



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

Public Notice

Applicant: Water/Earth Technology Unlimited. L.L.P.

Permit Application No.: SWF-2008-00253

Date: July 16, 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 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 the WET Unlimited Mitigation Bank (WUMB), a stream and wetland mitigation bank. The WUMB would be established through restoration and enhancement of an initial 124.41-acre tract to be known as the Bigfoot Swamp Mitigation Area, near Carthage, Panola County, Texas.

APPLICANT: Water/Earth Technology Unlimited, LLP.
4533 Phillip Court
Benbrook, Texas 76116-7673

APPLICATION NUMBER: SWF-2008-00253

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LOCATION: The proposed WUMB Bigfoot Swamp Mitigation Area would be located on an approximately 124.41-acre parcel of land adjacent to the Sabine River, 1.1 mile southwest of the intersection of FM 2517 and CR 448 in Panola County, Texas (Figure 1). The proposed project would be located approximately at UTM coordinates and 32.113733 North and 94.188706 East (Zone 15) on the Old Center, Texas 7.5-minute USGS quadrangle map in the Sabine River Basin (HUC 120100) (Figures 2-4).

PROJECT DESCRIPTION: Water/Earth Technology Unlimited, LLP (WET Unlimited) proposes to establish a compensatory mitigation bank, known as the WET Unlimited Mitigation Bank (WUMB), for the purposes of restoring, enhancing, and preserving the functions of streams, wetlands, and other waters to provide compensation for authorized losses of waters of the United States pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The WUMB would generate mitigation bank credits to provide viable compensatory mitigation for adverse stream and wetland impacts to private and public entities within the boundaries of the United States Army Corps of Engineers (USACE) Fort Worth District in the state of Texas.

The proposed WUMB would be established and operated through the development of a mitigation banking instrument (MBI) that would outline the guidelines, terms, conditions, and agreements that would be common to individual mitigation areas comprising the bank. The instrument would contain general provisions such as the legal authorities pertaining to mitigation banking, the goals and objectives of the WUMB, bank sponsorship, the procedures for adding mitigation sites to the instrument, ownership of bank lands and credits, permittee impacts to aquatic resources suitable for compensation, establishment of geographic service areas, assessment of mitigation area function/performance, accounting procedures, financial assurances, development of contingency and remedial actions, development of long- term maintenance and protection plans, acts of God, and transfer of bank ownership. Authorization of the WUMB would become effective on the date of

signature of the MBI by WET Unlimited and the District Engineer, USACE Fort Worth District or his/her representative.

Individual mitigation areas comprising the WUMB would be established by authorization of individual Site Developments Plans (SDPs) for each area. The individual SDPs for each mitigation site would be included as appendices to the MBI and would contain provisions specific to each site, including such elements as baseline conditions, description of improvements to produce mitigation credits, credit release, use of available credits, geographic service area, financial assurance, and maintenance and protection.

The MBI establishing the WUMB would contain an SDP for an initial mitigation area. The addition of other mitigation areas to the WUMB would be accomplished by submitting site-specific SDPs to the IRT for review and would become effective upon USACE approval to amend the MBI via addition of an SDP as an appendix to the document.

The MBI would be developed in accordance with Compensatory Mitigation for Losses of Aquatic Resources (Federal Register, Thursday, April 10, 2008, Vol. 73, No. 70, pp. 19670- 19705). The U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Texas Commission on Environmental Quality, Railroad Commission of Texas, and Texas Parks and Wildlife Department, who comprise the Interagency Review Team (IRT), would be involved in developing the MBI and may be signatories to the final document. The IRT would be involved in developing SDPs for future mitigation areas proposed for addition to the bank.

The initial mitigation area associated with the establishment of the WUMB would be an approximately 124.41-acre tract along the Sabine River floodplain in Panola County, Texas to be known as the Bigfoot Swamp Mitigation Area (Figure 3). The tract is bordered to the north and south by commercial timberlands and to the east by privately owned timberland. The boundaries of the tract form a "panhandle" region located along the far northeastern portion of the property where County Road 448 extends north-south near the easternmost property boundary. The main body of the tract was subjected to the clear-cutting of timber in November-December of 2007 by the previous landowner. During this timber harvest, Best Management Practices (BMPs) were not fully employed. As a result, timber was harvested up to the banks of the intermittent streams, the oxbow, cypress slough and cypress depression, and only a 75-foot-wide Streamside Management Zone (SMZ) was established along the bank of the Sabine River. The panhandle region of tract west of CR 448 was subjected to intensive selective harvesting of timber approximately 5 years earlier. Selective timber harvest created open-canopy, hardwood dominated lowlands and open-canopy, mixed pine and hardwood forest along higher elevations.

