



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

Public Notice

Applicant: Luminant Mining Company LLC

Permit Application No. : SWF-2012-00349

Date: January 24, 2013

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. Darvin Messer

Phone Number: (817) 886-1744

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 (WOUS) associated with the expansion of the Kosse Mine in Limestone and Robertson Counties, Texas by Luminant Mining Company LLC.

APPLICANT: Luminant Mining Company LLC (Luminant)
c/o Mr. Sid Stroud
Director, Environmental Mining
Luminant Power
Environmental Services Department
1601 Bryan Street
Dallas, Texas 75201

APPLICATION NUMBER: SWF-2012-00349

DATE ISSUED: January 24, 2013

LOCATION: The proposed project area is 4,755 acres—of which approximately 4,204 acres remain to be mined within Area D of the Kosse Mine, Railroad Commission of Texas (RCT) Permit No. 50A, within Limestone and Robertson counties. The project area is fully within the existing Kosse Mine (approximately 15,040 acres), with the mine center being approximately at Latitude 31° 16' 59" N and Longitude 96° 27' 21" W. The Kosse Mine began extracting lignite (coal) in 2007. The project area is approximately eight miles east of the town of Kosse, Texas (Figures 1-7); is contained within the Oletha and Bald Prairie 7.5-minute USGS quadrangle maps; and is in the following USGS Hydrologic Units: 120701030203 (Middle Steele Creek), 120701030204 (Lower Steele Creek), and 120701030403 (Upper Duck Creek). The proposed project area is generally contained within the following area: west of an oil well road; south of Heads Creek; north of Robertson County Road 477 and various property tracts; and east of an existing rail line from the mine to the Oak Grove Steam Electric Station.

OTHER AGENCY AUTHORIZATIONS: (1) State Water Quality Certification, Texas Commission on Environmental Quality (TCEQ); (2) Texas Pollutant Discharge Elimination System (TPDES) Wastewater Discharge Permit [02699], TCEQ; (3) Water Rights Exemption, TCEQ; (4) TPDES Stormwater Notice of Intent for Construction Activities [TXR150000], TCEQ; (5) Stormwater General Permit for Industrial Activities [TXR050000] (pending), TCEQ;

(6) Hazardous Waste Permit [728949], Environmental Protection Agency (EPA); (7) Surface Mining Permit [50], RCT; and (8) Solid Waste Registration [88189], TCEQ.

PROJECT DESCRIPTION: The applicant proposes to discharge approximately 100,000 cubic yards of fill material into approximately 62.00 acres of WOUS in conjunction with the continued operation and reclamation of the existing Kosse Mine, RCT Permit No. 50A in Limestone and Robertson counties. Total impacts to WOUS would include 18.55 acres of forested wetlands, 8.50 acres of scrub-shrub wetlands, 8.09 acres of non-forested wetlands, 17.01 acres of impoundments (stock tanks/ponds), and 115,800 linear feet (lf) (9.85 acres) of streams, including 29,319 lf (3.63 acres) of intermittent and 86,481 lf (6.22 acres) of ephemeral streams. The proposed mine expansion would consist of 4,204 acres remaining to be mined (see Figure 1). Surface mining operations would continue with conventional open pits excavated by large draglines and supported by standard earth moving equipment such as front-end loaders, hydraulic excavators, hydraulic backhoes, haulers, motor graders, dozers, end dumps, and scrapers. Infrastructure in support of the operation would include (1) construction of ponds and diversions to control surface water drainage, (2) placement of groundwater well fields to dewater overburden and relieve underburden pressures, (3) relocation of pipelines, and (4) construction of service roads. Project timing is for mining to continue as permits are approved by regulatory agencies. Various construction projects and mining operations would involve adverse impacts to waters of the U.S., including wetlands, associated with filling or dredging activities.

The proposed project area includes portions of the mine that are currently authorized under Nationwide Permit 21 (NWP 21) [Project No. SWF-2005-00663] (Figure 8). It is anticipated that SWF-2005-00663 would be reauthorized in accordance with 77 Federal Register 10184-10290, dated February 21, 2012. Due to the potential for the rate of mining in the previously authorized NWP 21 area to vary and for compliance monitoring purposes, impacts authorized by SWF-2005-00663 that have not occurred prior to the date of issuance of any Individual Permit would be evaluated for authorization under SWF-2012-00349 and would be required to meet the conditions of the Individual Permit.

Continued mining of the Kosse Mine would provide Luminant Generation Company LLC reliable access to an additional reserve of low cost lignite fuel resource to fuel the adjacent Oak Grove Steam Electric Station. In addition, this fuel resource is necessary to provide continuation of reliable and cost effective electric generation for customers and provide base load electric generation capacity for the Electric Reliability Council of Texas (ERCOT) electric grid.

Appropriate and practicable steps would be taken to avoid, minimize, or mitigate the adverse impacts of the proposed project on the aquatic ecosystem. Current planning for the mine shows avoidance and minimization of adverse impacts to WOUS would be a significant part of the design of the Surface Mining Control and Reclamation Act (SMCRA) permit and Individual Permit—the primary focus being protection of wetlands and other waters of the U.S. associated with Steele Creek. Approximately 92.00 acres of wetlands, 0.37 acre of ponds, and 58,979 linear feet (16.12 acres) of streams are projected to be avoided. Areas to be avoided include most of the high quality aquatic resources present on-site. Despite incorporating measures to avoid and minimize impacts to waters of the U.S., the project would result in the loss of approximately

62.00 acres of waters of the U.S. Specifically, 35.14 acres of wetlands, 9.85 acres (115,800 linear feet) of streams, and 17.01 acres of impoundments (stock tanks/ponds) would be permanently impacted.

The applicant has incorporated a number of measures to avoid and minimize impacts to WOUS. After consideration of all available options, the applicant proposes to mitigate for unavoidable losses of WOUS by construction of various waters of the U.S. within the reclaimed mine site, as is standard practice for surface mining activities. Baseline ecological conditional assessments of proposed aquatic resource impacts sites, existing reclaimed/restored aquatic resources, and regional aquatic resource reference sites were performed utilizing the Texas Rapid Assessment Method (TXRAM). Additionally, future conditions of aquatic resource restoration sites were predicted using TXRAM. Proposed mitigation work would utilize principles of natural channel design and fluvial geomorphology to reclaim/restore stream and wetland hydrology and buffers with the requirement that all created/restored waters meet the definition of WOUS. Detailed stream design information would be submitted for USACE and resource agency review prior to construction of mitigation streams. The information would include but not be limited to plan, profile, and dimension measurements based on appropriate regional hydrographic and geomorphological data and successful as-built streams/systems on and/or near the mine site. Proposed mitigation work would be similar in nature to past mitigation at other Luminant Mining Company LLC operations. The applicant has proposed annual monitoring of mitigation sites with TXRAM conditional assessments performed at 5-year intervals to ensure success criteria are met. Additionally, long-term site protection in the form of a conservation easement (pending securing a third-party instrument holder) is proposed for the mitigation areas within the approximately 90% company owned mine permit area. Any compensatory mitigation areas not protected long-term would be subject to further evaluation using the TXRAM Aquatic Resources Compensation Calculator (ARCC) to determine an amount of additional mitigation required due to the increased risk resulting from lack of long-term protection. Financial assurance funds are proposed in addition to required RCT bonding monies to further ensure mitigation success. The financial assurance amount has not yet been determined. In the event that these proposed on-site permittee responsible mitigation measures are not successful, the applicant has proposed the purchase of mitigation bank credits appropriate for the resource type and service area as a contingency plan to ensure full replacement of aquatic resources.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-331, 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 incorporates the requirements necessary to comply with the Texas Commission on Environmental Quality's (TCEQ) Tier II project criteria. Tier II projects are large projects that affect more than three (3) acres of waters of the United States and/or 1,500 linear feet or more of streams. They also include projects that impact rare and ecologically significant wetlands and would not qualify for a Tier I review or for which the applicant elects not to incorporate Tier I Best Management Practices (BMPs) including the applicant choosing to use alternative BMPs. Accordingly, a request for 401 certification is necessary, and there will be additional TCEQ review.

