



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

Public Notice

Applicant: San Miguel Electric Cooperative, Inc.

Permit Application No. : SWF-2012-00268

Date: February 10, 2017

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

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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 San Miguel Mine to Areas F, G, and H in McMullen County, Texas by San Miguel Electric Cooperative, Inc..

APPLICANT: San Miguel Electric Cooperative, Inc.
c/o Ms. Nellie Frisbee
Fuels Manager
P.O. Box 280
Jourdanton, Texas 78026

APPLICATION NUMBER: SWF-2012-00268

DATE ISSUED: February 10, 2017

LOCATION: The proposed project area is 2,707 acres—of which approximately 2,263 acres would be mined within the proposed San Miguel Electric Cooperative, Inc. (SMECI) F, G, and H Area Mine, all within McMullen County. The project area is fully within Areas F, G, and H, with the mine center being approximately at Latitude 28° 36' 34 N and Longitude -98° 31' 28" W. Extraction of lignite (coal) is proposed to begin in 2017, with construction of infrastructure proposed to begin in 2016. The project area is north of the town of Tilden, Texas (see Figure 1); is contained within the Cross, Cross NE, Crowther, and Caballos 7.5-minute USGS quadrangle maps; and is in the USGS Hydrologic Units 121101090503 (Bruce Branch-San Miguel Creek) and 121101090504 (La Jarita Creek).

San Miguel Mine Areas F, G, and H are generally bounded by San Miguel Creek on the south, State Highway 16 on the west, Farm Road 791 on the north, and various property lines on the east.

OTHER AGENCY AUTHORIZATIONS: (1) Texas Pollutant Discharge Elimination System (TPDES) Wastewater Discharge Permit [WQ0002043000], TCEQ; (2) TPDES Stormwater Multi-sector General Permit [TXR050000], TCEQ; and (3) Surface Mining Permit [TBD], Railroad Commission of Texas (RCT).

PROJECT DESCRIPTION: The applicant proposes to discharge approximately 6,211 cubic yards of fill material into approximately 3.84 acres of WOUS in conjunction with the construction, operation and reclamation of the proposed San Miguel Mine—Areas F, G, and H (SMECI FGH) in McMullen County; the RCT permit number is pending at this time. Total impacts to WOUS would include 2.86 acres of non-forested wetlands; 0.44 acre of impoundments (stock tanks/ponds); and 5,078 linear feet (lf) (0.54 acre) of streams, including 1,007 lf (0.23 acre) of intermittent; and 4,071 lf (0.31 acre) of ephemeral streams. Notably, impacts to perennial streams have been avoided. The proposed impact area would consist of approximately 2,263 acres in McMullen County (see Figures 2-7). Surface mining operations would be conducted with conventional open pits excavated by large draglines and supported by standard earth moving equipment such as scrapers, dozers, continuous surface miners, hydraulic excavators, front-end loaders, coal trains, and haul trucks. Infrastructure in support of the operation would include (1) construction of ponds and diversions to control surface water drainage, (2) relocation of pipelines, (3) construction of service roads, and (4) closure and/or relocation of a number of county roads to facilitate mine operations and protect public safety. 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 WOUS, including wetlands, associated with filling or dredging activities.

Mining of the SMECI FGH would provide SMECI reliable access to a continued source of low cost lignite fuel for the nearby San Miguel Power Plant. In addition, this fuel resource is necessary to provide continuation of reliable and cost effective electric generation for San Miguel's customers.

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 WOUS associated with La Jarita and San Miguel Creeks. Approximately 0.45 acre of non-forested wetlands and 8,072 linear feet (2.56 acres) of streams, including 3,031 feet of perennial stream, are projected to be avoided with minimization planning due to the strategic location of structures and mining operations. Despite incorporating measures to avoid and minimize impacts to WOUS, the project would result in the loss of approximately 3.84 acres of WOUS. Specifically, 2.86 acres of wetlands, 0.54 acre (5,078 linear feet) of streams, and 0.44 acre 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 in-kind WOUS 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 target 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 the San Miguel Mine. The applicant has proposed annual monitoring of mitigation sites with TXRAM conditional assessments performed at 5-year intervals to ensure success criteria are met. Compensatory mitigation areas are proposed to be protected long-term through the use of conservation easements. Financial assurance funds are proposed in addition to required RCT bonding monies to further ensure mitigation success.

