

TIER 3 CATEGORICAL EXCLUSION


**ARDOT JOB NUMBER 012357
FAP NUMBER STPAC-ER-0076(213)
ARKANSAS RIVER PIER PROTECTION REPAIRS (S)
ROUTE I-30, SECTION 23
ROUTE 9, SECTION 7
ROUTE 23, SECTION 6
CONWAY, FRANKLIN, & PULASKI COUNTIES**

Submitted Pursuant to 42 U.S.C. 4332(2)

By the
U.S. Department of Transportation
Federal Highway Administration
And the
Arkansas Department of Transportation

March 2020

3/30/2020
Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

The Environmental Division reviewed the referenced project and has determined it falls within the definition of the Tier 3 Categorical Exclusion as defined by the ARDOT/FHWA Programmatic Agreement on the processing of Categorical Exclusions. The following information is included for your review and, if acceptable, approval as the environmental documentation for this project.

This project will involve pier protection enhancements at three locations: The I-30 Bridge in Little Rock, the Highway 23 Bridge at Ozark, and the Highway 9 Bridge at Morrilton, Arkansas. Pier protection enhancements will consist of removing and replacing one pier protection cell at the I-30 location and installing additional rock ballast at all other pier protection sites. A project location map is attached.

There are no relocations, environmental justice issues, noise impacts, wellhead protection areas/public water supplies, wetlands, or cultural resources associated with this project. Field inspections found no evidence of existing underground storage tanks or hazardous waste deposits.

The official species obtained from the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation website identified the following species as potentially occurring within the I-30 Bridge area at Little Rock: Eastern Black Rail (*Laterallus jamaicensis spp. jamaicensis*), Least Tern (*Sterna antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), rattlesnake-master borer moth (*Papaipema eryngii*), and running buffalo clover (*Trifolium stoloniferum*). See attached species list.

There are known nesting sites of the Least Tern along the Arkansas River, approximately 7.3 miles downstream from the I-30 Bridge site. The removal and replacement of the pier protection cell will require driving new sheet piling into the river; therefore, it is our determination that the project "may affect, but is not likely to adversely affect" the Least Tern and the Piping Plover. The USFWS concurred on February 25, 2020.

Due to the minimal scope of the project (all work within the navigation channel of the Arkansas River) and the lack of suitable habitat; it is our determination that the project will have "no effect" on the remaining federally listed species.

The official species obtained from the USFWS Information for Planning and Consultation website identified the following species as potentially occurring near the Highway 23 Bridge at Ozark: Eastern Black Rail (*Laterallus jamaicensis spp. jamaicensis*), Least Tern (*Sterna antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), rattlesnake-master borer moth (*Papaipema eryngii*), gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), American burying beetle (*Nicrophorus americanus*), Geocarpon

(*Geocarpon minimum*), and Missouri bladderpod (*Physaria filiformis*). See attached species list.

Since the proposed work at the Highway 23 Bridge at Ozark will take place completely within the navigation channel of the Arkansas River, it does not include any bridge maintenance or construction activities, and does not include any driving of new sheet piles, it has been determined that the project will have “no effect” on the four federally listed bat species. Due to the lack of suitable habitat and scope of the proposed project, it has been determined that the project will have “no effect” on the federally listed plant and insect species, since they are terrestrial species. A “no effect” determination was also made for the Red Knot and Eastern Black Rail due to the lack of known occurrences and the scope of the proposed project. There is the potential for the Least Terns’ foraging and perching activities to be temporarily disrupted during construction; therefore, it has been determined that the project “may affect, but is not likely to adversely affect” Least Terns. Migration rest area habitat for the Piping Plover is not well documented, and migrating Piping Plovers have been observed in Arkansas, mostly along the Arkansas River; therefore, it has been determined that the project’s activities “may affect, but is not likely to adversely affect” the Piping Plover. The USFWS concurred on February 25, 2020.

The official species obtained from the USFWS Information for Planning and Consultation website identified the following species as potentially occurring at the Highway 9 Bridge in Morrilton, Arkansas: Eastern Black Rail (*Laterallus jamaicensis spp. jamaicensis*), Least Tern (*Sterna antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), rattlesnake-master borer moth (*Papaipema eryngii*), and the Indiana bat (*Myotis sodalis*). See attached species list.

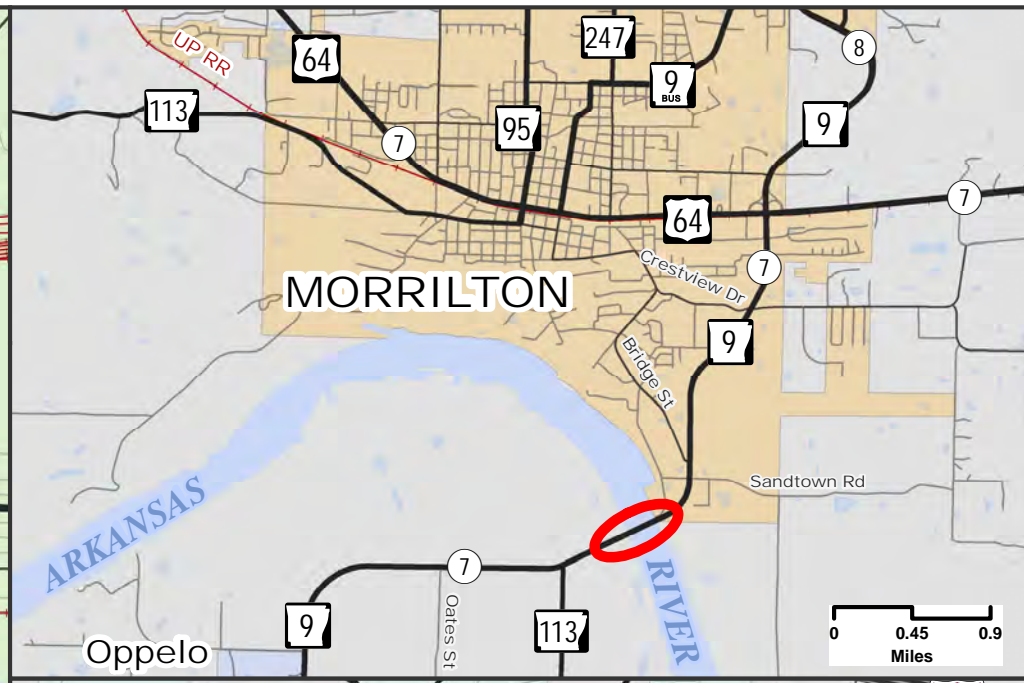
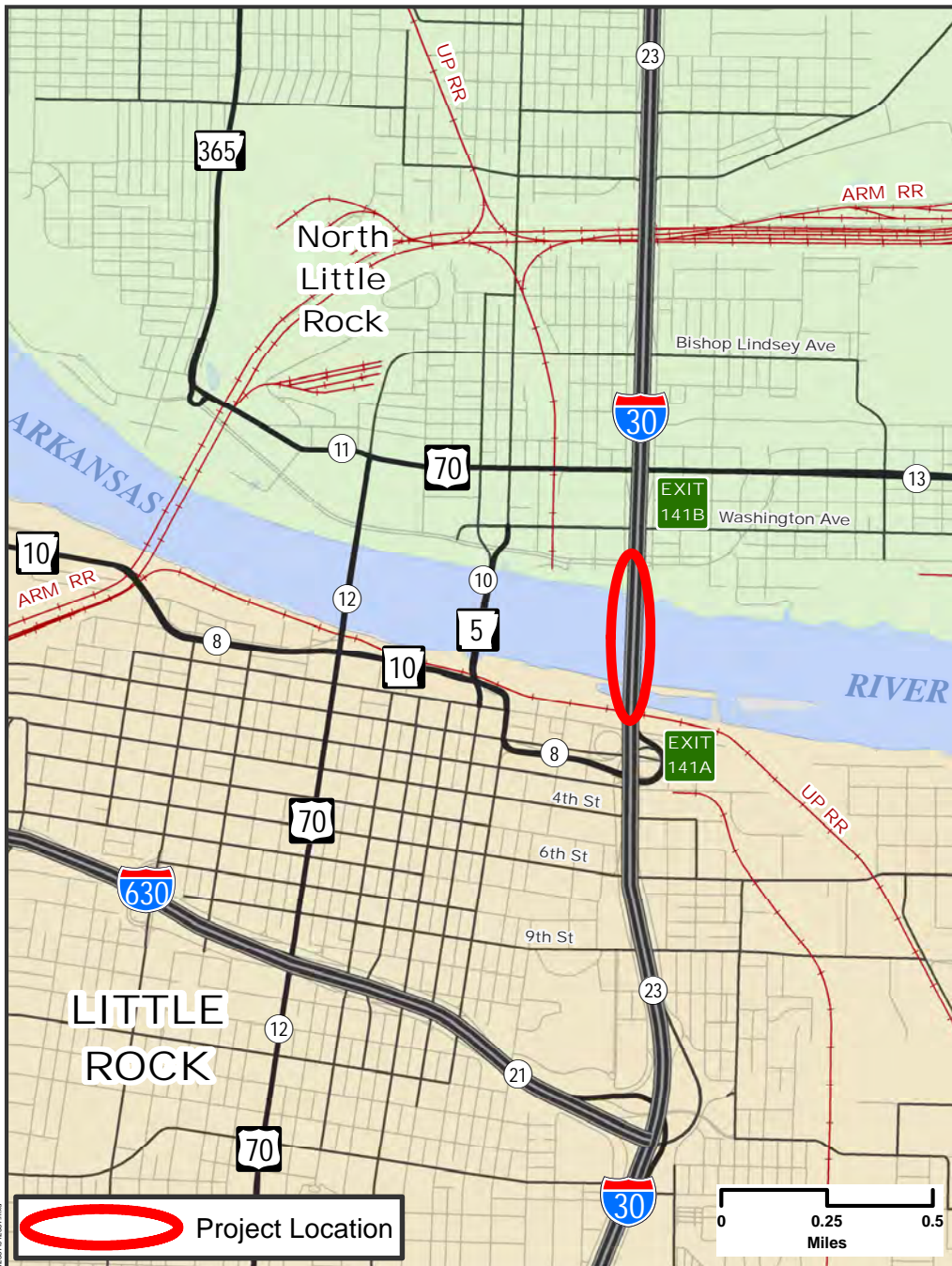
The proposed work at the Highway 9 Bridge at Morrilton will take place completely within the navigation channel of the Arkansas River, it does not include any bridge maintenance or construction activities, and does not include any driving of new sheet pile, it has been determined that the project will have “no effect” on the Indiana bat. Due to the lack of known occurrences and the scope of the project, it has been determined that the proposed project will have “no effect” on the Red Knot and Eastern Black Rail. The rattlesnake-master borer moth is a terrestrial species, and the proposed work is to take place within the Arkansas River; therefore, it has been determined that this project will have “no effect” on the rattlesnake-master borer moth. There is the potential for the Least Terns’ foraging and perching activities to be temporarily disrupted during construction; therefore, it has been determined that the project “may affect, but is not likely to adversely affect” Least Terns. Migration rest area habitat for the Piping Plover is not well documented, and migrating Piping Plovers have been observed in Arkansas, mostly along the Arkansas River; therefore, it has been determined that the

project's activities "may affect, but is not likely to adversely affect" the Piping Plover. The USFWS concurred on February 25, 2020.

