



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

# Public Notice

Applicant: Mitigation Management, LLC

Project No.: SWF-2016-00260

Date: May 14, 2020

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## Purpose

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, Project Manager

Phone Number: 817-886-1733

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## **PUBLIC NOTICE**

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

**SUBJECT:** On February 28, 2017, the U.S. Army Corps of Engineers (USACE) issued a public notice for the proposed Wendell's Gulch Mitigation Bank (WGMB or Bank). Due to a lapse in activity, a second public notice is being issued to provide interested parties an opportunity to comment on a proposal to create the WGMB, located north of the town of Cuneo in Cherokee County, Texas.

**APPLICANT:** Mitigation Management, LLC.  
c/o J. Mike Bird  
2557 State Hwy 7 East  
Center, Texas 75935

**APPLICATION NUMBER:** SWF-2016-00260

**DATE ISSUED:** May 14, 2020

**LOCATION:** The proposed bank is located along a tributary (Wendell's Gulch) of Flat Creek in the northwestern part of Cherokee County, Texas, approximately 1 mile north of Cuneo on County Road 3501. The approximate center of the proposed WGMB is located at latitude 32.0459° north and longitude 95.4064° west on the Berryville 7.5-minute United States Geodetic Survey quadrangle map. The site is located on both sides of Wendell's Gulch and within the Upper Neches Basin (8-digit HUC 12020001) and the South-Central Plains U.S. Environmental Protection Agency (EPA) Level III Ecoregion (Griffith et al., 2003). The entire property encompasses approximately 148 acres, of which an estimated 66 acres would be included in the Bank. A vicinity map of the proposed Bank site is depicted via Figure 1.

**PROJECT DESCRIPTION:** The purpose of the proposed Bank is to restore and perpetually conserve difficult-to-replace aquatic resources, most of which are best described as ephemeral, intermittent, and perennial streams and associated riparian habitats within the WGMB located within the Upper Neches River watershed. The operational goals of the Sponsor in undertaking development of the proposed Bank are to: 1) quantify, and make available, Texas Rapid Assessment Method (Version 2.0 (TxRAM)) Conditional Integrity Units (CIUs) for use to satisfy compensatory mitigation requirements for losses of aquatic resource functions and services within the geographic extent of the Service Area, 2) provide United States Army Corps of Engineers (USACE) permit applicants greater flexibility in compensating for unavoidable adverse impacts to the aquatic ecosystem, and 3) provide proven and higher quality methods of compensation for Waters of the United States (WOUS).

Historically, the property was predominantly agricultural fields interspersed with pastureland and scattered pockets of timber (both regenerating and harvested) located adjacent to channelized or impounded stream courses. Pastureland was converted to timberland in the 1980's and remained as such until approximately 2005, at which time most of the timber was harvested. Following harvest, much of the property was converted back into pastureland (Figure 2). A powerline right-of-way was established on the north section of the property sometime between 1972 and 1996.

The soils found within the proposed Bank boundary are predominantly listed as nonhydric, except for Mantachie fine sandy loam (Bb). This soil series consists of poorly drained acid alluvial soils that occupy nearly level flood plains of streams. Most of the proposed Bank is composed of the Bub-Trawick complex (Bt), Hannahatchee fine sandy loam (Hb), Nacogdoches fine sandy loam (Ng/Ne), and Tenaha loamy fine sand (Rf) (Figure 3).

The proposed Bank is largely pasture consisting of native and improved grasses (predominantly bahia grass, *Paspalum notatum*). Forested riparian areas on the property contain native woody vegetation that is normally found in the region, such as American elm (*Ulmus americana*), black willow (*Salix nigra*), cherrybark oak (*Quercus pagoda*), post oak (*Q. stellata*), willow oak (*Q. phellos*), water oak (*Q. nigra*), sugarberry (*Celtis laevigata*), green ash (*Fraxinus pennsylvanica*), eastern redcedar (*Juniperus virginiana*), American sycamore (*Plantanus occidentalis*), sweetgum (*Liquidambar styraciflua*), flameleaf sumac (*Rhus lanceolate*), American beautyberry (*Callicarpa americana*), Chinese privet (*Ligustrum sinense*), roughleaf dogwood (*Cornus drummondii*), eastern redbud (*Cercis canadensis*), and loblolly pine (*Pinus taeda*). Much of the forested riparian zones are very narrow or sparse, with most of the riparian habitat being herbaceous in nature, as can be seen in Figure 2. Minor inclusions of forested wetland habitat exist adjacent to a perennial stream that flows from the northwestern portion of the property into the Flat Creek wetland and stream floodplain complex.

