



Transportation Act (“FTA”). This action is also brought to compel the relevant federal and state agencies to fulfill their statutory obligations.

## I. INTRODUCTION

1. This lawsuit concerns a new interstate highway connector turnpike—on which construction recently commenced—by OTA, known as the “East-West Connector” or the “EWC.” This turnpike is intended to act as a controlled access, four-lane toll road expressway beginning at Interstate 44 and State Highway 37 at the Tri-Cities (Newcastle, Blanchard, Tuttle) area, crossing the South Canadian River east to Interstate 35 along Indian Hills Road in the Moore/Norman area, then continuing easterly, and then northeasterly, to Interstate 40, and a connection to the Kickapoo Turnpike. The EWC includes junctions at Interstate 44, Western Avenue/60th Avenue NW, Interstate 35, South Broadway, South Sooner Road/SH-77H, South Douglas/48th Street, the proposed South Extension Turnpike, South Choctaw Road, South Peebly Road, and Interstate 40. The EWC requires numerous installments and construction areas, including the building of temporary and permanent access roads, that will materially, and in some instances, permanently impact Waters of the United States (“WOTUS”)<sup>1</sup> in the subject project area; notably the Canadian River, Lake Thunderbird, and Lost Creek.

2. In sum, the EWC Project proposes the construction of approximately 30.5 miles of turnpike with two new bridges spanning the Canadian River, and other

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<sup>1</sup> The current regulatory definition of WOTUS is in flux, with a new definition of WOTUS proposed on November 20, 2025. The new regulatory definition was promulgated to address whether a water is WOTUS. *See Sackett v. U.S. E.P.A.*, 566 U.S. 120 (2023).

construction activities that will include the discharge and fill of materials into federally protected jurisdictions and waterways. Despite the undertaking of the Project, OTA, in connection with the United States Army Corps of Engineers, Tulsa Division (“USACE”), Federal Highway Administration (“FHWA”), the United States Department of the Interior, Bureau of Reclamation (the “Bureau”), and the United States Fish and Wildlife Service (“FWS”) (collectively, “Defendants”), have all failed to uphold their statutory duties to ensure the protection of Oklahoma’s wildlife, waterways, natural environment, and Plaintiff’s procedural rights.

3. According to OTA’s Chief of Public Relations, Lisa Shearer Salim, in a statement made on December 11, 2025, the Project includes the “longest bridge in Oklahoma” with the first phase of construction on the \$97 million bridge set to begin in 2026. True to their word, at least in this one respect, construction has begun on the Project, and already the negative impacts—which OTA has continually disregarded or downplayed and the federal agencies have ignored—have demonstrated themselves as a result of OTA’s actions.

4. The Canadian River is home to several species of endangered or threatened species recognized by FWS, namely the: Monarch Butterfly, Arkansas River Shiner, Peppered Chub, Piping Plover, Red Knot, and the Whooping Crane. Intertwined with the Project is a pernicious and pervasive disregard by the Defendants have for the regulations and framework intended to protect the natural environment of the United States.

5. Not only is the continued risk of greater harm imminent, but harm has also already occurred. The Project has already materially altered protected waterways in the

form of fill and discharge and the rerouting of waterways due to the construction of access roads, the building of piers, and placement of equipment and fill material in Wetlands, and inside the Ordinary High Water Mark (“OHWM”) of the Canadian River. Threatening and/or harming the habitats of protected and endangered species is imminent, if it has not occurred already. With much more work to be done, if the Project is allowed to continue, these harms will increase substantially as noise pollution, permanent fixtures, and other associated impacts become permanent and irreversible.

6. As a result, relief from this Court in the form of: 1) a declaratory judgment the Project violates the CWA, the APA, NEPA, the ESA, the FTA, and other declaratory relief; 2) preliminary and permanent injunctions stopping the construction of the Project; and 3) damages in the amount of civil penalties, as well as attorneys’ fees, is appropriate.

## II. PARTIES

7. Plaintiff Pike Off is an Oklahoma not-for-profit corporation with its principal place of business in Noble, Oklahoma. A part of Pike Off’s mission is to ensure compliance with federal environmental laws and regulations in connection with OTA’s construction of the East-West Connector Turnpike Project in McClain and Cleveland County, Oklahoma. Pike Off brings this action on behalf of itself and its members, including Amy Cerato, and Tanner Naehner, whose procedural, recreational, aesthetic, and environmental interests are adversely affected by the Project, and the failure of Defendants to comply with applicable federal environmental laws.

8. Defendant OTA is a corporate body and an instrumentality of the State of Oklahoma, responsible for the planning, construction, maintenance, and operation of

turnpike projects in Oklahoma, including the East-West Connector Turnpike Project at issue in this action. OTA may be served through its registered agent or Joe Echelle, Executive Director 3500 Martin Luther King Blvd. Oklahoma City, Oklahoma 7311-4221.

9. Defendant USACE is a federal agency within the Department of the Army responsible for administering the permit program under Section 404 of the Clean Water Act, 33 U.S.C. § 1344. USACE has jurisdiction over the WOTUS at issue in this action, including but not limited to the Canadian River, Lake Thunderbird, and Lost Creek and their associated wetlands.<sup>2</sup> USACE has failed to administer properly its Section 404 Program under the CWA and the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, *et seq.* (“RHA”). USACE may be served by serving the United States Attorney for the Western District of Oklahoma, Robert J. Troester, 210 Park Avenue, Suite 400, Oklahoma City, OK, 73102, and the Commander and District Engineer of the Tulsa Division of the USACE, Colonel Jessica D. Goffena, at 2488 E. 81<sup>st</sup> Tulsa, Oklahoma 74137-4290 or the Commanding General and Chief Engineer of the USACE, Lieutenant General William H. Graham, Jr. at 56<sup>th</sup> Chief Engineers and Commanding General, U.S. Army Corps of Engineers, 441 G Street, N.W. Washington, DC 20314.

10. Defendant FHWA is a federal agency within the United States Department of Transportation responsible for overseeing and approving environmental studies and

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<sup>2</sup> Lake Thunderbird is both a WOTUS, a vital water supply, and a popular recreation area. See, “Lake Thunderbird MDL Project,” Oklahoma Department of Environmental Quality, September 5, 2025. Lake Thunderbird is a WOTUS because it was constructed by, or on behalf of, the USACE as a part of the Norman Project, to construct the Norman Dam, impound the Little River into a reservoir, and provide municipal drinking water to the Oklahoma cities of Norman, Del City, and Midwest City. It is relatively permanent and has continuous surface connections to other traditional navigable waters.

compliance with NEPA and the Federal Transportation Act (including Section 4(f)), for highway projects that constitute major federal action or impact specially protected areas. Because FHWA's approval and consent are required to construct the interchange for the EWC a necessary part of the Project, making the Project constitute "major federal action" on that ground, alone. The FHWA may be served by serving Sean McMaster, Administrative, or Jeff Payne, Administrative and Chief Counsel at 1200 New Jersey Avenue, SC Washington DC 20590.

11. Defendant Bureau is a federal agency responsible for managing certain federal lands and water resources, including lands associated with the Norman Project and Lake Thunderbird. The Bureau may be served by serving Scott J. Cameron, Acting Commissioner, or David Palumbo, Deputy Commissioner of Operations at 1849 C Street, NW Washington DC 20240.

12. Defendant FWS is a federal agency within the Department of the Interior responsible for administering the Endangered Species Act, including conducting and participating in Section 7 Consultations regarding the effects of federal actions on listed species and their critical habitat. FWS failed to require meaningful consultation under Section 7 of the ESA. The FWS may be served by serving Brian Nesvik, at 1849 C Street, NW Washington DC 20240.

13. Defendants USACE, FHWA, the Bureau, and FWS (collectively, sometimes "Federal Defendants") have waived sovereign immunity pursuant to 5 U.S.C. § 702.

### III. JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgment Act), 5 U.S.C. §§ 701-706 (Administrative Procedure Act), 33 U.S.C. § 1365 (Clean Water Act citizen suit provision), and 16 U.S.C. § 1540(g) (Endangered Species Act citizen suit provision).

15. Pike Off provided formal notice of its intent to sue, pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365, and 40 C.F.R. Part 135, by letter dated January 23, 2026, (the “Notice Letter”) addressed to OTA, USACE, FHWA, the Bureau, the United States Environmental Protection Agency, and FWS. More than sixty (60) days have elapsed since the date of such notice. A true and correct copy of the Notice Letter is attached hereto as Exhibit 1.

16. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1) because a substantial part of the events and omissions that give rise to Pike Off’s claims have occurred and are occurring in McClain and Cleveland Counties, Oklahoma, which are within this judicial district, and the property and environment that is being affected and harmed by the conduct is located in this judicial district.

17. An actual, justiciable controversy exists between Pike Off and Defendants. Pike Off has standing to bring this action because its members have concrete, particularized injuries to their procedural, recreational, aesthetic, and environmental interests that are fairly traceable to Defendants’ conduct and would be redressed by a favorable decision.

#### IV. FACTUAL BACKGROUND

##### A. The East-West Connector Turnpike Project

18. The Project has been underway, informally, since at least 2022, when OTA first undertook a site survey for the potential EWC. Since that time, OTA has contracted with the engineering firm Garver Tulsa (“Garver”), which acts as agent on behalf of OTA for purposes of application for permits, approval with USACE and other applicable federal agencies, and the identification and hiring of contractors necessary to begin this process.

19. OTA, Garver, and the relevant federal agencies identified in this Complaint have been in contact since at least 2024 to discuss, assess, and consult on the proposals for the EWC, applicable governmental framework, and permits for each. Throughout this process, OTA, through Garver, continually presented unsubstantiated and unsupported assertions as to the minimal impact of the Project.

20. The Project intends to impose itself on the Canadian River, a WOTUS and a navigable waterway, and a delineated area of wetlands of at least 3.86 acres, and Lost Creek, another waterway of at least 0.49 delineated acres in the Project’s area.

21. According to OTA’s Preconstruction Notice (the “EWC PCN”), the Project is described as follows: “The Oklahoma Turnpike Authority (OTA) is proposing to construct a new location highway called the East West Connector (‘Turnpike’) in McClain and Cleveland counties, Oklahoma. Project EWC-28502A proposes to construct two new bridges over the Canadian River and its floodplain (one for eastbound and one for westbound traffic). The new bridges will each carry two 12-foot driving lanes with a 10-foot outside shoulder and 2-foot inside shoulder.”

22. According to OTA, construction of the two work roads is necessary to facilitate testing, equipment, and materials to the Project site, and the work roads are anticipated to be needed for the majority of construction, which has already started.

**B. The Affected Environment and Plaintiff's Interests: Standing; Ripeness**

***1. The Environment***

23. The Canadian River within the Project impact area constitutes habitat for the Arkansas River Shiner and other endangered species.

24. Lake Thunderbird and Lake Thunderbird State Park are part of the Norman Project and provide recreation and wildlife benefits, attract tourism and abundant wildlife, and offer various water-based and land-based recreational activities including boating, swimming, fishing, camping, hunting, hiking, picnicking, horseback riding, mountain biking, and birding.

25. The Little River and Hog Creek run into Lake Thunderbird. The Canadian River and Lost Creek are in the area where OTA is building the bridge for the Project. The longest bridge in Oklahoma will cross the Canadian River. The Project's impacts on these interconnected waterways and the surrounding watershed directly threaten the environmental and recreational qualities of Lake Thunderbird and the surrounding areas.

26. In December of 2022, the Bureau rejected OTA's proposed South Extension Route because of its impacts on federal lands that make up a part of the Norman Project and Lake Thunderbird. Despite this rejection, OTA realigned the Project so it purportedly does not cross fee title lands (this issue is still in question) but does admittedly cross lands burdened by flowage easements associated with Lake Thunderbird State Park. Some, if not

all, of these flowage easement lands are associated with recreation opportunities such as wading, swimming, water sports, hiking, walking, and other uses. (A true and correct copy of the Affidavit of Tanner Naeher is attached hereto as Exhibit 2).

27. Based on OTA's own Delineation of Waters of the United States Report dated December 10, 2024, no less than 3.86 acres of Waters of the United States—including streams, creeks, and wetlands—fall within the study footprint.

## ***2. Plaintiff's Interests: Standing***

28. Amy Cerato is the President and a Board Member of Pike Off.<sup>3</sup> She is a frequent and regular user of Lake Thunderbird and the Canadian River area.<sup>4</sup> She personally participates in mountain biking and other outdoor recreational activities in the Lake Thunderbird area.<sup>5</sup> The Project's impacts on the interconnected waterways and the surrounding watershed directly threaten the environmental and recreational qualities she uses and enjoys.<sup>6</sup> A true and correct copy of the Affidavit of Amy Cerato is attached hereto as Exhibit 3.

29. Tanner Naeher is a member and board member of Pike Off.<sup>7</sup> He has grown up hunting, fishing, and enjoying Lake Thunderbird since high school.<sup>8</sup> He regularly (averaging approximately twice per week) hunts deer, turkey, and wild hogs, fishes, engages in wildlife photography, other recreation, and observes wildlife in and around the

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<sup>3</sup> Exhibit 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Exhibit 2.

<sup>8</sup> *Id.*

South Canadian River and Lost Creek.<sup>9</sup> A true and correct copy of the Affidavit of Tanner Naeher is attached hereto as Exhibit 2. As set forth in Mr. Naeher's Affidavit, he has observed other persons using Lake Thunderbird for recreational and other purposes.

30. As set forth in the affidavits, each of these members of Pike Off, and therefore Pike Off itself, has concrete, particularized interests that are threatened by the Project and the failure of the Federal Defendants and OTA to comply with applicable federal environmental laws and their other regulations. Pike Off's harms are imminent and occurring presently; the harms are also concrete, and not merely speculative. Accordingly, Pike Off has standing to bring this action. If one member of a group of association has standing, the group or association has standing.<sup>10</sup>

### ***3. Ripeness***

This matter is ripe because OTA has commenced construction, is imminently planning to issue revenue bonds, making irretrievable financial commitments to fund further construction. Remaining construction is yet to be performed. Construction is and will impact WOTUS, drinking water supplies, and endangered species. Continuing construction without proper permitting process, permit, or other necessary requirements makes OTA's violations ongoing.

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<sup>9</sup> *Id.*

<sup>10</sup> See *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000); *Utah Physicians for a Healthy Environment v. Diesel Power Gear, LLC*, 21 F.4th 1229, 1241 (10th Cir. 2021); *Save Our Community v. U.S. E.P.A.*, 971 F.2d 1155, 1161 (5th Cir. 1992).

**C. OTA's Improper Permitting and Construction**

31. On December 20, 2024, OTA submitted a Preconstruction Notice (the “Lost Creek PCN”) under Nationwide Permit 14 for the construction of a temporary crossing of Lost Creek. The Lost Creek PCN indicates only 0.033 acres and 40 linear feet of Waters of the United States would be impacted.

32. This estimation departs without explanation from the WOTUS Delineation Report, which identifies Lost Creek as having 601 linear feet and 0.49 acres of WOTUS within the study footprint—a departure of nearly ninety-five percent (95%).

33. On August 12, 2025, Garver submitted the EWC PCN on behalf of OTA under NWP-14 for the construction of two permanent bridges over the Canadian River and associated work roads.

34. On April 4, 2025, USACE approved OTA's work on the Project under NWP-14 pursuant to the “data relative to Section 404 of the Clean Water Act.” USACE required only two “Activity Specific Conditions”: the maintenance of a Department of the Interior certified archaeologist, and the submission of an Aquatic Resource Protection Plan.

35. ACCESS Oklahoma provided a one-and-a-quarter page Aquatic Resources Protection Plan on April 7, 2025, which failed to provide any explanation as to the steps OTA or its contractors were taking to ensure no impact to WOTUS.

36. USACE did not issue a confirmation that the work to be done (constructing a permanent bridge across the Canadian River as part of a larger 30.5 mile turnpike project) was permitted under Section 404 of the CWA.

37. Despite indicating no impacts to the Canadian River would occur, OTA has either authorized or continues to allow contractors working on its behalf to place heavy equipment, piers, bollards, and other construction equipment within the OHWM, floodplains, and Wetlands of the Canadian River.

38. At the pre-bid meeting, OTA, in anticipating its own violations of the CWA, stated: “the disincentive rate for each non-compliance of the Ordinary High Water Mark would be \$2,000 per occurrence, plus \$100 per hour for every hour past the first hour until non-compliance issues are resolved.” This results in a maximum “disincentive” of \$4,300 for the first day and \$2,400 for each consecutive day—in contrast to the civil penalty for non-compliance under the CWA of almost \$70,000 per day.<sup>11</sup> In charging substantially less as a “disincentive rate” than the CWA penalty, OTA is actively inviting its contractors to violate the OHWM.

#### **D. Inadequate CWA Permitting Process and Issuance**

39. On July 23, 2024, Garver represented to FWS: “[T]here will be no impacts to the Canadian River. All construction, permanent and temporary, will occur outside the OHWM. The contractor will be required to install construction barrier fencing as well as BMPs outside of the OHWM as well and all materials and equipment will be stored outside of the OHWM as well. . . . The OTA has consulted with some crane operators who have confirmed the beams can be placed from the banks (outside the OHWM) and no in-water work will be required.” Absolutely no basis was provided for this conclusion in the CWA

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<sup>11</sup> Not much of a “disincentive rate,” whatever that euphemism means.

“permitting” process OTA/Garver undertook. No justification exists to support OTA’s use of cranes with certain specifications and capabilities in order to create a span of “the longest bridge in Oklahoma.” USACE proceeded with approval without either properly establishing the OHWM or requiring sufficient information that OTA would be using special equipment that could create such a span, without impacting WOTUS. Basing a permitting decision on the apocryphal statements of unidentified “crane operators” while failing to determine the OHWM is arbitrary and capricious and not in accordance with law.

**E. Nonexistent Consultation Under Section 7 of the ESA**

40. Section 7(a)(2) of the ESA requires federal agencies to ensure their activities are “not likely to jeopardize the continued existence of any federally listed species or the destruction or adverse modification of habitat of such species . . . determined . . . to be critical. . . .”<sup>12</sup>

41. Because OTA’s construction and operation of the EWC may affect a listed species or critical habitat (the Arkansas Shiner, for example, inhabits the portion of the Canadian River where construction will occur) a Formal Consultation must be performed. See Consultation Guidance, Ex. 8.

42. At the completion of Formal Consultation, USFWS must prepare a Biological Opinion. *Id.*

43. Each agency must use “the best scientific and commercial data available.” *Id.* No action that commits “irreversible or irretrievable commitment of resource” or

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<sup>12</sup> See 16 U.S.C. § 1536(a)(2), “ESA Section 7 Consultation,” U.S. Fish and Wildlife Service, attached hereto as Exhibit 8 “Consultation Guidance.”

forecloses what prudent alternative may be taken with a Biological Opinion has been issued. 16 U.S.C. 1536(d).

44. Here, the entirety of OTA's so-called "Consultation" under Section 7 of the ESA amounted to nothing more than Garver providing FWS with email exchanges only including a list of endangered species within the area, and a statement that OTA would not affect them or their habitat, whereupon the consultation was ostensibly deemed "complete."

45. OTA, USACE, and FWS have not been engaged in a meaningful Consultation under Section 7(1)-(2) of the Endangered Species Act as required.

46. Section 26 of OTA's PCN requires consultation on endangered species issues. OTA provides no information other than the identification of the endangered species located in the Canadian River, and instead flatly concludes that no effects will result.

#### **F. Notice of Intent to Sue**

47. As set forth above, on January 23, 2026, Pike Off, through counsel, sent formal notice of its intent to sue pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365, and 40 C.F.R. Part 135, to OTA, USACE, FHWA, the Bureau, the United States Environmental Protection Agency, and FWS. The notice letter detailed Pike Off's allegations of CWA, ESA, and FTA violations, improper segmentation, failure to obtain an Individual Permit, failure to conduct an EIS, and failure to engage in meaningful ESA consultation.

48. More than sixty (60) days have elapsed since the date of the notice letter, and Defendants have failed to cure or otherwise remedy the violations alleged therein.

