



**US Army Corps
of Engineers** ®
Fort Worth District

Public Notice

Applicant: Mitigation Management, LLC

Permit Application No.: SWF-2008-00257

Date: April 23, 2009

The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

Name: Mr. Brent Jasper

Phone Number: (817) 886-1733

PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

SUBJECT: This public notice is being issued to provide interested parties an opportunity to comment on a proposal to create an approximately 240-acre wetland mitigation bank to be known as the Sulphur River Mitigation Bank (SRMB) southwest of New Boston, Morris County, Texas.

APPLICANT: Mitigation Management, LLC
2557 State Hwy. 7 E
Center, Texas 75935

APPLICATION NUMBER: SWF-2008-00257

DATE ISSUED: April 23, 2009

LOCATION: The proposed SRMB site is located on approximately 240 acres of a larger 525-acre tract of land near the intersection of U.S. Highway 259 and Interstate 30 approximately 21 miles southwest of New Boston, Morris County, Texas (Figure 1). The proposed mitigation bank site is located approximately at Universal Transverse Mercator coordinates 340858.37 East and 3686841.77 North (Zone 15) on the Dalby Springs 7.5-minute United States Geological Survey quadrangle map in the Big Cypress – Sulphur River Basin (Hydrologic Unit Code (HUC)111403) in the East Central Texas Plains Ecoregion (Figure 2).

PROJECT DESCRIPTION: The proposed SRMB site consists of approximately 240 acres of land located within the floodplain of the Sulphur River in northern Morris County, Texas. The Sulphur River begins in Northeast Texas and flows into the Red River in Arkansas. Total drainage of the basin in Texas is 3,558 square miles. Historically, the Sulphur River was shallow and broadly meandered across the South Central Plains Ecoregion. During the 1950s, the upper one-third of its length was channelized, straightened, and constrained by levees for flood control. The U.S. Army Corps of Engineers (USACE) operates two multi-purpose lakes within the Sulphur River basin. Jim Chapman Lake (formerly, Cooper Lake) is located on the South Sulphur River near Cooper, Texas, and Wright Patman Lake is located on the Sulphur River near Texarkana, Texas.

Ecologically, the project site lies within the riverine floodplain communities of East Texas, identified as the Floodplains and Low Terraces that intersect both the East Central Texas Plains and South Central Plains Ecoregions (Griffith et al. 2004). These bottomland communities generally are described as Willow Oak-Water Oak-Blackgum Forest, Water Oak-Elm-Hackberry Forest, and Bald Cypress-Water Tupelo Swamp, in Vegetation Types of Texas Including Cropland (McMahan et al. 1984). The U.S. Fish and Wildlife Service (USFWS) generally described the forests within the acquisition area as ranging from moderately to heavily cut over with poor forest composition

primarily Bois d' Arc, green ash, hackberry, and cedar elm with some very high quality areas composed of water oak, willow oak, sweetgum, water hickory, ash, hackberry, elm, and overcup oak. Currently, the woody vegetation of the project site is dominated by green ash and sugarberry. Consequently, the introduction of native desirable hard and soft mast producing species, elimination of non-compatible land uses, and protection in perpetuity should result in improvements in the wetland functional capacity of the site.

The majority of the soils within the proposed SRMB are described as Kaufman and Gladewater clay, frequently flooded; both are listed as hydric soils on the U.S. Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Hydric Soils List for Morris County, Texas. Historically, these soils are described as supporting bottomland hardwood forests.

The proposed Primary Service Area (Figure 3) for the proposed SRMB is the intersection of the Big Cypress - Sulphur (HUC 111403) and South Central Plains and East Central Texas Plains Ecoregions. This includes Marion, Cass, Morris, Titus, Camp, and Franklin Counties in their entirety, and portions of Harrison, Upshur, Wood, Hopkins, Lamar, Delta, Red River, and Bowie Counties. The proposed Secondary Service Area for the proposed SRMB is the intersection of the Big Cypress - Sulphur (HUC 111403) and the Texas Blackland Prairies Ecoregion, and the intersection of the Sabine (HUC 120100) and the East Central Plains Ecoregion. This includes Rains County entirely and includes portions of Wood, Van Zandt, Kaufman, Hunt, Hopkins, Fannin, Delta, Lamar, and Red River Counties. Credit purchases in the Secondary Service Area would be performed at a multiplier of 1.5:1.