A discharge of fill material; e.g., riprap and sheet piling, will be placed below the ordinary high water mark of the Arkansas River; therefore, a Section 404 Nationwide 3 Permit for Maintenance will be required. A Section 10 permit and a Section 408 review will also be required. The U.S. Coast Guard approved the pier protection cell removal and reconstruction at the I-30 Bridge site on February 20, 2020 (see attached letter). The Coast Guard will be invited to attend the preconstruction conference for this project.

This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxic (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location, or any other factor that would cause a meaningful increase in MSAT impacts of the project from that of the no-build alternative.

No other adverse environmental impacts were identified. The checklist used to verify consideration of potential environmental impacts is attached.



Job 012357

Arkansas River Pier Protection Repairs (S)

I-30, Sec. 23
 Hwy. 9, Sec. 7
 Hwy. 23, Sec. 6
 Conway, Franklin & Pulaski Counties



FHW A
105502



ARKANSAS DEPARTMENT OF TRANSPORTATION

ArDOT.gov | IDriveArkansas.com | Scott E. Bennett, P.E., Director


10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261

Phone: 501.569.2000 | Voice/TTY 711 | Fax: 501.569.2400

March 2, 2020

AHPP
MAR 3 2020

Secretary Stacy Hurst
Arkansas Historic Preservation Program
1100 North Street
Little Rock, Arkansas 72201


Date 3-3-20
No known historic properties will be affected by this undertaking. This effect determination could change should new information come to light.

Arkansas State Historic Preservation Officer

RE: Job Number 012357
Arkansas River Pier Protection
Repairs (S)
Route I-30, Section 23
Route 9, Section 7
Route 23, Section 6
Conway, Franklin & Pulaski
Counties

Dear Secretary Hurst:

A Project Identification Form (PIF) for the referenced project is enclosed. Please review for concurrence with the findings of my staff. If you have any questions or require additional information, please contact Daniel Hildebran of my staff at (501) 569-4512.

Sincerely,


for John Fleming
Division Head
Environmental Division

JF:KB:DH:cb

Enclosure
PIF



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Arkansas Ecological Service Field Office
110 South Amity Road, Suite 300
Conway, Arkansas 72032



February 25, 2020

Mr. John Fleming
c/o Kayti Ewing
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, Arkansas 72209

Dear Mr. Fleming,

The U.S. Fish and Wildlife Service (Service) is responding to your request dated February 20, 2020, regarding ArDOT Job #012357_USFWS Consultation, which will remove, replace, and refill pier protection cells at three separate locations in the Arkansas River, Pulaski County, Arkansas. The project was described and assessed as follows (abbreviated):

The Arkansas Department of Transportation (ArDOT) project (Job Number 012357) will remove, replace, and refill pier protection cells at three separate locations in the Arkansas River.

Site 1 is the I-30 Bridge over the Arkansas River in Little Rock in Pulaski County. At Site 1, proposed work includes the removal and replacement of the existing pier protection cell on the west side of Pier 21, placement of a new cell-mounted navigation light on the west side of Pier 21, and refilling the existing pier protection cells on the west side of Pier 20 and on the east side of Pier 21 with riprap. The removal of the existing pier protection cell will be done on a barge equipped with a vibratory hammer. The new pier protection cell will require approximately 5,137 linear feet of new sheet pile to be driven into the river. Existing riprap and sheet piling will be removed, so it does not interfere with the driving of the new sheet pile. Approximately 3,139 cubic yards of riprap will be used to refill the new and existing pier protection cells. See the attached plans.

The official species from IPaC identified the following species as potentially occurring within the project area (Site 1): Eastern Black Rail (*Laterallus jamaicensis spp. jamaicensis*), Interior Least Tern (*Sterna antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), Rattlesnake-master Borer Moth (*Papaipema eryngii*), and Running Buffalo Clover (*Trifolium stoloniferum*).

There is a known nesting site for the Interior Least Tern on the right bank of the Arkansas River, approximately 7.3 river miles downstream from the I-30 Bridge in Little Rock. At this location, two pier protection cells will be refilled with riprap and one pier will be removed and completely replaced. The removal and replacement of the pier protection cell will require driving new sheet piling; however, due to the distance of the known Interior Least Tern occurrence, we have determined that the project's proposed activities "may affect, but is not likely to adversely affect" the Interior Least Tern.

The Piping Plover (*Charadrius melodus*) is a migratory bird. In the spring and summer, they breed in the northern United States and Canada. Piping Plovers use wide, flat, open, sandy beaches with very little vegetation; nesting habitat often includes small creeks or wetlands. Piping Plovers nest along larger waterbodies; e.g., along the shorelines of the Great Lakes, the shores of large rivers and streams in Great Plains, and along the Atlantic coast. In the fall, plovers migrate south and winter along the coast of the Gulf of Mexico and other southern locations. During fall and spring migration, Piping Plovers use rest sites including shorelines of lakes, rivers, and wetlands with muddy sandy substrates. Migration rest area habitat is not well documented, but migrating piping plovers have been observed in Arkansas, mostly along the Arkansas River; therefore, it is our determination that the project “may affect, but is not likely to adversely affect” the Piping Plover.

The Red Knot (*Calidris canutus rufa*) is a migratory bird that is found along the U.S. coast, especially around the Delaware Bay, where they feed on horseshoe crabs in the spring. In the fall, the Red Knot overwinters along the coasts of southern Chile and Argentina. While migrating between wintering and breeding areas, Red Knots have been spotted in the interior U.S., even in Arkansas, along migration stopovers, where habitat and food is favorable. Major threats to the Red Knot include loss of both breeding and nonbreeding habitat, food resources throughout the bird’s range, and the timing of the birds’ annual migration relative to favorable food and weather conditions. Noncoastal stopover habitats are not well documented, thus lack specific detailed information. Due to the minimal activity associated with this project, it is likely that favorable food resources would not be affected; furthermore, the likelihood of Red Knots passing through during repair of the pier protection is low; therefore, it our determination the project will have “no effect” on the Red Knot.

The Eastern Black Rail are found in a variety of wetlands—salt, brackish, and freshwater marshes; the Rattlesnake-master Borer Moth and Running Buffalo Clover are both terrestrial species. Due to the scope of work taking place completely within the navigation channel of the Arkansas River, it is our determination the project will have “no effect” on the Eastern Black Rail, the Rattlesnake-master Borer Moth, and the Running Buffalo Clover.

Site 2 is the Highway 23 Bridge over the Arkansas River in Ozark in Franklin County. At Site 2, proposed work includes refilling the existing pier protection cells on the east side of Pier 2 and on the east side of Pier 4 with riprap. Approximately 643 cubic yards of riprap will be used to refill the pier protection cells at Site 2.

The official species from IPaC identified the following species as potentially occurring within the project area (Site 2): Eastern Black Rail (*Laterallus jamaicensis spp. jamaicensis*), Interior Least Tern (*Sterna antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), Rattlesnake-master Borer Moth (*Papaipema eryngii*), Gray Bat (*Myotis grisescens*), Indiana Bat (*Myotis sodalis*), Northern Long-eared Bat (*Myotis septentrionalis*), Ozark Big-eared Bat (*Corynorhinus townsendii*

ingens), American Burying Beetle (*Nicrophorus americanus*), Geocarpon (*Geocarpon minimum*), and Missouri Bladderpod (*Physaria filiformis*).

There is a known nesting site for the Interior Least Tern on the left bank of the Arkansas River, approximately 2.0 miles south of the Highway 23 Bridge in Ozark. At this location, two existing pier protection cells will be refilled with riprap from a barge, and there is the potential that foraging and perching Interior Least Terns could be minimally disturbed along the river during the proposed project; therefore, it is our determination that the proposed project's activities will "may affect, but are not likely to adversely affect" the Least Tern.

Since the proposed work will take place completely within the navigation channel of the Arkansas River, does not include any bridge maintenance or construction activities, and does not include any driving of new sheet pile, it has been determined that the project will have "no effect" on the four federally listed bat species. Due to the lack of suitable habitat and scope of the proposed project, it has been determined that the project will have "no effect" on the federally listed plant and insect species, since they are terrestrial species.

The Piping Plover (*Charadrius melodus*) is a migratory bird. In the spring and summer, they breed in the northern United States and Canada. Piping Plovers use wide, flat, open, sandy beaches with very little vegetation; nesting habitat often includes small creeks or wetlands. Piping Plovers nest along larger waterbodies; e.g., along the shorelines of the Great Lakes, the shores of large rivers and streams in Great Plains, and along the Atlantic coast. In the fall, plovers migrate south and winter along the coast of the Gulf of Mexico and other southern locations. During fall and spring migration, Piping Plovers use rest sites including shorelines of lakes, rivers, and wetlands with muddy sandy substrates. Migration rest area habitat is not well documented, but migrating Piping Plovers have been observed in Arkansas, mostly along the Arkansas River; therefore, it is our determination that the project "may affect, but is not likely to adversely affect" the Piping Plover.

The Red Knot (*Calidris canutus rufa*) is a migratory bird that is found along the U.S. coast, especially around the Delaware Bay, where they feed on horseshoe crabs in the spring. In the fall, the Red Knot overwinters along the coasts of southern Chile and Argentina. While migrating between wintering and breeding areas, Red Knots have been spotted in the interior U.S., even in Arkansas, along migration stopovers, where habitat and food is favorable. Major threats to the Red Knot include loss of both breeding and nonbreeding habitat, food resources throughout the bird's range, and the timing of the birds' annual migration relative to favorable food and weather conditions. Noncoastal stopover habitats are not well documented, thus lack specific detailed information. Due to the minimal activity associated with this project, it is likely that favorable food resources would not be affected; furthermore, the likelihood of Red Knots passing through during repair of the pier protection is low; therefore, it our determination that the project will have "no effect" on the Red Knot.

The Eastern Black Rail are found in a variety of wetlands—salt, brackish, and freshwater marshes. Due to the scope of work taking place completely within the navigation channel of the Arkansas River, it is our determination the project will have “no effect” on the Eastern Black Rail.

Site 3 is the Highway 9 Bridge over the Arkansas River in Morrilton in Conway County. At Site 3, proposed work includes refilling the existing pier protection cells on the north side of Pier 11 and on the north side of Pier 12 with riprap. Approximately 744 cubic yards of riprap will be used to refill the existing pier protection cells at Site 3.

The official species from IPaC identified the following species as potentially occurring within the project area (Site 3): Eastern Black Rail (*Laterallus jamaicensis spp. jamaicensis*), Interior Least Tern (*Sterna antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), Rattlesnake-master Borer Moth (*Papaipema eryngii*), and the Indiana Bat (*Myotis sodalis*).

There are no known nesting sites for the Interior Least Tern nearby at this location; however, the Arkansas River is a known nesting site for these birds across the state. At this location, two existing pier protection cells will be refilled with riprap from a barge, and there is the potential that foraging and perching Interior Least Terns could be minimally disturbed along the river during the proposed project; therefore, it is our determination that the proposed project’s activities will “may affect, but are not likely to adversely affect” the Interior Least Tern.

Since the proposed work will take place completely within the navigation channel of the Arkansas River, does not include any bridge maintenance or construction activities, and does not include any driving of new sheet pile, it has been determined that the project will have “no effect” on the Indiana Bat.

The Rattlesnake-master Borer Moth is a terrestrial species, and the proposed work will be done completely within the navigation channel of the Arkansas River; therefore, it is our determination this project will have “no effect” on this species.