#### IV. CAUSES OF ACTION

##### **COUNT I: VIOLATION OF THE CLEAN WATER ACT**

49. The foregoing paragraphs are incorporated herein by reference.

##### **A. Framework**

50. The Clean Water Act was enacted by Congress in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” 33 U.S.C. § 1251(a). To achieve this goal, Section 404 of the CWA prohibits the discharge of any pollutant, including dredged soil or other fill material, into navigable waters unless authorized by permit. 33 U.S.C. §§ 1311, 1344.

51. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve the objective of the CWA, Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person,” except as otherwise authorized by the CWA.

52. A “person” means “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

53. The meaning of “pollutant” includes “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6). The meaning of “discharge of a pollutant” for purposes of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), includes “any additional of any pollutant to navigable waters from any

point source.” 33 U.S.C. § 1362(12)(A). The term “discharge” when used without qualification means “discharge of a pollutant” and “a discharge of pollutants.” 13 U.S.C. § 1362(16).

54. “Navigable waters” means “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” means, *inter alia*, traditionally navigable waters and waters that are relatively permanent, standing, or continuously flowing bodies of water that are connected to traditionally navigable waters.

55. Pursuant to Section 404 of the CWA, the “Secretary of the Army, acting through the Chief of Engineers” is the federal officer charged with determining whether to issue a “permit” for the “discharge of dredged or fill material into the navigable waters at specified disposal sites.” 33 U.S.C. § 1344(a), (d).

56. The Secretary of the Army in turn has delegated responsibility for administering the section 404 permitting program to respective District Engineers of the Corps, *see* 33 C.F.R. § 325.8(b). Such activities consequently are permissible only if a person obtains a “dredge and fill” permit authorized by section 404 of the CWA, which hereafter will be referred to as a “404 Permit.”

57. Although section 404 of the CWA refers to discharges into “navigable waters of the United States,” common practice is to refer to section 404 jurisdiction in terms of discharges affecting “Waters of the United States.” 33 C.F.R. § 328.1.

58. For instance, the USACE’s regulations define jurisdictional waters to include:

- a. “All waters which are currently used, or were used in the past, or may be susceptible to use in interstate... commerce...” *See* 33 C.F.R. § 328.3(a)(1).
- b. “All other waters such as intrastate lakes, rivers, streams..., wetlands..., or natural ponds, the use, degradation or destruction of which could *affect* interstate... commerce.” *See* 33 C.F.R. § 328.3(a)(3) (emphasis added).
- c. “Tributaries” of interstate waters. *See* 33 C.F.R. § 328.3(a)(5).
- d. “Wetlands adjacent to” jurisdictional waters. *See* 33 C.F.R. § 328.3(a)(7).

Certain waters fall within the USACE’s section 404-permitting jurisdiction, not only because they are collectively within the OHWM of the Canadian River and Lost Creek, but because under section 404, wetlands adjacent to a WOTUS are jurisdictional: “When adjacent wetlands [to non-tidal waters] are present, the jurisdiction extends beyond the ordinary high water mark to the limit of adjacent wetlands.” *See* 33 C.F.R. § 328.3(c); 33 U.S.C. § 1344.

59. Once WOTUS are found to be at a property, as a part of the 404 Permit process, OTA must overcome the *presumption* a practicable, less environmentally damaging alternative site exists. *See* 40 C.F.R. § 230.10. Attached hereto as Exhibits 4 and 5, respectively, are true and correct copies of section 404 and the current version of 40 C.F.R. § 230.10 as of June 2026. Also attached as Exhibits 6 and 7 are true and correct copies of two USACE guidance documents addressing how a CWA Alternatives Analysis is performed.

60. The Section 404 Guidelines require detailed and specific factual determinations regarding the discharge that is set to impact WOTUS. *See* 40 C.F.R. § 230.11(a)-(h). The factual determinations required must be used to issue the required findings of compliance contained in Section 230.12. 40 C.F.R. § 230.12(a). This includes

findings specifically by USACE, not by the applicant. USACE made insufficient findings to justify issuance of the permit (NWP 14).

61. USACE either issues a permit under Section 404 (an “individual permit”) or a Nation Wide Permit (“NWP”), here, NWP 14 (Linear Transportation Projects) basis. 33 U.S.C. § 1344(a), (e).

62. USACE’s authority to issue Nationwide Permits under Section 404(e) is limited: the basis for any category of activities involving discharges of dredged or fill material must be determined by USACE to be similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. 33 U.S.C. § 1344(e)(1).

63. A party “is entitled to proceed under a nationwide permit only if they can show that they meet the conditions for such a permit.” *Riverside Irr. Dist. v. Andrews*, 758 F.2d 508, 514 (10th Cir. 1985).

64. Pursuant to NWP-14, for a linear transport project “in non-tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than ½-acre of waters of the United States.”

**B. Neither Determination of the OHWM nor the Issuance of NWP-14 Was Legal**

65. USACE has relied too heavily on the vague and inadequate representations made by OTA and abdicated its own responsibilities to use the best science available to make factual determinations under Section 404. USACE has also failed to take a “hard look” at the OHWM determined in the WOTUS Delineation Report.

66. Based on a site visit, OTA represented to USACE the Canadian River has an “average OHWM observed to be 186 feet wide.” OTA unilaterally rejected the requirement that an applicant use the more comprehensive, and more recent, “National Ordinary High Watermark Field Delineation Manual” for Rivers and Streams, Final Version (January 2025), to determine the OHWM.

67. OTA undertook no efforts to establish an OHWM on the Canadian River other than to visually observe it; nor did OTA provide any support for its conclusion regarding the location of the OHWM. The Canadian River’s OHWM is not inextricably fixed—rather, it is a wandering and changing river that requires more than a cursory viewing to definitively establish an OHWM.<sup>13</sup>

68. OTA’s field visit for the delineation occurred in August and September of 2022—making any determination stale and unreliable, given the PCNs were submitted over two years later in December 2024 and August 2025.

69. On June 19, 2024, Garver represented to USACE: “As an effort to minimize impacts to the Canadian River, the OTA has determined that they can build the new river crossing [of the Canadian River] without any work within the OHWM of the Channel. There would be no permanent or temporary construction within the delineated stream. . . . We have verified with a couple of contractors that they have cranes that can hang beams from one location without having to enter or cross the Channel.”

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<sup>13</sup> A true and correct copy of a diagram demonstrating the Canadian River’s historical OHWM is attached hereto as Exhibit 9.

70. USACE took this unwarranted and unsupported conclusion as gospel, without even a scintilla of evidence supporting OTA's claim it could place construction equipment outside the OHWM; that there would be zero impacts in spanning the Canadian River, and without any scientific determination of the existence, geographic location of, and depth of the OHWM. Among other failures, without accurately determining the OHWM, OTA and USACE cannot conclude whether the cranes and or bridge structures will ultimately result in discharge of fill material below the OHWM of the Canadian River.

71. Despite outlining numerous bodies of water constituting WOTUS or protected wetlands in the "study footprint," the WOTUS Delineation Report provides no analysis of what portion of the "study footprint" would actually be impacted, and nowhere does it identify the square feet or acres actually impacted by the Project. One must conclude all of the consolidated waters identified in the study area are impacted. Under that or any other analysis, USACE's interpretation of WOTUS is inadequate and fails to acknowledge impacts will exceed more than ½ acre of impacts to WOTUS. Nationwide Permit 14 was wrongly issued; no basis exists for it.

72. Despite the clearly deficient permitting process, USACE nevertheless approved OTA's request under NWP-14, rather than requiring an individual permit.

### **C. The Project Must Receive an Individual Permit**

#### **1. Connected Actions/Segmentation**

73. Under the USACE's NEPA regulations (discussed below), it must consider "connected actions, cumulative actions, and similar actions in the same impact statement."

*Rocky Mountain Peace & Justice Center v. United States Fish and Wildlife Service*, 40

F.4th 1133, 1157 (10th Cir. 2022) (citing former 40 C.F.R. § 1508.25(a)(1)-(3), now codified for the USACE at 33 C.F.R. § 333.18). This regulation “prevents agencies from minimizing the potential environmental consequences of a proposed action (and thus short-circuiting NEPA review) by segmenting or isolating an individual action that, by itself, may not have a significant environmental impact.” *Rocky Mountain Peace*, 40 F.4th at 1156.

74. To determine whether two actions are connected, the Tenth Circuit applies an independent-utility test, where “two proposed actions [are] connected where one action could not occur but for the occurrence of the other.” *Id.* (citing *Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1028 (10th Cir. 2002)).

75. FHWA requires any “action evaluated under NEPA as a[n] . . . environmental impact statement (EIS) must: . . . (2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.” 23 C.F.R. § 771.111(f)(2).

76. OTA attempts to circumvent the noticing and permit requirements of an Individual Permit by separating the work done, and related impacts, to the Canadian River, Lost Creek, and the Wetlands separately. This is but a transparent effort to manufacture the Project’s impact as below the limits allowed by NWP-14.

77. OTA’s delineation describes a 30.5 mile project divided into two separate phases, each consisting of five (5) separate segments—resulting in a total of ten (10) for the Project. For environmental purposes, in order to escape the requirements for connected actions and segmentation, OTA must demonstrate the independent utility of each segment

and their necessity for the Project. OTA has failed to provide the required information to demonstrate each of the 10 segments have independent utility. OTA and the Federal defendants are required to measure the impacts of the entire 30.5 miles of the EWC or the Project.

78. The Project requires temporary and permanent construction roads to be built which would otherwise have no purpose except for the construction of the EWC. Each component is essential to, and necessary for, the completion of the Project. None of the proposed components stand alone; if the EWC was not the end goal, no temporary or permanent access roads would be constructed.

79. Taken together, the Project, as a whole, requires the construction of temporary and permanent access roads to facilitate the construction of 30.5 miles of linear highway, set to cross the Canadian River and impact Lost Creek. By OTA's own inadequate delineation report, the Project's footprint includes WOTUS totaling at least 3.6 acres of streams, an additional 1.2 acres of Wetland, and another 6 acres of Pond. Because the impacts to WOTUS total more than one-half ( $\frac{1}{2}$ ) acre, once impacts are properly determined, with connected actions considered and without segmentation, NWP-14 is not available to OTA, and OTA must obtain an Individual Permit.

#### **D. OTA Has Improperly Commenced Project Work**

80. Even if OTA's blanket assertions of lack of impact were remotely substantiated, the crane's inevitable placement in the floodplain and other work without a proper permit also constitute violations of the CWA.

81. The work being done in the Canadian River by OTA is taking place within the floodplain and the OHWM. OTA has either authorized or continues to allow contractors working on its behalf to place heavy equipment, piers, bollards, and other construction equipment within the OHWM, floodplains, and Wetlands of the Canadian River and Lost Creek. Despite indicating that no such impacts would occur, OTA has commenced work on the Project in direct contravention of the representations concerning impacts made to USACE during the permit process.

82. These violations are ongoing and continuing. As construction on the Project continues, the threat and actuality of permanent and irreversible harm continues, either as a result of permanent alteration of wildlife habitats and waterways, or the pollution of the Canadian River and Lost Creek resulting from dredge, fill, and other pollutants associated with heavy machinery and large commercial construction work.

83. Accordingly, Pike Off respectfully requests this Court to: (1) enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that the construction of the Project by OTA constitutes the “discharge of dredged or fill material” into Waters of the United States requiring a valid individual Section 404 permit; (2) enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that USACE has not complied with its obligation under the CWA to require OTA to submit to permitting procedures mandated by the CWA, including, proper determination of the OHWM, including all connections actions with the process, evidencing segmentation of impacts, and obtaining an Individual Permit; (3) grant a temporary restraining order and preliminary and permanent injunctive relief pursuant to 28 U.S.C. § 2202, the APA—or, in the alternative, the Mandamus Act, directing USACE to

fulfill its permitting responsibilities under the CWA; (4) grant a temporary restraining order and preliminary and permanent injunctive relief pursuant to the All Writs Act, or this Court's inherent powers, prohibiting OTA's continued construction of the Project without first submitting to required permitting procedures and obtaining an Individual Section 404 permit; (5) impose civil penalties for OTA's violation of the CWA pursuant to 33 U.S.C. § 1319; (6) waive Federal Rule of Civil Procedure 65(c)'s security requirement for an injunction and restraining order; and (7) grant Pike Off all other relief, at law or in equity, to which it may be entitled.

**COUNT II: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

84. The foregoing paragraphs are incorporated herein by reference.

85. The APA provides for judicial review of any improperly taken agency actions. A reviewing court shall "hold unlawful and set aside" any agency actions found to be: "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D).

86. An agency action is arbitrary and capricious if the agency has "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).

87. A reviewing court must undertake a "thorough, probing, in-depth review" of the agency's decision and then decide whether it was based on a consideration of the

relevant factors and whether there has been a clear error of judgment. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415-16 (1971).

88. USACE's verification and approval of OTA's use of NWP-14 for the Project, and the failure to require an individual permit, were arbitrary, capricious, and not in accordance with law for the following reasons:

- a. USACE failed to make independent factual determinations as required under Section 404 and instead, without support, relied exclusively on unsupported representations by OTA;
- b. USACE accepted OTA's stale and unreliable OHWM determination based on mere cursory observation of the Canadian River during field visits from August and September 2022;
- c. USACE failed to require OTA to identify clearly the actual acres of WOTUS impacted by the Project or to explain the unsubstantiated variation in the delineation report from the study footprint, and USACE then relied upon the unsubstantiated information in making the decision to issue NWP-14, and not to require an individual permit and an EIS;
- d. USACE failed to address the segmentation of impacts across multiple components of a single Project;
- e. USACE failed to address the connected actions of impacts across multiple components of a single Project; and

f. USACE failed to require an Individual Permit despite impacts exceeding the one-half acre threshold of NWP-14.

89. USACE's actions and inaction in this regard were arbitrary, capricious, an abuse of discretion, and not in accordance with law, and should be set aside by this Court.

90. Accordingly, Pike Off respectfully requests this Court to: (1) enter a declaratory judgment that USACE's approval of the Project under NWP-14 was arbitrary, capricious, and not in accordance with law; (2) vacate USACE's verification and approval of OTA's use of NWP-14 for the Project; (3) grant injunctive relief enjoining the Project until USACE complies with its obligations under the CWA and APA; and (4) grant Pike Off all other relief, at law or in equity, to which it may be entitled.

**COUNT III: VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY  
ACT ("NEPA")**

91. The foregoing paragraphs are incorporated herein by reference.

92. NEPA is the "basic national charter for protection of the environment." 42 U.S.C. § 4321 *et seq.*; 40 C.F.R. § 1500.1(a). NEPA requires all federal agencies to prepare a "detailed statement" for any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

93. On January 8, 2026, the Council on Environmental Quality ("CEQ") formally rescinded its government-wide environmental policy act regulations 40 C.F.R. § 1500-1508 ("NEPA Regulations"). With the rescission of the CEQ Regulations, implementation of NEPA became the province of each separate federal agency. The

USACE amended its NEPA Regulations to reflect this change. USACE's current NEPA Regulations are found at 33 C.F.R. § 333.

94. 33 C.F.R. § 333.2(a) makes USACE's Regulations under NEPA applicable to "...all Corps elements processing applications for Department of the Army Permits...."

95. The Tenth Circuit has defined "major Federal action" to mean "actions by the federal government . . . and non-federal actions 'with affects that might be major and which are potentially subject to federal control and responsibility.'" *Village of Los Ranchos de Albuquerque v. Barnhart*, 906 F.2d 1477, 1480 (10th Cir. 1990). "In effect, 'major federal action' means that the federal government has actual power to control the Project." *Ross v. Federal Hwy. Admin.*, 162 F.3d 1046, 1051 (10th Cir. 1998).

96. As a matter of law, NEPA mandates that the evaluation, and issuance of an EIS, be completed before the agency can consummate final agency action. NEPA requires the agency to "take a 'hard look' at environmental consequences" related to the proposed action. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

97. As part of its NEPA process, the USACE must make a significance determination. *See* 33 C.F.R. § 333.20(a). However, the preparation of environmental documents to determine the significance of impacts is not required "in instances where initial consideration as to the appropriate level of review as described indicates that the proposed activity is likely to have reasonable, foreseeable significant effects." Section 333.20(a) goes on to state:

[I]n cases where it is obvious that the proposed activity is likely to result in reasonably foreseeable significant effects an environmental assessment terminating in a finding of no

significant impact is therefore not prepared, the District Engineer must make a determination that an environmental impacts statement is required due to the likely significant events of activity.

98. The Project constitutes “major Federal action” because it includes more than a minimal federal involvement in the form of the CWA permitting by which the USACE can “control the outcome of the Project,” and FHWA, which can also control the project by approval and consents required under Section 4(f) of the Federal Transportation Act. (The Project cannot be completed without a CWA Permit.)

99. In addition, Section 333.18(c)(3)(i) (§ 2), contemplates a NEPA analysis of the “effects and impacts from the proposed action or alternatives on all Federal interests within the purview of the NEPA statute” – if the Project warrants it.

**A. The Project Constitutes Major Federal Action**

100. At least two grounds support the Project constituting a major federal action.

101. First, an Individual Permit is required under the Clean Water Act because a proper analysis results in impacts greater than one-half ( $\frac{1}{2}$ ) acre. USACE’s NEPA responsibilities trigger for any action constituting a major federal action, including the issuance of an individual permit. *See Sierra Club, Inc. v. Bostick*, 787 F.3d 1043, 1064 (10th Cir. 2015). An EIS would be required as part of the process required to obtain an individual permit here because of the significant impacts to human health and the environment.

102. Second, OTA admits on its website and in its filings the Project areas that intersect with federal highways must comply with NEPA under FHWA regulations. OTA

has admitted the Project must be approved by FHWA (and ODOT) in order for OTA to commence and complete construction of the Project. Without FHWA's approval of the NEPA analyses at the federal level, the Project cannot be completed. Thus, FHWA exerts control over the Project sufficient to establish "actual power to control" the Project, classifying the Project as a major Federal action.

**B. An EIS Is Required**

103. Because the Project constitutes a major Federal action, FHWA's regulations apply. 23 C.F.R. § 771.115 states: "(a) EIS. Actions that have a reasonably foreseeable significant effect on the quality of the human environment requiring EIS. The following are examples of action that normally require an EIS: (1) A new controlled access freeway; and, (2) A highway project of four or more lanes on a new location."

104. The Project is indisputably a controlled-access highway with four or more lanes; it is a turnpike designed for high-speed vehicular traffic, with all traffic flow—ingress and egress—regulated. The Intensive Cultural Resources Survey of the OTA ACCESS East-West Connector describes the EWC as "a new 4-lane controlled-access freeway that will provide additional capacity to the transportation network in the Oklahoma City metropolitan area." The RRS Request and Project Information submitted by OTA describes the EWC as "a 4-lane limited access freeway with grade separated crossing of local roads and interchanges for access."

105. Despite this straightforward analysis and the conclusion that results, OTA has failed to conduct an EIS. OTA has admitted the Project is subject to FHWA's oversight and approval, the Project is a new controlled access freeway, and it is a highway project of

four or more lanes on a new location. The Project cannot continue unless and until OTA prepares a proper EIS. Given the criteria, OTA cannot escape its obligation to prepare an EIS. The construction of the Project cannot continue until it does.

106. Additionally, when the USACE assess whether it may “discharge[]... dredged material or fill material” into WOTUS, USACE applies the Section “404(b)(1) guidelines and other substantive requirements of the CWA and other environmental laws.” 33 C.F.R. § 335.2. Because a permit under section 404 constitutes a “major federal action[], an Environmental Impact Statement (“EIS”) is required.” *Utahns for Better Transp. v. U.S. Dept. of Tansp.*, 305 F.3d 1152, 1161 (10th Cir. 2002). Because USACE failed to issue an EIS either as a result of the major federal action or the section 404 permit, USACE has failed to comply with applicable law. *Id.*

107. Accordingly, Pike Off respectfully requests this Court to: (1) enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that the Project constitutes “major federal action” mandating compliance with all applicable provisions and regulations under USACE and FHWA NEPA regulations; (2) enter a declaratory judgment FHWA and OTA have violated NEPA and applicable FHWA regulations by failing to prepare an EIS for the Project; (3) grant a temporary restraining order and preliminary and permanent injunctive relief pursuant to 28 U.S.C. § 2202, the APA—or, in the alternative, the Mandamus Act, or this Court’s inherent power, directing FHWA and OTA to fulfill their obligations to prepare a proper EIS; (4) grant a temporary restraining order and preliminary and permanent injunctive relief preventing OTA from continuing construction of the Project unless and until a compliant EIS is performed; (5) waive Federal Rule of Civil Procedure

65(c)'s security requirement for an injunction and restraining order; and (6) grant Pike Off all other relief, at law or in equity, to which it may be entitled.