Most of the terrain within the proposed Bank boundary is higher up in the watershed and consists of gently sloping hills that drain into various unnamed streams within the Bank, and then off property into the Flat Creek Floodplain (Figure 4). Perennial base flow is evident in stream channels along lower gradient reaches at topographic lows. Flat Creek, located approximately 650 feet north of the property boundary, is a tributary to the Neches River. Because of this network of stream courses, the bank receives stream flow from a number of sources, mostly originating within or near the bank itself.

The proposed Bank is currently planned to consist of approximately 66 acres of riparian area, encompassing an estimated 7,626 linear feet of ephemeral, intermittent, and perennial streams (Figure 5). Numerous stream reaches have been impounded, channelized, improperly culverted, and/or cleared of woody riparian vegetation resulting in channel instability (i.e. headcutting, incision, etc.). Stream reaches will be restored to stable planform geometry using natural channel design techniques based on site and watershed characteristics. This will include Priority 1, 2, and 3 restoration activities including reconnecting channels to floodplains, pond dam removal, etc. It has been estimated that approximately 11,000 linear feet of stream will result from the restoration

activities. Native woody species will be re-established within most of the riparian zones. Once a Preliminary Jurisdictional Determination (PJD) is completed, Bank acreage and linear footage of streams will be adjusted. Areas containing existing infrastructure (e.g. powerline right-of-way) will be excluded from the final Bank acreage, these areas will be identified in the Draft Mitigation Banking Instrument (DMBI).

Prior to selection of this site, the Bank Sponsor conducted a detailed evaluation and strategically selected this site for a number of reasons including, but not limited to, watershed needs, prospects for long-term sustainability and site integrity, potential for aquatic habitat diversity, habitat connectivity, trends in land use, compatibility with adjacent land uses, anticipated uplift potential, and probability for success; or, collectively, a watershed approach. It is anticipated this project would contribute to broad natural resource conservation initiatives and complements state and federal watershed conservation plans. A watershed approach gives direct consideration to 1) availability of suitable acreage and opportunities for valuable wetland/stream restoration and enhancement activities, 2) the lack of existing mitigation banks within the watershed, and 3) scarcity of viable mitigation opportunities within the proposed service area. The proposed service area is based on the standardized protocol developed by the Fort Worth District Interagency Review Team (IRT) and includes portions of HUCs 12020001, 12020004, and 12020002, wholly within the Fort Worth District USACE. The service area will include portions of Anderson, Angelina, Cherokee, Henderson, Houston, Nacogdoches, Rusk, Smith, and Van Zandt counties (Figure 6).

A Mitigation Banking Instrument (MBI) would be developed in accordance with the CMLR, (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 U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service (USFWS), Texas Commission on Environmental Quality, Railroad Commission of Texas, and Texas Parks and Wildlife Department comprise the Interagency Review Team (IRT), and 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 stream and wetland restoration activities.

**ENDANGERED AND THREATENED SPECIES:** The USACE has reviewed the USFWS's latest published version of endangered and threatened species to determine if any may occur in the project area. The proposed project is located in a county where the Red-cockaded woodpecker (*Picoides borealis*), is known to occur or may occur. The Red-cockaded woodpecker is an endangered species. Our initial review indicates that the proposed work would have "no effect" on any federally listed endangered or threatened species. It can be assumed that the nature of the project may have positive effects on those threatened and endangered species that may use the restored and protected habitat.