The Piping Plover (*Charadrius melodus*) is a migratory bird. In the spring and summer, they breed in the northern United States and Canada. Piping Plovers use wide, flat, open, sandy beaches with very little vegetation; nesting habitat often includes small creeks or wetlands. Piping Plovers nest along larger waterbodies; e.g., along the shorelines of the Great Lakes, the shores of large rivers and streams in Great Plains, and along the Atlantic coast. In the fall, plovers migrate south and winter along the coast of the Gulf of Mexico and other southern locations. During fall and spring migration, Piping Plovers use rest sites including shorelines of lakes, rivers, and wetlands with muddy sandy substrates. Migration rest area habitat is not well documented, but migrating Piping Plovers have been observed in Arkansas, mostly along the Arkansas River; therefore, it is our determination that the project “may affect, but is not likely to adversely affect” the Piping Plover.

The Red Knot (*Calidris canutus rufa*) is a migratory bird that is found along the U.S. coast, especially around the Delaware Bay, where they feed on horseshoe crabs in the spring. In the fall, the Red Knot overwinters along the coasts of southern Chile and Argentina. While migrating between wintering and breeding areas, Red Knots have been spotted in the interior U.S., even in Arkansas, along migration stopovers, where habitat and food is favorable. Major threats to the Red Knot include loss of both breeding and nonbreeding habitat, food resources throughout the bird's range, and the timing of the birds' annual migration relative to favorable food and weather conditions. Noncoastal stopover habitats are not well documented, thus lack specific detailed information. Due to the minimal activity associated with this project, it is likely that favorable food resources would not be affected; furthermore, the likelihood of Red Knots passing through during repair of the pier protection is low; therefore, it our determination that the project will have "no effect" on the Red Knot.

The Eastern Black Rail are found in a variety of wetlands—salt, brackish, and freshwater marshes. Due to the scope of work taking place completely within the navigation channel of the Arkansas River, it is our determination the project will have "no effect" on the Eastern Black Rail.

Due to the limited scope of the action (i.e., repair and replacement of fill in pier protection cells), minimal to no adjacent habitat effect, distance to known species locations and reproductive areas, minimal potential foraging habitat effects, limited and brief disturbance to natural behaviors (i.e., foraging, perching, etc.) due to noise and construction, and the special provision for water pollution control, the Service concurs with the determination of "may affect, not likely to adversely affect" for Interior Least Tern and Piping Plover. The Service agrees with ArDOT's assessment for all other species identified. No further consultation regarding this species or any of the species identified within the assessment is necessary at this time.

If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov.

Sincerely,



Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\ArDOT 012357_USFWS
Consultation\AFO Letter - ArDOT Job 012357 - Comments.docx



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480
<http://www.fws.gov/arkansas-es>

In Reply Refer To:
Consultation Code: 04ER1000-2020-SLI-0558
Event Code: 04ER1000-2020-E-01302
Project Name: 012357_Site 1 Pulaski County

February 19, 2020

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies endangered, threatened, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). **This letter only provides an official species list and technical assistance; if you determine that listed species and/or designated critical habitat may be affected in any way by the proposed project, even if the effect is wholly beneficial, consultation with the Service will be necessary.**

If you determine that this project will have no effect on listed species and their habitat in any way, then you have completed Section 7 consultation with the Service and may use this letter in your project file or application.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found on our website.

Please visit our website at <http://www.fws.gov/arkansas-es/IPaC/home.html> for species-specific guidance to avoid and minimize adverse effects to federally endangered,

threatened, proposed, and candidate species. Our web site also contains additional information on species life history and habitat requirements that may be useful in project planning.

If your project involves in-stream construction activities, oil and natural gas infrastructure, road construction, transmission lines, or communication towers, please review our project specific guidance at <http://www.fws.gov/arkansas-es/IPaC/ProjSpec.html>.

The karst region of Arkansas is a unique region that covers the **northern third of Arkansas** and we have specific guidance to conserve sensitive cave-obligate and bat species. **Please visit <http://www.fws.gov/arkansas-es/IPaC/Karst.html> to determine if your project occurs in the karst region and to view karst specific-guidance.** Proper implementation and maintenance of best management practices specified in these guidance documents is necessary to avoid adverse effects to federally protected species and often avoids the more lengthy formal consultation process.

If your species list includes any mussels, Northern Long-eared Bat, Indiana Bat, Yellowcheek Darter, Red-cockaded Woodpecker, or American Burying Beetle, your project may require a presence/absence and/or habitat survey prior to commencing project activities. Please check the appropriate species-specific guidance on our website to determine if your project requires a survey. We strongly recommend that you contact the appropriate staff species lead biologist (see office directory or species page) prior to conducting presence/absence surveys to ensure the appropriate level of effort and methodology.

Under the ESA, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with the Service further. Similarly, it is the responsibility of the Federal action agency or project proponent, not the Service, to make "no effect" determinations. If you determine that your proposed action will have "no effect" on threatened or endangered species or their respective critical habitat, you do not need to seek concurrence with the Service. Nevertheless, it is a violation of Federal law to harm or harass any federally-listed threatened or endangered fish or wildlife species without the appropriate permit.

Through the consultation process, we will analyze information contained in a biological assessment that you provide. If your proposed action is associated with Federal funding or permitting, consultation will occur with the Federal agency under section 7(a)(2) of the ESA. Otherwise, an incidental take permit pursuant to section 10(a)(1)(B) of the ESA (also known as a habitat conservation plan) is necessary to harm or harass federally listed threatened or endangered fish or wildlife species. In either case, there is no mechanism for authorizing incidental take "after-the-fact." For more information regarding formal consultation and HCPs, please see the Service's Consultation Handbook and Habitat Conservation Plans at www.fws.gov/endangered/esa-library/index.html#consultations.

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to

federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, **the accuracy of this species list should be verified after 90 days**. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. **Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.**

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2020-SLI-0558

Event Code: 04ER1000-2020-E-01302

Project Name: 012357_Site 1 Pulaski County

Project Type: BRIDGE CONSTRUCTION / MAINTENANCE

Project Description: Complete replacement of pier protection structures in the Arkansas River near the I-30 bridge in Little Rock in Pulaski County, Arkansas.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/34.75014613769896N92.26243257522583W>



Counties: Pulaski, AR

Endangered Species Act Species

There is a total of 6 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Birds

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477	Proposed Threatened
Least Tern <i>Sterna antillarum</i> Population: interior pop. No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/8505	Endangered
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Insects

NAME	STATUS
Rattlesnake-master Borer Moth <i>Papaipema eryngii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7863	Candidate

Flowering Plants

NAME	STATUS
Running Buffalo Clover <i>Trifolium stoloniferum</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2529	Endangered

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480
<http://www.fws.gov/arkansas-es>

In Reply Refer To:
Consultation Code: 04ER1000-2020-SLI-0559
Event Code: 04ER1000-2020-E-01304
Project Name: 012357_Site 2 Franklin Co

February 19, 2020

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies endangered, threatened, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). **This letter only provides an official species list and technical assistance; if you determine that listed species and/or designated critical habitat may be affected in any way by the proposed project, even if the effect is wholly beneficial, consultation with the Service will be necessary.**

If you determine that this project will have no effect on listed species and their habitat in any way, then you have completed Section 7 consultation with the Service and may use this letter in your project file or application.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found on our website.

Please visit our website at <http://www.fws.gov/arkansas-es/IPaC/home.html> for species-specific guidance to avoid and minimize adverse effects to federally endangered,

threatened, proposed, and candidate species. Our web site also contains additional information on species life history and habitat requirements that may be useful in project planning.

If your project involves in-stream construction activities, oil and natural gas infrastructure, road construction, transmission lines, or communication towers, please review our project specific guidance at <http://www.fws.gov/arkansas-es/IPaC/ProjSpec.html>.

The karst region of Arkansas is a unique region that covers the **northern third of Arkansas** and we have specific guidance to conserve sensitive cave-obligate and bat species. **Please visit <http://www.fws.gov/arkansas-es/IPaC/Karst.html> to determine if your project occurs in the karst region and to view karst specific-guidance.** Proper implementation and maintenance of best management practices specified in these guidance documents is necessary to avoid adverse effects to federally protected species and often avoids the more lengthy formal consultation process.

If your species list includes any mussels, Northern Long-eared Bat, Indiana Bat, Yellowcheek Darter, Red-cockaded Woodpecker, or American Burying Beetle, your project may require a presence/absence and/or habitat survey prior to commencing project activities. Please check the appropriate species-specific guidance on our website to determine if your project requires a survey. We strongly recommend that you contact the appropriate staff species lead biologist (see office directory or species page) prior to conducting presence/absence surveys to ensure the appropriate level of effort and methodology.

Under the ESA, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with the Service further. Similarly, it is the responsibility of the Federal action agency or project proponent, not the Service, to make "no effect" determinations. If you determine that your proposed action will have "no effect" on threatened or endangered species or their respective critical habitat, you do not need to seek concurrence with the Service. Nevertheless, it is a violation of Federal law to harm or harass any federally-listed threatened or endangered fish or wildlife species without the appropriate permit.

Through the consultation process, we will analyze information contained in a biological assessment that you provide. If your proposed action is associated with Federal funding or permitting, consultation will occur with the Federal agency under section 7(a)(2) of the ESA. Otherwise, an incidental take permit pursuant to section 10(a)(1)(B) of the ESA (also known as a habitat conservation plan) is necessary to harm or harass federally listed threatened or endangered fish or wildlife species. In either case, there is no mechanism for authorizing incidental take "after-the-fact." For more information regarding formal consultation and HCPs, please see the Service's Consultation Handbook and Habitat Conservation Plans at www.fws.gov/endangered/esa-library/index.html#consultations.

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to

federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, **the accuracy of this species list should be verified after 90 days.** This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. **Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.**

Attachment(s):

- Official Species List
-

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2020-SLI-0559

Event Code: 04ER1000-2020-E-01304

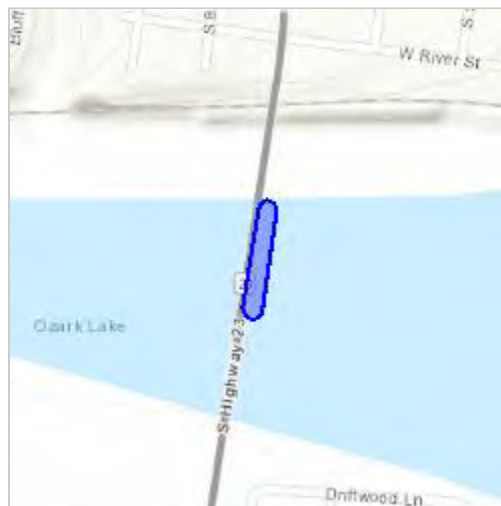
Project Name: 012357_Site 2 Franklin Co

Project Type: BRIDGE CONSTRUCTION / MAINTENANCE

Project Description: Pier protection repair in the Arkansas River at the Highway 23 Bridge.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.48332315516362N93.8324435055256W>



Counties: Franklin, AR

Endangered Species Act Species

There is a total of 12 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6329	Endangered
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened
Ozark Big-eared Bat <i>Corynorhinus (=Plecotus) townsendii ingens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7245	Endangered

Birds

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477	Proposed Threatened
Least Tern <i>Sterna antillarum</i> Population: interior pop. No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/8505	Endangered
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Insects

NAME	STATUS
American Burying Beetle <i>Nicrophorus americanus</i> Population: Wherever found, except where listed as an experimental population No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/66	Endangered
Rattlesnake-master Borer Moth <i>Papaipema eryngii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7863	Candidate

Flowering Plants

NAME	STATUS
Geocarpon minimum No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7699	Threatened
Missouri Bladderpod <i>Physaria filiformis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5361	Threatened

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480
<http://www.fws.gov/arkansas-es>

In Reply Refer To:

February 19, 2020

Consultation Code: 04ER1000-2020-SLI-0560

Event Code: 04ER1000-2020-E-01306

Project Name: 012357_Site 3 Conway co

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies endangered, threatened, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). **This letter only provides an official species list and technical assistance; if you determine that listed species and/or designated critical habitat may be affected in any way by the proposed project, even if the effect is wholly beneficial, consultation with the Service will be necessary.**

If you determine that this project will have no effect on listed species and their habitat in any way, then you have completed Section 7 consultation with the Service and may use this letter in your project file or application.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found on our website.