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: Many permit applications the USACE evaluates for mining subject to Surface Mining Control and Reclamation Act of 1977 (SMCRA) involve species that are protected under the Endangered Species Act (ESA). USACE has been conducting various consultations with the U.S. Fish and Wildlife Service (USFWS) on a project specific basis. It is believed that such consultations are not warranted, are redundant and are the responsibility of another agency. USACE holds that that the Office of Surface Mining Reclamation and Enforcement (OSM) is the lead Federal agency in accordance with 50 CFR 402.07 that is required to ensure compliance with Section 7 of the ESA for the proposed action. USACE recognizes that typically most of its permit decisions related to mining involve actions, as defined at 50 CFR 402.02, that are smaller in scope than OSM's control and responsibility and occasionally are comparable in scope. Therefore, potential action areas and the direct, indirect and cumulative effects to species protected under the ESA should be covered by OSM's efforts and authority.

USACE fully recognizes that the RCT has adopted surface coal mining and reclamation and operations regulatory program authority under SMCRA from OSM. RCT's implementation of its program is required to ensure actions it authorizes comply with ESA as detailed in the USFWS's September 24, 1996 Programmatic Biological Opinion (BO) and Conference Report to OSM which addresses the continuation and approval of surface coal mining and reclamation operations under State and Federal regulatory programs adopted pursuant to SMCRA. The consultation and resulting BO were based on OSM's Federal action(s) of approval of state and Federal regulatory program adoption. Such efforts to comply with ESA by RCT and/or OSM should ensure that USACE's responsibilities for ESA compliance associated with Section 10 and/or 404 permits are fully addressed.

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.

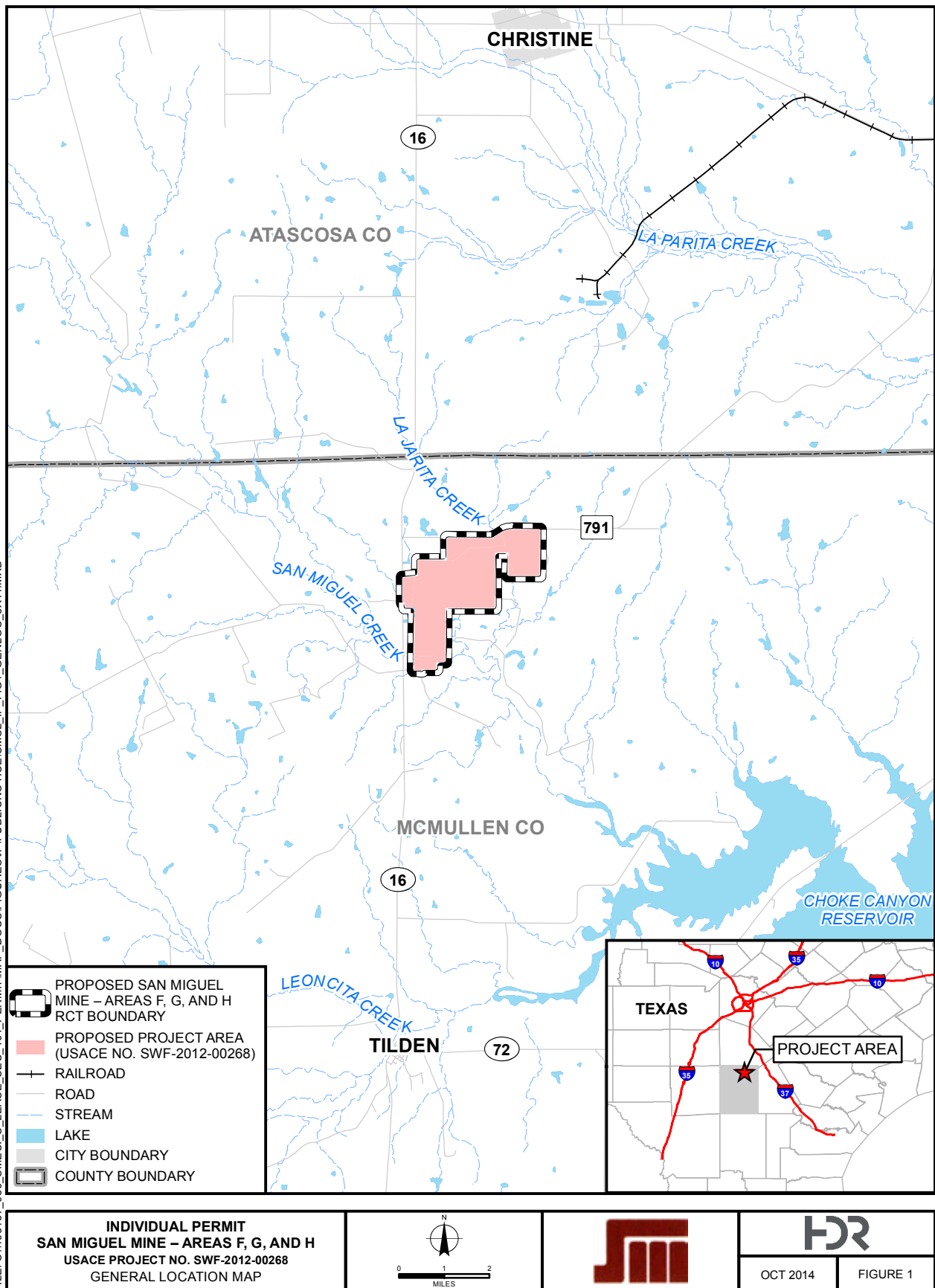
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be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

