Public Notice

US Army Corps of Engineers
Fort Worth District

Applicant: **Hunt Oil Company**

Permit Application No.: **SWF-2008-00173**

Date: **February 13, 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: **Ms. Lisa Gomez**

Phone Number: (817) 886-1735

JOINT PUBLIC NOTICE

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

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: Application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States associated with the construction of a 200 acre-foot (approximately 39.7 acres) lake on approximately 382 acres of pasture and woodland within Circle K Ranch in Kaufman, Texas. Circle K Ranch is located approximately 9.5 miles east of Kaufman, Texas, and is bordered by Highway 243 to the north and County Road (CR) 109 to the south. The site is located in the southeastern portion of Circle K Ranch.

APPLICANT: Hunt Oil Company
1900 North Akard Street
Dallas, Texas 75201-2300

APPLICATION NUMBER: SWF-2008-00173

DATE ISSUED: February 13, 2009

LOCATION: The proposed project is located within an approximately 382-acre pasture and woodland tract within the Circle K Ranch. Circle K Ranch is 9.5 miles east of Kaufman, Texas, and is bordered by Highway 243 to the north and County Road 109 to the south in Kaufman County, Texas (Sheet 1 of 7). The proposed project would be located approximately at UTM coordinates 770200 East and 3604024 North (Zone 14) on the Cedarvale 7.5-minute USGS quadrangle map (Sheet 2 of 7) in the USGS Hydrologic Unit 12030107.

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification

PROJECT DESCRIPTION: The applicant proposes to discharge approximately 921 cubic yards of dredged and fill material into approximately 0.574 acres of waters of the United States in conjunction with the construction of a 200 acre-foot lake of approximately 39.7 acres. Total proposed impacts to waters of the U.S. include 0.665 acre (7,394 linear feet) of ephemeral stream and 1.315 acres of emergent wetland.

The applicant seeks to construct this lake for wildlife habitat, hunting and fishing, small water craft use, wildlife observation and general ranch use at Circle K Ranch in Kaufman, Texas. The lake would require damming an ephemeral stream. The newly-constructed lake would provide aquatic habitat where water is only present in the stream currently during periods of rainfall.

Some portions of the project have been completed. In order to create the lake, a dam has been constructed approximately mid-way through the site. Filling and recontouring of the main ephemeral stream took place both north and south of the dam. In 2008, Hunt Oil Company implemented interim measures approved by USACE to protect downstream ecological receptors and restore normal flow in the stream. When the lake is completed, new open water and new wetlands would have been created, providing new aquatic habitat beyond an ephemeral stream.

The interim measures included the following: (1) the stream channel in the proposed lake area was cleared and this area was seeded with grass; (2) the existing low pool by the dam was left in place to act as a sedimentation basin, a check dam of rip rap was constructed, and the spillway was sloped sufficiently and structurally stabilized with geo-textile fabric; (3) logs, brush, and other obstructions were removed from the north stream channel (4) a channel was formed south of the dam along the original stream course; (5) dirt and debris that was blocking a concrete pipe conveyance south of the dam was removed; and (6) periodic maintenance and inspections have been conducted and trapped sediment or debris will occasionally be removed as needed. In addition, irrigation was added in the dam area and the dam was fenced to prevent damage by cattle.

The main ephemeral stream (unnamed tributary to Williams Creek) enters the site from the north and flows north to southwest. The main ephemeral stream totals 7,185 linear feet and exits the site to the south as it flows into a pasture and then south under County Road 109 (Sheet 3 of 7).

Once the dam is constructed on the ephemeral stream, a portion of the stream would be flooded by the newly created lake. This portion of the stream would become open water and wetlands (the lake). The stream downstream from the dam would be reconfigured to restore a stream channel. Construction of the proposed project (Sheet 4 of 7) would fill, reconfigure, and replace with open water/wetlands approximately 4,318 linear feet (0.400 acre) of ephemeral stream upstream of the dam. Approximately 222 linear feet (0.020) of ephemeral stream would be filled and covered by the construction of the dam. Approximately 1,672 linear feet (0.154) acre of ephemeral stream south of the dam would be filled, reconfigured, and enhanced (**Table 1**). Part of this work has been performed. The total impact to waters of the U.S. would be 0.574 acres.

Once complete, the dam would hold runoff and flow from the main ephemeral stream to create the lake. During completion of the dam and lake, a siphon control device would be designed to allow overflow to continue south of the dam along the natural water course of the ephemeral stream. Areas north of the clearing would remain in their natural state upon project completion. Tributary A and its instream emergent wetland located in the far southwestern corner of the site would not be involved in the construction or impacted by the activities.

