



# Toledo Bend Project

## Joint Operation



February 3, 2012

Via Electronic Filing

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re: Toledo Bend Project, FERC Project No. 2305-036;  
Final Shoreline Management Plan**

Dear Secretary Bose:

The Sabine River Authority of Texas and Sabine River Authority, State of Louisiana (collectively, Authorities) hereby submit the enclosed Final Shoreline Management Plan (SMP) for the Federal Energy Regulatory Commission's (FERC or Commission) relicensing of the Toledo Bend Project, FERC Project No. 2305 (Project). The Final SMP is a comprehensive plan to govern the Project's extensive 1,130 mile shoreline, which is within two states, during the new license term.

As part of the Final License Application filed with the Commission on September 30, 2011, the Authorities included a Preliminary Draft SMP, together with a schedule for consulting with resource agencies and interested members of the public, obtaining and reviewing comments from agencies and stakeholders, and revising the Preliminary Draft SMP, as appropriate, based on comments received. The schedule provided for the Authorities to complete all this work and file a final SMP with the Commission for approval by today, February 3, 2012.

The enclosed Final SMP reflects the culmination of this extensive effort. Over the past several months, the Authorities have worked vigorously to seek the views of resource agencies and members of the public who recreate at the Project, own residences adjacent to Toledo Bend, and rely on the numerous resources provided by Toledo Bend as their livelihood. The Authorities held multiple, well-publicized public meetings to review the SMP and receive comments, and met individually with federal and state resource agencies, to obtain feedback and comments on the plan. The Preliminary Draft SMP was placed on the websites of both Authorities, as well as the Project relicensing website, and during the public meetings, the Authorities actively solicited comments by providing meeting participants with a customized comment form.

Overall, the comments received were constructive and provided good input to the Authorities' efforts in the SMP to continue their long-standing permitting programs, with adjustments and enhancements where appropriate, during the new license term. As part of this filing, the Authorities have enclosed all comments received on the Preliminary Draft SMP, as well a written response to each comment.

The Final SMP seeks to protect the Project's primary purpose of water supply and secondary purposes of hydroelectric power generation and public recreation. At the same time, the Plan seeks to promote economic development in the region by accommodating shoreline development proposals that maintain the natural scenic quality of the shoreline and protect scenic, recreational, and environmental attributes of the Project. As such, the Authorities believe the SMP is the ideal plan for the Authorities' management of the Project's 1,130 mile shoreline during the new license term, and are prepared to commence implementation of the Final SMP upon the effective date of a new license, issued by the Commission, that approves the Final SMP and makes it part of the new license.

The Authorities appreciate the efforts of federal and state resource agencies, Indian tribes, and members of the public in providing input and assistance in the development of this Final SMP. The Authorities look forward to working with the Commission and relicensing participants to ensure timely issuance of a new license for the Project.

If you have any questions about the Authorities' Final SMP, please do not hesitate to contact the undersigned at 409-746-2192 or [mswoboda@sratx.org](mailto:mswoboda@sratx.org).

Respectfully submitted,



Melvin T. Swoboda  
Licensing Manager

Enclosure

cc: Attached Distribution List

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**(FERC PROJECT NO. 2305)**

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FINAL

SABINE RIVER AUTHORITY OF TEXAS  
SABINE RIVER AUTHORITY, STATE OF LOUISIANA

TOLEDO BEND PROJECT  
(FERC No. 2305)  
SHORELINE MANAGEMENT PLAN



FEBRUARY 2012

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## LIST OF ACRONYMS

APE.....	Area of Potential Effects
Authorities.....	Sabine River Authority, State of Louisiana, and/or the Sabine River Authority of Texas
CLUP .....	Commercial Limited Use Permit
ESA.....	Endangered Species Act
FERC.....	Federal Energy Regulatory Commission
FPA .....	Federal Power Act
gpd.....	gallons per day
LA .....	Louisiana
LDNR.....	Louisiana Department of Natural Resources
LDWF .....	Louisiana Department of Wildlife and Fisheries
LOCD.....	Louisiana Office of Cultural Development
msl.....	mean sea level
National Register .....	National Register of Historic Properties
PGP .....	Programmatic General Permit
PLUP .....	Private Limited Use Permit
Project .....	Toledo Bend Project (FERC No. 2305)
RCW .....	red cockaded woodpecker
Reservoir .....	Toledo Bend Reservoir
RM .....	river mile
RRC.....	Railroad Commission of Texas
RTE.....	rare, threatened, and endangered
SMP.....	Shoreline Management Plan
SRA.....	Sabine River Authority
SRA-LA .....	Sabine River Authority, State of Louisiana
SRA-TX .....	Sabine River Authority of Texas
TCEQ .....	Texas Commission on Environmental Quality
THC.....	Texas Historical Commission
TPWD .....	Texas Parks and Wildlife Department
TX .....	Texas
USACE .....	U.S. Army Corps of Engineers

USFS .....U.S. Forest Service

USFWS .....U.S. Fish and Wildlife Service



## **1.0 INTRODUCTION**

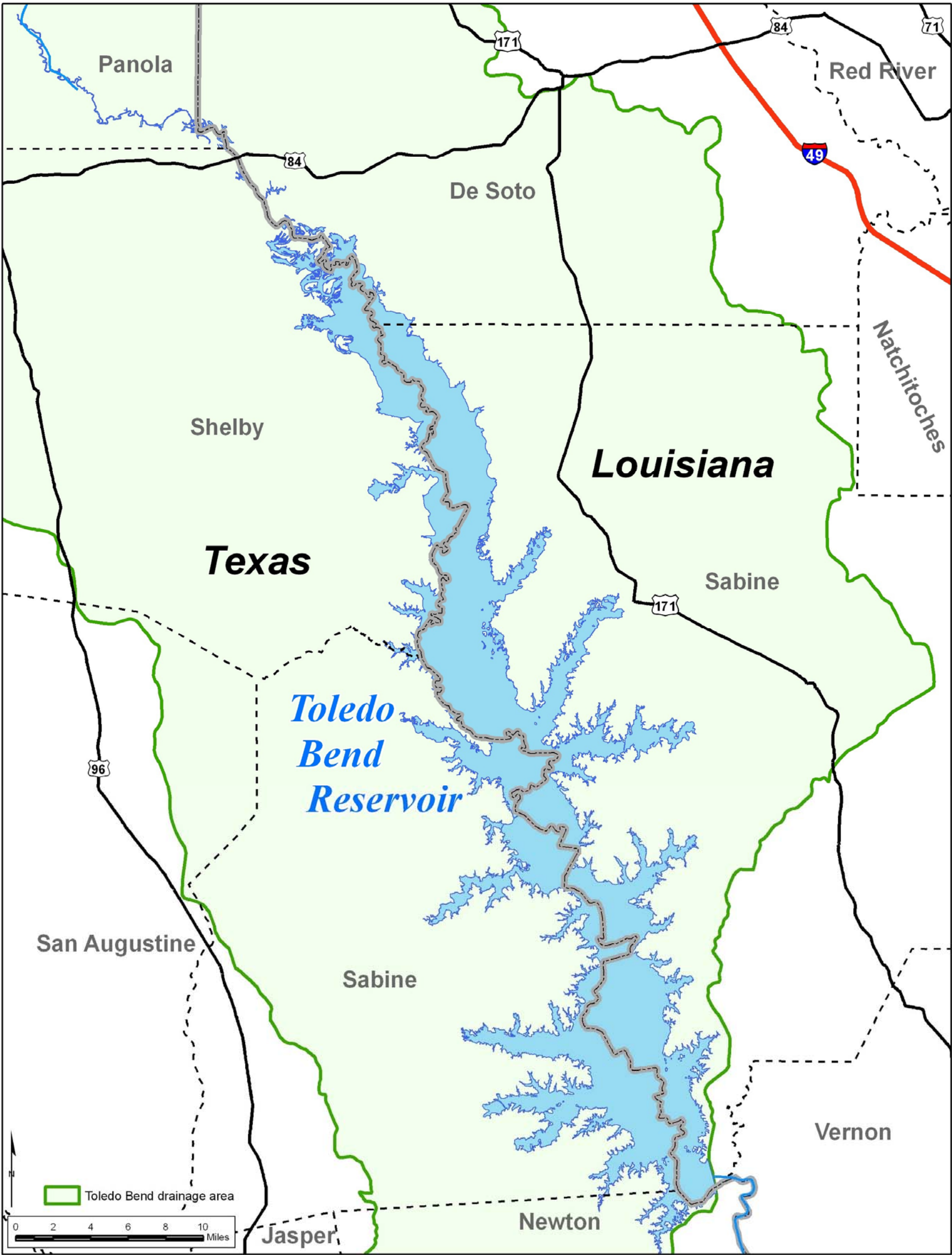
### **1.1 TOLEDO BEND PROJECT**

The Toledo Bend Project (FERC No. 2305) (“Toledo Bend Project” or “Project”) is an existing, federally licensed hydroelectric project jointly owned and operated by the Sabine River Authority (“SRA”), State of Louisiana, and the Sabine River Authority of Texas (together, “the Authorities”; individually “SRA-LA” and “SRA-TX,” respectively). The Project was originally licensed to the Authorities as co-licensees in 1963 by the Federal Energy Regulatory Commission’s (FERC) predecessor agency, the Federal Power Commission. The Project was initially conceived, licensed, and developed as, and today functions primarily as, a water supply facility, with hydroelectric power generation and recreation as secondary purposes.

The Toledo Bend Project is located on the Sabine River in Panola, Shelby, Sabine, and Newton counties in Texas; and DeSoto, Sabine, and Vernon parishes in Louisiana (Figure 1-1). The existing facilities at the Project include a dam and powerhouse, three dikes, gated spillway, tailrace and excavated channel, switchyard, turbines, penstocks, and primary transmission line. The Toledo Bend Reservoir (or “Reservoir”) extends approximately 132 river miles (RM) up the Sabine River to just north of Logansport, Louisiana, from RM 147 to RM 279. Toledo Bend Reservoir is a large, irregularly shaped basin that consists of approximately 1,130 miles of shoreline and 185,000 surface acres at 172 feet mean sea level (msl). It is the largest manmade reservoir in the southern United States and the fifth largest in the country and is located along the boundary between Texas and Louisiana. From the Toledo Bend Dam, the Sabine River flows in a southerly direction for approximately 146 miles, where it empties into Sabine Lake, which flows into the Gulf of Mexico.

The Toledo Bend Reservoir consists of several major drainage basins that are larger than many lakes. The topography creates many small coves and inlets in addition to the main portion of the Reservoir. While much of the shoreline is undeveloped, residential and commercial development does occur along the shores. In accordance with its federal license, the Authorities maintain property rights and therefore have control over types of facilities and activities that occur below the approximate 175-foot-msl contour elevation (i.e., the Project Boundary, the “Take Line”). Use of lands located beyond the Project Boundary is at the discretion of the property owner and governed by local or state laws or regulations.

FIGURE 1-1  
TOLEDO BEND RESERVOIR AND LOWER BASIN



## **1.2 PURPOSE OF THE SHORELINE MANAGEMENT PLAN**

This Shoreline Management Plan (SMP) has been developed as part of the FERC relicensing of the Project and will become effective once FERC issues a new license for the Project, approves this SMP, and makes it part of the new license. The SMP is a comprehensive plan to manage the multiple resources and uses of the Project's shoreline in a manner that is consistent with license requirements and Project purposes, and to address the needs of the public. This SMP identifies the existing resources at the Project and acceptable uses that the Authorities will consider in analyzing the impact of new shoreline facilities and activities within the Project Boundary, prior to granting a permit or authorization for such uses.

While the SMP is a management tool to assure that use and occupancy of Project lands and waters are consistent with license requirements, FERC guidelines, and the Authorities' management policies, it also serves as a helpful guide for property owners adjacent to the Project shoreline. For example, although both SRAs (the Authorities) have well-established, existing permitting programs, persons wishing to construct or place structures within the Project Boundary or otherwise use Project lands now have a consolidated document that provides information on the types of shoreline facilities and activities that will be allowed within specific portions of the Project Boundary.

This document also identifies the types of regulatory consultation and approvals needed for various types of proposed shoreline development activities. Potential permittees should be aware that FERC's Standard Land Use Article (Article 403 of the original license, which will be adopted into the new license) (see Appendix A) provides the Authorities with limited authority to approve specific activities. Should a use or occupancy of the Project lands (or waters) that exceeds these limits be desired, FERC must individually review and approve such occupancy through an application for non-project use of Project lands before the Authorities can issue any permit or other authorization.

In the event that a requested use or occupancy is inconsistent with this SMP, including the Authorities' Policies and Guidelines set forth in Appendices C and D, the Authorities will not issue a permit or authorization, nor will they submit the proposal to FERC for further review and approval. This SMP has been approved by the Boards of both SRA-LA and SRA-TX to provide a clear understanding of the rules, processes, and procedures for activities conducted on Authorities' lands and/or waters at the Toledo Bend Project. In addition, the Authorities reserve the right to modify or change any provision of this SMP document, as described in Section 7.0.

## **1.3 GOALS AND OBJECTIVES OF THE SHORELINE MANAGEMENT PLAN**

The Toledo Bend Project is a hydroelectric project licensed and regulated by FERC. Adjoining property owners and other potential permittees should be aware that conducting activities within the Project Boundary is a revocable privilege that is allowed only through permits, leases, and other authorizations issued by the Authorities. The Authorities support the use of the Project lands and waters for a variety of activities, provided: (1) the uses meet the regulatory requirements of the license; (2) the uses are consistent with this SMP, including the Policies and Guidelines set forth in Appendices C and D; and (3) the Project's scenic, recreational, cultural,

and environmental values are protected. FERC has specific mandates, rules, and regulations relating to the operation of the Toledo Bend Project and use of lands and water within the Project Boundary.

To achieve this overall goal of balanced and controlled use of Project lands, this SMP establishes the following objectives:

1. Protecting the Project's primary purpose of water supply and secondary purposes of hydroelectric power generation and recreation.
2. Accommodating shoreline development proposals that maintain the natural scenic quality of the shoreline and water for all users, protecting specific scenic attributes, and protecting environmental attributes such as wetlands, habitat, and spawning areas.
3. Assuring that development of the shoreline is balanced, orderly, in suitable locations, and done in a manner to protect reasonable public access and use of the shoreline, and the scenic and historic resources within the Project Boundary, and provides for economic development.
4. Encouraging the development of safe, convenient, properly administered, and diversified public access to publicly owned shorelines in such a manner that public access will not infringe upon the personal or property rights of adjacent residents.
5. Requiring that proposed shoreline development activities meet applicable federal and state regulatory requirements, and providing opportunities, where practicable, to meet such requirements efficiently, through coordinated and programmatic efforts with federal and state regulators.
6. Minimizing conflicts among contrasting uses.
7. Furthering the intent and policies of the SMP through fair, balanced, and impartial administration of the shoreline permitting process.

## **1.4 COMPONENTS OF THE SHORELINE MANAGEMENT PLAN**

This SMP governs the shorelands and water of the Toledo Bend Reservoir and the areas below the dam that lie within the FERC Project Boundary. Shorelands are those lands that lie within the Project Boundary as identified on the Exhibit G Project maps approved by FERC as a part of the Project license.

As FERC licensees, the Authorities are required to manage lands and waters within the FERC Project Boundary in accordance with FERC license requirements. The policies, guidelines, and programs to manage the Toledo Bend shoreline are contained within this SMP. Three tools in shoreline management employed in this plan are: (1) classification of shorelands based on resources present, adjoining land uses and ownership, and desired future conditions; (2) description of permitted uses and processes to obtain required permits from the Authorities, including instances in which consultation with federal and state resource agencies is required;



and (3) establishment of shoreline Policies and Guidelines for both Texas and Louisiana shorelines that govern existing and future occupancies, structures, and activities along Project shorelines within the Project Boundary.

For some types of proposed development within the FERC Project Boundary, other federal programs may apply, such as the National Historic Preservation Act, Endangered Species Act (ESA), Rivers and Harbors Act, and Clean Water Act. To meet the requirements of these programs, this SMP includes procedures for consulting with federal and state fish and wildlife agencies and the State Historic Preservation Officers, where appropriate. In addition, because the Authorities are not authorized under the FERC license to approve all potential activities and uses on Project lands and waters, the SMP identifies when FERC approval is necessary for contemplated shoreline uses.

The SMP for the Toledo Bend Project includes five key components: (1) general shoreline policies; (2) classification of the Project's shorelands; (3) programs and guidelines for managing shoreline development, including issuing permits; (4) SMP enforcement; and (5) an SMP review and update process. The Policies and Guidelines for Louisiana appear in Appendix B, and the Policies and Guidelines for Texas appear in Appendix C.

## **1.5 PROPERTY OWNERSHIP AND INTERESTS**

Most lands within the Project Boundary are owned by SRA-LA or SRA-TX in fee title. SRA-LA owns all lands in Louisiana in fee title, although on some Project lands in Louisiana, during the original development of the Project, SRA-LA issued leases to adjacent shoreline owners for terms of ninety-nine years. These leases are expressly subject to safety, sanitary, building, and zoning requirements established by SRA-LA. In addition, SRA-LA has a long-standing permitting program, under which it has issued many permits for construction and development activities along the shoreline.

Similarly, in Texas, SRA-TX has a well-established permitting program for access and construction activities on Project lands it owns in fee. SRA-TX owns a fee interest in all non-federal lands in Texas within the Project Boundary. Approximately 3,797 acres of federal lands are located within the FERC Project Boundary in Texas. These lands, which include portions of the Sabine National Forest and Indian Mounds Wilderness Area, are administered exclusively by the U.S. Forest Service (USFS). Federal lands within the Project Boundary, therefore, are not eligible for the Authorities' permitting programs described in this SMP, nor does this SMP apply to USFS's management of these lands.

For these reasons, the Authorities possess sufficient interest in Project lands to manage such lands in accordance with Project purposes.

## **2.0 GENERAL SHORELINE POLICIES**

In deciding whether to issue a license under the Federal Power Act (FPA) for any project, FERC, in addition to considering the power and development purposes for which licenses are issued, gives equal consideration to the purposes of energy conservation; the protection of, mitigation of

damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat); the protection of recreational opportunities; and the preservation of other aspects of environmental quality (FPA 1920, as amended).

A FERC licensee must hold all rights in project property necessary to fulfill project purposes, including the provision of reasonable public access to project lands and waters and the protection of aesthetic and natural resources, as required under the FERC-issued license. In the context of a FERC-licensed hydropower project, an SMP is, generally, a document that is used to meet the licensee's obligations under the FPA, associated regulations, other applicable federal and state laws, and the FERC license authorizing the project.

A licensee of a hydropower project may receive requests from neighboring landowners, government agencies, or private organizations to use project land for a variety of purposes unrelated to operating the project. These uses may include, but are not limited to, construction and maintenance of boat docks, marinas, bridges, pipelines, water withdrawals, and utility lines. Requests for non-project use of project lands can involve complex issues related to commercial marina construction, shoreline development, oil and gas leases, water withdrawals, and shoreline stabilization. FERC requires that licensees ensure the shorelines within their project boundaries are managed in a manner that is consistent with project license requirements and project purposes. Conveyances and permits must be consistent with the scenic, recreational, and other environmental values of the project.

### **3.0 SHORELINE CLASSIFICATIONS, RESOURCE PROTECTION, AND DEVELOPMENT REQUIREMENTS**

This section presents the following components of the Toledo Bend Project SMP: (1) an inventory of shoreline uses; (2) the resources the SMP is designed to protect; and (3) the shoreline use conditions and requirements the Authorities have in place to protect resources and Project purposes. The Authorities will use the information in this section to assess proposed development activities and other requests for non-Project use of Project lands.

#### **3.1 SHORELINE CLASSIFICATION**

Shoreline use classification maps were created to inventory the current shoreline resources and uses at the Toledo Bend Project. These shoreline use classification maps were developed based on land use and natural resource information from publicly available sources (e.g., National Wetlands Inventory) and from studies conducted in relicensing. Shoreline use classifications are areas within the Project Boundary that are designated for certain existing and future uses that are consistent with the goals and objectives of this SMP<sup>1</sup>. These classifications are not assigned to lands outside the Project Boundary. Instead, they refer exclusively to the use of the Project shoreline property. The goal of these classifications is to balance the multiple interests involved in the shoreline's management. These use classifications will protect shoreline habitat while still allowing for shoreline development. The shoreline is classified into four use categories, as

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<sup>1</sup> USFS lands in and adjacent to the Project are displayed on the maps.

described below. Shoreline land use classification maps are presented in Appendix D. Updates of the SMP, as discussed in Section 7.0, will include a periodic review of shoreline classifications and revisions as appropriate.

### *3.1.1 U.S. FOREST SERVICE (USFS)*

The USFS classification identifies Project lands that are federally owned and administered by the USFS. All of these lands are located in Texas. As described in Section 1.5 of this SMP, federal lands are excluded from the provisions of this SMP. SRA-TX will not issue permits for use or occupancy of federal lands.

### *3.1.2 PUBLIC ACCESS*

The Public Access classification identifies Project lands where publicly owned recreation facilities and access areas currently exist or are proposed for the term of the new license. In Public Access areas, the Authorities will issue shoreline permits exclusively to public entities or concessionaires, to promote opportunities for public access and public recreation at the Project. As described more fully in Section 4.0 of the SMP, depending on the scope of the proposed use or development, different processes for resource agency consultation, FERC review and/or approval, and review and approval by the Authorities apply to proposed uses and developments in Public Access areas.

### *3.1.3 CONSERVATION*

The Conservation classification identifies Project lands where sensitive resources (such as wetlands, historic properties, and special habitats) are present. In Conservation areas, the Authorities will issue a permit for a proposed use only after consultation with all affected federal and state resource agencies, as more fully described in Section 4.0 of the SMP. Also as described in Section 4.0, in most cases FERC pre-notification or approval will be required for proposed uses in Conservation areas. Based on the results of consultation with resource agencies and FERC review, the Authorities may decline to issue a proposed permit for proposed development in a Conservation area, or the permit may be subject to protection, mitigation, and enhancement measures that the developer would be required to implement. As provided in Section 7.0 of this SMP, lands designated under the Conservation classification are subject to periodic review and modification.

### *3.1.4 GENERAL*

The General classification identifies Project lands that do not fall into the aforementioned shoreline classifications, and encompasses the majority of all non-federal shoreline areas within the Project Boundary. Lands within the General classification have not been identified as containing sensitive resources, and therefore are generally open for shoreline development activities that are consistent with this SMP, including the Policies and Guidelines set forth in Appendices C and D. As described more fully in Section 4.0 of the SMP, depending on the scope of the proposed use or development, different processes for resource agency consultation, FERC review and/or approval, and review and approval by the Authorities apply to proposed uses and developments in General areas. For more common uses, such as residential docks, the

Authorities expect that implementation of this SMP will involve few, if any, changes from their current permitting programs.

## **3.2 TOLEDO BEND SHORELINE AND RESERVOIR RESOURCE DESCRIPTIONS**

This section is organized by resource type. Each subsection presents a summary of resources within the Toledo Bend Project Boundary.

### **3.2.1 GEOLOGY AND SOILS**

The Toledo Bend Project is located in the West Gulf Coastal Plain physiographic region, a subdivision of the Coastal Plain Province of the Atlantic Plain (Natural Resources Conservation Service 2006). The West Gulf Coastal Plain borders the Gulf of Mexico and encompasses portions of Louisiana, easternmost Texas, and neighboring sections of Arkansas and Oklahoma (Bureau of Land Management Undated, Fisher 1965). The physiography of the West Gulf Coastal Plain has been shaped by the deposition of sediments in a dynamic and interrelated combination of riverine, coastal, and deltaic settings, and the Reservoir shoreline is composed entirely of sedimentary deposits primarily consisting of sand, silt, and clay. As a result of this sedimentary composition, the Toledo Bend Reservoir shoreline is susceptible to erosion, and shoreline erosion has been observed at Toledo Bend Reservoir.