**C. OTA and USACE Have Violated the NEPA Process**

108. The CWA and the ESA each have regulations prohibiting activities that would compromise the integrity of the environmental investigations and procedures required by statute. 33 C.F.R. § 333.13(b) identifies the limitations that can be taken during the NEPA process. It reads:

**“Limitations on actions during the NEPA process.** Except as provided in paragraph (c) of this section, until the Corps issues a record of decision, their finding of no significant impact, or makes its categorical exclusion determination, as applicable, the Permit Applicant (here OTA) should take no action concerning their application that would:

- (1) have an adverse environmental effect within an area under the jurisdiction of the Corps; or
- (2) limit the choice of the reasonable alternatives.

OTA and USACE have not engaged in fully, much less completed, the NEPA Process. The process has not reached its conclusion by either Record of Decision, Finding of No Significant Impact, or Categorical Exclusion Determination, thus the NEPA is still ongoing. Moreover, OTA cannot evade its obligations to participate in the NEPA process by declaring it completed without any of the hallmark determinations required in 333.13(b). On the contrary, OTA has failed to comply with this provision because it is already engaged in construction that has an “adverse environmental effect” within an area “under the jurisdiction of the court” by constructing the Project and discharging fill material into WOTUS. OTA has, likewise, failed to comply with Section 333.13(b)(2)

because it has engaged in at least three (3) activities that limit the choice of Reasonable Alternatives: (1) Spending millions of dollars to acquire right-of-way for the Project; (2) Commencing construction without proper permits; and (3) the imminent entry into a billion dollar Bond package.

109. In addition, on the 25<sup>th</sup> day of June, 2026, OTA plans to seek approval from the Oklahoma Council of Bond Oversight for a bond issue package to commit two billion, nine-hundred thousand dollars (\$2,900,000,000) to the construction of turnpikes in Oklahoma. Among the projects funded by the bonds is the EWC. Execution of the bond documents will result in the *de facto* choice of an unsupported alternative, thus making the selection of a Reasonable Alternative pursuant to the Clean Water Act regulations impossible. The funding of the EWC by the bond package results in the inevitable outcome of the Project as described in the bond package becoming a reality – all in violation of 333.13(b).

110. Section 7(d) of the ESA contains its own prohibition against compromising the Section 7 consultation process. It states:

“After initiation of Consultation required under Subsection (a)(2), the Federal Agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate Subsection (a)(2).”

The purpose of Section 7(d) is to prevent an applicant from sabotaging the consultation process under Section 7 by committing irreversible and irretrievable resources to the Project. As with OTA’s Clean Water Act process, whatever activity OTA engaged with

under the nominal title of Consultation under the ESA was ineffective, incomplete, outside the law, and therefore ongoing. Consequently, OTA's irreversible and irretrievable commitment of resources such as the funding of right-of-way, commencement of construction without permits, and seeking to fund the Project by issuing a new bond package as violate Section 7(d), because each represents an irreversible and irretrievable commitment of resources.

111. Because of the foregoing, Pike Off seeks a temporary restraining order, preliminary injunction, and permanent injunction preventing additional acquisition of right-of-way, construction of the Project, or funding of the proposed bond package until such time as a proper CWA analysis and a proper Section 7 Consultation under the ESA have occurred.

**COUNT IV: VIOLATION OF SECTION 4(F) OF THE FEDERAL  
TRANSPORTATION ACT**

112. The foregoing paragraphs are incorporated herein by reference.

113. Section 4(f) of the U.S. Department of Transportation Act (now codified at 49 U.S.C. § 303 and 23 U.S.C. § 138) is the federal law protecting publicly owned parks and recreation areas, wildlife and waterfowl refuges, and historic sites from use in transportation projects.

114. The Norman Project and Lake Thunderbird (including Lake Thunderbird State Park) are protected under Section 4(f). The Project's route impacts federal title lands, flowage easements, and the conservation, flood, and surcharge pools.<sup>14</sup>

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<sup>14</sup> Attached hereto as Exhibit 10 is a true and correct copy of the current route and its impact to Lake Thunderbird.

115. FHWA is required to perform environmental studies at the intersections of the East-West Connector with Federal Interstate Highways 35, 44, and 40 before construction starts. Those studies have not been performed. Construction has commenced.

116. FHWA must perform a Section 4(f) study to demonstrate there is no “feasible and prudent” alternative to the route selected by OTA that impacts federally protected lands, including the Norman Project and Lake Thunderbird.

117. OTA, FHWA, and the Bureau incorrectly concluded there was no Federal Action requiring implementation of FHWA’s 4(f) requirements.

118. FHWA’s failure to perform the required Section 4(f) study constitutes a violation of the FTA and infringes upon Pike Off’s procedural rights.

119. Accordingly, Pike Off respectfully requests this Court to: (1) enter a declaratory judgment that OTA, under FHWA supervision, must perform a proper Section 4(f) study before construction of the Project continues; (2) grant a temporary restraining order and preliminary and permanent injunctive relief preventing OTA from continuing construction of the EWC until the required Section 4(f) study of the EWC; (3) waive Federal Rule of Civil Procedure 65(c)’s security requirement; and (4) grant Pike Off all other relief, at law or in equity, to which it may be entitled.

**COUNT V: VIOLATION OF THE ENDANGERED SPECIES ACT – SECTION 7  
CONSULTATION**

120. The foregoing paragraphs are incorporated herein by reference.

**A. ESA Obligations**

121. The United States Supreme Court has characterized the ESA as “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 180 (1978).

122. The purpose of the ESA is “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved . . . .” 16 U.S.C. § 1531(b). Congress intended this objective to be carried out, “whatever the cost.” *Hill*, 437 U.S. at 184. As such, “all [f]ederal . . . agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities [to further] the purposes of [the ESA].” 16 U.S.C. § 1531(c)(1).

123. The ESA therefore imposes substantial, continuing, and affirmative obligations on federal agencies to conserve endangered species and their habitat.

124. Specifically, under the ESA, all federal agencies must ensure any action they authorize, fund, or carry out is not likely to “jeopardize the continued existence” of a listed species or adversely modify its critical habitat. 50 C.F.R. § 402.01(a).

125. Agency action that “jeopardize[s] the continued existence” of a listed species is defined as agency action that “reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species . . . by reducing the reproduction, numbers, or distribution.” 50 C.F.R. § 402.02.

126. The ESA requires a “procedural consultation” when an agency proposes an action that may affect an endangered species. *See* 16 U.S.C. § 1536; 50 C.F.R. § 402.14(a).

127. As part of this process, an agency must use the best scientific and commercial data available, and consult with FWS, if it has reason to believe an endangered species may be present in the area of a proposed action. *See* 16 U.S.C. §§ 1536(a)(3), 1536(c)(1).

128. Section 7(a)(2) of the ESA requires a federal agency to determine “at the earliest possible time” whether any action it takes “may affect” listed species and critical habitat. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). If the agency’s action “may affect” listed species or critical habitat, the agency must enter into consultation with FWS. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).

129. For purposes of these provisions, the “action area” is the area that is affected directly or indirectly by the proposed agency action. *See* 50 C.F.R. § 402.02. As such, during consultation with FWS, a federal agency must expansively characterize a project’s “action area”—not just the “immediate area involved”—when evaluating the potential for jeopardy to covered species. *See* 50 C.F.R. § 402.02.

130. This process is carried out through an incremental approach, including establishing: (a) the presence of a species, (b) the potential effects on the species, (c) adverse effects, and (d) whether a species will be jeopardized by the adverse effects.

131. ESA regulations provide several different means to make these determinations, including: Biological Assessment, Informal Consultation, and Formal Consultation.

132. A “Biological Assessment” is a study prepared under the direction of FWS which evaluates the potential effects of a project on an endangered species. *See* 50 C.F.R. § 402.12. Such an assessment is to be performed when a major construction project is about

to take place, and the assessment must be completed “before any contract for construction is entered and before the project begins.” *See* 50 C.F.R. § 402.12(b)(2). No biological assessment has been performed.

133. If the Biological Assessment leads to the conclusion that there may be adverse impacts on a species, then an agency must submit to “Formal Consultation” with FWS before authorizing any action. *See* 50 C.F.R. §§ 402.14(a), 402.14(c).

134. The ESA’s enabling regulations also provide for an “Informal Consultation” as an alternative, preliminary step in the ESA process. 50 C.F.R. § 402.13(a). An agency can engage in an Informal Consultation with FWS, in lieu of a Biological Assessment. *See* 50 C.F.R. § 402.13(a). As with a Biological Assessment, if during Informal Consultation, it appears an endangered species is likely to be affected by a project, Formal Consultation is required. *See* 50 C.F.R. § 402.13(a). Informal consultation under 50 C.F.R. § 402 has occurred.

135. “Formal Consultation” requires an in-depth analysis of a project’s possible impact on endangered or threatened species or critical habitats. 50 C.F.R. § 402.14(d). Under Formal Consultation, FWS must fulfill clearly articulated duties, and at the end of the process, must provide a “Biological Opinion” that contains precise, in-depth information regarding FWS’s findings related to the species at issue. *See* 50 C.F.R. §§ 402.14(g), 402.14(h). No formal consultation has occurred.

136. The ESA provides a low threshold for Section 7(a)(2) Consultation: an agency must initiate formal consultation for any activity that “may affect” listed species and critical habitat.

**B. The Arkansas River Shiner**

137. The Arkansas River Shiner (*Notropis girardi*) is a federally listed threatened species. The Canadian River within the Project impact area constitutes critical habitat for the Arkansas River Shiner.

138. The Project includes the construction of approximately thirty (30) miles of turnpike, at least two (2) bridges spanning the Canadian River, and the construction of temporary and permanent access roads through and over Lost Creek—a tributary of the Canadian River—all of which will include the discharge of dredge or fill material into Waters of the United States.

139. The construction of two bridges over the Canadian River and its floodplain, and the associated construction activities, will disturb wildlife habitat in and around the Canadian River—the very waterway designated as habitat for the Arkansas River Shiner.

140. The construction of the temporary and permanent work roads across Lost Creek, which will each be approximately 50 feet wide and constructed with corrugated metal pipes covered with earthen fill material, will disrupt the natural flow and ecological character of Lost Creek, a tributary that flows into the Canadian River and the broader watershed supporting the Arkansas River Shiner.

141. There can be no question the Project constitutes an action that “may affect” the Arkansas River Shiner and its habitat. The Project involves major construction directly in and adjacent to the Canadian River and its tributaries—known habitat for the Arkansas River Shiner. Bridge construction, placement of piers, construction of work roads across Lost Creek, discharge of fill material, and associated mobilization activities all have the

potential to adversely affect the Arkansas River Shiner through direct habitat disturbance, alteration of stream flow, sediment transport, and degradation of water quality in the Canadian River watershed.

**C. Defendants' Failure to Engage in Meaningful Section 7 Consultation**

142. OTA, USACE, and the relevant federal agencies have not engaged in a meaningful consultation as required under Section 7 of the Endangered Species Act.

143. It is undisputed the Canadian River within the impact area constitutes habitat for the Arkansas River Shiner and other endangered species. Apparently, at least in part on reliance on OTA's representations it will not engage in work within the Waters of the United States, no real "consultation" concerning species took place.

144. Additionally, Section 7 Consultation was not performed in connection with Lost Creek, a tributary of the Canadian River, or the Canadian River.

145. In essence, the entirety of the so-called "consultation" amounted to nothing more than OTA's environmental consultant providing FWS with emails containing little if any information on the Arkansas River Shiner or other endangered species within the area, and a statement that OTA would not affect them or their habitat. Whereupon the consultation was deemed completed. Such a "consultation" does not satisfy the requirements of Section 7.

146. The exchange between OTA's environmental consultant and FWS was cursory, perfunctory, and inadequate. The ESA's consultation requirement is not a mere rubber-stamp, check-the-box exercise. It requires a substantive, meaningful assessment of the potential effects of the proposed action on listed species and their habitat. *See* 50 C.F.R.

§ 402.14. Sending FWS a list of potentially present endangered species, accompanied by a conclusory assertion the Project will have no effect on them, does not constitute the type of analysis or exchange contemplated or required by Section 7.

147. The consultation was terminated (1) without any investigation into the presence of the Arkansas River Shiner or any other endangered species possibly in the action area, (2) without any assessment of the potential effects of the Project on the species, (3) without any analysis of adverse effects, and (4) without any determination whether the endangered species or its habitat would be jeopardized by the Project.

148. Critically, Defendants never performed a Biological Assessment. Nor did Defendants conduct an Informal Consultation of any substance or initiate a Formal Consultation. And no Biological Opinion was issued as required under the Endangered Species Act.

149. By way of example only, Defendants did not provide the mandatory consideration to: (a) the impacts associated with the construction of two bridges over the Canadian River and its floodplain on the Arkansas River Shiner and its habitat; (b) the impacts associated with the construction of temporary and permanent work roads across Lost Creek, a tributary of the Canadian River, on the Arkansas River Shiner and its critical habitat; (c) the effects of sediment and other discharges, disruption of natural stream flow, and alteration of water quality on the Arkansas River Shiner and other endangered species; (d) the impacts of mobilization and construction activities that will necessarily affect the Canadian River watershed, thereby jeopardizing the existence and recovery of the Arkansas River Shiner by affecting its habitat; (e) the potential for contact or “take” of the

Arkansas Shiner because of Project impacts; or (f) the cumulative effects of the Project as a whole—a thirty-mile turnpike project with multiple water crossings—on the Arkansas River Shiner and its critical habitat.

150. OTA’s PCN does not address consultation on endangered species issues; rather, it simply concludes its action will not affect habitat. This conclusory determination is insufficient. An agency cannot avoid its Section 7 consultation obligations simply by declaring its project will have no effect on listed species. The “may affect” threshold is deliberately low, and the presence of critical habitat for the Arkansas River Shiner in the Project’s action area plainly triggers the duty to consult.

151. USACE’s failure to require meaningful Section 7 Consultation before issuing any Nationwide Permit, and the FWS’s acceptance of a conclusory email in lieu of substantive consultation, constitute actions that are arbitrary, capricious, and not in accordance with law, and violate the APA, the ESA, and their implementing regulations.

152. The failure of OTA, USACE, and FWS to engage in a credible Consultation of any type, or to perform a proper Biological Assessment regarding the Project’s impact on the Arkansas River Shiner and its critical habitat, violates Section 7 of the ESA and its regulations.

153. Defendants’ failure to comply with the Endangered Species Act infringes upon Pike Off’s procedural rights and threatens immediate and irreparable harm to the environment.

154. Accordingly, Pike Off respectfully requests this Court to: (1) enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that OTA, USACE, and FWS has not

engaged in an appropriate species “consultation” under Section 7 of the ESA to assess all impacts the Project may have on the Arkansas River Shiner and its habitat; (2) enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that USACE and FWS acted arbitrarily, capriciously, and not in accordance with law in failing to engage in appropriate consultation(s) under the ESA; (3) grant a temporary restraining order and preliminary and permanent prospective, mandatory injunctive relief pursuant to 28 U.S.C. § 2202, the APA—or, in the alternative, the Mandamus Act or this Court’s inherent powers, directing USACE and FWS to fulfill their obligations to conduct an appropriate ESA consultation(s) regarding and related to the effect the Project may have on the Arkansas River Shiner and its habitat; (4) grant a temporary restraining order and preliminary and permanent injunctive relief pursuant to equitable principles, the All Writs Act, or this Court’s inherent powers, preventing and enjoining OTA’s mobilization for or continued construction of the Project unless and until USACE and FWS engage in and complete a proper ESA consultation(s) (50 C.F.R. § 402.12(b)(2)), and thereafter authorize any such mobilization or construction; (5) waive Federal Rule of Civil Procedure 65(c)’s security requirement for an injunction and restraining order; and (6) grant Pike Off all other relief, at law or in equity, to which it may be entitled.

#### **V. PRAYER FOR RELIEF**

WHEREFORE, Pike Off respectfully requests this Court:

- a) Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that the construction of the Project by OTA constitutes the “discharge of dredged or

fill material” into Waters of the United States requiring a valid Section 404 Individual Permit;

- b) Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that USACE acted arbitrarily, capriciously, and not in accordance with law in approving the Project under NWP-14;
- c) Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that the Project constitutes a “major federal action” requiring compliance with FHWA and USACE regulations, including the preparation of an EIS;
- d) Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that FHWA has violated its own regulations and the Federal Transportation Act by failing to require OTA to prepare an EIS for the Project;
- e) Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that OTA must perform a Section 4(f) study before continuing construction of the Project proceeds;
- f) Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that OTA, USACE, and FWS have not engaged in an appropriate species consultation under Section 7 of the ESA to assess all impacts the Project may have on the Arkansas River Shiner and other endangered species and their habitat;
- g) Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that USACE and FWS acted arbitrarily, capriciously, and not in accordance with law in failing to engage in appropriate consultation(s) under the ESA;

- h) Grant a temporary restraining order and preliminary injunction immediately enjoining OTA from continuing construction of the Project pending resolution of this action;
- i) Grant preliminary and permanent injunctive relief preventing OTA from continued construction, issuance of bonds, and further funding for the construction of the Project unless and until: (i) USACE issues a valid Individual Permit under Section 404 of the CWA; (ii) a compliant EIS is prepared and approved; (iii) FHWA completes the required Section 4(f) study; and (iv) USACE and FWS engage in and complete a proper ESA consultation;
- j) Grant mandatory injunctive relief pursuant to 28 U.S.C. § 2202, the APA—or, in the alternative, the Mandamus Act—directing the Federal Defendants to fulfill their statutory obligations under the CWA, APA, the ESA, and the FTA;
- k) Vacate USACE’s verification and approval of OTA’s use of NWP-14 for the Project;
- l) Impose civil penalties for OTA’s violations of the CWA pursuant to 33 U.S.C. § 1319;
- m) Waive Federal Rule of Civil Procedure 65(c)’s security requirement for an injunction and restraining order or reduce the amount of the Bond to *de minimis*;

- n) Award Pike Off its costs of litigation, including reasonable attorneys' fees, to the extent authorized by law; and
- o) Grant Pike Off all other relief, at law or in equity, to which it may show itself justly entitled.

Dated: June 23, 2026

**CHEEK & FALCONE, PLLC**

By: /s/ Robert E. Norman

Robert E. Norman  
Oklahoma Bar No. 14789  
rnorman@cheekfalcone.com  
6301 Waterford Blvd., Suite 320  
Oklahoma City, Oklahoma 73118  
Telephone: (405) 286-9573  
Facsimile: (405) 286-9683

**-and-**

**MUNSCH HARDT KOPF & HARR, P.C.**

Frederick W. Addison, III\*  
Texas Bar No. 00903350  
raddison@munsch.com  
Zachary A. Ford\*  
Texas Bar No. 24116373  
zford@munsch.com  
Conor P. White\*  
Texas Bar No. 24125722  
cwhite@munsch.com  
500 N. Akard Street, Suite 4000  
Dallas, Texas 75201  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
**\* Pro Hac Vice Applications Submitted  
Contemporaneously with Complaint  
Counsel for Plaintiff Pike Off OTA., Inc.**

### **REQUEST FOR HEARING**

Plaintiff does not seek *ex parte* relief in this matter. Plaintiff does seek, however, a hearing on its request for Preliminary Injunction on the Parties' papers within 30 days. Plaintiff respectfully requests oral argument.

/s/ Frederick W. Addison, III  
Frederick W. Addison, III

### **CERTIFICATE PRIOR TO FILING THIS COMPLAINT**

Prior to filing this Complaint, on the 23rd day of June, 2026, Plaintiff furnished by electronic means a copy of the Complaint and Application (along with all supporting materials) to counsel for Defendants. These copies were provided to Defendants as courtesy copies only, and not for purposes of service.