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 if any may occur in the project area. The proposed project is located in Limestone and Robertson counties where the following species are listed: least tern (*Sterna antillarum*) (Limestone County); Houston toad (*Bufo houstonensis*) (Robertson County); large-fruited sand verbena (*Abronia macrocarpa*) (Robertson County); Navasota ladies' tresses (*Spiranthes parksii*) (both counties); and whooping crane (*Grus americana*) (both counties). Although habitat for the least tern and Navasota ladies' tresses has been documented in the mine permit area, no sightings of federally listed threatened or endangered species or species of special concern have occurred or were recorded within the limits of the proposed Project Area during environmental baseline studies and field reconnaissance, and initial review indicates that the proposed work would not adversely affects any federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES (NRHP): The applicant proposes to address historic properties and cultural resources in accordance with the requirements of Section 106 of the National Historic Preservation Act and through direct consultation with applicable agency officials and other stakeholders. An integral part of the permit application process involves comprehensive cultural resource surveys for, at a minimum, the five-year project area term to determine the presence or evidence of significant historic or archaeological sites within the project area that could be affected by the proposed mining activities. Several historic properties and cultural resource sites have been identified in the region. However, no cultural resource sites

listed on the National Register of Historic Places (NRHP), eligible for listing on the NRHP, or with an unknown NRHP status will be impacted by mine-related activities unless the proper approvals are received from the Texas Historical Commission, Railroad Commission of Texas, and if necessary, the Environmental Protection Agency.

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.

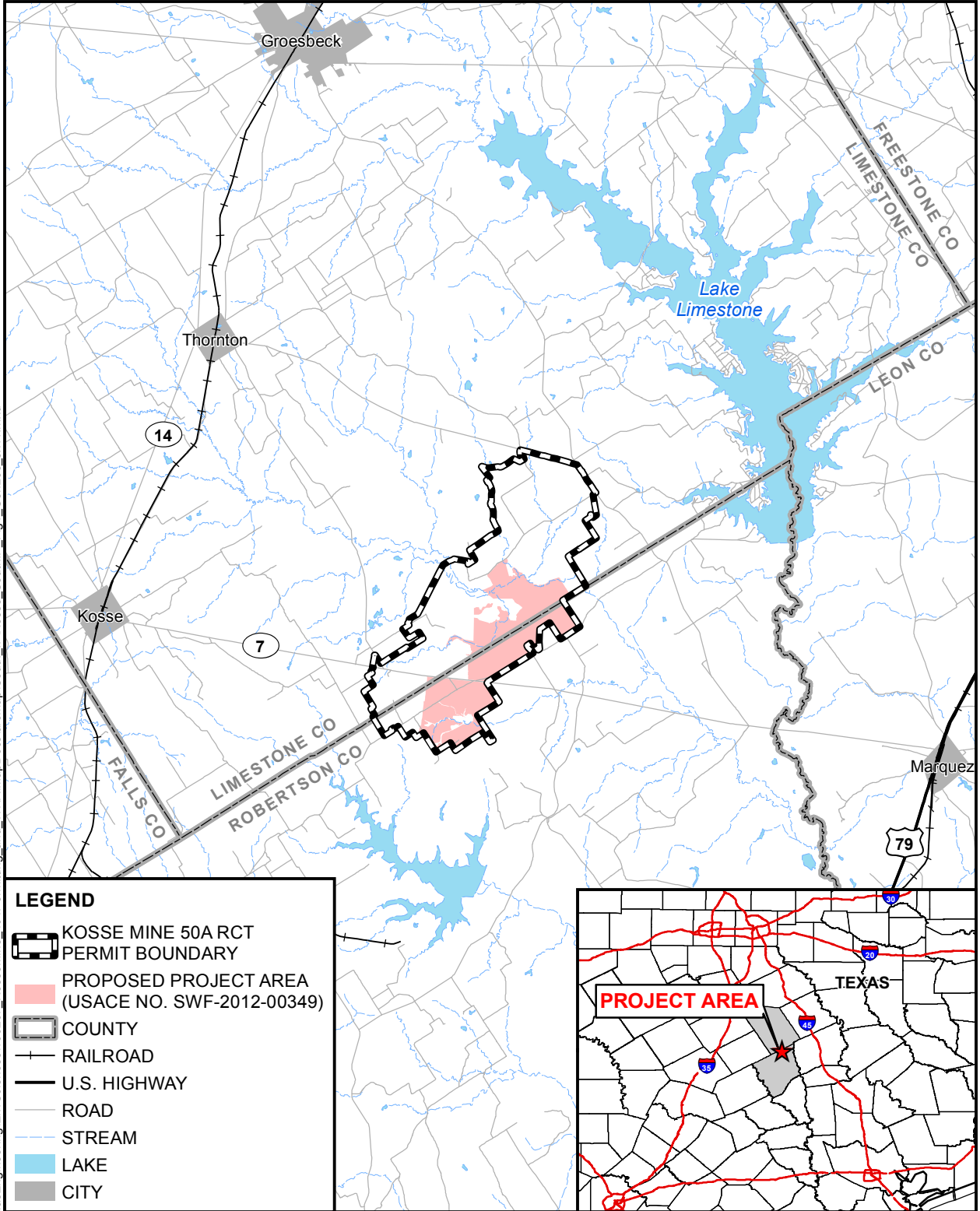
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be 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.