Shoreline erosion has been documented at the Toledo Bend Reservoir. Erosion is an ongoing and natural process that occurs when water moves along a shoreline. Wave action derived from prevailing winds is the primary cause of erosion at the Toledo Bend Reservoir (Holmes and Stalling 1987, Taylor 1998). Other factors influencing erosion include wakes created by power boats and the continued loss of standing timber that was inundated when the Reservoir was filled.

Although erosion is a natural process, the Authorities recognize that targeted erosion control measures, where feasible and cost-effective, can be an effective means of protecting sensitive resources by impeding or ceasing erosion. The permitting process originally created by the Authorities and expanded upon in this SMP guides the Authorities in permitting shoreline stabilization features as a means of inhibiting shoreline erosion.

### **3.2.2 WATER QUALITY**

The Toledo Bend Project was initially conceived, licensed, developed, and today primarily functions as a water supply facility, with secondary uses of hydroelectric power generation and recreation. Ongoing water quality monitoring at the Toledo Bend Project demonstrates that, generally, water quality is in compliance with Texas and Louisiana numeric water quality standards (Authorities 2008b). While water quality within the Reservoir is good, and has been found to be excellent in some sampling locations, the permitting process originally created by the Authorities and expanded upon in this SMP allows the Authorities, FERC, and consulting agencies to ensure that permitted structures and activities meet applicable water quality requirements.

### 3.2.3 FISH AND AQUATIC RESOURCES

#### FISHERIES

Toledo Bend Reservoir provides a significant and diverse fishery resource, sport fishery, and other recreational opportunities and is well known for its trophy largemouth bass fishery. Besides the largemouth bass fishery, the Reservoir includes other temperate basses including white bass, yellow bass, and striped bass. Since 1976, annual stockings of striped bass have been conducted. Spotted bass are present in small numbers. Other related species include white and black crappie and bluegill. Blue and channel catfish are also abundant in the Reservoir, with a lesser population of flathead catfish. Forage and prey species include gizzard shad, threadfin shad, and bluegill (Driscoll and Ashe 2006).

Shoreline development has been occurring at the Toledo Bend Reservoir for several decades, and it is not anticipated that the continued development of the shoreline will adversely impact the fisheries in a manner that differs from what has historically occurred at the Reservoir. However, established permitting processes in this SMP will help ensure that development activities along the Toledo Bend Reservoir shoreline will not adversely affect fish populations or their associated habitats within the Reservoir.

#### AQUATIC HABITAT

Toledo Bend Reservoir is a large impoundment with approximately 1,130 miles of shoreline, and there is a significant amount of shallow littoral zone habitat for fish and other aquatic species. Aquatic vegetation communities occur on over 40 percent of the Reservoir (Yeldell et al. 2007), and the overall aquatic vegetation community within the Reservoir is considered diverse. In addition, there are large areas of standing timber, which were left uncut when the Reservoir was filled. This standing timber habitat persists within the Reservoir today. Toledo Bend Reservoir also has areas of aquatic vegetation coverage primarily in isolated coves, particularly in the northern portion of the Reservoir. Water structures such as docks also provide necessary cover and habitat for species such as largemouth bass and sunfish.

The SMP allows the Authorities to help protect sensitive aquatic areas through the use of their permitting systems. Land use classifications, for example, allow the Authorities to determine where development can occur along the shoreline that will not impact sensitive areas (i.e., General Land Use Classification), and where development should occur only after careful review (i.e., Conservation Land Use Classification). Through consultation with appropriate federal and state resource agencies in Conservation areas, as well as in other areas of the Reservoir where appropriate, proposed developments along the Toledo Bend Reservoir shoreline will be appropriately conditioned to help protect and manage aquatic habitat.

#### AQUATIC VEGETATION

Toledo Bend Reservoir has a robust aquatic vegetation community, which provides for good fish habitat. The community consists of alligator weed, American lotus, buttonbush, cattail, coontail, common water nymph, eelgrass, Eurasian watermilfoil, giant salvinia, hydrilla, pondweeds,

torpedo grass, water fern, water hyacinth, and white water lily, along with a variety of other species of aquatic vegetation (Driscoll and Ashe 2006, Yeldell et al. 2007).

Significant proportions of the aquatic vegetation present in Toledo Bend Reservoir have been identified as nuisance and invasive aquatic plant species. Examples include hydrilla, water hyacinth, and giant salvinia, which are the primary nuisance aquatic vegetation species found in Toledo Bend Reservoir (Driscoll and Ashe 2006). Hydrilla, however, has been deemed beneficial by many anglers for bass habitat.

At Toledo Bend Reservoir, Texas Parks and Wildlife Department (TPWD) and Louisiana Department of Wildlife and Fisheries (LDWF) direct the monitoring and management of the invasive aquatic plant community within the Reservoir. The Authorities cooperate with TPWD and LDWF in the states' management programs for invasive aquatic vegetation, which primarily focus on water hyacinth and giant salvinia (SRA-TX 2010). The states' cooperative programs direct surveys and monitor invasive aquatic plants on an annual basis, actively manage invasive plant areas (i.e., using biological- and chemical-control measures), and promote public education regarding control of aquatic invasive species populations (Toledo Bend Giant Salvinia Training Team 2010, Elder 2008).

#### 3.2.4 *TERRESTRIAL RESOURCES*

Terrestrial resources within the Project Boundary include wetlands, shoreline vegetation, and wildlife, including rare, threatened, and endangered (RTE) species.

##### WETLANDS AND SHORELINE VEGETATION

The periphery of the Project contains several wetland varieties including Palustrine Forested, Palustrine Scrub/Shrub, Palustrine Emergent, and Palustrine Aquatic Bed wetlands (Cowardin et al. 1979). The Palustrine Forested community forms the riparian and floodplain area for most of the lower Sabine River. The Palustrine Scrub/Shrub community forms the transition zone between the relatively drier bottomland hardwoods and the permanently flooded or saturated emergent wetlands. Emergent wetlands present at the Project are semi-permanently or permanently flooded. Additionally, the aquatic bed community is found within the Reservoir and consists of floating or submerged plants in areas of little water movement.

Through the SMP's land use classification system, wetlands and areas of shoreline habitat that provide critical habitat to threatened/endangered wildlife will be labeled with the Conservation land use classification. In order to protect these critical habitat areas, the shoreline permitting process established under this SMP requires shoreline permit requests in Conservation areas be subject to applicable permits from, and consultation with, appropriate federal and state resource agencies prior to the Authorities' issuance of a permit. Any issued permit may be subject to modifications and conditions to help ensure protection of wetlands and shoreline vegetation.

##### INVASIVE SPECIES

Chinese tallow is a terrestrial invasive species that commonly occurs within the FERC Project Boundary and vicinity. Chinese tallow is an aggressive invader of riparian and bottomland

habitats, and thrives in open, disturbed areas, as well as mature forests with a developed canopy (Authorities 2008a).

Chinese tallow has been persistent in the general vicinity of the Project, and the Authorities recognize that preventing its spread is desirable. In support of inhibiting the spread of Chinese tallow, the Authorities' Policies and Guidelines require permit holders and lessees to remove Chinese tallow trees of any size from the permitted/leased shoreline property, and prevent permit holders/lessees from planting Chinese tallow and other invasive species.

### WILDLIFE

Numerous game and non-game animals are found in the Project vicinity, which includes private property as well as the Sabine National Forest and state wildlife areas. White-tailed deer is the most common big game species in the Project vicinity and wild hogs are also common. Other mammals present include large to medium furbearers, small game species, rodents, and bats, etc.; additionally, avian species, reptiles, and amphibians are common and well represented in the Project vicinity.

Shoreline classification maps have been developed to denote Conservation areas in which federal and state resource agencies must be consulted prior to the Authorities' issuance of any permit for proposed shoreline development. Such development, therefore, is subject to modifications and conditions to appropriately protect and manage wildlife habitat.

### RARE, THREATENED, AND ENDANGERED (RTE) SPECIES

Several state or federally listed RTE species potentially occur in terrestrial habitats within the vicinity of the Project. Federally listed endangered, threatened, or candidate species occurring or potentially occurring within the Project Boundary consist of the Louisiana black bear, red cockaded woodpecker (RCW), Louisiana pine snake, earth fruit, Texas golden gladeceess, and Sprague's pipit. The Project vicinity also provides nesting habitat for the bald eagle, which has been removed from protection under the ESA as of August 8, 2007. Although de-listed under ESA, bald eagles continue to be protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

The Authorities' relicensing studies concluded that the continued operation and maintenance of the Project will have no effect upon four of the six species known to occur or potentially occur in the vicinity of the Project: Louisiana black bear, Sprague's pipit, earth fruit, and Texas golden gladeceess. The RCW and the Louisiana pine snake are known to occur or have the potential to occur or forage within or adjacent to the Project Boundary. The RCW studies found that the quality of foraging habitat adjacent to the shoreline was low and the Project operation does not impact the foraging habitat. The Louisiana pine snake surveys found no optimal foraging habitat for the snake or its main prey (pocket gophers) in the survey areas. Based on the findings of the RCW and the Louisiana pine snake studies, the continued operation and maintenance of the Project will not affect these species. Nonetheless, habitats, nesting sites, forage areas, and rookeries associated with some of these species, together with the bald eagle, have been placed

in the Conservation land use classification area under the SMP's land use classification system, thereby helping to ensure protection of these potentially sensitive resources.

### *3.2.5 CULTURAL RESOURCES / HISTORIC PROPERTIES*

The area surrounding the Toledo Bend Project has been the setting of numerous cultural-resource management-related investigations dating back to the 1960s. The compilation of research resulted in the identification of numerous archaeological sites located along the shoreline or in the vicinity of the Project. The identified sites have been categorized according to their eligibility for inclusion in the National Register of Historic Places (National Register) and their categorization will determine the level of development permitted near the given site. Additionally, several Native American tribes may attach religious and cultural significance to historic properties within the Project Boundary or in the vicinity of the Reservoir.

Construction of new boat ramps, docks, marinas, retaining walls, and other shoreline features could potentially affect archaeological resources and other historic properties within the Project's Area of Potential Effects (APE). Shoreline development activities can vary considerably, and the nature and severity of potential effects depends on the location, extent, and type of development. Low-impact activities such as the installation of seasonal floating docks are unlikely to have any direct effects on historic properties within the Project's APE. However, ground-disturbing activities associated with new construction (e.g., boat ramps) have the potential to adversely affect archaeological and historic resources. Other indirect effects of shoreline development may include unintentional changes in the patterns of erosion and sedimentation in the vicinity of historic and archaeological resources. Shoreline development may also make archaeological resources more easily accessible to looters and vandals.

Through the SMP's land use classification system, culturally sensitive and/or culturally significant areas have been placed under the Conservation land use classification, and no ground-disturbing construction activities will be authorized within a 50-meter radius of archaeological sites that have not been evaluated or are determined to be National Register-eligible without consultation with the State Historic Preservation Officer. Due to the sensitive nature of certain cultural resources, the exact location of some sensitive resources within the Conservation classification will not be disclosed to the public and may influence the level of development permitted in given areas. Portions of the Toledo Bend Reservoir shoreline may be added to or removed from the Conservation classification as a result of archeological surveying activities that will occur throughout the term of the license.

### *3.2.6 RECREATION RESOURCES*

The Toledo Bend Project currently offers a spectrum of recreation activities and related experiences. The spectrum ranges from simple undeveloped camping and picnic sites to fully developed parks with full-service cabins and wireless Internet service. These recreation areas are owned and maintained by a variety of entities including SRA-LA, SRA-TX, State of Louisiana, USFS, and contract operators. The range of opportunities currently in place appears to serve the needs of many different types of people. Projections indicate that population may increase in the



southern states over the next 50 years, possibly creating an increase in demand for outdoor recreation facilities.

The SMP provides a Public Access land use classification to ensure continued availability of shoreline access by the public through the new license term. To meet future recreation demands, the Public Access classification may be modified, as appropriate, as part of the periodic review of the SMP between the Authorities and applicable state and federal agencies.

### 3.2.7 AESTHETIC / VISUAL RESOURCES

Views of the Toledo Bend Project area are generally scenic, with the natural beauty of the water of the Reservoir combined with forests, grasslands, and croplands. Visual elements of the Toledo Bend Project include the approximately 70-mile-long Reservoir, earthen dam and surrounding appurtenances, and several shoreline recreation sites located on both the Louisiana and Texas shorelines. The Texas shoreline includes 250 miles of the Sabine National Forest and two wildlife management areas. The overall terrain of the Project area is heavily wooded with rolling hills and valleys.

The SMP's Policies and Guidelines in Appendices C and D enable the Authorities to review proposed developments and permit facilities that are consistent with management goals and values of the Project.

## 4.0 SHORELINE PERMITTING PROGRAM

As described above, both SRA-LA and SRA-TX have long-standing and well-established shoreline policies, permitting programs, and other management practices designed to protect shoreline resources at the Toledo Bend Project, including Project operations, recreation, and environmental values. As described in this section, this SMP expands these efforts and consolidates them into a single document, to better inform shoreline users and the recreating public, and to enhance coordination and promote consistency between the Authorities in managing shoreline areas at the Toledo Bend Reservoir. The Authorities' permitting program is described below, and the Authorities' individual Policies and Guidelines, which include additional procedures and policies specific to shoreline development in Louisiana and Texas, appear in Appendices C and D of this SMP.

### 4.1 OVERVIEW

As a general rule, all proposed improvements, construction activities, and other ground-breaking activities at Toledo Bend Reservoir within the FERC Project Boundary must be permitted in advance by SRA-TX (for proposed activities in Texas) or SRA-LA (for proposed activities in Louisiana).<sup>2</sup> The process for applying for a permit from the Authorities may differ, depending on several variables:

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<sup>2</sup> In Section 4.0 of this SMP, the term "Authorities" is used generically to refer to either or both of the Authorities. A proposed development or use occurring only in Texas requires a permit only from SRA-TX. A proposed

- **Land Use Classification.** The designated land use classification of the area in which the proposed improvement or use is proposed will affect the level of the Authorities' review and the applicant's responsibility to consult with affected federal and state resource agencies. As described below, for example, applicants for proposed developments or uses within a Conservation land use area must complete consultation with resource agencies prior to submitting a permit application with the Authorities.
- **Proposed Development or Use.** Depending on the scope of the proposed development, the permitting process will differ. The typical process for permitting a major natural gas pipeline, for example, will involve additional consultation and approval requirements than required for a proposed residential dock. In most cases, the permitting processes in this SMP adopt the process required for different development activities described in FERC's Standard Land Use Article. As described below, however, in a few limited instances this SMP modifies the consultation and review provisions of the Standard Land Use Article to address special circumstances present at the Toledo Bend Project.
- **Programmatic General Permit.** To assist shoreline developers in completing the permitting process as expeditiously and efficiently as possible, the Authorities are in the process of obtaining a Programmatic General Permit (PGP) from the U.S. Army Corps of Engineers (USACE) that would apply to some dredging and filling activities within Toledo Bend Reservoir. A PGP is a type of general permit issued by the USACE every 5 years, which allows certain activities to occur on a programmatic basis, as authorized by the Authorities. Thus, for proposed shoreline developments that include dredging or filling activities within the scope of the PGP, the developer would not need to obtain a separate permit from the USACE, as the Authorities' issuance of a permit incorporates and consolidates the USACE permitting requirement. For this reason, the PGP expedites the permitting review process for many proposed activities at the Toledo Bend Project. For proposed development activities beyond the scope of the PGP, the developer will need to obtain an individual or other permit from the USACE.

Based on these variables, the Authorities in this SMP have established five different authorization or permitting processes to process applications as efficiently as possible, while meeting FERC licensing and other regulatory requirements. These processes are described in Section 4.2. Some of these processes require the developer to consult with federal and state resource agencies prior to submitting a permit application with the Authorities, and this consultation requirement is described in Section 4.3. Details regarding the Authorities' permit application requirements appear in Section 4.4. For all activities requiring a permit, the Authorities—prior to issuing a permit—will review the application for consistency with other management plans associated with the FERC license, as well as other regulatory requirements, as described in Section 4.5. In some cases, FERC review or approval may be required prior to the Authorities' issuance of a permit, as set forth in Section 4.6. Finally, procedures and requirements related to structures and other shoreline uses in existence prior to the effective date of this SMP appear in Section 4.7.

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development or use occurring only in Louisiana requires a permit only from SRA-LA. A proposed development or use occurring in both states requires a permit from both SRA-LA and SRA-TX.

## 4.2 DESCRIPTION OF PERMITTING PROCESSES

As described above, the Authorities' permitting process for proposed shoreline development and use at Toledo Bend Reservoir will vary, depending on: (1) the land use classification in which the proposed development or use is located; (2) the scope and type of the proposed development or use; and (3) whether the proposed development or use is within the scope of the Authorities' PGP with USACE. Based on these three variables, the Authorities have developed five separate approval or permitting processes, as follows:

- **Type 1 Activities.** Recognizing that many adjoining landowners to Toledo Bend Reservoir currently hold leases or other authorizations from the Authorities to occupy shoreline areas, this SMP approves certain activities on a programmatic basis, without the need for the lessee or permittee to obtain further authorization from the Authorities. So long as they are conducted according to the standards in the Authorities' Policies and Guidelines set forth in Appendices C and D, these Type 1 activities are hereby approved on premises covered by a lease or permit. All Type 1 activities are identified in Table 4-1, below.
- **Type 2 Activities.** Type 2 activities occur outside of Conservation areas under this SMP's land classification system and are covered by the Authorities' PGP with USACE. In addition, Type 2 activities are smaller in scope, generally covering those described in subsection (b) of FERC's Standard Land Use Article. Given the expanse of the Toledo Bend shoreline area, moreover, Type 2 activities also include existing, minor encroachments on the Authorities' lands within the Project Boundary not classified as a Conservation area. Type 2 activities also encompass energy and secondary distribution electric infrastructure development with no ground-breaking activities within the Project Boundary in non-Conservation areas, recognizing the prevalence of residential electric distribution services and natural gas and oil exploration in the vicinity of the Project. Finally, Type 2 activities include temporary, residential-scale water withdrawal pumps for non-consumptive irrigation of parcels immediately adjacent to the Project's shoreline. **Based on their long-standing experience of managing shorelines through their previous permitting programs, the Authorities expect the majority of shoreline development activities at the Toledo Bend Reservoir to fall within the abbreviated and consolidated permitting process for Type 2 activities.** Specific Type 2 activities are identified in Table 4-1, and the permitting process for Type 2 activities, which is outlined in Figure 4-1, consists of:
  - Completion and filing of an application with the Authorities, as provided in Section 4.4; and
  - Review and approval of the application by the Authorities, as provided in Section 4.5.
- **Type 3 Activities.** Type 3 activities are the same as Type 2 activities, except they involve dredging or filling activities not covered by the Authorities' PGP with USACE. Specific Type 3 activities are identified in Table 4-1, and the permitting for Type 3 activities, which is outlined in Figure 4-2, consists of:

- Obtaining a dredge and fill and/or other permit from USACE, as required; and
  - Completion and filing of an application with the Authorities, as provided in Section 4.4; and
  - Review and approval of the application by the Authorities, as provided in Section 4.5.
- **Type 4 Activities.** Type 4 activities include most construction and other ground-breaking activities within Conservation areas, as well as larger-scale, more intensive development activities in non-Conservation areas. Generally, Type 4 activities encompass those proposed in Conservation areas and described in subsection (b) of FERC's Standard Land Use Article, as well as activities throughout the Project described in subsections (c) and (d) of the Article. Some Type 4 activities may be covered by the Authorities' PGP with USACE, but in all instances applicants for a proposed Type 4 activity must obtain all federal approvals and consult with interested federal and state resource agencies prior to submitting a permit application to the Authorities. Specific Type 4 activities are identified in Table 4-1, and the permitting for Type 4 activities, which is outlined in Figure 4-3, consists of:
    - Obtaining a dredge and fill and/or other permit from USACE, as required; and
    - Consultation with interested federal and state resource agencies, as provided in Section 4.3; and
    - Completion and filing of an application with the Authorities, as provided in Section 4.4; and
    - Review and approval of the application by the Authorities, as provided in Section 4.5; and
    - Review and/or approval of the application by FERC if required by the Standard Land Use Article, as provided in Section 4.6.
  - **Type 5 Activities.** Type 5 activities encompass all activities not specifically identified in Table 4-1. All Type 5 activities must be approved, in advance, by both the Authorities and FERC, and in all instances applicants must obtain all federal approvals and consult with interested federal and state resource agencies prior to submitting a permit application to the Authorities. While the process for permitting Type 5 activities is generally the same as the process for Type 4 activities (set forth in Figure 4-3), developers are encouraged to contact the Authorities as early in the planning phase as possible, such that the Authorities can work with the developer in establishing a process and schedule for obtaining all requisite regulatory approvals for the proposed activity or use.

**TABLE 4-1**  
**APPROVAL PROCESS REQUIRED AT TOLEDO BEND PROJECT**  
**BASED ON TYPE OF PROPOSED ACTIVITY**

Activity	General Land Use Classification	Public Access Land Use Classification	Conservation Land Use Classification
Landscape plantings <sup>3</sup>	Type 1	Type 1	Type 1
Fencing <sup>4</sup>	Type 1 or 2	Type 1 or 2	Type 1 or 2
Noncommercial pier, landing, boat dock, or similar structures that can accommodate up to 10 slips	Type 2 or 3	Type 2 or 3	Type 4
Embankments, bulkheads, retaining walls, or similar erosion control measures	Type 2 or 3	Type 2 or 3	Type 4
Maintenance dredging or filling	Type 2 or 3	Type 2 or 3	Type 4
Food plots and other wildlife enhancements	Type 2 or 3	Type 2 or 3	Type 4
Minor encroachments on SRA-LA or SRA-TX lands within Project Boundary <sup>5</sup>	Type 2	Type 2	Type 4
Natural gas and oil pipelines, wells, secondary distribution lines, and similar infrastructure with no ground-breaking activities within Project Boundary	Type 2	Type 2	Type 4
Residential-scale, temporary water withdrawal pumps <sup>6</sup>	Type 2	Type 2	Type 4
Replacement, expansion, realignment, or maintenance of bridges or roads	Type 4	Type 4	Type 4
Storm drains and water mains	Type 4	Type 4	Type 4

<sup>3</sup> See Appendix C § 1.2.2.2; Appendix D § 1.2.2.

<sup>4</sup> SRA-LA's Policies and Guidelines treats fencing as a Type 1 activity. See Appendix C § 1.2.2.2. SRA-TX's Policies and Guidelines treats fencing as a Type 2 activity. See Appendix D § 2.9.

<sup>5</sup> See *infra* § 6.3.1; Appendix C § 1.2.10.2; Appendix D § 1.2.9.

<sup>6</sup> See Appendix C § 2.7.

