



INTEROFFICE MEMORANDUM

June 6, 2024

TO: Master Files

FROM: ^{for} Josh Seagraves, Division Head – Environmental *KS*

SUBJECT: Job 061855
FAP PRTT-0026(53)
Hwy. 5 Erosion Repair (Garland Co.) (S)
Route 5, Section 5
Garland County
Tier 1 Categorical Exclusion

After appropriate environmental review, it has been determined that the subject job is a Tier 1 Categorical Exclusion as described by the ARDOT/FHWA Programmatic Agreement on Categorical Exclusion Documentation and Processing. A public hearing will not be offered for this project.

The purpose of this project is to repair significant erosion along Highway 5 in Garland County that was caused by a major rain event in May 2023. This project will address the erosion that has occurred and will also provide resilience by constructing improvements that will enable the area to withstand greater rainfall events in the future. Activities will include the application of grass seeds, the placement of tied concrete block mats on prepared ground surfaces, the modification of existing culvert curtain walls, the construction of in-stream vanes, and placement of stone riprap in stream channels and slopes. All work will occur within the existing right of way.

The project will not involve relocations, prime farmlands, wetlands, underground storage tanks, hazardous materials, any environmental justice issues, or cultural resources. This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxics concerns. The cultural resources clearance is attached.

The official species list obtained from the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation identified the Indiana Bat (*Myotis sodalis*), Northern Long-eared Bat (*Myotis septentrionalis*), Tricolored Bat (*Perimyotis subflavus*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), Rufa Red Knot (*Calidris canutus rufa*), Alligator Snapping Turtle (*Macrochelys temminckii*), Arkansas Fatmucket (*Lampsilis powellii*), Monarch Butterfly (*Danaus plexippus*) and Missouri bladderpod (*Physaria filiformis*) as species potentially occurring within the project area.

Utilizing the FHWA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and the Northern Long-eared Bat (PBO) determination key, it has been determined the project will have “no effect” on the Indiana Bat and Northern Long-eared Bat.

Utilizing the Arkansas determination key, it has been determined that the project will have “no effect” on the Eastern Black Rail, Piping Plover and Rufa Red Knot and “may affect but is not likely to adversely affect” the Arkansas Fatmucket and Missouri bladderpod.

The Monarch Butterfly is a candidate species and as such is not federally protected under the Endangered Species Act. However, the USFWS recommends agencies implement conservation measures for candidate species in action areas as these are, by definition, species that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure.

The Alligator Snapping Turtle is currently a proposed threatened species, and the Tricolored Bat is a proposed endangered species; however, the proposed project will not jeopardize the continued existence of either species.

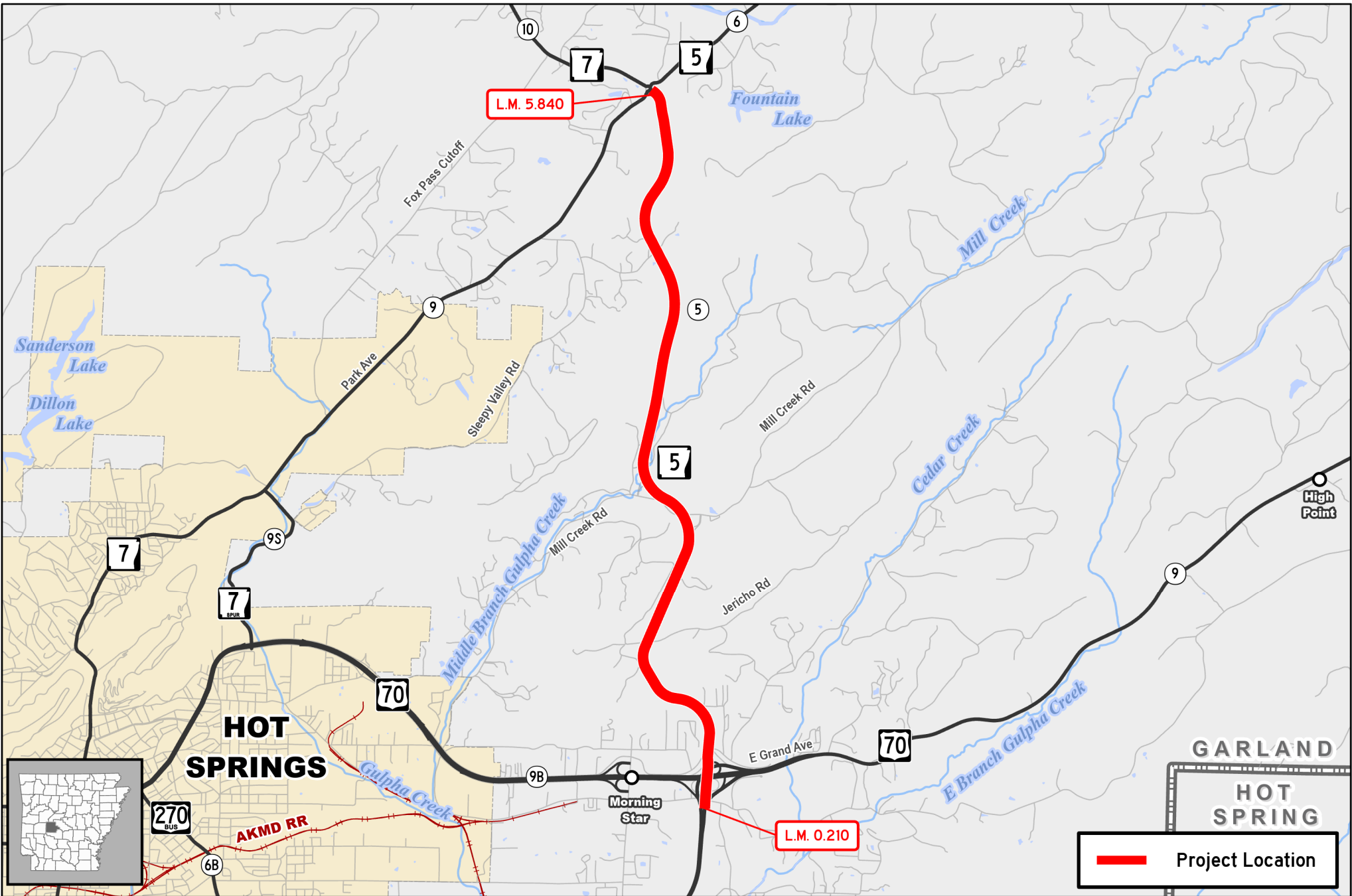
The erosion repairs for this project will be covered under the previous Section 404 Standard Individual permit for Job R60140 (Permit Number MVK-2018-00275).

Garland County participates in the National Flood Insurance Program. The project lies within a Zone A Special Flood Hazard Area. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a substantial floodplain encroachment or a risk to property or life.

Attachments

c: Program Management
Right of Way
Roadway Design
District 6
FHWA

JS:KR:sw



Job 061855

Hwy. 5 Erosion Repair (Garland Co.) (S)

Hwy. 5, Sec. 5
Garland County

AR DOT
ARKANSAS DEPARTMENT OF TRANSPORTATION

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INTEROFFICE MEMORANDUM

April 24, 2024

TO: Job File

M H

FROM: Milton Hughes, Cultural Resources Section

SUBJECT: Cultural Resources Clearance
Job 061855
Hwy. 5 Erosion Repair (Garland Co.) (S)
Route 5, Section 5
Garland County

This job proposes to repair numerous locations of erosion along recently constructed Highway 5 between Highway 70 and Highway 7 in Garland County. Activities will include the application of grass seeds, the placement of tied concrete block mats on prepared ground surfaces, the modification of existing culvert curtain walls, the construction of in-stream vanes, and placement of stone riprap in stream channels and slopes. All work will take place on existing disturbed ground. No new right-of-way (ROW) or temporary construction easements will be required.

A records review and a visual inspection have been conducted for this project. The review included the site files at the Arkansas Archeological Survey's (ARAS) database for previously recorded archeological sites and the Arkansas Historic Preservation Program's (AHPP) database for National Register of Historic Places (NRHP) listed and eligible structures. Additional records reviewed included copies of the 1823 and 1848 GLO plats for Township 2 South, Range 18 West and the 1838 GLO plat of Township 2 South, Range 19 West; the 1896 USGS 15' Hot Springs, Arkansas Special topographic map; the 1911 and 1947 USGS 15' Hot Springs and Vicinity, Arkansas topographic map; the 1936 Garland County highway map; the 1972/1984 7.5' USGS Fountain Lake, ARK topographic map; and available aerial imagery. The review of the GLO plats, highway map, topographic maps, and aerials revealed no possible cultural resources that would have survived the construction of the bypass.

The ARAS database contained documentation of numerous sites recorded along the route (3GA0831, 3GA0832, 3GA0837, 3GA0838, 3GA0839, 3GA0840, 3GA0851, 3GA0858, 3GA1079, 3GA1080, 3GA1038, 3GA1097, 3GA1100, 3GA1101, 3GA1102, 3GA1103, 3GA1104, 3GA1107, 3GA1108, 3GA1109, 3GA1110, 3GA1111, 3GA1112, 3GA1113, 3GA1114, 3GA1115, 3GA1116, 3GA1117, 3GA1118, 3GA1119, 3GA1120, 3GA1121, 3GA1122, 3GA1123, 3GA1124, 3GA1125, 3GA1126, 3GA1127, 3GA1128 and 3GA1129). Of these, 3GA0837, 3GA0838, 3GA0839, 3GA0840, 3GA0858, 3GA1097, 3GA1108, 3GA1111, 3GA1112, 3GA1122, 3GA1124, 3GA1128, 3GA1129, 3GA1113, 3GA1118, and 3GA1119 were avoided by the project, lie outside of the existing ROW, and will not be affected by the proposed erosion repair activities. The remaining sites were either determined to be ineligible for listing to the NRHP or were mitigated through archeological excavation and documentation and destroyed by the construction of the bypass. These sites no longer exist.

The AHPP contains documentation of two properties near the project, GA0908 and GA0944. GA0908 (also documented as archeological site number 3GA0832/0833/0834/0835/0836 on the ARAS database) is determined as not eligible for inclusion to the NRHP and GA0944, located outside of the project, has an NRHP eligibility determination of unknown.

Under job R60140, cultural resources were surveyed, and historic properties were addressed. The current scope of work occurs in the existing ROW of job R60140 within previously disturbed areas. This type of undertaking will not affect historic properties. Therefore, this project requires no Section 106 review under Appendix C, Activities 6 and 20 of the 2021 Programmatic Agreement.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480

In Reply Refer To:

06/03/2024 19:04:57 UTC

Project Code: 2024-0098750

Project Name: Hwy. 5 Erosion Repair (Garland Co.) (S)

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

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2) (c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/program/migratory-bird-permit/what-we-do>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

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

Attachment(s):

- Official Species List

OFFICIAL SPECIES LIST

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

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

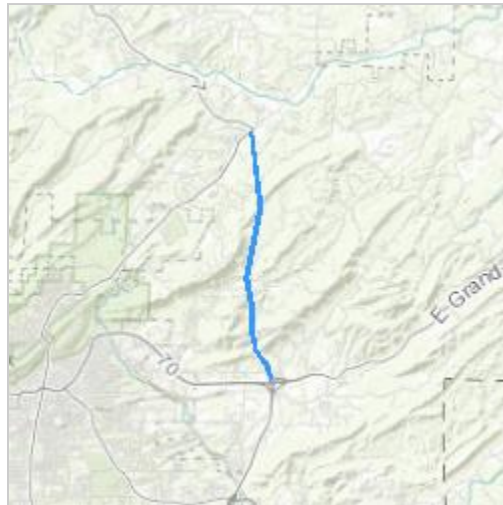
(501) 513-4470

PROJECT SUMMARY

Project Code: 2024-0098750
Project Name: Hwy. 5 Erosion Repair (Garland Co.) (S)
Project Type: Government / Municipal (Non-Military) Construction
Project Description: Erosion Repair to the newly constructed Hwy. 5 extension between Hwy. 270 and Hwy. 7.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@34.541906100000006,-92.98259435022837,14z>



Counties: Garland County, Arkansas

ENDANGERED SPECIES ACT SPECIES

There is a total of 10 threatened, endangered, or candidate species on this species list.

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

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

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

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

MAMMALS

NAME	STATUS
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Endangered
Tricolored Bat <i>Perimyotis subflavus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10515	Proposed Endangered

BIRDS

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477	Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Rufa Red Knot <i>Calidris canutus rufa</i> There is proposed critical habitat for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

REPTILES

NAME	STATUS
Alligator Snapping Turtle <i>Macrochelys temminckii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4658	Proposed Threatened

CLAMS

NAME	STATUS
Arkansas Fatmucket <i>Lampsilis powellii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2213	Threatened

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

FLOWERING PLANTS

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

CRITICAL HABITATS

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

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

Agency: Arkansas Department of Transportation

Name: clint hutcheson

Address: PO Box 2261

City: Little Rock

State: AR

Zip: 72203

Email: clinton.hutcheson@ardot.gov

Phone: 5017767797

You have indicated that your project falls under or receives funding through the following special project authorities:

- **BIPARTISAN INFRASTRUCTURE LAW (BIL) (OTHER)**



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480

In Reply Refer To:

06/03/2024 19:52:23 UTC

Project code: 2024-0098750

Project Name: Hwy. 5 Erosion Repair (Garland Co.) (S)

Subject: Consistency letter for the 'Hwy. 5 Erosion Repair (Garland Co.) (S)' project under the amended February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion (dated March 23, 2023) for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (NLEB).

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request dated June 03, 2024 to verify that the **Hwy. 5 Erosion Repair (Garland Co.) (S)** (Proposed Action) may rely on the amended February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion (dated March 23, 2023) for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action will have no effect on the endangered Indiana bat (*Myotis sodalis*) or the endangered northern long-eared bat (*Myotis septentrionalis*). If the Proposed Action is not modified, **no consultation is required for these two species**. If the Proposed Action is modified, or new information reveals that it may affect the Indiana bat and/or northern long-eared bat in a manner or to an extent not considered in the PBO, further review to conclude the requirements of ESA section 7(a)(2) may be required.