The Bigfoot Swamp contains approximately 2,137 linear feet of frontage along the Sabine River, which forms the western boundary of the tract. Topography on the project site is generally flat to gently undulating with shallow to deep stream/river scars and swales scattered across the landscape (Figures 3 and 4). A gentle rise of approximately 3 feet in elevation occurs along a natural levee that spans most of the Sabine River frontage. Approximately 1,124 linear feet of 10-foot-wide intermittent stream traverses the site along the northwestern corner of the property. An

approximately 2.62-acre crescent-shaped oxbow lake exists in the southwestern portion of the property and an approximately 0.53-acre cypress slough extends along the southeastern corner of the property and into the adjacent property to the south. Approximately 479 linear feet of intermittent stream extends southward from the southern portion of the oxbow across the southern boundary of the site. Approximately 0.43-acre of an approximately 1.6-acre cypress depression also lies within the boundary of the tract along its southern boundary.

The majority of soils within the Bigfoot Swamp site are predominantly in the Estes-Mantachie soil association (Aerie Dystraquerts and Fluventic Endoaquepts), listed as hydric soils in the USDA Natural Resources Conservation Service Hydric Soils List for Panola County, Texas. These soils are described as being poorly drained clay loams that are frequently flooded for long durations, and have historically supported bottomland hardwood forest.

Approximately 14.13 acres in the far northeastern portion of the tract (including CR 448 and the portion of the tract east of CR 448) are located on an area mapped as the Latch-Mollville soil association (Grossarenic Paleudalfs and Typic Glossaqualfs). Mollville soils are associated with depressional areas on floodplain terraces, are subject to prolonged ponding of water. Mollville soils are poorly drained silt loams and historically have supported bottomland hardwood forest. Latch soils are moderately well drained loamy sands occurring on oblong and low oval mounds along stream terraces. The majority of the panhandle area of is generally 10-15 feet higher in elevation than the remainder of the Bigfoot Swamp tract and appears to exhibit characteristics consistent with Latch soils.

Frequent and prolonged flooding of the Sabine River drives the hydrology on the Bigfoot Swamp tract. Typically, most flood events occur from November to May and inundate most of the tract with 3 to 6 feet of water for extended periods of time. Across the majority of the Bigfoot Swamp, hydrologic indicators are highly visible and include pronounced water marks on trees, deposition of silt on logs and leaves, and substantial drift lines.

WET Unlimited proposes to restore and enhance the streams, wetlands, and other waters of the United States on the subject property to facilitate the redevelopment of a closed-to-partially open, highly functioning bottomland forest indigenous to the Sabine River in Panola County. Restoration activities would concentrate on stabilizing disturbed, unvegetated areas adjacent to the intermittent stream channels, oxbow lake, cypress slough, and cypress depression, reforestation bottomland hardwood forest, and enhancement of non-wetland forested buffers. This would be accomplished through the planting of native herbaceous vegetation, planting of hard and soft mast producing trees and shrubs, and controlling noxious or undesirable vegetation through root/stem removal, herbicide application, selective harvest, or other appropriate technique. Management of the site would be focused on establishing and preserving desirable species, reducing competition from unwanted species, increasing wetland and wildlife habitat functions, and promoting a vertically heterogeneous, self-sustaining oak dominated forest.

WET Unlimited proposes to establish a primary service area and a secondary service area for the Bigfoot Swamp Mitigation Area (Figure 5). The Primary service area would include those areas

within the intersection of the Sabine River Basin (HUC 120100) and the South Central Plains ecoregion (Griffith et al. 2004); wholly encompassed within the Fort Worth District. This area would include portions of Gregg, Harrison, Rusk, Sabine, San Augustine, Shelby, Smith, Upshur, and Wood Counties and include Panola County in its entirety. The Bank Sponsor also proposes a secondary service area that would include areas within the intersection of the Big Cypress-Sulphur River (HUC 111403) and Neches River (HUC 120200) basins in the South Central Plains ecoregion and the Sabine River (HUC 120100) basin in the East Central Texas Plains ecoregion, wholly encompassed within the Fort Worth District. This area would include portions of Anderson, Bowie, Cass, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Hunt, Kaufman, Morris, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Wood, Van Zandt Counties and include Angelina, Camp, Cherokee, Marion, Nacogdoches, and Rains Counties in their entirety.