Activity	General Land Use Classification	Public Access Land Use Classification	Conservation Land Use Classification
Sewers that do not discharge into Project waters	Type 4	Type 4	Type 4
Minor access roads	Type 4	Type 4	Type 4
Telephone, gas, and primary electric utility distribution lines	Type 4	Type 4	Type 4
Non-Project overhead electric transmission lines that do not require erection of support structures within the Project Boundary	Type 4	Type 4	Type 4
Submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kilovolts or less)	Type 4	Type 4	Type 4
Water intake or pumping facilities other than residential-scale, temporary water withdrawal pumps <sup>7</sup>	Type 4	Type 4	Type 4
Construction of new bridges or roads	Type 4	Type 4	Type 4
Sewer or effluent lines that discharge into Project waters	Type 4	Type 4	Type 4
Pipelines that cross Project lands or waters and involve ground-breaking activity within the Project Boundary, but which do not discharge into Project waters	Type 4	Type 4	Type 4

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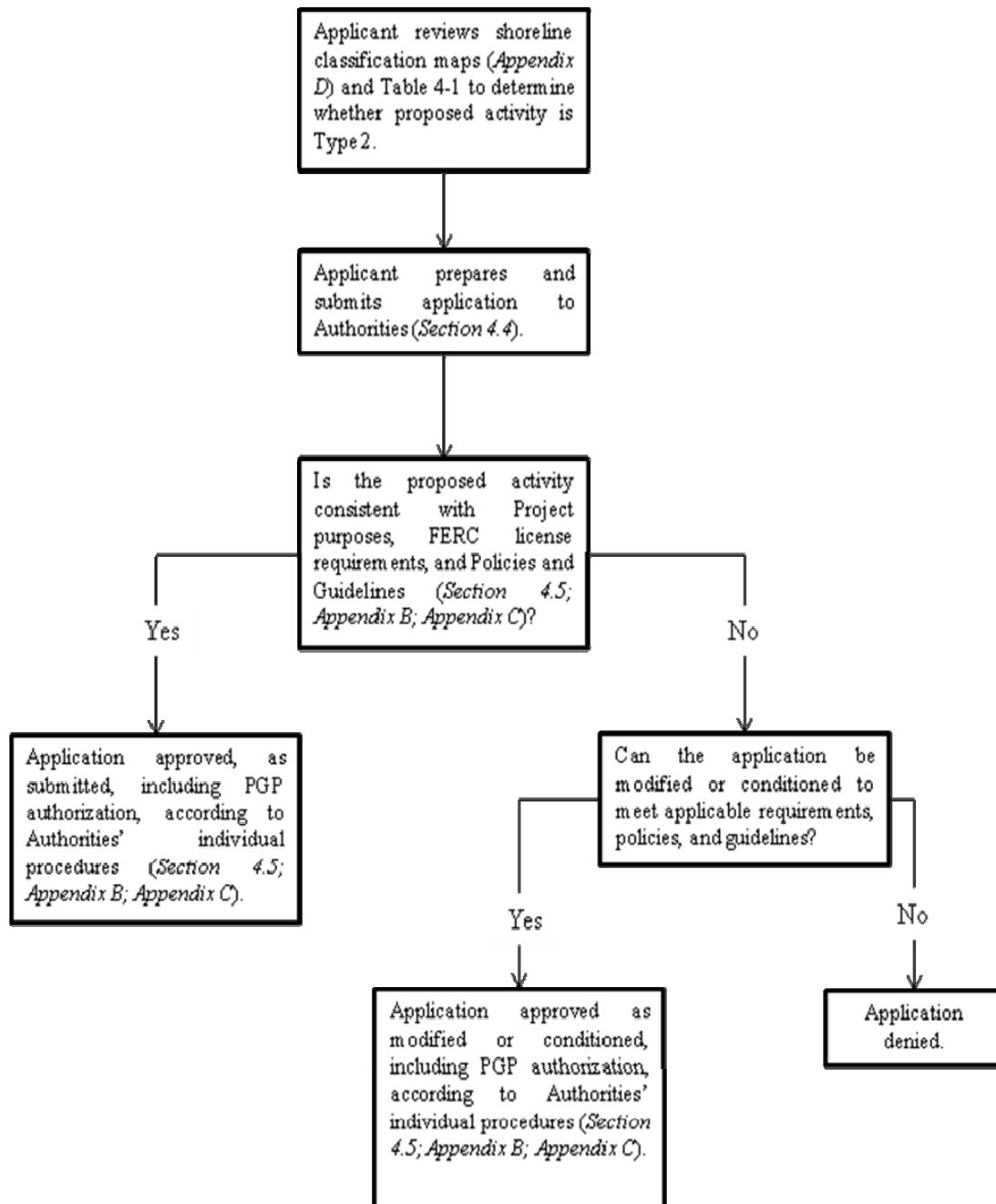
<sup>7</sup> FERC's Standard Land Use Article distinguishes between water intake facilities that extract less than one million gallons per day (gpd), and those that extract at least one million gpd. Facilities extracting less than one million gpd do not require prior FERC notification and review, and only need to be reported to FERC on an annual basis. Facilities extracting at least one million gpd require prior FERC notification and review. *See infra* § 4.6; Figure 4-3; Appendix A.

Activity	General Land Use Classification	Public Access Land Use Classification	Conservation Land Use Classification
Non-Project overhead transmission lines that require erection of support structures within the Project Boundary	Type 4	Type 4	Type 4
Private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina	Type 4	Type 4	Type 4
Recreational development consistent with the Project's Recreation Management Plan	Type 4	Type 4	Type 4
Other uses, if: (1) the amount of land required is 5 acres or less; and (2) the involved land is located at least 75 feet (horizontally) from Toledo Bend at the conservation pool elevation of 172 feet msl	Type 4	Type 4	Type 4
Non-minor encroachments on SRA-LA or SRA-TX lands within Project Boundary <sup>8</sup>	Type 4 or 5	Type 4 or 5	Type 4 or 5
All other structures, developments, and uses	Type 5	Type 5	Type 5

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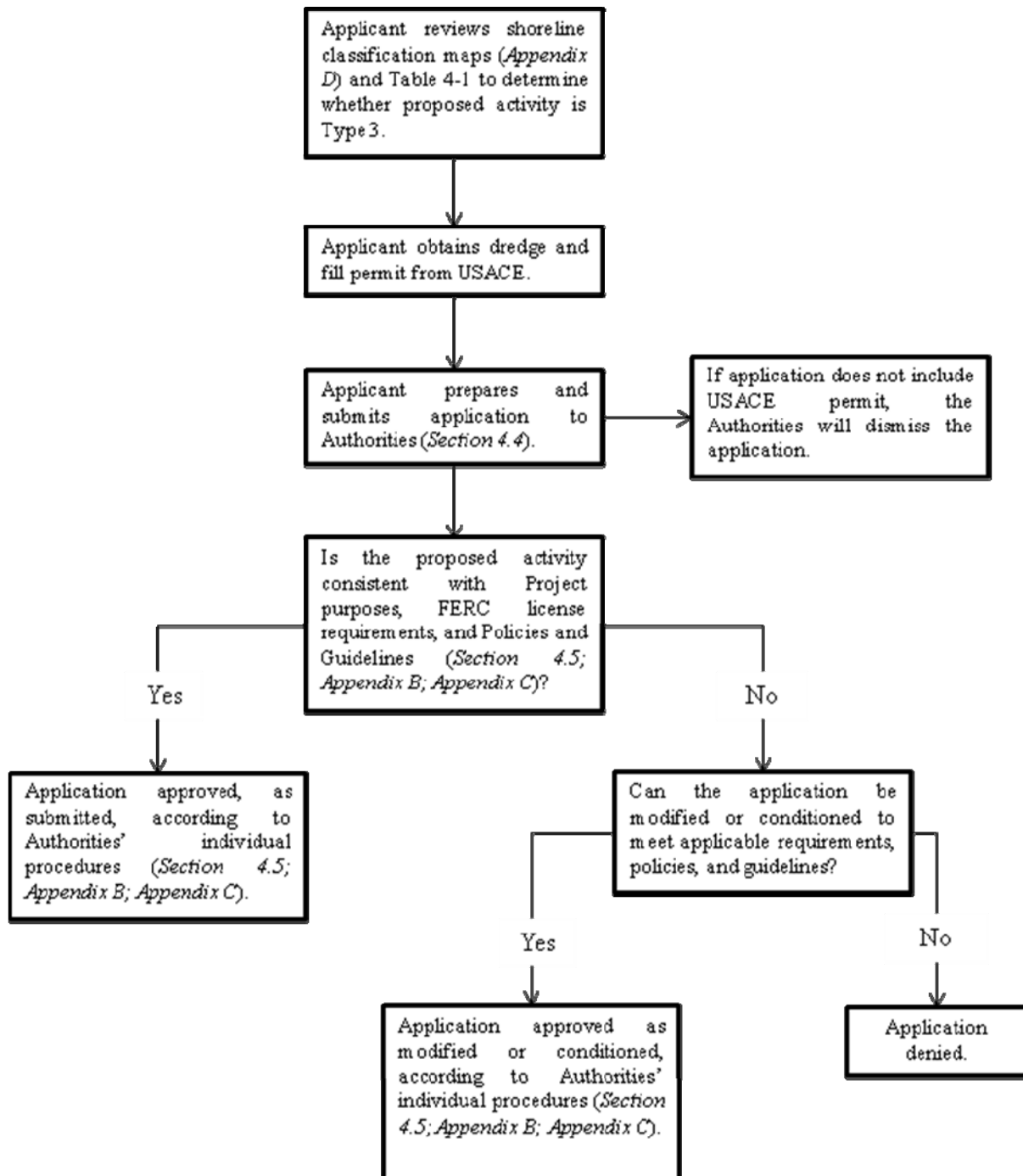
<sup>8</sup> See *infra* § 6.3.1.

**FIGURE 4-1**  
**PERMIT APPLICATION PROCESS FOR TYPE 2 ACTIVITIES**

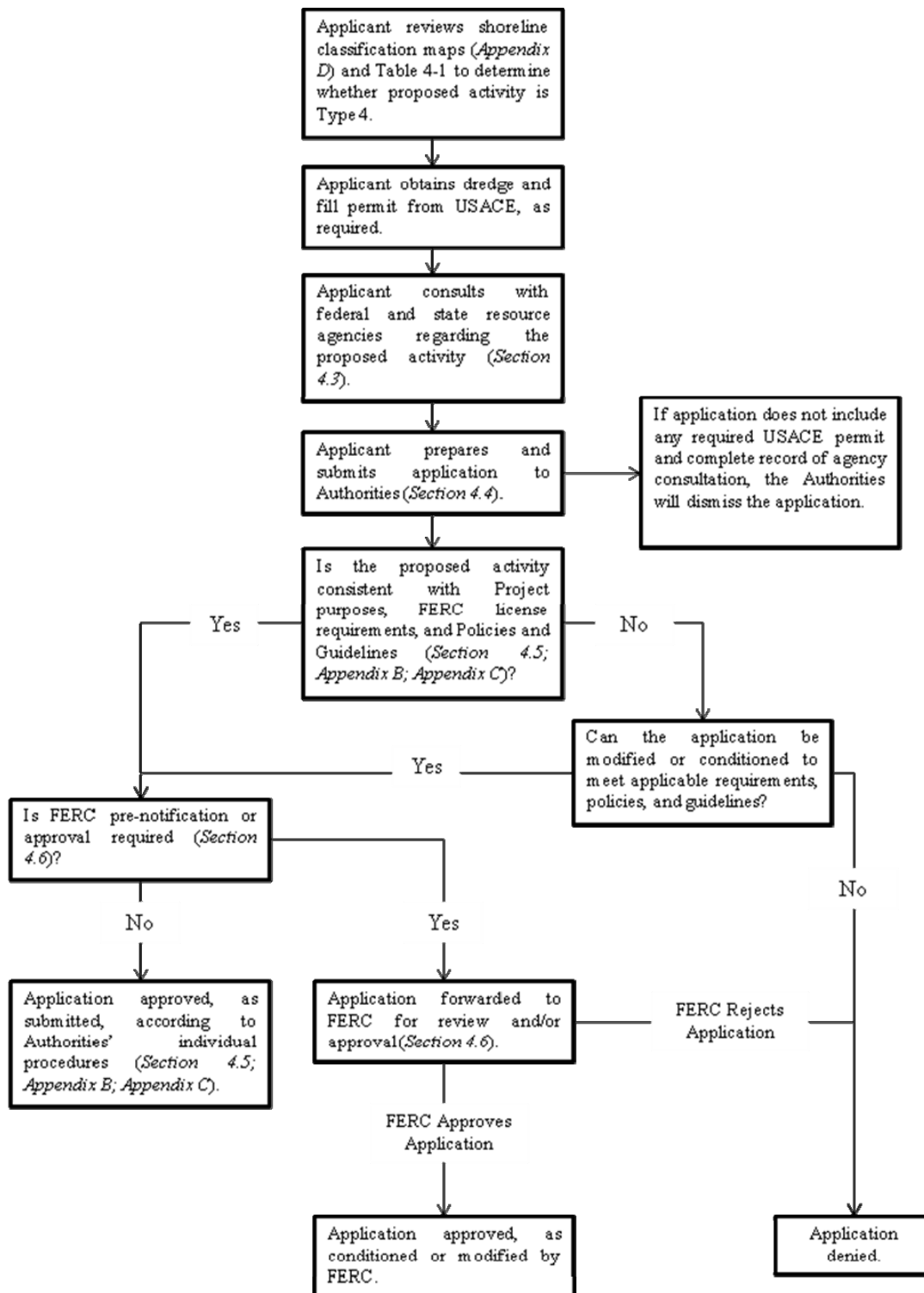




**FIGURE 4-2**  
**PERMIT APPLICATION PROCESS FOR TYPE 3 ACTIVITIES**



**FIGURE 4-3**  
**PERMIT APPLICATION PROCESS FOR TYPE 4 ACTIVITIES**



### **4.3 RESOURCE AGENCY CONSULTATION REQUIREMENTS**

As noted in Section 4.2 above, the application approval process for Type 4 and Type 5 activities requires the developer to consult with interested federal and state resource agencies before filing an application with the Authorities. The section describes the required resource agency consultation process.

#### **4.3.1 RESOURCE AGENCIES TO CONSULT**

Applicants for Types 4 and 5 activities must consult with, and obtain any required permit or approval from, all interested federal and state resource agencies prior to submitting their permit applications with the Authorities. At a minimum, these applicants must consult with federal and state fish and wildlife agencies and the State Historic Preservation Officer. In addition, if the proposed activity would involve any wetland areas or dredging or filling activities in navigable waters, the applicant must obtain all required permits and authorizations from USACE, to the extent such activities are not covered by the Authorities' PGP with USACE. Thus, for proposed activities in Louisiana, applicants must consult with:

- Louisiana Department of Wildlife and Fisheries
- Louisiana Office of Cultural Development
- USACE (for any required permit or authorization)
- U.S. Fish and Wildlife Service (Type 5 activities only)

For proposed activities in Texas, applicants must consult with:

- Texas Parks and Wildlife Department
- Texas Historical Commission (as provided in the Project's Historic Properties Management Plan)
- USACE (for any required permit or authorization)
- U.S. Fish and Wildlife Service (Type 5 activities only)

By letter dated January 6, 2012 and included as Appendix E to this SMP, the U.S. Fish and Wildlife Service (USFWS) recommends that the Authorities provide information on USFWS's trust resources, which include, but are not limited to, federally listed species, bald eagles, and migratory birds, directly to shoreline permit applicants in lieu of mandatory coordination with USFWS. Except where prior FERC review and approval is required, applicants will be required to adhere to the USFWS recommendations and instructions provided by the Authorities. Where a proposed activity requires prior FERC review and approval (i.e., Type 5 activities), applicants must consult with USFWS prior to submitting their permit applications with the Authorities. In implementing the SMP, the Authorities will periodically update the information in Appendix E to be provided to applicants, as requested by USFWS.

Contact information for each of these agencies appears in Appendix F of the SMP, and as noted in Appendix F, additional consultation requirements and permitting may apply, depending on the scope of the proposed activity.

When consulting with interested federal and state resource agencies, applicants must provide the agencies with a description of the proposed activity, including any maps, plans, and specifications, and the applicant must complete any resource investigation, study, or assessment requested by an agency. The applicant must provide consulting agencies at least 30 days to review and comment on the proposal. If a permit applicant provides documentation that an agency did not respond to an applicant's written request for consultation within 30 days of receipt, the Authorities may move forward with processing the application as provided in Section 4.5, provided that the applicant obtained any required permit prior to submitting its application with the Authorities.

#### **4.3.2**     *RECORD OF CONSULTATION*

Where agency consultation is required for a proposed permit under this SMP, the applicant must provide the Authorities a complete record of consultation, consisting of:

- Correspondence from the applicant to each agency, providing the description, maps, plans, and specifications of the proposed activity, together with any resource studies or investigations conducted by the applicant and provided to the consulted agency in support of the activity.
- All comments received from consulted agencies, including any and all issued permits or other authorizations.

If any consulted resource agency raises any resource-related concern regarding the proposed activity, the applicant must resolve that issue directly with the resource agency prior to submitting an application with the Authorities, and should adapt or modify its proposal to address resource-related concerns raised by consulting agencies. The applicant's record of consultation must include documentation demonstrating the resolution of any resource-related concerns raised by consulting agencies.

### **4.4**     **APPLICATION REQUIREMENTS**

#### **4.4.1**     *OBTAINING AN APPLICATION PACKAGE*

A form of application is appended to each of the Authorities' Policies and Guidelines, which appear in Appendices C and D of this SMP. To obtain the most current version of the permit application, applicants should contact the Authorities as follows:

Louisiana

Sabine River Authority  
Shoreline Department  
15091 Texas Hwy.  
Many, LA 71449  
Telephone: (318) 256-4112

## Texas

Sabine River Authority of Texas  
Toledo Bend Division  
450 Spur 135  
Burkeville, TX 75932  
Telephone: (409) 565-2273

### 4.4.2 APPLICATION CONTENTS

Applicants must ensure that their applications are complete. All incomplete applications will be dismissed and will not be reviewed or approved by the Authorities. In particular, all applicants must submit:

1. A fully completed, signed original application.
2. One copy of the construction drawings or design plans for the proposed structure. Where appropriate, re-vegetation or shoreline stabilization plans should be included.
3. One copy of a site plan that identifies: (1) the leased or permitted property boundary in relation to the Reservoir shoreline; (2) the location of existing structures within the Project Boundary; (3) the location of proposed structures within the Project Boundary; and (4) areas inside the Project Boundary that may be temporarily disturbed or affected by construction activities. For any proposed activity within 100 feet of Sabine National Forest or other federal land administered by the USFS, moreover, the site plan must demonstrate that the construction or use of the proposed activity, including ingress and egress, would not involve any encroachment upon federal lands.
4. Any other application requirements in the Authorities' Policies and Guidelines, which appear in Appendices C and D of this SMP.
5. For Type 4 and Type 5 activities, a complete record of consultation with federal and state resource agencies, as set forth in Section 4.3 of this SMP.
6. Any permit application fees required by the Authorities.

## 4.5 REVIEW AND APPROVAL BY THE AUTHORITIES

All permit applications must be reviewed and approved by the Authorities before the applicant can commence any development or other ground-breaking activities at the proposed site. In particular, the Authorities will review the application and determine whether the proposed activity is consistent with: (1) the primary Project purpose of water supply and secondary purposes of hydroelectric generation and recreation; (2) the obligations of the FERC license; (3) the Authorities' Policies and Guidelines set forth in Appendices C and/or D; and (4) the FERC-approved Historic Properties Management Plan and Recreation Management Plan for the Project. As required under FERC's Standard Land Use Article, moreover, the Authorities will evaluate whether the proposed activity is consistent with the protection of the Project's scenic, recreational, and other environmental values. Finally, for Type 4 and Type 5 activities, the

Authorities will review the applicant's record of consultation with federal and state resource agencies.

Based on this review, the Authorities will determine whether to approve the application and issue a permit for the proposed activity. The Authorities reserve the right to approve the application as submitted, or to require modifications or changes to conform the application with the standards, guidelines, requirements, values, and purposes identified above.

For all Type 2 and Type 3 activities, as well as Type 4 activities identified in Subsection (c) of the Standard Land Use Article, once the Authorities complete their review of the application, they will notify the applicant, in writing, of their decision. If the application is approved, the Authorities will issue a permit as set forth in their Policies and Guidelines, which appear in Appendices C and/or D of this SMP.

For Type 4 activities identified in Subsection (d) of the Standard Land Use Article and all Type 5 activities, the Authorities will not immediately approve the application. Rather, if the Authorities are supportive of the application, they will forward the application to FERC for review and, in some cases, approval, as provided in Section 4.6.

The Authorities expressly reserve the right to deny any permit application for any reason, including inconsistency with the standards, guidelines, requirements, values, and purposes identified above. As all lands available for permitting under this SMP are owned in fee by SRA-LA or SRA-TX, the issuance of permits is entirely discretionary, and no applicant has any right or entitlement to obtain a permit from the Authorities. All permitting decisions of the Authorities are final and unreviewable.

#### **4.6 FERC REVIEW AND/OR APPROVAL**

As noted in Section 4.2 above, Type 4 activities identified in Subsection (d) of the Standard Land Use Article and all Type 5 activities require prior FERC review, and in some cases, prior FERC approval before the Authorities may issue a permit. In these cases, the Authorities will initially review the application, as set forth in Section 4.5. If the Authorities, based on this review, are supportive of the proposed activity, they will forward the application to FERC for review and/or approval.

As a general matter, Type 4 activities identified in Subsection (d) of the Standard Land Use Article do not require prior FERC approval. Rather, as provided under the Standard Land Use Article, FERC will have 45 days to review the application, and the Authorities can issue the permit 60 days after the application is filed, unless FERC notifies the Authorities that prior FERC approval will be necessary. All Type 5 activities will require prior approval by FERC before the Authorities can approve the application and issue the permit.

Once FERC completes its review, and either approves the application or authorizes the Authorities to proceed with their permitting of the activity, the Authorities will issue the permit as set forth in their Policies and Guidelines, which appear in Appendices C and D.

## **4.7 PERMITTING REQUIREMENTS FOR EXISTING FACILITIES**

### **4.7.1 EXISTING PERMITTED FACILITIES**

The Authorities are aware that many shoreline developments have been constructed along the Toledo Bend Reservoir shoreline under their prior permitting programs. This SMP does not require any new permit for an existing structure or activity that is covered by an existing, valid permit. Regardless of the shoreline classification of the existing, permitted structure or activity, previously issued and current permits issued by the Authorities remain valid.

The Authorities will require a new permit issued pursuant to this SMP, however, for: (1) any major modification or expansion of any existing, permitted facility, or (2) construction of any new facilities or structures. Such permits will be issued in accordance with Sections 4.1 through 4.6 of this SMP.

### **4.7.2 EXISTING NON-PERMITTED FACILITIES**

Facilities in existence prior to the effective date of this SMP, but which do not have a valid permit issued in accordance with the Authorities' previous permitting programs, must be permitted in accordance with Sections 4.1 through 4.6 of this SMP.

## **5.0 MONITORING**

In an effort to ensure that shoreline development at the Toledo Bend Reservoir is conducted in accordance with this SMP, the Authorities will monitor shoreline areas on an incidental and opportunistic basis during the new license term, and will respond appropriately to reports and notifications from federal and state resource agencies, adjacent landowners, and members of the public. If, based on these efforts, the Authorities discover any unpermitted structure or any other activity not consistent with the SMP, they will notify the adjoining landowner of the violation in writing. Such notice will provide instructions on how to bring the unpermitted or other unauthorized activity into compliance with the SMP, including the requirement to obtain any permit required under Section 4.0.

## **6.0 ENFORCEMENT**

### **6.1 PERMITTING VIOLATIONS**

Where the Authorities become aware of any unpermitted structure, activity, or other activity inconsistent with the SMP, the Authorities will first seek to enforce the requirements of this SMP by notifying the permittee or adjacent landowner of the permit violation or activity that is inconsistent with this SMP. The Authorities will work with the permittee or adjacent landowner in an effort to bring the structure or inconsistent activity into conformance with the SMP. Such efforts may include providing information on the Authorities' permitting procedures, working with the permittee or adjacent landowner in preparing an application and securing authorization required under this SMP, and notifying an offending landowner or permittee that continued

violations could result in the loss of the privilege to occupy shoreline areas through termination of the permit, lease, or other authorization.

Should these efforts fail to cure the violation, the Authorities will exercise other means of enforcing SMP requirements. These measures include: terminating the lease, permit, or other authorization; entering onto the premises and removing unpermitted structures; requiring the permittee or adjacent landowner to remove unpermitted structures; blocking access to the Project Reservoir; reporting violations to law enforcement officials; and seeking remedies in court.

## **6.2 UNAUTHORIZED DREDGING**

Any dredging within the FERC Project Boundary without an approved permit will be reported to the USACE.