For Proposed Actions that include bridge/culvert or structure removal, replacement, and/or maintenance activities:

If your initial bridge/culvert or structure assessment failed to detect Indiana bats and/or NLEBs use or occupancy, yet later detected prior to, or during construction, please submit the Post Assessment Discovery of Bats at Bridge/Culvert or Structure Form (User Guide Appendix E) to this Service Office within 2 working days of the incident. In these instances, potential incidental take of Indiana bats and/or NLEBs may be exempted provided that the take is reported to the Service.

If the Proposed Action may affect any other federally-listed or proposed species and/or designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please advise the lead Federal action agency accordingly.

The following species may occur in your project area and **are not** covered by this determination:

- Alligator Snapping Turtle *Macrochelys temminckii* Proposed Threatened
- Arkansas Fatmucket *Lampsilis powellii* Threatened
- Eastern Black Rail *Laterallus jamaicensis ssp. jamaicensis* Threatened
- Missouri Bladderpod *Physaria filiformis* Threatened
- Monarch Butterfly *Danaus plexippus* Candidate
- Piping Plover *Charadrius melodus* Threatened
- Rufa Red Knot *Calidris canutus rufa* Threatened
- Tricolored Bat *Perimyotis subflavus* Proposed Endangered

PROJECT DESCRIPTION

The following project name and description was collected in IPaC as part of the endangered species review process.

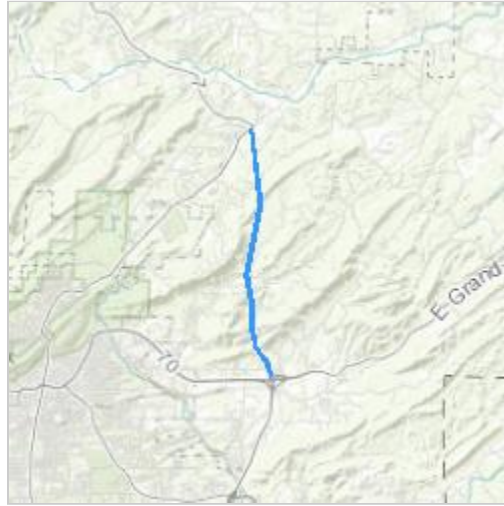
NAME

Hwy. 5 Erosion Repair (Garland Co.) (S)

DESCRIPTION

Erosion Repair to the newly constructed Hwy. 5 extension between Hwy. 270 and Hwy. 7.

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@34.541906100000006,-92.98259435022837,14z>



DETERMINATION KEY RESULT

Based on the information you provided, you have determined that the Proposed Action will have no effect on the endangered Indiana bat and/or the endangered northern long-eared bat.

Therefore, no consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required for these two species.

QUALIFICATION INTERVIEW

1. Is the project within the range of the Indiana bat^[1]?

[1] See [Indiana bat species profile](#)

Automatically answered

Yes

2. Is the project within the range of the northern long-eared bat^[1]?

[1] See [northern long-eared bat species profile](#)

Automatically answered

Yes

3. Which Federal Agency is the lead for the action?

A) Federal Highway Administration (FHWA)

4. Are *all* project activities limited to non-construction^[1] activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

No

5. Does the project include *any* activities that are **greater than** 300 feet from existing road/rail surfaces^[1]?

[1] Road surface is defined as the actively used [e.g. motorized vehicles] driving surface and shoulders [may be pavement, gravel, etc.] and rail surface is defined as the edge of the actively used rail ballast.

No

6. Does the project include *any* activities **within** 0.5 miles of a known Indiana bat and/or NLEB hibernaculum^[1]?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

7. Is the project located **within** a karst area?

No

8. Is there *any* suitable^[1] summer habitat for Indiana Bat or NLEB **within** the project action area^[2]? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR Section 402.02). Further clarification is provided by the [User's Guide for the Range-wide Programmatic Consultation for Indiana Bat and Northern Long-eared Bat](#).

No

9. Does the project include wetland or stream protection activities associated with compensatory wetland mitigation?

No

10. Does the project include slash pile burning?

No

11. Does the project include *any* bridge removal, replacement, and/or maintenance activities (e.g., any bridge repair, retrofit, maintenance, and/or rehabilitation work)?

No

12. Does the project include the removal, replacement, and/or maintenance of *any* structure other than a bridge? (e.g., rest areas, offices, sheds, outbuildings, barns, parking garages, etc.)

No

13. Will the project involve the use of **temporary** lighting *during* the active season?

No

14. Will the project install new or replace existing **permanent** lighting?

No

15. Does the project include percussives or other activities (**not including tree removal/trimming or bridge/structure work**) that will increase noise levels above existing traffic/background levels?

No

16. Will the project raise the road profile **above the tree canopy**?

No

17. Is the location of this project consistent with a No Effect determination in this key?

Automatically answered

Yes, because the project action area is not within suitable Indiana bat and/or NLEB summer habitat and is outside of 0.5 miles of a hibernaculum.

DETERMINATION KEY DESCRIPTION: FHWA, FRA, FTA PROGRAMMATIC CONSULTATION FOR TRANSPORTATION PROJECTS AFFECTING NLEB OR INDIANA BAT

This key was last updated in IPaC on October 30, 2023. Keys are subject to periodic revision.

This decision key is intended for projects/activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA), which may require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) for the endangered **Indiana bat** (*Myotis sodalis*) and the endangered **northern long-eared bat** (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's [amended February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion \(dated March 23, 2023\) for Transportation Projects](#). The programmatic biological opinion covers limited transportation activities that may affect either bat species, and addresses situations that are both likely and not likely to adversely affect either bat species. This decision key will assist in identifying the effect of a specific project/activity and applicability of the programmatic consultation. The programmatic biological opinion is not intended to cover all types of transportation actions. Activities outside the scope of the programmatic biological opinion, or that may affect ESA-listed species other than the Indiana bat or NLEB, or any designated critical habitat, may require additional ESA Section 7 consultation.

IPAC USER CONTACT INFORMATION

Agency: Arkansas Department of Transportation

Name: clint hutcheson

Address: PO Box 2261

City: Little Rock

State: AR

Zip: 72203

Email: clinton.hutcheson@ardot.gov

Phone: 5017767797

You have indicated that your project falls under or receives funding through the following special project authorities:

- BIPARTISAN INFRASTRUCTURE LAW (BIL) (OTHER)



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480

In Reply Refer To:

06/03/2024 20:24:13 UTC

Project code: 2024-0098750

Project Name: Hwy. 5 Erosion Repair (Garland Co.) (S)

Subject: Consistency letter for 'Hwy. 5 Erosion Repair (Garland Co.) (S)' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Arkansas Determination Key for project review and guidance for federally listed species (Arkansas Dkey).

Dear clint hutcheson:

The U.S. Fish and Wildlife Service (Service) received on **June 03, 2024** your effect determination(s) for the 'Hwy. 5 Erosion Repair (Garland Co.) (S)' (the Action) using the Arkansas DKey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based on your answers and the assistance in the Service’s Arkansas DKey, you made the following effect determination(s) for the proposed Action:

Species	Listing Status	Determination
Arkansas Fatmucket (<i>Lampsilis powellii</i>)	Threatened	NLAA
Eastern Black Rail (<i>Laterallus jamaicensis ssp. jamaicensis</i>)	Threatened	No effect
Indiana Bat (<i>Myotis sodalis</i>)	Endangered	May affect
Missouri Bladderpod (<i>Physaria filiformis</i>)	Threatened	NLAA
Piping Plover (<i>Charadrius melodus</i>)	Threatened	No effect
Rufa Red Knot (<i>Calidris canutus rufa</i>)	Threatened	No effect

Status

Consultation with the Service is not complete. Further consultation or coordination with the Arkansas Ecological Services Office is necessary for those species with a determination of “may affect” (MA) listed above. Please contact our office at 501-513-4470, arkansas_es_clearance@fws.gov, or your agency point of contact in the Arkansas Ecological

Services Office to discuss methods to avoid or minimize potential adverse effects to those species.

The Service concurs with the NLAA determination(s) for the species listed above. Your agency has met consultation requirements by informing the Service of the “No Effect” determinations. No further consultation for this project is required for these species. This letter confirms you may rely on effect determinations provided in the Arkansas Determination Key for project review and guidance for federally listed species to satisfy agency consultation requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat. 884, as amended 16 U.S.C. 1531 et seq.; ESA).

FHWA projects should not use the Arkansas Dkey for the Northern Long-eared Bat (NLEB) or Indiana Bat. Please complete the FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat determination key. This key is intended for projects funded or authorized by FHWA, FRA, or FTA, that may affect the endangered Indiana bat and/or the threatened NLEB, which requires consultation with the Service under Section 7 of the ESA.

The Service recommends that your agency contact the Arkansas Ecological Services Field Office or re-evaluate this key in IPaC if: 1) the scope, timing, duration, or location of the proposed project changes; 2) new information reveals the action may affect listed species or designated critical habitat; 3) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation with the Arkansas Ecological Services Field Office should take place before project changes are final or resources committed.

This letter only covers the listed species in the above table. The following species may also occur in the Action area:

- Alligator Snapping Turtle *Macrochelys temminckii* Proposed Threatened
- Monarch Butterfly *Danaus plexippus* Candidate
- Northern Long-eared Bat *Myotis septentrionalis* Endangered
- Tricolored Bat *Perimyotis subflavus* Proposed Endangered

If you determine your project may affect additional listed or proposed listed species not covered by the Arkansas ESFO DKey, please contact our office at 501-513-4470, arkansas_es_clearance@fws.gov, or your agency point of contact Arkansas ESFO to discuss methods to avoid or minimize potential adverse effects to those species. Candidate species are not afforded protection under the ESA; however, we recommend they be considered in project planning and that conservation measures be implemented to avoid or minimize impacts to individuals or their habitat as much as possible.

Bald and Golden Eagle Protection Act: The following resources are provided to project proponents and consulting agencies as additional information. Bald and golden eagles are not included in this section 7(a)(2) consultation and this information does not constitute a determination of effects by the Service.

The Service developed the National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with Bald Eagles when and under what circumstances the protective provisions of the Bald and Golden Eagle Protection Act may apply to their activities. The guidelines should be consulted prior to conducting new or intermittent activity near an eagle nest. Activity specific guidelines begin on page 10 of the document. To access a copy of the National Bald Eagle Management Guidelines please visit the Service's Bald and Golden Eagle Management webpage and scroll down to the Guidance and Tools section: <https://www.fws.gov/library/collections/bald-and-golden-eagle-management>

If the recommendations detailed in the National Bald Eagle Management Guidelines cannot be followed, you may apply for a permit to authorize removal or relocation of an eagle nest in certain instances. To obtain an application form or contact information for Regional Migratory Bird Permit Offices please visit the Service's Bald and Golden Eagle Management webpage and scroll down to the Permits section: <https://www.fws.gov/library/collections/bald-and-golden-eagle-management>

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

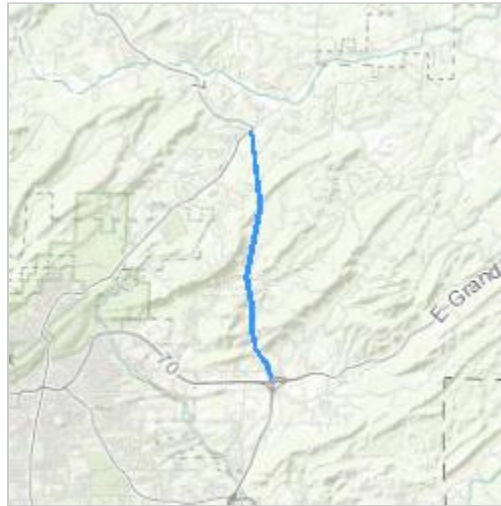
Hwy. 5 Erosion Repair (Garland Co.) (S)

2. Description

The following description was provided for the project 'Hwy. 5 Erosion Repair (Garland Co.) (S)':

Erosion Repair to the newly constructed Hwy. 5 extension between Hwy. 270 and Hwy. 7.

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@34.54190610000006,-92.98259435022837,14z>



Species Protection Measures

QUALIFICATION INTERVIEW

1. Have you made an effects determination of "no effect" for all species in the area of the project? A "no effect" determination means the project will have no beneficial effect, no short-term adverse effects, and no long-term adverse effects on any of the species on the IPaC-generated species list for the proposed project or those species habitat. A project with effects that cannot be meaningfully measured, detected or evaluated, effects that are extremely unlikely to occur, or entirely beneficial effects should not have a "no effect" determination. (If unsure, select "No").

No

2. Is the action authorized, funded, or being carried out by a Federal agency?

Yes

3. Are you the the action agency or the designated non-federal representative?

Yes

4. Choose the agency you represent in this consultation with the U.S. Fish and Wildlife Service:

d. Federal Highway Administration

5. Will project proponents follow [Special Provisions for avoidance and minimization](#) measures for listed species in Arkansas?

Yes

6. [Semantic] Does the project intersect designated critical habitat for the Leopard Darter?

Automatically answered

No

7. [Semantic] Does the project intersect designated critical habitat for the Neosho Mucket?

Automatically answered

No

8. [Semantic] Does the project intersect designated critical habitat for Yellowcheek Darter?

Automatically answered

No

9. [Semantic] Does the project intersect designated critical habitat for Rabbitsfoot?

Automatically answered

No

10. [Semantic] Does the project intersect designated critical habitat for Ouachita Fanshell?

Automatically answered

No

11. [Semantic] Does the project intersect the American burying beetle consultation area?