Implementation of the proposed mitigation work 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 Panola County where the bald eagle (*Haliaeetus leucocephalus*) and the Louisiana black bear (*Ursus americanus luteolus*) are known to occur or may occur as migrants. The bald eagle is a delisted species being monitored during the first five years following delisting. The Louisiana black bear is a threatened species. Our initial review indicates that the proposed work would have no effect on 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 sites. 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 August 18, 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

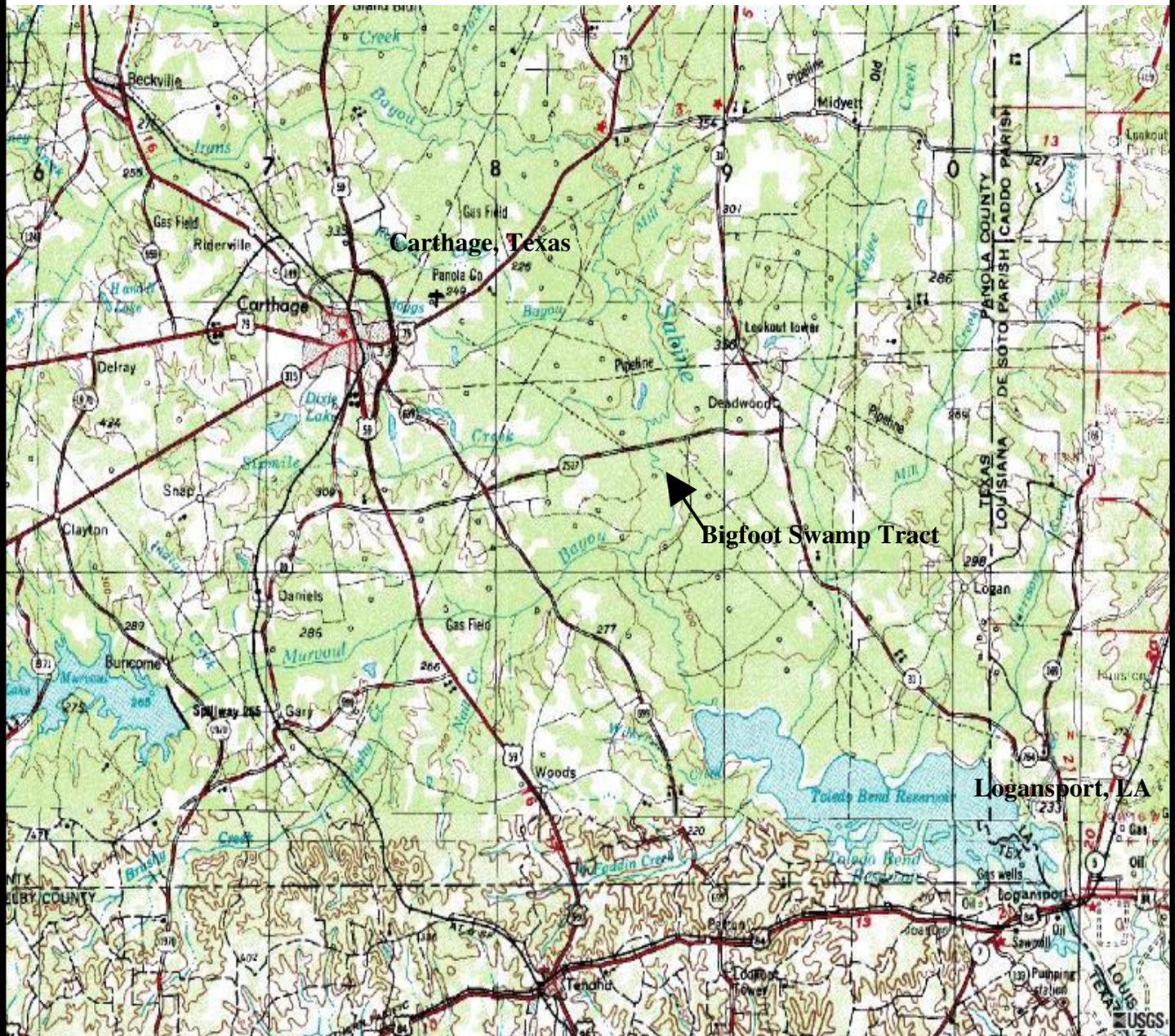
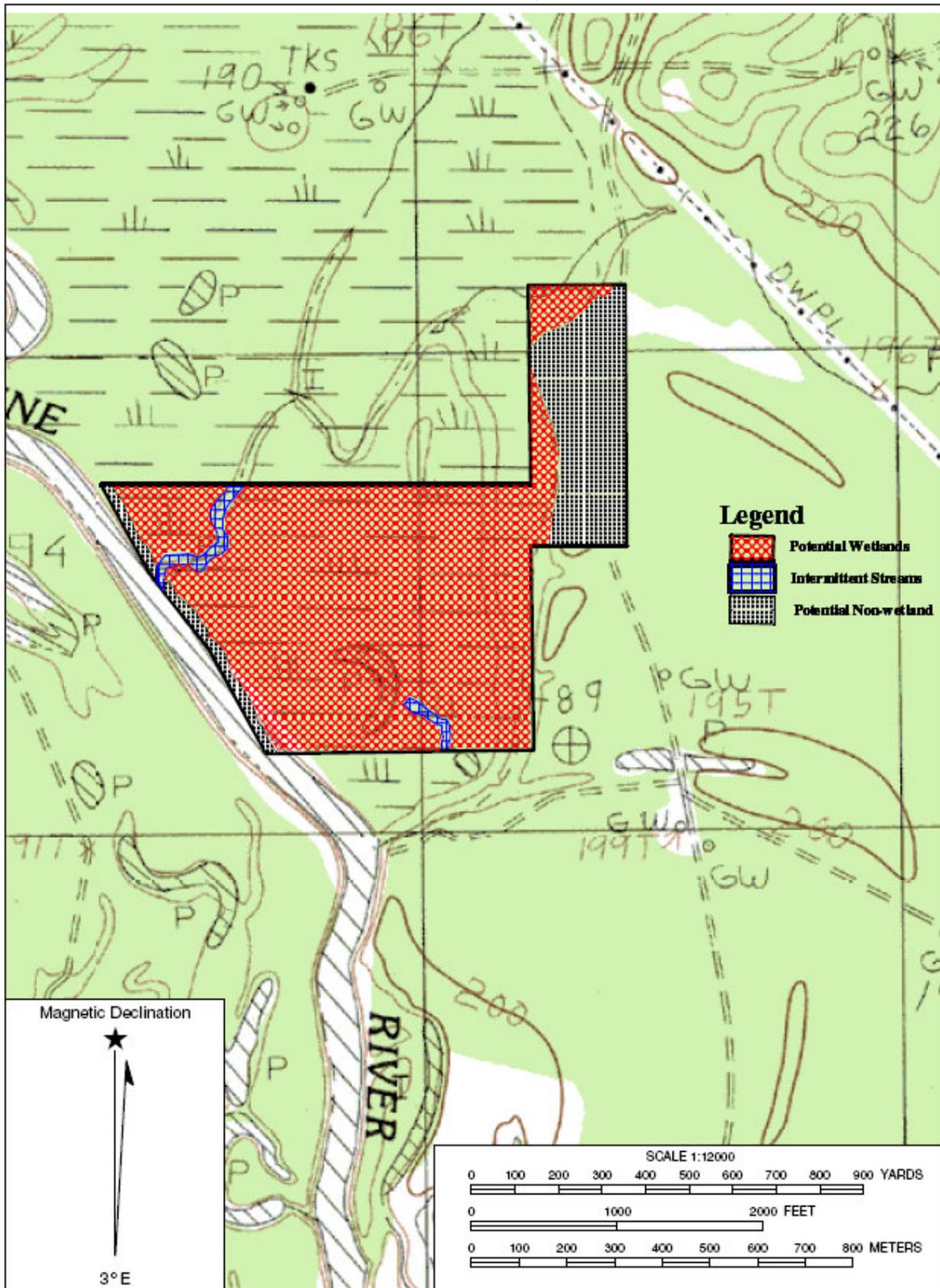