Table 1. Potential Waters of the U.S. in the Circle K Ranch, Kaufman, Texas Project Area

Stream/Pond Name	Total Length (feet)	Average Width at OHWM (weighted mean)	Total Area (acres)
EPHEMERAL STREAM			
Unnamed Tributary to Williams Creek	7,185	4.0	0.660
Unnamed Tributary to Williams Creek (Tributary A)	209	1.0	0.005
EPHEMERAL STREAM TOTAL	**7,394**	**---**	**0.665**
WETLANDS			
Emergent Wetland	---	---	1.315
WETLAND TOTAL	**---**	**---**	**1.315**
TOTAL WATERS	**7,394**	**---**	**1.980**

During project planning, the applicant considered several alternatives in an effort to avoid and minimize adverse impacts to waters of the U.S. The applicant proposed an onsite mitigation plan to fully compensate for the unavoidable impacts to waters of the U.S. This alternative is preferred because it would create a lake for wildlife habitat, hunting and fishing, small water craft use, wildlife observation, and general ranch use that would fit in with the activities at Circle K Ranch. Furthermore, this alternative would leave a high quality and self-sustaining aquatic ecosystem in place over a portion of the ephemeral stream. The aquatic habitat would continue year round after construction of the lake. This alternative would provide an ecological enhancement to the existing aquatic system at the site. Other alternatives considered were:

Perform Project Without Filling and Realigning Waters of the U.S.

Performing the project (construction of a lake) without impacting any potential waters of the U.S. was rejected due to the location and nature of the waters on site. Without filling the stream, it would not be possible to build the lake and increase wildlife habitat, hunting and fishing, small water craft use, wildlife observation, and general ranch activities at the Circle K Ranch. The only conceivable way to construct a lake and wetlands at the site without impacting the stream would be to excavate a lake in the upland area adjacent to the stream and divert water from the stream to the lake. This alternative was rejected because: (1) the excavation required in the elevated upland area to construct a lake would make the project financially impractical; (2) the resulting grades would not support a wetland area; and (3) the diversion of stream water would adversely impact the stream.

Purchase Credits at an Offsite Mitigation Bank

This alternative was rejected because it would not provide the proposed ecological enhancement at the location of the impact.

Perform Permittee-Implemented Mitigation at an Offsite Location

This alternative was rejected because it would not provide the proposed ecological enhancement at the location of the impact.

The applicant believes it has taken all practicable measures to avoid and minimize impacts to waters of the U.S. Interim measures as discussed above have been implemented. In addition, on-site impacts would be further minimized by limiting the disturbance to only the areas necessary to build the lake and restore the stream channel downstream of the dam. Off-site impacts would be minimized by adhering to a Storm Water Pollution Prevention Plan (SWPPP) developed for the site. The SWPPP would include Best Management Practices (BMPs) to control erosion and sediment transport off the site.

Mitigation Area

Mitigation for impacts would be accomplished on site (Sheets 4, 5, 6, and 7 of 7). The area proposed for the mitigation area is wholly owned by the applicant and has no liens or other encumbrances attached to it. Table 3 shows the proposed mitigation for Circle K Ranch.

Approximately 4,318 linear feet of the main ephemeral stream would be converted to open water (36.8 acres) and wetlands north of the dam once the lake is at full capacity. The northern portion of the lake would be enhanced by creating a low marsh (1.31 acres), high marsh (0.86 acres), and riparian area (0.99 acres). This area would be vegetated with native tree and shrub species and wetland plants. Variable slopes, meandering edges, and wetlands shelves would be created. Additional areas of low and high marsh would be incorporated into the lake design for the mid section and southern portions of the lake (1.58 acres of low marsh and 1.24 acres of high marsh). In addition, upland buffer areas of native vegetation would be planted along the lake sides (2.32 acres).

An auxiliary spillway would be created on the east side for emergency overflow control. Water flow from the siphon would enter a small pool (outfall area) reinforced with rip-rap immediately after a rain event. This feature would also be used as mitigation by creating a wetland in this space (adding approximately 0.03 additional acres of high marsh to the project site). The planting schedule in all areas would depend upon the filling of the lake.

The portion of the ephemeral stream that flows south of the proposed lake and dam would be recontoured to approximate its original meandering course (0.15 acres) and would be enhanced by creating a buffer of native vegetation along the banks (0.15 acres) The buffer would be seeded as necessary to supplement native grasses that have already grown along the stream edges. The ephemeral stream south of the dam would be earthen and would meander to mimic, as closely as possible, the morphology of the historical stream and similar streams in the area to provide habitat diversity and channel stability within the stream.

Table 3. Proposed Mitigation for Circle K Ranch, Kaufman, Texas.

Mitigation Site	Length (feet)	Width (feet)	Area (acres)	Total Mitigation Area (acres)
Open Water Creation				
Open lake water	--	--	36.8	36.8*
Total Open Water Creation	**--**	**--**	**36.8**	**36.8***
Riparian Area Creation				
North lake area	--	--	0.99	0.99
Total Riparian Area Creation	**--**	**--**	**0.99**	**0.99**
Low Marsh Wetland Creation				
North lake area	--	--	1.31	1.31
Central and south lake area	--	--	1.58	1.58
Total Low Marsh Wetland Creation	**--**	**--**	**2.89**	**2.89**
High Marsh Wetland Creation				
North lake area	--	--	0.86	0.86
Central and south lake area	--	--	1.24	1.24
Outfall area	--	--	0.03	0.03
Total High Marsh Wetland Creation	**--**	**--**	**2.13**	**2.13**
Buffer Creation				
Lake	--	--	2.32	2.32
Stream south of dam	--	--	0.86	0.86
Total Buffer Creation	**--**	**--**	**3.18**	**3.18**
Ephemeral Stream Reconfiguration				
Stream south of dam	1594	4	0.15	0.15
Total Ephemeral Stream Reconfiguration	**1594**	**4**	**0.15**	**0.15**
TOTAL MITIGATION	**1594**	**4**	**46.14**	**46.14**

* The acreage of 36.8 does not include low marsh areas. The total lake acreage given as approximately 39.7 acres in the description of the lake includes low marsh areas below the normal lake elevation.