## **6.3 ENCROACHMENTS**

Landowners adjacent to the Toledo Bend Reservoir are responsible to ensure that dwellings, buildings, and other structures do not encroach on the Authorities' lands within the FERC Project Boundary. Landowners in the vicinity of Sabine National Forest in Texas, moreover, are responsible to ensure that their developmental activities do not encroach on National Forest lands administered by the USFS. During the term of the new license for the Project, encroachments on Project lands will be resolved as follows.

### **6.3.1 MINOR, EXISTING ENCROACHMENTS**

The Authorities recognize that adjacent landowners may be unaware that the Project Boundary, while generally running along the 175-foot msl contour elevation, actually is a metes and bounds survey that, in some areas, encompasses areas above 175 feet msl. During the over 40 years since the Project was initially developed, moreover, some adjacent landowners may have mistakenly relied upon this "general understanding" of the location of the Project Boundary and mistakenly erected dwellings and other structures that, while above 175 feet msl, are within the FERC-approved Project Boundary.

The Authorities also recognize the wide expanse of public resources at the Toledo Bend Project. With approximately 1,130 miles of shoreline across two states, these comparatively minor instances where well-intentioned landowners have encroached upon the Authorities' lands within the Project Boundary are far surpassed by the immense availability of other areas for public access, recreation, fish and wildlife protection and management, and other public uses. The Project shoreline is generally undeveloped, remote, and sparse, and the rural location of the Project has not created development pressure on Toledo Bend Reservoir.

For these reasons, this SMP authorizes the Authorities to handle minor encroachments on a case-by-case basis, either by directing the owner of the minor encroachment to remove the encroachment and restore the site, or by authorizing the encroachment as a Type 2 activity under Section 4.0 of this SMP.



The Authorities have identified three criteria that must be met for a minor encroachment to be addressed under this Section 6.3.1. First, the encroachment must occur entirely above the 175-foot msl contour line and 50 feet (measured horizontally) from the conservation pool of 172 feet msl. These areas, while perhaps necessary for Project purposes, are away from the shoreline, outside the normal flowage and inundated area of the Project, and sufficiently away from the shoreline as to not adversely affect shoreline resources, such as public access, public recreation, aesthetics, and fish and wildlife management.

Second, the encroachment must have occurred during the original license term for the Project. As discussed below, the Authorities will be undertaking initiatives to better inform adjacent landowners of the location of the Project Boundary. Thus, only ongoing, historical encroachments are subject to the more abbreviated approval process contemplated under this Section 6.3.1.

Finally, encroachments on federal lands administered by the USFS cannot be approved under the abbreviated procedures contemplated under this Section 6.3.1. The Authorities cannot authorize any encroachments on federal lands, including federal lands within the FERC Project Boundary. Any such encroachments must be resolved exclusively by the USFS.

Thus, the only encroachments that meet all three of the following criteria are eligible for the more abbreviated resolution process for minor encroachments under this Section 6.3.1:

1. The encroachment existed during the original term of the Toledo Bend license, i.e., on or before September 30, 2013; and
2. The majority of the encroachment must be located above the 175-foot msl contour and at least 50 feet (measured horizontally) from the Toledo Bend conservation pool level of 172 feet msl; and
3. The encroachment, including lands used for purposes of ingress and egress, must not occupy any federal lands administered by the USFS.

As set forth in the Authorities' individual Policies and Guidelines, the Authorities will work with the owner of the encroachment to either: (1) remove the encroaching structure and appropriately remediate the Project lands associated with the encroachment, or (2) grant appropriate rights to occupy Project lands.<sup>9</sup> Any such rights issued by the Authorities will reserve all rights for the Authorities to manage such lands for Project purposes. All costs, fees, and remedial work associated with resolving any encroachment are the sole responsibility of the owner of the encroaching structure or activity.

### 6.3.2 *OTHER ENCROACHMENTS*

For all encroachments beyond the scope of Section 6.3.1, the Authorities will address encroachments as follows:

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<sup>9</sup> Appendix C § 1.2.10.2; Appendix D § 1.2.9.

- **Map and Detailed Description of Encroachment.** Upon discovery of an encroachment, the Authorities will contact the owner of the encroachment, or the adjacent landowner where the owner of the encroachment cannot be readily identified, notifying the owner or landowner of the encroachment, and requiring the owner or landowner to prepare a report that includes: (1) a detailed map showing the location of the encroachment with respect to the Project Boundary; and (2) a description of the encroachment and encroached lands, including any affected natural resources.
- **Analysis by the Authorities.** Upon receipt of the landowner's or owner's report, the Authorities will review it and determine whether the encroached lands are necessary for Project purposes. If the Authorities determine that the encroached lands are unnecessary for Project purposes, they will prepare and file an application with FERC to move the Project Boundary to exclude the encroachment from the Project Boundary. If, however, the Authorities determine that the encroached lands are necessary for Project purposes, they will work with the owner or landowner to appropriately address the encroachment.
- **Removal and Restoration.** If the Authorities determine, after working with the owner or landowner, that the appropriate action would be to remove the encroachment, they will notify the owner or landowner, providing a reasonable amount of time for the owner or landowner to remove the encroachment and restore the site. Owners of encroachments bear all costs associated with removing the encroachment and restoring the site to environmentally acceptable conditions.
- **Continuation of Encroachment.** If the Authorities determine, after working with the owner or landowner, that the appropriate action would be to authorize the encroachment, the Authorities will treat the encroachment as a Type 4 or Type 5 activity, as appropriate, and require the owner to obtain approval of the encroachment pursuant to the procedures set forth in Section 4.0 of this SMP. As part of that approval process, the Authorities, consulted resource agencies, and FERC may impose conditions and measures to protect FERC license requirements and Project purposes.

### 6.3.3 ENCROACHMENT PREVENTION INITIATIVES

To help prevent encroachments and implement the encroachment measures in this Section 6.3 over the term of the new license for the Project, the Authorities will undertake the following measures:

- **Monitoring.** The Authorities will monitor Project shorelines, as set forth in 5.0 of this SMP.
- **Reporting Violations to the USFS.** Upon discovery of any encroachment on federal lands within the FERC Project Boundary, the Authorities will immediately report the encroachment to USFS officials.

- **Permitting Violations.** In the event that owners of encroachments are unresponsive to the Authorities' efforts to address any encroachments, they will seek to enforce these provisions as set forth in Section 6.1 of this SMP.

## **7.0 SHORELINE MANAGEMENT PLAN REVIEW AND UPDATE PROCESS**

Every 5 years during the term of the new license for the Project, the Authorities will review the overall SMP in consultation with interested federal and state resource agencies and members of the public. The purpose of this update is to develop any reasonable and necessary revisions to protect water supply, power generation and capacity, environmental values, public recreation, historic properties, and aesthetics of the Toledo Bend Project. Upon FERC approval, this 5-year review cycle may be extended following the initial review of the SMP.

In addition, the Authorities, in consultation with interested federal and state resource studies, will update the land classification maps on an as-needed basis to reflect results of archeological surveys, designation of critical habitat for any federally listed endangered or threatened species, or identification of other sensitive resources along the Project shoreline.

Any revisions to this SMP are subject to FERC review and approval.

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## 9.0 DEFINITIONS

**ADJOINING LANDOWNER:** A person or entity owning land that shares a common boundary with property owned by SRA-LA or SRA-TX within the FERC Project Boundary for the Toledo Bend Project.

**DOCK:** A floating or fixed structure that: (1) extends into or over a lake, pond, or navigable river or stream from only that portion of the immediate shoreline or boathouse necessary to attach the floating or fixed structure to the shoreline or boathouse, and (2) is built or used for the purposes of securing and/or loading or unloading watercraft.

**LITTORAL ZONE:** Part of the river, lake, or ocean that is closest to the shore. The littoral zone extends from the shoreline to 600 feet into the water.

**PALUSTRINE WETLAND:** Includes all nontidal wetlands dominated by trees, shrubs, and emergent species.

**PERMIT HOLDER OR PERMITTEE:** Person(s) or entity(ies) who obtain a permit to use and occupy Project lands.

**PROJECT BOUNDARY:** The Toledo Bend Project Boundary encompasses lands and waters necessary for the construction, operation, and maintenance of the Project, and for other Project-related purposes, as depicted in Exhibit G of the Project license.

**RETAINING WALL:** A permanent structure of cribbing, wood, masonry, stone, concrete, or other material that supports a mass of soil.

**RIPRAP:** A heavy stone facing (armor) on a shore bank used to protect it and the adjacent upland against wave scour. Riprap depends on the soil beneath it for support and should be built only on stable shores or bank slopes.

**WETLANDS:** Areas that are temporarily, intermittently, or permanently inundated by surface water or saturated by groundwater.

**APPENDIX A**

**FERC STANDARD LAND USE ARTICLE**

128 FERC ¶ 62,051  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Sabine River Authority of Texas and  
Sabine River Authority, State of Louisiana

Project No. 2305-022

ORDER AMENDING LICENSE

(July 21, 2009)

1. On July 15, 2009, the Sabine River Authority of Texas and Sabine River Authority, State of Louisiana (Authorities or co-licensees) filed an application to amend the license for the Toledo Bend Hydroelectric Project (FERC No. 2305).<sup>1</sup> Specifically, the Authorities request that the Commission's standard land use article (article) be added to its project license. The project is located on the Sabine River in Newton, Sabine and Shelby counties, Texas, and Sabine and De Soto parishes, Louisiana.
2. The standard land use article has been included in Commission licenses issued since 1980, and has been added to other licenses upon the request of a licensee. The article allows licensees to authorize certain uses and occupancies of project lands and waters without prior Commission approval. The co-licensees request this amendment to reduce the administrative burden of preparing multiple applications for relatively minor uses of project resources. Further, the Authorities state inclusion of the article would update the project license to reflect current Commission policies.
3. The article contains conditions that are designed to ensure that any authorized use or conveyance permitted under this article is consistent with the project license and the protection of the project's scenic, recreational, and other environmental values. Amending the subject license to include this article would update the license to current Commission policies and standards related to land use; therefore, the subject license should be amended to include this article.

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<sup>1</sup> 30 FPC ¶ 1009 (1963).



The Director orders:

(A) The license for the Toledo Bend Hydroelectric Project (FERC No. 2305), is amended to include the article found in paragraph (B) of this order. The new article will be added to the license as article 403.

(B) Article 403. *Use and Occupancy* (a) In accordance with the provisions of this article, the licensees shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The licensees may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensees shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed under this article.

If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensees for protection and enhancement of the project's scenic, recreational, or other environmental values, or, if a covenant of a conveyance made under the authority of this article is violated, the licensees shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensees may grant permission without prior Commission approval are:

- (1) landscape plantings;
- (2) noncommercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time where said facility is intended to serve single family type dwellings;
- (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline;
- (4) food plots and other wildlife enhancements.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensees shall require multiple use and occupancy of facilities for access to project lands or waters. The licensees shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health and safety requirements.

Before granting permission for construction of bulkheads or retaining walls, the licensees shall:

- (1) inspect the site of the proposed construction;
- (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and
- (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

To implement this paragraph (b), the licensees may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensees' costs of administering the permit program. The Commission reserves the right to require the licensees to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensees may convey easements or rights of way across, or leases of, project lands for:

- (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary State and Federal approvals have been obtained;
- (2) storm drains and water mains;
- (3) sewers that do not discharge into project waters;
- (4) minor access roads;
- (5) telephone, gas, and electric utility distribution lines;
- (6) non project overhead electric transmission lines that do not require erection of support structures within the project boundary;
- (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69 kV or less); and
- (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir.

No later than January 31 of each year, the licensees shall file three copies of a report briefly describing for each conveyance made under this paragraph (c ) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensees may convey fee title to, easements or rights of way across, or leases of project lands for:

- (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained;
- (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates or permits have been obtained;
- (3) other pipelines that cross project lands or waters but do not discharge into project waters;
- (4) non project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained;
- (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one half mile (measured over project waters) from any other private or public marina;
- (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and
- (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the licensees must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensees to file an application for prior approval, the licensees may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

- (1) Before conveying the interest, the licensees shall consult with Federal and State fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.
- (2) Before conveying the interest, the licensees shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or

approved report on recreational resources, that the lands to be conveyed do not have recreational value.

- (3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.
- (4) The Commission reserves the right to require the licensees to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(g) The authority granted to the licensees under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(C) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR §385.713.

Robert J. Fletcher  
Chief, Land Resources Branch  
Division of Hydropower  
Administration and Compliance

Document Content(s)

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## **APPENDIX B**

### **SABINE RIVER AUTHORITY, STATE OF LOUISIANA PRIVATE USE AND COMMERCIAL USE FACILITY POLICIES AND GUIDELINES**

**SABINE RIVER AUTHORITY, STATE OF LOUISIANA**  
**PRIVATE USE AND COMMERCIAL USE FACILITY**  
**POLICIES AND GUIDELINES**

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## **1.0 SHORELINE MANAGEMENT POLICIES FOR TOLEDO BEND PROJECT SHORELINE LANDS – LOUISIANA**

### **1.1 Permitting Policies**

#### **1.1.1 Permit Required for Construction Activities**

Except as provided in Section 1.2.2 of these Policies and Guidelines, all improvements, construction, and other ground-breaking activities at Toledo Bend Reservoir (or “Reservoir”) on lands owned by the Sabine River Authority, State of Louisiana (SRA-LA), including the leaseback parcels, must be conducted under and in accordance with a Private Limited Use Permit (PLUP) or Commercial Limited Use Permit (CLUP) issued by SRA-LA. Any use of SRA-LA lands inconsistent with the PLUP or CLUP is strictly prohibited.

For purposes of these Policies and Guidelines, a PLUP is defined as a permit issued by SRA-LA to a person for a private, individual purpose associated with a single, private residence on lands adjoining SRA-LA’s lands within the Federal Energy Regulatory Commission (FERC) Project Boundary for Toledo Bend Project (or “Project”). A CLUP is defined as any other type of permit issued by SRA-LA for use and occupancy of SRA-LA’s lands within the FERC Project Boundary.

#### **1.1.2 Adjacent Owners; First Option**

It is the general policy of SRA-LA that property owners immediately adjacent to SRA-LA property within the FERC Boundary for Toledo Bend Project possess the first option to seek a PLUP or CLUP for proposed structures or activities requiring a SRA-issued permit, as set forth in Section 4.0 of the FERC-approved Shoreline Management Plan (SMP); *provided, however*, that the adjacent owner agrees to, in writing, and follows all rules and regulations, prescribed fees, restrictions, and reservations, including waiver of any claims against the SRA-LA for damages.

#### **1.1.3 Process and Requirements for Obtaining Permit**

All PLUP and CLUP applicants must adhere to the process requirements for obtaining a permit, as set forth in the SMP for Toledo Bend Project. In addition:

(a) **Proof of Ownership.** All applicants must include proof of ownership of land adjoining SRA-LA’s lands within the FERC Project Boundary and/or a signed statement from the adjoining landowner or leaseback lessee authorizing the proposed development.

(b) **Pre-Construction Inspection.** Prior to issuance of a permit, SRA-LA will conduct a pre-construction inspection of the premises to ensure the proposed improvements are in accordance with these Policies and Guidelines.

(c) **Commencement of Activities.** No construction, development, or other ground-disturbing activities may be started until SRA-LA approves the application and issues the PLUP or CLUP for the proposed activity.

(d) **Permit Available for Inspection.** Once issued, a copy of the approved PLUP or CLUP must be available at the construction site during construction, for review and inspection by SRA-LA.

(e) **Post-Construction Improvement Inspection.** Upon completion of the permitted development or other ground-disturbing activity, the permittee shall notify SRA-LA, after which SRA-LA will conduct a post-construction inspection to ensure the improvements were constructed as permitted.

(f) **PLUP or CLUP Plate.** Upon completion of the post-construction inspection, SRA-LA will furnish a permit plate to the permittee. PLUP and CLUP plates apply to all structures on the premises except water withdrawal facilities, which will be issued a separate plate. All plates must be posted on a completed, permitted facility in a conspicuous location that makes the facility easily identifiable from the Reservoir.

#### 1.1.4 Revocable Privilege

When issuing PLUPs or CLUPs for limited use and occupancy of its lands, SRA-LA expressly retains fee ownership and all rights to enter, occupy, control, and possess all lands associated with the PLUP or CLUP. Issuance of a PLUP or CLUP is a revocable privilege and does not convey any right of ownership or control of the permitted lands. In exchange for this privilege, permittees must comply with permit conditions, regulations, and these Policies and Guidelines developed by the SRA-LA, as well as applicable local, state and federal regulations, including any requirements to protect and enhance the scenic, cultural, environmental, public safety, and public recreational values of the Toledo Bend Project that may be required by FERC.

#### 1.1.5 Water Level Fluctuation; No Right to Extend Facilities

In general, the permitted use of the Toledo Bend Reservoir shoreline within the FERC Project Boundary may provide some access to the Reservoir at the conservation pool stage elevation. **However, the water level in Toledo Bend Reservoir is subject to fluctuation and may drop 10 feet or more below the full pool stage. Permitted and leased premises are subject to flowage and inundation as a result of normal operations of the Reservoir.** Unless approved by SRA-LA in accordance with the procedures set forth in the SMP, permittees are not authorized to extend any facility beyond the permit-approved specifications for any reason, including efforts to provide access to the Reservoir during periods of lower water levels at Toledo Bend Reservoir.

#### 1.1.6 Construction and Maintenance

Construction activities under PLUPs and CLUPs shall comply with all applicable federal, state, and local laws, regulations, codes, and ordinances, as well as FERC license requirements.

All permitted structures must be maintained in good repair. All structures not adhering to these requirements are subject to removal at the permittee's expense.

#### 1.1.7 Electrical Standards

All electrical wiring shall be installed in accordance with national, state, and local electrical codes and requirements. Electrical wiring cannot be attached to trees, and all electrical service is to be installed underground in electrical conduit unless otherwise approved.

#### 1.1.8 Limitations on Lands Eligible for Permit

Notwithstanding any other provision in these Policies and Guidelines, in certain areas of the Toledo Bend Reservoir shoreline, such as at the heads of drains, PLUPs and CLUPs will be issued only where reasonable and practical as determined by the SRA-LA.

#### 1.1.9 Contractors Licensed and Insured

All contractors retained by permittees and lessees to undertake work within the FERC Project Boundary for the Toledo Bend Project must comply with state requirements related to licensing and insurance.

### **1.2 Land Management Policies**

#### 1.2.1 General

The following land management policies apply to all premises subject to: (1) permits issued by SRA-LA for use and occupancy of lands within the FERC Project Boundary for Toledo Bend Project, including PLUPs and CLUPs; and (2) leaseback agreements issued by SRA-LA to landowners whose property lies immediately adjacent to SRA-LA lands within the FERC Project Boundary for Toledo Bend Project.

#### 1.2.2 Authorized Ground Breaking and Construction Activities

Permittees and lessees are authorized under these Policies and Guidelines to undertake the following construction and other ground-breaking activities without specific prior approval of SRA-LA, so long as the activity conforms to the specifications, limitations and requirements below.

##### *1.2.2.1 Fencing*

Permittees and lessees are authorized to construct and maintain fencing on the permitted or leased land, so long as the fencing meets the following specifications:

- Fencing material must be pre-approved by SRA-LA.
- Privacy, hog-wire, and barbwire fences are strictly prohibited.

- Fencing may not extend below the conservation pool elevation of 172 feet mean sea level (msl).
- Fencing shall be constructed along or within the boundary of the permitted or leased premises.

SRA-LA reserves the right to require relocation or removal of any fencing for any reason, including but not limited to facilitating public access to the Toledo Bend Project and protecting environmental resources. Upon receipt of a written relocation or removal notification from SRA-LA, the permittee or lessee shall immediately relocate or remove the fencing at its own expense, and at no cost to SRA-LA.

#### *1.2.2.2 Landscaping*

Lessees and permittees must keep their leased or permitted premises clear of garbage, refuse, debris, and other unsightly objects and materials that detract from the aesthetic qualities at Toledo Bend Project. Lessees and permittees are authorized to engage in reasonable landscaping activities to beautify the leased or permitted premises; such activities, however, must be conducted in a manner that recognizes the importance of natural, native vegetation for maintenance of shoreline and bank stability, fish and wildlife habitat, aesthetics, and water quality at Toledo Bend Project. For these reasons, landscaping activities on leased and permitted premises are subject to the following restrictions and requirements:

- **Underbrush Clearing.** Lessees and permittees are authorized to clear underbrush on the leased or permitted premises.
- **Tree Removal.** Unless authorized in advance by SRA-LA, lessees and permittees are strictly prohibited from removing: (1) any cypress trees on the leased or permitted premises; (2) any trees below the conservation pool elevation of 172 feet msl, except for non-native invasive species discussed below; and (3) any trees on the leased or permitted premises more than three inches in diameter, except for non-native invasive species discussed below. As a matter of policy, SRA-LA generally will not authorize removal of more than 10 trees per acre from any leased or permitted premises.
- **Grasses and Other Plantings.** SRA-LA encourages permittees and lessees to plant native grasses and other plantings that do not require intensive watering, fertilizer, and pesticide treatments. SRA-LA reserves the right to require permittees and lessees to remove any landscape plantings that detract from the natural beauty and aesthetics of the Toledo Bend Project.
- **Chinese Tallow and Other Invasives.** Permittees and lessees are strictly prohibited from planting or maintaining any invasive terrestrial or aquatic species on the leased or permitted premises. In particular, permittees and lessees must immediately remove any Chinese tallow trees from the leased or permitted premises, regardless of the diameter.

### 1.2.3 SRA-LA Access to Premises

All leased and permitted premises are subject to entry and periodic inspection by SRA-LA. As a condition of any permit or lease issued by SRA-LA, SRA-LA requires all lessees and permittees to provide access at all times to all leased and permitted sites, through private property if necessary, for the purpose of inspection or monitoring the premises. In addition, adjacent private property owners will provide SRA-LA access to any structure or facility within the FERC Project Boundary of Toledo Bend Project, regardless of whether the structure or facility has been issued a PLUP or CLUP by SRA-LA. The purposes for SRA-LA entry and inspection on leased and permitted premises include, but are not limited to, the following:

- As part of the permit processes, such as issuing a new permit or transferring a permit.
- Monitoring water withdrawal activities and compliance.
- Construction and post-construction inspection.
- Response to complaints from regulators and/or members of the public.
- Periodic inspection at the sole discretion of SRA-LA.

### 1.2.4 Stump Removal

Permittees and lessees are prohibited from removing any tree stumps from Toledo Bend Reservoir below the conservation pool elevation of 172 feet msl, except as approved in advance of such removal by SRA-LA.

### 1.2.5 Aquatic Herbicides

Permittees and lessees must adhere to all federal, state, and parish laws and regulations applicable to the handling, storage, disposal, and application of aquatic herbicides within the FERC Project Boundary of the Toledo Bend Project. In addition, use of aquatic herbicides on leased and permitted premises is subject to the following restrictions and requirements:

- Toledo Bend Salvinia Training and Permit. Prior to applying any aquatic herbicides within the FERC Project Boundary for the Toledo Bend Project, lessees and permittees, and their contractors or service providers, must obtain a permit, which can be obtained only upon completion of a training course offered by Louisiana Department of Wildlife and Fisheries.
- Herbicide Application Data Form. Within 14 days of applying any aquatic herbicides within the FERC Project Boundary for the Toledo Bend Project, lessees and permittees must submit a completed Herbicide Application Data Form to SRA-LA. A copy of the data form must be retained by the lessee or permittee for a period of 3 years from the date of the herbicide application.

#### 1.2.6 Property Covenants and Deed Restrictions

Private covenants and deed restrictions that do not appear on the face of the permit or leaseback agreement issued by SRA-LA are not enforceable by SRA-LA and are beyond the scope of these Policies and Guidelines.