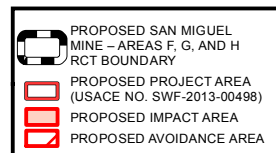
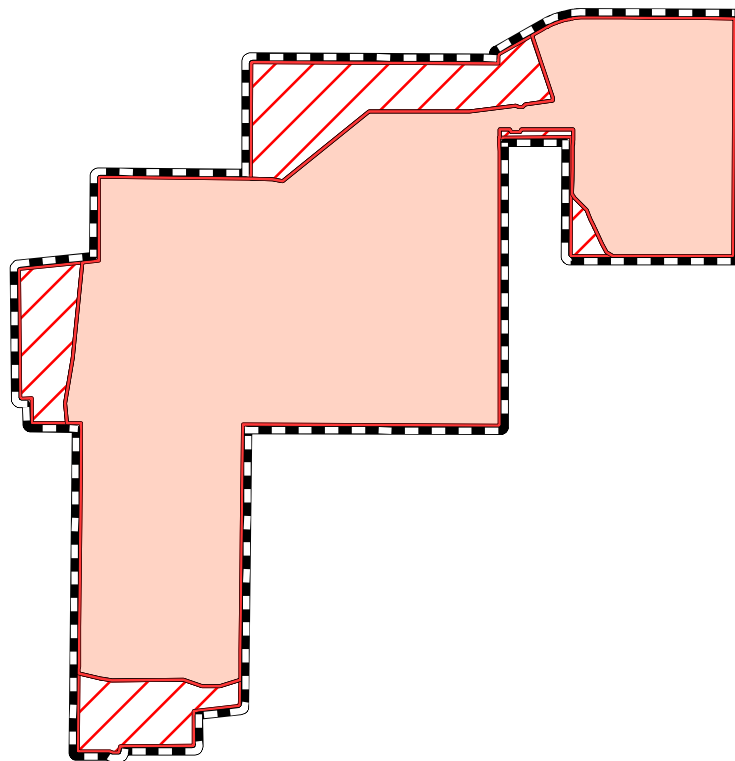
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before March 17, 2017, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments 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