Automatically answered

No

12. [Semantic] Does the project intersect the red-cockaded woodpecker AOI?
Automatically answered
No
13. [Semantic] Does the project intersect the Eastern black rail AOI?
Automatically answered
Yes
14. Will the project take place in freshwater herbaceous wetlands and/or wet prairies?
No
15. [Semantic] Does the project intersect the red knot AOI?
Automatically answered
Yes
16. Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?
No
17. Does the project take place in marshy or flooded open field habitat?
No
18. [Semantic] Does the project intersect the Piping Plover AOI?
Automatically answered
Yes
19. [Semantic] Does the project intersect the Whooping Crane AOI?
Automatically answered
No
20. [Semantic] Does the project intersect the interior least tern AOI?
Automatically answered
No
21. [Semantic] Does the project intersect the Gray Bat AOI?
Automatically answered
No
22. [Semantic] Does the project intersect the Ozark Big-eared Bat AOI?
Automatically answered
No
23. [Semantic] Does the project intersect the Indiana bat AOI?
Automatically answered
Yes
24. [Semantic] Does the project intersect the Benton County Cave Crayfish AOI?
Automatically answered
No
25. [Semantic] Does the project intersect the Hell Creek Cave Crayfish AOI?
Automatically answered
No

26. [Semantic] Does the project intersect the Ozark cavefish AOI?
Automatically answered
No
27. [Semantic] Does the project intersect the Missouri bladderpod AOI?
Automatically answered
Yes
28. [Semantic] Does the project intersect the Geocarpon AOI?
Automatically answered
No
29. [Semantic] Does the project intersect the Pondberry AOI?
Automatically answered
No
30. Does the project contain any of the following activity types: Dams or Impoundments (including berms or levees), Municipal or industrial effluent discharge, Mining, Mine reclamation, Disposal of mine wastewater or tailings, Construction of natural gas or oil well pads, Construction greater than 40 acres, Dredging or snag removal, Energy development within floodplain, or OHV trail construction or maintenance?
No
31. Does the project contain any of the following activity types: Boat Ramps, Bridges, Culverts, Residential or Commercial Development, Streambank Stabilization (or other streambank work), Pipeline and linear projects, Water intakes/withdrawals, Forest conversion within 100 ft of occupied streams, or Stream or ditch relocation, or straightening?
No
32. Will the project involve construction or other ground disturbance; riparian forest disturbance; or the application of herbicides, insecticides, or fertilizer within 100 feet of the streams?
No
33. Will the project result in discharge or runoff of sediment, erosion, or any other pollutant, including nutrients, into the stream?
Yes
34. [Semantic] Does the project intersect the rabbitsfoot AOI?
Automatically answered
No
35. [Semantic] Does the project intersect the neosho mucket AOI?
Automatically answered
No
36. [Semantic] Does the project intersect the Spectaclecase AOI?
Automatically answered
No

37. [Semantic] Does the project intersect the snuffbox AOI?
Automatically answered
No
38. [Semantic] Does the project intersect the speckled pocketbook AOI?
Automatically answered
No
39. [Semantic] Does the project intersect the ouachita rock pocketbook AOI?
Automatically answered
No
40. [Semantic] Does the project intersect the fat pocketbook AOI?
Automatically answered
No
41. [Semantic] Does the project intersect the Curtis pearlymussel AOI?
Automatically answered
No
42. [Semantic] Does the project intersect the scaleshell AOI?
Automatically answered
No
43. [Semantic] Does the project intersect the pink mucket AOI?
Automatically answered
No
44. [Semantic] Does the project intersect the Arkansas fatmucket AOI?
Automatically answered
Yes
45. [Semantic] Does the project intersect the Arkansas fatmucket survey coordination area?
Automatically answered
No
46. [Semantic] Does the project intersect the winged mapleleaf AOI?
Automatically answered
No
47. [Semantic] Does the project intersect the leopard darter AOI?
Automatically answered
No
48. [Semantic] Does the project intersect the Yellowcheek darter AOI?
Automatically answered
No
49. [Semantic] Does the project intersect the Ouachita fanshell AOI?
Automatically answered
No

50. [Semantic] Does the project intersect the Ozark hellbender AOI?

Automatically answered

No

51. [Semantic] Does the project intersect the harperella AOI?

Automatically answered

No

52. [Semantic] Does the project intersect the pallid sturgeon AOI?

Automatically answered

No

53. [Semantic] Does the project intersect the interior least tern range?

Automatically answered

No

IPAC USER CONTACT INFORMATION

Agency: Arkansas Department of Transportation

Name: clint hutcheson

Address: PO Box 2261

City: Little Rock

State: AR

Zip: 72203

Email: clinton.hutcheson@ardot.gov

Phone: 5017767797

You have indicated that your project falls under or receives funding through the following special project authorities:

- BIPARTISAN INFRASTRUCTURE LAW (BIL) (OTHER)

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

ARDOT Job 061855 FAP PRTT-0026(53)

Job Title Hwy. 5 Erosion Repair(Garland Co.) (S)

Environmental Resource	None	Minimal	Major	Comments
Air Quality	X			No impacts
Cultural Resources	X			CR memo attached
Economic	X			No impacts
Endangered Species		X		NLAA for Arkansas Fatmucket, Missouri bladderpod
Environmental Justice/Title VI	X			No impacted populations
Fish and Wildlife		X		Minimal during construction
Floodplains		X		Zone A SFHA
Forest Service Property	X			None in the project area
Hazardous Materials/Landfills	X			None in project area
Land Use	X			No impacts
Migratory Birds	X			Bird SP required
Navigation/Coast Guard	X			None in the project area
Noise Levels	X			No impacts
Prime Farmland	X			No impacts
Protected Waters	X			None in the project area
Public Recreation Lands	X			No impacts
Public Water Supply/WHPA	X			None in the project area
Relocatees	X			No relocations
Section 4(f)/6(f)	X			No impacts
Social	X			No impacts
Underground Storage Tanks	X			No impacts
Visual	X			No impacts anticipated
Streams		X		Covered under MVK-2018-00275
Water Quality		X		Temporary during construction
Wetlands	X			None in the project area
Wildlife Refuges	X			None in the project area

Section 401 Water Quality Certification Required? Yes

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type Individual

Remarks: _____

Signature of Evaluator Kathryn Rose Date 6/5/2024



REPLY TO
ATTENTION OF

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

December 4, 2019

Regulatory Division

STANDARD PERMIT NO. MVK 2018-00275

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

Dear Mr. Fleming:

Under authority of Section 404 of the Clean Water Act (33 U.S. Code 1344), enclosed is Department of the Army Permit No. **MVK 2018-00275** which authorizes the placement of dredged and fill material in waters of the United States associated with constructing a 5.5-mile highway bypass on the east side of Hot Springs. The project will eventually be a four-lane divided highway with fully controlled access meeting freeway standards, with a design speed of 50 mph. Initially, two 12-foot-wide travel lanes (one in each direction) with 8-foot-wide shoulders will be built, with the final typical section being two 12-foot-wide travel lanes in each direction separated by a barrier wall. Right-of-way width will vary from 400 to 600 feet depending on construction cuts and fills.

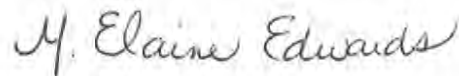
All construction will be on new location and the project will cross seventeen streams and one herbaceous wetland. The stream crossings include a total of 20 concrete pipe culverts, 5 concrete box culverts and one bridge. Stream channel relocation along with construction of the stream crossing structures will permanently impact a total of approximately 18,413 linear feet of stream, requiring approximately 10,661 cubic yards of fill material placed in 3.4 acres of waters of the United States. A total of 0.8 acres of wetlands will be permanently impacted for the construction of the Mill Creek interchange, requiring approximately 2,581 cubic yards of fill material. ArDOT will provide compensatory mitigation for the stream impacts with permittee-responsible mitigation at the Lockett Creek and Blowout Mountain Mitigation Areas. Compensatory mitigation for the wetland impacts will be provided with credits from the ArDOT Upper Saline River Mitigation Bank. The project begins just outside the city limits on the East side of Hot Springs at the intersection of U.S. Highway 70 and East Grand Avenue (Martin Luther King Jr. Interchange), and extends northward for 5.5 miles to where it terminates at the junction of State Highways 5 and 7, near the Community of Fountain Lake. More specifically it is located in section 6, T. 3 S., R. 18 W., and in sections 7, 18, 19, 30 and 31, T. 2 S., R. 18 W., and in sections 12, 13, 25 and 36, T. 2 S., R. 19 W., Garland County, Arkansas.

The project shall be constructed and maintained as described in the permit. If changes are proposed in the design or location of the project, you are required by law to submit revised plans to the District Engineer for approval before construction of the change is begun.

It is your responsibility to understand and comply with all of the conditions of the permit and to make any of your employees or contractors involved with this project continuously aware of the permit conditions. Your attention is directed to **Special Condition Nos. 1 through 11** of the enclosed permit. These conditions include erosion control measures and the required mitigation which will minimize impacts to the wetlands and streams. We will periodically inspect the construction site and the associated mitigation site to ensure compliance with the conditions. We have also attached a copy of the state water quality certification and conditions which are a part of this permit.

Your cooperation in the Regulatory Program is appreciated. If you have any additional questions regarding this project, please contact Mr. Johnny McLean at (501) 324-5296 and refer to Permit No. **MVK 2018-00275, Hot Springs Bypass (ArDOT Job No. R60140)**.

Sincerely,



M. Elaine Edwards
Chief, Regulatory Division

Enclosures

Copy Furnished:

ADEQ, Ms. Melanie Treat, w/cy dwgs
USF&WS, Mr. Lindsey Lewis, w/cy dwgs
EPA, Ms. Wanda Boyd, w/cy dwgs
Vicksburg District Regulatory, w/cy dwgs

DEPARTMENT OF THE ARMY PERMIT

Permittee: **Arkansas Department of Transportation (ArDOT)**

Permit No.: **MVK 2018-00275**

Issuing Office: Department of the Army
Little Rock District
PO Box 867
Little Rock, Arkansas 72203-0867

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The purpose of the project is to construct a four-lane highway which will function as a bypass, to provide safe and efficient movement of local and through traffic, and to alleviate congestion on Highway 7 by moving through traffic onto the proposed bypass.

All construction will be on new location and the project will cross seventeen streams and one herbaceous wetland. The stream crossings include a total of 20 concrete pipe culverts, 5 concrete box culverts and one bridge. Stream channel relocation along with construction of the stream crossing structures will permanently impact a total of approximately 18,413 linear feet of stream, requiring approximately 10,661 cubic yards of fill material placed in 3.4 acres of waters of the United States. A total of 0.8 acres of wetlands will be permanently impacted for the construction of the Mill Creek interchange, requiring approximately 2,581 cubic yards of fill material.

ArDOT will mitigate for unavoidable stream channel impacts with 139,808.2 stream credits through permittee-responsible mitigation at the Lockett Creek Mitigation Area and the Blowout Mountain Mitigation Area. The Lockett Creek Mitigation Area is a 232-acre site located in the Upper Saline River watershed near Hot Springs Village and the Blowout Mountain Mitigation Area is a 325-acre site located in the Ouachita Headwaters watershed near Mount Ida. The wetland impacts will be mitigated with 6.9 wetland credits at ArDOT's Upper Saline River Mitigation Bank near Crows. Copies of the stream impacts table, and stream and wetland credit worksheets are attached. The location and general plan for the proposed work are shown on the enclosed sheets 1 through 14 of 18.

Project Location: The project is located on the East side of Hot Springs at the intersection of U.S. Highway 70 and East Grand Avenue (Martin Luther King Jr. Expressway Interchange), and extends northward for 5.5 miles to where it terminates at the junction of State Highways 5 and 7, near the Community of Fountain Lake. More specifically it is

located in section 6, T. 3 S., R. 18 W., and in sections 7, 18, 19, 30 and 31, T. 2 S., R. 18 W., and in sections 12, 13, 25 and 36, T. 2 S., R. 19 W., Garland County, Arkansas.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **December 31, 2022**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is enclosed if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

- 1. ArDOT shall notify the U.S. Army Corps of Engineers Little Rock District Transportation Program Manager of any additional fill proposed in waters of the United States to widen the roadway embankment and construct and extend the culverts. This includes all activities associated with the discharge and excavation of material in waters of the United States by any ArDOT contractor. Also, all ArDOT contractors shall be furnished and required to implement the conditions of the Standard Permit and receive additional authorization required for all associated activities in waters of the United States.**

- 2. ArDOT shall implement ArDOT's Standard Erosion Control Measures during all construction phases of the highway. Erosion control measures will be maintained before, during and after construction of the project. All disturbed areas along the highway right-of-way shall be seeded, planted or given some other type of equivalent protection against subsequent erosion during construction and upon completion of the project.**
- 3. ArDOT shall place all construction debris, including any excess material, on land in such a manner to prevent it from entering or being discharged in any waterway.**
- 4. Upon completion of the project, ArDOT will remove all temporary work roads, restore the area(s) to preconstruction contours and reestablish native vegetation.**
- 5. Upon completion of the project, ArDOT will restore all manipulated stream channels and riparian zones to preconstruction conditions and reestablish native vegetation.**
- 6. ArDOT agrees to mitigate for the impacts to 0.8 acres of wetlands with 6.9 wetland credits from their Upper Saline River Mitigation Bank. ArDOT will provide documentation of the mitigation bank transaction to the U.S. Army Corps of Engineers Little Rock District Transportation Program Manager within 60 days from the issuance of the permit.**
- 7. ArDOT agrees to mitigate for the impacts to 18,413 linear feet of stream channel with 139,808.2 stream credits at their Lockett Creek and Blowout Mountain permittee-responsible mitigation areas. The mitigation will be performed in accordance with the plan dated October 2019.**
- 8. ArDOT agrees to prohibit the clearing of trees within 150 feet of any known Northern Long-eared Bat (NLEB) occupied maternity roost tree during the pup rearing season (June 1 through July 31) or within 0.25 miles of any NLEB hibernaculum or during the winter between November 15 and April 1. All offsite tree clearing activities must be coordinated with the U.S. Fish and Wildlife Service.**
- 9. Should any cave openings be exposed during excavation activities authorized by this permit, ArDOT shall stop work immediately and contact the Little Rock District Corps of Engineers Regulatory Division. The Corps of Engineers will initiate the Federal and State coordination necessary to determine if threatened or endangered species are present. ArDOT shall make all practical and reasonable efforts to protect the site from further damage. These efforts should include, but are not limited to, the construction of a ring levee with silt fence and straw bales as soon as possible around the opening to reduce silt-laden runoff from entering the opening.**
- 10. ArDOT will notify the U.S. Army Corps of Engineers Little Rock District Transportation Program Manager when the construction of the project begins so that periodic compliance inspections can be performed.**

11. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition No. 6 and Special Condition No. 7 will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the US. Army Corps of Engineers.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization:

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is

not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision:** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions:** General Condition 1 establishes a time limit for the completion of your activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.



