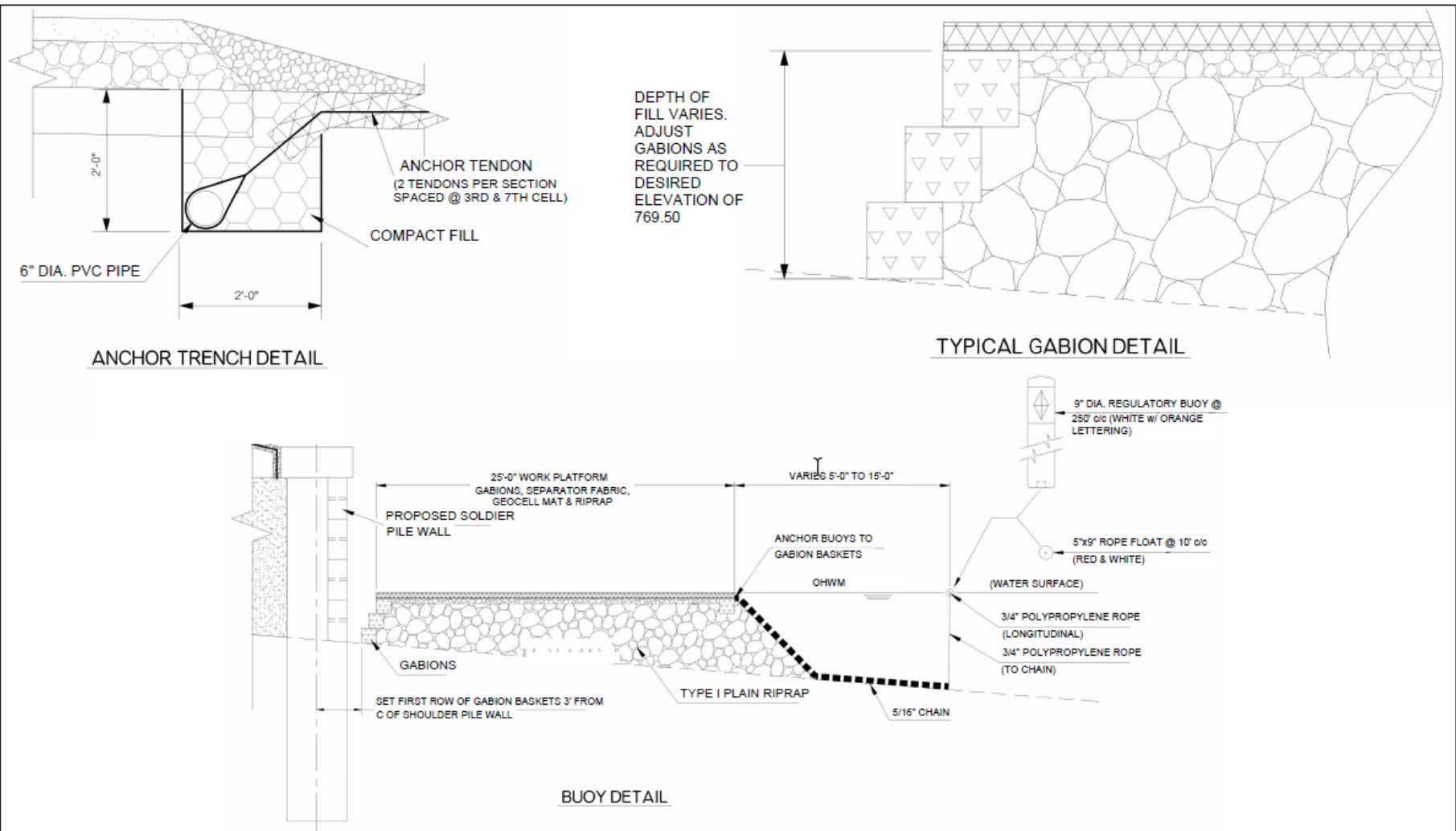


**Typical Section - Wall & Work Platform**  
JP 28969(04); ODOT Project Number J2-8969(004)  
Bank Protection along SH-10 on the Illinois River, from  
12.4 miles northeast of the SH-51 junction, in Cherokee County  
**Figure 5**



SWT-2022-00597  
Oklahoma Department of Transportation  
State Highway 10 (Hanging Rock), Illinois River  
Cherokee County, Oklahoma





Typical Section - Buoy Detail  
 JP 28969(04); ODOT Project Number J2-8969(004)  
 Bank Protection along SH-10 on the Illinois River, from  
 12.4 miles northeast of the SH-51 junction, in Cherokee County  
 Figure 6



SWT-2022-00597  
 Oklahoma Department of Transportation  
 State Highway 10 (Hanging Rock), Illinois River  
 Cherokee County, Oklahoma

Enclosure 6 of 6