Please visit our website at <http://www.fws.gov/arkansas-es/IPaC/home.html> for species-specific guidance to avoid and minimize adverse effects to federally endangered,

threatened, proposed, and candidate species. Our web site also contains additional information on species life history and habitat requirements that may be useful in project planning.

If your project involves in-stream construction activities, oil and natural gas infrastructure, road construction, transmission lines, or communication towers, please review our project specific guidance at <http://www.fws.gov/arkansas-es/IPaC/ProjSpec.html>.

The karst region of Arkansas is a unique region that covers the **northern third of Arkansas** and we have specific guidance to conserve sensitive cave-obligate and bat species. **Please visit <http://www.fws.gov/arkansas-es/IPaC/Karst.html> to determine if your project occurs in the karst region and to view karst specific-guidance.** Proper implementation and maintenance of best management practices specified in these guidance documents is necessary to avoid adverse effects to federally protected species and often avoids the more lengthy formal consultation process.

If your species list includes any mussels, Northern Long-eared Bat, Indiana Bat, Yellowcheek Darter, Red-cockaded Woodpecker, or American Burying Beetle, your project may require a presence/absence and/or habitat survey prior to commencing project activities. Please check the appropriate species-specific guidance on our website to determine if your project requires a survey. We strongly recommend that you contact the appropriate staff species lead biologist (see office directory or species page) prior to conducting presence/absence surveys to ensure the appropriate level of effort and methodology.

Under the ESA, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with the Service further. Similarly, it is the responsibility of the Federal action agency or project proponent, not the Service, to make "no effect" determinations. If you determine that your proposed action will have "no effect" on threatened or endangered species or their respective critical habitat, you do not need to seek concurrence with the Service. Nevertheless, it is a violation of Federal law to harm or harass any federally-listed threatened or endangered fish or wildlife species without the appropriate permit.

Through the consultation process, we will analyze information contained in a biological assessment that you provide. If your proposed action is associated with Federal funding or permitting, consultation will occur with the Federal agency under section 7(a)(2) of the ESA. Otherwise, an incidental take permit pursuant to section 10(a)(1)(B) of the ESA (also known as a habitat conservation plan) is necessary to harm or harass federally listed threatened or endangered fish or wildlife species. In either case, there is no mechanism for authorizing incidental take "after-the-fact." For more information regarding formal consultation and HCPs, please see the Service's Consultation Handbook and Habitat Conservation Plans at www.fws.gov/endangered/esa-library/index.html#consultations.

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to

federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, **the accuracy of this species list should be verified after 90 days**. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. **Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.**

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2020-SLI-0560

Event Code: 04ER1000-2020-E-01306

Project Name: 012357_Site 3 Conway co

Project Type: BRIDGE CONSTRUCTION / MAINTENANCE

Project Description: Pier protection repair in Arkansas River near Highway 9 bridge

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.126554881801N92.7323471153457W>



Counties: Conway, AR

Endangered Species Act Species

There is a total of 6 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
Indiana Bat <i>Myotis sodalis</i>	Endangered
There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	

Birds

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477	Proposed Threatened
Least Tern <i>Sterna antillarum</i> Population: interior pop. No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/8505	Endangered
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Insects

NAME	STATUS
Rattlesnake-master Borer Moth <i>Papaipema eryngii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7863	Candidate

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
Eighth Coast Guard District

1222 Spruce Street, Room 2.102D
St. Louis, MO 63103-2832
Staff Symbol: dwb
Phone: (314) 269-2382
Email: david.a.orzechowski@uscg.mil

16593.1/118.5 ARW
February 20, 2020

Mr. Rick Ellis
Arkansas Department of Transportation
P.O. Box 2261
Little Rock, AR 72203-2261

Subj: I-30 BRIDGE, MILE 118.5, ARKANSAS WATERWAY

Dear Mr. Ellis:

This is in reply to your email dated February 20, 2020 requesting approval of proposed work on the subject bridge's protection cells. We understand the work will consist of removing and replacing the upstream left descending pier protection cell and adding rock to two other cells. Since the work will not permanently reduce the vertical or horizontal clearances for river traffic, a Coast Guard Bridge Permit will not be required for this project.

The work plan is hereby approved from a navigation standpoint and the Coast Guard requires the following precautionary measures be taken during the performance of the work:

Condition 1: All proposed changes or deviations from these conditions shall be submitted to the Coast Guard Bridge Branch, St. Louis, Missouri for consideration. Drawings related to proposed changes are to be presented legibly in an 8 ½" x 11" format.

Condition 2: All work shall be performed that the free flow of navigation is not unreasonable interfered with and the navigable depths are not impaired.

Condition 3: The work should not be allowed to interfere with displaying navigation lights on the bridge and protection cells at night.

Condition 4: When removing concrete components from the protection cells, a precautionary measure, i.e., a "catch" barge positioned near the work area, shall be taken to ensure that nothing falls into the river. This office shall be advised prior to such action so that we may alert navigation to its location in the river.

Condition 5: The Arkansas Department of Transportation shall keep the Commander, Eighth Coast Guard District (dwb), informed of the schedule of work and be notified prior to any change to the schedule. In addition, the name of the person who may be contacted on a 24-hour basis to respond to an emergency at the work site shall be provided.

Subj: I-30 BRIDGE, MILE 118.5, ARKANSAS WATERWAY, 16593.1/118.5 ARW
February 20, 2020

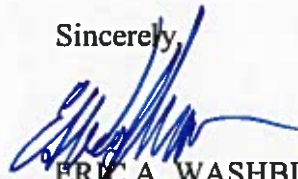
Condition 6: Positive precautions shall be taken to prevent the accidental dropping of spark-producing, flame-producing, lighted or other damaging objects onto barges or vessels passing through the bridge. All flame-cutting, welding, and similar spark-producing operations shall be ceased at the protection cell when vessels are passing through the bridge.

Condition 7: The work must comply with the Federal Water Pollution Control Act, as amended, which prohibits the discharge of oil (including oil based paints) or hazardous substances into the waters of the United States. The law requires any person in charge of a vessel or facility from which oil or a hazardous substance is discharged to immediately report the discharge to the U.S. Coast Guard National Response Center, 800-424-8802 (toll free). The owner/operator of a vessel or facility from which the pollutant is discharge is subject to a civil penalty of up to \$10,000 and is liable for cleanup costs, if any.

This office must be kept informed on the status of this work to enable us to issue cautionary notices to mariners. If there is a marine radio at the job site, please furnish us the call sign and operating frequency so that the information can be included in our notices. Please complete the enclosed Project Information Record and return it so we can contact the person responsible for compliance with this letter.

Please contact Mr. David Orzechowski at the above extension to provide work status updates or for additional information.

Sincerely,



ERIC A. WASHBURN
Bridge Administrator, Western Rivers
By direction of the District Commander

Encl: Project Information Record

Copy: CG SECTOR LMR
USCGC MUSKINGUM
CDRUSAED Little Rock, AR

**ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST
FOR CONSIDERATION OF POTENTIAL IMPACTS**


ARDOT Job Number 012357 FAP Number STPAC-ER-0076(213)

Job Title Arkansas River Pier Protection Repairs (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No MSAT impacts anticipated
Cultural Resources	X			SHPO clearance attached
Economic	X			Will not be impacted by project
Endangered Species		X		"No effect" & "NLAA" determinations
Environmental Justice/Title VI	X			No protected populations in project area
Fish and Wildlife		X		Temporary impacts during construction
Floodplains	X			No floodplain SP will be required
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			No hazardous material impacts
Land Use	X			Will not be impacted by project
Migratory Birds	X			No impacts anticipated
Navigation/Coast Guard		X		Section 10 permit; USCG involved
Noise Levels	X			No increases due to project
Prime Farmland	X			No prime farmland impacted
Protected Waters	X			None in project area
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA	X			None in project area
Relocates	X			No relocations
Section 4(f)/6(f)	X			No impacts to 4(f)/6(f) properties
Social	X			No impacts to the social environment
Underground Storage Tanks	X			No USTs in project area
Visual	X			No changes to visual environment
Streams		X		Nationwide 3 Section 404 Permit
Water Quality		X		Temporary decline during construction
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? No
 Short-term Activity Authorization Required? Yes
 Section 404 Permit Required? Yes Type NW 3

Remarks: _____

Signature of Evaluator  Date 3/16/2020



DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 867
LITTLE ROCK, ARKANSAS 72203-0867
www.swl.usace.army.mil

April 29, 2020

Regulatory Division

NATIONWIDE PERMIT NO. **2019-00346**

Mr. John Fleming
Division Head, Environmental Division
Arkansas Department of Transportation
PO Box 2261
Little Rock, Arkansas 72203-2261

Dear Mr. Fleming:

Please refer to your recent request concerning Department of the Army permit requirements pursuant to Section 404 of the Clean Water Act (33 U.S. Code 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403). You requested authorization for work, including the placement of dredged and fill material, in waters of the United States associated with repairing the pier protection cells at three locations on the Arkansas River which were damaged by high flows in 2019. Site 1 is the Interstate 30 bridge in Little Rock, Navigation Mile 118.5. Site 2 is the State Highway 23 bridge at Ozark, Navigation Mile 258.2. Site 3 is the State Highway 9 bridge at Morrilton, Navigation Mile 173.0. ArDOT anticipates that the work at the Ozark and Morrilton bridges will require 1-2 days at each site to complete, and the work at the I-30 bridge will require 5-7 days to complete.

At Site 1, the work will remove and replace the existing pier protection cell on the west side of Pier 21, place a new cell-mounted navigation light on the west side of Pier 21 and refill the existing pier protection cells on the west side of Pier 20 and on the east side of Pier 21 with riprap. The existing pier protection cell on the west side of Pier 21 will be removed and replaced. The new pier protection cell will require approximately 5,137 linear feet of new sheet pile to be driven into the river via a vibratory hammer. Approximately 3,139 cubic yards of riprap will be discharged to refill the new and existing pier protection cells. At Site 2, the work will refill the existing pier protection cells on the east side of Pier 2 and on the east side of Pier 4 with riprap. Approximately 643 cubic yards of riprap will be discharged. At Site 3, the work will refill the existing pier protection cells on the north side of Pier 11 and on the north side of Pier 12 with riprap. Approximately 744 cubic yards of riprap will be discharged.

The impacts to waters of the United States will be less than 0.1 acres at each site. The project "may affect, but is not likely to adversely affect" the Least Tern (*Sterna antillarum*) and Piping Plover (*Charadrius melodus*). There are no impacts to wetlands or cultural resources. The project was approved as a Tier 3 Categorical Exclusion by the Federal Highway Administration on March 30, 2020. The U.S. Coast Guard approved the work plan with seven Conditions on February 20, 2020. Project location maps depicting the specific bridge piers and pier protection cells are enclosed.

The proposed activities are authorized by three Department of the Army Nationwide Permit (NWP's) **No. 3** (copy enclosed), provided that the conditions therein, and the following added **Special Conditions**, are met. You should become familiar with the conditions and maintain a copy of the permit at the worksite for ready reference. If changes are proposed in the design or location of the facilities, you should submit revised plans to this office for approval before construction of the change begins.