**NATIONAL REGISTER OF HISTORIC PLACES:** Portions of the proposed mitigation bank have been preliminarily surveyed for the presence of historic and prehistoric cultural resources. One prehistoric site was identified inside the boundary of the proposed mitigation bank. The delineated boundary of the prehistoric site will be avoided by any proposed permanent or temporary construction activities associated with the project including access roads. Additional cultural resource survey is anticipated for workspaces associated with this project including: access roads, fence lines, and any other permanent or temporary impacts not captured by the preliminary cultural resource survey.

**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 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.

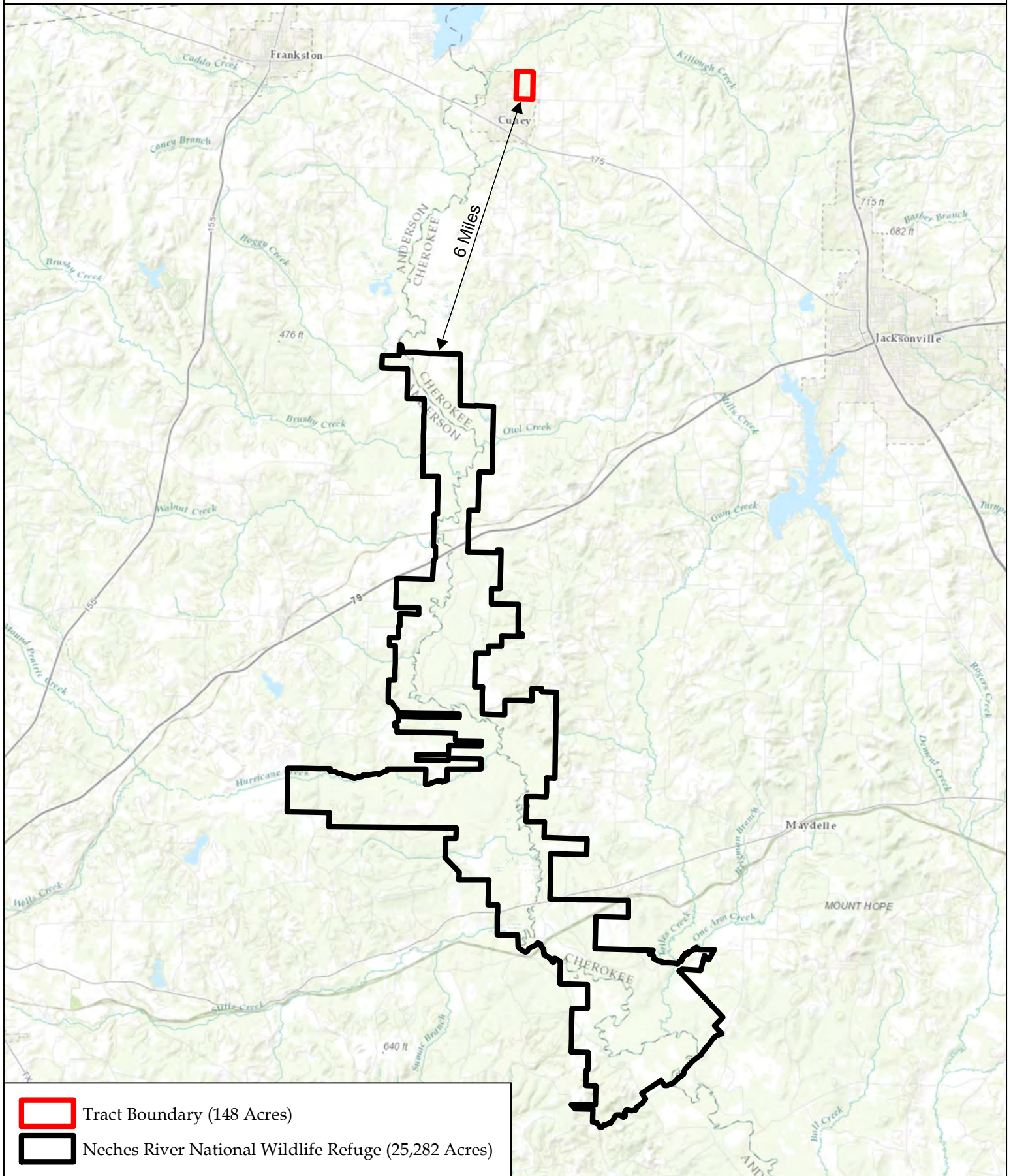
**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before June 15, 2020, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no 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 [brent.j.jasper@usace.army.mil](mailto:brent.j.jasper@usace.army.mil) OR Regulatory Division, CESWF-DE-R; U.S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. At this time due to COVID-19, the USACE is doing our best to follow federal, state, and city orders. As part of that effort,