(PERMITEE)

12/2/19

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Pursuant to the direction from Colonel Eric M. Noe, District Engineer:

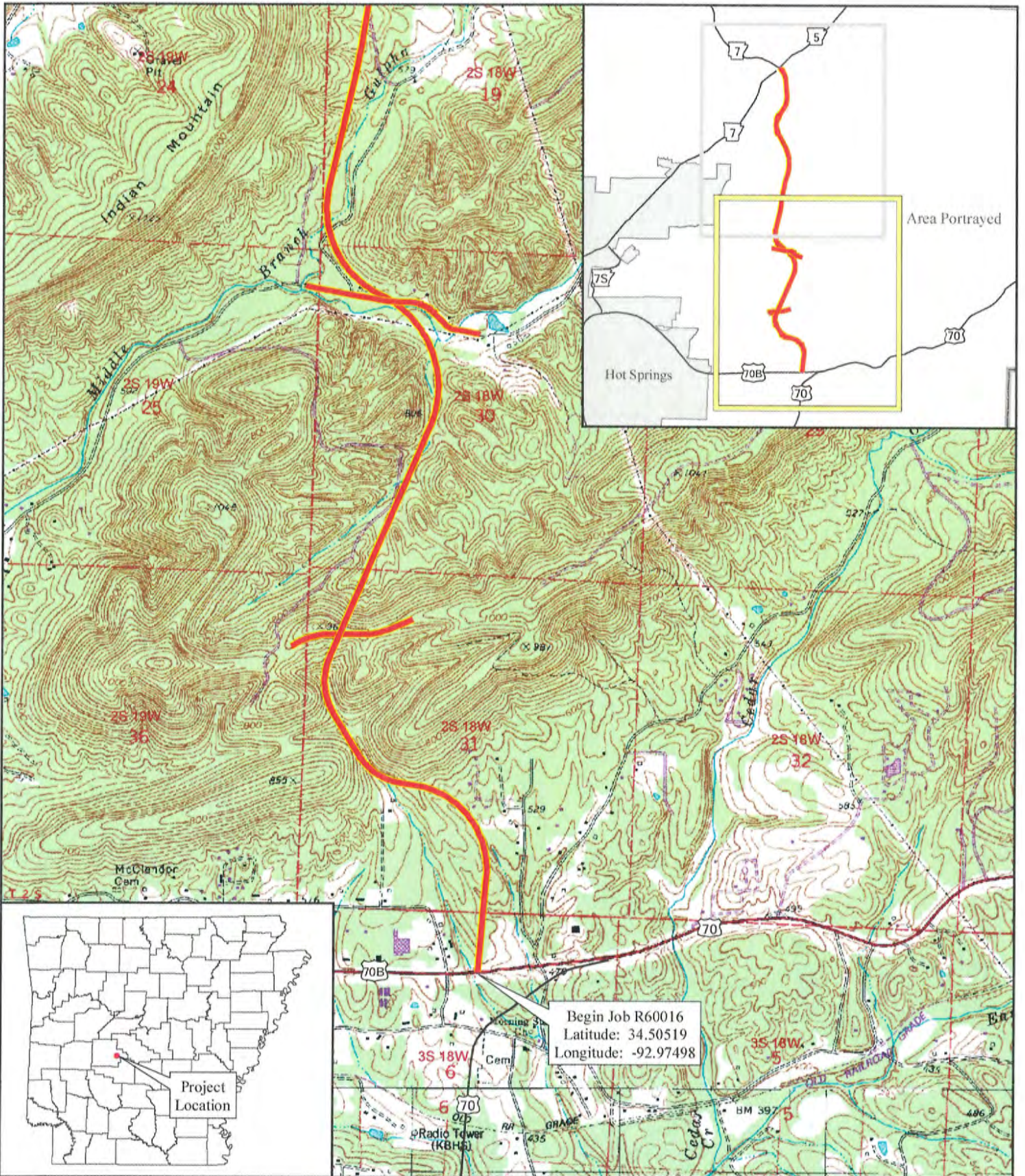
M. Elaine Edwards
M. Elaine Edwards
Chief, Regulatory Division

12/4/19
(DATE)

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

(TRANSFEREE)

(DATE)



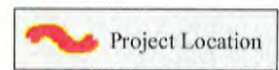
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 Longitude: -92.97498



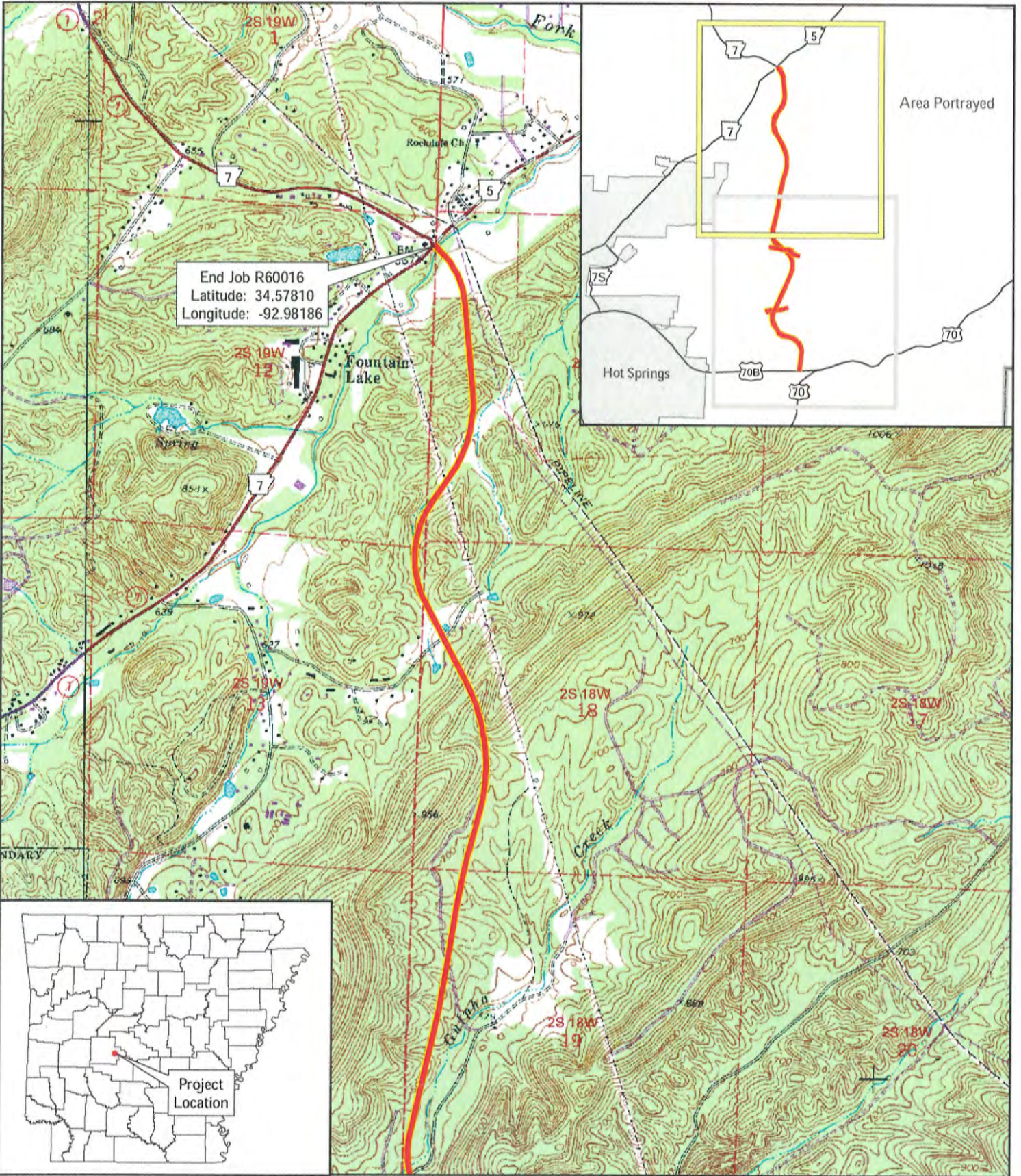
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AHTD - Environmental GIS - Reed
 March 10, 2017

Job R60016.
 East - West Arterial.
 (Hot Springs).
 Garland County.
 Sheet 1 of 18



Fountain Lake 1988 USGS Topographic Map



End Job R60016
 Latitude: 34.57810
 Longitude: -92.98186

Area Portrayed

Hot Springs

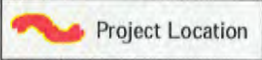
Project Location



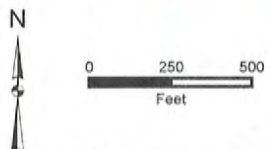
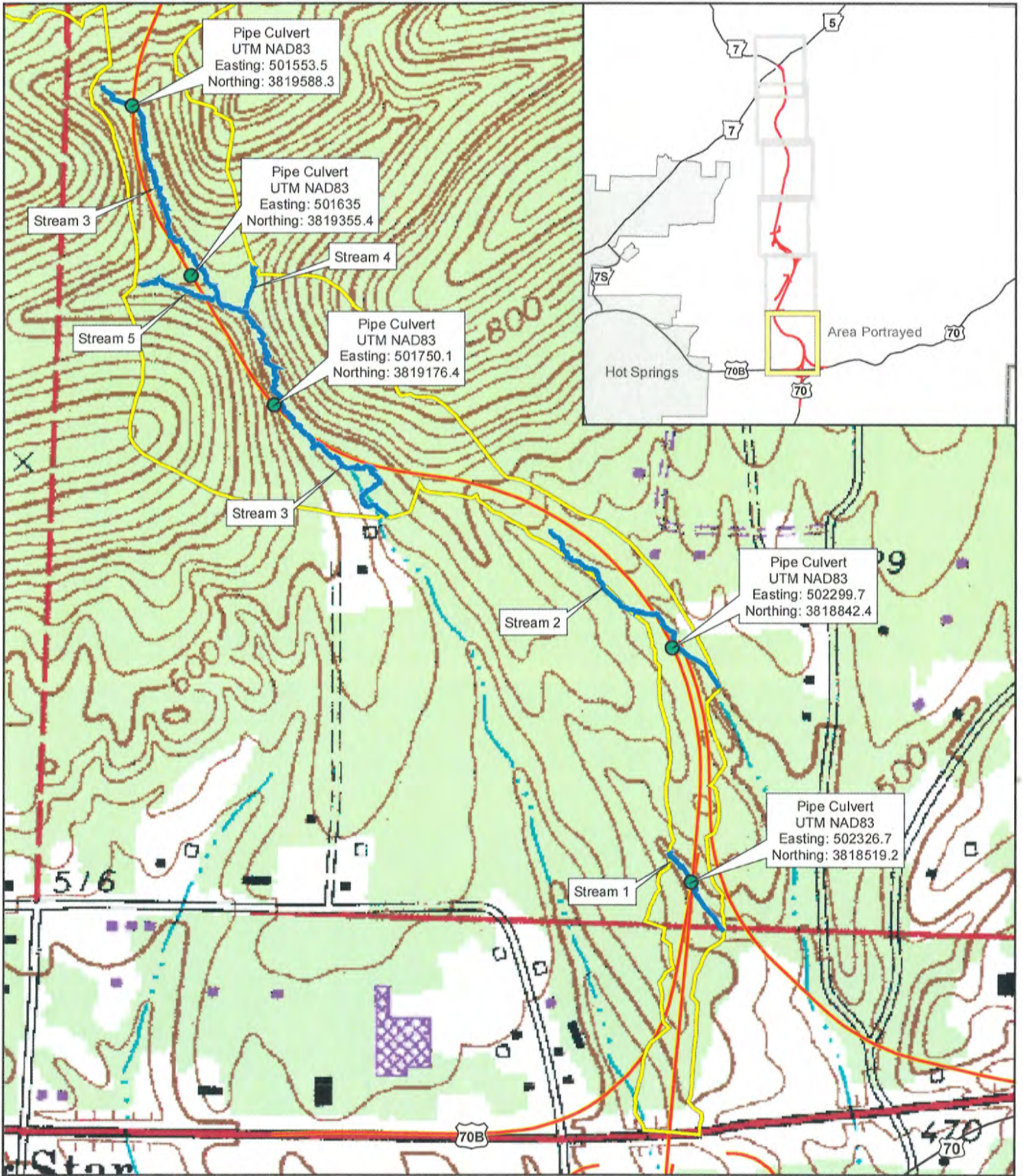
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AHTD - Environmental GIS - Reed
 March 10, 2017

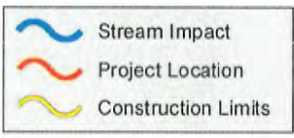
Job R60016.
 East - West Arterial.
 (Hot Springs).
 Garland County.
 Sheet 2 of 18