Special Conditions:

- 1. ArDOT understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S. Army Corps of Engineers (Corps), to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.**
- 2. Any work vessel (push boat, barge, etc.) must be manned and under power at all times (24 hours per day), or moored in an area with approved anchorage.**
- 3. ArDOT agrees to coordinate all pier protection cell repair operations with the United States Coast Guard (USCG) and the Corps. Appropriate notification will be provided no less than 30 days prior to commencement of work. The notification will include contact information (phone number and email) for the ArDOT Resident Engineer and work barge point of contact (phone number and radio channel), drawings for the work barge orientation and anchorage locations in relation to the navigation channel, and the schedule of operation including days, hours, and duration of work. In addition, any changes in workflow will be closely coordinated with the USCG and the Corps prior to commencement of work activities.**
- 4. ArDOT agrees to keep the USCG and Corps continually informed in writing of the progress of the work which affects navigation so that temporary navigation lights can be prescribed for any obstructions.**
- 5. ArDOT agrees to notify the USCG and Corps when construction is temporarily shut down or completed so that navigation notices can be lifted and/or amended.**

Note: The USCG and Corps points of contact are as follows: David Orzechowski (314-269-2382) David.A.Orzechowski@uscg.mil, Rod Gaines (501-324-5563) Roderick.S.Gaines@usace.army.mil, USCG Sector Lower Mississippi River, Waterways Management Office (901-521-4725), and USCG Sector Lower Mississippi River, Command Center (901-521-4804).

For your information, we have enclosed a copy of the Arkansas Department of Environmental Quality (ADEQ) Section 401 Water Quality Certification conditions, which are

conditions of your permit. If you have any questions concerning compliance with the conditions of the 401 certification, you should contact Ms. Melanie Treat or Mr. Jim Wise at the ADEQ, Water Division, 5301 Northshore Drive, North Little Rock, Arkansas 72118, telephone (501) 682-0040.

Also, in order to fully comply with the conditions of the NWP, you must submit the enclosed compliance certification within 30 days of completion of the project. This is required pursuant to General Condition No. 30 of the permit.

The NWP determination will be valid until March 18, 2022. If NWP **No. 3** is modified, suspended, or revoked during this period, your project may not be authorized unless you have begun or are under contract to begin the project. If work has started or the work is under contract, you would then have twelve (12) months to complete the work.

For your convenience, we have also enclosed the Section 408 approval letter and the Section 408 terms and conditions. If you have any questions regarding Section 408, please contact Ms. Julia Smethurst at (501) 324-5602, or Julia.A.Smethurst@usace.army.mil.

Your cooperation in the Regulatory Program is appreciated. If you have any questions about this permit or any of its provisions, please contact Mr. Johnny McLean at (501) 324-5295 and refer to **Permit No. SWL 2019-00346, ArDOT – Pier Protection Cell Repairs at Interstate 30, State Highway 9 and State Highway 23 on the Arkansas River.**

Sincerely,

Sarah Chitwood
Chief, Regulatory Division

Enclosures

cc:

U.S. Coast Guard, David Orzechowski, LT Adam J. Paz, David Delich, w/cy dwgs
Roderick Gaines, Navigation Maintenance, w/cy dwgs
Julia Smethurst, Section 408 Coordinator, w/cy dwgs
Craig Evans, Engineering and Construction, w/cy dwgs
Kayti Ewing, ArDOT Environmental Division, w/cy dwgs
Arkansas Department of Environmental Quality, Melanie Treat, w/cy dwgs
U.S. Fish and Wildlife Service, Lindsey Lewis, w/cy dwgs
Ch, Regulatory Enf, w/cy dwgs

PERMITTEE COMPLIANCE CERTIFICATION

PERMIT NO.: SWL 2019-00346, ArDOT – Pier Protection Cell Repairs at Interstate 30, State Highway 9 and State Highway 23 on the Arkansas River

NWP/S NO.: 3

PERMITTEE NAME: ArDOT

DATE OF ISSUANCE: 29 April 2020

PROJECT MANAGER: Johnny McLean

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

**US Army Corps of Engineers, Little Rock
ATTENTION: CESWL-RD
PO Box 867
Little Rock, Arkansas 72203-0867**

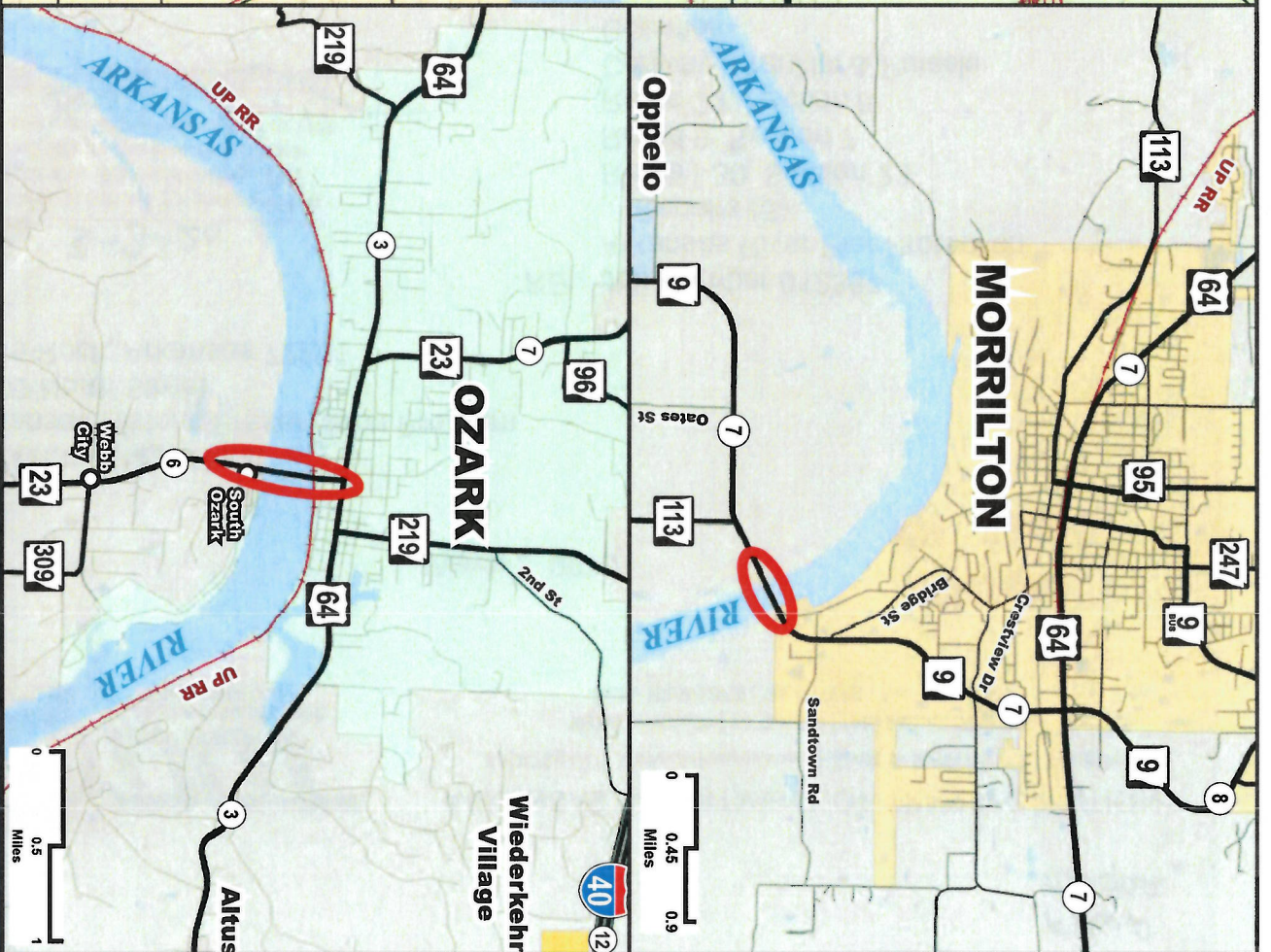
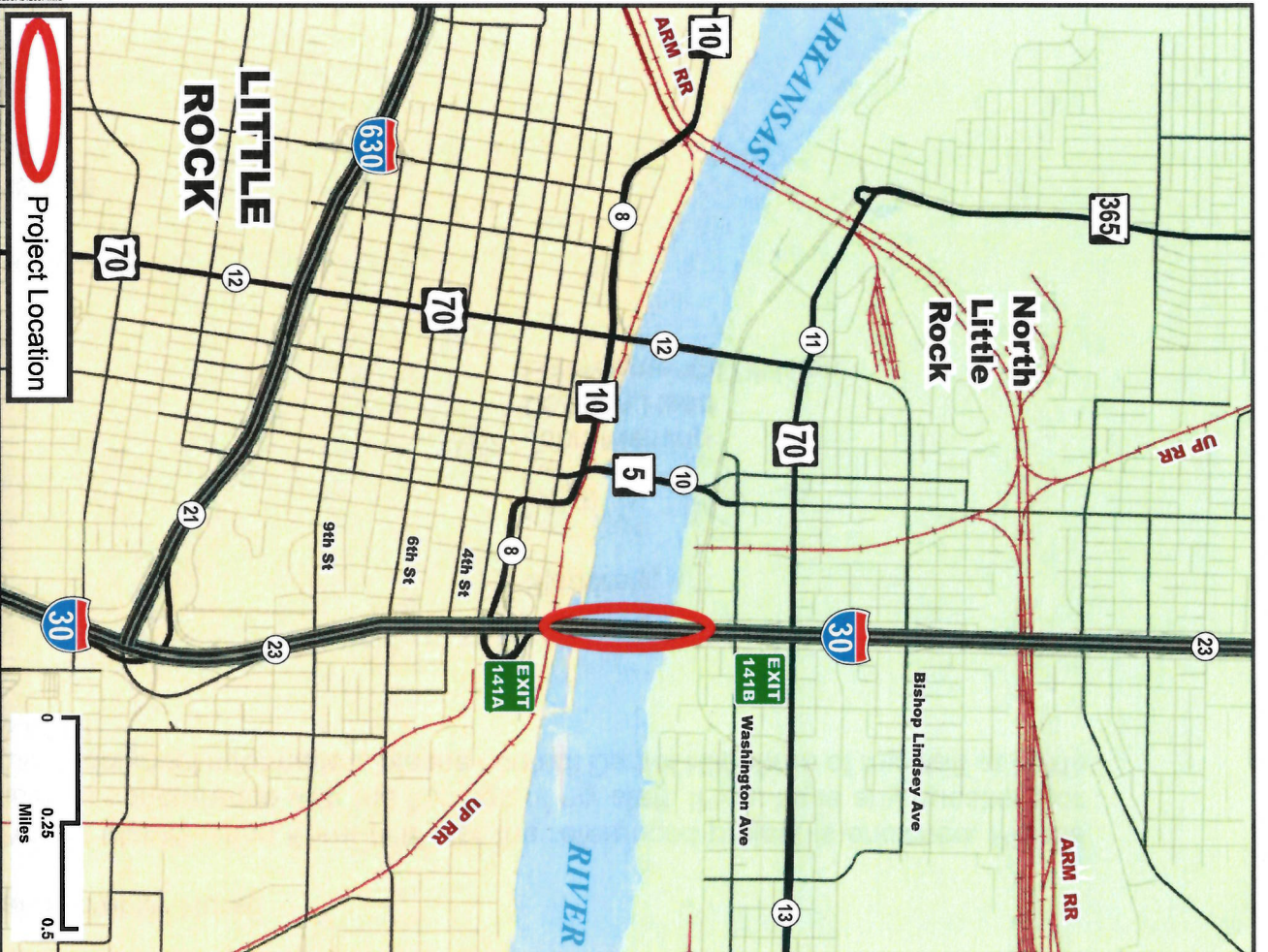
Please note that your permitted activity is subject to a compliance inspection by a US Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