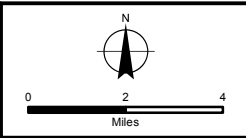
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before February 25, 2013, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no 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: 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) 886-1731. 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

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**INDIVIDUAL PERMIT
KOSSE MINE**
USACE PROJECT NO. SWF-2012-00349
GENERAL LOCATION MAP

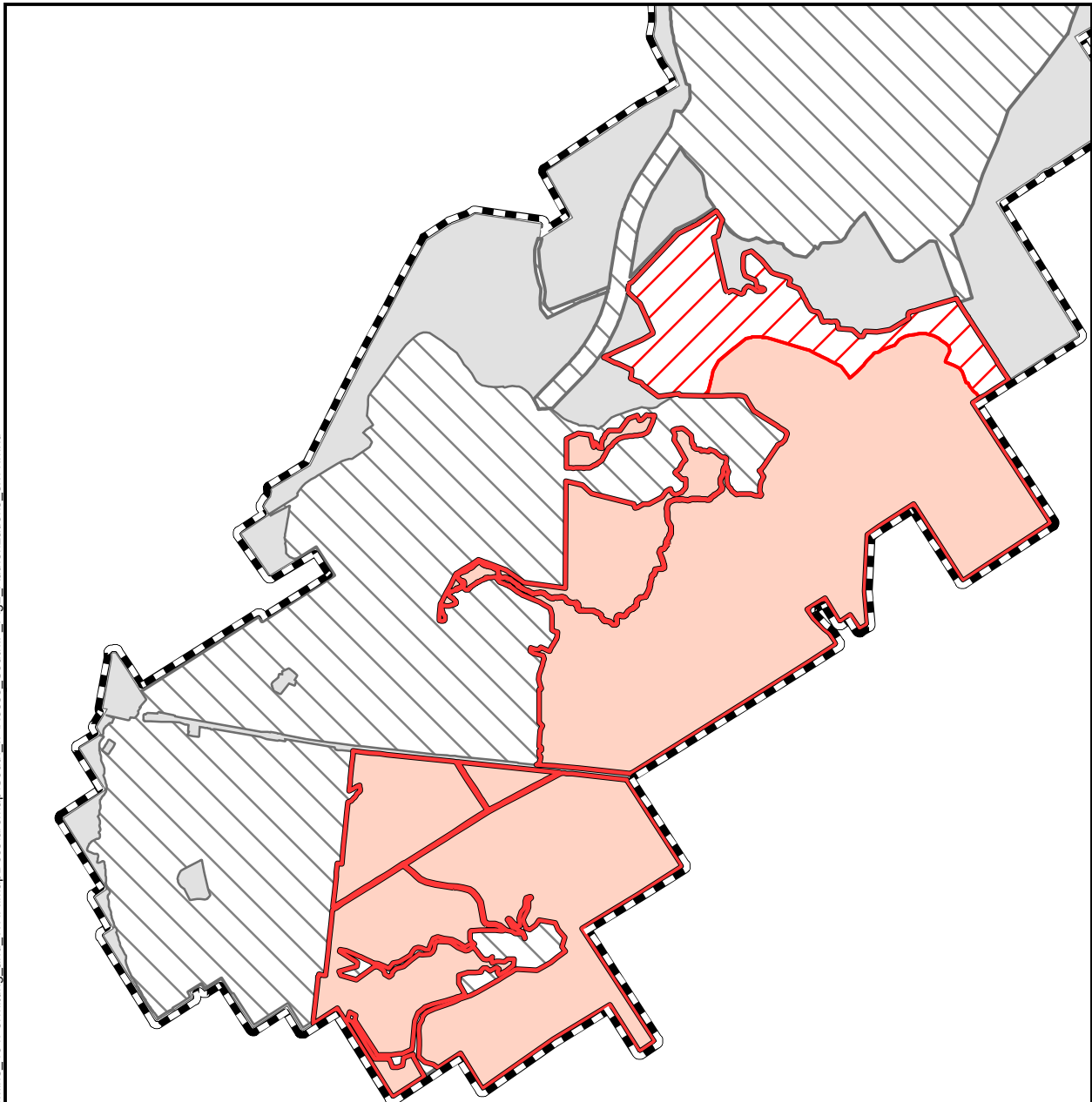


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1711 Preston Rd. Suite 200
Dallas, TX 75248-1232
972-960-4400







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FIGURE 1

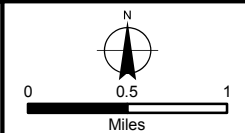
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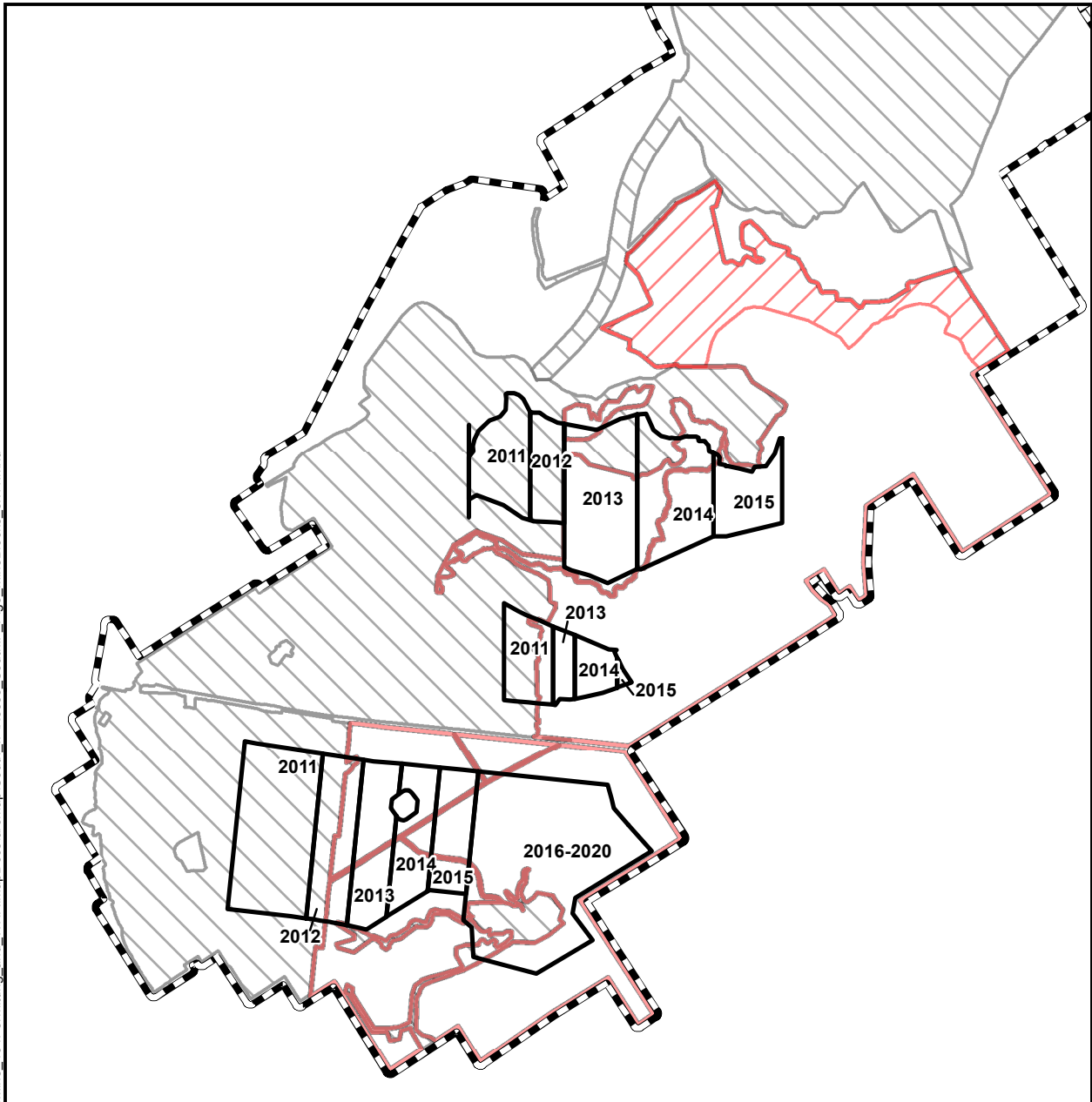
-  KOSSE MINE 50A RCT PERMIT BOUNDARY
-  PROPOSED PROJECT AREA (USACE NO. SWF-2012-00349)
-  PROPOSED IMPACT AREA
-  PROPOSED AVOIDANCE AREA
-  PREVIOUSLY AUTHORIZED/IMPACTED AREA
-  UNDISTURBED AREA