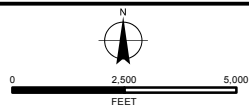
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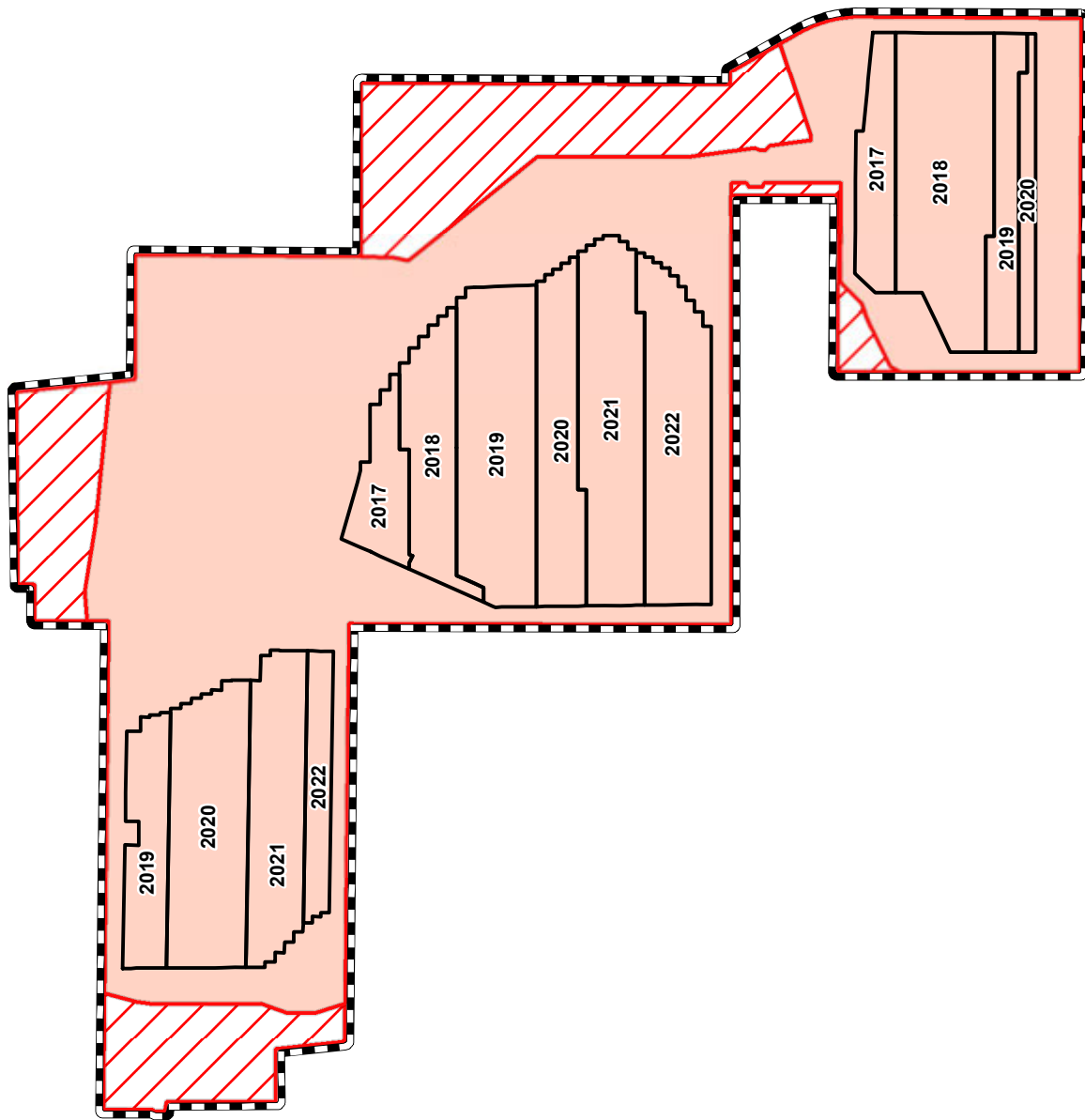
INDIVIDUAL PERMIT
SAN MIGUEL MINE – AREAS F, G, AND H
USACE PROJECT NO. SWF-2012-00268
PROPOSED USACE AUTHORIZATION








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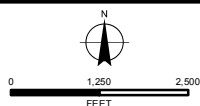
FIGURE 2

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-  PROPOSED SAN MIGUEL MINE – AREAS F, G, AND H RCT BOUNDARY
-  PROPOSED PROJECT AREA (USACE NO. SWF-2012-00268)
-  PROPOSED IMPACT AREA
-  PROPOSED AVOIDANCE AREA
-  PROPOSED MINE BLOCK