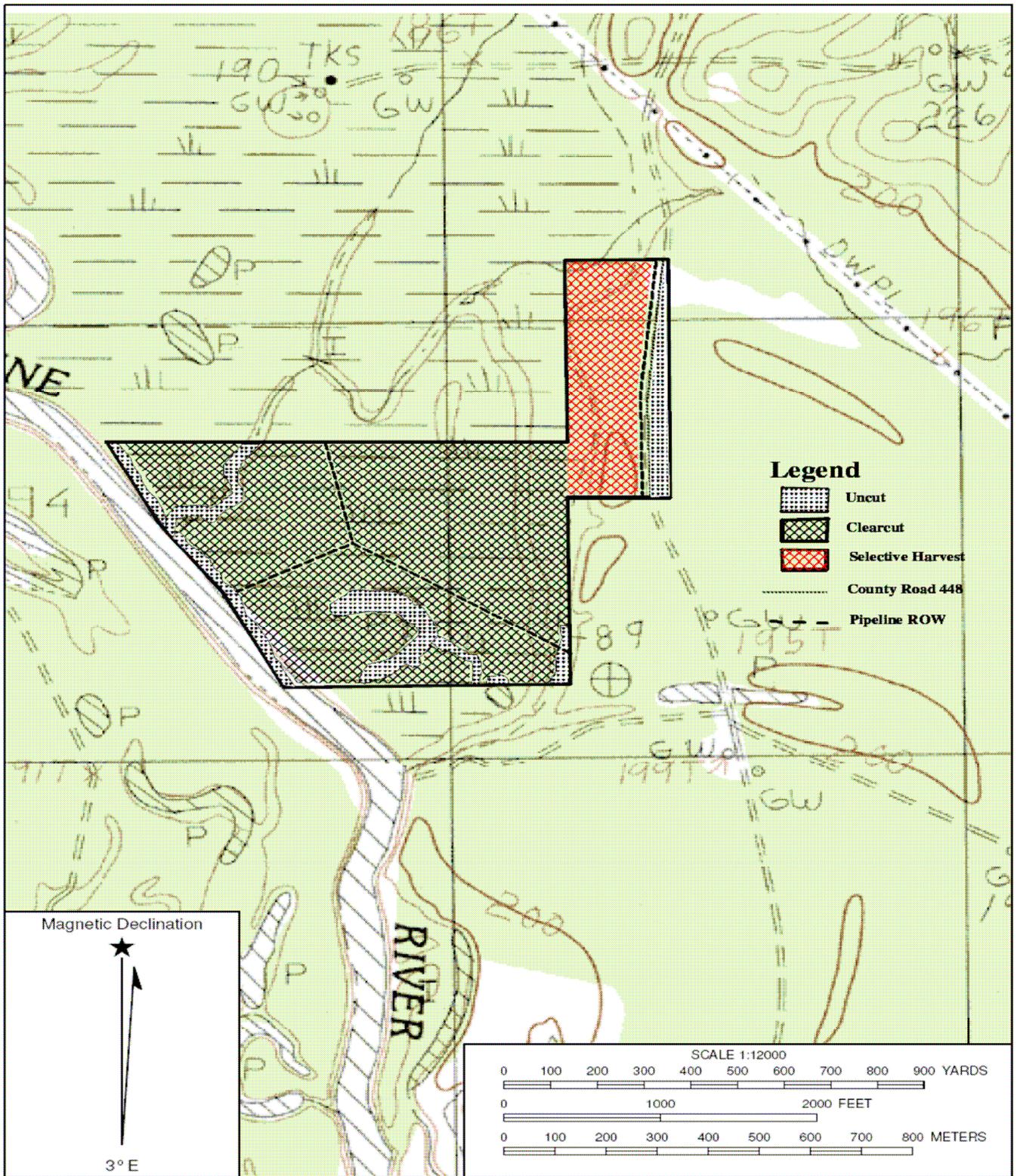
Figure 1. General Location Map

Proposed WET Unlimited Mitigation Bank
Bigfoot Swamp Mitigation Area (124.41 acres)
Panola County, Texas