#### 1.2.7 Abandoned or Non-Conforming Property

SRA-LA is authorized, at the expense of the lessee or permittee, to seize any structures, fixtures, or personal property located on permitted or leased premises, or in the adjoining Reservoir area of the Toledo Bend Project, which is unauthorized, abandoned, unattended for unreasonably lengthy periods, non-conforming with these Policies and Guidelines, or where the permittee or lessee fails to timely submit payment for any fee or charge issued by SRA-LA.

#### 1.2.8 Vehicles on Leased and Permitted Premises

Unused or inoperable motor vehicles, including but not limited to watercraft, must not be stored on any lands subject to any lease or permit issued by SRA-LA.

No recreational vehicles (which, for the purposes of these Policies and Guidelines, include travel trailers, mobile homes, and similar equipment) of any type may be stored on SRA-LA lands subject to a lease or PLUP. Recreational vehicles may be parked on lands subject to a CLUP, provided that: (1) recreational vehicle use is consistent with the commercial activity authorized under the CLUP, and (2) the recreational vehicle is not used for permanent habitation.

#### 1.2.9 Encroachments, Generally

Lessees and permittees are responsible to ensure that their use and occupancy of SRA-LA lands do not encroach beyond the leased or permitted premises. In addition, adjoining landowners are responsible to ensure that dwellings, buildings, and other structures and uses do not encroach on SRA-LA lands. Any encroachment issues must be resolved prior to SRA-LA issuing any permit for a proposed structure or activity. SRA-LA reserves the right to require, at the sole expense of the lessee, permittee, or land owner, removal of any and all encroachments. Costs and expenses associated with remediation of an encroachment are the responsibility of the permittee, lessee, or land owner of the encroaching structure or activity.

#### 1.2.10 Encroachments within FERC Project Boundary

Leaseback agreements and permits issued by SRA-LA do not authorize the lessee or permittee to construct any dwelling or other habitable structure within the FERC Project Boundary for the Toledo Bend Project. In addition, any structure or groundbreaking activity, except as provided in Section 1.2.2 of these Policies and Guidelines, must be approved and permitted by SRA-LA. For these reasons, it is the policy of SRA-LA to cure any encroachments within the Project Boundary in a manner that balances the expense and challenge of removing encroachments against SRA-LA's FERC license obligations to ensure public access and protect the electric generating, water supply, recreational, historical, and environmental values at the

Toledo Bend Project. The following procedures apply to the resolution of encroachments on SRA-LA's lands within the Project Boundary.

#### *1.2.10.1 Removal of Encroachment*

As a general rule, SRA-LA requires removal of all encroachments on its lands within the FERC Project Boundary for Toledo Bend Project. Upon discovery of an encroachment, SRA-LA will notify the owner of the encroachment, in writing, directing the owner to remove the encroachment within a reasonable period, not to exceed 90 days. If the owner of the encroachment believes additional time for removal is warranted, it may seek an extension of time to remove the encroachment, which SRA-LA may grant at its sole discretion, upon a showing of good cause.

#### *1.2.10.2 Authorization of Limited Encroachments*

If the owner of an encroachment believes that removal of the encroachment is unreasonable or impractical, it may seek authorization and accompanying appropriate interests from SRA-LA for the encroachment, as follows:

(a) **Improvement Survey Required.** The owner of the encroachment must prepare an improvement survey and submit it to SRA-LA with its request for authorization and accompanying interests from SRA-LA. At a minimum, the improvement survey must depict the location of: (1) the encroaching structure or use, (2) the FERC Project Boundary for Toledo Bend Project and SRA-LA property line, and (3) the 172-foot-msl and 175-foot-msl contour lines.

(b) **Unilateral Authorization by SRA-LA.** Upon receipt of a request to authorize an encroachment with accompanying improvement survey, the SRA-LA will determine whether authorizing the encroachment would: (1) be consistent with FERC license requirements; (2) preserve public access and use at the Toledo Bend Project; and (3) meet the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project. If the requested encroachment approval meets each of these criteria, SRA-LA will approve limited encroachments, without prior resource agency consultation or FERC review and/or approval, so long as:

(1) The encroachment existed during the original term of the Toledo Bend Project license, i.e., on or before September 30, 2013; and

(2) The majority of the encroachment is located above the 175-foot msl contour and at least 50 feet (measured horizontally) from the Toledo Bend conservation pool level of 172 feet msl.

(c) **Authorization Following Consultation and/or FERC Approval.** All encroachments not within the scope of Section 1.2.10.2(b) must be approved in accordance with Section 4.0 of the SMP and SRA-LA's accompanying Policies and Guidelines.

(d) **Authorization and Rights.** Upon approval, SRA-LA will authorize the encroachment and grant appropriate rights for the encroaching structure. Any instrument of conveyance will: (1) require the owner to indemnify SRA-LA and hold it harmless;

(2) require the owner to maintain appropriate insurance for the structure and personal property therein; (3) retain sufficient flowage rights to SRA-LA, as well as rights to operate the Toledo Bend Project for all Project purposes; and (4) include any other provisions deemed necessary or appropriate by SRA-LA.

(e) Denial of Encroachment Authorization. In the event SRA-LA or FERC denies a request to authorize an encroachment, SRA-LA will notify the owner of the encroachment, in writing, directing the owner to remove the encroachment within a reasonable period, not to exceed 90 days. If the owner of the encroachment believes additional time for removal is warranted, it may seek an extension of time to remove the encroachment, which SRA-LA may grant at its sole discretion, upon a showing of good cause.

#### 1.2.11 Boundary Line Disputes Among Lessees and Permittees

Disputes regarding a common boundary line between leaseback and permitted parcels that cannot be agreed to by all concerned parties will be resolved by the SRA-LA, at its sole discretion. Costs and expenses associated with the resolution of boundary line disputes, including but not limited to surveys, are the sole responsibility of the disputing parties, and not SRA-LA.

#### 1.2.12 Habitation

Except as provided in Section 1.2.10 of these Policies and Guidelines, leased and permitted lands owned by SRA-LA and within the FERC Project Boundary may not be used for permanent habitation by any person(s).

#### 1.2.13 CLUP Approved Uses

Upon issuance of a CLUP, SRA-LA grants the permittee the right to establish, operate, and maintain a recreational land use operation in accordance with the permitted use. SRA-LA prohibits any use of the premises inconsistent with permittee's permitted use.

## **2.0 CONSTRUCTION GUIDELINES FOR PRIVATE LIMITED USE PERMITS**

### **2.1 General**

The construction guidelines that follow are not comprehensive, but are intended as an aid to permittees. Because every PLUP site is unique and may present different environmental, safety, structural, and other issues, SRA-LA specifically reserves the right to impose additional restrictions as may be necessary to protect the interest of the public and/or the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project.

PLUP applicants are encouraged to contact SRA-LA with any questions related to these construction guidelines, prior to preparing their applications.



## **2.2 Storage Buildings**

The following conditions and restrictions apply to storage buildings within the FERC Project Boundary and subject to a PLUP issued by SRA-LA:

- Shall be a single-level structure not exceeding 720 square feet supported by a concrete slab or wooden structure.
- Shall be constructed in conformance with all national, state, and local building codes and requirements.
- Siding must be metal, wood, cement fiberboard, or brick and the roof must be metal or composition shingles.
- No portion of a storage building shall be used as a habitable structure.
- Potable water plumbing is authorized only for the use of sinks or hose bibs.
- The storage building shall not be used for storage of recreational vehicles.

## **2.3 Boathouses/Docks/Piers**

The following conditions and restrictions apply to boathouses, docks, and piers within the FERC Project Boundary and subject to a PLUP issued by SRA-LA:

- The physical dimensions of any facility shall be the lesser of the following limitations at the conservation pool elevation of 172 feet msl:
  - Any boathouse and/or dock/pier combination shall not exceed a total length of 300 linear feet from conservation pool elevation.
  - Subject to the other length limitations in this section, boathouses, docks, and piers will be the minimum length needed to: (1) accommodate a single watercraft, and (2) reach the 160-foot msl contour.
  - Any boathouse and/or dock/pier combination length shall not exceed 33 percent of the cove width at the conservation pool elevation, as determined solely by the SRA-LA.
  - For coves narrower than 60 feet, there must be a 20-foot clear area for navigation in the center of the cove, or 20-foot area at the deepest area of the cove.
  - Boathouses/docks/piers shall not be built closer than 10 feet from the side property boundary lines.
- Boathouses shall be a single level structure not exceeding 2,500 square feet.
- Boathouses shall not be used as a habitable structure.
- Potable water plumbing is authorized only for the use of sinks or hose bibs.

- Siding must be factory-coated, double-sided metal, cement fiberboard, or wood and the roof must be metal or composition shingles.
- Any material touching water shall be pressure treated wood or other approved material.
- Should a floating boathouse and/or dock be desired, it is recommended that they be supported by encapsulated closed cell foam for buoyancy. Barrels/drums cannot be used for floatation.
- Lighting/reflectors will adhere to applicable federal, state, and local requirements.
- Should a permittee elect to have electricity on a pier/boathouse/dock, it shall be in conformance with national, state, and local electrical codes and requirements.
- All structures must be constructed in conformance with all national, state, and local building codes and requirements.

## **2.4 Gazebos/Pavilions**

The following conditions and restrictions apply to gazebos and pavilions within the FERC Project Boundary and subject to a PLUP issued by SRA-LA:

- Shall not exceed 720 square feet.
- Framing shall be completely open and capable of being viewed at all times.
- Roofing must be factory coated metal or composition shingles.

## **2.5 Excavation/Dredging**

All dredging, filling, and excavation activities within the leased or permitted premises must comply with all applicable local, state, and federal requirements, and must be completed in accordance with any required permit from U.S. Army Corps of Engineers (USACE). In addition, the following conditions and restrictions apply to any excavation, dredging, and filling activities within the FERC Project Boundary and subject to a PLUP issued by SRA-LA:

- Some proposed dredging, filling, or excavation activities may be eligible for approval under a Programmatic General Permit between SRA-LA and USACE.
- SRA-LA reserves the right at its sole discretion to modify, limit, or deny any proposed dredging, filling, or excavation activities within the FERC Project Boundary for the Toledo Bend Project, as necessary to protect the interest of the public and/or the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project. Copies of dredging requirements can be obtained at the SRA-LA office.

## **2.6 Shoreline Stabilization**

All shoreline stabilization activities within the leased or permitted premises must comply with all applicable local, state, and federal requirements, and must be completed in accordance with any required permit from the USACE. In addition, the following conditions and restrictions apply to any shoreline stabilization activities within the FERC Project Boundary and subject to a PLUP issued by SRA-LA:

- Some proposed shoreline stabilization activities may be eligible for approval under a Programmatic General Permit between SRA-LA and USACE.
- SRA-LA reserves the right at its sole discretion to modify, limit, or deny any proposed shoreline stabilization activities within the FERC Project Boundary for the Toledo Bend Project, as necessary to protect the interest of the public and/or the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project.
- Generally, SRA-LA will approve shoreline stabilization measures only to control soil erosion in high-energy areas.
- Lessees and permittees are encouraged to use bioengineering techniques and landscape plantings before seeking authorization from SRA-LA for more invasive and expensive shoreline stabilization measures, such as rip-rap.

## **2.7 Water Withdrawal Facilities**

All proposed water withdrawal facilities must comply with all applicable local, state, and federal requirements. In addition, the following conditions and restrictions apply to water withdrawal facilities within the FERC Project Boundary and subject to a PLUP issued by SRA-LA:

- On lands subject to a PLUP, SRA-LA will authorize water withdrawal facilities only for private, residential use.
- Water withdrawal pumps must be electric.
- SRA-LA will approve only one pump per leased or PLUP permit, and each permitted pump will serve only a single lessee or permittee.
- Discharge piping from the pump is limited to a 1-1/2-inch nominal diameter restriction.

### **3.0 CONSTRUCTION GUIDELINES FOR COMMERCIAL LIMITED USE PERMITS**

#### **3.1 General**

The construction guidelines that follow are not comprehensive, but are intended as an aid to permittees. Because every CLUP site is different and may present different environmental, safety, structural, and other issues, SRA-LA specifically reserves the right to impose additional restrictions as may be necessary to protect the interest of the public and/or the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project.

CLUP applicants are encouraged to contact SRA-LA with any questions related to these construction guidelines, prior to preparing their applications.

#### **3.2 Recreational Vehicle/Travel Trailer**

Recreational vehicles must be on wheels and readily moveable in a “drive-away” condition at all times. No structure may be constructed around any recreational vehicle or travel trailer that will, in the sole discretion of SRA-LA, limit its ability to be mobile. All utilities must be installed to meet all federal, state, and local codes and requirements.

#### **3.3 Gazebos/Pavilions**

Gazebos/pavilions will be allowed on CLUP land, with length and numbers regulated by SRA-LA on a case-by-case basis to fit specific situations.

#### **3.4 Carports**

Permanent, metal carports are allowed within CLUP land if factory constructed and professionally installed.

#### **3.5 Excavation/Dredging**

All dredging, filling, and excavation activities within the leased or permitted premises must comply with all applicable local, state, and federal requirements, and must be completed in accordance with any required permit from USACE. In addition, the following conditions and restrictions apply to any excavation, dredging, and filling activities within the FERC Project Boundary and subject to a CLUP issued by SRA-LA:

- Some proposed dredging, filling, or excavation activities may be eligible for approval under a Programmatic General Permit between SRA-LA and USACE.
- SRA-LA reserves the right at its sole discretion to modify, limit, or deny any proposed dredging, filling, or excavation activities within the FERC Project Boundary for the Toledo Bend Project, as necessary to protect the interest of the public and/or the electric

generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project. Copies of dredging requirements can be obtained at the SRA-LA office.

### **3.6 Docks/Piers/ Boathouses**

SRA-LA will allow permittee to construct a boathouse/dock/pier on CLUP land under the following conditions. The restrictions listed below are subject to additional limitations based on a site-by-site evaluation as determined solely by the SRA-LA.

- Docks/piers/boathouses length and numbers may be regulated at the discretion of SRA-LA to fit specific situations.
- The physical dimensions of any facility shall be the lesser of the following limitations:
  - Any boathouse and/or dock/pier combination shall not exceed a total length of 300 linear feet from conservation pool elevation (172 msl).
  - Subject to the other length limitations in this section, boathouses, docks, and piers will be the minimum length needed to: (1) accommodate a single watercraft, and (2) reach the 160-foot-msl contour.
  - Any boathouse and/or dock/pier combination length shall not exceed 33 percent of the cove width as determined solely by the SRA-LA.
  - For coves narrower than 60 feet, there must be a 20-foot clear area for navigation in the center of the cove or 20-foot at the deepest area of the cove.
- Boathouses shall be a single level structure.
- Boathouses shall not be used as a habitable structure.
- Potable water plumbing may be authorized on a case-by-case basis.
- Siding must be metal, cement fiberboard, or wood and the roof must be factory-coated, double-sided metal or composition shingles.
- Any material touching water shall be pressure treated wood or other approved material.
- Should a floating boathouse and/or dock be desired, they must be supported by encapsulated closed cell foam for buoyancy. Barrels cannot be used for floatation.
- Lighting/reflectors will adhere to USACE requirements.
- Should a permittee elect to have electricity on a boathouse/dock, it shall be in strict conformance with national, state, and local electrical codes and requirements.
- All structures will be built to conform to all national, state, and local codes, laws, and regulations.

### **3.7 Water Withdrawal Facilities**

Commercial water withdrawal permits will be issued on a case-by-case basis and all SRA-LA and federal, state, and local laws, codes, and requirements must be met.

**APPENDIX C**

**SABINE RIVER AUTHORITY OF TEXAS**  
**PRIVATE USE AND COMMERCIAL USE FACILITY**  
**POLICIES AND GUIDELINES**

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## **1.0 SHORELINE MANAGEMENT POLICIES FOR TOLEDO BEND PROJECT SHORELINE LANDS**

### **1.1 Permitting Policies**

#### **1.1.1 Permit Required for Construction Activities**

Except as provided in Section 1.2.2 of these Policies and Guidelines, all improvements, construction, and other ground-breaking activities at Toledo Bend Reservoir (or “Reservoir”) owned by the Sabine River Authority of Texas (SRA-TX) must be conducted under and in accordance with a Private Limited Use Permit (PLUP) or Commercial Limited Use Permit (CLUP) issued by SRA-TX. Any use of SRA-TX lands inconsistent with the PLUP or CLUP is strictly prohibited.

#### **1.1.2 Adjacent Owners; First Option**

It is the general policy of the SRA-TX that property owners, on the shoreline area of Toledo Bend Reservoir immediately adjacent to SRA-TX property and within the Federal Energy Regulatory Commission (FERC) Project Boundary for the Toledo Bend Project (or “Project”), possess the first option to seek a PLUP or CLUP for proposed structures or activities requiring a SRA-issued permit, as set forth in Section 4.0 of the FERC-approved Shoreline Management Plan (SMP); *provided, however*, that the adjacent owner agrees to, in writing, and follows all rules and regulations, prescribed fees, restrictions, and reservations, including waiver of any claims against the SRA-TX for damages.

#### **1.1.3 Process and Requirements for Obtaining Permit**

All PLUP and CLUP applicants must adhere to the process requirements for obtaining a permit, as set forth in Section 4.0 of the SMP for the Toledo Bend Project. SRA-TX permits on a recurring interval CLUP and PLUP lands within the FERC Project Boundary on CLUP or PLUP lands. An approved PLUP or CLUP does not grant a permittee approval to construct improvements within the FERC Project Boundary. Refer to Section 1.1.4 for discussion on requirements to construct improvements within the FERC Project Boundary. In addition to the requirements set forth in the SMP for the Toledo Bend Project, all applicants must include proof of ownership of land adjoining SRA-TX’s lands within the FERC Project Boundary. Upon initial issuance of a PLUP and CLUP, SRA-TX will furnish a permit plate to the permittee, which must be posted in a conspicuous location that is easily identifiable from the Reservoir.

#### **1.1.4 Process and Requirement for Constructing Improvements**

An approved PLUP or CLUP does not grant a permittee approval to construct improvements within the FERC Project Boundary. To construct improvements within the FERC Project Boundary, a permittee must first have a PLUP or CLUP and then submit a construction application to SRA-TX for approval. Once an application is submitted to SRA-TX, the following procedures will be followed:

(a) **Pre-Construction Improvement Inspection:** Prior to issuance of construction approval, SRA-TX will perform a pre-construction inspection to ensure the proposed improvements are in accordance with these Policies and Guidelines.

(b) **Construction Application Available for Inspection:** Once issued, a copy of the approved construction application must be available at the construction site during construction, for review and inspection by SRA-TX.

(c) **Post Construction Improvement Inspection:** Upon completion of construction, permittee shall notify SRA-TX, and SRA-TX will conduct a post construction inspection to ensure the improvements were constructed as approved.

(d) **Commencement of Construction:** No construction, development, or other ground disturbing activities may commence until SRA-TX issues approval of a construction application for the proposed improvements.

#### 1.1.5 Revocable Privilege

When issuing PLUPs or CLUPs for limited use and occupancy of its lands, SRA-TX expressly retains fee ownership and all rights to enter, occupy, control, and possess all lands associated with the PLUP or CLUP. Issuance of a PLUP or CLUP is a revocable privilege and does not convey any right of ownership or control of the permitted lands. In exchange for this privilege, permittees must comply with permit conditions and regulations developed by the SRA-TX, as well as applicable local, state, and federal regulations, including any requirements to protect and enhance the scenic, cultural, environmental, public safety, and public recreational values of the Toledo Bend Project as required by FERC.

#### 1.1.6 Water Level Fluctuation; No Right to Extend Facilities

In general, the permitted use of the Toledo Bend Reservoir shoreline within the FERC Project Boundary may provide some access to the Reservoir at the conservation pool stage elevation. **However, the water level in the Toledo Bend Reservoir is subject to fluctuation and PLUP and CLUP lands are subject to flowage and inundation as a result of normal operations of the Reservoir.** Unless approved by SRA-TX in accordance with the procedures set forth in the SMP, permittees are not authorized to extend any facility beyond the permit-approved specifications for any reason, including efforts to provide access to the Reservoir during periods of lower water levels at Toledo Bend Reservoir.

#### 1.1.7 Construction and Maintenance

Construction activities under PLUPs and CLUPs shall comply with all applicable federal, state, and local laws, regulations, codes, and ordinances, as well as FERC license requirements. All permitted structures must be maintained in good repair and in a sightly manner. All structures not adhering to these requirements are subject to removal at the permittee's expense.

#### 1.1.8 Electrical Standards

All electrical wiring shall be installed in accordance with national, state, and local electrical codes and requirements. Electrical wiring cannot be attached to trees, and all electrical service is to be installed underground in electrical conduit unless otherwise approved.

#### 1.1.9 Limitations on Lands Eligible for Permit

Notwithstanding any other provision in these Policies and Guidelines, in certain areas of the Toledo Bend Reservoir shoreline, such as at the backs of coves, PLUPs and CLUPs will be issued only where reasonable and practical as determined by the SRA-TX.

#### 1.1.10 Contractors Insured

Contractors retained by permittees to undertake work within the FERC Project Boundary for the Toledo Bend Project must be insured and must adhere to the statutory insurance requirements in accordance with the laws of the State of Texas and undertake all construction activities in accordance with a permit issued by SRA-TX.

### **1.2 Land Management Policies**

#### 1.2.1 General

The following land management policies apply to all premises subject to permits issued by SRA-TX for use and occupancy of lands within the FERC Project Boundary for the Toledo Bend Project, including PLUPs and CLUPs.

#### 1.2.2 Landscaping

Permittees are authorized under these Policies and Guidelines to undertake the following landscaping activities without specific prior approval of SRA-TX. Permittees must keep their permitted premises clear of garbage, refuse, debris, and other unsightly objects and materials that detract from the aesthetic qualities of the Toledo Bend Project. Permittees are authorized to engage in reasonable landscaping activities to beautify the permitted premises; such activities, however, must be conducted in a manner that recognizes the importance of natural, native vegetation for maintenance of shoreline and bank stability, fish and wildlife habitat, aesthetics, and water quality at the Toledo Bend Project. For these reasons, landscaping activities on permitted premises are subject to the following restrictions and requirements:

- Underbrush Clearing: Permittees are authorized to clear underbrush on the permitted premises.
- Tree Removal: With the exception of non-native invasive species discussed below, permittees are strictly prohibited from removing: (1) any tree below the conservation pool elevation of 172 feet mean sea level (msl); and (2) any tree greater than 3 inches in diameter on the permitted premises above the conservation pool elevation of 172 feet msl, except as permitted by SRA-TX.

- **Grasses and Other Plantings:** SRA-TX encourages permittees to plant native grasses and other plantings that do not require intensive watering, fertilizer, and pesticide treatments. SRA-TX reserves the right to require permittees to remove any landscape plantings that detract from the natural beauty and aesthetics of the Toledo Bend Project.
- **Chinese Tallow and Other Invasives.** Permittees are strictly prohibited from planting or maintaining any invasive terrestrial or aquatic species on the permitted premises. In particular, permittees must immediately remove any Chinese tallow trees from the permitted premises, regardless of the diameter.

#### 1.2.3 SRA-TX Access to Premises

All permitted premises are subject to entry and periodic inspection by SRA-TX. As a condition of any permit issued, SRA-TX requires all permittees to provide access at all times to all permitted sites, through private property if necessary, for the purpose of inspection or monitoring the premises. The purposes for SRA-TX entry and inspection on permitted premises include, but are not limited to, the following:

- Monitoring water withdrawal activities and compliance.
- Pre-construction and post-construction inspection.
- Response to complaints from regulators and/or members of the public.
- Periodic inspection at the sole discretion of SRA-TX.

#### 1.2.4 Stump Removal

Permittees are prohibited from removing any tree stumps from the Toledo Bend Reservoir below the conservation pool elevation of 172 feet msl, except as approved in advance of such removal by SRA-TX.