The constructed wetlands and riparian area would be planted with a mix of native vegetation that would thrive in the ecosystem created in the buffer, riparian, low marsh, and high marsh areas and that would preserve water quality in the lake and stream. These plantings would provide self-sustaining, diverse, and beneficial habitat.

The north end of the lake would have 0.99 acres of riparian areas, 1.31 acres of low marsh, and 0.86 acres of high marsh. The central and southern portion of the lake would have 1.58 acres of low marsh, 1.24 acres of high marsh, and 2.32 acres of buffer. The outlet pool would have 0.03 acres of high marsh. The ephemeral stream south of the dam would have 0.86 acres of buffer. The riparian areas would be planted with trees and shrubs at a density of approximately 100 stems per acre.

Trees would be of at least 1-inch caliper and shrubs would be in 1- to 5-gallon buckets. The low and high marsh areas would be planted with herbaceous plants, trees, and shrubs, seeded with wetland grasses, and potted with wetland plants. The buffer would be seeded with native grasses.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concerns for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties, in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE in determining whether to issue; issue with modifications or conditions; or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

STATE WATER QUALITY CERTIFICATION: This project results in a direct impact of greater than three acres of waters of the state or 1,500 linear feet of streams (or a combination of the two is above the threshold), and as such does not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with USACE processing of this Department of the Army application, the TCEQ is reviewing this application under Section 401 of the Clean Water Act, and Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. **Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087**. The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of the work is made

available for review in the TCEQ's Austin Office. The complete application may be reviewed in the USACE's office. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, adversely affected such interest.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's (USFWS) latest published version of endangered and threatened species to determine whether any may occur in the project area. The project site contains potentially suitable habitat for two subspecies of the peregrine falcon, the whooping crane, and the timber/canebrake rattlesnake that are designated as threatened or endangered. Although the site contains potentially suitable habitat for these species, the project site does not offer habitat distinguishable from the rest of the region and the surrounding areas would continue to provide suitable habitat for these species. The project area is not identified by the USFWS as critical habitat for these species. On completion, the project would provide enhanced aquatic habitat for water fowl and other wildlife. An ephemeral stream area would be developed into a small lake with marshy areas in the northern section of the water body. Our initial review indicates that the proposed work would have no negative effect on federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: A review of the Texas Historical Commission's (THC) Historic Sites Atlas (http://atlas.thc.state.tx.us/) returned no listings on or near the project site. If cultural resources are encountered during construction, work will cease in the immediate area; work can continue in the project area where no cultural materials are present. In the discovery area, work will cease and the contractor will notify the State Historical Preservation Office. If previously unidentified sites are encountered, they will be assessed for eligibility to the National Register of Historic Places and the need for additional treatment prior to impacts.

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.