**INDIVIDUAL PERMIT
KOSSE MINE
USACE PROJECT NO. SWF-2012-00349
PREVIOUS/CURRENT USACE
AUTHORIZATIONS**








 HDR Engineering, Inc. 17111 Preston Rd. Suite 200 Dallas, TX 75248-1232 972-960-4400	DEC 2012	FIGURE 2

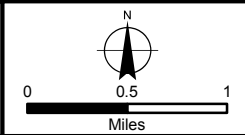
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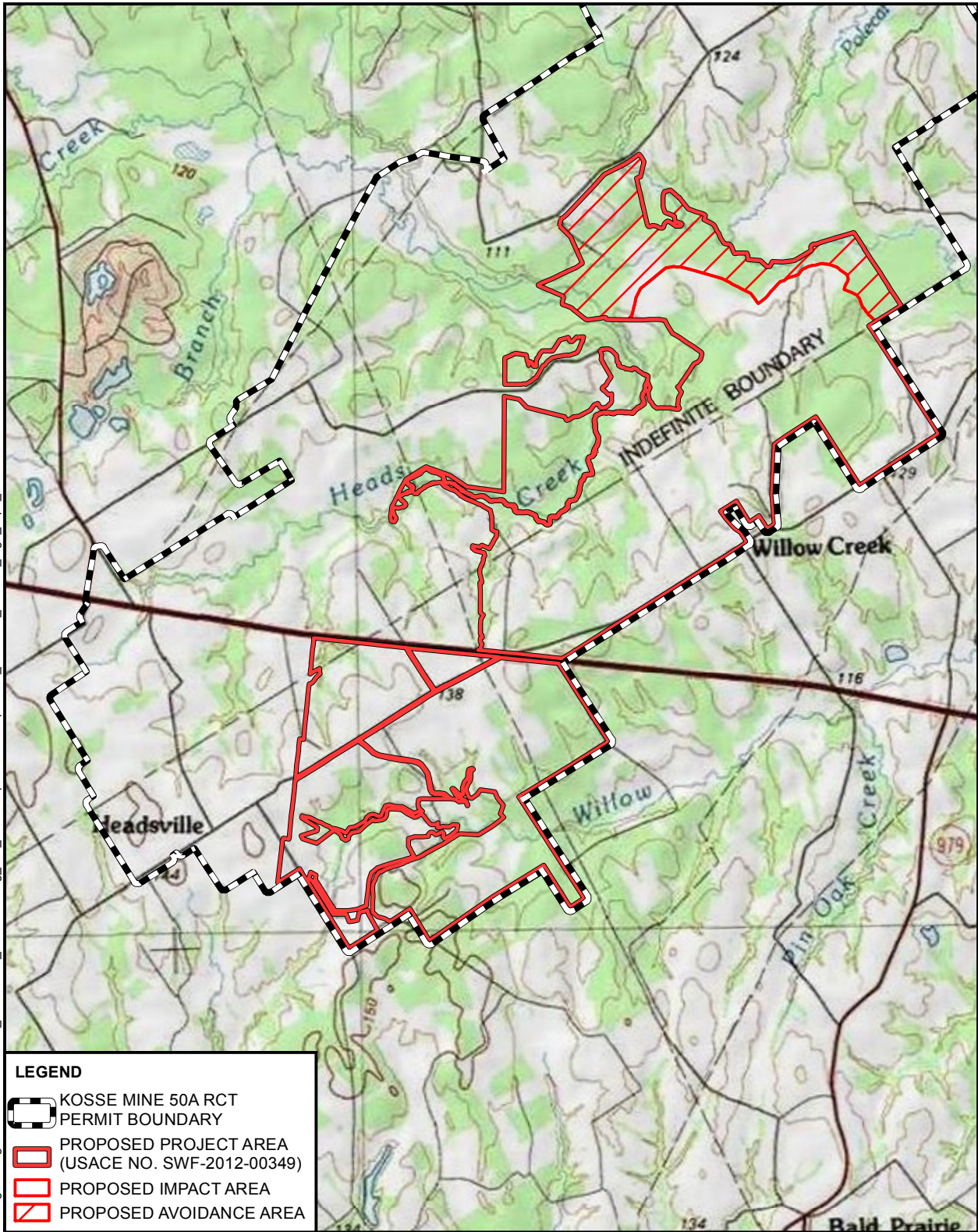
-  KOSSE MINE 50A RCT PERMIT BOUNDARY
-  PROPOSED PROJECT AREA (USACE NO. SWF-2012-00349)
-  PROPOSED AVOIDANCE AREA
-  PREVIOUSLY AUTHORIZED/IMPACTED AREA
-  MINE BLOCK

**INDIVIDUAL PERMIT
KOSSE MINE
USACE PROJECT NO. SWF-2012-00349
PROJECTED SEQUENCE
OF MINING**







 HDR Engineering, Inc. 17111 Preston Rd. Suite 200 Dallas, TX 75248-1232 972-960-4400	
DEC 2012	FIGURE 3

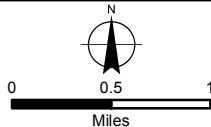
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-  KOSSE MINE 50A RCT PERMIT BOUNDARY
-  PROPOSED PROJECT AREA (USACE NO. SWF-2012-00349)
-  PROPOSED IMPACT AREA
-  PROPOSED AVOIDANCE AREA