/s/ Frederick W. Addison, III  
Frederick W. Addison, III



Ross Tower  
500 N. Akard Street, Suite 4000  
Dallas, Texas 75201-6605  
Main 214.855.7500  
Fax 214.855.7584  
munsch.com  
Email: raddison@munsch.com  
Direct Dial: (214) 855-7570

January 23, 2026

**VIA OVERNIGHT MAIL AND  
CMRRR#9314 7699 0430 0145 0133 20**

Oklahoma Turnpike Authority  
Joe Echelle, Executive Director  
3500 Martin Luther King Blvd.  
Oklahoma City, Oklahoma 73111-4221

**VIA OVERNIGHT MAIL AND  
CMRRR#9314 7699 0430 0145 0134 52**

Lee Zeldin, Administrator  
U.S. Environmental Protection Agency  
Office of the Administrator  
Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

**VIA OVERNIGHT MAIL AND  
CMRRR#9314 7699 0430 0145 0135 44**

Lieutenant General William H. "Butch" Graham, Jr.  
56th Chief Engineers and Commanding General  
U.S. Army Corps of Engineers  
441 G Street, N.W.  
Washington, DC 20314

**VIA OVERNIGHT MAIL AND  
CMRRR#9314 7699 0430 0145 0145 65**

Robert Singletary  
Executive Director  
Oklahoma Department of Environmental  
Quality  
707 N. Robinson  
Oklahoma City, Oklahoma 73102

**VIA OVERNIGHT MAIL AND  
CMRRR#9314 7699 0430 0145 0136 98**

Colonel Jessica D. Goffena  
Commander and District Engineer  
U.S. Army Corps of Engineers  
2488 E. 81<sup>st</sup> St.  
Tulsa, Oklahoma 74137-4290

**VIA OVERNIGHT MAIL AND  
CMRRR#9314 7699 0430 0145 0137 26**

Scott Mason, Regional Administrator  
U.S. Environmental Protection Agency  
Region 6  
U.S. Fish & Wildlife Services  
1201 Elm Street, Suite 500  
Dallas, Texas 75270

**VIA OVERNIGHT MAIL AND  
CMRRR#9314 7699 0430 0145 0138 72**

Scott J. Cameron, Acting Commissioner  
David Palumbo, Deputy Commissioner, Operations  
Bureau of Reclamation  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

**VIA OVERNIGHT MAIL AND  
CMRRR#9314 7699 0430 0145 0138 10**

Department of the Interior  
U.S. Department of Fish & Wildlife  
1849 C Street, NW  
Washington, DC 20240

January 23, 2026  
Page 2

**VIA OVERNIGHT MAIL AND  
CMRRR#9314 7699 0430 0145 0140 15**

Sean McMaster, Administrative  
Jeff Payne, Deputy Administrative and Chief Counsel  
Federal Highway Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Re: Notice of Intent to Sue for Violations of 33 USC 1365, 33 USC Section 1319, 40 CFR 135, Section 4, Federal Transportation Act; and Action Under National Environmental Policy Act (“NEPA”) and the Administrative Procedures Act

Dear Sir or Madam:

Please be informed we represent Pike Off OTA., Inc., an Oklahoma not-for-profit corporation (“Pike”) in connection with the matters described herein. This letter provides formal notice, pursuant to Section 505(a) of the Clean Water Act, 33 USC 1365 and 40 CFR 135 of the intent of Pike Off to bring a Citizens Suit under Section 1365 of the Clean Water Act, as well as suit pursuant to the Administrative Procedures Act 5 USC Sections 704, 706, Section 4 of the Federal Transportation Act, and the National Environmental Policy Act, 42 USC § 4321 et seq. (“NEPA”) against the Oklahoma Turnpike Authority (“OTA”), and the United States Army Corps of Engineers, Tulsa Division, (“USACE”), Federal Highway Administration (the “FHWA”) and the Department of the Interior, Bureau of Reclamation (the “Bureau”).

OTA has sought and obtained at least one Nationwide Permit (“Nationwide Permit 14-Linear Transportation Projects”) (hereinafter “NW-14”) for a portion of the construction of the OTA Project known as the East-West Connector Turnpike Project (“Project”). The Project includes not only construction of approximately thirty (30) miles of turnpike, but also at least two (2) bridges spanning the Canadian River, and other activities (including the construction of a temporary access road which we understand and has already been completed and a “permanent” access road to be built through and over Lost Creek) that will include the discharge of dredge or fill material resulting in “the loss of greater than 1/2 acre of Waters of the United States.

According to OTA, Chief of Public Relations, Lisa Shearer Salim, in a December 11, 2025 interview with KOCO 5 TV explained the East-West Connector Project will include the “longest bridge in Oklahoma” with the first phase of construction on the \$97 million bridge to begin in early 2026. Not only is the Project imminent,<sup>1</sup> but so is the harm associated with it. The imminent, irreparable harm associated with the Project will inevitably occur should the recipients of this letter elect to ignore their responsibilities, the procedural rights of Pike Off, and the public interest.

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<sup>1</sup> See, “Exhibit A, Flexible Notice to Proceed,” OTA, November 18, 2025, “The Contractor may begin work anytime after the issuance of the Notice to Proceed but no later than March 9, 2026.”

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Pursuant to the Preconstruction Notice (“PCN”) (ENG 6082”), the OTA EWC-28502A East West Connector over Canadian River Floodplain is described by the USACE as a project by which:

“the Oklahoma Turnpike Authority (“OTA”) is proposing to construct a new location highway called the East-West Connector (“Turnpike”) in McClain and Cleveland County, Oklahoma. Oklahoma Project EWC-28502A proposes to construct two (2) new bridges over the Canadian River and its floodplain (one for East bound and one for West bound traffic) [2-lanes going each way/4-lanes total]. The new bridges will each carry two (2) 12-foot driving lanes with a 10-foot outside shoulder and 2-foot inside shoulders. The Project will not have any permanent impact to Waters of the United States (“WOTUS”). All piers will fall outside the Ordinary High Water Mark, (“OHWM”) of the features delineated within the Project area. The temporary and permanent work roads<sup>2</sup> will be constructed (North and South), both of which will impact Lost Creek (S-3). The South Work Road will also affect Wetland 1. Work roads will cross Lost Creek using a series of corrugated metal pipes (CMP) and earthen fill material. Work roads will remain in place for the duration of bridge construction and will be removed upon completion of work. Stream flow in Lost Creek will be maintained. Lost Creek and Wetland 1 will be restored to pre-construction conditions. Refer to attached Waters Report, KMZ of Waters Reports features and PDF and KMZ of 90 percent Plans.”

\* \* \*

“The temporary work roads will be constructed with a series of corrugated metal pipes (“CMP”) covered with earthen fill material. In Lost Creek, the two (2) work roads will each be constructed with three (3) 72-inch diameter CMPs with 2-foot of cover. In Wetland 1, the South Work Road will be constructed with two (2) 36-inch diameter CMPs with 2-foot of cover. Work Roads will be approximately 50-foot wide.”

\* \* \*

“Construction of the two Work Roads is necessary to facilitate equipment and materials to the EWC-28502A Project Site. Construction of the bridge over the Canadian River and Flood Plain will require transport of hundreds of concrete beams and will require cranes and other specialized equipment to construct. The Work Roads will support access to the Site for these items. The Work Roads are anticipated to be needed for the majority of construction which is anticipated to start in April 2026 and finish in April 2028.”

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<sup>2</sup> At the October 31, 2025, OTA Pre-Bid Meeting (the “Pre-Bid Meeting”) OTA explained the need for the second “permanent” access road because the temporary access road “is right in the middle of the turnpike construction.”

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On December 20, 2024, OTA filed a pre-construction notification (“PCN”) for Nationwide Permit 14 in connection with OTA’s construction of a temporary crossing of Lost Creek. According to OTA, the construction of the temporary crossing is a necessary part of the East/West Connector Project. The PCN addresses the specific description of the Lost Creek activity as the East-West Connector (EWC-28502A, East-West Connector-Bridge and Approaches: East-West Connector Turnpike over the Canadian River Flood Plain).

The PCN states as purpose for Nationwide Permit 14:

“The Permit will be used to construct a temporary crossing of Lost Creek to support heavy equipment access to the proposed location of a new bridge over the Canadian River and its floodplain. The heavy equipment is needed to complete geotechnical investigations in support of the design of the bridge, and for archaeological trenching in support of the Section 106 Review that is anticipated for the future use of NWP-14 for the permanent bridge construction. The work will be completed as soon as possible after right-of-entry is received, anticipated in January or February of 2025, and will take between 30-45 days to complete. Permanent bridge construction is anticipated to being in early 2026 and will be permitted separately.”

The PCN estimates 0.033 acres, and 40-linear feet, of Waters of the United States will be impacted.

No basis is provided for either the 0.033 acre of temporary impact (which has been decreased without explanation, from OTAs delineation of 0.49 acres) nor is any basis provided to address exact impact to WOTUS or concerning impacts to endangered and threatened species habitats. Despite the absence of such information, the applicant’s agent has certified the PCN as “complete and accurate.”

In its Delineation of Waters of the United States Report dated December 10, 2024, OTA admits acres “within the study footprint,” (streams and creeks, and wetlands of Lost Creek, total 3.86 acres and will fall within the jurisdiction of the USACE. Although the Delineation does not address exact acres impacted), as it must, (and thus, the Corps has no basis to issue any CWA Permit without (actual acres impacted) one must take the 3.86 acres “within the study footprint,” to be impacted. Because the impacts to WOTUS total more than 1/2 acre, Nationwide Permit 14 is not available to the OTA and it must obtain an Individual Permit.

### **Segmentation and Connected Action**

In addition, by segmenting impacts to Lost Creek, the Canadian River, and Wetlands, OTA seeks to evade its obligations to obtain an individual Permit by not including all of the acreage impacted as one Project. This segmentation of portions of the same project is a transparent effort to stay below the 1/2 acre impact limits for the NWP-14. OTA is not allowed to analyze portions of the Project in segments when the inevitable result is to present impacts that appear smaller than they actually are. This is particularly true when one action, of many, results in the need for an Individual Permit.

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The building of the Turnpike requires temporary and permanent construction roads to be built. What's more, the temporary and permanent construction roads have no purpose and are not needed without the construction of the Turnpike.

It is improper to separate impacts associated with activities that are "intrinsically linked to the Project overall." Whether described as "segmentation," "connected actions," or "cumulative actions,") it is required all impacts must be analyzed as a part of the same project. As the Tenth Circuit noted in *Rocky Mountain Peace and Justice v. U.S. Fish and Wildlife Service*, agencies must be prevented from minimizing the potential environmental consequences of a proposed action (and thus short-circuiting NEPA Review) by segmenting or isolating an individual action that, by itself, may not have a significant environmental impact. *See also, Citizens' Commission to Save Our Canyons v. U.S. Forest Service*, 297 F.3d 1012, 1028 (10th Cir. 2002). Here, the Project is sufficiently "significant" to require an Individual Permit – even before other unsuitable impacts are considered.

To determine whether two actions are connected (or are being segmented) an independent utility test is applied.<sup>3</sup> Here, neither the construction of the temporary or permanent roads across Lost Creek, nor the bridge over the Canadian River, can stand alone. Each is essential and needed, to complete the Project. Neither has independent utility; all must be considered together for purposes of impacts. FHWA Regulations at 23 CFR § 771.1(f) requires a linear transportation to have "independent utility" to be a stand-alone project. The temporary and permanent work roads provide no benefit, unless the Turnpike is built. *Id.* The expenditure of funds to build the temporary and permanent roads is not reasonable unless the Turnpike is built. *Id.* Thus, because the Project's impacts are greater than 1/2 acre an Individual Permit is required for the East-West Connector Project. Consequently, the impacts of all these must be considered together, in an Environmental Impact Statement. Moreover, should the activities be regarded as two different actions, it is well settled "two proposed actions [are] connected when one action could not occur but for the occurrence of the other." *Id.* at 1029.

In addition to resulting in segmentation, the construction of the temporary and permanent construction roads, and their necessity for the Turnpike Project, make them Connected Actions that must be addressed as part of the same project. Actions are "connected" if one of the actions cannot or will not proceed unless other actions are taken previously or simultaneously. According to OTA, construction of the Turnpike cannot proceed without construction of the temporary and permanent<sup>4</sup> construction access roads. Moreover, the roads are interdependent parts of the larger Turnpike Project and depend upon the larger action for their justification.

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<sup>3</sup> The now repealed CEQ Regulations state a proposed action is connected to other actions if the proposed action (1) "[a]utomatically trigger[s] other actions which may require [EISs], (2) "[c]annot or will not proceed unless other actions are taken previously or simultaneously," or (3) is an "interdependent part of a larger action and depend[s] on the larger action for [its] justification." 40 C.F.R. § 1508.25(a)(1).

<sup>4</sup> The impacts of the "permanent" access road should have been in a PCN along with the PCN for the temporary access road. Based on the impacts of the temporary road, the permanent access road's impacts alone likely exceed 1/2 acre.

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OTA has failed miserably in its performance of the required Environmental Studies and the relevant federal agencies have abdicated their responsibilities by advancing the Project without compliance with environmental laws and regulations.

### **Major Federal Action**

The Tenth Circuit has defined “major federal action” as “actions by the federal government . . . and non-federal actions ‘with affects that might be major and which are potentially subject to federal control and responsibility.’” *See Los Ranchos*, 906 F.2d 1477, 1480 (10th Cir. 1990). As the Tenth Circuit has said repeatedly:

“In effect, ‘major federal action’ means that the federal government has actual power to control the Project.”

*See Ross v. Federal Highway Administration*, 162 F.3d 1046 (10th Cir. 1998).

At least two grounds support the Project constituting major federal action. The first, is that an Individual Permit is required under the Clean Water Act because a proper analysis results in impacts greater than 1/2 acre under any and all calculations, for the three actions crossing water. The second is that OTA admits on its website the Project areas that intersect with federal highways must comply with the National Environmental Policy Act (“NEPA”). As OTA admits, the NEPA documents concerning the OTA’s Turnpike’s intersection with Federal highway must be approved by FHWA (and ODOT) in order for OTA to commence and complete construction of the Project. Without FHWA’s approval of the NEPA analyses at the Federal level, the Project cannot be constructed. Such control by FHWA results in the Project being classified Major Federal Action. *See Los Ranchos*, at 1482; *see also Sierra Club v. Hodel*, 848 F.2d 1068, 1089 (10th Cir. 1988).

Because the construction of the East-West Connector constitutes major Federal Action, FHWA’s Regulations apply. 23 CFR § 771.115(a)(1)(2) states as follows:

“(a) *EIS*. Actions that have a reasonably foreseeable significant effect on the quality of the human environment requiring EIS. The following are examples of actions that normally require an EIS:

- (1) a new controlled access freeway; and,
- (2) a highway project of four or more lanes on a new location.”

East-West Connector, like virtually all turnpikes, is a controlled-access highway and is generally defined as a highway designed for high-speed vehicular traffic, with all traffic flow – ingress and egress – regulated. There is no question the East-West Connector qualifies as a controlled-access highway. An EIS should be performed because under 23 CFR § 771.115(a)(2) the highway to be constructed involves a project of four (4) or more lanes on a new location, and when completed will result in a “new controlled

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access freeway.” (*See* 23 CFR 771.115(a)(2)). OTA has admitted each of those facts. Consequently, the East-West Connector Project cannot move forward until a compliant EIS is performed by OTA.

### **Inadequacies in Section 404 Permitting Process**

The Section 404 Guidelines found at 40 CFR § 230, et. seq., require detailed and specific factual determinations regarding various aspects of the discharge that is to be made to a WOTUS. *See*, 40 CFR § 230.11(a)-(h). The factual determinations required must be used to issue the required findings of compliance contained Section 230.12. Here, USACE makes no findings, and instead has elected to rely on conclusions proffered by OTA, rather than facts in making its determination an Individual Permit is not necessary, and NWP 14 Permits are sufficient.

In so doing, USACE has failed, among other inadequacies, to take a “hard look” at the Ordinary High Watermark (“OHWM”) one or successive – in the Delineation provided to the Corps. OTA represents to the Corps the Canadian River has an “average OHWM observed to be 186 feet wide. (Page 14) It also states at page 3 of the Delineation: “Water bodies were delineated according to USACE Regulatory Guidance Letter (“RGL”) 05-05 Ordinary High Watermark (“OHWM”) identification for Non-tidal Waters (USACE 2005).”

In utilizing RGL 05.05, OTA rejected requiring OTA to use the more comprehensive and more recent “National Ordinary High Watermark Field Delineation Manual” for Rivers and Streams, Final Version, (January 2025). OTA also elected to forego using the “Rapid Ordinary High Watermark (OHWM) Identification Data Sheet) should evaluate when, September 20, 2024,” Section 3B of RGL 05.05 requires the consideration of 15 specific criteria, one establishing an OHWM. There is no evidence either OTA or the USACE utilized any of the 15 conditions. While RGL 05.05 doesn’t “require” anything, it cautions when, as here, in physical evidence alone will be the determination more than one of the criteria should be addressed.

OTA did nothing to establish the OHWM other than visually attempt to observe it. It did nothing to support its conclusion regarding the location of the OHWM. Given the wandering and changing nature of the Canadian River’s OHWM (*See* Exhibit B) it was arbitrary and capricious for USACE to accept OTA’s OHWM determination.

In the same manner, the OHWM is used to determine whether or not discharges or construction activities are occurring in a WOTUS. In addition to failing to delineate properly the OHWM, OTA claims there will be no impacts because (at page 8 of its delineation) OTA purports to list the data collection it has performed in determining impacts to Waters of the U.S. Few of the criteria expressed have been demonstrated, only concluded. A lack of factual information undermines the OHWM determination. In addition, OTA’s field visit for the delineation occurred in August and September of 2022, and is now stale and unreliable. Nevertheless, similarly, for both the Canadian River and Lost Creek, the OHWM “was observed” by OTA. Observation is insufficient to establish the location of the OHWM.

Even more unacceptable, the Corps adopted Garver’s Wednesday, June 19, 2024 conclusions that:

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“As an effort to minimize impacts to the Canadian River, the OTA has determined that they can build the new river crossing [of the Canadian River] without any work within the OHWM of the Channel. There would be no permanent or temporary construction within the delineated stream. I have attached some exhibits showing the purposed piers in relation to the OHWM as determined through field delineation. We have verified with a couple of contractors that they have cranes that can hang all the beams from one location without having to enter or cross the Channel. Extensive care would be taken to mark the OHWM, establish buffers, and install and monitor BMPs to protect the resource.”

The Corps’ decision to accept OTA’s unwarranted and unsupported conclusion that it can place construction equipment outside the OHWM is unsupported by even a scintilla of evidence. That a “couple of contractors” say “they have cranes that can hang all the beams” from outside the OHWM requires an analysis that would at least include the capability of the cranes, their location, the ability to move them, and the exact manner in which the cranes would be used, and the road that would be built.

Moreover, the crane’s inevitable placement in the floodplain also violates the CWA.<sup>5</sup>

The Corps’ acted arbitrarily, capriciously and not in accordance with law when it approved the Corps delineation and accepted the unsupported conclusions involving how the bridge would be built.

#### **Section 4(f)**

FHWA is required to perform environmental studies at the intersections of East/West Connector with Federal Interstate Highways 35, 44 and 40. Those studies have not been performed, as they must be, before construction starts. Significantly, in December of 2022, the Department of Interior’s Bureau of Reclamation rejected the OTA’s proposed South Extension Route because of its impacts on federal lands that make up a part of the Norman Project and Lake Thunderbird. The Norman Project and Lake Thunderbird provide recreation and wildlife benefits, attract tourism and abundant wildlife and include Lake Thunderbird State Park. Lake Thunderbird offers various water based recreational activities including boating, swimming and fishing, camping, hunting, hiking, picnicking, horseback riding, mountain biking and birding.

Likewise, the path of the OTA’s proposed East-West Connector route impacts federal title lands, flowage easements, and the conservation, flood, and surcharge pools. Section 4(f) is therefore applicable.

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<sup>5</sup> In an admission of its inability to perform work outside the OHWM, OTA has established paltry penalties for such a violation. At the prebid meeting OTA stated,

“the disincentive rate for each non-compliance of the Ordinary High Water Mark would be \$2,000 per occurrence, plus \$100 per hour for every hour past the first hour until non-compliance issues are resolved.” This penalty results in a maximum “disincentive” of \$4300 for the first day and \$2400 for each consecutive day. The civil penalty for non-compliance under the CWA with OHWM is almost \$70,000 per day. The disincentive amount is actually an invitation to violate the OHWM and the CWA.