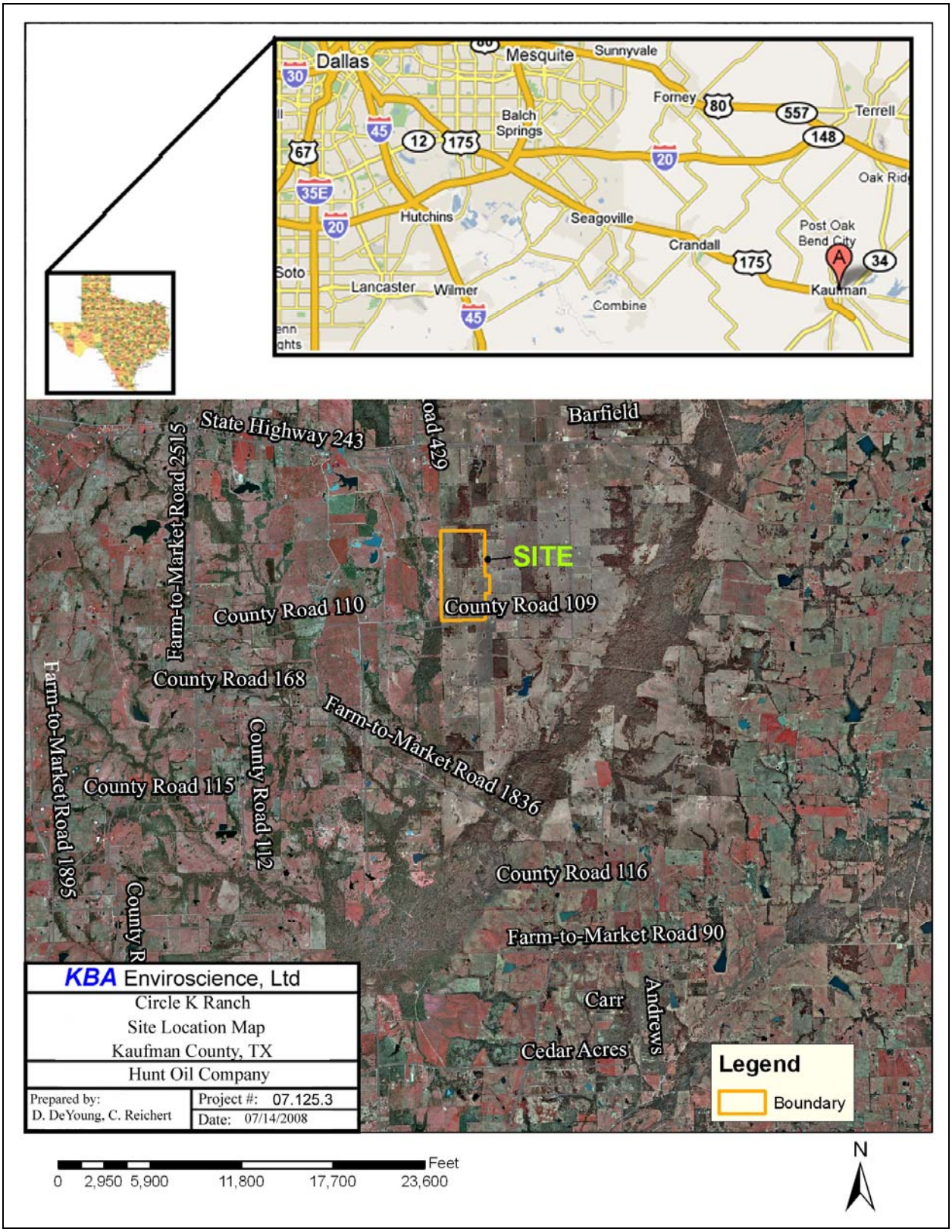
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be 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 **March 15, 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 Ms. Lisa Gomez; 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) 886-1735. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

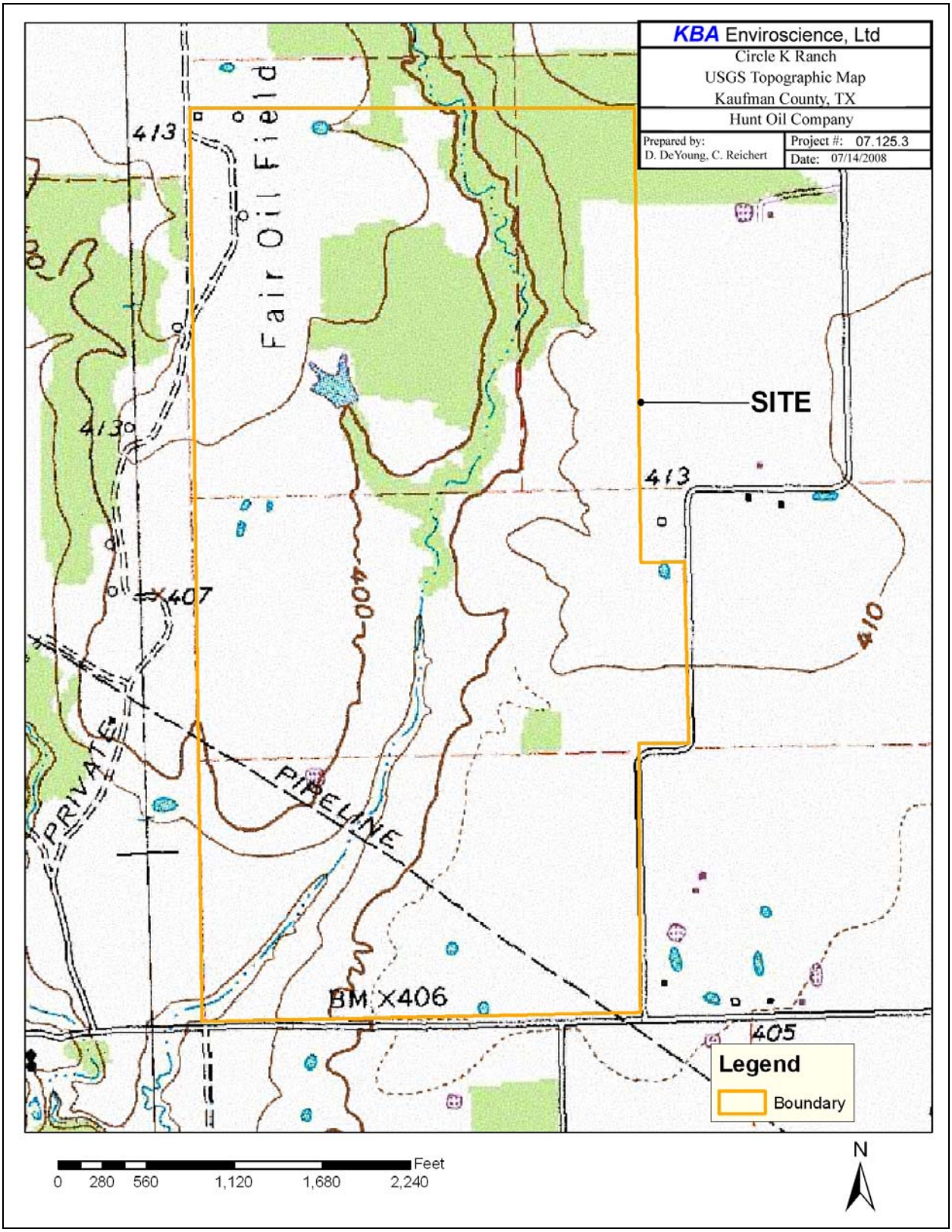
DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS

SHEET 1 of 7



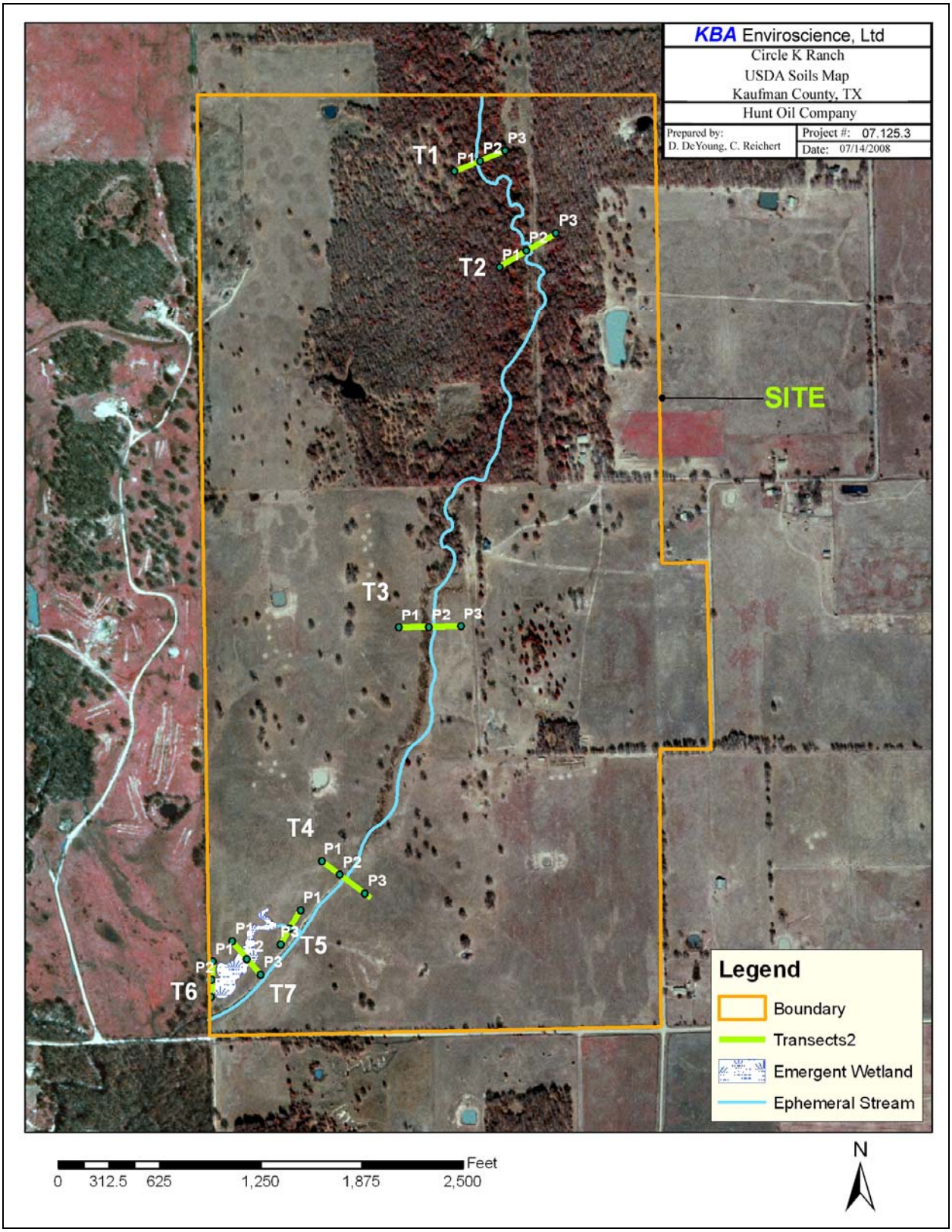
Site Map for Circle K Ranch, Kaufman, Texas