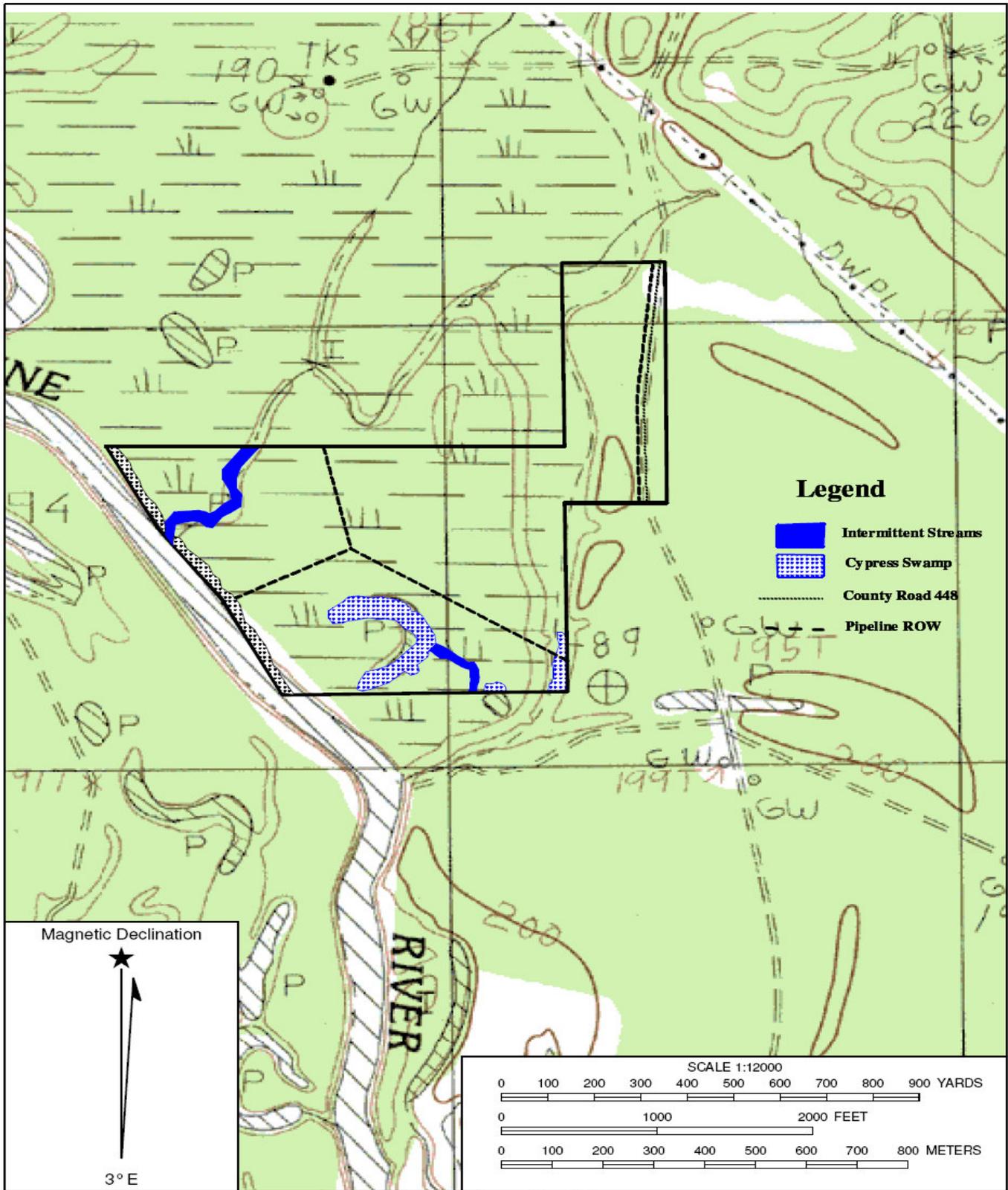




**Figure 2. Potential Wetlands, Streams, and Non-Wetlands
Proposed WET Unlimited Mitigation Bank
Bigfoot Swamp Mitigation Area
124.41 acres
Panola County Texas**



**Figure 3. Timber Treatment Areas
 Proposed WET Unlimited Mitigation Bank
 Bigfoot Swamp Mitigation Area
 124.41 acres
 Panola County Texas**