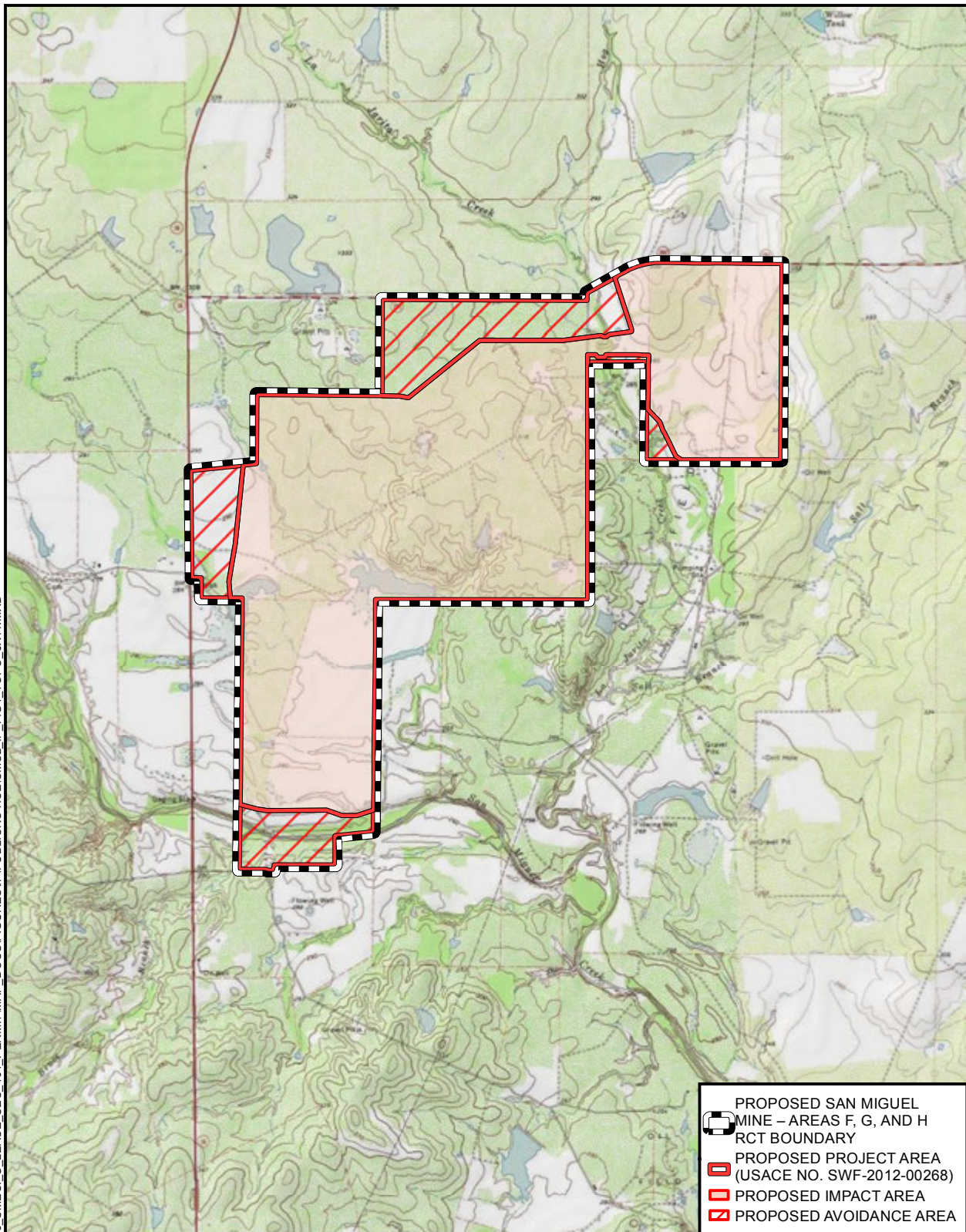
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SAN MIGUEL MINE – AREAS F, G, AND H
 USACE PROJECT NO. SWF-2012-00268
 PROJECTED SEQUENCE OF MINING



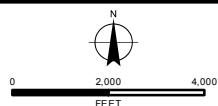
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FIGURE 3