**INDIVIDUAL PERMIT
KOSSE MINE**
USACE PROJECT NO. SWF-2012-00349
TOPOGRAPHIC FEATURES

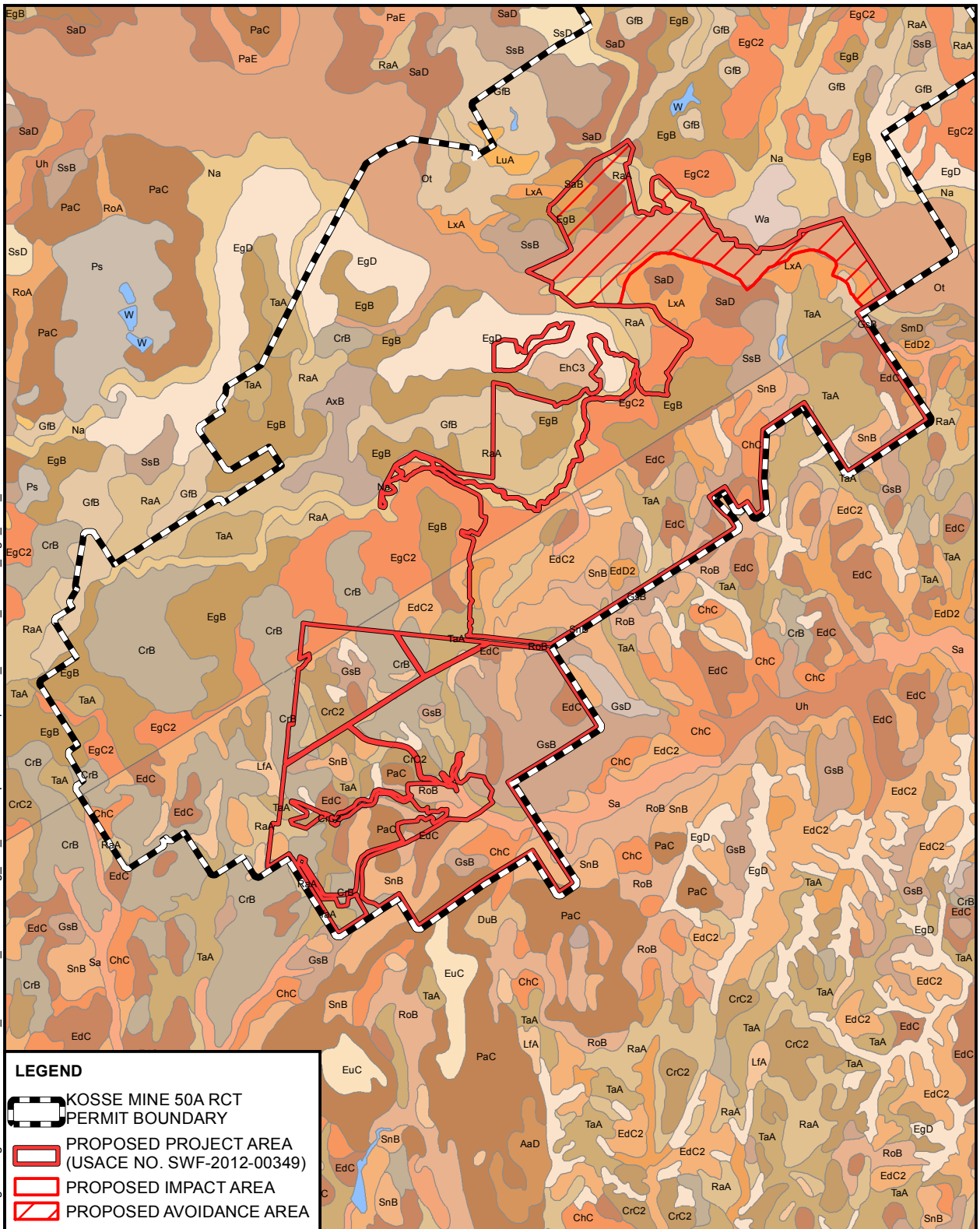


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FIGURE 4

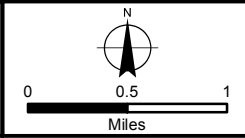
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-  KOSSE MINE 50A RCT PERMIT BOUNDARY
-  PROPOSED AVOIDANCE AREA
-  PROPOSED IMPACT AREA
-  PROPOSED PROJECT AREA (USACE NO. SWF-2012-00349)

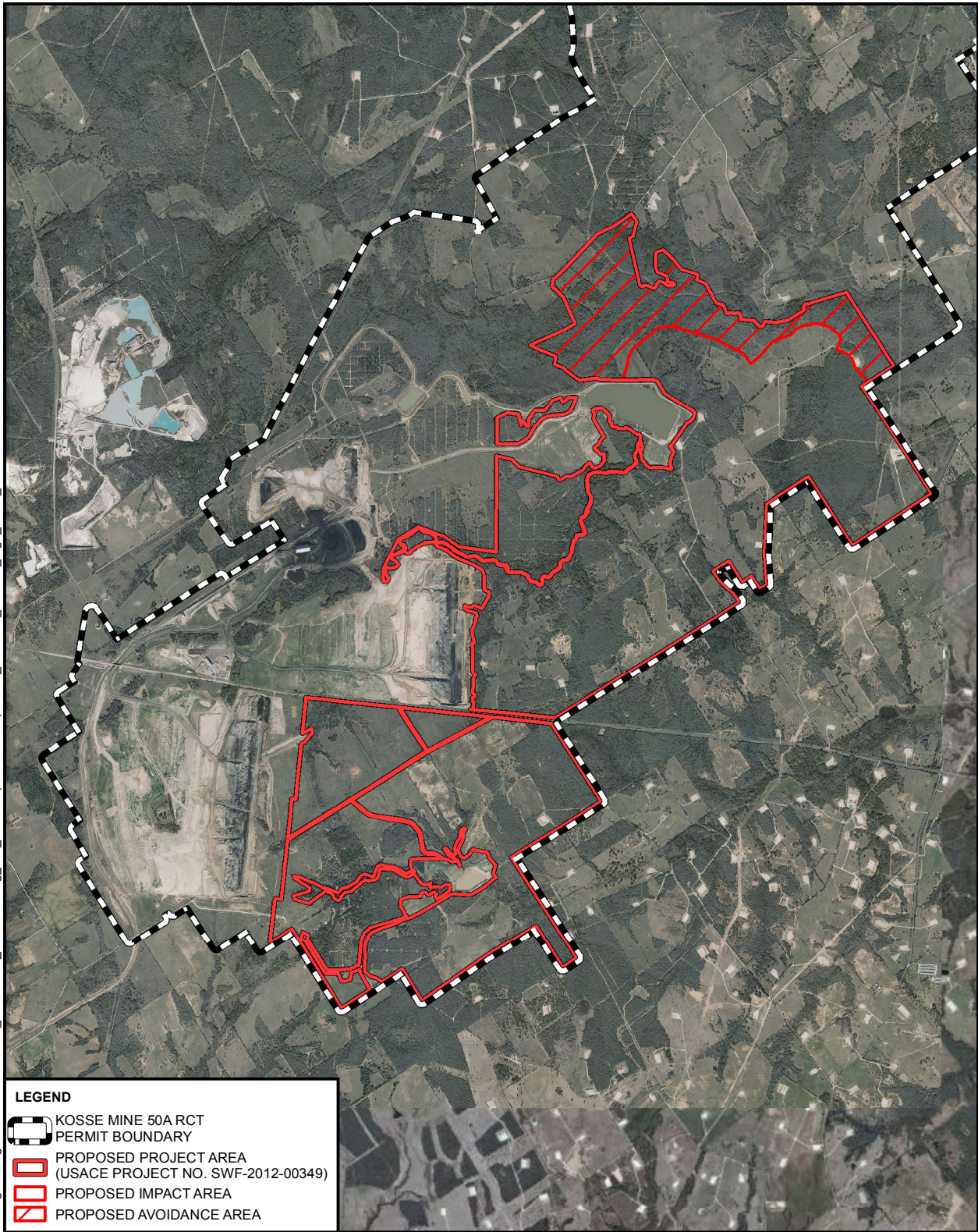
**INDIVIDUAL PERMIT
KOSSE MINE
USACE PROJECT NO. SWF-2012-00349
SOIL FEATURES**







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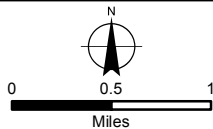
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-  KOSSE MINE 50A RCT PERMIT BOUNDARY
-  PROPOSED PROJECT AREA (USACE PROJECT NO. SWF-2012-00349)
-  PROPOSED IMPACT AREA
-  PROPOSED AVOIDANCE AREA