**Figure 4. Streams and Cypress Swamps
Proposed WET Unlimited Mitigation Bank
Bigfoot Swamp Mitigation Area
124.41 acres
Panola County Texas**

WET Unlimited, LLP
Water/Earth Technology Unlimited

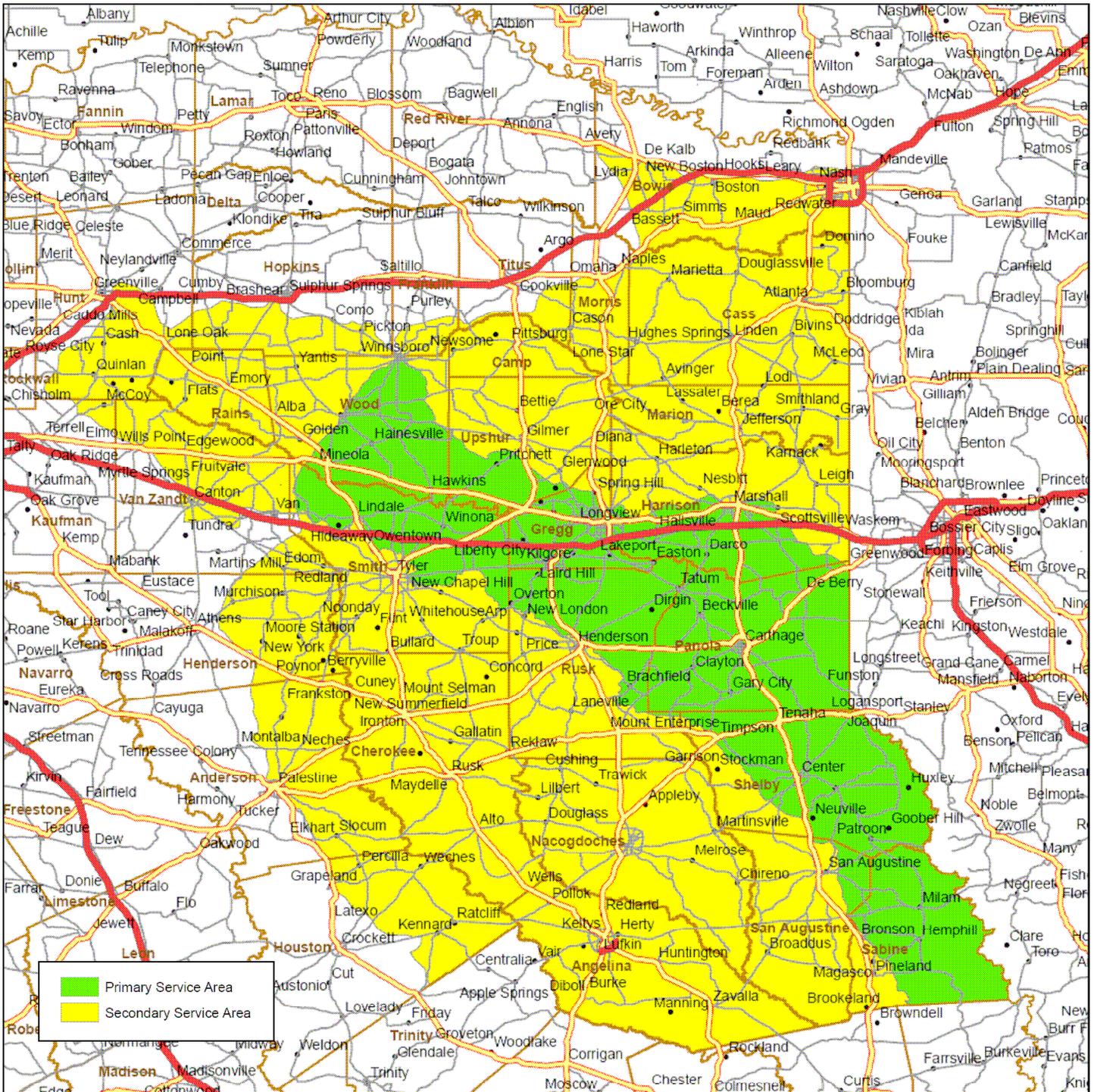


Figure 5. Proposed Service Area
Proposed WET Unlimited Mitigation Bank
Bigfoot Swamp Mitigation Area
124.41 acres
Panola County Texas