SHEET 2 of 7



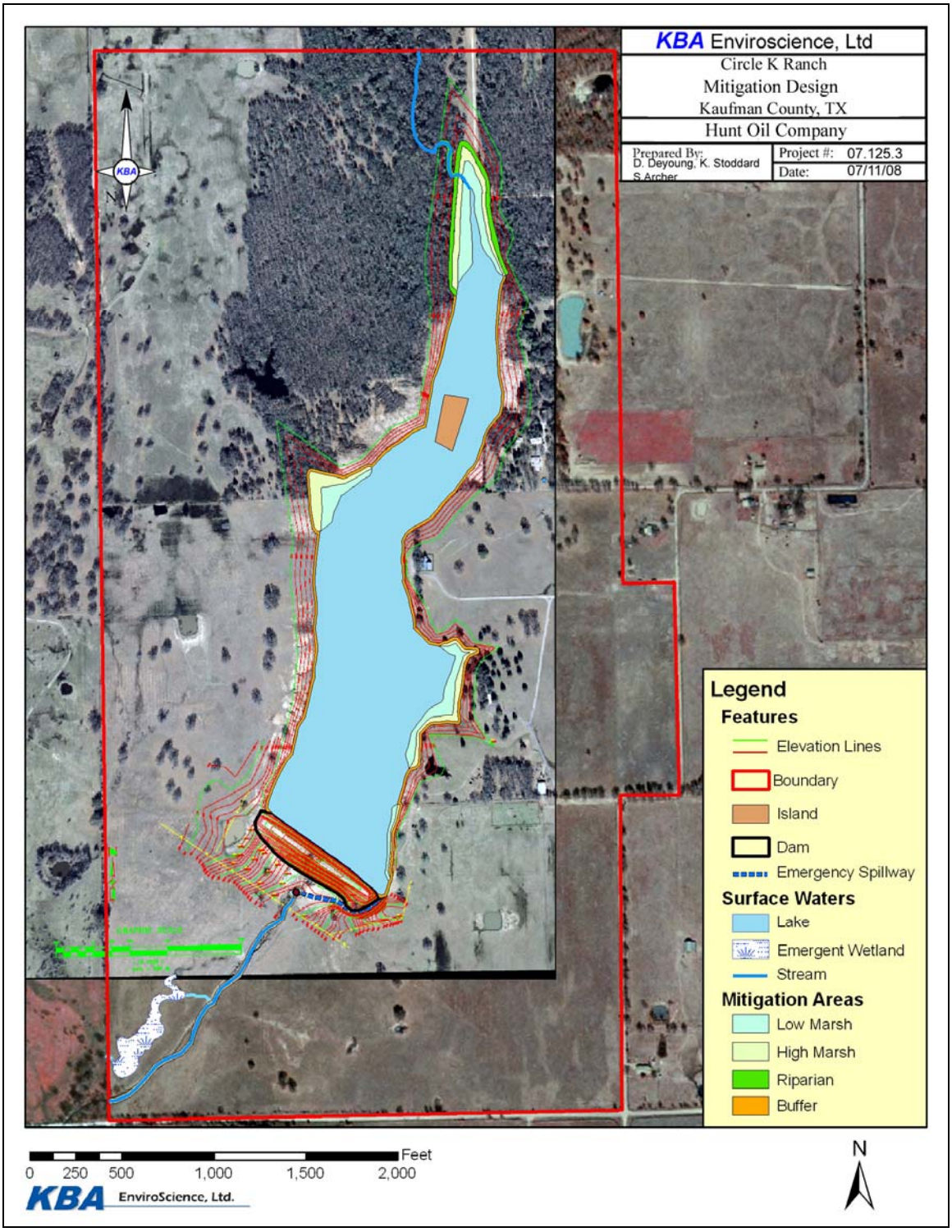
Topographic Map for Circle K Ranch, Kaufman, Texas