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Section 4(f) of the U.S. Department of Transportation Act (now 49 U.S.C Section 303 & 23 USC Section 138) is the federal law protecting publicly owned parks and recreation areas, wildlife water fowl refuges and historic sites from use in transportation projects. The Norman Project and Lake Thunderbird (including Lake Thunderbird State Park) are protected under Section 4(f). Consequently, FHWA must perform a Section 4(f) study to demonstrate there is no "feasible and prudent" alternative to the route selected by OTA that impacts federally protected lands. OTA and the Bureau of Reclamation incorrectly concluded there was no Federal Action requiring implementation of FHWA's 4(f) requirements. Because federal jurisdiction exists, based on the need for an Individual Permit, and because FHWA must approve environmental studies associated with the Intersection of OTA's East/West Connector and Federal Highways, 4(f) is applicable.

In an effort to overcome the Bureau of Reclamation's rejection of the alignment for the Project over Bureau of Reclamation lands, OTA realigned the Project so that it purportedly does not cross fee title lands, only lands that were burdened by flowage easement(s).<sup>6</sup> Flowage easements, however, must fall within public recreational or other uses that warrant protection when the easements are used for transportation projects. Some, if not all of the flowage easements over which the Project will travel are those associated with either or both of Little River State Park and Lake Thunderbird State Park. It is undisputed those lands make-up a portion of the shore, and are associated with recreation opportunities such as wading, swimming, water sports, hiking, walking and other uses. The East-West Connector is not compatible with this use of the flowage easements and would unreasonably interfere with those uses. A 4(f) study must be performed to determine whether there is a feasible and prudent avoidance alternative to the current Project route.

### **Segmentation**

OTA's delineation describes a 30.5 mile project divided into two (2) phases each consisting of five (5) segments - totaling 10, for the entire project. For environmental purposes, as set forth more fully above, OTA must demonstrate the independent utility of each segment, and their necessity for the Project. No such demonstration has been made.<sup>7</sup>

The Preconstruction Notice ("PCN") for Lost Creek is incomplete, inadequate, and fails to satisfy NWP 14. To begin with, there is no factual basis to establish impacts to Lost Creek are limited to 0.49 acres included in the Delineation, much less the 0.033 acres in 40 linear feet said to be impacted in the

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<sup>6</sup> Flowage easements, generally, are lands where the Bureau of Reclamation has rights for water management, restricting permanent structures and requiring permits for activities impacting development near the lakes flow zones.

<sup>7</sup> In fact, on page 5 of the Delineation, OTA admits the IH-44 and IH-35 interchanges have not been evaluated as a part of the Delineation Report. OTA, the Army Corps, the Department of Interior, U.S. Fish & Wildlife Services, have not been engaged in a meaningful consultation under Section 7 of the Endangered Species Act as required. It is undisputed that the Canadian River within the impact area constitutes critical habitat for the Arkansas Shiner and other endangered species. Apparently, at least in part on reliance on OTA's representations it will not engage in work within the WOTUS a full consultation concerning species was not performed. Section 7, Consultation was, likewise, not performed in connection with the Lost Creek, a tributary of the Canadian River. In essence, once OTA provided Fish & Wildlife with an email including a list of endangered species within the area, and a statement OTA would not affect them or its habitat, the consultation was completed. Such a "consultation" does not satisfy the requirements of Section 7.

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PCN. The Delineation was completed December 10, 2024. The PCN was submitted or at least signed December 20, 2024. **(The PCN states)**

**“Each PCN must include a delineation of wetlands, other special aquatic sites, and other waters such as lakes and ponds and perennial intermittent streams on the purposed site.”**

There is no evidence any of the requirements above were addressed when OTA submitted its Lost Creek PCN. In addition, OTA did not provide any information concerning best management practices for Erosion Control (“BNPs”), nor did it provide information on restoration of the stream after impacts. See PCN Section 20. In addition, Section 24 of OTA’s PCN does not address consultation on endangered species issues; rather, it simply concludes its action will not affect habitat.

Lastly, Section 30 of the PCN calls for information that should be included and is not characterized in any other Section. Others impacts to Waters of the U.S. associated with the East/West Connector Project should be included in this space in order to evaluate total impacts. They were not.

### **Failure to Identify Impacts**

Nowhere in OTA’s Delineation does it actually identify the square feet or acres impacted by the Project. Rather, it only identifies, “linear feet within the study footprint” and “acres within study footprint: “whether measuring streams, wetlands or ponds.” Without such information, no Clean Water Permit cannot be issued – whether Nationwide or Individual. Because no impacts are sufficiently identified. No mention is made how the fill will be retained in place for two (2) years of bridge construction. This bit of sophistry was rewarded with the issuance of an NWP 14 Permit. Based on the information provided by OTA, one can only conclude the Project as reflected by the WOTUS and the streams summary and the wetlands summary and pond summary, using OTA’s classifications, results in no less than impacts to 3.86 acres.<sup>8</sup>

OTA has issued its Notice to Proceed and is condemning property and preparing for construction; the harm to the Waters of the United States addressed herein is imminent. Absent withdrawal of the NW-14 Permit issued, and reestablishment of a proper Section 404 Permit process, Pike Off intends to sue the addressees of this letter in Federal Court under the Clean Water Act, NEPA, the APA, the Endangered Species Act, and Section 4(f) of the Federal Transportation Act. The suit will seek injunctive relief against all parties, as well as civil penalties and attorneys’ fees.

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<sup>8</sup> OTA’s calculations are immediately subject to scrutiny. The notion two (2) of the regulated bodies, Lost Creek and OW-3 are 0.49 acres in size (1/100 of an acre below the jurisdictional cut-off is unlikely even if not mathematically impossible).

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Pike Off hereby requests this letter be placed in the Administrative Record for this matter.

Very truly yours,

MUNSCH HARDT KOPF & HARR, P.C.

By:   
Frederick W. Addison, III

108-23(a-c) 19  
11-18-25

**OKLAHOMA TURNPIKE AUTHORITY  
SPECIAL PROVISIONS  
FOR  
FLEXIBLE NOTICE TO PROCEED  
EWC-28502A, JP NO. 37100(12), CLEVELAND AND MCCLAIN COUNTY  
EWC-28802A, JP NO. 37100(13), CLEVELAND COUNTY**

These Special Provisions revise, amend, and where in conflict, supersede applicable sections of the 2019 Standard Specifications for Highway Construction.

**108.03 PROSECUTION AND PROGRESS *(Add the following:)***

**A. Notice to Proceed**

The Notice to Proceed for this project will be issued in the normal time period (approximately 30 days after award). The Contractor may begin work any time after the issuance of the Notice to Proceed, but no later than **March 9, 2026**. Time charges will begin on the date the Contractor begins work, or at the date specified in the Notice to Proceed, and will continue until the project is completed. Once the work begins, construction is expected to continue at an optimum rate until the work is done.

This project will be allowed a flexible start date for beginning the work. The Work Order for this project will be issued in the normal time period (approximately 30 days after award of Contract). The Contractor may begin work any time after the issuance of the Work Order, but no later than **March 9, 2026**. Time charges will begin on the date the Contractor begins work and will continue until the project is complete.

The March 9, 2026 (or earlier) first NTP will be in effect for the following stations:

- 170+56.58 to 194+86.68 (EWC-28502A)
- 203+08.19 to 242+11.83 (EWC-28502A)
- 242+11.83 to 256+79.90 (EWC-28802A)

**NOTE:** The Contractor will not be allowed to work between station 194+86.69 and station 203+08.18 (EWC-28502A) and from station 256+79.91 to station 268+29.17 (EWC-28802A) until after March 31, 2026. This restriction includes no access across the land for employees or equipment and no storage or placement of materials or equipment within these stations. These areas must be considered a "No Access" areas until after March 31, 2026 for EWC-28502A and EWC-28802A.

# Canadian River at Indian Hills Rd Selective interpretations of the active channel positions over the last 40 years

Google Earth Images 1985-2024

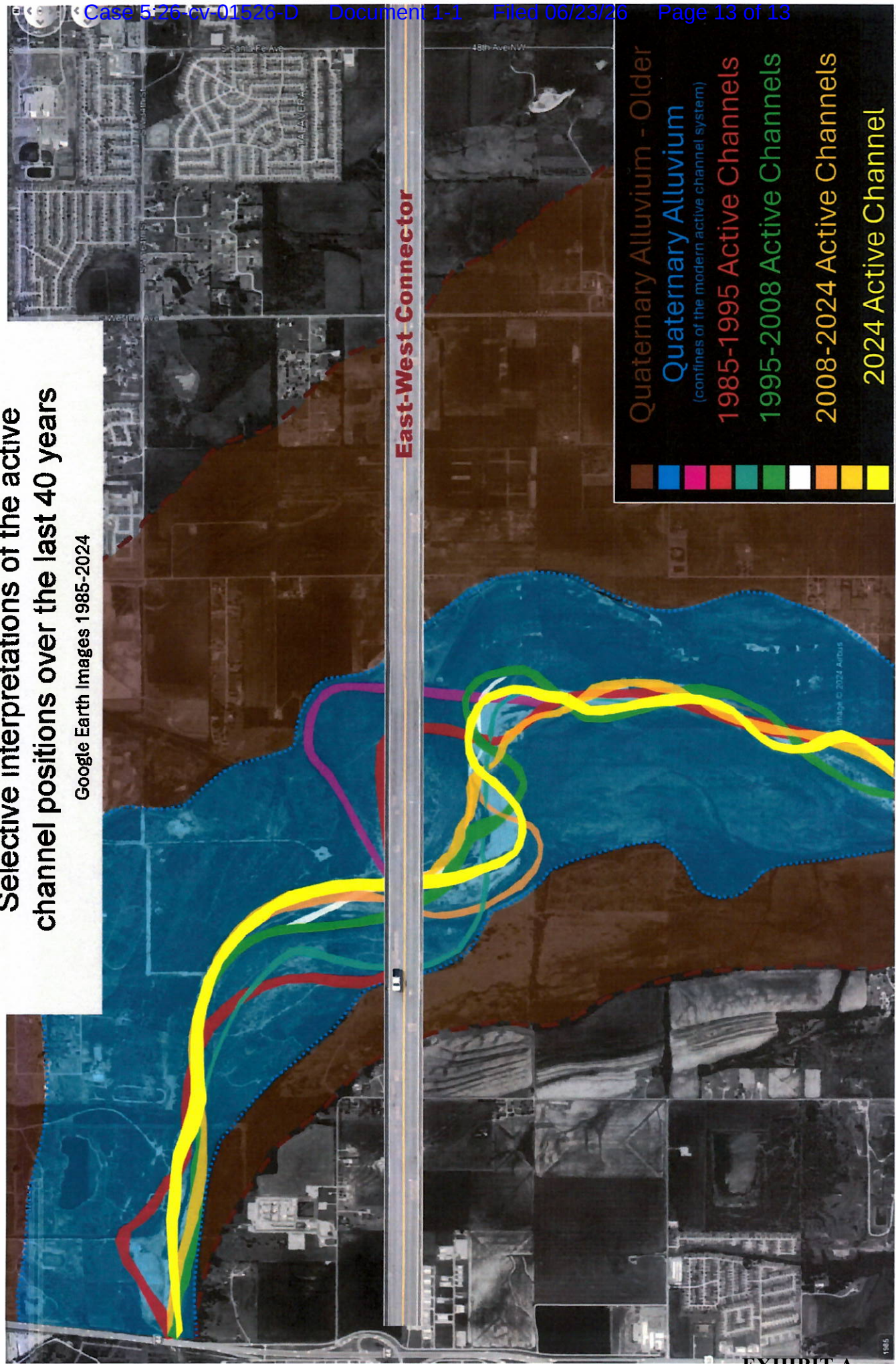


EXHIBIT A

EXHIBIT B



3. As set forth more fully in this Affidavit, I have concrete, personal interests in the waters, lands, and natural resources that will be adversely impacted by the Project. These interests include my longstanding recreational use of and aesthetic enjoyment of the South Canadian River, Lost Creek, and the surrounding areas, including the Lake Thunderbird area. These interests are threatened by the Project and the failure of the Defendants to comply with applicable federal environmental laws.

4. I have grown up hunting, fishing and enjoying the Lake Thunderbird area since I was a child. Over the years, I have developed a deep personal connection to the waterways, lands, and wildlife in the area surrounding the Project, including the South Canadian River and Lost Creek.

5. In both day and night, I regularly engage in recreational activities in and around the South Canadian River, Lost Creek, Lake Thunderbird, and the surrounding areas in Cleveland and McClain Counties. Specifically, I engage in the following activities in these areas:

- a. I hunt deer, turkey, and wild hogs in and around the river and creek areas that will be impacted by the Project. I am primarily a bow hunter. I have hunted these areas regularly and intend to continue doing so in the future.
- b. I fish in and around the rivers and ponds in the area.
- c. I engage in wildlife photography in and around the South Canadian River and Lost Creek areas.
- d. I visit Lost Creek specifically to look for and observe wildlife. I have observed deer and other wildlife along the river and creek areas that will be impacted by the Project.
- e. I enjoy the peace and quiet of the natural environment in these areas and derive aesthetic pleasure from the undisturbed character of the waterways, wetlands, and surrounding lands.

6. Included here as Exhibit A, is a link to a true and correct copy of an aerial photo with interactive legend depicting my use of numerous parks, natural and wildlife in the areas of

the Project. The Project crosses no less than 12 streams, creeks, streams, and tributaries in the area. It will impact both title lands and flowage easements.

7. During my use of the areas shown on Exhibit A, I often see other people enjoying the same areas and engaged in many of the same types of activities as I do such as fishing, wading, swimming, birding, hunting, picnicking, playing, horseback riding, biking and camping. The shorelines and the areas around them at Lake Thunderbird are in almost constant use by someone during daylight hours.

8. My recreational use and enjoyment of the South Canadian River, Lost Creek, Lake Thunderbird, and the surrounding lands and waters are directly threatened by the Project. According to OTA, the Project includes the construction of approximately thirty (30) miles of turnpike, at least two (2) bridges spanning the Canadian River, and the construction of temporary and permanent access roads through and over Lost Creek, all of which will include the discharge of dredge or fill material into Waters of the United States.

9. The Project will adversely impact my recreational, aesthetic, and environmental interests in the following ways:

- a. Construction of the temporary and permanent work roads across Lost Creek, which will each be approximately 50 feet wide and constructed with corrugated metal pipes covered with earthen fill material, will disrupt the natural flow and character of Lost Creek, diminishing my ability to observe and enjoy wildlife in and around the creek.
- b. The construction of two bridges over the Canadian River and its floodplain, and the associated construction activities, will disturb wildlife habitat in and around the South Canadian River, adversely impacting my ability to hunt, fish, observe wildlife, and photograph wildlife in these areas.
- c. Based on OTA's own Delineation of Waters of the United States Report, no less than 3.86 acres of Waters of the United States — including streams, creeks, and wetlands of Lost Creek — fall within the study footprint and will be impacted by the Project. These impacts directly threaten the waters and habitats that support the wildlife I hunt, fish for, photograph, and observe.

d. The Canadian River within the Project impact area constitutes critical habitat for the Arkansas Shiner and other endangered species. OTA and the relevant federal agencies have not engaged in a meaningful consultation under Section 7 of the Endangered Species Act. The failure to properly consult regarding impacts to endangered species and their habitats threatens the overall ecological health of the waterways and surrounding environment that I use and enjoy. Attached hereto as Exhibits B-H are photographs I took at a location approximately 9.25 miles SE of the Project, but in the same critical habitat of the Shiner.

10. The harm to my interests is imminent. OTA has issued its Notice to Proceed and is condemning property and preparing for construction. According to OTA, the work roads are anticipated to be needed for the majority of construction, which is anticipated to start in April 2026 and finish in April 2028.

11. I intend to continue using and enjoying the South Canadian River, Lost Creek, and the surrounding areas for hunting, fishing, wildlife observation, photography, and other recreational activities. The construction of the Project and the associated impacts to the waterways, wetlands, and wildlife habitats will diminish and impair my use and enjoyment of these areas. These harms are concrete, particularized, and not merely speculative.

12. I am concerned that OTA has sought to evade its obligation to obtain an Individual Permit under the Clean Water Act by segmenting the impacts of the Project. Because the impacts to Waters of the United States total more than one-half (1/2) acre, Nationwide Permit 14 is not available to OTA, and it must obtain an Individual Permit. The construction of the temporary and permanent work roads across Lost Creek, and the bridge construction over the Canadian River, are connected actions that have no independent utility apart from the Turnpike and must be considered together for purposes of evaluating impacts.

13. In addition, the Federal Highway Administration (“FHWA”) is required to perform environmental studies at the intersections of the East-West Connector with Federal Interstate Highways 35, 44, and 40 before construction starts. Those studies have not been performed.

FHWA must also perform a Section 4(f) study under the Federal Transportation Act to demonstrate there is no “feasible and prudent” alternative to the route selected by OTA that impacts federally protected lands, including the Norman Project and Lake Thunderbird, which provide recreation and wildlife benefits, attract tourism and abundant wildlife, and include Lake Thunderbird State Park. Lake Thunderbird offers various water-based recreational activities including boating, swimming, wading, fishing, camping, hunting, hiking, picnicking, horseback riding, walking the shorelines or creek beds, mountain biking, and birding — activities in which I personally participate. The Project will impact fee title lands and/or flowage easements use for recreation and wildlife purposes.

14. I am further concerned that the U.S. Army Corps of Engineers (“USACE”) made no independent factual findings or determinations regarding the adequacy of OTA’s Preconstruction Notice, the permit process, or Delineation of the Waters of the United States and instead relied on conclusions proffered by OTA. USACE’s failure to take a “hard look” at the impacts of the Project, including the Ordinary High Water Mark determination, undermines the integrity of the permitting process and deprives me and the public of procedural protections to which we are entitled under federal law.

15. It is important to me, and important to my procedural rights, that all environmental and conservation laws and regulations be followed in connection with the Project. Specifically, it is important that OTA and the relevant federal agencies be required to comply with the Clean Water Act, the National Environmental Policy Act (“NEPA”), the Endangered Species Act, the Administrative Procedures Act, and Section 4(f) of the Federal Transportation Act. To the extent

the Project proceeds without full compliance with these laws and their attendant procedures and requirements, my procedural rights are violated, and I am irreparably harmed.

16. I will suffer concrete injury from the construction and operation of the Project and its impacts on Waters of the United States, wetlands, wildlife habitats, and the surrounding environment without adequate environmental review or adequate opportunities for public notice and comment. My use and enjoyment of the South Canadian River, Lost Creek, and the surrounding lands and waters, including the Lake Thunderbird area, would be diminished by the Project.

17. By failing to comply with the procedural requirements of the Clean Water Act, NEPA, the Endangered Species Act, and Section 4(f) of the Federal Transportation Act, the Defendants have deprived me and Pike Off of the procedural rights and protections to which we are entitled under federal law. These procedural rights are designed to protect the very interests — recreational, aesthetic, environmental, and informational — that the Project threatens. If the Defendants comply with these laws, as they must, the resulting environmental review, public participation, and permitting processes would redress my injuries by ensuring the Project's impacts on the environment are properly evaluated, disclosed, and mitigated before construction proceeds.

18. Because of the reasons set forth herein, I request a Temporary Restraining Order, Preliminary Injunction, and a Permanent Injunction be entered preventing OTA from continuing to construct the Project until the proper procedures are followed including these required by the CWA, APA, ESA, FTA, and Oklahoma State Law.

19. As a board member of Pike Off, I am authorized to state that my interests and injuries, as described in this Affidavit, are germane to the purposes of Pike Off.

I made this affidavit as a member of Pike Off and in my individual capacity.

  
\_\_\_\_\_  
TANNER NAEHER

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this 22nd day of June, 2026, to certify which witness my hand and seal of office.



  
\_\_\_\_\_  
Notary Public for the State of Oklahoma



(“OTA”) construction of the East-West Connector Turnpike Project (“Project”) in McClain and Cleveland County, Oklahoma.

3. As set forth more fully below, I have concrete, personal interests in the waters, lands, and natural resources that will be adversely impacted by the Project. These interests include my longstanding and frequent recreational use of and aesthetic enjoyment of the Canadian River, Lake Thunderbird and the surrounding areas. These interests are threatened by the Project and the failure of the Defendants to comply with applicable federal environmental laws.