A mitigation banking instrument (MBI) would be developed in accordance with the Compensatory Mitigation for Losses of Aquatic Resources, (Federal Register, Thursday, April 10, 2008, Vol. 73, No. 70, pp. 19594-19705). The MBI would detail the legal and physical characteristics of the bank and how the bank would be established and operated. Subjects addressed in detail in the MBI would include development of the site, service area, credit determination, financial assurances, scope of agreement, purpose and goals of the bank, baseline conditions, performance standards for enhancement activities, accounting procedures, monitoring and reporting, long-term maintenance and protection, and transfer of bank ownership or sponsorship. The USACE, USFWS, U.S. Environmental Protection Agency (EPA), Texas Commission on Environmental Quality (TCEQ), Railroad Commission of Texas (RRC), and Texas Parks and Wildlife Department (TPWD), who comprise the Interagency Review Team (IRT), would be involved in developing the MBI and may be signatories to the final document.

Implementation of the proposed mitigation bank would require Department of the Army Authorization under Section 404 of the Clean Water Act. Based on preliminary evaluation by the USACE, it appears that the proposed bank may be authorized by nationwide permit 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any may occur in the project area. The proposed project would be located in Morris County where the Louisiana Black Bear (*Ursus americanus luteolus*) is federally listed as a threatened species. Our initial review indicates that the proposed work would have no effects on any federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: The USACE has reviewed the latest complete published version of the National Register of Historic Places and found no listed properties to be in the project area. The area of the proposed mitigation bank has not been formally surveyed for the presence of historic and prehistoric. However, areas of high probability for the presence of historic and prehistoric sites are present within the permit area. Additional work to identify these sites may be necessary.

FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to allow the public an opportunity to comment on this bank proposal and to assist the USACE and other members of the IRT in developing the final MBI. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

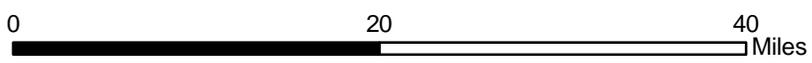
PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before May 22, 2009, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Brent Jasper; Regulatory Branch, CESWF-PER-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30

P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1733. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS

Figure 1 of 5
Location Map
Proposed Sulphur River Mitigation Bank (+/- 240acres)
Morris County, TX