DATE WORK COMPLETED: _____

SIGNATURE OF PERMITTEE

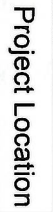
DATE



Job 012357

Arkansas River Pier Protection Repairs (S)

I-30, Sec. 23
Hwy. 9, Sec. 7
Hwy. 23, Sec. 6
Conway, Franklin & Pulaski Counties



NWP No. SWL 2019-00346

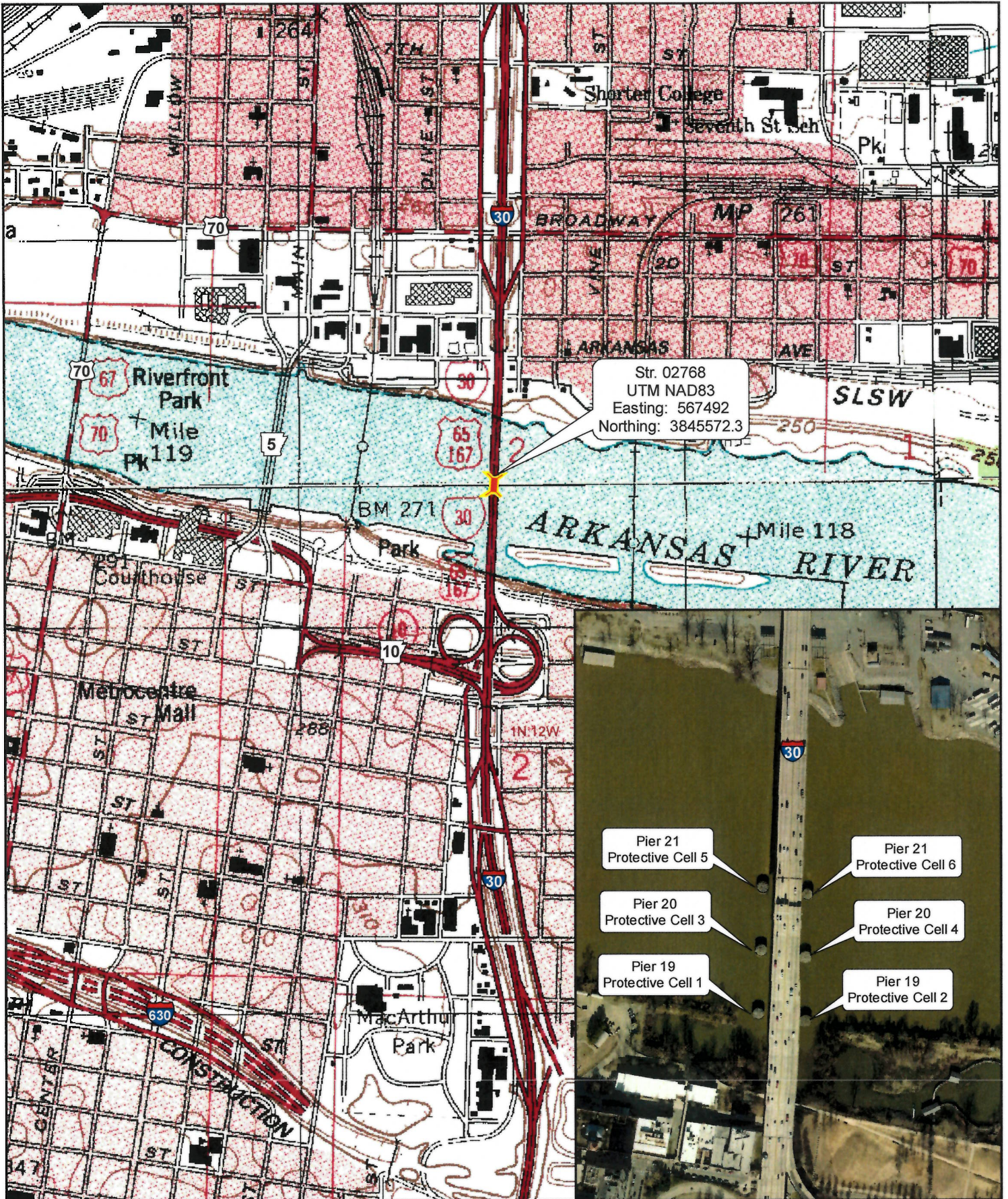
Arkansas Dept. of Transportation

Little Rock, Morrilton, Ozark

I-30, State Hwy. 9, State Hwy. 23

Pier Protection Repairs – April 2020





Str. 02768
 UTM NAD83
 Easting: 567492
 Northing: 3845572.3

Pier 21
 Protective Cell 5

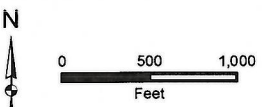
Pier 21
 Protective Cell 6

Pier 20
 Protective Cell 3

Pier 20
 Protective Cell 4

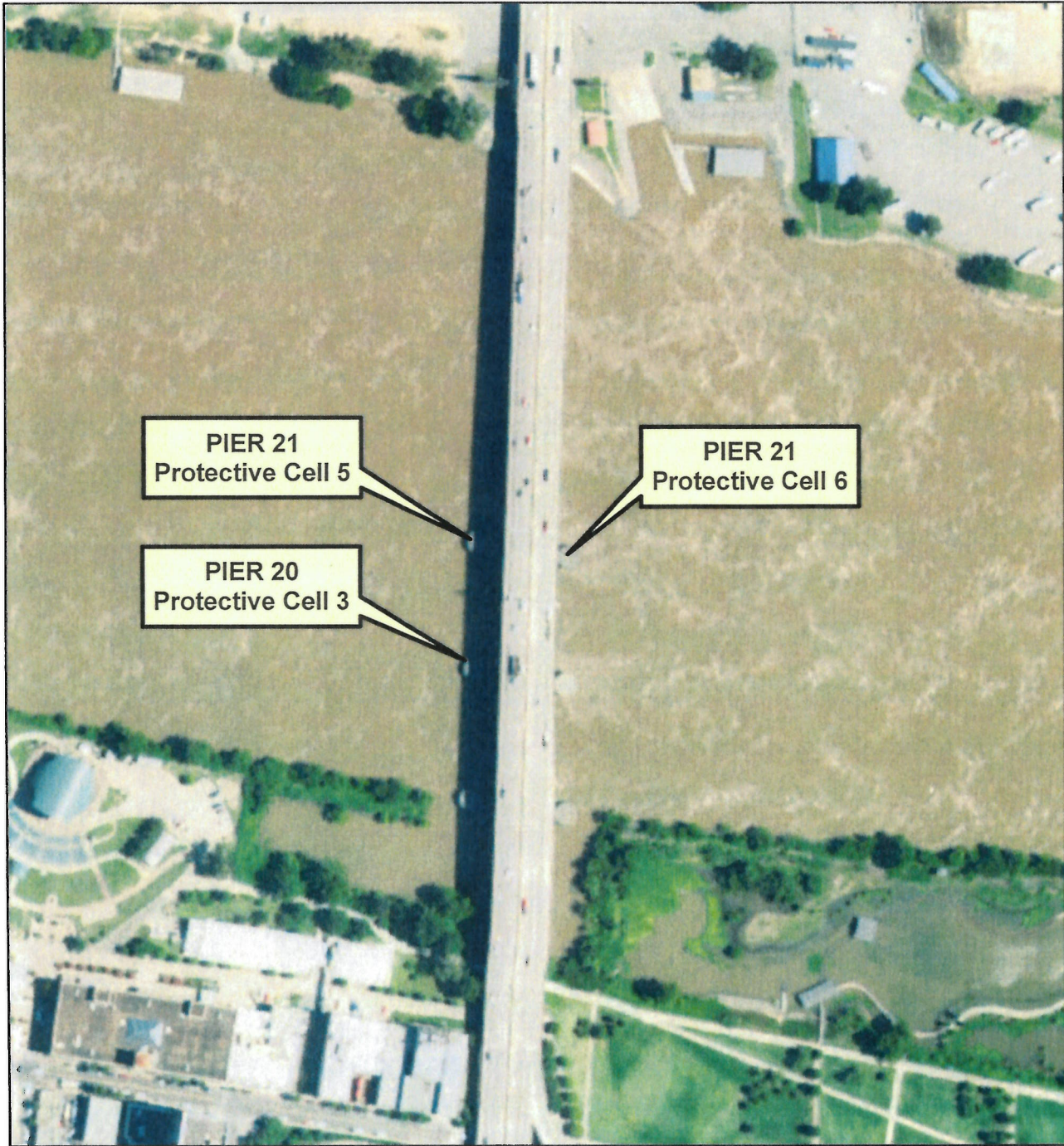
Pier 19
 Protective Cell 1

Pier 19
 Protective Cell 2



District 6 Pier Protection
 Cell Rehabilitation
 Pulaski County

Sheet 2 of 7
 Project Location



PIER 21
Protective Cell 5

PIER 20
Protective Cell 3

PIER 21
Protective Cell 6