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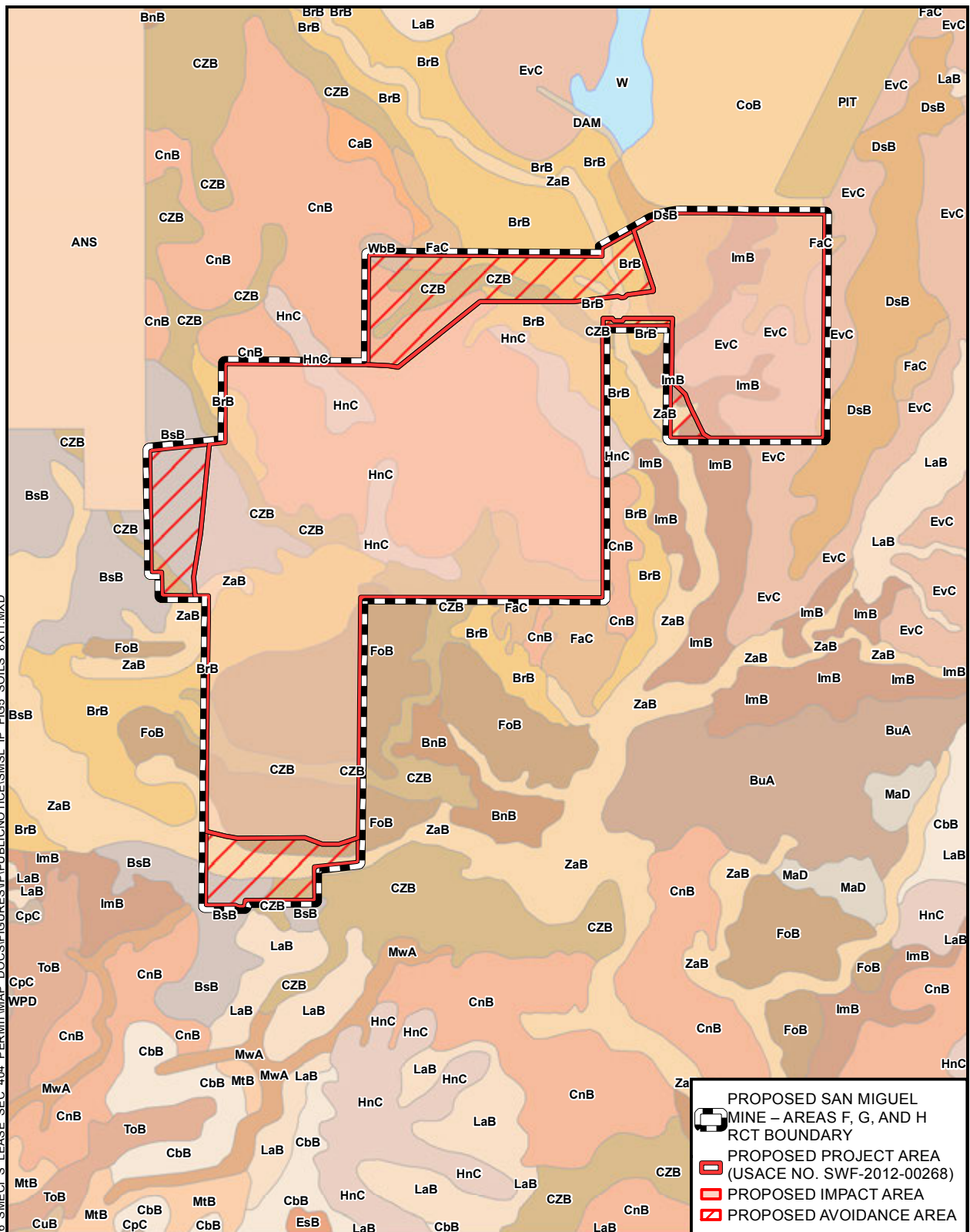
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SAN MIGUEL MINE - AREAS F, G, AND H
USACE PROJECT NO. SWF-2012-00268
TOPOGRAPHIC FEATURES



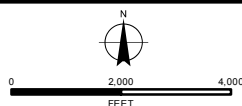
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FIGURE 4