we are making every reasonable effort for coordinating projects with the public remotely if at all possible. As such, 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



# Proximity Map Wendell's Gulch Tract - Cherokee County, Texas





2015 Imagery  
Wendell's Gulch Tract - Cherokee County, Texas



11/9/2016  
Imagery: 2015 TOP

0 230 460 690 920 1,150  
Feet

1 Inch = 394 Feet

This map was generated by Advanced Ecology, LTD.  
No claims are made to the accuracy or  
completeness of the data depicted in this  
map or to the map's suitability for a particular  
use. The information depicted may contain  
inaccuracies and is provided "as is".



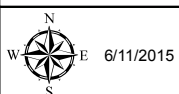
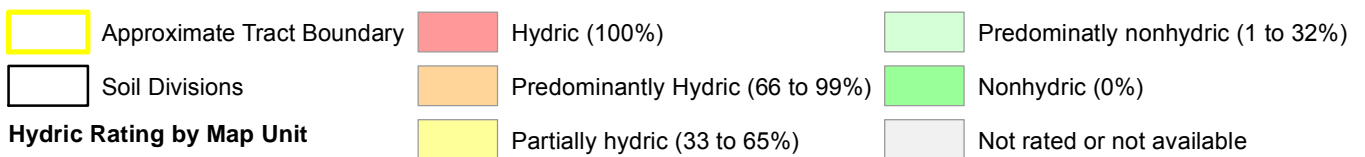
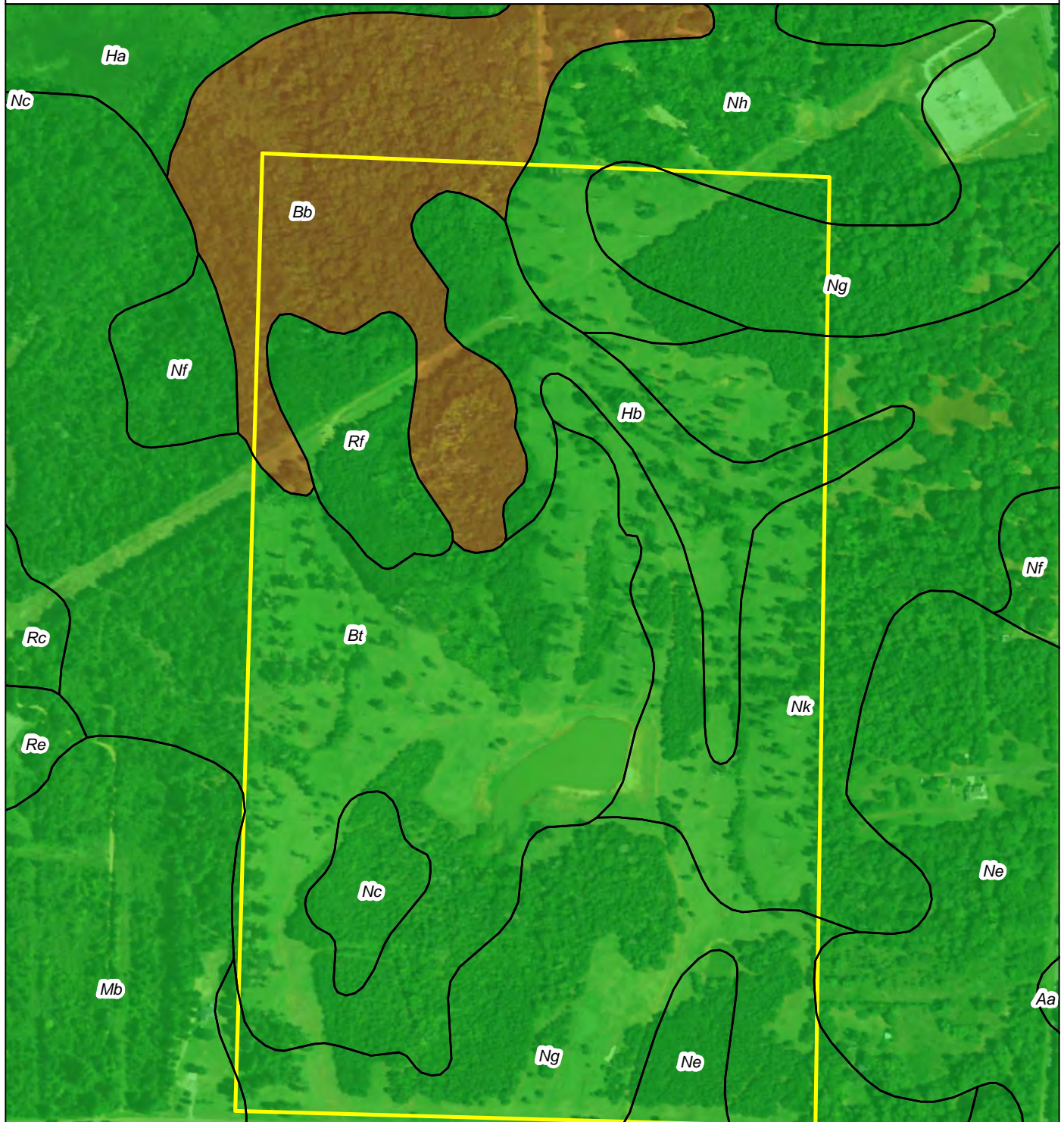
Texas Office: (936) 598-3053 Louisiana Office: (318) 797-1546