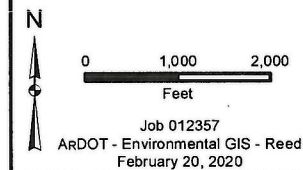
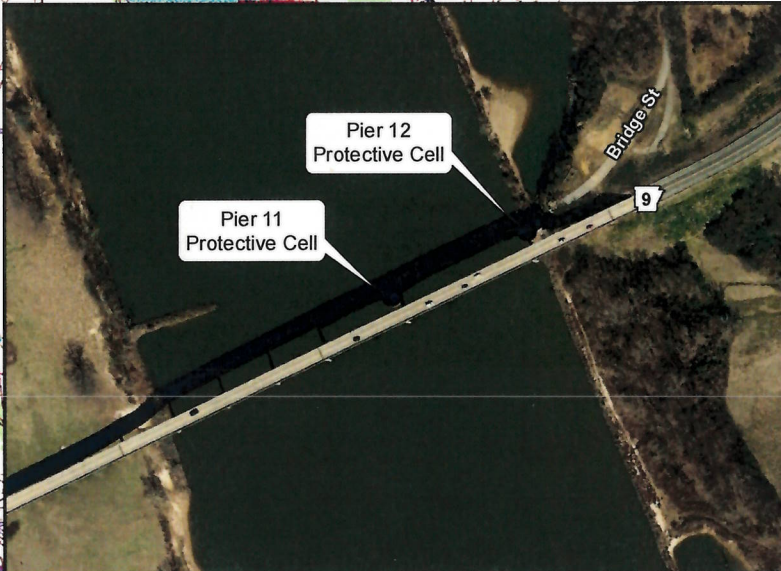
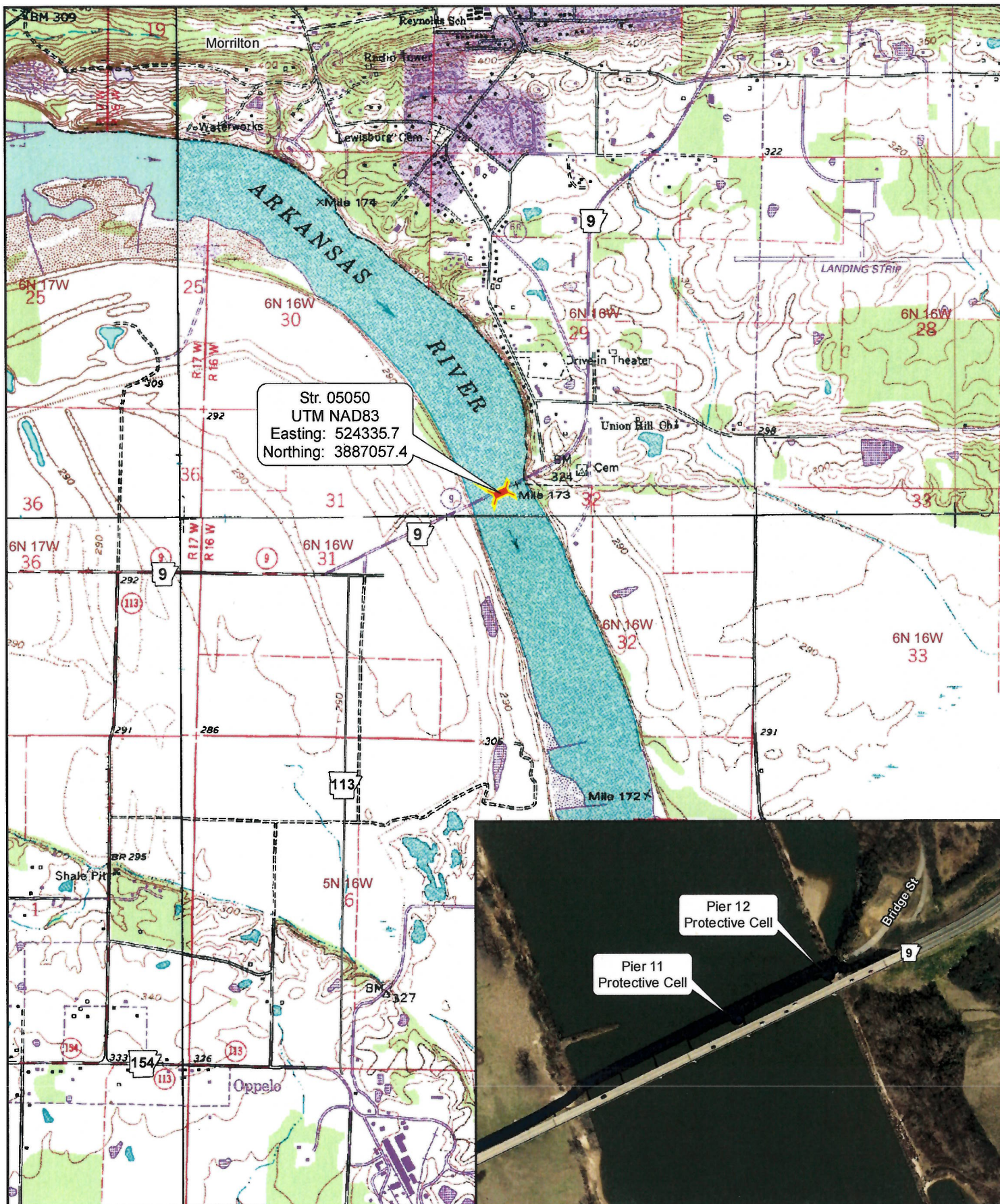
DAVID D. TERRY L&D
I-30 BRIDGE
PIER PROTECTION
CELL REHAB

DATE: MARCH 2020

COUNTY: PULASKI
STATE: ARKANSAS

1 inch = 258 feet

EXHIBIT "A"



District 8 Pier Protection
 Cell Rehabilitation
 Conway County

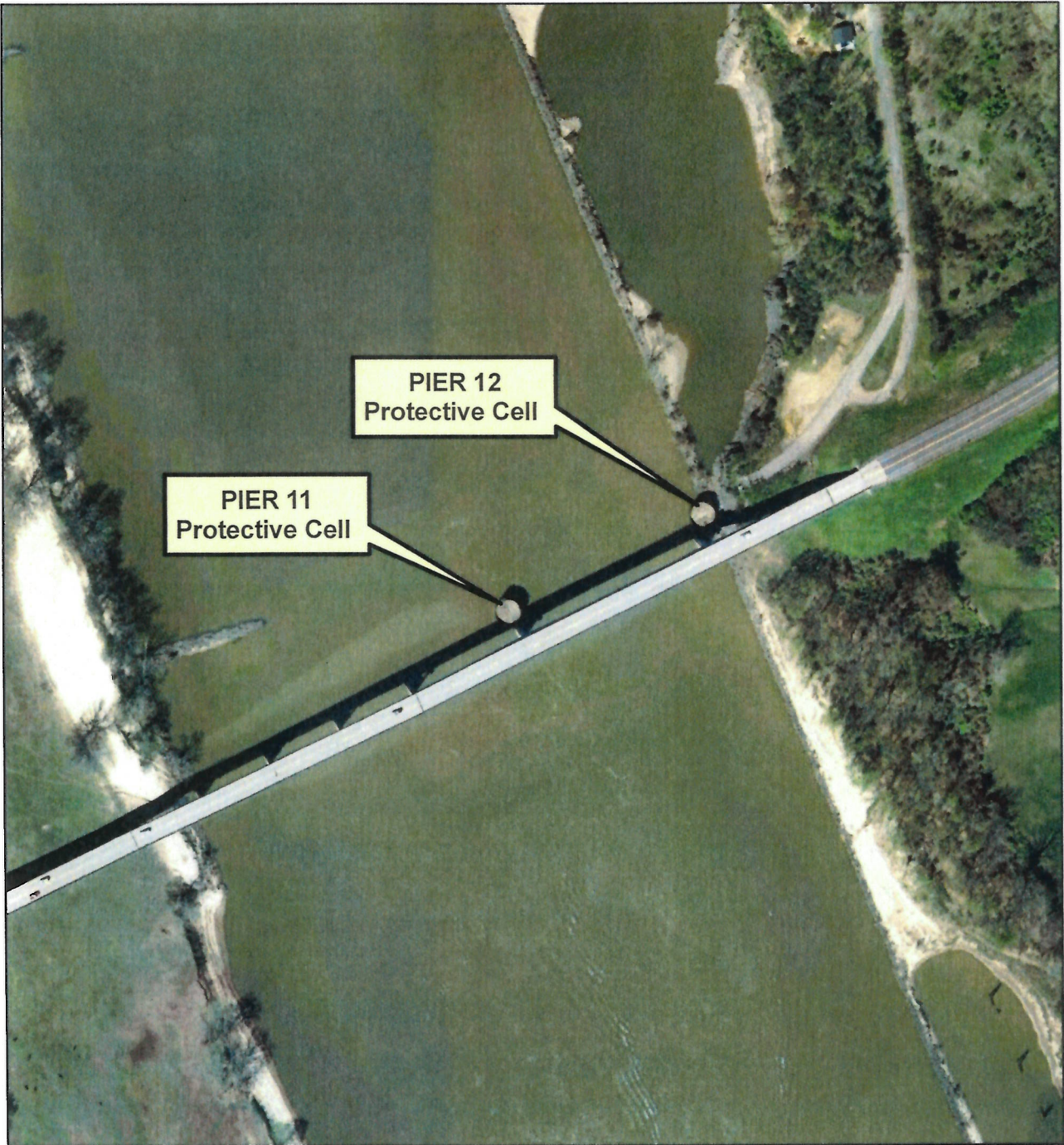
Sheet 4 of 7

Project Location

USGS Topographic Maps:
 Houston 1995, Morrilton East 1995,
 Morrilton West 1995, and Perryville 1995

R. 16 W.

**T.
6
N.**



**TOAD SUCK FERRY L&D
HIGHWAY 9 BRIDGE
PIER PROTECTION
CELL REHAB**

**DATE: MARCH 2020
FN: DACW**

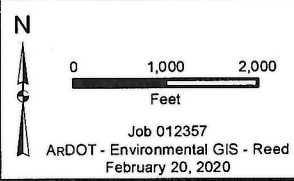
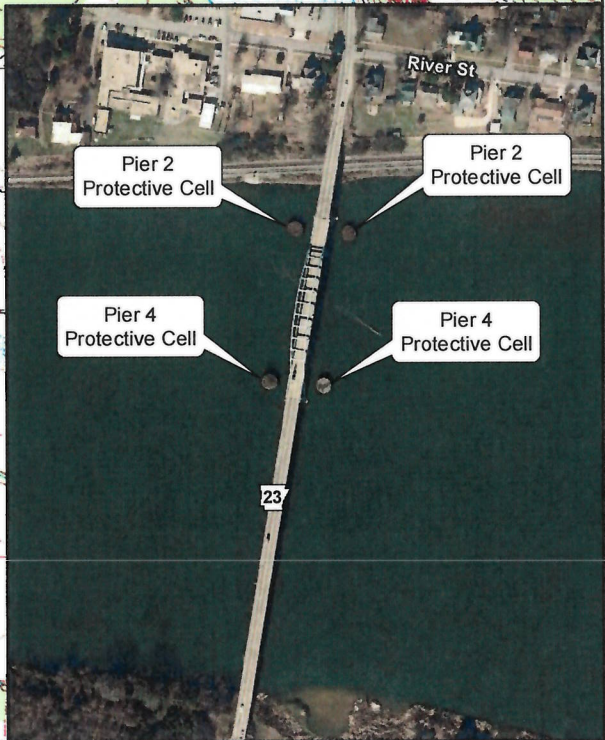
**COUNTY: CONWAY
STATE: ARKANSAS**

1 inch = 242 feet


EXHIBIT "C"



Str. A1210
 UTM NAD83
 Easting: 424488.6
 Northing: 3927067.8



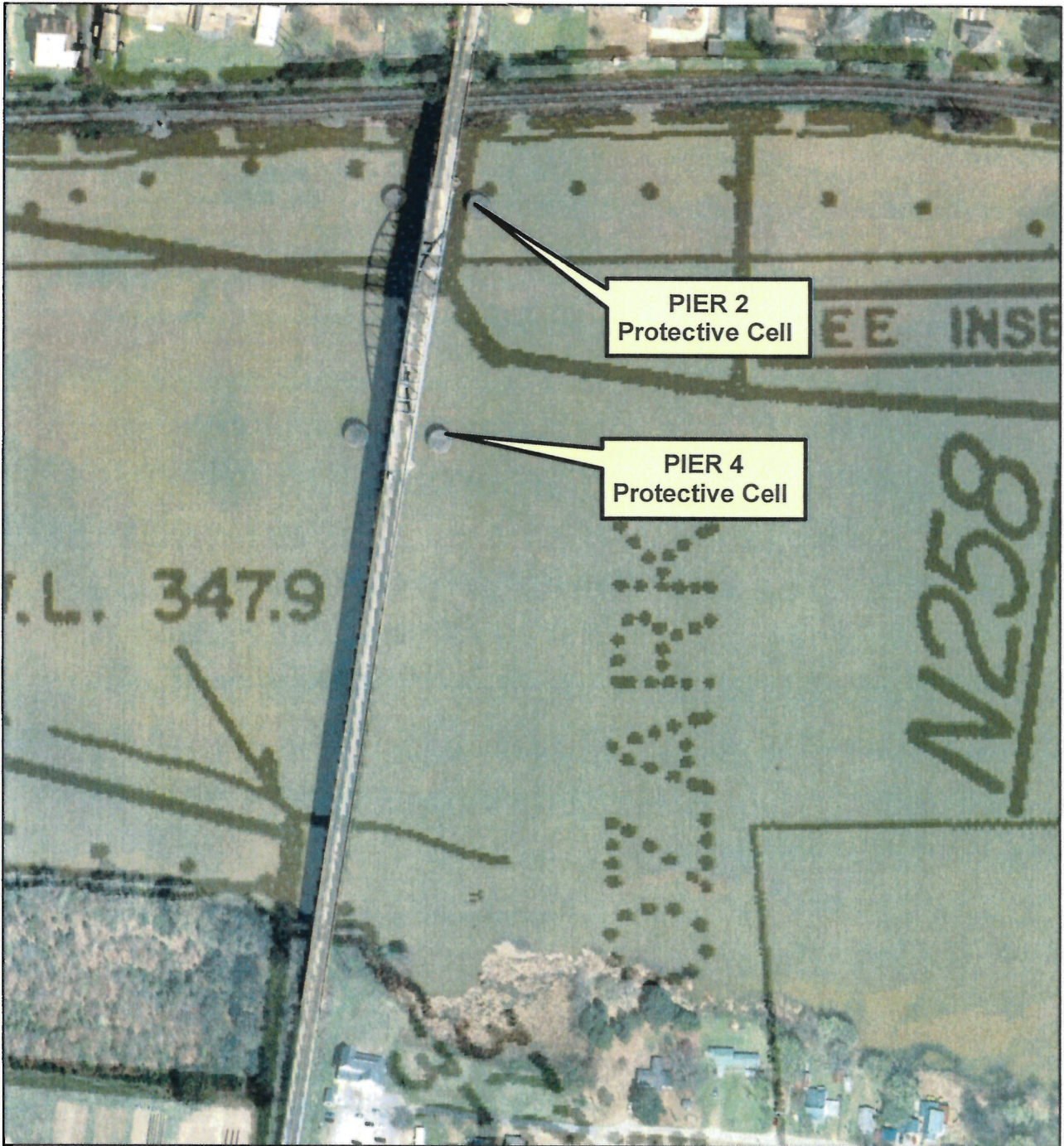
District 4 Pier Protection
 Cell Rehabilitation
 Franklin County