**INDIVIDUAL PERMIT
KOSSE MINE**
USACE PROJECT NO. SWF-2012-00349
AERIAL PHOTOGRAPH

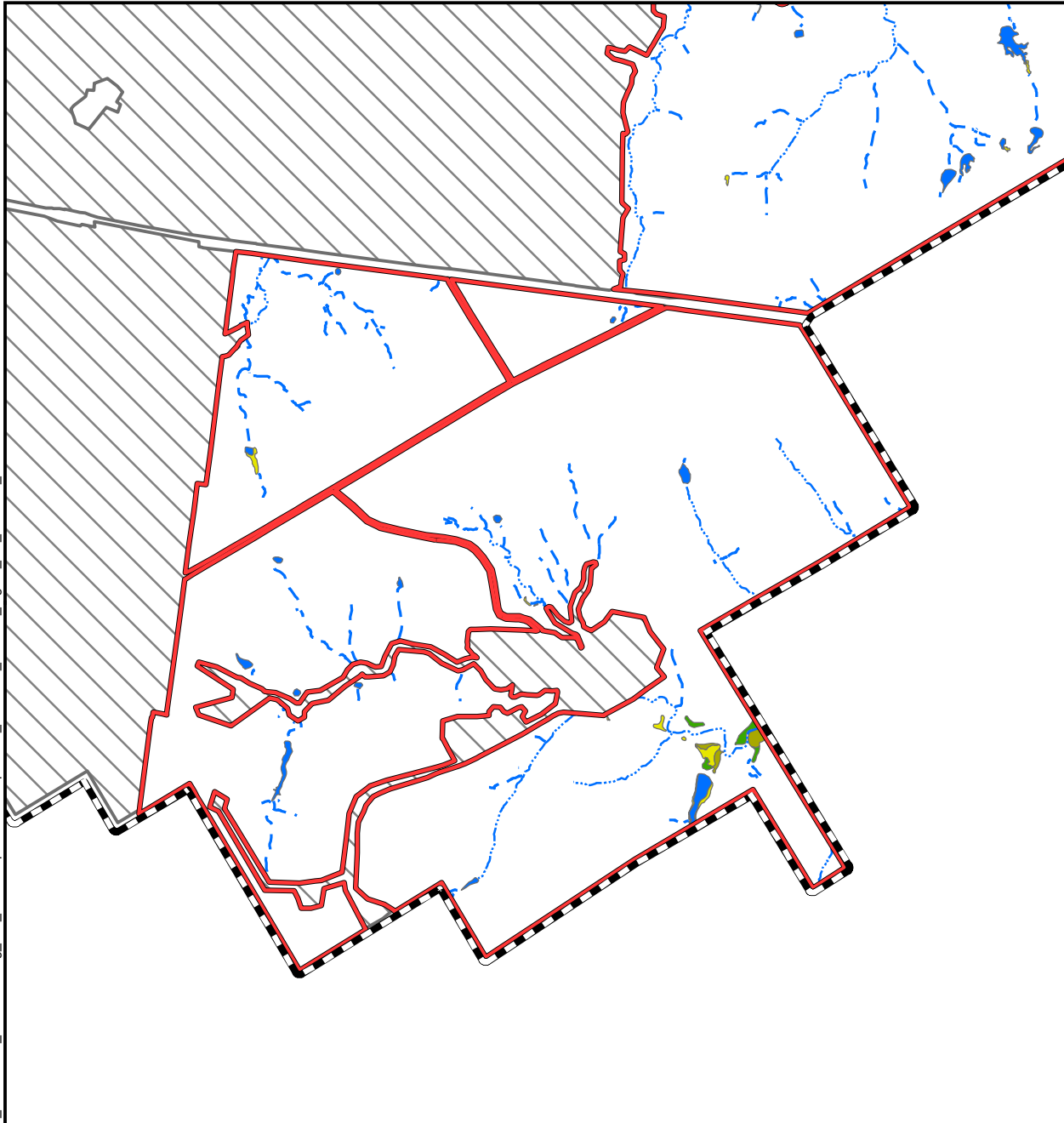


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FIGURE 6

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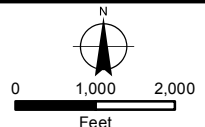


*WATERS OF THE U.S. WITHIN THE PROPOSED IMPACT AREA DELINEATED BY HDR INC. IN 2012.
 *WATERS OF THE U.S. WITHIN THE PROPOSED AVOIDANCE AREA DELINEATED BY PBS&J IN 2006.

LEGEND

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|---------------------------|---------------------|--|-------------------------------|--|-------------------------------------|
| WATERS OF THE U.S. | | FORESTED WETLAND | NOT WATERS OF THE U.S. | | PROPOSED IMPACT AREA |
| EPHEMERAL STREAM | SCRUB-SHRUB WETLAND | KOSSE MINE 50A RCT PERMIT BOUNDARY | PROPOSED AVOIDANCE AREA | | PREVIOUSLY AUTHORIZED/IMPACTED AREA |
| INTERMITTENT STREAM | EMERGENT WETLAND | PROPOSED PROJECT AREA (USACE NO. SWF-2012-00349) | | | |
| PERENNIAL STREAM | POND | | | | |