**Figure 2.**



# Soil Map

## Wendell's Gulch Tract - Cherokee County, Texas



Imagery: 2014 NAIP  
Soils: USDA NRCS

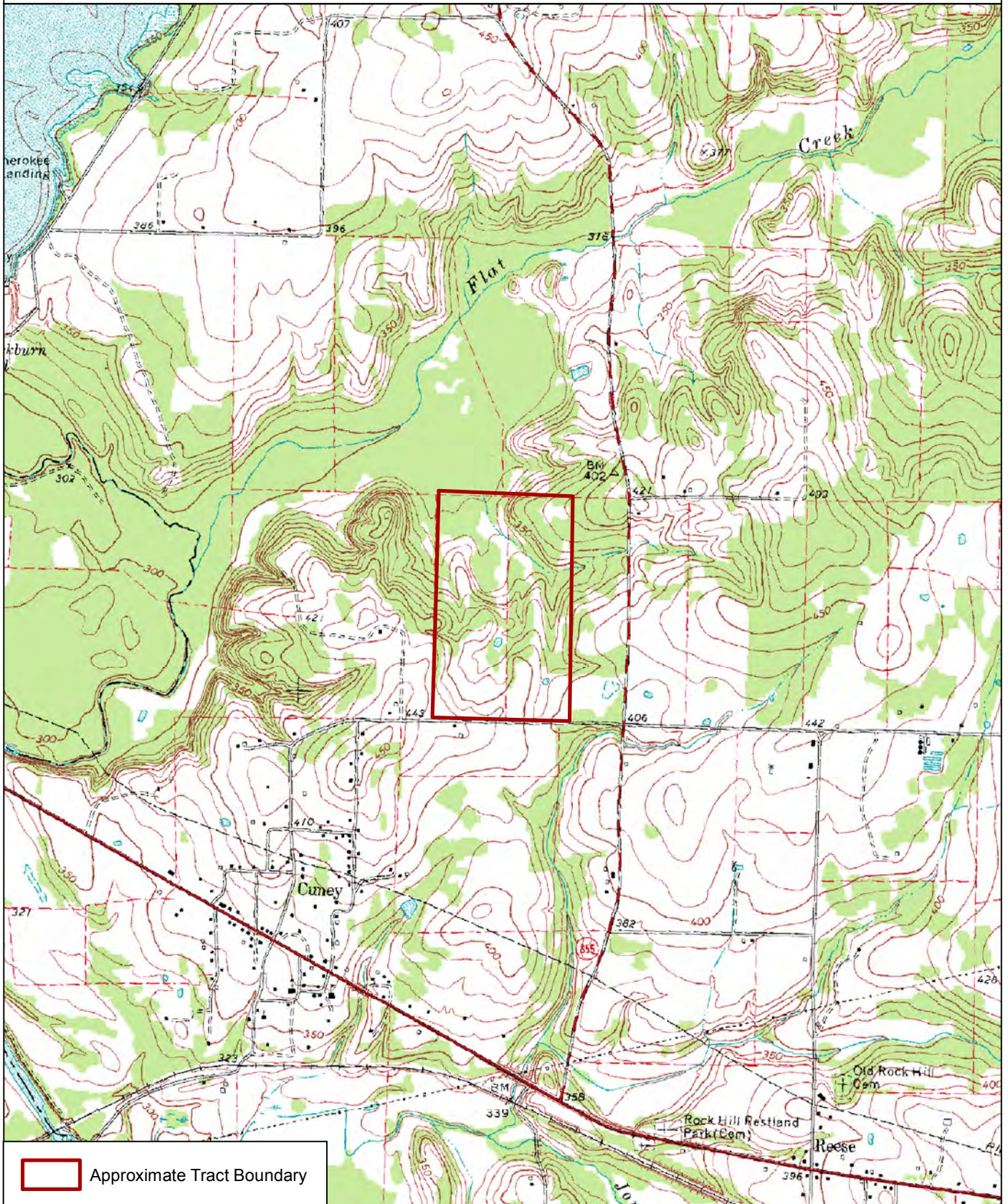
Figure 3.

This map was generated by Advanced Ecology, LTD. using GIS (Geographical Information System) software. No claims are made to the accuracy or completeness of the data depicted in this map or to the map's suitability for a particular use. The information depicted may contain inaccuracies and is provided "as is".