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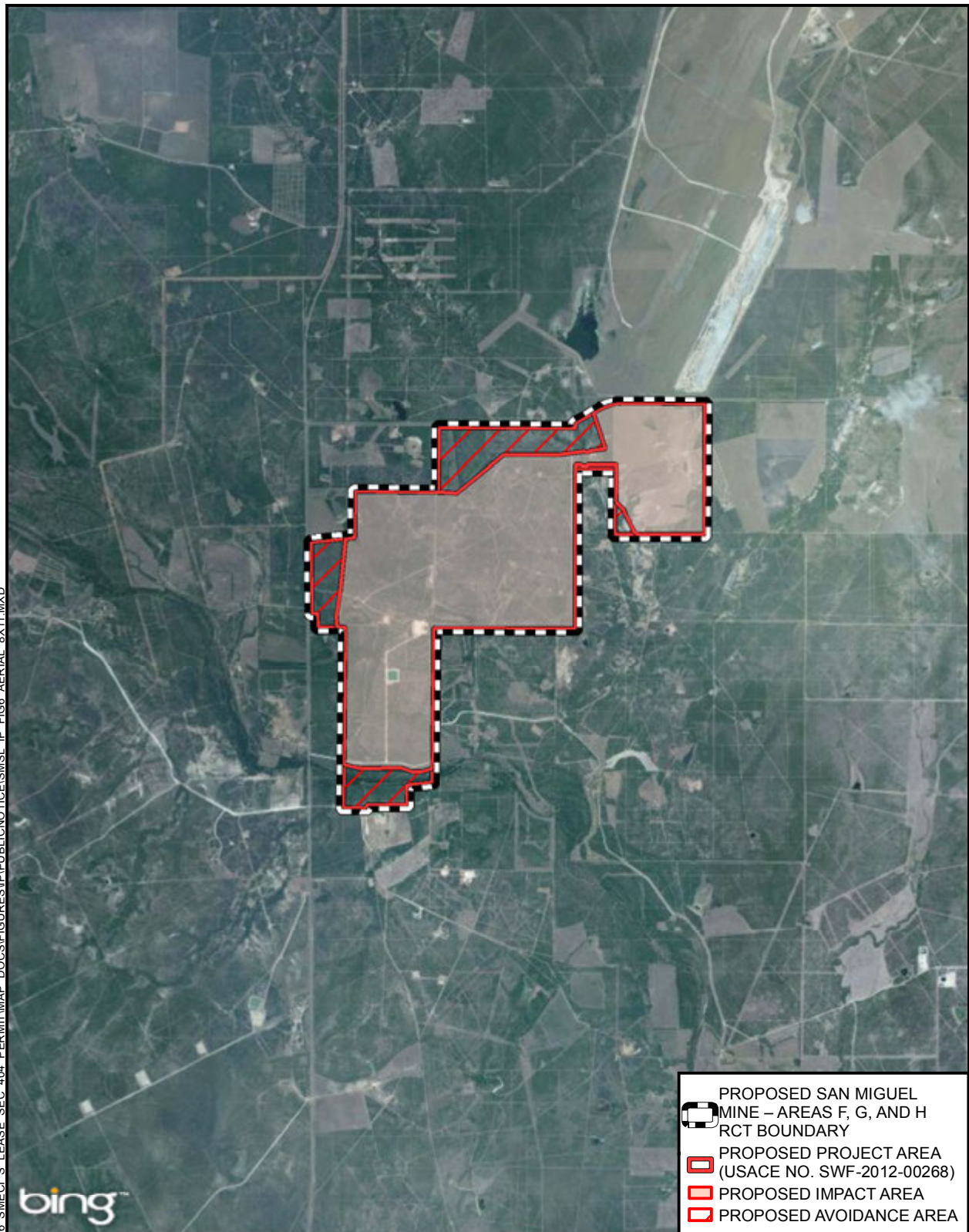
INDIVIDUAL PERMIT
SAN MIGUEL MINE - AREAS F, G, AND H
USACE PROJECT NO. SWF-2012-00268
SOIL MAP



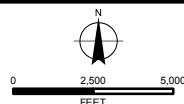
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FIGURE 5

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INDIVIDUAL PERMIT
SAN MIGUEL MINE – AREAS F, G, AND H
USACE PROJECT NO. SWF-2012-00268
AERIAL PHOTOGRAPH



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FIGURE 6

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