4. I have used and enjoyed Lake Thunderbird and the surrounding watershed for more than twenty years. Throughout that time, I have regularly engaged in a variety of recreational activities at Lake Thunderbird and its tributaries, including the Little River and Dave Blue Creek, as well as on the federally owned lands and state-managed wildlife and recreation areas associated with the Norman Project and Lake Thunderbird State Park. My activities have included fishing, swimming, water skiing, tubing, hiking, bird watching, rose rock exploration, camping, mountain biking, and wildlife observation.

5. During the summer months, I regularly use Lake Thunderbird for water-based recreation, including swimming, boating, water skiing, tubing, and fishing. During the cooler months, I frequently use the Clear Bay mountain biking trail system and other recreational trails in and around Lake Thunderbird State Park for mountain biking, hiking, and wildlife observation. I also regularly visit the surrounding public lands and tributaries, including the Little River and Dave Blue Creek areas, where I enjoy bird watching, observing wildlife, hiking, and other outdoor recreational activities.

6. I have visited and recreated in these areas numerous times each year for more than two decades, including within the past year, and I intend to continue using and enjoying Lake Thunderbird, its tributaries, and the surrounding public lands on a regular basis in the future. My

enjoyment of these areas depends upon the continued protection of their natural, scenic, recreational, and ecological qualities.

7. Lake Thunderbird and Lake Thunderbird State Park are part of the Norman Project and provide recreation and wildlife benefits, attract tourism and abundant wildlife, and offer various water-based and land-based recreational activities including hiking, boating, swimming, fishing, camping, birding, hunting, hiking, picnicking, horseback riding, mountain biking, and birding — activities in which I personally participate.

8. The Little River, Dave Blue Creek, and Hog Creek run into Lake Thunderbird. The Canadian River and Lost Creek are in the area where OTA is building the bridge for the Project. The Project's adverse impacts on these interconnected waterways and the surrounding watershed directly threaten the environmental and recreational qualities of Lake Thunderbird as well as the Canadian River, and Lost Creek, and the surrounding areas that I use and enjoy.

9. My recreational use and enjoyment of Lake Thunderbird, the Canadian River, Lost Creek, and their surrounding lands and waters are directly threatened by the Project. According to OTA, the Project includes the construction of approximately thirty (30) miles of turnpike, at least two (2) bridges spanning the Canadian River, and the construction of temporary and permanent access roads through and over Lost Creek, all of which will include the discharge of dredge or fill material into Waters of the United States.

10. The Project will adversely impact my recreational, aesthetic, and environmental interests in the following ways:

- a. Based on OTA's own Delineation of Waters of the United States Report, no less than 3.86 acres of Waters of the United States — including streams, creeks, and wetlands — fall within the study footprint and will be impacted by the Project. These impacts to the watershed threaten the water quality and ecological health of the waterways that feed into and sustain Lake Thunderbird, Lost Creek, and the Canadian River and its surrounding recreational areas.

- b. In December of 2022, the Department of the Interior's Bureau of Reclamation rejected OTA's proposed South Extension Route because of its impacts on federal lands that make up a part of the Norman Project and Lake Thunderbird. Despite this rejection, OTA realigned the Project so that it purportedly does not cross fee title lands but does continue to cross lands burdened by flowage easements associated with Little River State Park and Lake Thunderbird State Park. Some, if not all, of these flowage easement lands are associated with recreation opportunities such as wading, swimming, water sports, hiking, walking, and other uses — uses in which I personally participate and from which I derive enjoyment. The East-West Connector is not compatible with these recreational uses of the flowage easements and would unreasonably interfere with and damage them.
- c. The Canadian River within the Project impact area constitutes critical habitat for the Arkansas Shiner, a Water of the U.S., and other endangered species. OTA and the relevant federal agencies have not engaged in a meaningful consultation under Section 7 of the Endangered Species Act. The failure to properly consult regarding impacts to endangered species and their habitats threatens the overall ecological health of the waterways and surrounding environment that I use and enjoy.
- d. Construction of the temporary and permanent work roads across Lost Creek, which I understand has already been commenced, and which will each be approximately 50 feet wide and constructed with corrugated metal pipes covered with earthen fill material, as well as the construction of two bridges over the Canadian River and its floodplain, will disrupt the natural flow and ecological character of these waterways and the broader watershed that includes Lake Thunderbird, diminishing my ability to enjoy recreation in the Lake Thunderbird, Lost Creek, and Canadian River areas. Their construction and use constitute the placemat of fill and dredged material in the Water of the United States known as Lost Creek.

11. The harm to my interests is imminent. OTA has issued its Notice to Proceed, is condemning property, and has commenced construction. According to OTA, work roads are completed to some extent and construction of the Project is ongoing.

12. I most recently visited the Lake Thunderbird area in June 2026 and have concrete plans to return throughout the remainder of 2026 and beyond. I intend to continue using and enjoying Lake Thunderbird, the Little River, Dave Blue Creek, the Clear Bay trail system, and the surrounding public recreation and wildlife management areas for outdoor recreation, wildlife observation, and aesthetic enjoyment. The construction of the Project and the associated impacts to the waterways, wetlands, and wildlife habitats in the Lake Thunderbird watershed will diminish

and impair my use and enjoyment of these areas. These harms are concrete, particularized, and not merely speculative.

13. I plan to continue using the Canadian River and Lost Creek areas to enjoy outdoor recreation such as hiking, kayaking, and wildlife observation. I am concerned OTA has sought to evade its obligation to obtain an Individual Permit under the Clean Water Act by segmenting the impacts of the Project. Because the impacts to Waters of the United States total more than one-half (1/2) acre, Nationwide Permit 14 is not available to OTA, and it must obtain an Individual Permit. The construction of the temporary and permanent work roads across Lost Creek, and the bridge construction over the Canadian River, are connected actions that have no independent utility apart from the Turnpike and must be considered together for purposes of evaluating impacts.

14. In addition, the Federal Highway Administration (“FHWA”) is required to perform federal environmental studies at the intersections of the East-West Connector with Federal Interstate Highways 35, 44, and 40 before construction starts. Those studies have not been performed, construction has begun. FHWA must also perform a Section 4(f) study under the Federal Transportation Act to demonstrate there is no “feasible and prudent” alternative to the route selected by OTA that impacts federally protected lands, including the Norman Project and Lake Thunderbird. A Section 4(f) study is particularly important to me because Section 4(f) of the U.S. Department of Transportation Act is the federal law protecting publicly owned parks and recreation areas, wildlife and waterfowl refuges, and historic sites from encroachment of transportation projects — and Lake Thunderbird State Park is precisely the type of resource Section 4(f) is designed to protect.

15. I am further concerned that the U.S. Army Corps of Engineers (“USACE”) made no independent factual findings or determination regarding the adequacy of OTA’s Preconstruction Notice, the permit processes or Delineation of the Waters of the United States and

**AFFIDAVIT OF AMY CERATO – PAGE 5**

instead relied on inadequately supported conclusions proffered by OTA. USACE's failure to take a "hard look" at the impacts of the Project, including the Ordinary High Water Mark determination, undermines the integrity of the permitting process, prevents a meaningful analysis of CWA impacts, and deprives me and the public of procedural protections to which we are entitled under federal law.

16. It is important to me, and important to my procedural rights, that all environmental and conservation laws and regulations be followed in connection with the Project. Specifically, it is important OTA and the relevant federal agencies be required to comply with the Clean Water Act, the National Environmental Policy Act ("NEPA"), the Endangered Species Act, the Administrative Procedures Act, and Section 4(f) of the Federal Transportation Act. To the extent the Project proceeds without full compliance with these laws and their attendant procedures and requirements, my procedural rights are violated, and I am irreparably harmed.


17. I will suffer concrete injury from the construction and operation of the Project and its impacts on Waters of the United States, wetlands, wildlife habitats, and the surrounding environment without adequate environmental review or adequate opportunities for public notice and comment. My use and enjoyment of the Canadian River, Lake Thunderbird, Lake Thunderbird State Park, Lost Creek, Little Creek, Hog Creek, Dave Blue Creek, and the surrounding lands and waters would be diminished by the Project.

18. By failing to comply with the procedural requirements of the Clean Water Act, NEPA, the Endangered Species Act, and Section 4(f) of the Federal Transportation Act, the Defendants have deprived me and Pike Off of the procedural rights and protections to which we are entitled under federal law. These procedural rights are designed to protect the very interests — recreational, aesthetic, environmental, and informational — that the Project threatens and is now harming. If the Defendants comply with these laws, as they must, the resulting environmental

review, public participation, and permitting processes would redress my injuries by ensuring the Project's impacts on the environment are properly evaluated, disclosed, and mitigated before construction proceeds.

19. As President of Pike Off, I am authorized to state that my interests and injuries, as described in this Affidavit, are germane to the purposes of Pike Off, and that neither my claims nor the relief requested in this action require my individual participation. I make this affidavit in both my official capacity as Pike Off's President and as an individual.

20. Because of the reasons set forth herein, I request a Temporary Restraining Order, Preliminary Injunction, and a Permanent Injunction be entered preventing OTA from continuing to construct the Project until the proper procedures are followed including these required by the CWA, APA, ESA, FTA, and Oklahoma State Law.

  
AMY CERATO

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this 22 day of June, 2026, to certify which witness my hand and seal of office.



  
Notary Public for the State of Oklahoma

## SECTION 404 OF THE CLEAN WATER ACT

- A. The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.
- B. Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary
  - 1. through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 403(c), and
  - 2. in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.
- C. The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.
- D. The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.
- E.
  - 1. In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice of opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. Any general permit issued under this subsection shall
    - a. be based on the guidelines described in subsection (b)(1) of this section, and
    - b. set forth the requirements and standards which shall apply to any activity authorized by such general permit.
  - 2. No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for

public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

F.

1. Except as provided in paragraph (2) of this subsection, the discharge of dredge or fill material -
  - a. from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
  - b. for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;
  - c. for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;
  - d. for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;
  - e. for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;
  - f. resulting from any activity with respect to which a State has an approved program, under section 208(b)(4) which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307).
2. Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

G.

1. The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce

shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto), within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

2. Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.
3. No later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

H.

1. Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:
  - a. To issue permits which -
    - i. apply, and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 307 and 403 of this Act;
    - ii. are for fixed terms not exceeding five years; and
    - iii. can be terminated or modified for cause including, but not limited to, the following:
      - I. violation of any condition of the permit;
      - II. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;
      - III. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.



this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.

4. After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits pending before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.
  5. Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.
- I. Whenever the Administrator determines after public hearing that a State is not administering a program approved under section (h)(2)(A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall:
1. withdraw approval of such program until the Administrator determines such corrective action has been taken, and
  2. notify the Secretary that the Secretary shall resume the programs for the issuance of permits under subsection (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.
- J. Each State which is administering a permit program pursuant to this section shall transmit to the Administrator
1. a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and
  2. a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he

shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h)(1)(E), or (B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b)(1) of this section unless it modified such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the cause may be, for such source in accordance with the guidelines and requirements of this Act.

- K. In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section or any category (including any class, type, or size within such category) of discharge within the State submitting such program.
- L. The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.
- M. Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that
  - 1. an application for a permit under subsection (a) of this section has been received by the Secretary, or
  - 2. the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the

United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

- N. Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act.
- O. A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.
- P. Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 307, and 403.
- Q. Not later than the one-hundred-eightieth day after the date of enactment of this subsection, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice of such application is published under subsection (a) of this section.
- R. The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after the date of enactment of his subsection, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 301(a) or 402 of the Act (except for effluent standards or prohibitions under section 307), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for each construction.
- S.
  - 1. Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such persons to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.
  - 2. A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of

the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

3. The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.
4.
  - . Any person who willfully or negligently violates any condition or limitation in a permit issued by the Secretary under this section shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.
    - A. For the purposes of this paragraph, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.
5. Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.
- T. Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

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This content is from the eCFR and is authoritative but unofficial.

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## **Title 40 – Protection of Environment**

### **Chapter I – Environmental Protection Agency**

#### **Subchapter H – Ocean Dumping**

#### **Part 230 – Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material**

#### **Subpart B – Compliance With the Guidelines**

**Authority:** 33 U.S.C. 1251 *et seq.*

**Source:** 45 FR 85344, Dec. 24, 1980, unless otherwise noted.

#### **§ 230.10 Restrictions on discharge.**

Note: Because other laws may apply to particular discharges and because the Corps of Engineers or State 404 agency may have additional procedural and substantive requirements, a discharge complying with the requirement of these Guidelines will not automatically receive a permit.

Although all requirements in § 230.10 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities.

- (a) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.
  - (1) For the purpose of this requirement, practicable alternatives include, but are not limited to:
    - (i) Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters;
    - (ii) Discharges of dredged or fill material at other locations in waters of the United States or ocean waters;
  - (2) An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.
  - (3) Where the activity associated with a discharge which is proposed for a special aquatic site (as defined in subpart E) does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (*i.e.*, is not “water dependent”), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.

- (4) For actions subject to NEPA, where the Corps of Engineers is the permitting agency, the analysis of alternatives required for NEPA environmental documents, including supplemental Corps NEPA documents, will in most cases provide the information for the evaluation of alternatives under these Guidelines. On occasion, these NEPA documents may address a broader range of alternatives than required to be considered under this paragraph or may not have considered the alternatives in sufficient detail to respond to the requirements of these Guidelines. In the latter case, it may be necessary to supplement these NEPA documents with this additional information.
  - (5) To the extent that practicable alternatives have been identified and evaluated under a Coastal Zone Management program, a section 208 program, or other planning process, such evaluation shall be considered by the permitting authority as part of the consideration of alternatives under the Guidelines. Where such evaluation is less complete than that contemplated under this subsection, it must be supplemented accordingly.
- (b) No discharge of dredged or fill material shall be permitted if it:
- (1) Causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard;
  - (2) Violates any applicable toxic effluent standard or prohibition under section 307 of the Act;
  - (3) Jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended. If an exemption has been granted by the Endangered Species Committee, the terms of such exemption shall apply in lieu of this subparagraph;
  - (4) Violates any requirement imposed by the Secretary of Commerce to protect any marine sanctuary designated under title III of the Marine Protection, Research, and Sanctuaries Act of 1972.
- (c) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. Findings of significant degradation related to the proposed discharge shall be based upon appropriate factual determinations, evaluations, and tests required by subparts B and G, after consideration of subparts C through F, with special emphasis on the persistence and permanence of the effects outlined in those subparts. Under these Guidelines, effects contributing to significant degradation considered individually or collectively, include:
- (1) Significantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites.
  - (2) Significantly adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical, and chemical processes;
  - (3) Significantly adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

- (4) Significantly adverse effects of discharge of pollutants on recreational, aesthetic, and economic values.
- (d) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps.



US Army Corps  
of Engineers  
Seattle District

# Alternative Analysis Guidance



Date: 23 October 2003

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## PREPARING AN ALTERNATIVES ANALYSIS

### DEFINITIONS

**Section 404(b)(1) Guidelines.** A set of guidelines listed in 40 CFR Part 230 intended to be consistent with and implement the policies in the Clean Water Act. The purpose of the guidelines is to restore and maintain the chemical, physical and biological integrity of waters of the United States through the control of discharges of dredged or fill material. Fundamental to the guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

**Project Purpose and Need.** Basically, need is a problem statement. Purpose is a solution statement (how the need is proposed to be met). The applicant states the purpose as they understand it and then the Corps verifies that it is not unduly restrictive of potential alternatives, pursuant to the Section 404(b)(1) Guidelines (the guidelines).

**Basic project purpose.** The fundamental, essential, or irreducible purpose of the proposed project and is used to determine whether the project is "water dependent" or not.

**Overall project purpose.** The project purpose of the applicant's specific project: The 404 alternatives analysis is based on the overall project purpose.

**Special Aquatic Sites.** The guidelines cover all waters of the U.S., but afford special aquatic sites a higher level of scrutiny and protection. Special aquatic sites include sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and stream riffle and pool complexes. From a national perspective, the degradation or destruction of special aquatic sites is considered among the most severe environmental impacts covered by the guidelines.

**Water Dependency.** This pertains to an activity (associated with a fill) that is proposed to occur in a special aquatic site and that requires access or proximity to, or siting within, a special aquatic site in order to fulfill its basic purpose. For example, the basic purpose of a restaurant is to feed people, and it is therefore not a water dependent activity.

**Practicable Alternative.** An alternative that is or was available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose.

## THE ALTERNATIVES ANALYSIS

Unless exempt from regulation, all projects involving fill in waters of the U.S., whether or not these waters are special aquatic sites, are required to evaluate "practicable alternatives" that would have less impact on the aquatic ecosystem. When an activity is proposed to occur in a special aquatic site (i.e. wetland fill) and it is not water dependent, the regulations presume that 1) practicable alternatives **that do not** involve special aquatic sites are available, and that 2) these alternatives will have less adverse impact on the aquatic ecosystem. Both of these presumptions must be clearly rebutted in writing by the applicant as a prerequisite to complying with the Section 404(b)(1) Guidelines, and thus to potential permit issuance (see Environmental Impacts section).

In order to accomplish the Section 404(b)(1) evaluation, the applicant must supply the Corps with the following information:

1. a specific description of the purpose and need for the project, including the basic and the overall project purpose (see definitions above).
2. an analysis of the practicable alternatives (see additional explanation below). Unless the applicant clearly demonstrates to the Corps that the proposal involving wetland fill is the least environmentally damaging practicable alternative, the 404(b)(1) guidelines prohibit the placement of fill material and the permit will be denied.

The alternative analysis should include both offsite and onsite alternatives which are available and capable of meeting the project purpose. Therefore, it is important that the overall purpose of the project be defined; otherwise, an alternative analysis cannot be accomplished and the subsequent Section 404 evaluation could not be completed in a manner potentially favorable to the applicant. In preparing your analysis of the offsite practicable alternatives, you must first determine the geographic areas to be considered. The geographic scope of the market analysis should be specifically stated in your project purpose. An alternative must be capable of achieving the project purpose in order to be considered a practicable alternative.

What properties are or were available in the area of your market analysis? Are these alternatives practicable? Consider the design criteria used for development of the proposed project. Are there properties available that would meet those criteria that would not involve filling in wetlands? Specific properties should be identified within the study area and reasons given why these sites are or are not practicable. We recommend preparing a matrix listing alternative sites and analyzing them in terms of cost, logistics, and existing technology, as well as impacts. Two additional important points you should be aware of:

- a. Not owning a piece of property does not eliminate it from consideration.
- b. Just because an alternative is not zoned for a certain type of development does not eliminate it from consideration. Zoning is a planning tool, not an absolute, and is subject to adjustments through variances, as well as through policy changes. What is involved in a rezone/variance can be considered in terms of logistics, costs, and existing technology.

Remember that the alternatives examined must be capable of achieving the basic project purpose; hence, the emphasized importance of clearly defining project need and purpose. A clear, definitive statement of need and purpose helps to define the specific criteria against which the various alternatives will be evaluated. With the matrix, we recommend inclusion of a map showing the study area of your analysis and the properties that have been analyzed.

Concerning onsite alternatives, we need specific information that provides rationale as to why the proposed site plan is the least environmentally damaging practicable alternative. Here again, we recommend a matrix that addresses alternative onsite configurations in terms of costs, logistics, and existing technology (it helps to focus the analysis if the categories are broken down further into the specific design criteria used in site development). We want to emphasize that the guidelines require that to be permissible, an alternative must be the least environmentally damaging practicable alternative. Once a set of practicable alternatives has been identified, the regulatory mandate is to permit the alternative with the least environmental damage. If the preferred alternative were not the least environmentally damaging practicable alternative, then the permit would be denied.

Additionally, we stress that the guidelines set forth rebuttable presumptions that:

- (1) alternatives for non water-dependent activities that do not involve special aquatic sites are available; and
- (2) alternatives that do not involve special aquatic sites have less adverse impact on the aquatic environment.

Unless the applicant refutes both of these premises in writing, then the permit would be denied.