SHEET 3 of 7



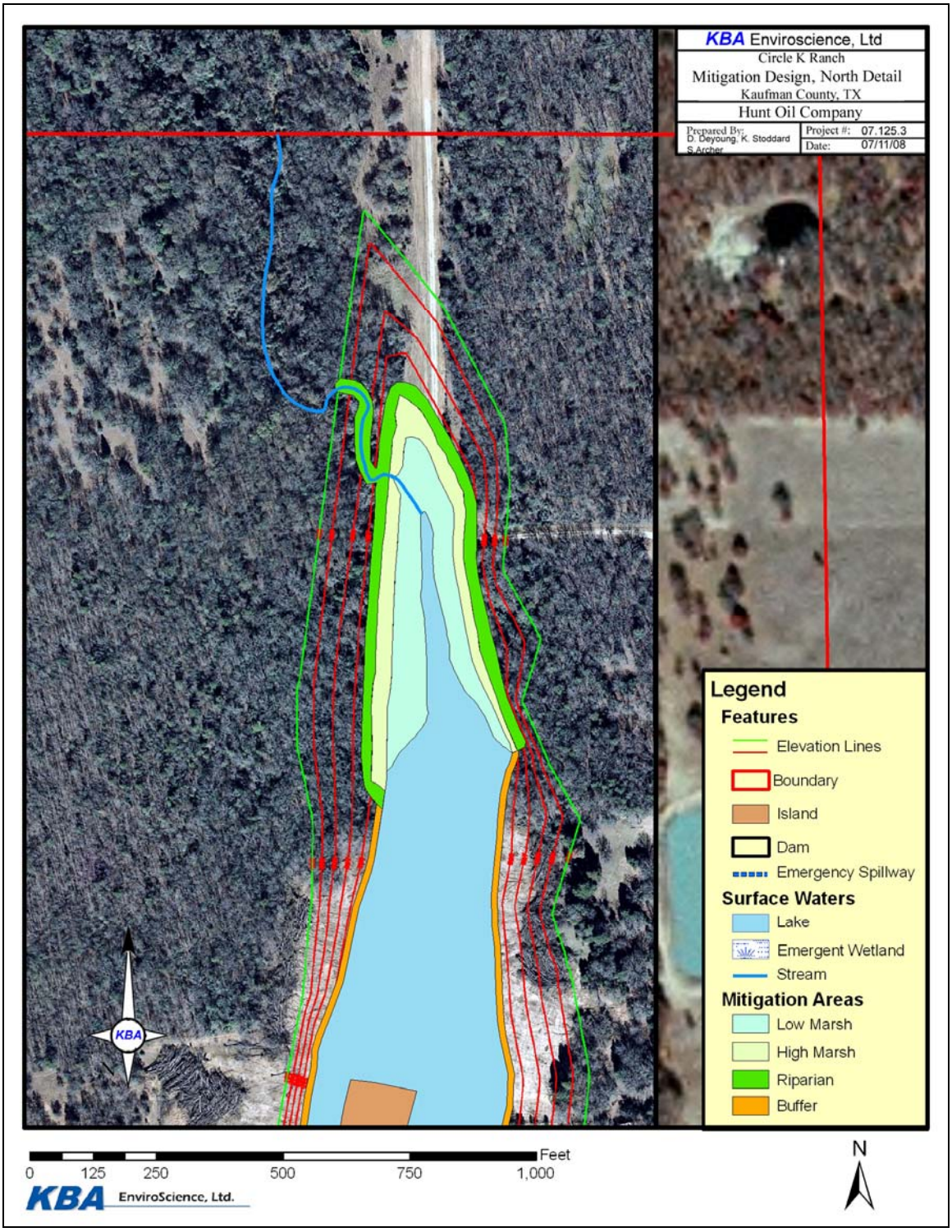
Potential Waters of the U.S. and Delineation Transects for Circle K Ranch, Kaufman, Texas.

SHEET 4 of 7



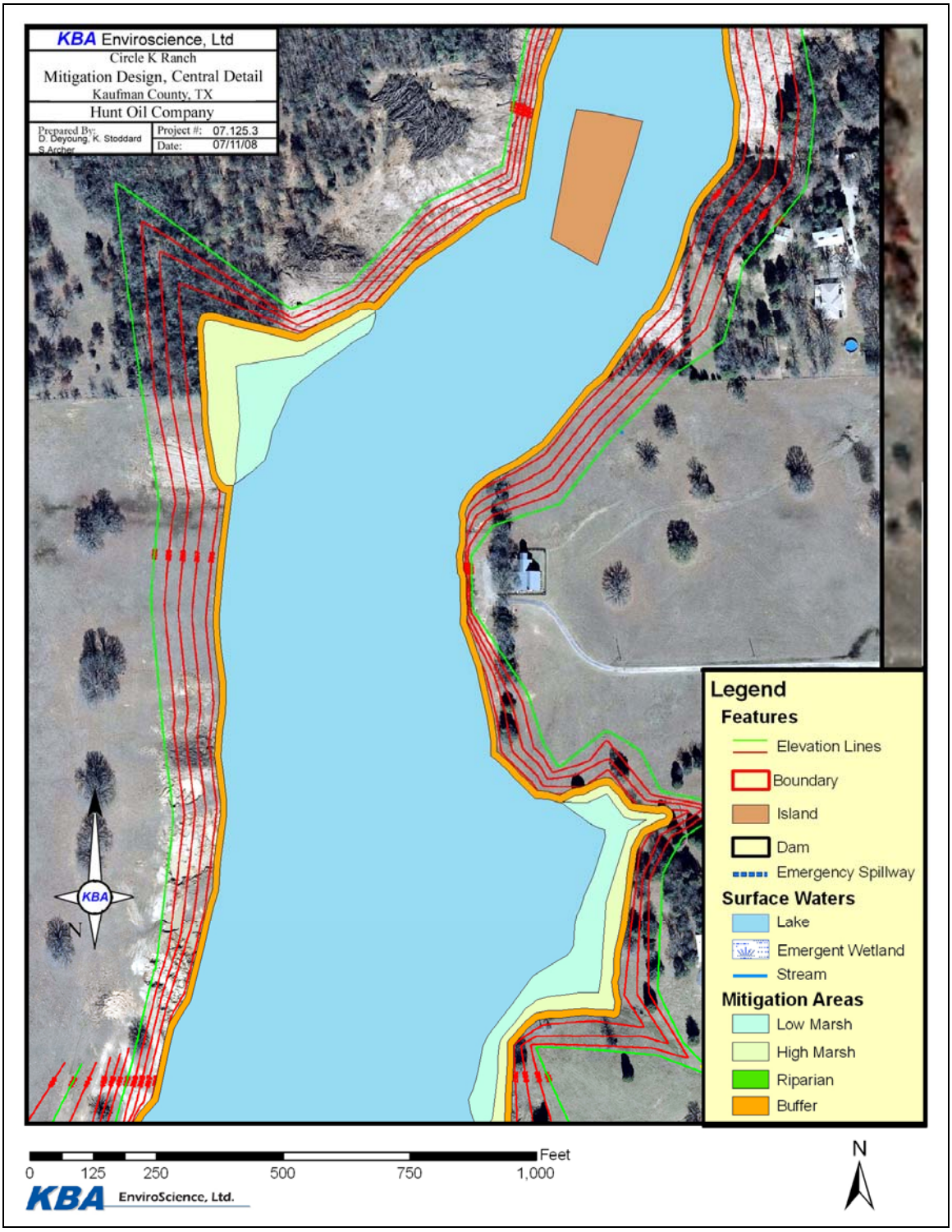
Circle K Ranch, Kaufman, Texas, Mitigation Plan Overview