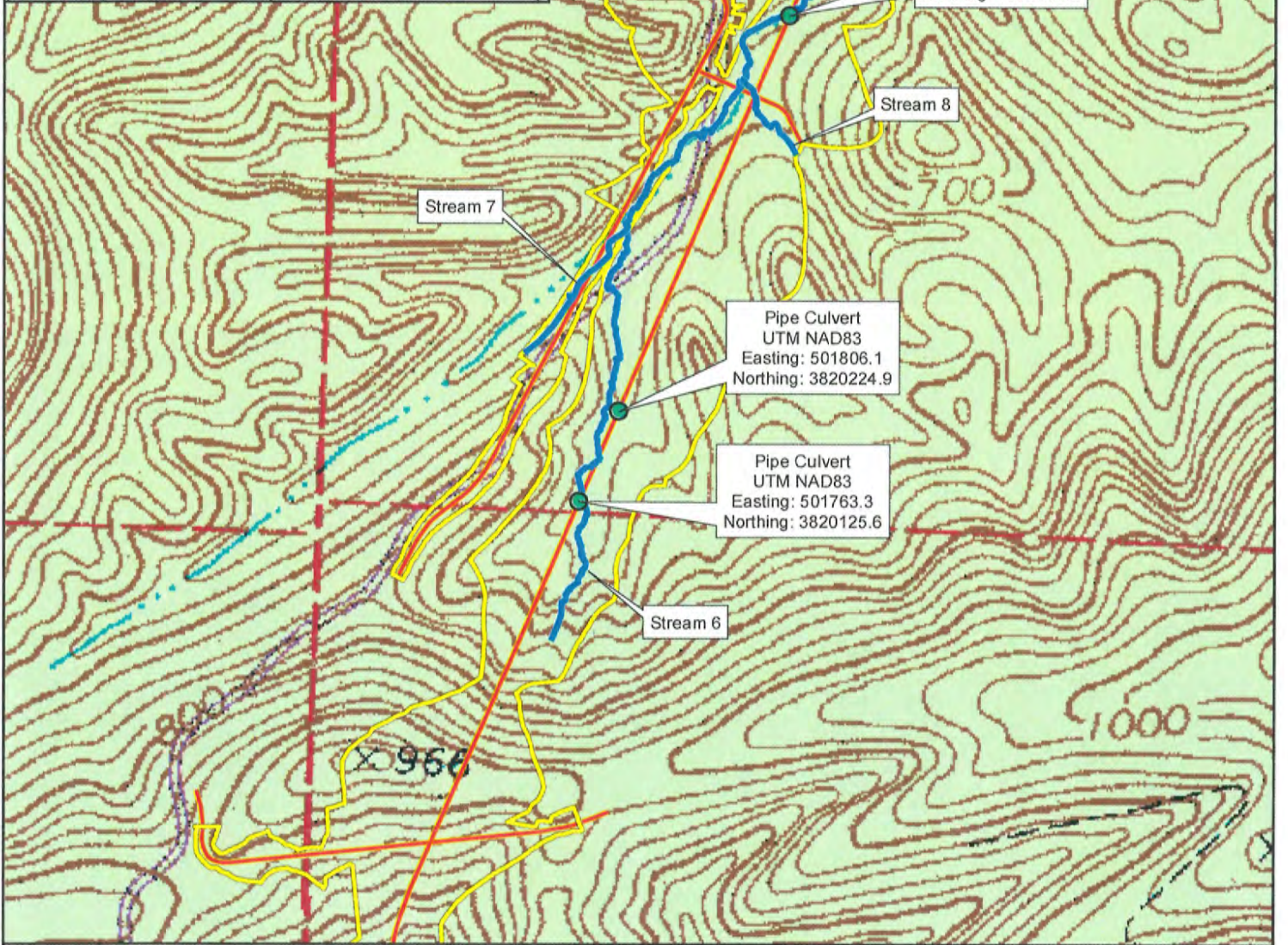
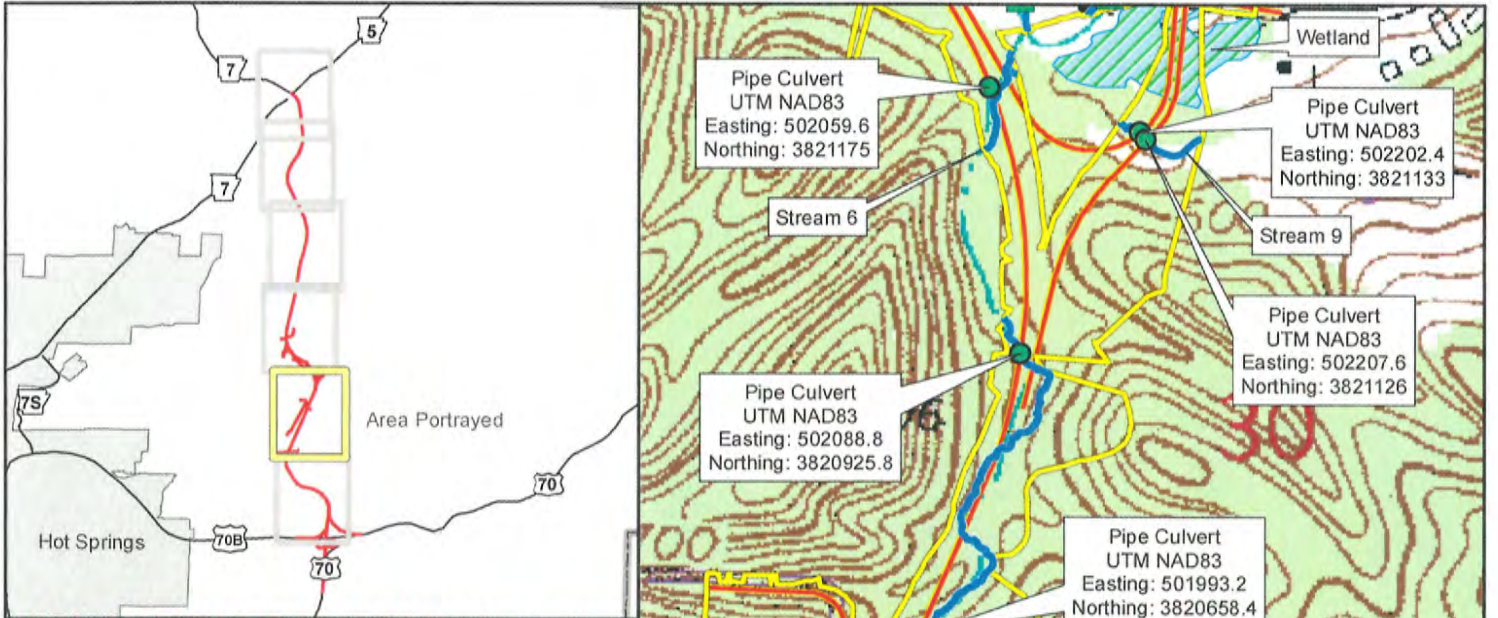


Fountain Lake 1988 USGS Topographic Map

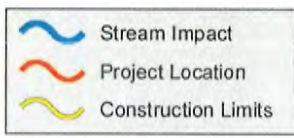


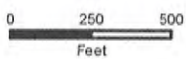
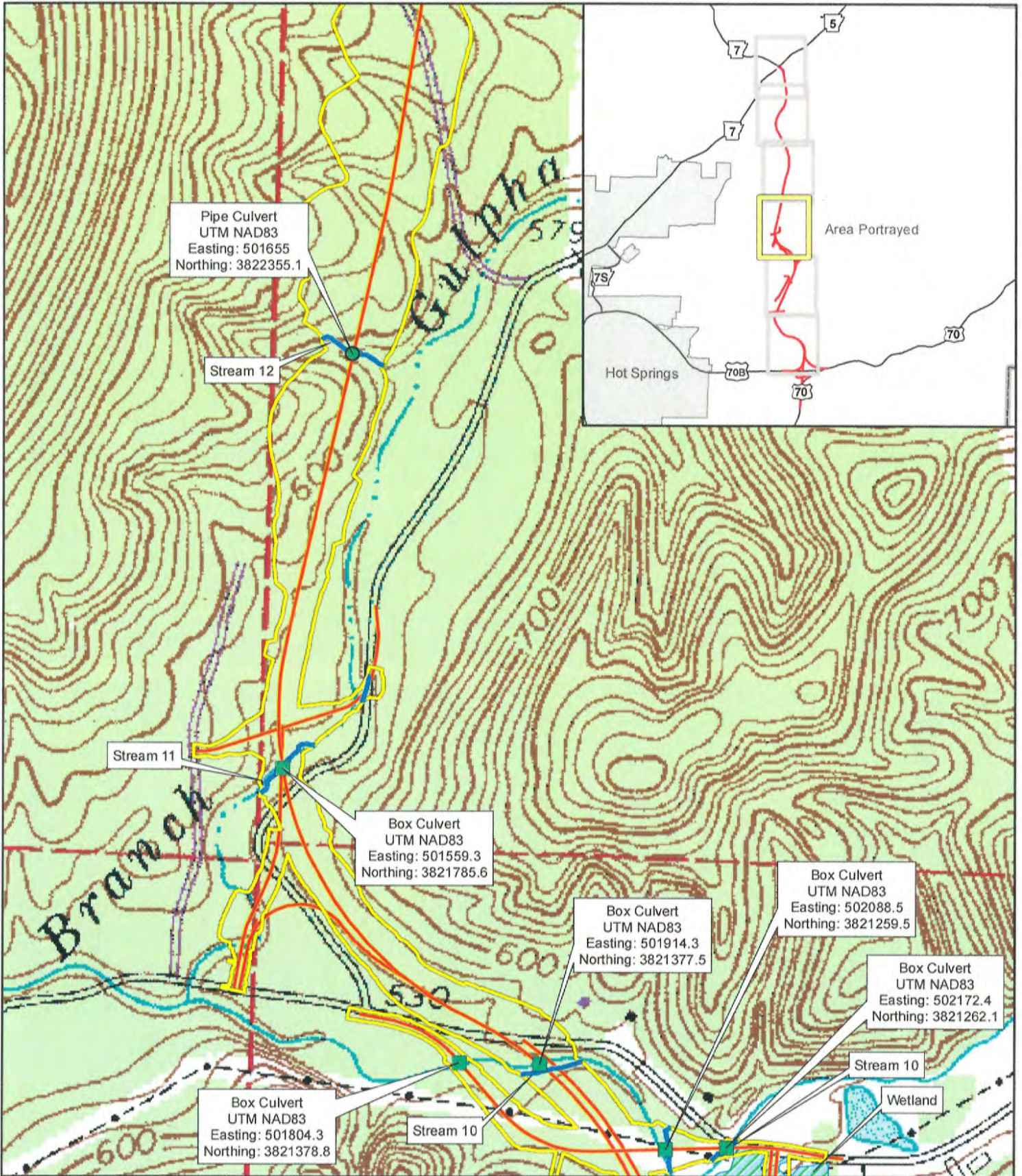
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 Hwy. 70 East - Hwy. 7 North
 Garland County
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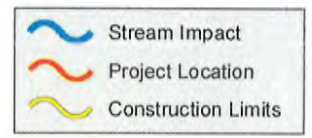


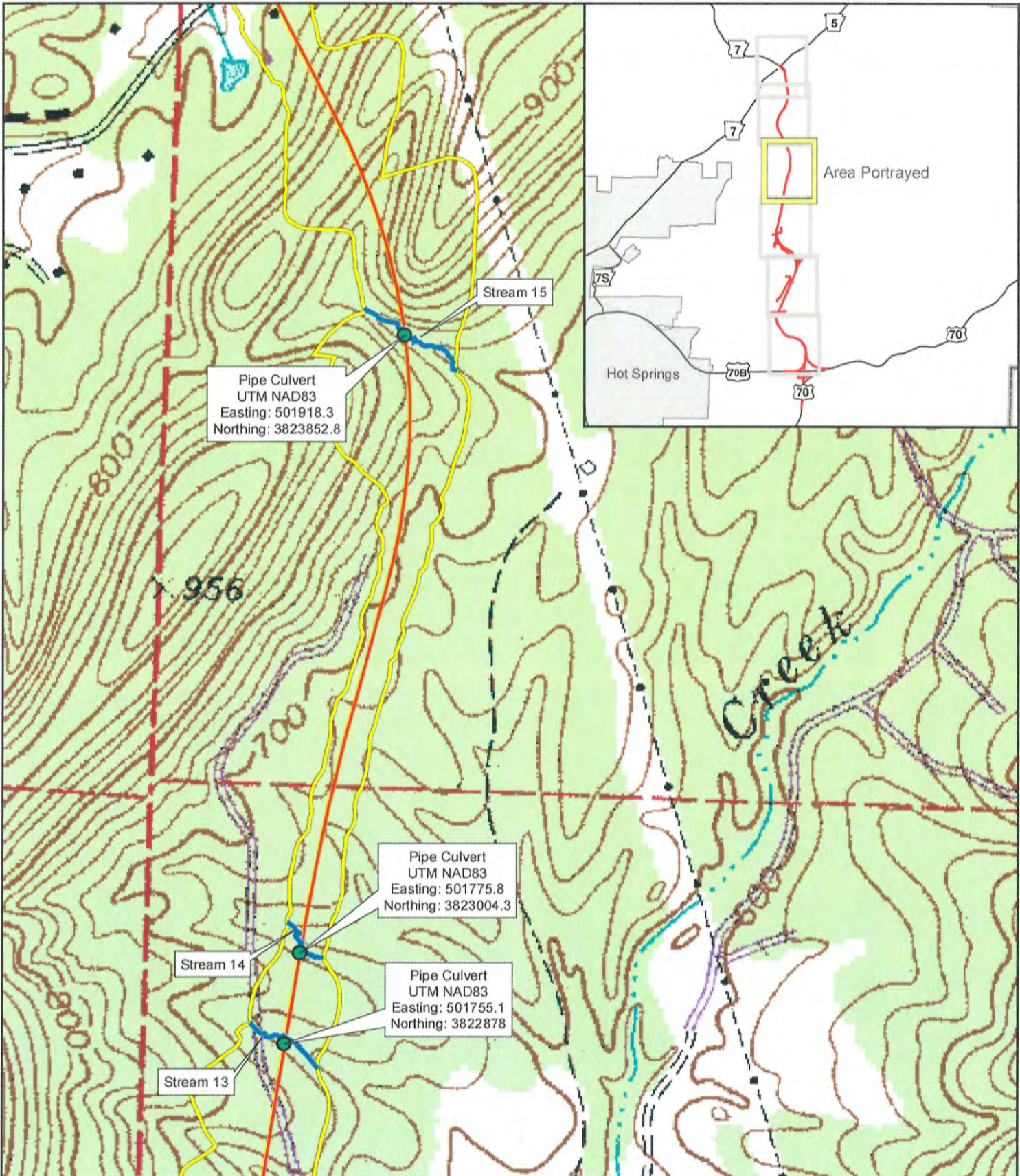
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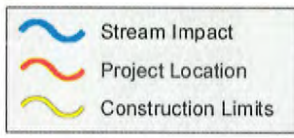