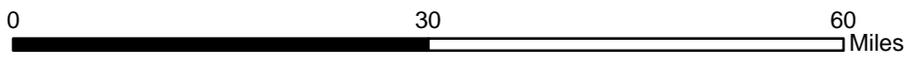
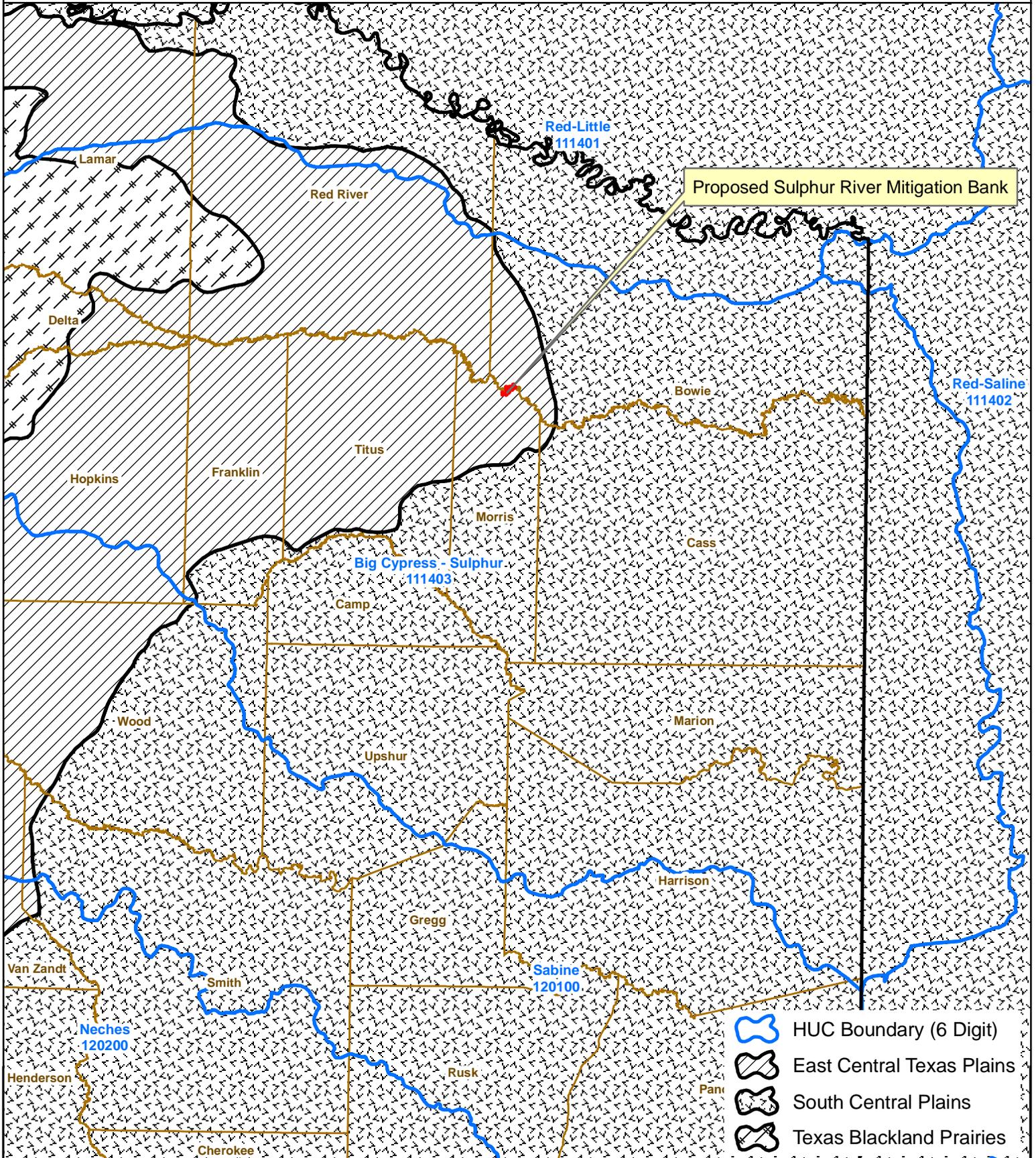
Base Map : USA Street Map (TNRIS)
 USACE Project # SWF-2008-00257

Drawn By: Chance Kimbrough
 Date: March 6, 2009

Vector data are for representation only and
 should not be used for legal description



Figure 2 of 5
 Level III Ecoregions and Six Digit HUC Boundaries
 Proposed Sulphur River Mitigation Bank (+/- 240 acres)
 Morris County, TX