**INDIVIDUAL PERMIT
 KOSSE MINE
 USACE PROJECT NO. SWF-2012-00349
 WATERS OF THE U.S.**

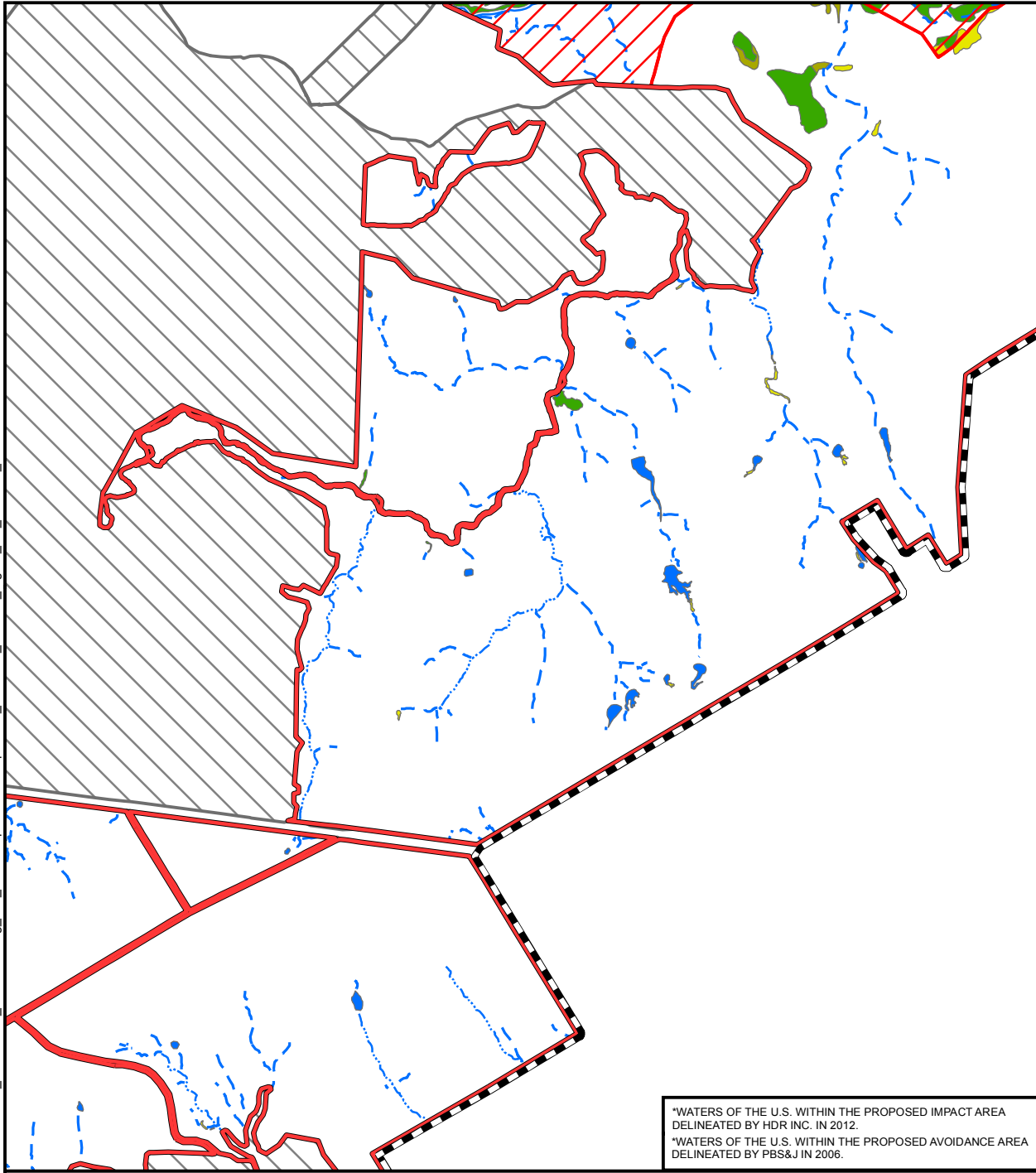


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FIGURE 7-1

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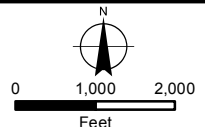


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 *WATERS OF THE U.S. WITHIN THE PROPOSED AVOIDANCE AREA DELINEATED BY PBS&J IN 2006.

LEGEND

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|---------------------------|---------------------|--|-------------------------------|-------------------------------------|----------------------|
| WATERS OF THE U.S. | | FORESTED WETLAND | NOT WATERS OF THE U.S. | | PROPOSED IMPACT AREA |
| EPHEMERAL STREAM | SCRUB-SHRUB WETLAND | KOSSE MINE 50A RCT PERMIT BOUNDARY | PROPOSED AVOIDANCE AREA | PREVIOUSLY AUTHORIZED/IMPACTED AREA | |
| INTERMITTENT STREAM | EMERGENT WETLAND | PROPOSED PROJECT AREA (USACE NO. SWF-2012-00349) | | | |
| PERENNIAL STREAM | POND | | | | |

