



Public Notice

U.S. Army Corps
of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
1645 South 101st East Avenue
Tulsa, OK 74128-4609

SWT-2013-85
Public Notice No.

June 25, 2013
Public Notice Date

July 25, 2013
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
1645 SOUTH 101ST EAST AVENUE
TULSA, OKLAHOMA 74128-4609

Application Number SWT-2013-85

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 permit and water quality certification pursuant to Sections 404 and 401 of the Clean Water Act. The ODEQ hereby incorporates this public notice and procedure as its own public notice and procedure by reference thereto.

The application is for the construction of a secondary fire protection pond.

Name of Applicant:

Mr. Brad Collum
Deeprook Energy Resources, LLC
321 East Broadway Street
Cushing, OK 74023-3337

Location: The proposed project is located in the unnamed tributary of Skull Creek, in Section 26, Township 18 North, Range 5 East, near Cushing, Payne County, Oklahoma. The project site can be found on the Yale, OK 7.5 Minute USGS Quadrangle map.

Latitude North: 36.0135083

Longitude West: 96.740577 Decimal Degrees

Purpose:

The basic purpose of this work is to construct a fire pond for fire suppression at the crude oil terminal.

A water dependency determination is not required because no special aquatic sites are located within the project site.

The overall purpose of this work is to have a sufficient source of water supply in case there is a fire at the crude storage facility. The fire pond would also have a spillway and a boat ramp for fire truck access.

Description of Work: The applicant proposes to construct a 25-foot tall by 200-foot long earthen dam using approximately 700 cubic yards (cys) of clayey sand, 420 cys of sandy clay, and 280 cys of shale. The surface area of the fire pond would be 6.6 acres and would convert approximately 1,425 linear feet of intermittent stream channel to open water habitat. This project would require bulldozers, scrapers, front-end loaders, and trucks. The boat ramp and spillway would be constructed using concrete and steel rebar.

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:

Four alternative configurations were considered during the preliminary design of the project.

Alternative 1: No Action

Alternative 2: This proposal would require the construction of an earthen dam and the excavated material would be used to construct the dam. (Current Proposal)

Alternative 3: This proposal would create an on-channel borrow area, which would require the excavation of earthen material that would be too expensive to dispose off-site properly.

Alternative 4: Excavate an off-channel borrow area. A similar area has been constructed in the uplands but constructing smaller ponds is not economically feasible and they are not large enough to provide sufficient water supply for fire suppression. This is not an acceptable alternative and it does not meet the long-term goals of the applicant.

Deeprock Energy Resources has chosen Alternative 2, which would provide sufficient water storage (5 million gallons) for fire suppression in the event that there is a fire at the Cushing Terminal.

Mitigation: The applicant has not proposed any compensatory mitigation for the unavoidable impacts to aquatic resources expected from the proposed project.

The Corps has made no determination at this time with regard to the need of mitigation relative to the federal mitigation rules and guidance, including Tulsa District's Mitigation and Monitoring Guidelines. The Corps is accepting comments on the need for and nature for mitigation, in addition to comments on the applicant's primary proposal. The Corps bears the final decision on the need for and extent of mitigation required if the project proposed herein is authorized.

Project Setting: This project is located within the city limits of Cushing, in the Oklahoma Ecoregion of Cross Timbers Transition, which is part of the Central Great Plains geomorphic province. The transition is characterized by a series of rough plains with incised streams with rocky or muddy substrates. The project is located within a riparian corridor that provides shading to the intermittent stream channel.

Existing Condition: The project area is primarily comprised of undeveloped parcels of land surrounded by construction of new crude oil storage tanks.

Plans and Data: Plans showing the location of the proposed activity and other data are enclosed with this notice (Enclosures 1 through 3). If additional information is desired, it may be obtained from Mr. Marcus Ware, U.S. Army Corps of Engineers, Tulsa District, ATTN: Regulatory Office, 1645 South 101st East Avenue, Tulsa, OK 74128-4609, or telephone 918-669-7403.

Cultural Resources: The DE has consulted the National Register of Historic Places, and has determined that there are no properties currently listed in the National Register which would be directly affected by the proposed work. The DE has also consulted the listing of Eligibility Determinations for Oklahoma and determined that the proposed project is not in the vicinity of properties eligible for listing. This public notice is also being sent to the State Historic Preservation Officer and to Native American Tribal governments to reveal if other known historic or archeological resources that might be eligible for listing in the National Register exist in the project area and which could be directly affected by the proposed work. This coordination is being done to fulfill our requirements under the National Historic Preservation Act of 1966 and associated historic preservation laws. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archeological or other historic properties which might be affected by the proposed work, the DE will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 (Public Law 89-665), as amended, and 36 CFR Part 800, in accordance with implementing regulations 33 CFR Part 325, Appendix C.