#### 1.2.5 Aquatic Herbicides

Permittees must adhere to all federal, state, and local laws and regulations applicable to the handling, storage, disposal, and application of aquatic herbicides within the FERC Project Boundary for the Toledo Bend Project. Prior to applying any aquatic herbicides within the FERC Project Boundary for the Toledo Bend Project, permittees, and their contractors or service providers, must be in compliance with Texas Department of Licensing and Regulations and Texas Parks and Wildlife requirements for herbicide applications.

#### 1.2.6 Abandoned or Non-Conforming Property

SRA-TX is authorized to seize any structures, fixtures, or personal property located on permitted premises, or in the adjoining Reservoir area of the Toledo Bend Project, which is unauthorized, abandoned, unattended for unreasonably lengthy periods, non-conforming with

these Policies and Guidelines, or where the permittee fails to timely submit payment for any fee or charge issued by SRA-TX.

#### 1.2.7 Vehicles on Permitted Premises

Unused or inoperable motor vehicles, including but not limited to watercraft, may not be stored on any lands subject to any permit issued by SRA-TX.

No recreational vehicles of any type may be stored on SRA-TX lands subject to a PLUP. Recreational vehicles may be parked on lands subject to a CLUP, provided that: (1) recreational vehicle use is consistent with the commercial activity authorized under the CLUP, and (2) the recreational vehicle is not used for permanent habitation.

#### 1.2.8 Encroachments

Permittees are responsible to ensure that their use and occupancy of SRA-TX lands do not encroach beyond the permitted premises. In addition, adjoining landowners are responsible to ensure that dwellings, buildings, and other structures and uses do not encroach on SRA-TX lands. Any encroachment issues must be resolved prior to SRA-TX issuing any permit for a proposed structure or activity. SRA-TX reserves the right to require, at the sole expense of the permittee or landowner, removal of any and all encroachments. Costs and expenses, including but not limited to surveys and/or removal of structures, associated with reconciliation of an encroachment are the responsibility of the permittee or landowner of the encroaching structure or activity.

#### 1.2.9 Encroachments within FERC Project Boundary

Permits issued by SRA-TX do not authorize the permittee to construct any dwelling or other habitable structure within the FERC Project Boundary for Toledo Bend Project. In addition, any structure or groundbreaking activity, except as provided in Section 1.2.2 of these Policies and Guidelines, must be approved and permitted by SRA-TX. For these reasons, it is the policy of SRA-TX to cure any encroachments within the Project Boundary in a manner that balances the expense and challenge of removing encroachments against SRA-TX's FERC license obligations to ensure public access and protect the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project. The following procedures apply to the resolution of encroachments on SRA-TX's lands within the Project Boundary.

##### *1.2.9.1 Removal of Encroachment*

As a general rule, SRA-TX requires removal of all encroachments on its lands within the FERC Project Boundary for the Toledo Bend Project. Upon discovery of an encroachment, SRA-TX will notify the owner of the encroachment, in writing, directing the owner to remove the encroachment within a reasonable period, not to exceed 90 days. If the owner of the encroachment believes additional time for removal is warranted, it may seek an extension of time to remove the encroachment, which SRA-TX may grant at its sole discretion, upon a showing of good cause.

### *1.2.9.2 Authorization of limited Encroachments*

If the owner of an encroachment believes that removal of the encroachment is unreasonable or impractical, it may seek authorization and accompanying appropriate interests from SRA-TX for the encroachment, as follows:

(a) **Improvement Survey Required:** The owner of the encroachment must prepare an improvement survey and submit it to SRA-TX with its request for authorization and accompanying interests from SRA-TX. At a minimum, the improvement survey must depict the location of: (1) the encroaching structure or use, (2) the FERC Project Boundary for the Toledo Bend Project and SRA-TX property line, and (3) the 172-foot msl and 175-foot msl contour lines.

(b) **Unilateral Authorization by SRA-TX:** Upon receipt of a request to authorize an encroachment with accompanying improvement survey, the SRA-TX will determine whether authorizing the encroachment would: (1) be consistent with FERC license requirements; (2) preserve public access and use at the Toledo Bend Project; and (3) meet the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project. If the requested encroachment approval meets each of these criteria, SRA-TX will approve limited encroachments, without prior resource agency consultation or FERC review and/or approval, so long as:

- (1) The encroachment existed during the original term of the Toledo Bend Project license, i.e., on or before September 30, 2013; and
- (2) The majority of the encroachment is located above the 175-foot msl contour and at least 50 feet (measured horizontally) from the Toledo Bend conservation pool level of 172 feet msl; and
- (3) The encroachment, including lands used for purposes of ingress and egress, must not occupy any federal lands administered by the U.S. Forest Service (USFS).

(c) **Authorization Following Consultation and/or FERC Approval:** All encroachments not within the scope of Section 1.2.9.2(b) must be approved in accordance with Section 4.0 of the SMP and SRA-TX's accompanying Policies and Guidelines.

(d) **Authorization and Rights:** Upon approval, SRA-TX will authorize the encroachment and grant appropriate rights for the encroaching structure. Any instrument of conveyance will: (1) require the owner to indemnify SRA-TX and hold it harmless; (2) require the owner to maintain appropriate insurance for the structure and personal property therein; (3) retain sufficient flowage rights to SRA-TX, as well as rights to operate the Toledo Bend Project for all Project purposes; and (4) include any other provisions deemed necessary or appropriate by SRA-TX.

(e) **Denial of Encroachment Authorization:** In the event SRA-TX or FERC denies a request to authorize an encroachment, SRA-TX will notify the owner of the encroachment, in writing, directing the owner to remove the encroachment within a reasonable period, not to exceed 90 days. If the owner of the encroachment believes additional time for

removal is warranted, it may seek an extension of time to remove the encroachment, which SRA-TX may grant at its sole discretion, upon a showing of good cause.

#### 1.2.10 Permit Boundary Line Disputes

Disputes regarding a common PLUP and CLUP boundary lines that cannot be agreed to by all concerned parties will be resolved by the SRA-TX, at its sole discretion. Costs and expenses associated with the resolution of permit boundary line disputes, including but not limited to surveys, are the sole responsibility of the disputing parties, and not SRA-TX.

#### 1.2.11 Habitation

Permitted lands owned by SRA-TX and within the FERC Project Boundary may not be used for permanent habitation by any person(s).

#### 1.2.12 Best Management Practices

Permittees shall use and follow Best Management Practices in accordance with the State of Texas to construct, maintain, and operate facilities within the FERC Project Boundary.

#### 1.2.13 CLUP Approved Uses

Upon issuance of a CLUP, SRA-TX grants the permittee the right to establish, operate, and maintain a recreational land use operation in accordance with the permitted use. SRA-TX prohibits any use of the premises inconsistent with permittee's permitted use.

## **2.0 CONSTRUCTION GUIDELINES FOR PRIVATE LIMITED USE PERMITS**

### **2.1 General**

The construction guidelines that follow are not comprehensive, but are intended as an aid to permittees. Because every PLUP site is unique and may present different environmental, safety, structural, and other issues, SRA-TX specifically reserves the right to impose additional restrictions as may be necessary to protect the interest of the public and/or the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project.

PLUP applicants should contact SRA-TX with any questions related to these construction guidelines, prior to preparing their applications.

### **2.2 Storage Buildings**

The following conditions and restrictions apply to storage buildings within the FERC Project Boundary and are subject to a PLUP issued by SRA-TX:



- Prior to any construction permittee shall provide SRA-TX with construction plans and/or sufficient details regarding the proposed facilities.
- Shall be a single level structure not exceeding 720 square feet supported by a concrete slab or wooden structure with a minimum of 2x6 pressure treated floor joist.
- Siding must be factory coated metal, wood, cement fiberboard, or brick and the roof must be factory coated metal or composition shingles.
- No portion of a storage building shall be used as a habitable structure.
- Potable water plumbing attached to conventional household fixtures including, but not limited to, sinks, showers, bathtubs and toilets is prohibited.
- The storage building shall not be used for storage of recreational vehicles.

## **2.3 Boathouses and Docks**

The following conditions and restrictions apply to boathouses and docks within the FERC Project Boundary and are subject to a PLUP issued by SRA-TX. The restrictions listed below are subject to additional limitations based on a site-by-site evaluation as determined solely by the SRA-TX.

- Prior to any construction, permittee shall provide SRA-TX with construction plans and/or details regarding the proposed facility.
- The physical dimensions of any facility shall meet the following limitations:
  - Any boathouse and/or dock combination shall not exceed a total length of 150 linear feet from conservation pool elevation unless specific site conditions will allow.
  - Any boathouse and/or dock combination length shall not exceed 25 percent of the cove width as determined solely by the SRA-TX.
- Boathouses shall be a single level structure not exceeding 1,500 square feet.
- Boathouses shall not be used as a habitable structure.
- Potable water plumbing attached to conventional household fixtures including, but not limited to, sinks, showers, bathtubs, and toilets is prohibited.
- Siding must be factory coated metal, cement fiberboard, or painted wood and the roof must be factory coated metal or composition shingles.
- Any material touching water and structural framing shall be painted steel or pressure treated wood or other approved material.

- Should a floating boathouse and/or dock be desired, it is recommended that they be supported by encapsulated closed cell foam for buoyancy. Other methods may be approved on a case-by-case basis.
- Should a permittee elect to have electricity on a boathouse/dock, it shall be in conformance with all federal, state, and local codes and ordinances.

## **2.4 Piers**

SRA-TX will allow permittee to construct a pier with or without a T-head or un-walled boat shelter on PLUP land under the following conditions. The restrictions listed below are subject to additional limitations based on a site-by-site evaluation as determined solely by the SRA-TX.

- Prior to any construction, permittee shall provide SRA-TX with construction plans and/or details regarding the proposed facility.
- The physical dimensions of any facility shall meet the following limitations:
  - Any pier or un-walled boat shelter with or without a T-head shall not exceed a total length of 150 linear feet from conservation pool elevation unless specific site conditions will allow.
  - Any pier or un-walled boat shelter with or without a T-head shall not exceed 25 percent of the cove width as determined solely by the SRA-TX.
- Any material touching water and structural framing shall be painted steel or pressure treated wood or other approved material.
- Should a floating pier or un-walled boat shelter be desired, it is recommended that they be supported by encapsulated closed cell foam for buoyancy. Other methods may be approved on a case-by-case basis.
- Should a permittee elect to have electricity on a pier or un-walled boat shelter, it shall be in conformance with all federal, state, and local codes and ordinances.

## **2.5 Gazebos and Pavilions**

The following conditions and restrictions apply to gazebos and pavilions within the FERC Project Boundary and subject to a PLUP issued by SRA-TX:

- Prior to any construction, permittee shall provide SRA-TX with construction plans and/or details regarding the proposed facility
- Shall not exceed 720 square feet.
- Framing shall be completely open and capable of being viewed at all times.

- Roofing must be factory coated metal or composition shingles.

## **2.6 Excavation and Dredging**

All dredging, filling, and excavation activities within the permitted premises must comply with all applicable local, state, and federal requirements, and must be completed in accordance with any required permit from U.S. Army Corps of Engineers (USACE). In addition, the following conditions and restrictions apply to any excavation, dredging, and filling activities within the FERC Project Boundary and subject to a PLUP issued by SRA-TX:

- Some proposed dredging, filling, or excavation activities may be eligible for approval under a Programmatic General Permit between SRA-TX and USACE.
- SRA-TX reserves the right at its sole discretion to modify, limit, or deny any proposed dredging, filling or excavation activities within the FERC Project Boundary for Toledo Bend Project, as necessary to protect the interest of the public and/or the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project. Copies of dredging requirements can be obtained at the SRA-TX office.

## **2.7 Shoreline Stabilization**

All shoreline stabilization activities within the permitted premises must comply with all applicable local, state, and federal requirements, and must be completed in accordance with any required permit from the USACE. In addition, the following conditions and restrictions apply to any shoreline stabilization activities within the FERC Project Boundary and subject to a PLUP issued by SRA-TX:

- Some proposed shoreline stabilization activities may be eligible for approval under a Programmatic General Permit between SRA-TX and USACE.
- SRA-TX reserves the right at its sole discretion to modify, limit, or deny any proposed shoreline stabilization activities within the FERC Project Boundary for the Toledo Bend Project, as necessary to protect the interest of the public and/or the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project.

## **2.8 Water Withdrawal Facilities**

The following conditions and restrictions apply to water withdrawal facilities within the FERC Project Boundary and subject to a PLUP issued by SRA-TX:

- On lands subject to a PLUP, SRA-TX will authorize water withdrawal and discharge facilities only for private, residential use.
- Water withdrawal pumps must be electric (i.e., no internal combustion units).
- SRA-TX will approve only one pump per PLUP premises.

- Discharge piping from the pump is limited to a 1-inch nominal diameter restriction.

## **2.9 Fences**

Permittees are authorized to construct and maintain fencing on the permitted land, so long as the fencing meets the following specifications:

- Fencing material must be pre-approved by SRA-TX.
- Privacy, hog-wire, and barbwire fences are prohibited.
- Fencing may not extend beyond the conservation pool elevation of 172-feet msl.
- It is the permittees responsibility to identify the permit boundary and fencing shall be constructed along said permit boundary.

If it is determined a fence needs to be removed or relocated for any reason, the permittee shall do so at no cost to the SRA-TX.

## **3.0 CONSTRUCTION GUIDELINES FOR COMMERCIAL LIMITED USE PERMITS**

### **3.1 General**

The construction guidelines that follow are not comprehensive, but are intended as an aid to permittees. Because every CLUP site is different and may present different environmental, safety, structural, and other issues, SRA-TX specifically reserves the right to impose additional restrictions as may be necessary to protect the interest of the public and/or the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project.

CLUP applicants are encouraged to contact SRA-TX with any questions related to these construction guidelines, prior to preparing their applications.

### **3.2 Recreational Vehicle/Travel Trailer**

Recreational vehicles cannot exceed 40 feet in length (not including hitches or bumpers) and must be on wheels and readily moveable in a “drive-away” condition at all times. No structure may be constructed around any recreational vehicle or travel trailer that will, in the sole discretion of SRA-TX, limit its ability to be mobile. Freestanding or attached roofs are prohibited from extending over recreational vehicles and porches/decks may not be attached to recreational vehicles or travel trailers.

### **3.3 Porches and Decks**

Free standing, detached porches/decks will be allowed on CLUP land but are restricted to a maximum of 400 square feet. Only factory coated metal roofing or composition shingles are

allowed for porches or decks. Structural framing for porches or decks must be a minimum of pressure treated 2x6 and flooring is restricted to a ground level concrete slab, pressure treated 2x6, 1-inch thick beveled edge pressure treated deck boards or synthetic deck boards.

### **3.4 Carports**

Portable metal carports are allowed within CLUP land if factory constructed and professionally installed. The total footprint for the carport shall not exceed 576 square feet (24x24).

### **3.5 Excavation and Dredging**

All dredging, filling, and excavation activities within the permitted premises must comply with all applicable local, state, and federal requirements, and must be completed in accordance with any required permit from USACE. In addition, the following conditions and restrictions apply to any excavation, dredging, and filling activities within the FERC Project Boundary and subject to a PLUP issued by SRA-TX:

- Some proposed dredging, filling, or excavation activities may be eligible for approval under a Programmatic General Permit between SRA-TX and USACE.
- SRA-TX reserves the right at its sole discretion to modify, limit, or deny any proposed dredging, filling, or excavation activities within the FERC Project Boundary for the Toledo Bend Project, as necessary to protect the interest of the public and/or the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project. Copies of dredging requirements can be obtained at the SRA-TX office.

### **3.6 Docks, Boathouses, and Piers**

Dock length and numbers may be regulated at the discretion of SRA-TX to fit specific situations and to avoid overcrowding. All other specifications are subject to additional restrictions on a case-by-case basis.

### **3.7 Water Withdrawal Facilities**

The following conditions and restrictions apply to irrigation water withdrawal facilities within the FERC Project Boundary and subject to a CLUP issued by SRA-TX:

- On lands subject to a CLUP, SRA-TX will authorize water withdrawal and discharge facilities only for private irrigation use.
- Water withdrawal pumps must be electric (i.e., no internal combustion units).
- Only one pump per recreational vehicle will be permitted.
- Discharge piping from the pump is limited to a 1-inch nominal diameter restriction.

### **3.8 Fences**

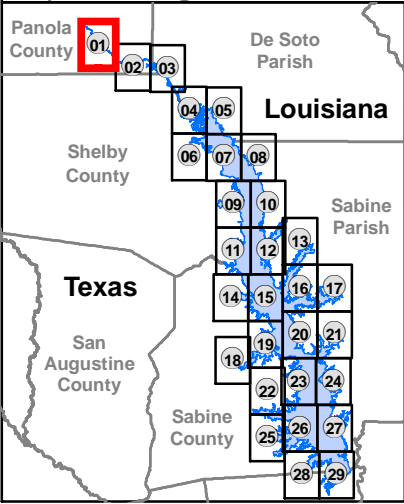
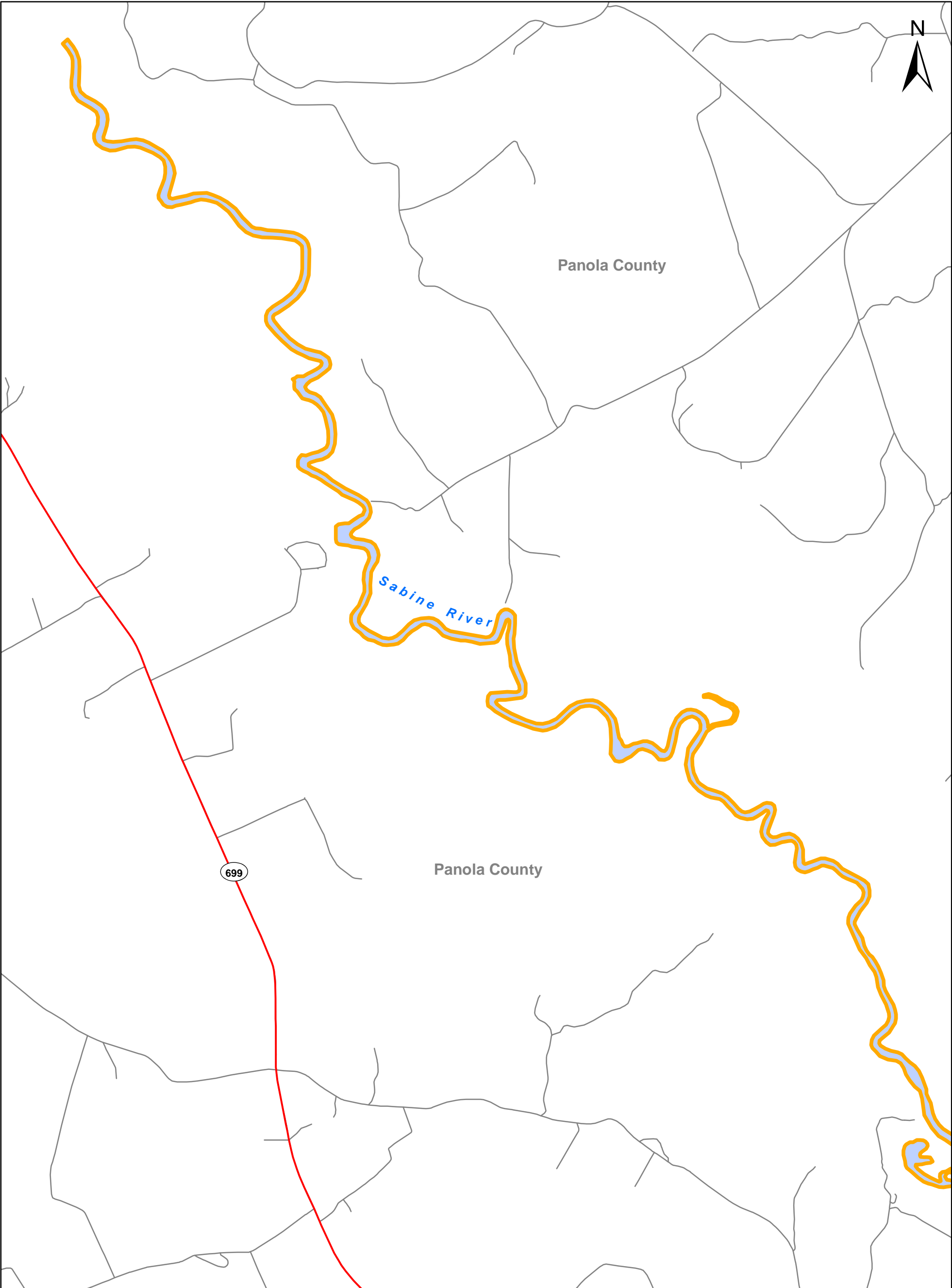
Permittees are authorized to construct and maintain fencing on the permitted land, so long as the fencing meets the following specifications:

- Fencing material must be pre-approved by SRA-TX.
- Privacy, hog-wire, and barbwire fences are prohibited.
- Fencing may not extend beyond the conservation pool elevation of 172-feet msl.
- It is the permittees responsibility to identify the permit boundary and fencing shall be constructed along said permit boundary.

If it is determined a fence needs to be removed or relocated for any reason, the permittee shall do so at no cost to the SRA-TX.