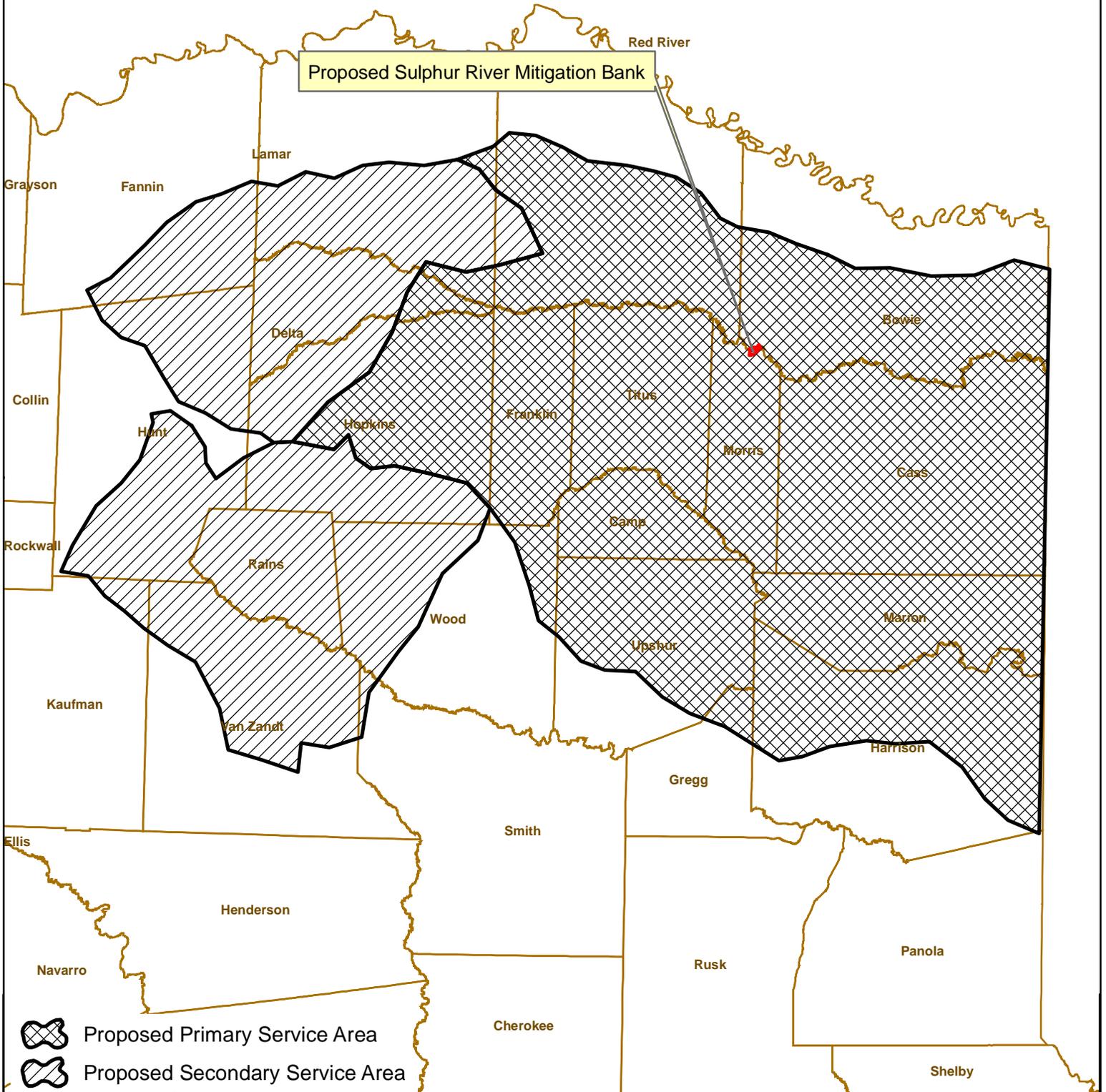
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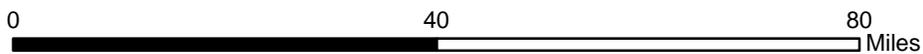
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Figure 3 of 5
Service Area Map
Proposed Sulphur River Mitigation Bank (+/- 240 acres)
Morris County, TX