**MITIGATION.** Compensatory mitigation may not be used as a method to reduce environmental impacts in the selection of the least environmentally damaging practicable alternatives for the purposes of requirements under the guidelines. If it is determined that potential impacts have been avoided to the maximum extent practicable, the remaining unavoidable impacts will then need to be mitigated to the extent appropriate and practicable by requiring steps to minimize impacts. Compensation for aquatic resource values can only be considered after impacts have been avoided and minimized to the greatest extent possible.

**ENVIRONMENTAL IMPACTS.** All activities to be permitted by the Corps must go also through National Environmental Policy Act (NEPA) compliance procedures. This may be via Categorical Exclusion (such as for minor activities, including those covered by Letters of Permission), Environmental Assessment (EA) (such as for activities covered by nationwide permits and many standard permits), or Environmental Impact Statement (EIS) (for activities covered by certain standard permits). When a project needs a standard permit, we use the comments received on the Public Notice to help make the decision on NEPA compliance. During the environmental review, it may be decided that even the least environmentally damaging practicable alternative will result in an unacceptable level of impact on the aquatic environment and the permit would therefore be denied.

**SUMMARY.** No discharge of dredged or fill material shall be permitted if:

- 1) There is a practicable alternative to the proposed work, which would have less adverse impact on the aquatic ecosystem (so long as the alternative will not have other significant adverse environmental consequences);
- 2) It violates a State water quality standard, violates a toxic effluent standard, jeopardizes the continued existence of a threatened or endangered species, or violates protective requirements of a federal marine sanctuary;
- 3) It will result in significant degradation of waters of the U.S.; or
- 4) If appropriate and practicable steps have not been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem.

In addition to these requirements of the Section 404(b)(1) Guidelines, the Corps also conducts a review of at least 19 different public interest factors and a review of Tribal concerns. Even if a proposal passes the Guidelines tests, if it is found to be contrary to the public interest, the permit would be denied.

4/23/2026

Weatherford U.S. L.P Real Estate Department  
2000 St. James Place  
Houston, TX 77056

Dear Weatherford U.S. L.P Real Estate Department,

I am writing regarding the oil clarifier, sump pump, etc. that was scheduled to be removed from the premises at 2301 Orange Ave, Signal Hill, CA 90755 following the termination of your tenancy. This removal was articulated in the Phase I Environmental Site Exit Assessment that your company mailed to me on April 12, 2001 from Jo-Lynne Busic-Adams. I was told by Tracy Breedlove the Weatherford employee at 2301 Orange Avenue Signal Hill CA 90755 that all work had been properly done. When I got the property back, the area of the sump pump was cemented in.

Over the past several weeks, I have made multiple attempts to contact you by phone to discuss this matter, but I have not received any response. This lack of communication has made it necessary for me to proceed without your input. I was attempting to learn if Weatherford U.S. LP, perhaps, kept records of the Phase 2 or even Phase 3 if that were necessary.

Because I am selling the property and due to the potential environmental and regulatory implications, I am moving forward with Phase II site assessment and any necessary remediation work. As you are aware, the proper removal and handling of the oil clarifier system was your responsibility under the terms of your lease and applicable California and Federal environmental regulations.

Accordingly, I will be submitting all costs associated with the Phase II investigation and remediation to you for reimbursement. Documentation of the work performed and associated expenses will be provided.

If you wish to discuss this matter or coordinate next steps, please contact me immediately. Otherwise, I will continue to proceed as outlined above.

Sincerely,

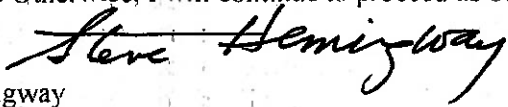
Steve Hemingway

641 Ridge Way

Fallbrook, CA. 92028

(310) 433-2173

Stevehemingway9@gmail.com



# Preparing An Alternatives Analysis Under Section 404 of the Clean Water Act

Fort Worth District – Regulatory Division

November 2014

In its evaluation of permit applications to discharge dredged or fill material into waters of the U.S. (WOUS), including wetlands, the U.S. Army Corps of Engineers (USACE) is required to analyze alternatives to the proposed project that achieve its purpose. USACE conducts this analysis pursuant to two main requirements – the 404(b)(1) Guidelines (Guidelines)<sup>1</sup> and the National Environmental Policy Act (NEPA)<sup>2</sup>. USACE also considers alternatives as part of its public interest review evaluation<sup>3</sup>. This document is intended to assist permit applicants in formatting information into an “Alternatives Analysis” that includes the key items that must be evaluated for permit decisions. It is by no means all inclusive of the scenarios that can occur with an Alternatives Analysis but captures many of the most common topics.

USACE must evaluate alternatives that are practicable and reasonable. In accordance with the Guidelines at 40 CFR 230.10(a), a permit cannot be issued if a practicable alternative exists that would have less adverse impact on the aquatic ecosystem (known as the Least Environmentally Damaging Practicable Alternative [LEDPA]), provided that the LEDPA does not have other significant adverse environmental consequences to other natural ecosystem components. Reasonable alternatives must be considered to satisfy NEPA. However, there are no requirements with reasonable alternatives relative to USACE's permit decision similar to the Guidelines. Evaluations to address the Guidelines and NEPA normally satisfy the requirements of the public interest review.

The Guidelines include two rebuttable presumptions for projects with discharges into WOTUS which involve special aquatic sites (defined at 40 CFR 240.40-45 and include wetlands, riffle pool complexes, and other specific aquatic resources), that do not require access to or siting within the special aquatic site(s) to achieve their basic essence (basic project purpose). The first presumption states that alternatives that do not affect special aquatic sites are presumed to be available. The second presumption states that practicable alternatives located in non-special aquatic sites (e.g., other waters, uplands, etc.) have less adverse impact on the aquatic ecosystem. **It is the applicant's responsibility to clearly demonstrate to the USACE that both of these presumptions have been rebutted in order to pass the alternatives portion of the Guidelines.**

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<sup>1</sup> 40 CFR Part 230

<sup>2</sup> 33 CFR Part 325 Appendix B and 40 CFR 1508

<sup>3</sup> 33 CFR 320.4(a)(2)ii

The amount and detail of information in an alternatives analysis and the level of scrutiny required by the Guidelines is commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the proposed activity) and the scope/cost of the project<sup>4</sup>. Analysis of projects proposing greater adverse environmental effects need to be more detailed and explore a wider range of alternatives than projects proposing lesser effects.

The extent to which an alternatives analysis incorporates these principles and details, can have substantial effects on the amount of time necessary for the USACE to evaluate a permit application. Below are recommended steps to follow in providing the necessary information for the USACE to consider in an alternatives analysis:

### **Step 1: Describe Need and Define Purpose**

Need and purpose are inter-dependent terms which are critical to the alternative analysis. They should be articulated individually since the project's purpose is framed in relation to addressing a need.

Need is typically the problem or opportunity that the applicant is proposing to meet with their project. It can normally be quantified or measured. Information collected or developed relative to project need is important in the framing of the project purpose. The evaluation of need will vary based on the type of project and will be commensurate with the magnitude of impacts and scope of the proposal. Examples can include:

- Road/highway project – safety issues/needs such as accident rates, congestion levels, regional traffic flow, level of service, etc.
- Commercial/Housing Development – market demands
- Energy project – projected increases in power use

USACE normally does not require an assessment and documentation associated with economic evaluations for private enterprise and assumes the applicant has undertaken adequate analysis. However, USACE may require documentation and assessment of the need on a case by case basis.<sup>5</sup> USACE can also conclude a project is speculative in relation to the need assessment and make a negative finding concerning a permit application.

Based upon the need, the applicant should develop their project purpose and clearly state it. The project purpose statement should be carefully considered and developed, as it will define and drive the complexity of the alternatives analysis, including constraints and practicability considerations. The purpose should not be defined in such a restrictive manner to unduly restrict or preclude other alternatives, nor should it be so broad that a reasonable search of options cannot be accomplished. The applicant is to define the project purpose from their perspective. Inclusion of a geographic limit within the purpose statement is normally justified but subject to the same limits relative to unduly restricting the range of alternatives. This does not mean that site-specific projects do not occur. Additionally, USACE must develop its own project purpose

<sup>4</sup> August 23, 1993 EPA/USACE Memorandum to the Field concerning the Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guideline Alternatives Requirements

<sup>5</sup> 33 CFR 3204(q)

statement while considering the applicant's as well as the public's perspective. While at times, projects may legitimately be multi-use in nature, statements that are multi-purpose add substantial complexity to the alternatives analysis and can exponentially increase the number of alternatives that will need to be evaluated to capture the full range of practicable alternatives. Below are two examples of defining project purpose:

#### Example 1

- *To build a profitable 225-lot single-family residential development with 2 Olympic-sized swimming pools, 3 recreational centers and 5 sports fields at the southwest intersection of Interstate 35W and Keller-Hicks Road.*

This example is too restrictive because there are no alternative sites to consider. It also unnecessarily details the exact number of lots and pools and other facilities, which unduly reduces the number of practicable and reasonable alternatives. Additionally, the profitability of the project is an inherent aspect of the project but not necessarily germane to the analysis USACE has to undertake.

- *To provide residential development in Northeast Texas.*

For the type of action being proposed, this example is too broad in scope if the applicant is focusing on a certain city or county to locate the project. This would also create such a large number of alternatives that evaluating them would be unwieldy.

- *To provide a medium-sized single-family residential development with associated support facilities near Interstate 35W in Fort Worth, Texas, to meet local demand.*

This is an appropriate overall project purpose. It clearly defines what the project involves, single-family residences, rather than "housing" which could include multi-family features such as townhouses or apartments, reflects the need to be located near a targeted major transportation corridor (which would need to be explained and supported in the needs analysis), and it defines the geographic scope to a reasonable and justified size addressing the applicant's target area of Fort Worth, TX while reflecting the public demand.

#### Example 2

- *To build an economically viable 1.75-million square foot furniture warehouse facility with a 150-car parking lot and 2-acre aesthetic reflecting pond, at the Southeast corner side of I-20 in Duncanville.*

As with the first example, this example is too restrictive because there are no alternative sites to consider. It also unnecessarily details the exact square footage of the building, the number of parking spaces, and includes a water feature. It is unclear why the proposed water feature would be an essential component of this project. An applicant would have to attempt to justify in the need analysis why such a feature is relevant and needed for the commercial project. Additionally, as with the first example,

the economic viability of the project is an inherent aspect of the project but not necessarily germane to the analysis USACE has to undertake.

- *To provide light industrial/commercial development in the North Central Texas.*

Although the applicant may have a legitimate need to locate the project in a certain region, this example is likely too broad in scope and would also create such a large number of alternatives that evaluating them would be unwieldy.

- *To provide large commercial warehouse space with access to Interstate Highway and rail line in the South Dallas area to meet regional demands.*

This is an appropriate overall project purpose. It clearly defines what the project involves, commercial warehouse space, rather than the broader scope of light industrial/commercial development. The statement also specifies a legitimate need for access to both Interstate Highway and rail for transportation of goods and targets a reasonable and justifiable geographic target area of South Dallas county. The needs analysis that supports this statement will provide further details on the building size, the need for warehouse space in this growing area and will describe the specific transportation needs that drive project constraints relative to siting near both Interstate Highway and rail line to serve regional demands.

The applicant's proposed overall project purpose will be carefully considered, but if the USACE cannot concur with it as submitted, the USACE is required to modify it. If the applicant has submitted an alternative analysis using a project purpose the USACE cannot concur with, (e.g., it is too restrictive, contains multiple purposes but treated as one, etc.), the analysis most likely will need to be revised to appropriately include the proper range of practicable and reasonable alternatives and/or revised alternatives screening. The applicant would be notified of the change to the definition.

Additional information about the proposed overall project purpose and applicant desires may also be provided, including details about the area, location, history, and other factors that influence or constrain the intended nature, size, level of quality, price class, or other characteristics of the project. Information that further describes why particular geographic boundaries were chosen also will assist the USACE in its review.

## **Step 2: Identify Alternatives**

The applicant should list all alternatives that were initially considered (the "universe" of options) that could meet the overall project purpose. A brief description of each alternative should also be included. The maximum number of alternatives to study will vary and depends on the nature and scope of the proposed project. The number evaluated should typically be greater for projects involving greater impacts. The list, at a minimum, should be broken into the categories noted below:

- According to 33 CFR Part 320.1(a)(4) and 325 Appendix B, the USACE is neither an

opponent nor a proponent of the applicant's proposal; therefore, the applicant's final proposal will be identified as the applicant's preferred alternative

- The No Action Alternative(s) – this includes an alternative that would involve no discharges of dredged or fill material into WOUS (not involve a discharge of dredged or fill material into WOUS, which could involve reconfiguring the project to avoid all wetlands on the site or siting the project entirely in uplands offsite) or permit denial. It can also include alternatives that are beyond the control of the applicant. Although the No Action alternative might not seem reasonable initially, it must always be included in the analysis and can serve several purposes. It is a reasonable alternative, especially for situations where the project does not comply with the regulations and consideration and disclosure of the consequences of a permit denial is warranted. It may also be a reasonable alternative for situations where impacts are great and the need is relatively minor. It can also be used in some circumstances as a benchmark – usually for ongoing actions - enabling decision makers to compare the magnitude of the environmental effects of the action alternatives.
- Offsite locations, including those that might involve less adverse impact to WOUS, or less impact to special aquatic sites or less impact to higher quality aquatic resources.
- Onsite alternatives, particularly those that would involve less adverse impact to WOUS. These include modifications to the alignments, site layouts, or design options in the physical layout and operation of the project to reduce the amount of impacts to WOUS. On-site options can be identified as sub-options.

### **Step 3: Describe and Analyze Alternatives for Practicability**

(NOTE: It may be more efficient to demonstrate that some alternatives will have greater impact on the aquatic ecosystem compared to the applicant's preferred option than determining their practicability. If it can be easily documented, and clearly described within the narrative and matrix described below, then step 4 can be included in step 3. This is only appropriate for alternatives where this distinction is clear.)

There may be differing levels of alternatives screening that occur with permit applications. Some applications may require several levels of screening (larger impacting and more complex proposals including multi-purpose projects) while others may have a single level (normal individual permit actions). For multiple level screening scenarios, coarser screens are typically applied at the outset to eliminate clearly impracticable and unreasonable alternatives while the sophistication and refinement of screens increases as the range/list of alternatives narrows. Single level alternatives analyses will normally not include coarse level screens but will have comparable degree screens for all alternatives. Regardless of the type of alternatives analysis, the criteria used to establish screens and how an alternative passes or fails the screen need to be clearly elucidated and supported.

It is important to note that while the terms practicable and reasonable are used and may be synonymous at times, the factors to determine practicability for the Guidelines and reasonability

for NEPA can and typically do differ. Practicable is defined as meaning the alternative is available, and capable of being done after taking into consideration cost, existing technology, and/or logistics in light of the overall project purpose(s).<sup>6</sup> Reasonable is based on consideration of the project purpose as well as technology, economics and common sense.<sup>7</sup> The Guidelines may require more substantive effort to demonstrate compliance compared to NEPA,<sup>8</sup> as well as involve limitations relative to how they can be applied to determine practicability. This is further underscored by the rebuttable presumptions previously discussed requiring it be clearly demonstrated by the applicant that the alternatives are not practicable (and not less damaging – see step 4) compared to the applicant’s proposed project.

When preparing an alternative analysis, there are potential opportunities to reduce effort and time as noted above relative to impacts to the aquatic ecosystem. This can also occur with alternatives that are not available or obviously impracticable. Such options can be identified and evaluated first and eliminated based on limited screening efforts. For example, attempts to obtain alternate sites but were not available or turned down for purchase, lease, or management can normally be eliminated from further consideration with limited information. Sites that are obviously too small to accommodate the project or that lie substantially outside the geographic boundaries identified in the overall project purpose are not practicable, and therefore unreasonable, and can be eliminated with little information. Any alternatives that are eliminated from further study because the applicant concluded they failed this first coarse round of screening still require certain descriptive information be provided. However, the level of information should be less than other options that will be subjected to more refined screen efforts. It is imperative the applicant describes why any alternative is eliminated from further analysis so USACE can independently review and verify the information and each step in the applicant’s alternative analysis. The USACE will verify that the criteria used for screening at all levels are objective and comply with regulations, policy, and implementing guidance and ensure they are not so restrictive that they eliminate practicable, which includes reasonable, alternatives.

Alternatives should be clearly listed and numbered for ease of reference and comparison. *At a minimum*, the following information for each alternative site examined should be provided:

1. *General site information:*

- a. specific parcel information including, but not limited to; parcel ID numbers, aerial photos, location maps, and GPS coordinates;
- b. presence, quantity and quality or function of wetlands and/or other WOUS (If demonstrating that a site has more impact than other options, including the applicant’s preferred, include potential direct and indirect impacts associated with these improvements in lieu of practicability information);
- c. County/City zoning designation;
- d\*. the presence of any federally-listed threatened or endangered species or their critical

<sup>6</sup> 40 CFR 230.3(q)

<sup>7</sup> Council on Environmental Quality Guidance 40 Most Asked Questions #2A

<sup>8</sup> 40 CFR 230.10(a)(4)

habitat, state listed species, or other natural or regionally important ecosystem resource factors that may be significantly impacted; and,

e\*. site infrastructure and other components for a single and complete project (will the site require new access roads/infrastructure, etc.?).

(\* - Items d and e may not be needed for those alternatives eliminated in the earliest coarse screens.)

## 2. *The practicability of each alternative:*

a. **Practicability:** As previously stated, alternatives that are practicable are those that are available and capable of being done by the applicant after considering the following (in light of the project purpose). **An alternative needs to fail only one practicability factor to be eliminated during the screening process:**

- **Costs** - Cost is analyzed in the context of the overall scope/cost of the project and whether it is unreasonably expensive. This determination is typically made in relation to comparable costs for similar actions in the region or analogous markets<sup>9</sup>. If costs of an alternative are clearly exorbitant compared to those similar actions, and possibly the applicant's proposed action, they can be eliminated without the need to establish a cost threshold for practicability determinations. Cost is to be based on an objective, industry-neutral inquiry that does not consider an individual applicant's financial standing. The data used for any cost must be current with respect to the time of the alternatives analysis. For example, the costs associated with various infrastructure components such as roadways or utilities, including upgrades to existing infrastructure components or the need to establish new infrastructure components, may affect the viability of a particular alternative. A location far from all existing infrastructure (roads, water, sewer, and/or electricity) might not be practicable based on the costs associated with upgrading/establishing the infrastructure necessary to use that site. However, just because one alternative costs more than another does not mean that the more expensive alternative is impracticable. It is important to note that in the context of this definition, cost does not include economics. Economic considerations, such as job loss or creation, effects to the local tax base, or other effects a project is anticipated to have on the local economy are not part of the cost analysis;
- **Existing Technology** - The alternatives examined should consider the limitations of existing technology yet incorporate the most efficient/least-impacting construction methods currently available. For example, alternatives to a proposed highway that occur in unstable or dynamic soils may not be practicable due to a lack of technology to ensure the road will not crumble or collapse. Implementation of state of the art technologies might be available and should be considered if applicable. Engineered retaining walls and cantilevered road ways can also be incorporated into an alternative that substantially minimizes wetland or water

<sup>9</sup> National Policy Guidance Old Cutler Bay Associates 404(q) Permit Elevation, 13 Sep 1990.

impacts by eliminating fill slopes. However, it is recognized that such actions may result in the alternative being determined as impracticable due to costs; and,

- Logistics - The alternatives evaluated may incorporate an examination of various logistics associated with the project, i.e., placement of facilities within a specified distance to major thoroughfares, utilization of existing storage or staging areas, and/or safety concerns that cannot be overcome. Examples of alternatives that may not be practicable considering logistics are: no access to a major interstate or rail for manufactured goods; a piece of property is land-locked and cannot be accessed by public roads or utilities and applicant does not have condemnation authority; water supply is needed within a certain time frame and option cannot be implemented within it.

b. **Availability:** The Guidelines state that if it is otherwise a practicable alternative, an area not presently owned by the applicant that could reasonably be obtained, utilized, expanded, or managed in order to fulfill the overall purpose of the proposed activity can still be considered a practicable alternative. In other words, the fact that an applicant does not own an alternative parcel, does not preclude that parcel from being considered as a practicable alternative. This factor is normally a consideration as a logistics and possibly cost limitation. **The applicant should consider and anticipate alternatives available during the timeframe that the USACE conducts its alternatives analysis. In some circumstances, consideration of the timeframe when property was obtained by the applicant may influence the analysis.**

### *3. Presentation of alternatives information:*

An alternatives comparison matrix (see example on next page) is an effective way to present and compare the main parameters that were considered during the evaluation. To allow for an objective evaluation, the comparison of the plan(s) for the proposed and alternative sites should be framed for "yes" or "no" determinations. A narrative needs to accompany the matrix defining the practicability factors chosen, the data used to support the limitations of the factor or criteria, and explanation of any "no" determinations. Practicability of the No Action alternative also must be addressed in this narrative and, if applicable, also included in the matrix. The information should explain the consequences on the applicant and the public if the project is denied, if an alternative can be implemented that does not involve discharges into WOUS, or is an option that is outside the capability of the applicant. Any remaining alternatives that are found to be practicable will move on to the next and final step.