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: Interior least tern (*Sterna antillarum*), whooping crane (*Grus Americana*), and piping plover (*Charadrius melodus*). A copy of this notice is being furnished to the U.S. Fish and Wildlife Service and appropriate state agencies. This notice constitutes a request to those agencies for information on whether any other listed or proposed-to-be-listed endangered or threatened species may be present in the area, which would be affected by the proposed activity.

Our preliminary determination is that the proposed activity will not affect listed threatened or endangered species or their critical habitat, if the work is completed outside of the nesting season of the interior least tern. The IPAC Consultation Tracking Number: 02EKOK00-2013-SLI-1116

Environmental Considerations: The decision whether to issue a permit will be based on an evaluation of the probable impact 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, flood plain 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.

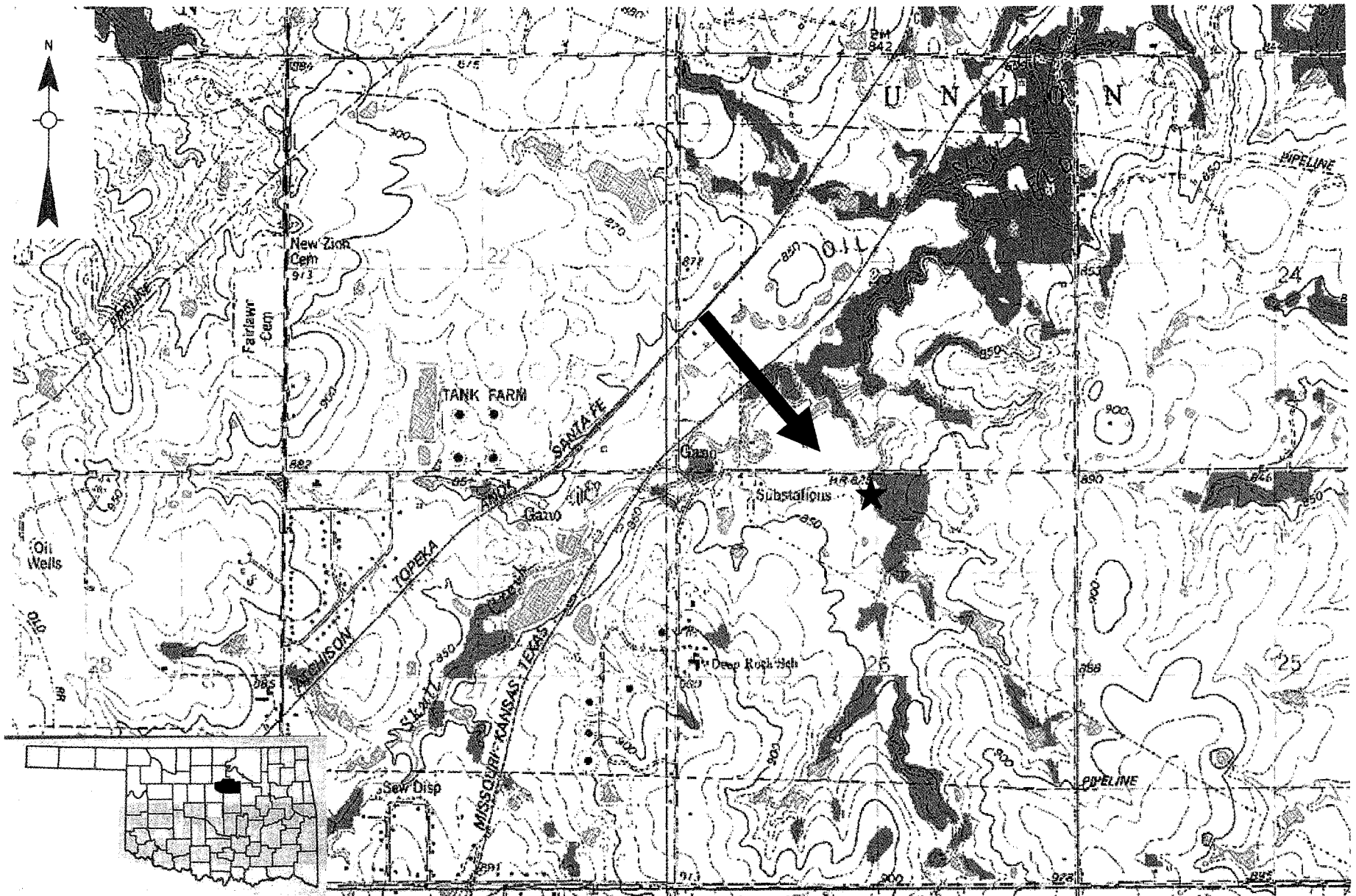
Comments: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Comments concerning the issuance of this permit should be received by the DE not later than 30 days from the date of this public notice. 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 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.