SHEET 5 of 7



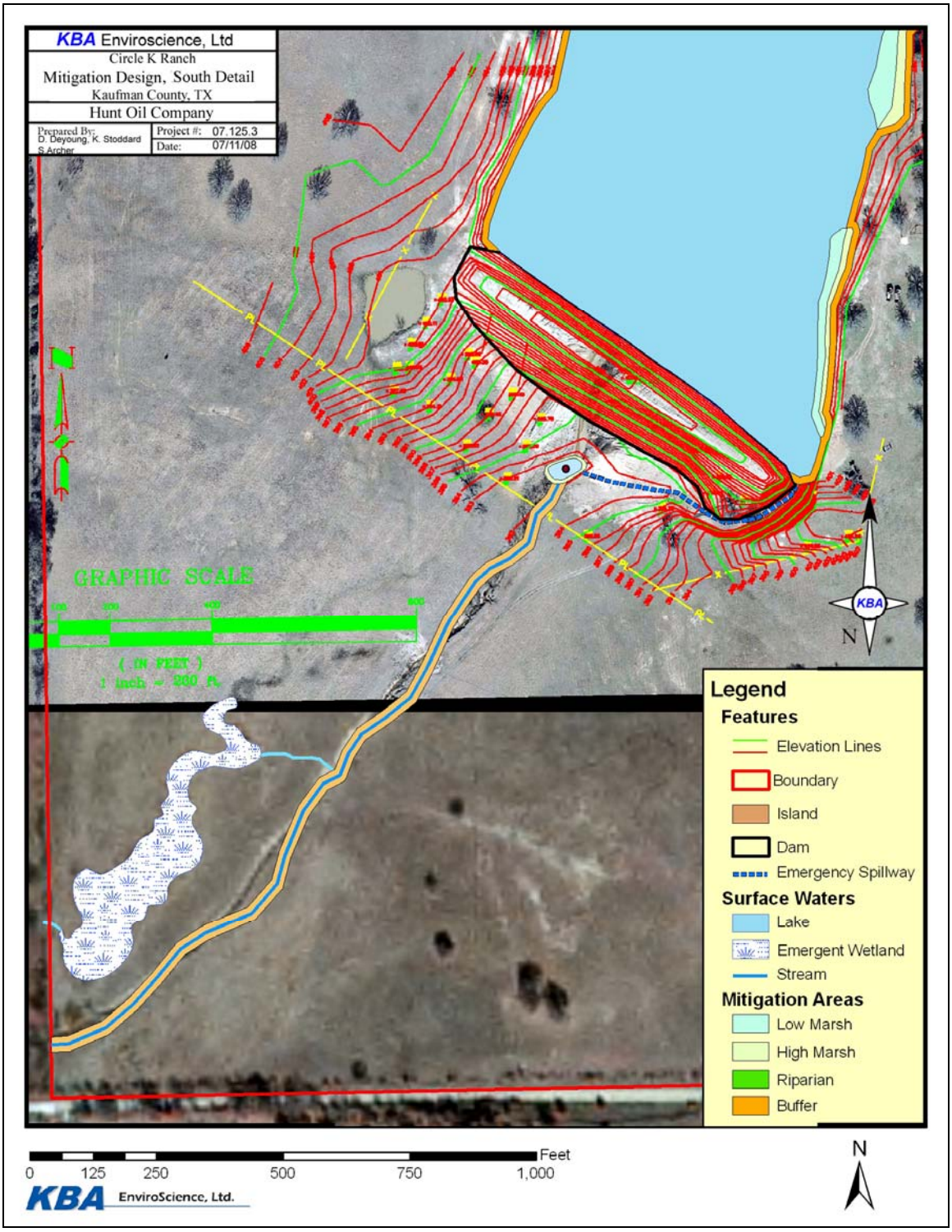
Circle K Ranch, Kaufman, Texas, Mitigation Plan, North Detail

SHEET 6 of 7



Circle K Ranch, Kaufman, Texas, Mitigation Plan, Central Detail

SHEET 7 of 7



Circle K Ranch, Kaufman, Texas, Mitigation Plan, South Section Detail