**INDIVIDUAL PERMIT
 KOSSE MINE
 USACE PROJECT NO. SWF-2012-00349
 WATERS OF THE U.S.**

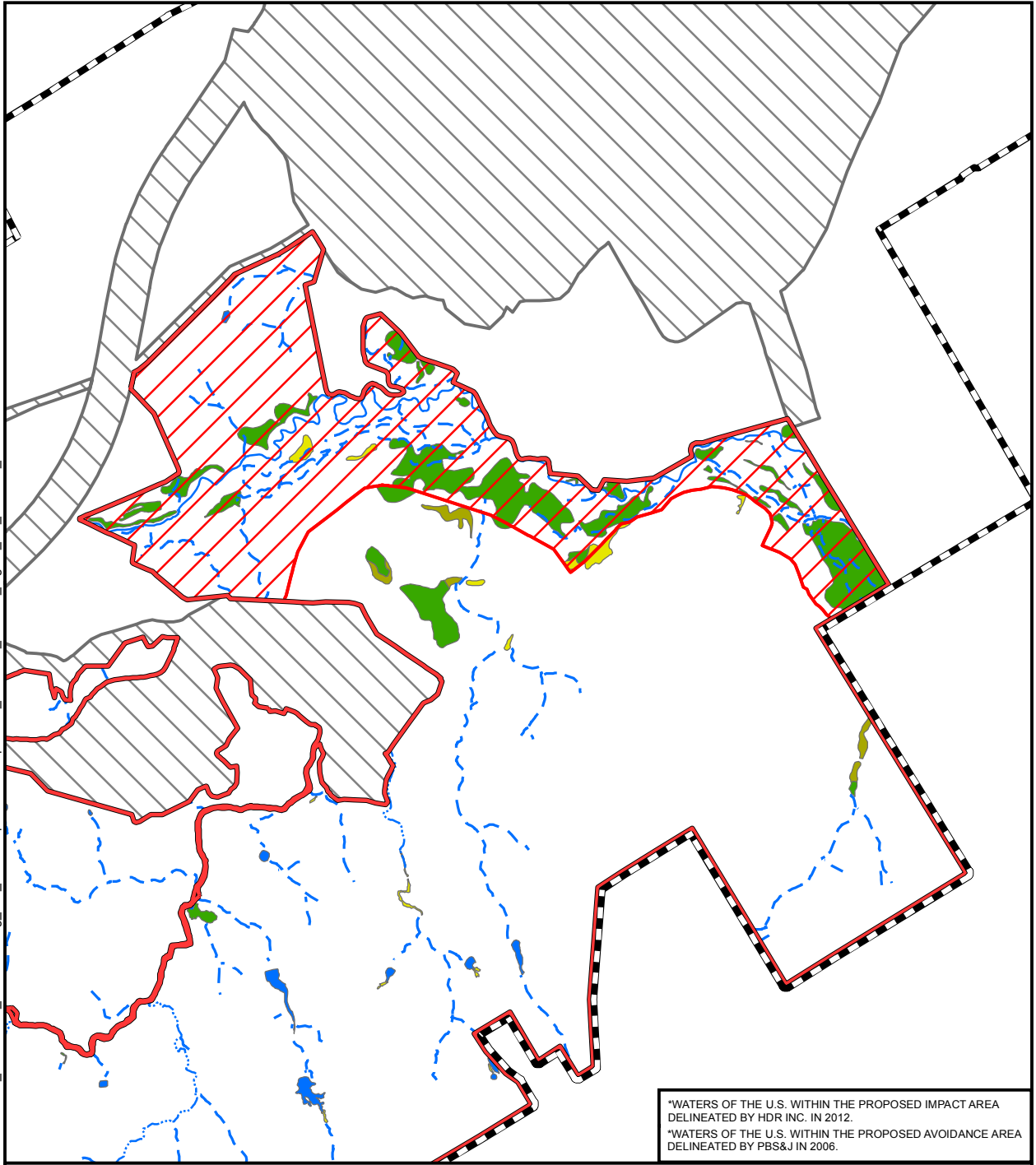


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FIGURE 7-2

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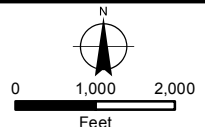


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LEGEND

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|---------------------------|---------------------|--|-------------------------------------|
| WATERS OF THE U.S. | FORESTED WETLAND | NOT WATERS OF THE U.S. | PROPOSED IMPACT AREA |
| EPHEMERAL STREAM | SCRUB-SHRUB WETLAND | KOSSE MINE 50A RCT PERMIT BOUNDARY | PROPOSED AVOIDANCE AREA |
| INTERMITTENT STREAM | EMERGENT WETLAND | PROPOSED PROJECT AREA (USACE NO. SWF-2012-00349) | PREVIOUSLY AUTHORIZED/IMPACTED AREA |
| PERENNIAL STREAM | POND | | |

**INDIVIDUAL PERMIT
 KOSSE MINE
 USACE PROJECT NO. SWF-2012-00349
 WATERS OF THE U.S.**

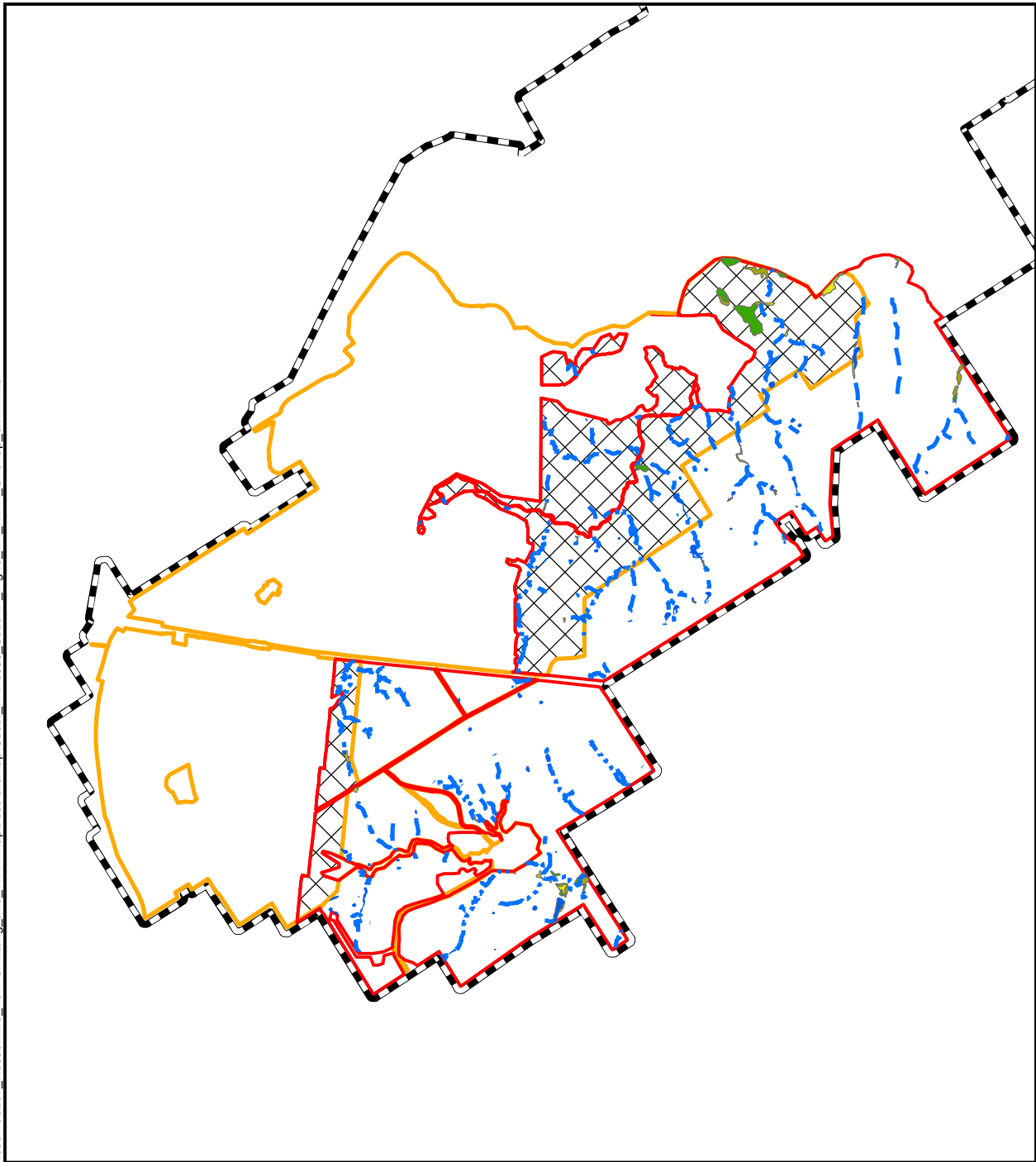


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FIGURE 7-3

Path: O:\Dept037_DallasEngineering\EnvSciences\106267_KosseMine_404Permitting_and_WHA\MapDocs\arcmap\South_IP\Kosse_SouthIP_Fig10_PN_NWP_Overlap_8x11.mxd



LEGEND

WATERS OF THE U.S.

- EPHEMERAL STREAM
- INTERMITTENT STREAM
- PERENNIAL STREAM
- POND

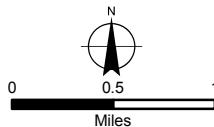
- FORESTED WETLAND
- SCRUB-SHRUB WETLAND
- EMERGENT WETLAND

NOT WATERS OF THE U.S.

- KOSSE MINE 50A RCT PERMIT BOUNDARY
- PROPOSED IMPACT AREA (USACE NO. SWF-2012-00349)

- REAUTHORIZATION AREA
- NATIONWIDE PERMIT 21 (USACE NO. SWF-2005-00663)

**INDIVIDUAL PERMIT
KOSSE MINE**
USACE PROJECT NO. SWF-2012-00349
NWP 21 REAUTHORIZATION AREA



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FIGURE 8