At the request of the Oklahoma Water Resources Board's National Flood Insurance Program (NFIP) State Coordinator, we are sending a copy of this notice to the local Floodplain Administrator to apprise the administrator of proposed development within their jurisdiction. In accordance with 44 CFR Part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), participating communities are required to review all proposed development to determine if a flood plain development permit is required. The local Floodplain Administrator is required to perform this review for all proposed development and maintain records of such review.

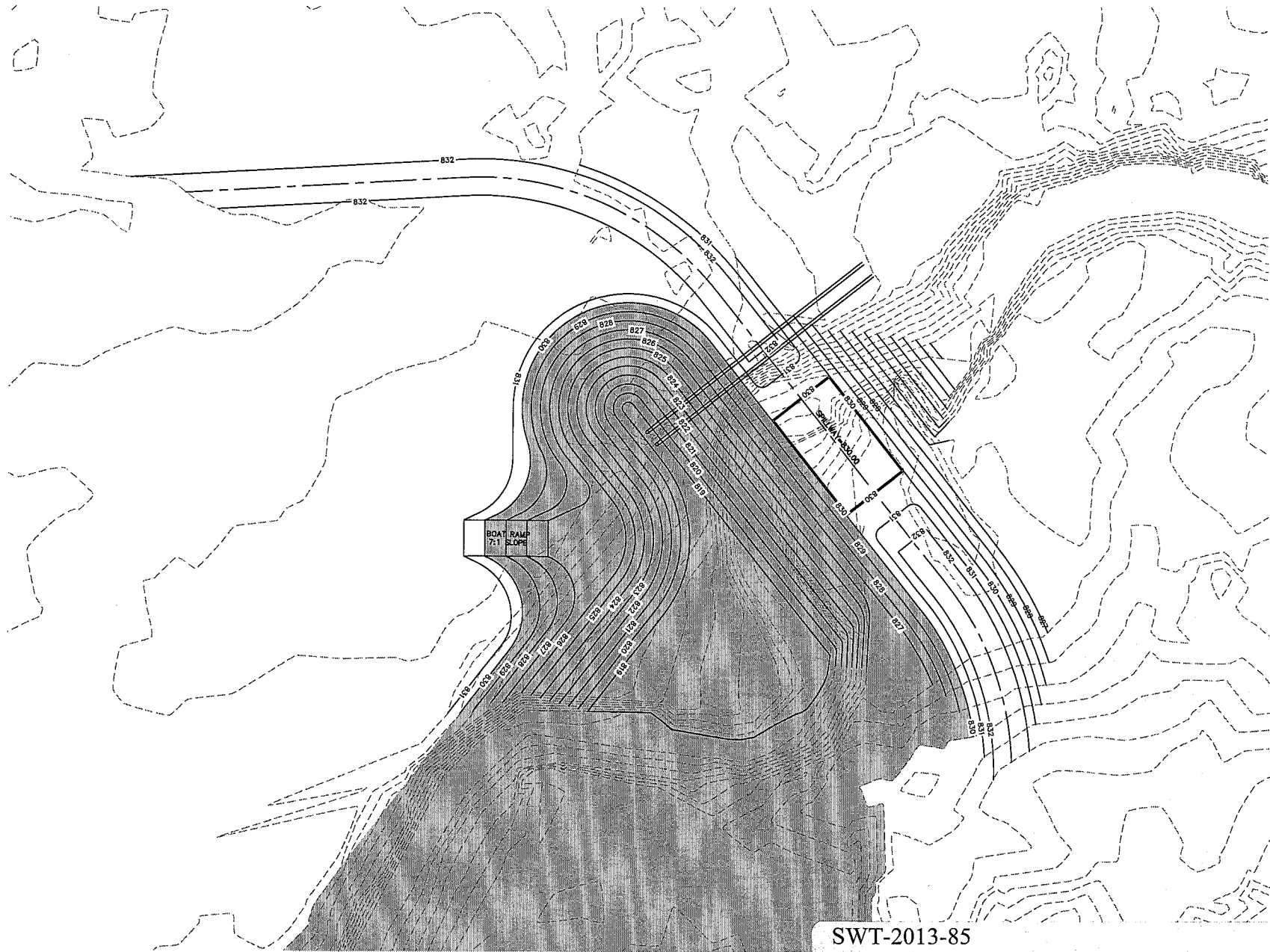
Comments concerning water quality impacts will be forwarded to the ODEQ for consideration in issuing a water quality Section 401 certification for the proposed project. Work may **not** commence until decisions have been made on both Sections 401 and 404.