Proposed Primary Service Area
 Proposed Secondary Service Area



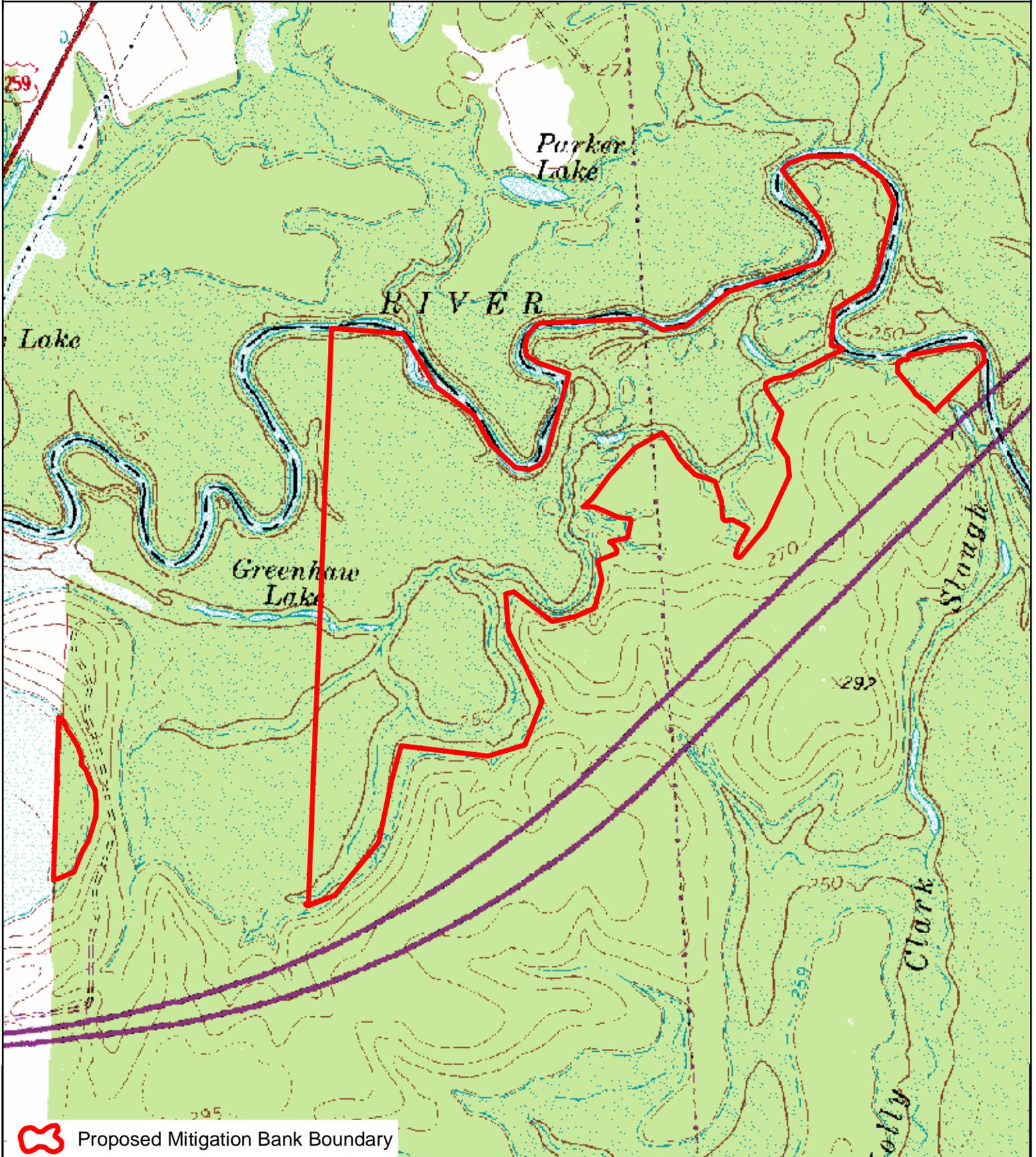
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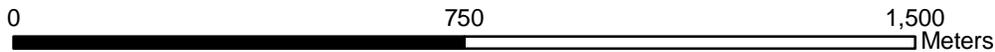
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Figure 4 of 5
USGS Topographic Map
Proposed Sulphur River Mitigation Bank (+/- 240 acres)
Morris County, TX