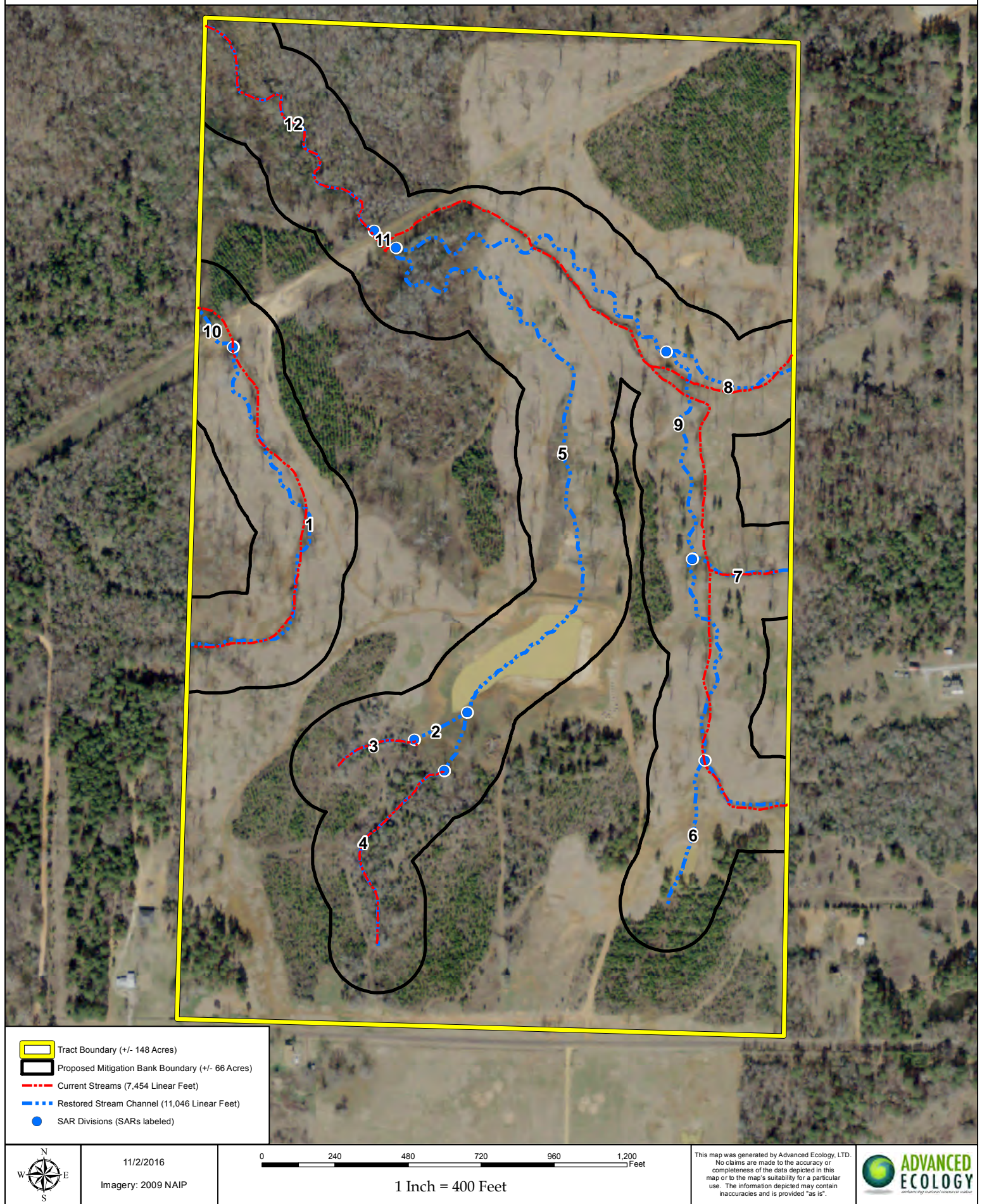
Topo Map  
Wendell's Gulch Tract - Cherokee County, Texas





# Conceptual Mitigation Work Plan Map

## Wendell's Gulch Mitigation Bank - Cherokee County, Texas



Texas Office: (936) 598-3053 Louisiana Office: (318) 797-1546

Figure 5.



### Service Area Map Wendell's Gulch Tract - Cherokee County, Texas

**Legend:**

- 8 Digit HUCs
- Primary Service Area
- Secondary Service Area
- Level III Ecoregions**
  - East Central Texas Plains
  - South Central Plains
- Texas USACE District Boundaries
- Texas Counties

**Map Labels:**

**HUCs:** 12010001 Upper Sabine, 12010003 Lake Fork, 11140307 Little Cypress, 11140306 Caddo Lake, 12030107 Cedar, 12030105 Upper Trinity, 12020001 Upper Neches, 12020004 Upper Angelina, 12020005 Lower Angelina, 12020002 Middle Neches, 12020003 Lower Neches, 12030201 Lower Trinity-Tehuacana.

**Counties:** Van Zandt, Wood, Upshur, Gregg, Harrison, Panola, Rusk, Cherokee, Anderson, Freestone, Leon, Houston, Trinity, Polk, Tyler, Jasper, San Augustine, Shelby, Toledo Bend Reservoir.

**Project Location:** Marked with a star in the Upper Neches HUC (12020001).

**Scale:** 0 to 40 Miles.

**Figure 6.**

Drawn By: Jay Deatherage  
Date: July 6, 2016

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

**ADVANCED ECOLOGY**