Andrew R. Commer
Chief, Regulatory Office

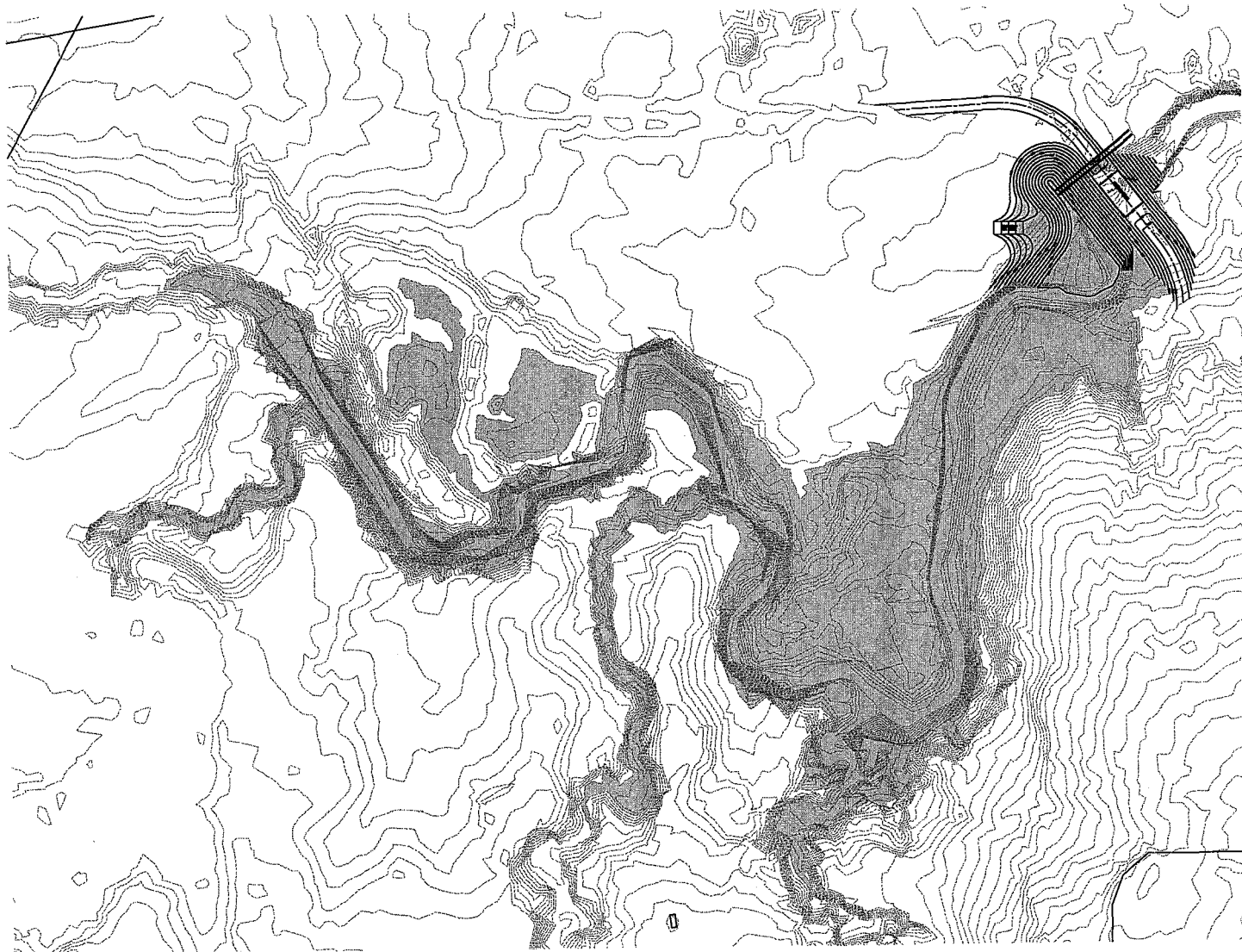
Enclosures



SWT-2013-85
Deeprook Energy Resources, LLC
Fire suppression pond, unnamed tributary of Skull Creek
Cushing Oil Terminal, Payne County
Enclosure 1 of 3



SWT-2013-85
Deeprook Energy Resources, LLC
Fire suppression pond, unnamed tributary of Skull Creek
Cushing Oil Terminal, Payne County
Enclosure 2 of 3



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Deeprook Energy Resources, LLC
Fire suppression pond, unnamed tributary of Skull Creek
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Enclosure 3 of 3