Sheet 6 of 7
 Project Location

USGS Topographic Maps:
 Ozark 1993 and Watalula 1973

R. 27 W.

T.
10
N.



OZARK-JETTA TAYLOR L&D
HIGHWAY 23 BRIDGE
PIER PROTECTION
CELL REHAB
TRACT NO. 317

DATE: MARCH 2020
FN: DACW

COUNTY: FRANKLIN
STATE: ARKANSAS

1 inch = 250 feet

EXHIBIT "B"

Nationwide Permit No. 3

Maintenance. (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or

dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act section 404(f) exemption for maintenance.

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization.

Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. **Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or

restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has

determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or

designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the

associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance

regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (54

U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the

circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts.

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects.

Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory

mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities

resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited,

except when the acreage loss of waters of the United States authorized by the NWP does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that

the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on

historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWP 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on

the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable

information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should

be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision

In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

1. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the

aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31)



MAR 16 2017

Colonel Robert G. Dixon
District Commander
U.S. Army Corps of Engineers
P.O. Box 867
Little Rock, Arkansas 72203-0867

RE: Public Notice: Re-issuance of Nationwide Permits

Dear Colonel Dixon:

The Arkansas Department of Environmental Quality (ADEQ) has completed its review of the above referenced public notice for re-issuance of the U.S. Army Corps of Engineers Nationwide Permits (NWPs) for the State of Arkansas.

ADEQ has determined that there is a reasonable assurance that the activities covered under most these NWPs will be conducted in a manner which, according to the Arkansas Pollution Control and Ecology Commission's Regulation No.2, will not physically alter a significant segment of the waterbody and will not violate the water quality criteria.

Therefore, pursuant to §401(a)(1) of the Clean Water Act, the ADEQ hereby issues water quality certification for all NWPs with the exception of NWPs 14, 29, and 43, contingent upon the following conditions:

- 1) An individual water quality certification request must be submitted to ADEQ for Activities which may impact Extraordinary Resource Waters, Ecologically Sensitive Waterbodies, and Natural Scenic Waterways and their tributaries (within 1 mile) as defined in Regulation No. 2, Water Quality Standards.
- 2) The applicant shall contact ADEQ to determine if a Short Term Activity Authorization (STAA) is needed when performing work in the wetted area of any waterbody. More information can be obtained by contacting the Water Division Planning Section of ADEQ at 501-682-0946.
- 3) The applicant shall implement all practicable best management practices (BMPs) to avoid excessive impacts of sedimentation and turbidity to the surface waters.
- 4) The applicant will take all reasonable measures to prevent the spillage or leakage of any chemicals, oil, grease, gasoline, diesel, or other fuels. In the unlikely event such spillage or leakage occurs, the applicant must contact ADEQ immediately.
- 5) The applicant shall limit construction to low flow periods as much as possible to minimize adverse effects on water quality and aquatic life.

- 6) If a construction site will disturb equal to or greater than one (1) acre and less than five (5) acres, the applicant shall comply with the requirements in Reg.6.203 for Stormwater discharge associated with a small construction site, as defined in APC&EC Regulation No. 6. If the construction site will disturb five (5) acres or more, the applicant shall comply with the terms of the Stormwater Construction General Permit Number ARR 150000 prior to the start of construction. BMPs must be implemented regardless of the size. More information can be obtained by contacting the NPDES Stormwater Section of ADEQ at (501) 682-0621.

For NWP 14, 29, and 43, where a Pre-Construction Notification (PCN) is required, in addition to conditions 1-6 listed above, an individual water quality certification request must be submitted to ADEQ in cases and the activity occurs in:

- a. Waterbodies on the most currently approved 303(d) list for turbidity/siltation, including tributaries of the listed stream (within 1 mile) and waters upstream of the listed segment (within 1 mile).
- b. Waterbodies with an approved Total Maximum Daily Load (TMDL) for turbidity/siltation, including their tributaries (within 1 mile) and waters upstream of the listed segment (within 1 mile).

If you have additional questions regarding this certification, please contact Ms. Lazendra Hairston at (501) 682-0946.

Sincerely,



Caleb Osborne
Associate Director, Office of Water Quality

cc: Elaine Edwards, Chief Regulatory Division USACE
Jim Ellis, Project Manager USACE
Wanda Boyd, U.S. EPA,



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers, Little Rock District
700 West Capitol, Room 7530
Little Rock, AR 72201

April 28, 2020

Mr. John Fleming
Division Head, Environmental Division
Arkansas Department of Transportation
P.O. Box 2261
Little Rock, AR 72203-2261

Dear Mr. Fleming:

Arkansas Department of Transportation is granted permission to do construct the three pier protection cells at Navigation Miles 258.2, 173, and 118.5 of the McClellan-Kerr Arkansas River Navigation System as specified in your request and subject to compliance to the terms and conditions below and attached under Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408). This evaluation was performed in accordance with Engineer Circular (EC) 1165-2-220.

The Arkansas Department of Transportation (ARDOT) shall meet the following conditions:

a. Coordinate all pier protection cell repair operations with the United States Coast Guard (USCG) and the Corps. The USGC and Corps points of contact are as follows: David Orzechowski (314-269-2382) David.A.Orzechowski@uscg.mil, Rod Gaines (501-324-5563) Roderick.S.Gaines@usace.army.mil, USCG Sector Lower Mississippi River, Waterways Management Office (901-521-4725), and USCG Sector Lower Mississippi River, Command Center (901-521-4804).

b. Notification will be provided no less than 30 days prior to commencement of work. The notification will include contact information (phone number and email) for the ARDOT Resident Engineer and work barge point of contact (phone number and radio channel), drawings for the work barge orientation and anchorage locations in relation to the navigation channel, and the schedule of operation including days, hours, and duration of work. Any changes in workflow will be closely coordinated with the USCG and the Corps prior to commencement of work activities.

c. Any work vessel (push boat, barge, etc.) must be manned and under power at all times (24 hours per day), or moored in an area with approved anchorage.

d. Keep the USCG and Corps continually informed in writing of the progress of the work which affects navigation so that temporary navigation lights can be prescribed for any obstructions. Also, notify the USCG and Corps when construction is temporarily shut down or completed so that navigation notices can be lifted and/or amended.

For any questions regarding your Section 408 permission, please contact Ms. Julia Smethurst, at (501) 324-5602.

Sincerely,

Craig Pierce, P.E., PMP
Deputy for Program and Project Management

STANDARD TERMS AND CONDITIONS

LIMITS OF THE AUTHORIZATION

1. This permission only authorizes you, the requester, to undertake the activity described herein under the authority provided in Section 14 of the Rivers and Harbors Act of 1899, as amended (33 USC 408). This permission does not obviate the need to obtain other federal, state, or local authorizations required by law. This permission does not grant any property rights or exclusive privileges, and you must have appropriate real estate instruments in place prior to construction and/or installation.
2. The time limit for completing the work authorized ends on March 19, 2022. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
3. Without prior written approval of the USACE, you must neither transfer nor assign this permission nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this permission. Failure to comply with this condition will constitute noncompliance for which the permission may be revoked immediately by USACE.
4. The requester understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration of the work herein authorized, or if, in the opinion of the Secretary of the Army or an authorized representative, said work will cause unreasonable conditions and/or obstruction of USACE project authorized design, the requester will be required upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim can be made against the United States on account of any such removal or alteration.

INDEMNIFICATION AND HOLD HARMLESS

1. The United States will in no case be liable for:
 - a. any damage or injury to the structures or work authorized by this permission that may be caused or result from future operations undertaken by the United States, and no claim or right to compensation will accrue from any damage; or
 - b. damage claims associated with any future modification, suspension, or revocation of this permission.
2. The United States will not be responsible for damages or injuries which may arise from or be incident to the construction, maintenance, and use of the project requested by you, nor for damages to the property or injuries to your officers, agents, servants, or employees, or others who may be on your premises or project work areas or the federal project(s) rights-of-way. By accepting this permission, you hereby agree to fully defend, **indemnify**, and **hold harmless** the United States and USACE from any and all such claims, subject to any limitations in law.
3. Any damage to the water resources development project or other portions of any federal project(s) resulting from your activities must be repaired at your expense.

REEVALUATION OF PERMISSION

1. The determination that the activity authorized by this permission would not impair the usefulness of the federal project and would not be injurious to the public interest was made in reliance on the information you provided.
2. This office, at its sole discretion, may reevaluate its decision to issue this permission at any time circumstances warrant, which may result in a determination that it is appropriate or necessary to modify or revoke this permission. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. you fail to comply with the terms and conditions of this permission;
 - b. the information provided in support of your application for permission proves to have been inaccurate or incomplete; or
 - c. significant new information surfaces which this office did not consider in reaching the original decision that the activity would not impair the usefulness of the water resources development project and would not be injurious to the public interest.

CONDUCT OF WORK UNDER THIS PERMISSION

1. You are responsible for implementing any requirements for mitigation, reasonable and prudent alternatives, or other conditions or requirements imposed as a result of environmental compliance.
2. Work/usage allowed under this permission must proceed in a manner that avoids interference with the inspection, operation, and maintenance of the federal project.
3. In the event of any deficiency in the design or construction of the requested activity, you are solely responsible for taking remedial action to correct the deficiency.
4. The right is reserved to the USACE to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to operate and/or to make any other use of the lands as may be necessary in connection with government purposes, and you will have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.
5. You must provide copies of pertinent design, construction, and/or usage submittals/documents. USACE may request that survey and photographic documentation of the alteration work and the impacted project area be provided before, and after, construction and/or installation.
6. Any damage to the water resources development project or other portions of any federal project(s) resulting from your activities must be repaired at your expense.
7. USACE shall not be responsible for the technical sufficiency of the alteration design nor for the construction and/or installation work.