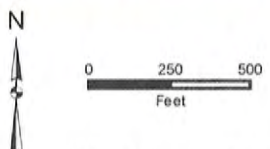
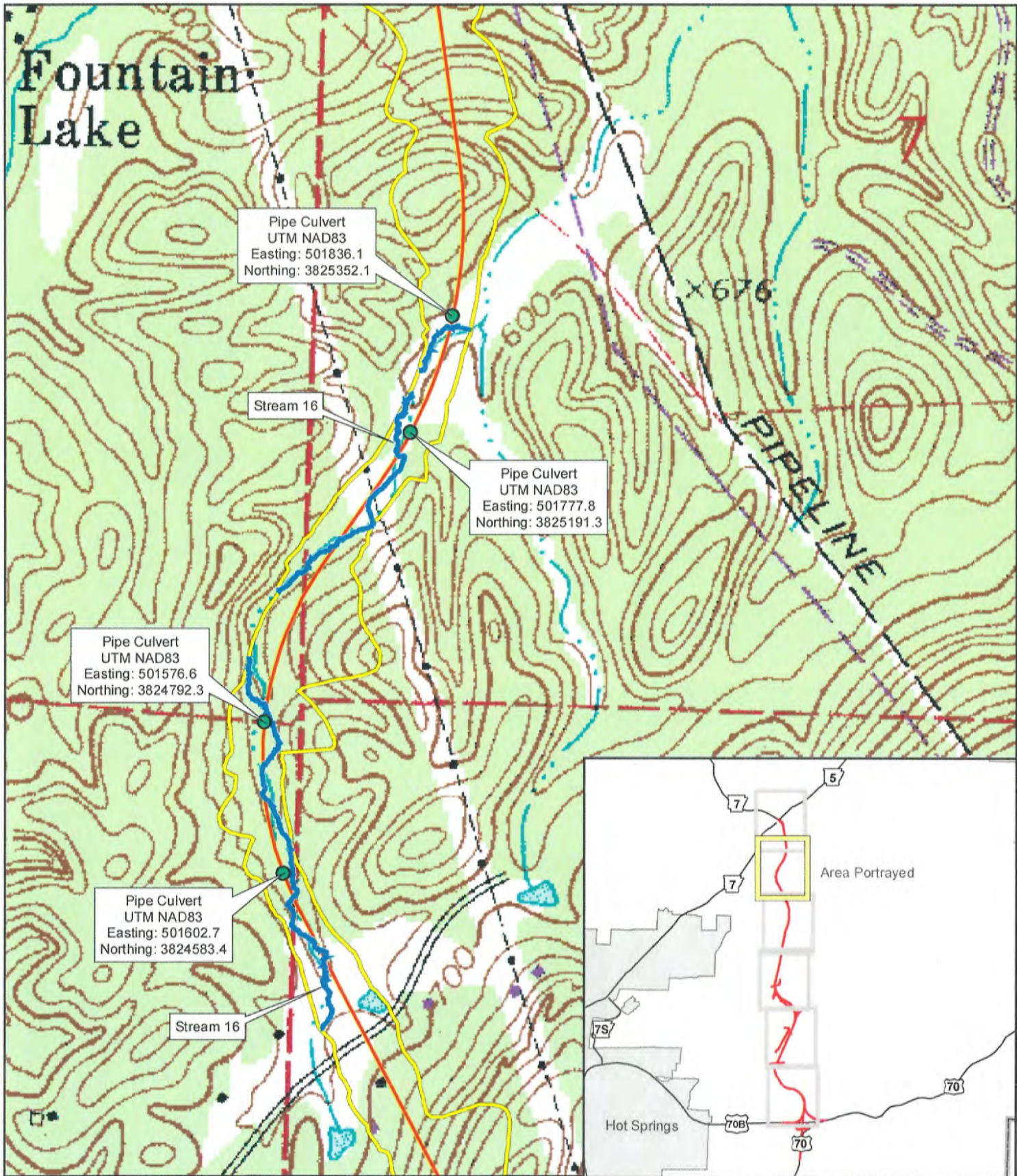
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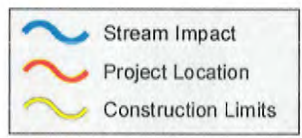


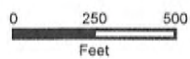
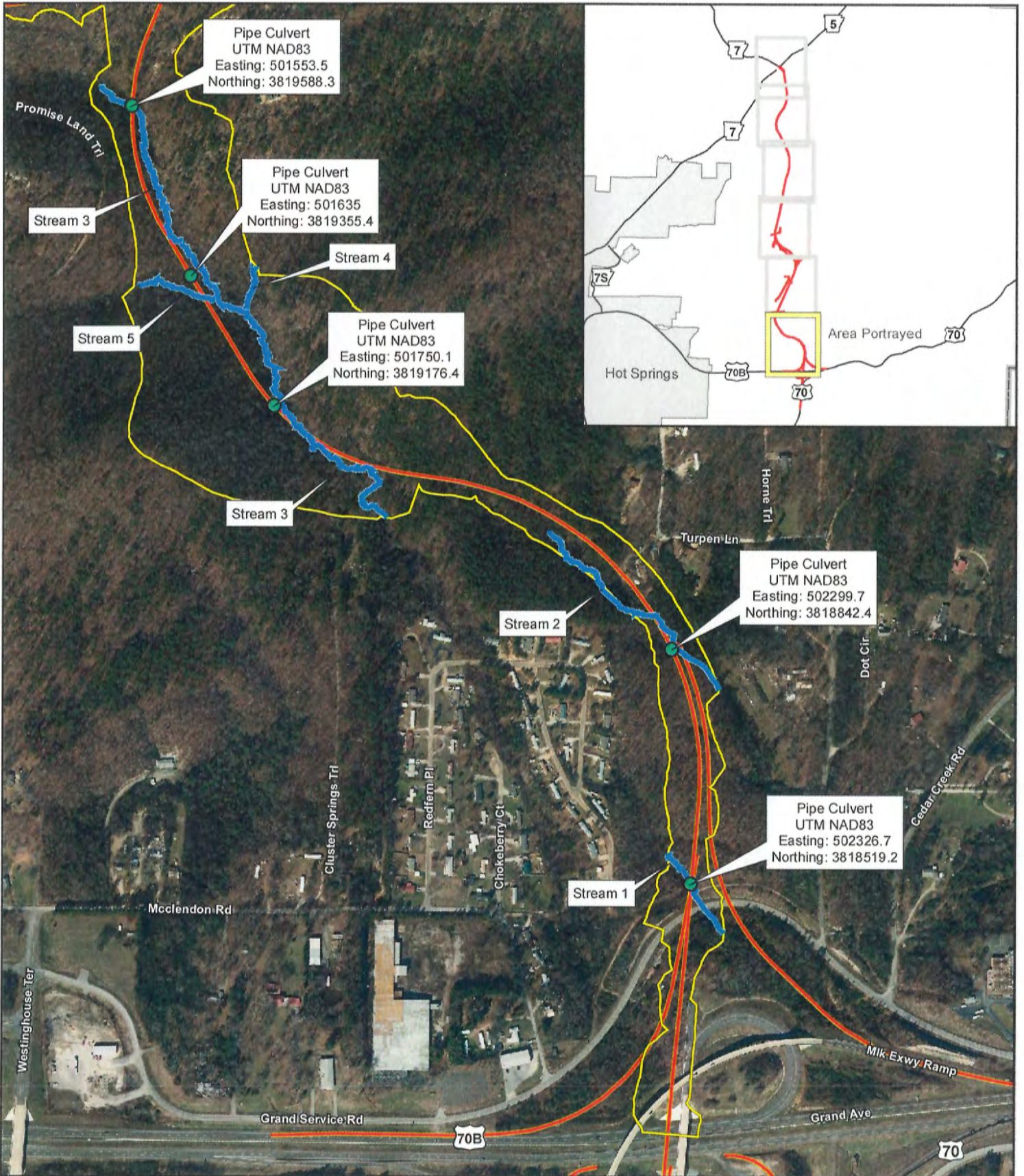
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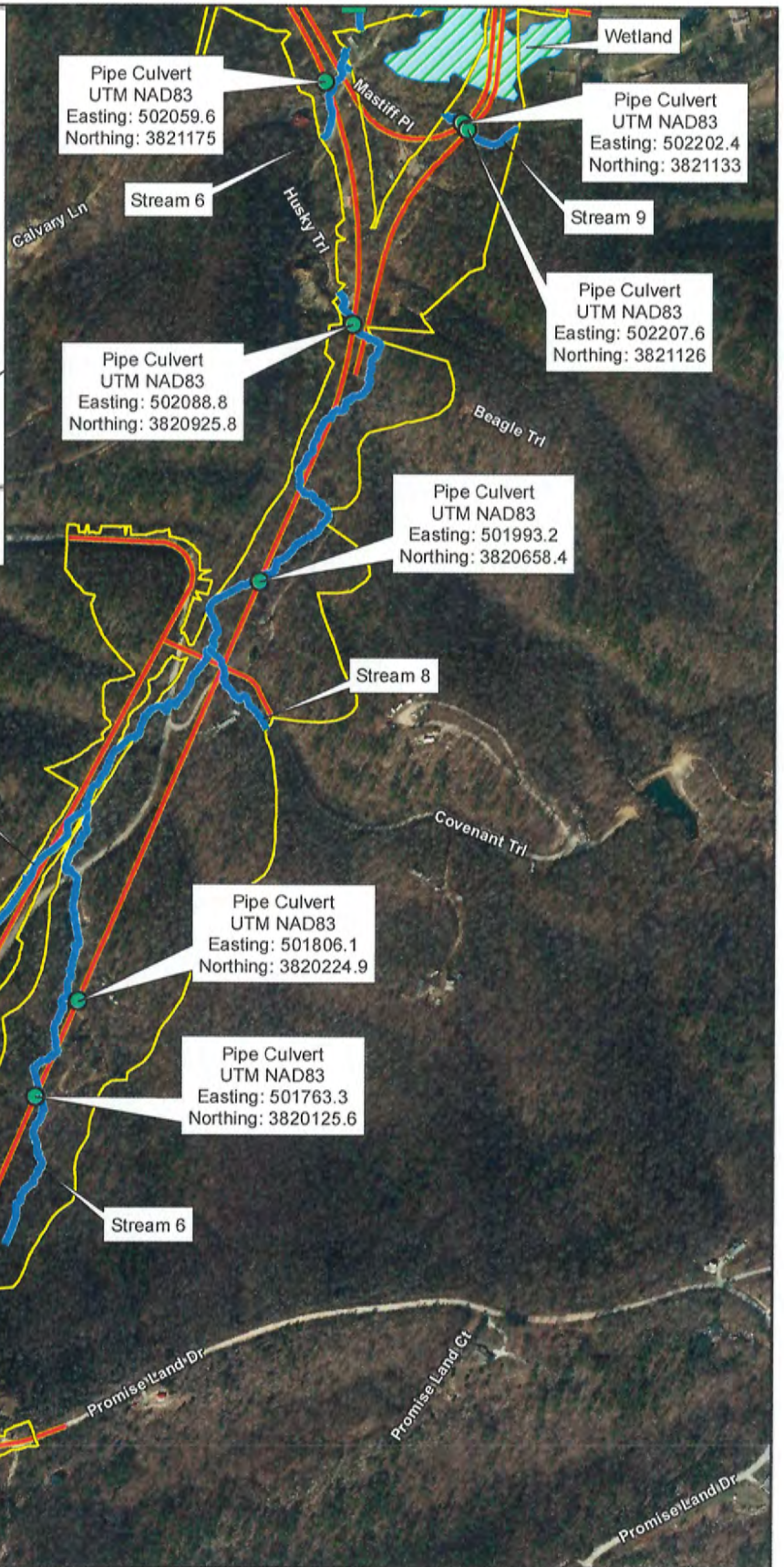
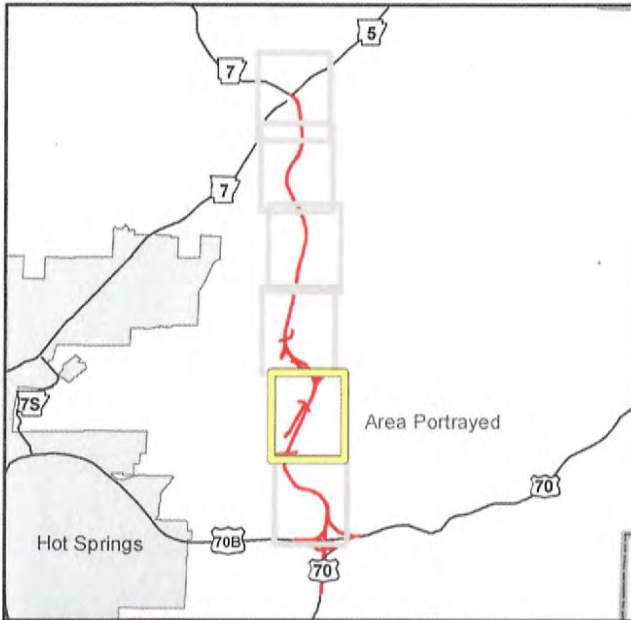
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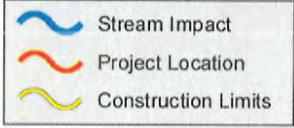