**Example Alternative Comparison Matrix for Practicability**

Practicability Category	Factor	Alternative 1 Applicant's Preferred	Alternative 2	Alternative 3	Alternative 4	Alternative 5	Alternative 6
Available	Available for Acquisition	YES Applicant owns the parcel	YES Listed in multi-list	YES Listed in multi-list	NO Applicant does not have condemnation authority	YES Listed in multi-list	YES Listed in multi-list
Logistics	Sufficient Parcel Size	YES 800 acres	YES 870 acres	YES 770 acres	N/A – failed availability screen	YES 900 acres	NO 600 – did not provide adequate space for size range of project
	Existing Zoning Appropriate & Potential for Zoning Change	YES Zoned for this project type	YES Zoned for this project type	YES Zoned for agriculture, City has not denied zone change	N/A	YES Zoned for this project type	N/A – failed sufficient parcel size screen
	Availability of Utilities	YES Adjacent to site	YES 0.5 miles to existing water, sewer and power.	YES Adjacent to site	N/A	YES 6 miles to existing water, sewer and power	N/A
	Availability for Access	YES County ROW on east property boundary	YES County ROW to northwest property corner	NO Landlocked by private parcels, request for easement denied, applicant does not have condemnation authority	N/A	YES County ROW to northwest property corner	N/A
Existing Technology	Topography and other Site Conditions Feasible for Construction of Project	YES	YES With use of engineered retaining walls and drainage systems	N/A – failed access screen	N/A	YES With use of engineered retaining walls, drainage systems and bridges	N/A
Cost (No cost threshold established)	Reasonable Acquisition Costs (non-exorbitant)	YES Applicant owns the parcel	YES Within market normal costs for similar properties	N/A	N/A	NO Exorbitant - costs are 10X normal costs for similar land	N/A

**Step 4: Identify the Least Environmentally Damaging Alternative**

All alternatives making it to this step are practicable. Therefore, a comparison and determination of which is the least damaging is required. The Guidelines require that only the LEDPA can be authorized. It is also important to recognize that determining the least environmental damaging alternative cannot include any aspect of compensatory mitigation.<sup>10</sup>

Using the same numbering system from the step above, identify the impacts to the aquatic ecosystem for each remaining practicable alternate site and option. Because the Guidelines include the consideration as to whether the LEPDA results in "other significant adverse environmental consequences" to other natural ecosystem components, those other natural environmental factors and the significant effects to them can also be discussed as well. For each remaining site, the narrative should include the following information:

- a. describe the direct, indirect, and cumulative impacts (beneficial or adverse) to the aquatic ecosystem (WOUS) associated with each of the remaining alternatives;
- b. identify, specify and quantify the impacts to the aquatic ecosystem. Rather than stating that "Alternative A would result in a large impact to low quality wetlands and ditches that are sparsely vegetated and impact some wildlife" use "Alternative A would result in the discharge of fill material into 2.1 acres of modified riverine wet meadow wetland and realignment and filling of 1.2 acres of channelized intermittent stream that contains scattered emergent wetland vegetation."
- c. describe the **significant** adverse environmental impacts associated with each of the remaining alternatives on other natural ecosystem features and how the determination of significant was made.
- d. in order to ensure an appropriate and meaningful comparison of alternatives in relation to their proposed and predicted impacts, equivalent methods and level of detail are required for all alternatives<sup>11</sup> at similar levels in the screening process. For example, if detailed studies on hydrologic effects are presented for one the alternatives carried forward in an analysis, but not others, the analysis would to be supplemented with the same type and level of data and information for the other options.

2. If multiple practicable alternatives remain, and/or many natural environmental factors are involved that would be significantly impacted, another matrix that contains only environmental parameters (e.g., wetland functional units; Federal and/or state listed species; high functioning/value upland habitat, floodplains, and plant communities; air quality) can be used to assist in illustrating the proposed LEDPA. Emphasis should be placed on impacts to the aquatic environment through acreage and functional unit loss of wetlands or other WOTUS that would be affected or eliminated by each alternative. An example matrix is below.

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<sup>10</sup> 40 CFR 230.5 and February 6, 1990 Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines

<sup>11</sup> 40 CFR 1502.14 and CEQ's 40 Most Asked Questions 5b

*Example Environmental Factor Matrix*

<b>Environmental Factors</b>	<b>Alternative 1</b>	<b>Alternative 2</b>
	<b>Applicant's Preferred Alternative</b>	
<b>Wetland Impacts (Acres)</b>	2.0	6.0
<b>TXRAM Units</b>	11.4	31.9
<b>Open Water Impacts (Acres)</b>	5.0	2.0
<b>Impacts to Federally Listed T &amp; E Upland Species</b>	Yes – not a significant loss	No
<b>Floodplain Upland Impacts (Acres)</b>	0.0	5 acres - not a significant loss
<b>LEDPA</b>	Yes	No

**Step 5: Determination of LEDPA**

Conclude the alternatives analysis with a description of the alternative proposed to be the LEDPA, reiterating the rationale for this determination. It is noted that if the remaining alternatives have similar impacts to the aquatic ecosystem as the applicant's preferred, USACE can conclude the applicant's proposal is the LEDPA.<sup>12</sup> It is reiterated that no aspect of compensatory mitigation can be utilized in making this determination. In other words, an applicant cannot use compensatory mitigation to "buy down" an alternative in order to meet the LEDPA.

<sup>12</sup> August 23, 1993 EPA/USACE Memorandum to the Field concerning the Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guideline Alternatives Requirements

# ESA Section 7 Consultation

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## ESA Section 7 Consultation

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Section 7 of the Endangered Species Act (ESA) is titled Interagency Cooperation. It identifies the responsibilities of the U.S. Fish and Wildlife Service (Service), National Marine Fisheries Service (NMFS), and other federal agencies to use their authorities in furtherance of the purposes of the ESA. Section 7(a)(1) requires all federal agencies to carry out programs for the conservation of listed species, and section 7(a)(2) requires the agencies to ensure their activities are not likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat. Section 7(a)(2) of the ESA applies to all actions federal agencies fund, authorize, permit, or carry out in which there is discretionary federal involvement or control.

## Process

### Informal Consultation

The Service encourages agencies to contact the local Ecological Services field office for information or pre-consultation technical assistance early in the project development process. The first step in informal consultation is a discussion or information exchange between the agency carrying out the action and the Service about the proposed action and any applicable conservation measures for consideration. The result of this will be a delineation of the action area and a determination of whether the action may affect listed species or critical habitat. We encourage agencies to use Information for Planning and Consultation (IPaC), the Service's digital project planning tool, to identify species and critical habitats that may be present in the action area.

[LAUNCH IPAC](#)

## Determination

If the proposed action may affect any listed species or critical habitat, then the agency must begin a formal consultation, unless the agency determines, with written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat. If the agency determines that the proposed action will not affect any listed species or critical habitat, no further action is needed. The Service encourages agencies to use the digital consultation package builder tool available on IPaC to assist in this process.

## Formal Consultation

During formal consultation, the agency and the Service share information about the proposed project and the species or critical habitat likely to be affected. Formal consultation may last up to 90 days, after which the Service will prepare a biological opinion. We will analyze all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action.

## Conclusion of the Biological Opinion

The biological opinion will state whether the federal agency has ensured that its action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. A biological opinion may include reasonable and prudent measures necessary or appropriate to minimize the impact of the incidental take on the species.

We have 45 days after completion of formal consultation to write the biological opinion. The period for formal consultation and completion of the biological opinion may be extended through agreement of the agency (and applicant, as applicable) and the Service.

## Legal Justification

Section 7(a)(1) of the ESA establishes an obligation for all federal agencies to use their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation (i.e., recovery) of listed species. It also directs the Secretary (i.e., the Secretary of the Interior or the Secretary of Commerce) to review other programs they administer and to use such programs to further the purposes of the ESA.

Section 7(a)(2) states that “[e]ach Federal action agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.” Authority to administer the ESA has been delegated by the Secretary of the Interior to the Service’s Director, and by the Secretary of Commerce to the NMFS Assistant Administrator. In fulfilling the requirements of section 7(a)(2), each agency must use “the best scientific and commercial data available.” The regulations governing interagency cooperation are at Title 50, part 402.

## Get Started

Federal agencies wishing to explore beginning a [Section 7](#) consultation should consult the Ecological Services office nearest the proposed project site. See our "Find a facility" map to locate the nearest office.



## Related Resources & Information

Enter Search Term



Content Type



Showing 1-7 of 7

Federal Agency Obligations under Section 7(a)(1) of the Endangered Species Act



The U.S. Fish and Wildlife Service requested legal guidance on the scope of Federal agencies' responsibilities under Section 7(a)(1) of the Endangered Species Act. Section 7(a)(1) directs all Federal agencies to carry out "programs for the conservation of endangered and threatened species." The...

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Feb 6, 2024

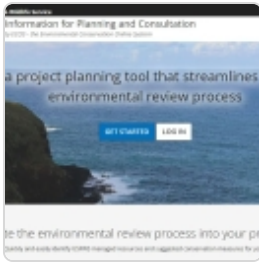


Consultations with Federal Agencies: Section 7 of the Endangered Species Act

This document provides answers to frequently asked questions regarding endangered species consultations with federal agencies.

PDF

Jun 2, 2025



Information for Planning and Consultation

Information for Planning and Consultation (IPaC) is a digital project planning tool that provides information to project proponents to help determine whether a project will have effects on federally listed species or designated critical habitat, as well as other sensitive resources managed...

Service

Consultation and Technical Assistance

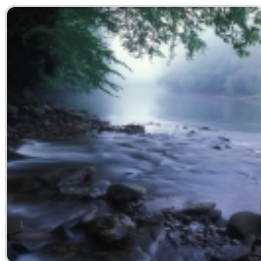
Endangered Species Consultation Handbook

This document outlines procedures for conducting consultation and conference activities under section 7 of the Endangered Species Act.



PDF

Mar 1, 1998



### Ecological Services

The Ecological Services Program works to restore and protect healthy populations of fish, wildlife, and plants and the environments upon which they depend. Using the best available science, we work with federal, state, Tribal, local, and non-profit stakeholders, as well as private land owners, to...

Program

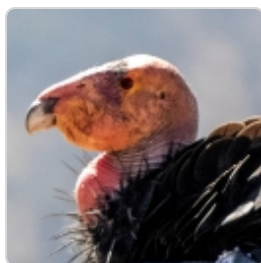
Falls Church, VA

### Endangered Species Act

The Endangered Species Act establishes protections for fish, wildlife, and plants that are listed as threatened or endangered; provides for adding species to and removing them from the list of threatened and endangered species, and for preparing and implementing plans for their recovery;...

Laws, Agreements & Treaties

Dec 28, 1973



### Endangered Species

We provide national leadership in the recovery and conservation of our nation's imperiled plant and animal species, working with experts in the scientific community to identify species on the verge of extinction and to build the road to recovery to bring them back. We work with a range of public...

Program

Falls Church, VA

## Library Collections



### Section 7 Consultation

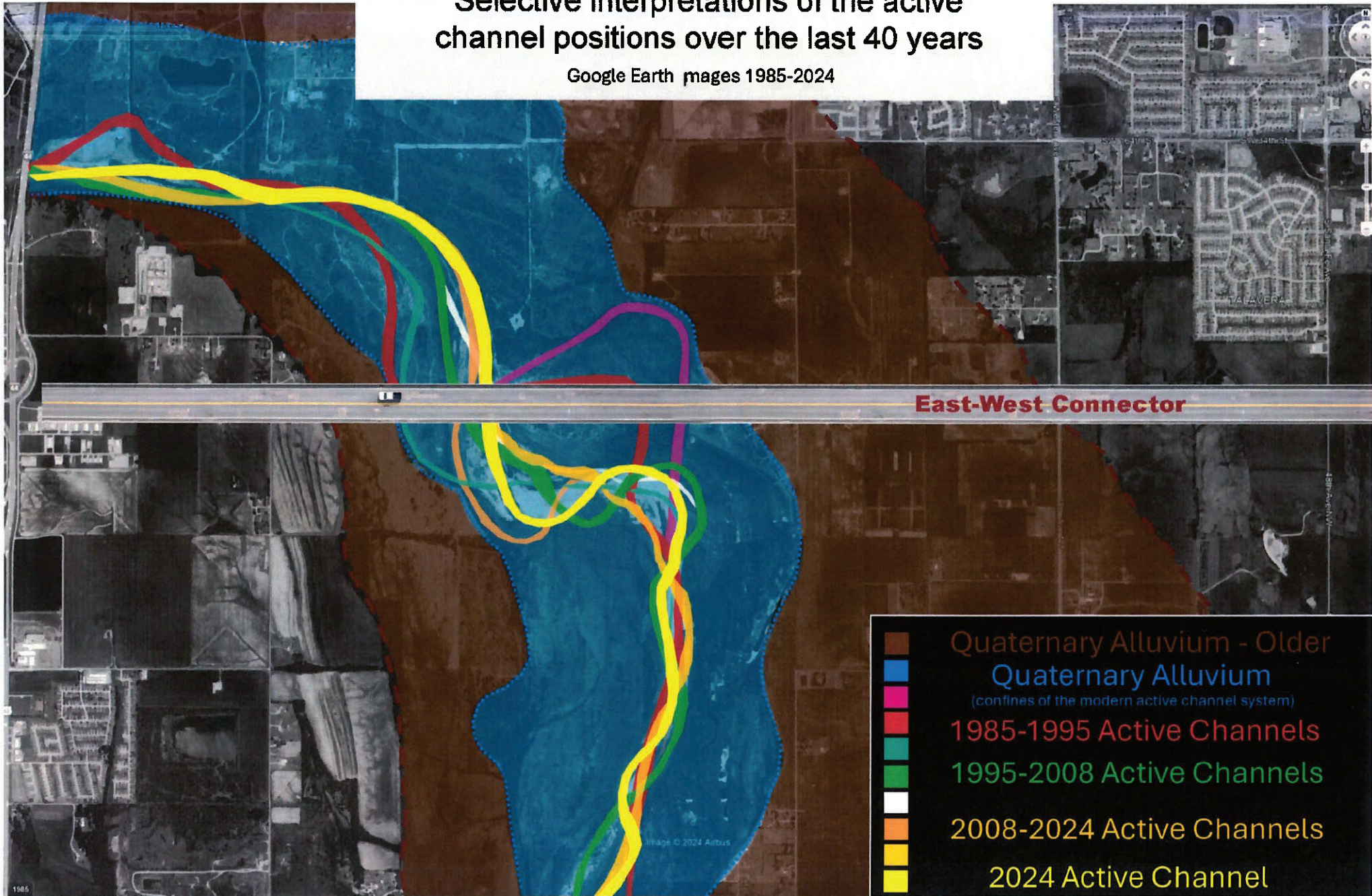
This library collection includes general information regarding interagency consultations under the Endangered Species Act, as well as national guidance and policies.

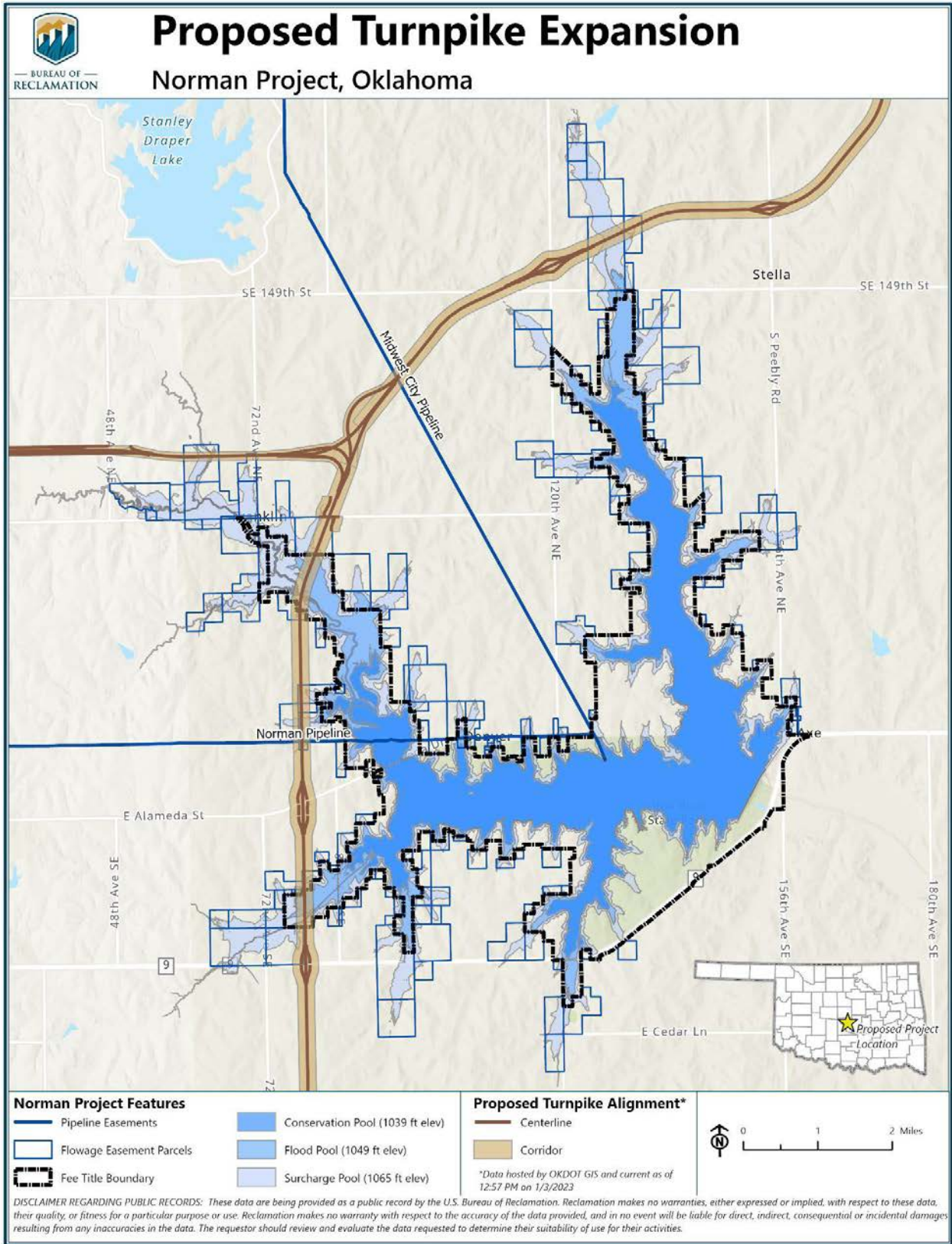
Library Collection

7 Items

# Canadian River at Indian Hills Rd Selective interpretations of the active channel positions over the last 40 years

Google Earth images 1985-2024





CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PIKE OFF OTA, INC.

(b) County of Residence of First Listed Plaintiff Cleveland (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert E. Norman, Cheek & Falcone, PLLC, 6301 Waterford Blvd, Ste 320, Oklahoma City, OK 73118 405-286-9191

DEFENDANTS

(1) OKLAHOMA TURNPIKE AUTHORITY; (2) U.S. ARMY CORPS OF ENGINEERS, TULSA DIVISION; (3) FEDERAL

County of Residence of First Listed Defendant Cleveland (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 5 U.S.C. §§ 701-706, 33 U.S.C. § 1365, and 16 U.S.C. § 1540(g). Brief description of cause: Violation of Environmental Acts

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 6/23/2026 SIGNATURE OF ATTORNEY OF RECORD Robert E. Norman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.