 Proposed Mitigation Bank Boundary



Base Map: USGS; 7.5 Topo (Dalby Springs Quad)
USACE Project # SWF-2008-00257

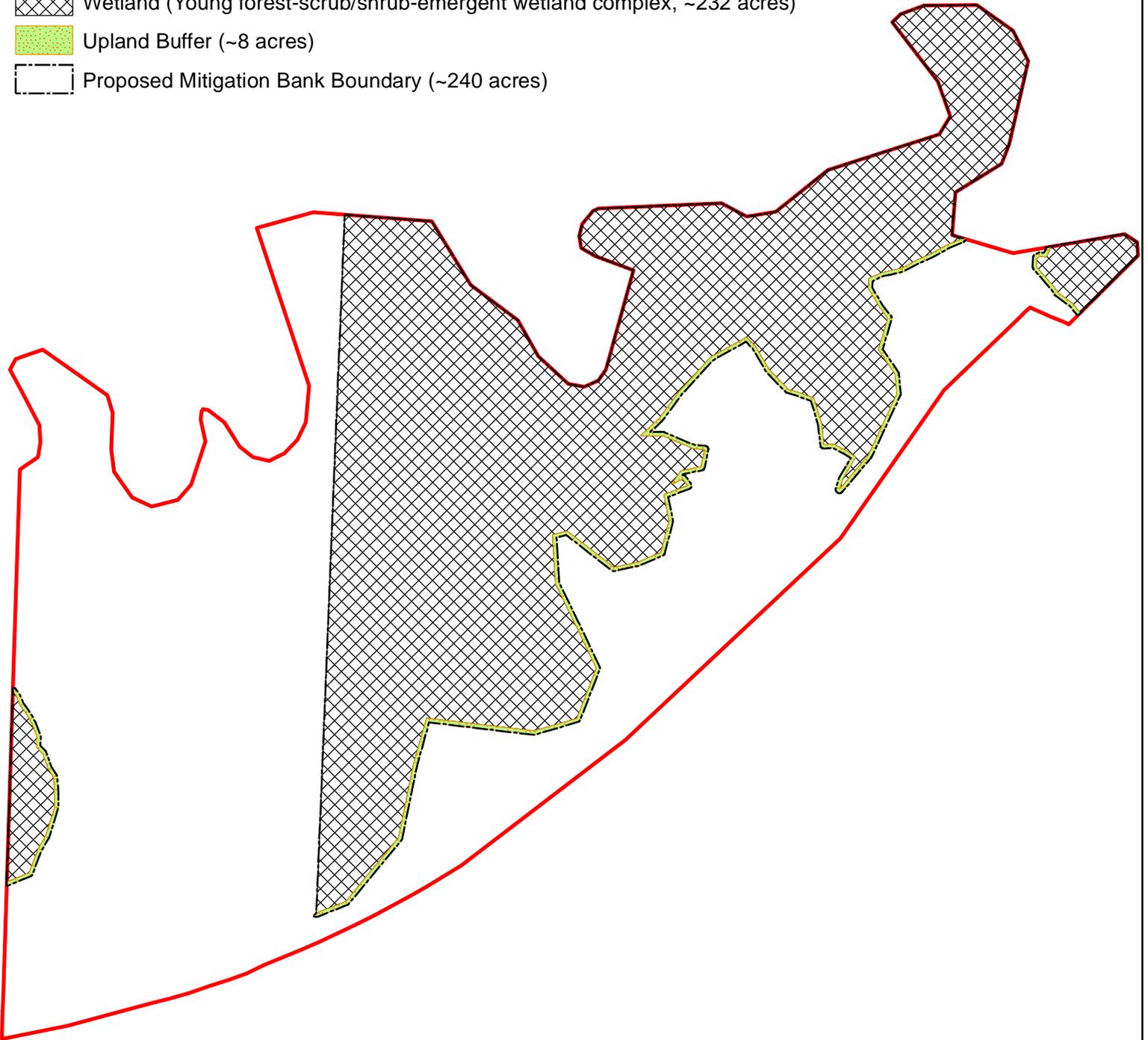
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Figure 5 of 5
Preliminary Wetland Delineation Map
Proposed Sulphur River MB (+/- 240 acres)
Morris County, TX

-  Sulphur River Tract Boundary (~526 acres)
-  Wetland (Young forest-scrub/shrub-emergent wetland complex, ~232 acres)
-  Upland Buffer (~8 acres)
-  Proposed Mitigation Bank Boundary (~240 acres)



0 650 1,300 Meters

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