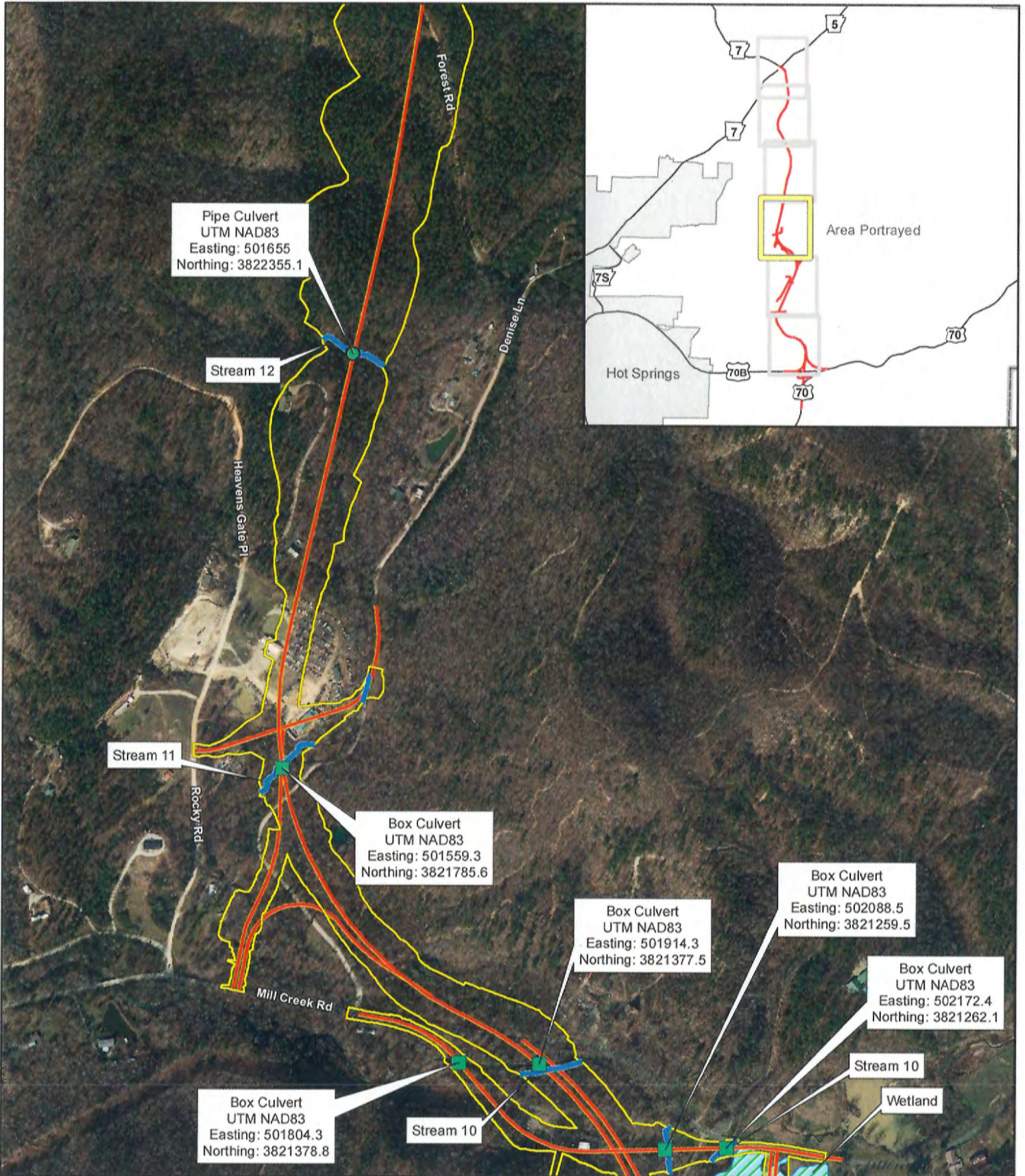
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-  Stream Impact
-  Project Location
-  Construction Limits



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Pipe Culvert
 UTM NAD83
 Easting: 501655
 Northing: 3822355.1

Stream 12

Heavens Gate Pl

Denise Ln

Stream 11

Rocky Rd

Box Culvert
 UTM NAD83
 Easting: 501559.3
 Northing: 3821785.6

Box Culvert
 UTM NAD83
 Easting: 501914.3
 Northing: 3821377.5

Box Culvert
 UTM NAD83
 Easting: 502088.5
 Northing: 3821259.5

Box Culvert
 UTM NAD83
 Easting: 502172.4
 Northing: 3821262.1

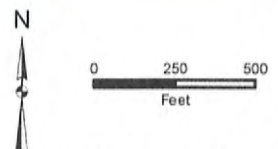
Mill Creek Rd

Box Culvert
 UTM NAD83
 Easting: 501804.3
 Northing: 3821378.8

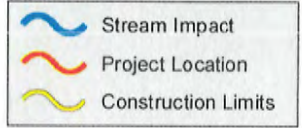
Stream 10

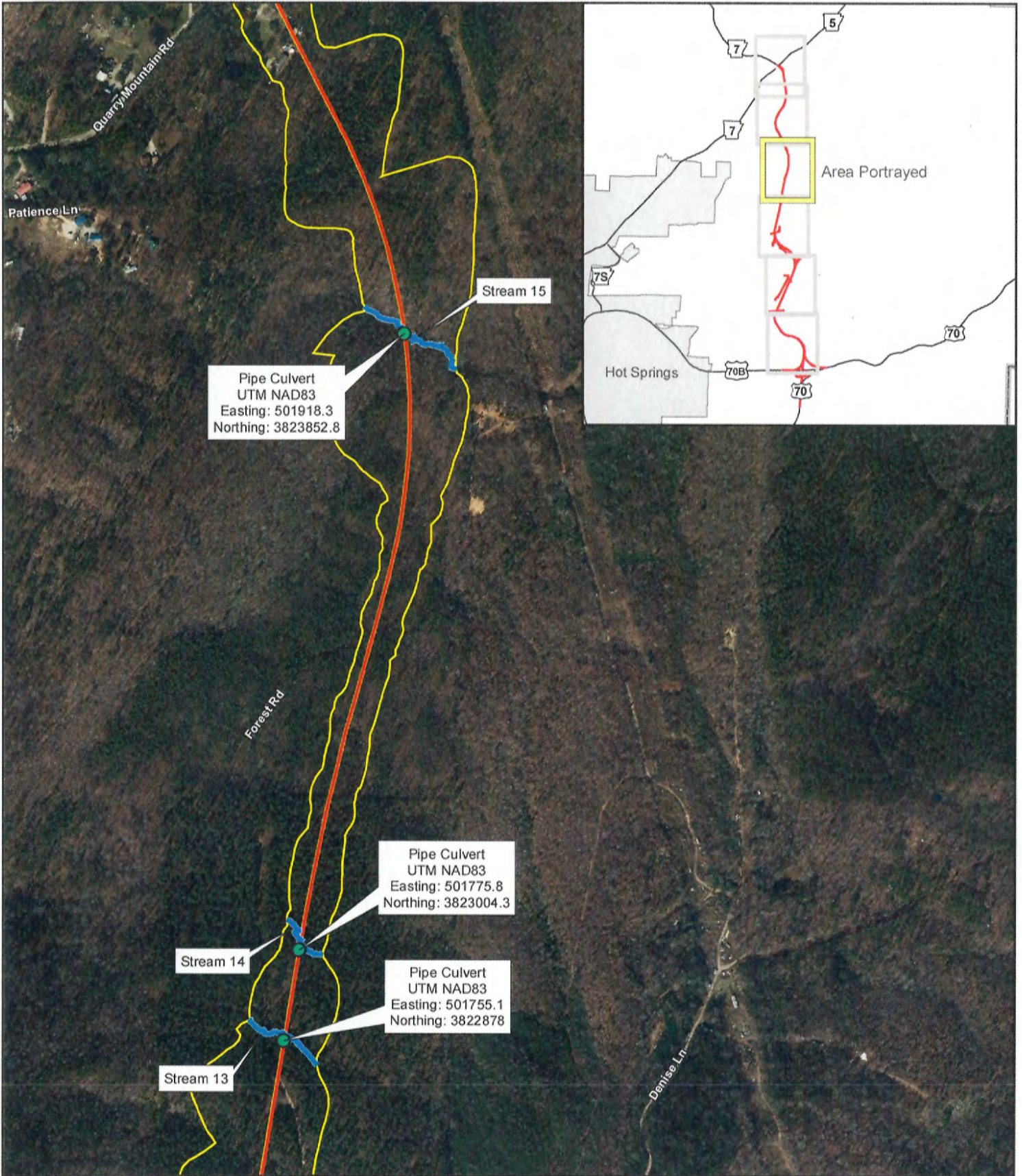
Stream 10

Wetland

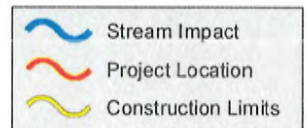


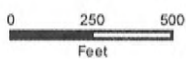
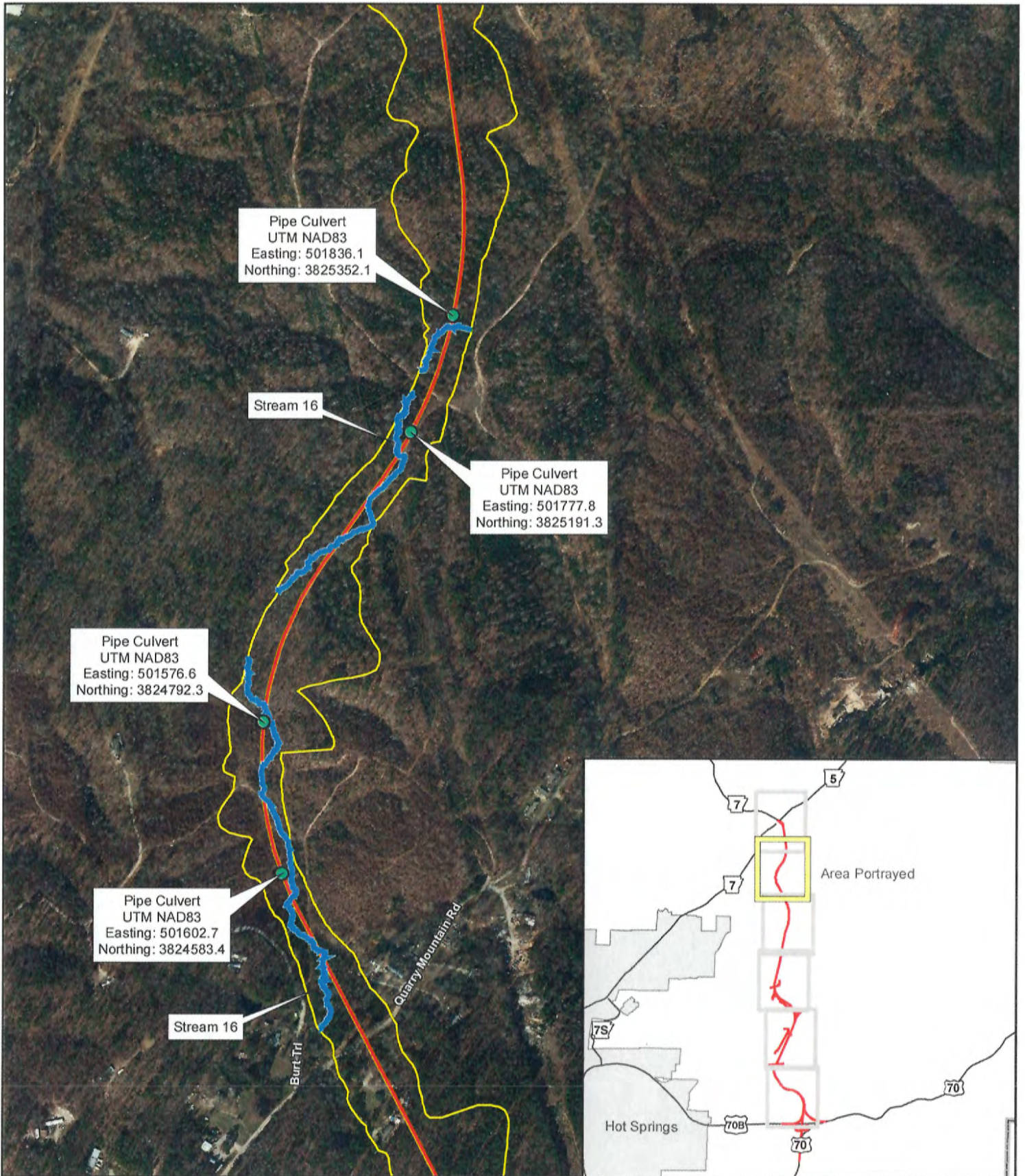
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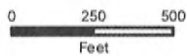
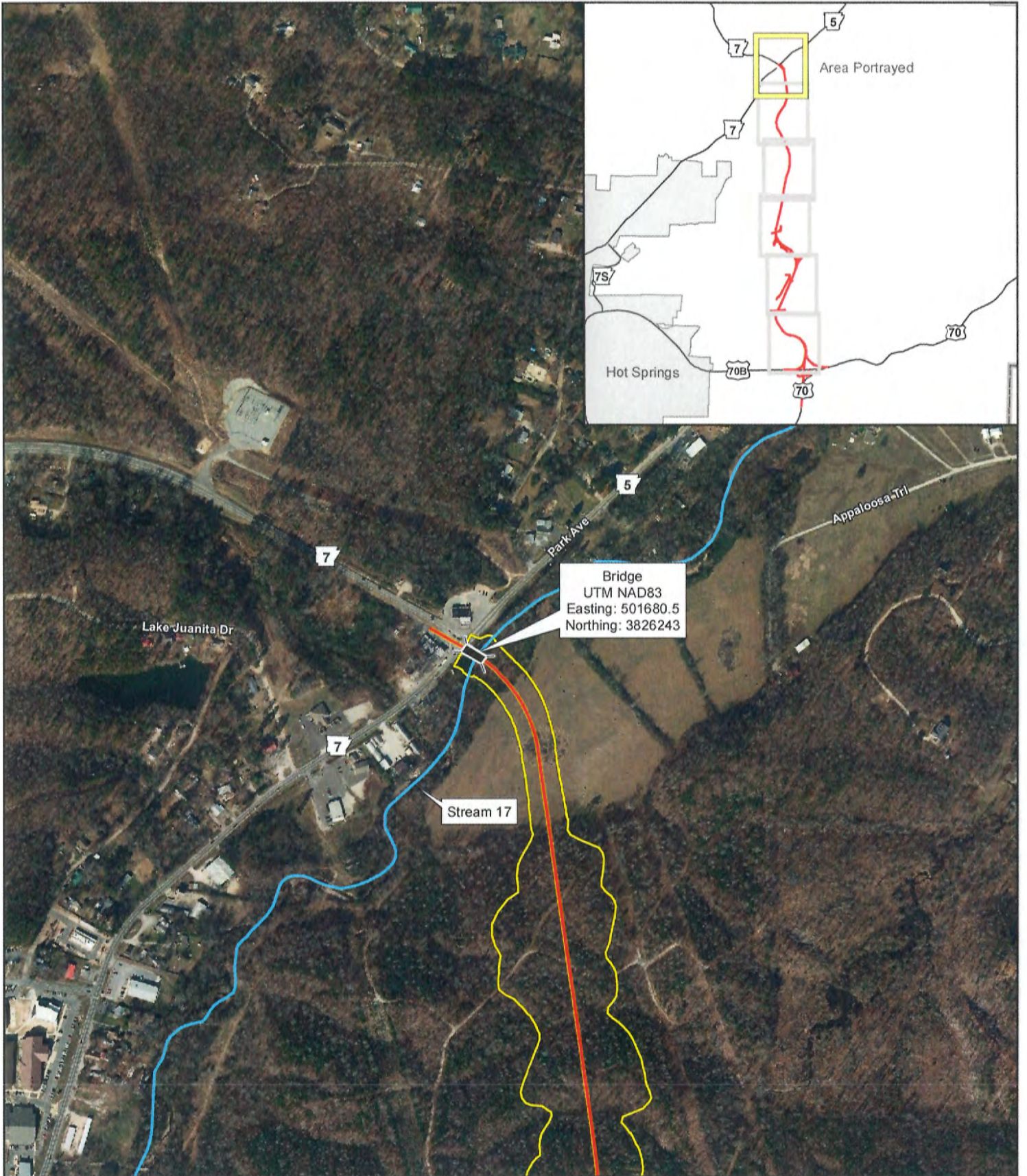
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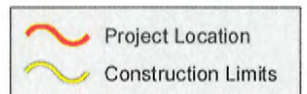


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- Stream Impact
- Project Location
- Construction Limits



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 Hwy. 70 East - Hwy. 7 North
 Garland County
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R60140 Stream Impacts			
Stream	Stream Name	Stream Classification	Stream Length Impacts (linear feet)
1	Unnamed tributary of East Branch Gulpha	Ephemeral	468.1
2	Unnamed tributary of East Branch Gulpha	Ephemeral	1,191.5
3	Unnamed tributary of East Branch Gulpha	Perennial	3,205.6
4	Unnamed tributary of East Branch Gulpha	Intermittent	236.9
5	Unnamed tributary of East Branch Gulpha	Ephemeral	388.1
6	Unnamed tributary of Mill Creek	Perennial	4,759.2
7	Unnamed tributary of Mill Creek	Ephemeral	633.7
8	Unnamed tributary of Mill Creek	Ephemeral	387.4
9	Unnamed tributary of Mill Creek	Intermittent	366.2
10	Mill Creek	Perennial	665.1
11	Middle Branch Gulpha	Perennial	509.8
12	Unnamed tributary of Middle Branch Gulpha	Ephemeral	350.5
13	Unnamed tributary of Middle Branch Gulpha	Ephemeral	409.3
14	Unnamed tributary of Middle Branch Gulpha	Ephemeral	282.5
15	Unnamed tributary of Middle Branch Gulpha	Ephemeral	587.9
16	Unnamed tributary of South Fork Saline	Ephemeral	1,876.3
16	Unnamed tributary of South Fork Saline	Intermittent	2,094.9
17	Unnamed tributary of South Fork Saline	Perennial	0
			Total 18,413.1

**ADVERSE IMPACT
FACTORS FOR RIVERINE SYSTEMS WORKSHEET**

Stream Type Impacted	Ephemeral 0.1			Intermittent 0.4			Perennial-OHWM width		
							<15' 0.4	15'-30' 0.6	>30' 0.8
Priority Area	Tertiary 0.1			Secondary 0.4			Primary 0.8		
Existing Condition	Functionally Impaired 0.1			Moderately Functional 0.8			Fully Functional 1.6		
Duration	Temporary 0.05			Recurrent 0.1			Permanent 0.3		
Activity	Clearing 0.05	Utility Crossing/Bridge Footing 0.15	Below Grade Culvert 0.3	Armor 0.5	Detention 0.75	Morphologic Change 1.5	Impoundment (dam) 2.0	Pipe >100' 2.2	Fill 2.5
Cumulative Linear Impact	<100' 0	100'-200' 0.05	201-500' 0.1	501-1000' 0.2	>1000 linear feet (LF) 0.1 reach 500 LF of impact (example: scaling factor for 5,280 LF of impacts = 1.1)				

Factor	Dominant Impact Type 1	Dominant Impact Type 2	Dominant Impact Type 3	Dominant Impact Type 4	Dominant Impact Type 5
Stream Type Impacted	Ephemeral	Intermittent	Perennial < 15'	blank	blank
Priority Area	Tertiary	Tertiary	Tertiary	blank	blank
Existing Condition	Moderately Func	Moderately Func	Moderately Func	blank	blank
Duration	Permanent	Permanent	Permanent	blank	blank
Activity	Fill	Fill	Fill	blank	blank
Cumulative Linear Impact	blank 3.6	blank 3.6	blank 3.6	blank	blank
Sum of Factors	M = 7.4	7.7	7.7	0	0
Linear Feet of Stream Impacted in Reach	LF= 4699	603.1	9139.7		0
M X LF	34,772.60	4,644	70,376	0	0

Total Mitigation Credits Required = (M X LF) = 109,792.6

**ADVERSE IMPACT
FACTORS FOR RIVERINE SYSTEMS WORKSHEET**

Stream Type Impacted	Ephemeral 0.1			Intermittent 0.4			Perennial-OHWM width		
							<15' 0.4	15'-30' 0.6	>30' 0.8
Priority Area	Tertiary 0.1			Secondary 0.4			Primary 0.8		
Existing Condition	Functionally Impaired 0.1			Moderately Functional 0.8			Fully Functional 1.6		
Duration	Temporary 0.05			Recurrent 0.1			Permanent 0.3		
Activity	Clearing 0.05	Utility Crossing/Bridge Footing 0.15	Below Grade Culvert 0.3	Armor 0.5	Detention 0.75	Morphologic Change 1.5	Impoundment (dam) 2.0	Pipe >100' 2.2	Fill 2.5
Cumulative Linear Impact	<100' 0	100'-200' 0.05	201-500' 0.1	501-1000' 0.2	>1000 linear feet (LF) 0.1 reach 500 LF of impact (example: scaling factor for 5,280 LF of impacts = 1.1)				

Factor	Dominant Impact Type 1	Dominant Impact Type 2	Dominant Impact Type 3	Dominant Impact Type 4	Dominant Impact Type 5
Stream Type Impacted	Ephemeral	Intermittent	blank	blank	blank
Priority Area	Tertiary	Tertiary	blank	blank	blank
Existing Condition	Moderately Func	Moderately Func	blank	blank	blank
Duration	Permanent	Permanent	blank	blank	blank
Activity	Fill	2.5	blank	blank	blank
Cumulative Linear Impact	blank 3.6	blank 3.6	blank	blank	blank
Sum of Factors	M = 7.4	7.7	0	0	0
Linear Feet of Stream Impacted in Reach	LF= 1876.3	2094.9			0
M X LF	13,884.62	16,131	0	0	0

Total Mitigation Credits Required = (M X LF) = 30,015.62

R60140 6/5/19

Mitigation for Wetlands

14. Tables and Worksheets.

14.1. Adverse Impacts Table.

ADVERSE IMPACT FACTORS FOR WETLANDS AND OTHER WATERS OF THE U.S. EXCLUDING STREAMS

FACTORS	OPTIONS					
	Lost Type	Type C 0.2		Type B 2.0		Type A 3.0
Priority Category	Tertiary 0.5		Secondary 1.5		Primary 2.0	
Existing Condition	Very Impaired 0.1	Impaired 1.0		Slightly Impaired 2.0		Fully Functional 2.5
Duration	Seasonal 0.1	0 to 1 0.2	1 to 3 0.5	3 to 5 1.0	5 to 10 1.5	Over 10 2.0
Dominant Impact	Shade 0.2	Clear 1.0	Dredge 1.5	Drain 2.0	Impound 2.5	Fill 3.0
Cumulative Impact	$0.05 \times \sum AA_i$					

Note: For the Cumulative Impact factor, $\sum AA_i$ stands for the sum of the acres of adverse impacts to aquatic areas for the overall project. When computing this factor, round to the nearest tenth decimal place using even number rounding. Thus 0.01 and 0.050 are rounded down to give a value of zero while 0.051 and 0.09 are rounded up to give 0.1 as the value for the cumulative impact factor. The cumulative impact factor for the overall project must be used in each area column on the Required Mitigation Credits Worksheet below.

Required Mitigation Credits Sample Worksheet

Factor	Area 1	Area 2	Area 3	Area 4	Area 5	Area 6
Lost Type	2.0					
Priority Category	0.5					
Existing Condition	1.0					
Duration	2.0					
Dominant Impact	3.0					
Cumulative Impact	0.1					
Sum of r Factors	$R_1 = 8.6$	$R_2 =$	$R_3 =$	$R_4 =$	$R_5 =$	$R_6 =$
Impacted Area	$AA_1 = 0.8$	$AA_2 =$	$AA_3 =$	$AA_4 =$	$AA_5 =$	$AA_6 =$
$R \times AA =$	6.9					

Total Required Credits = $\sum (R \times AA) =$ 6.9

ADEQ

ARKANSAS
Department of Environmental Quality

September 26, 2019

Colonel Robert A. Hilliard, District Commander
Vicksburg District U.S. Army Corps of Engineers
4155 Clay Street
Vicksburg, MS 39183-3435

RE: 401 Water Quality Certification- **MVK-2018-00275** – ARDOT –Highway 70 North Bypass,
Garland County, Arkansas

Dear Colonel Hilliard:

The Arkansas Division of Environmental Quality ("ADEQ") has completed review of the above referenced project for Arkansas Department of Transportation (ARDOT), P.O. Box 2261, Little Rock, AR 72203, for the discharge of dredged or fill material in waters of the United States (WOUS) associated with construction of two lanes of a future four lane divided roadway connecting Highway 70 East to Highway 7 North. All construction would be on new location and the project would cross seventeen streams and one herbaceous wetland. The project is located in Section 6, T 3 S, R 18 W, and in Sections 7, 18, 19, 30 and 31, T 2 S, R 18 W, and in Sections 12, 13, 25 and 36, T 2 S, R 19 W, Garland County, Arkansas.

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

Pursuant to §401(a)(1) of the Clean Water Act, the ADEQ hereby issues water quality certification for this project: **MVK-2018-00275/ADEQ No. 20190290**, contingent upon the following conditions:

- 1) The applicant shall implement all practicable best management practices (BMPs) to avoid excessive impacts of sedimentation and turbidity to the surface waters.
- 2) The applicant will take all reasonable measures to prevent the spillage or leakage of any chemicals, oil, grease, gasoline, diesel, or other fuels. In the unlikely event such spillage or leakage occurs, the applicant must contact ADEQ immediately.
- 3) The applicant shall contact ADEQ to determine if a Short Term Activity Authorization (STAA) is needed when performing work in the wetted area of any waterbody. More information can be obtained by contacting the Water Division Planning Section of ADEQ at 501-682-0040.
- 4) The applicant shall limit construction to low flow periods as much as possible to minimize adverse effects on water quality and aquatic life.
- 5) If a construction site will disturb equal to or greater than one (1) acre and less than five (5) acres, the applicant shall comply with the requirements in Reg. 6.203 for Stormwater discharge associated with a small construction site, as defined in APC&EC Regulation

No. 6. If the construction site will disturb five (5) acres or more, the applicant shall comply with the terms of the Stormwater Construction General Permit Number ARR150000 prior to the start of construction. BMPs must be implemented regardless of the size. More information can be obtained by contacting the NPDES Stormwater Section of ADEQ at (501) 682-0621.

In issuing this certification, ADEQ does not assume any liability for the following:

- A. Damages to the proposed project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes.
- B. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity specified in this certification.
- C. Design or construction deficiencies associated with this proposed project.

Please contact Mrs. Melanie Treat, at (501) 682-0040 if you have any questions regarding this certification. Please reference ADEQ No. **20190290**.

Sincerely,



Bryan Leamons, P.E.
Senior Operations Manager, Office of Water Quality

cc: Johnny McLean, USACE, Johnny.L.McLean@usace.army.mil
Wanda Boyd, EPA,
Melvin Tobin, USFWS,
Jennifer Sheehan, AGFC,
Travis Harmon, ADEQ District 5
Amy Beck, ADEQ District 5