## **APPENDIX D**

### **TOLEDO BEND PROJECT SHORELINE USE CLASSIFICATION MAPS**



### Legend

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

### Toledo Bend Joint Operation FERC #2305

Toledo Bend Reservoir,  
Land Use Classifications

Sheet 1 of 29

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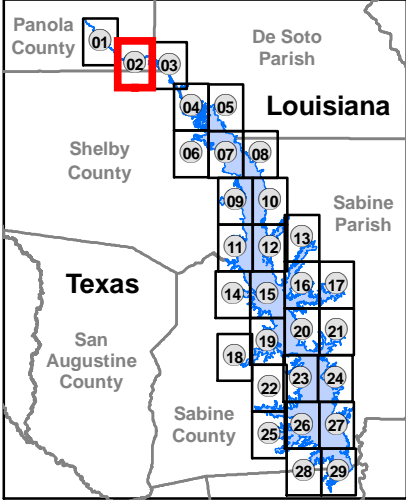
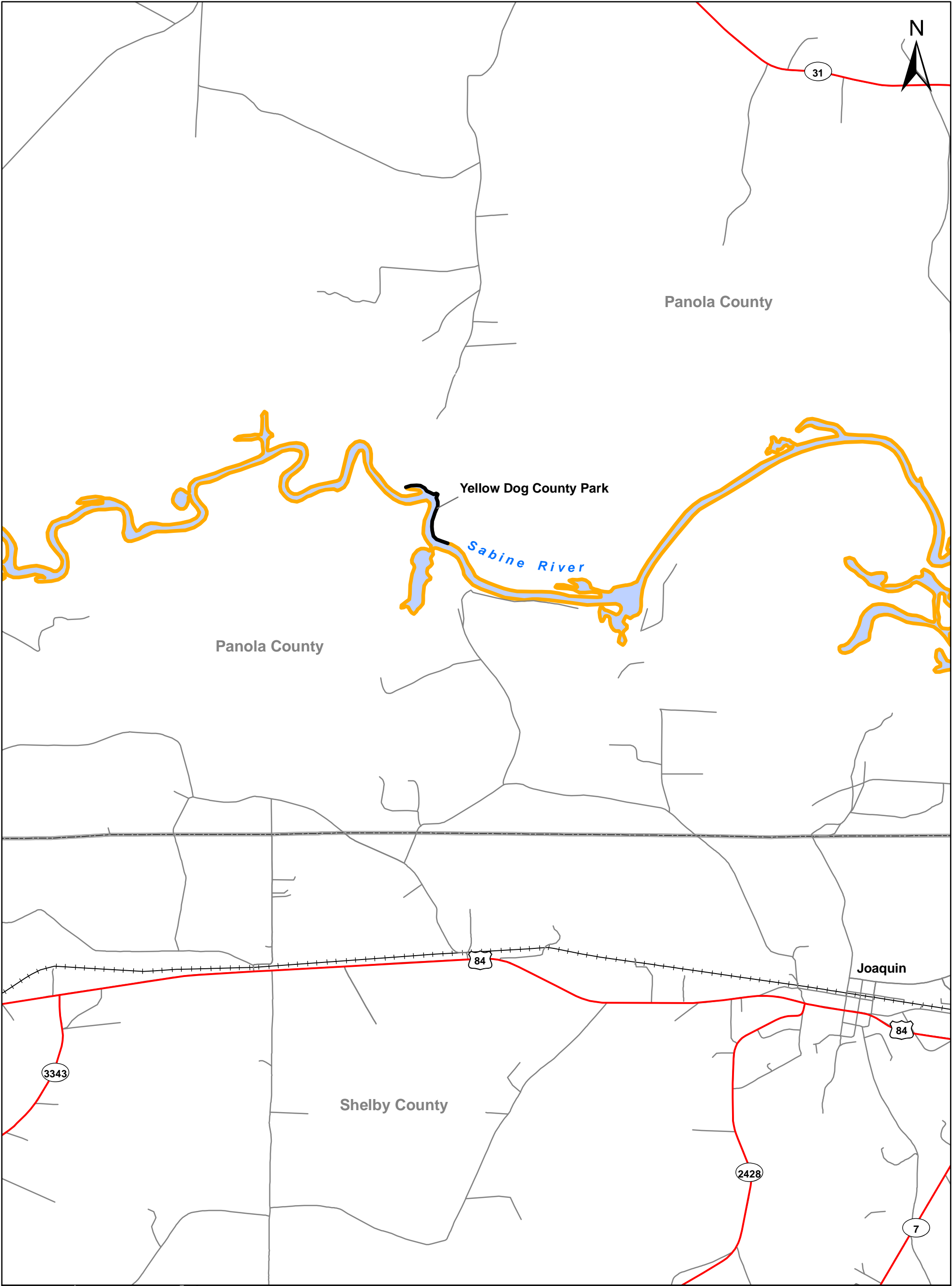
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011





### Legend

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

### Toledo Bend Joint Operation FERC #2305

Toledo Bend Reservoir,  
Land Use Classifications

Sheet 2 of 29

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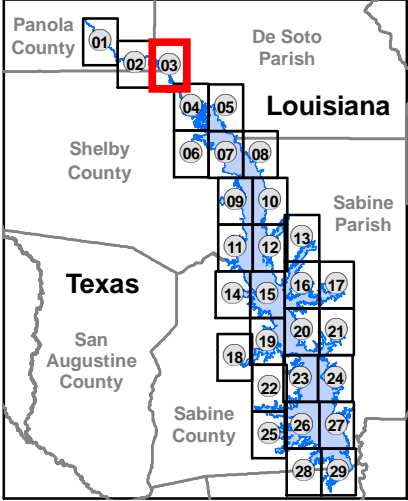
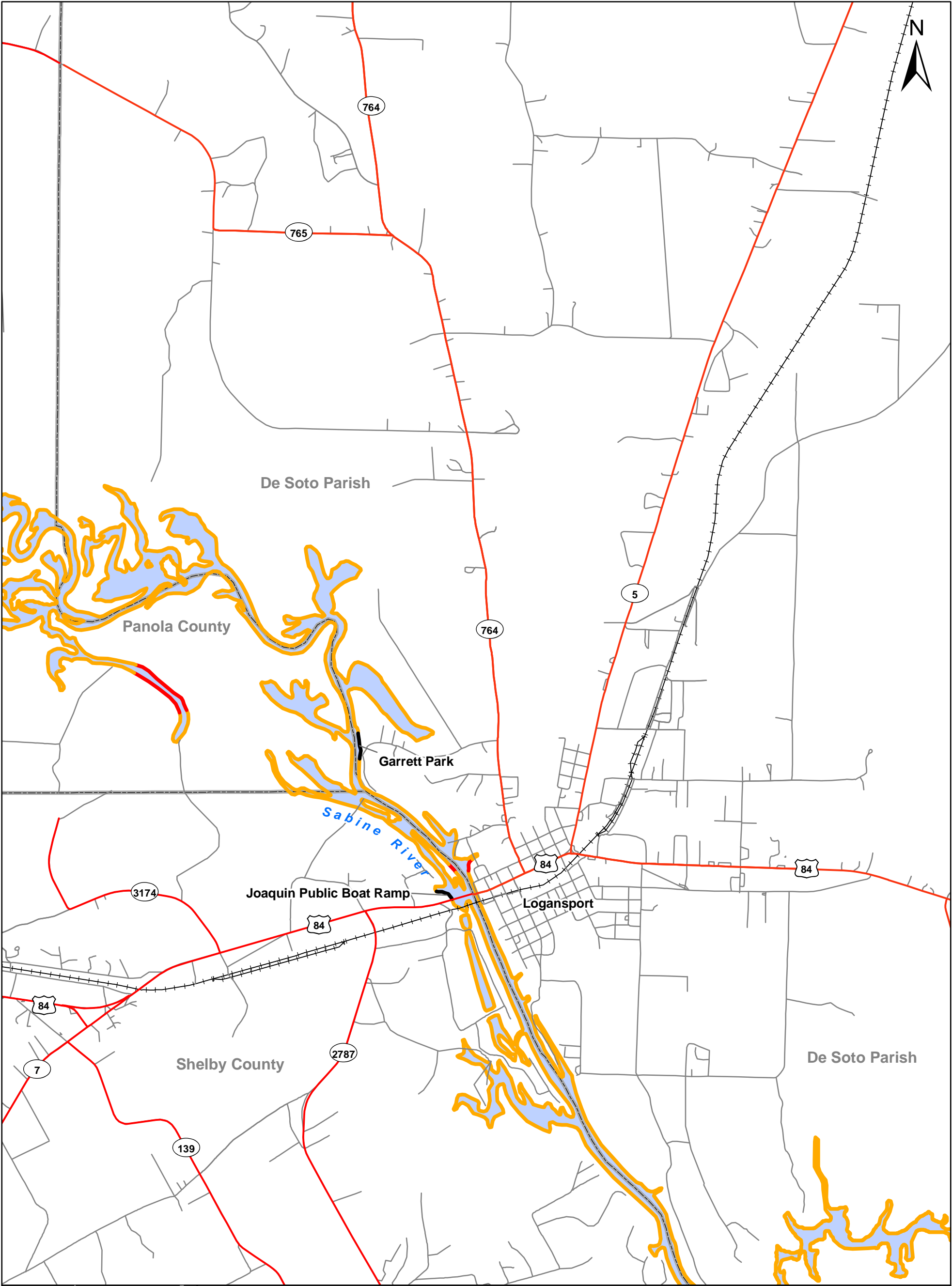
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



### Legend

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

## Toledo Bend Joint Operation FERC #2305

### Toledo Bend Reservoir, Land Use Classifications

Sheet 3 of 29

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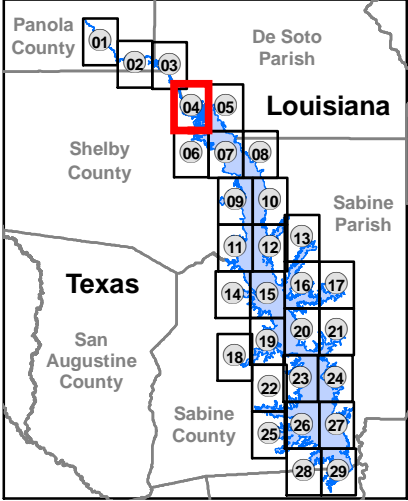
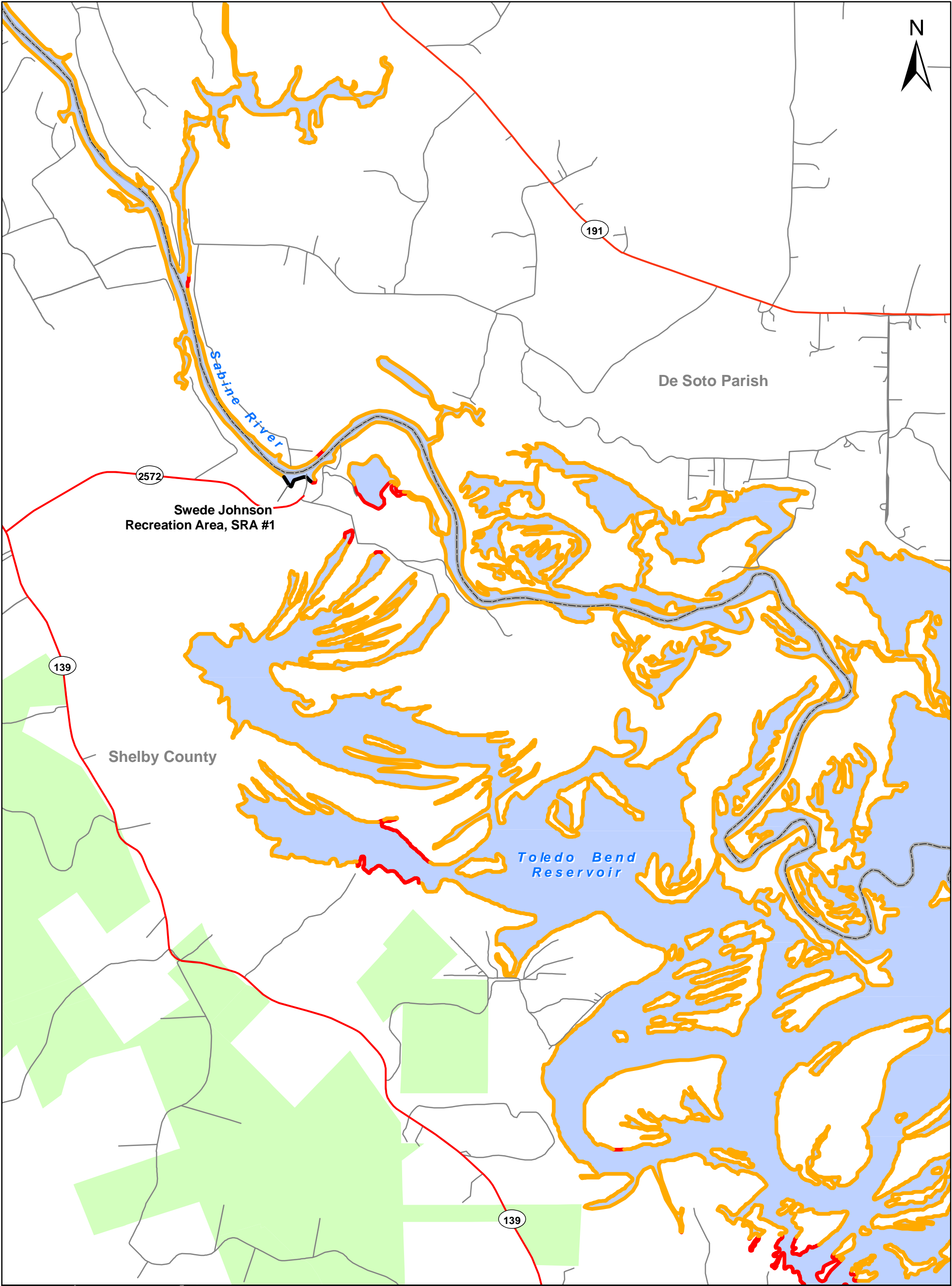
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

- County Boundary
- USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

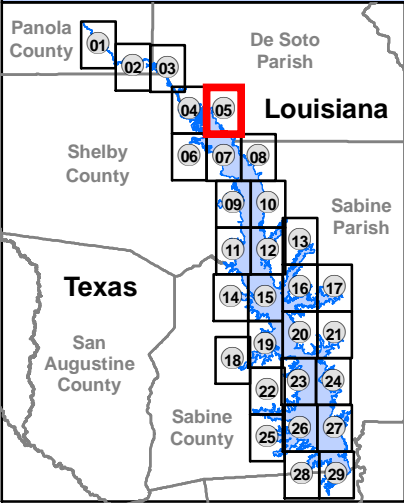
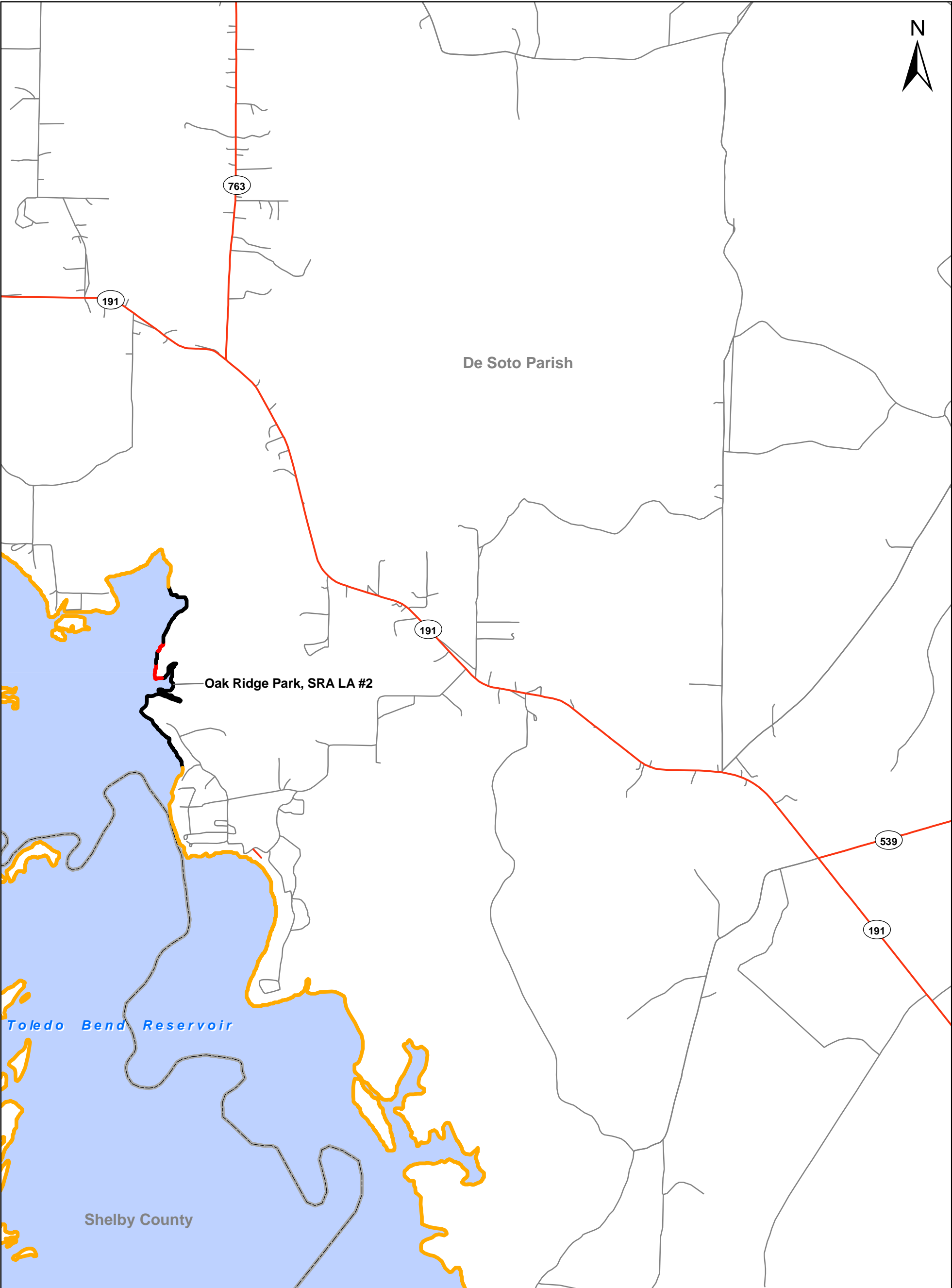
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Land Use Classifications**

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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas;  
US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary
 USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 5 of 29**

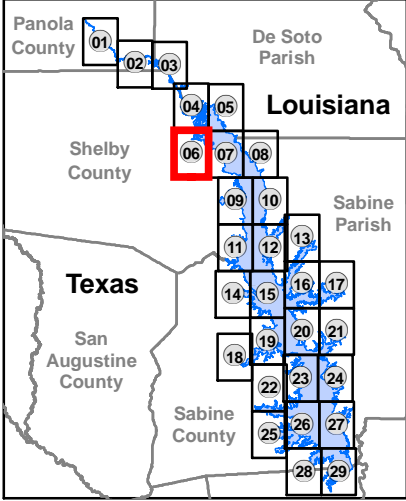
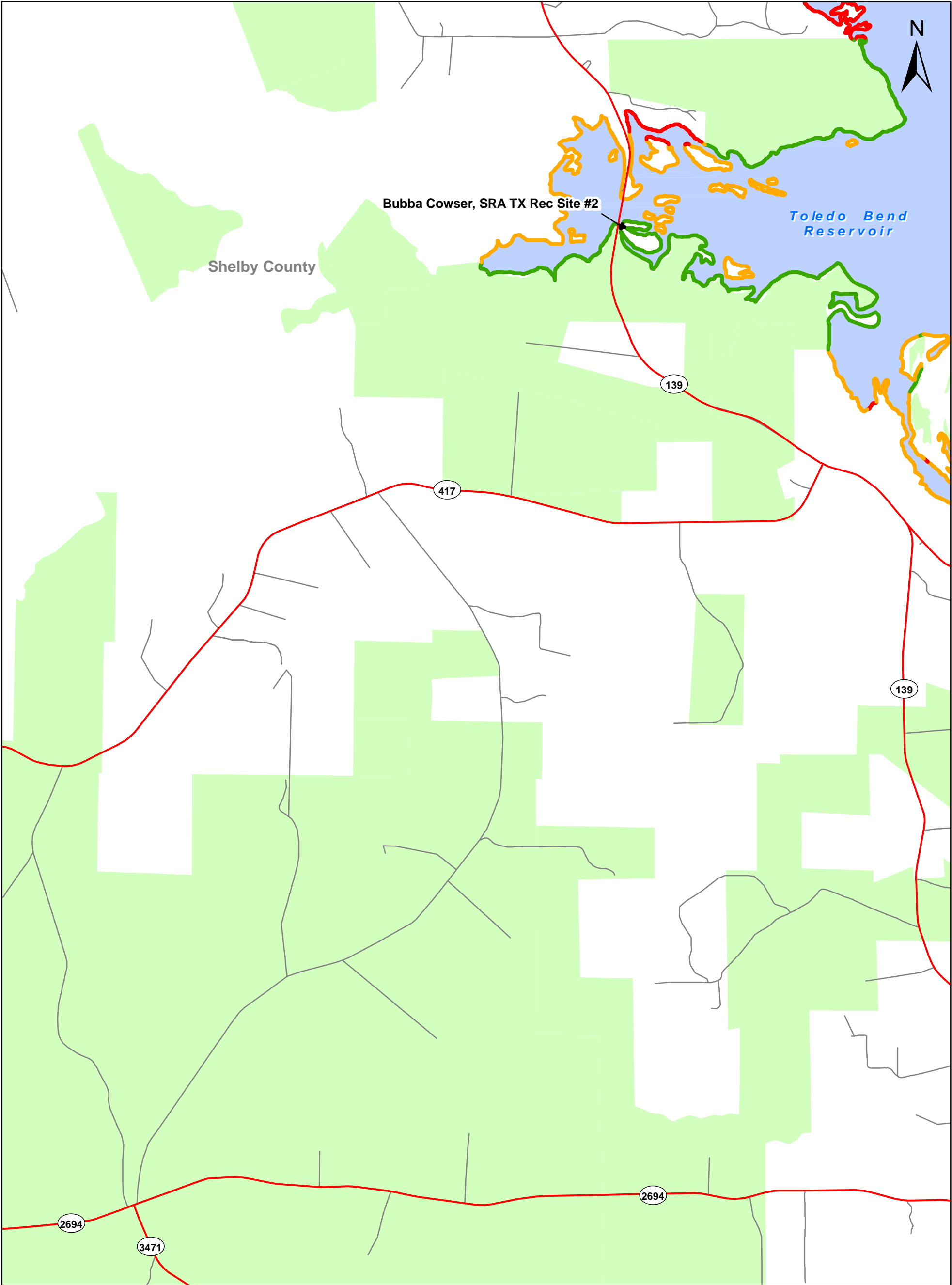
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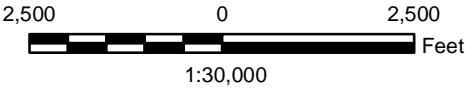
- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

- County Boundary
- USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

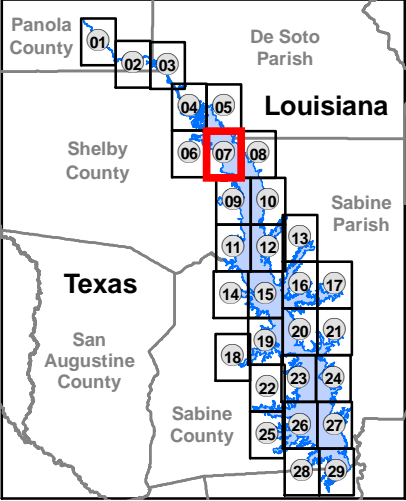
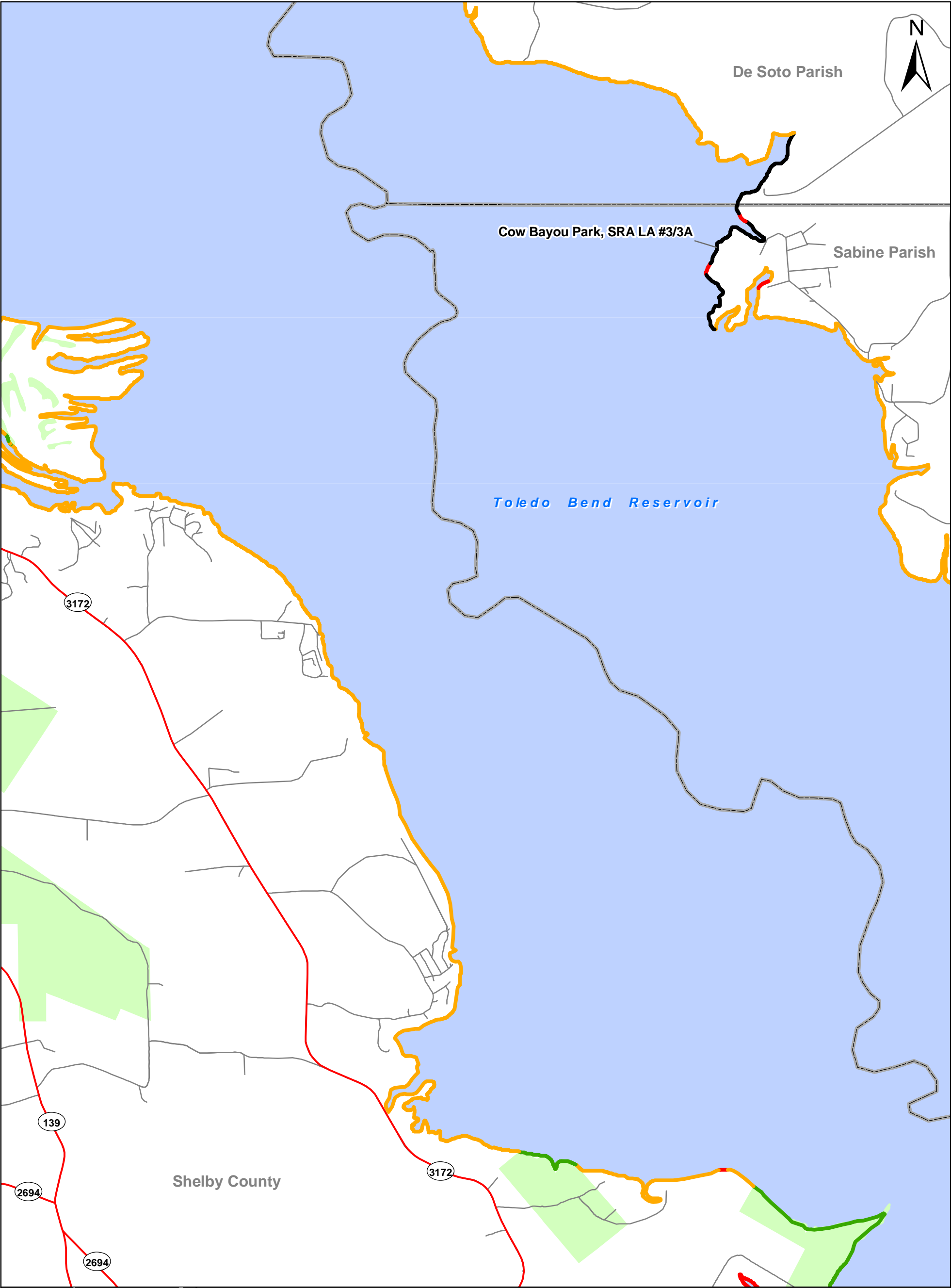
Sheet 6 of 29



Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011





**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 7 of 29**

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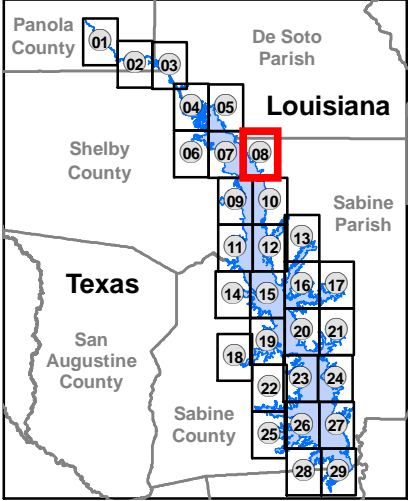
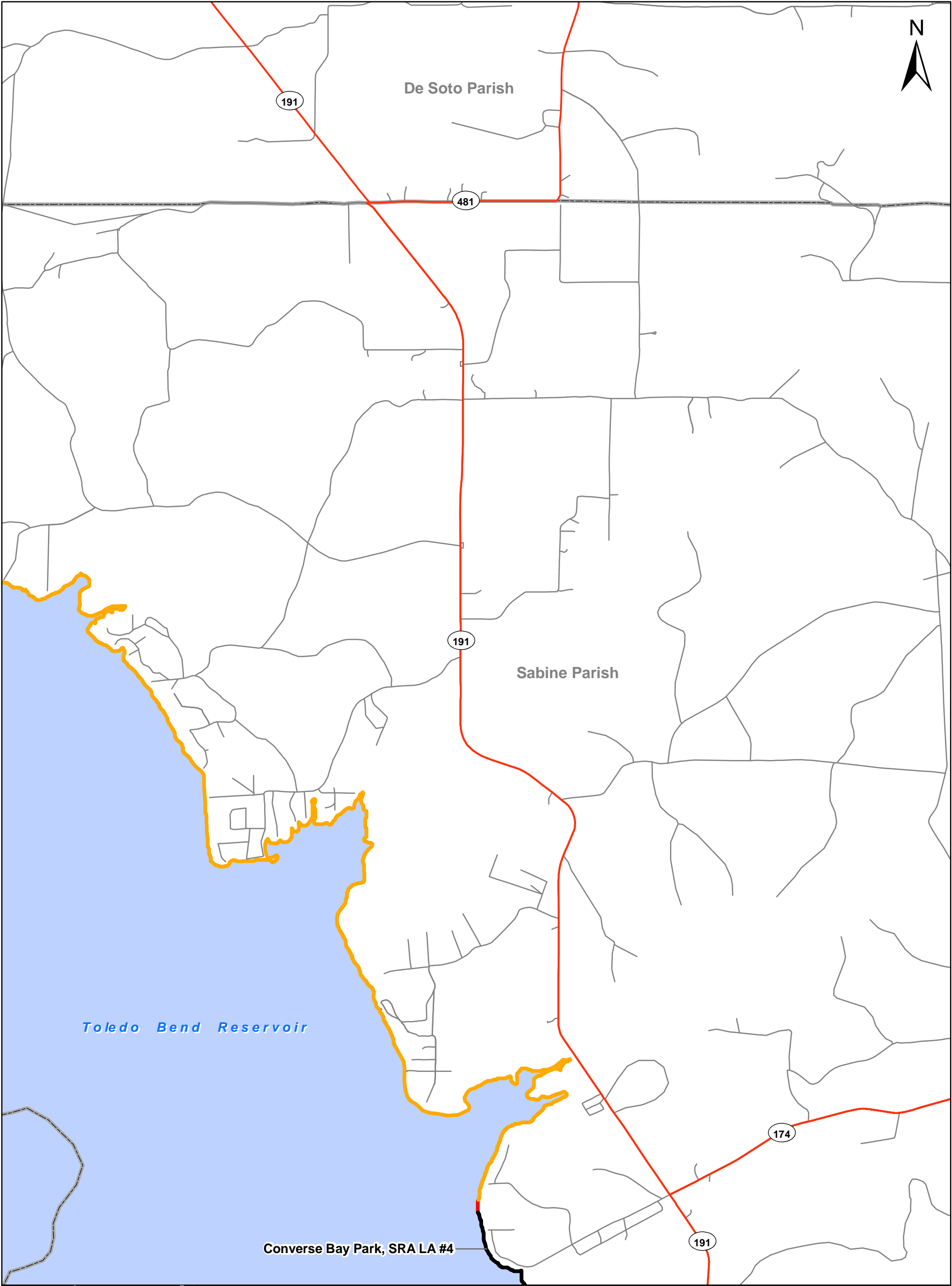
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

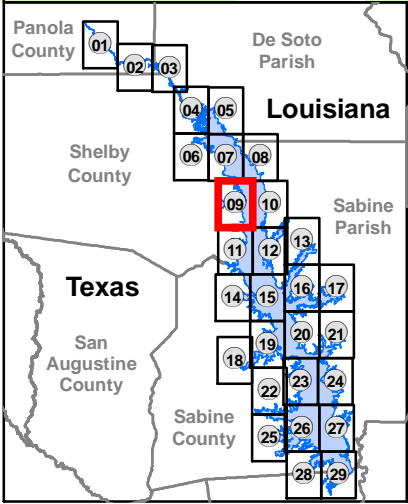
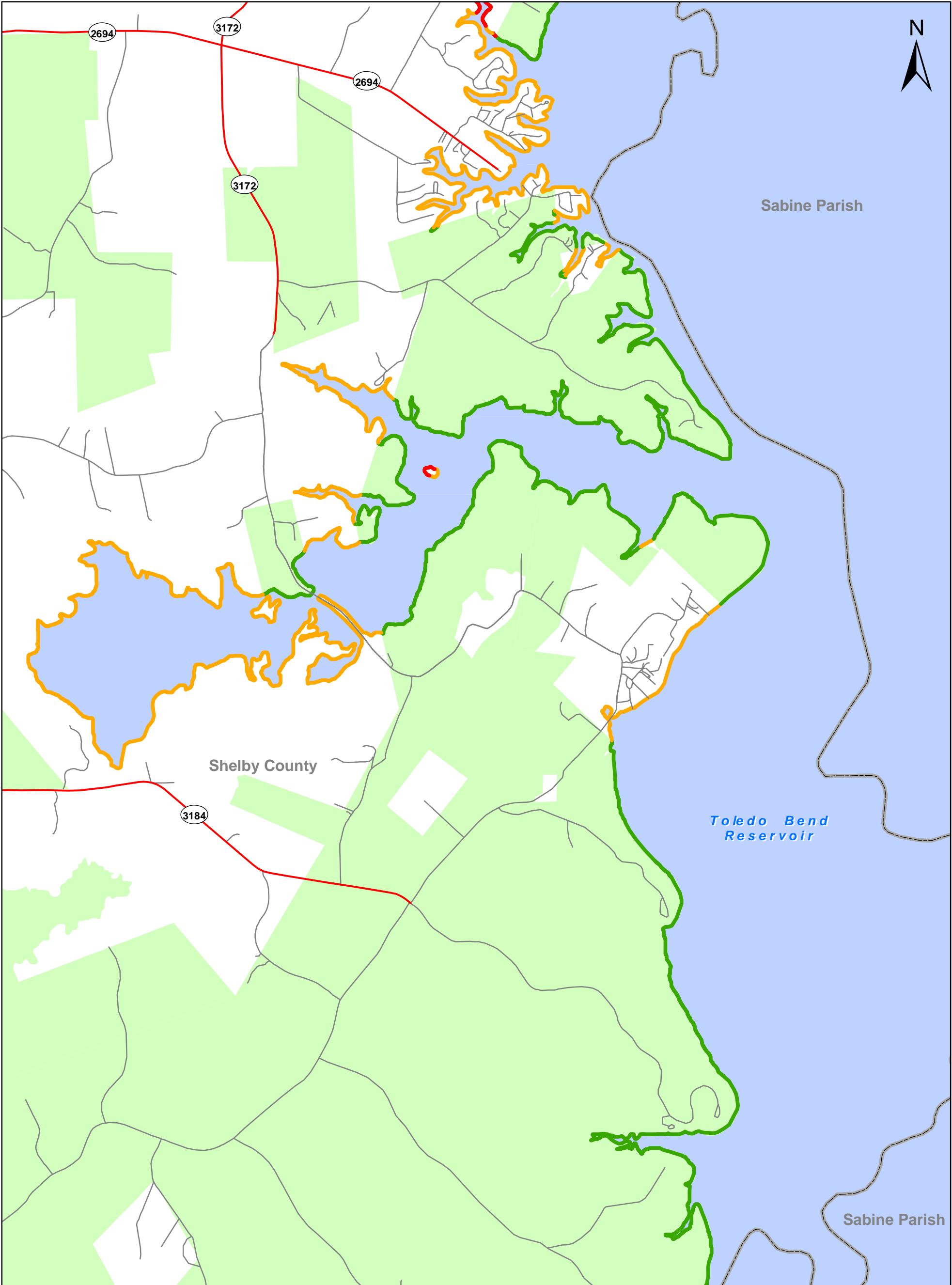
**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 8 of 29**

Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

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**Legend**

SMPCClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 9 of 29**

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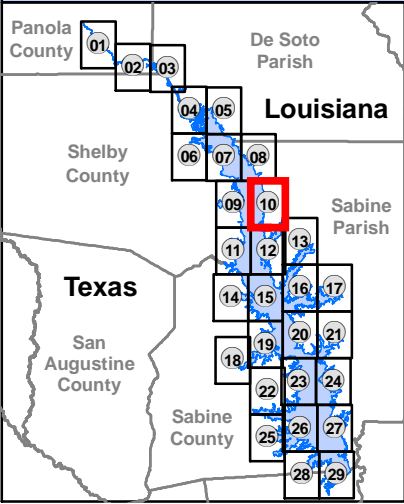
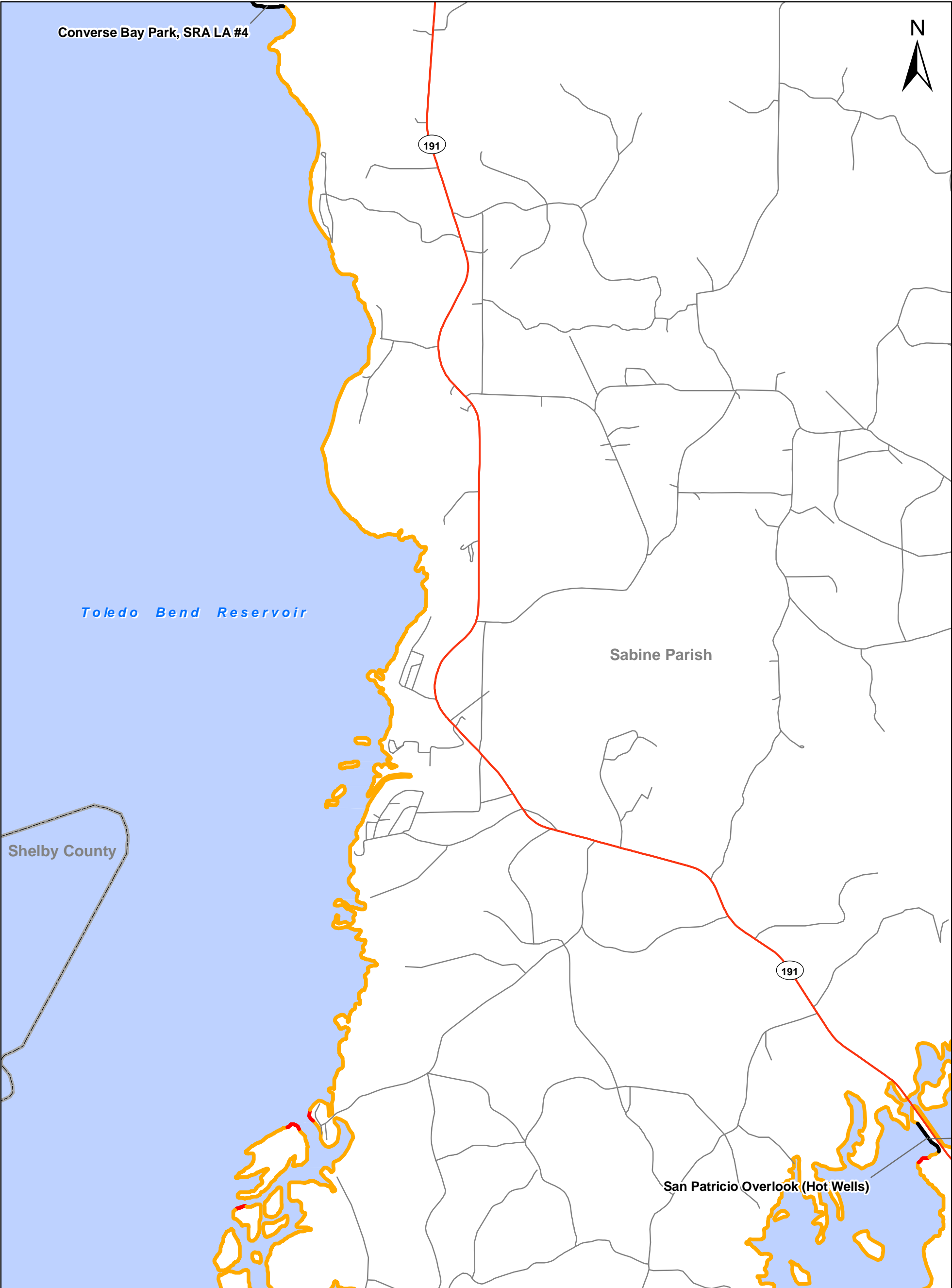
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011





**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

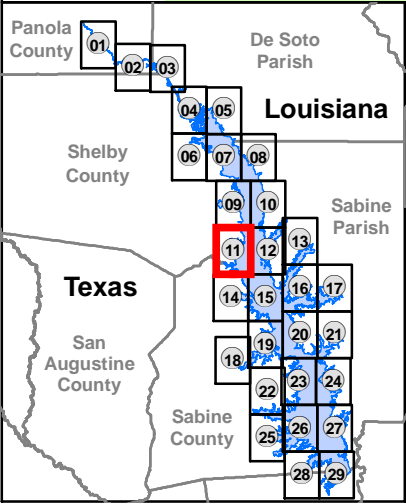
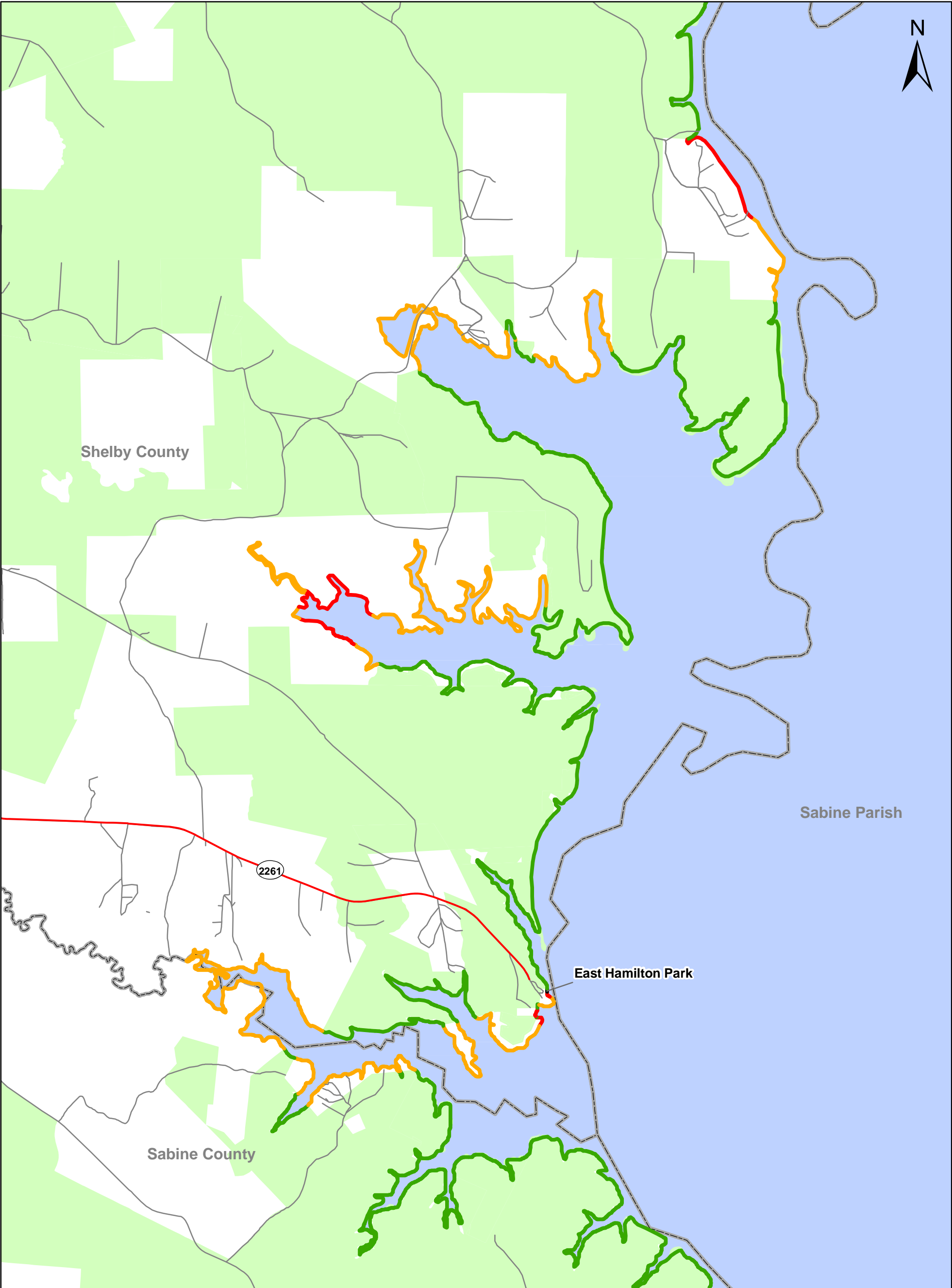
**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 10 of 29**

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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

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**Legend**

SMPCClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

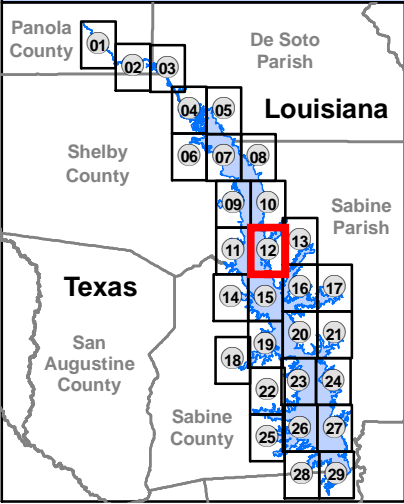
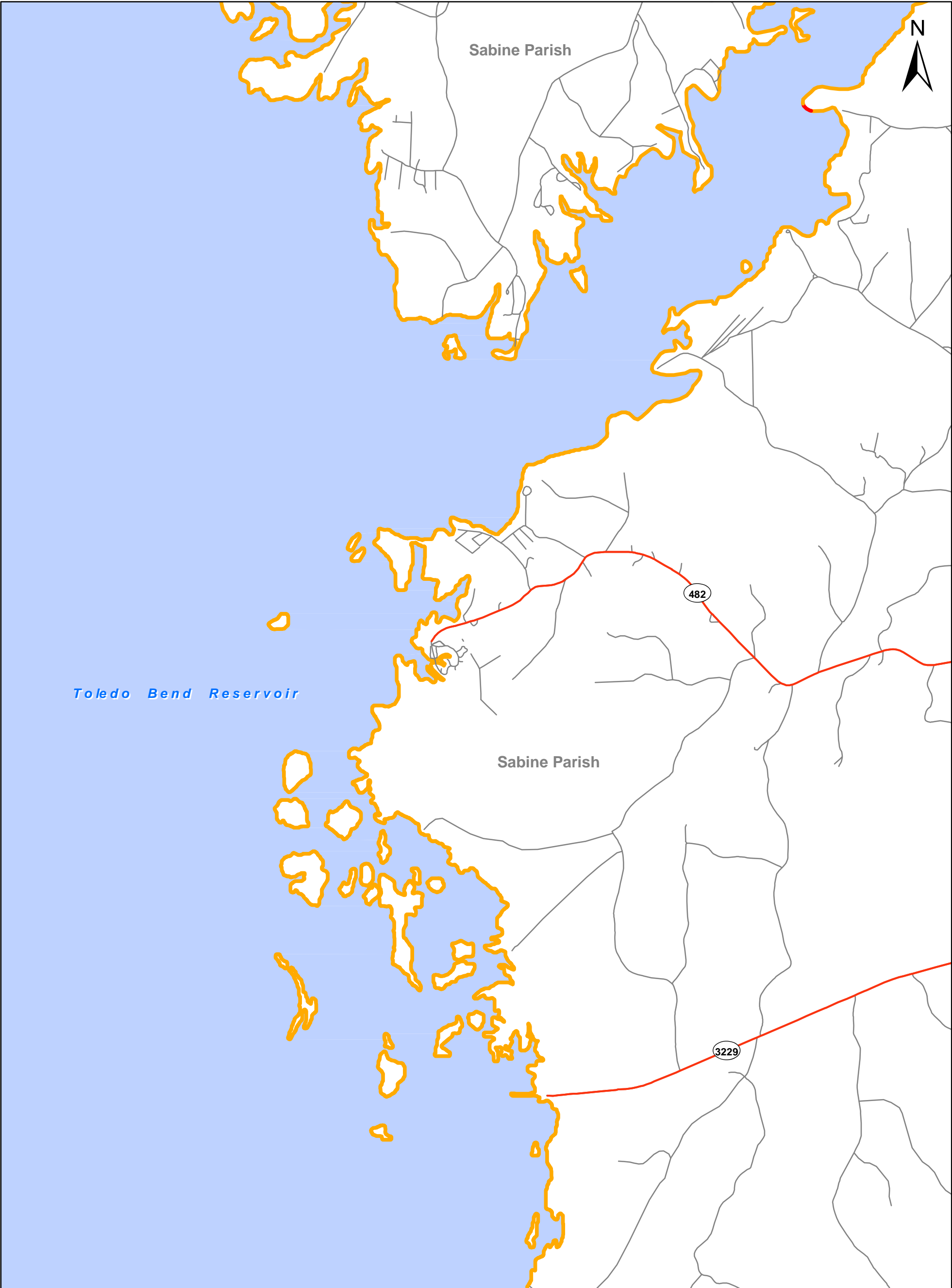
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Land Use Classifications**

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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

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**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

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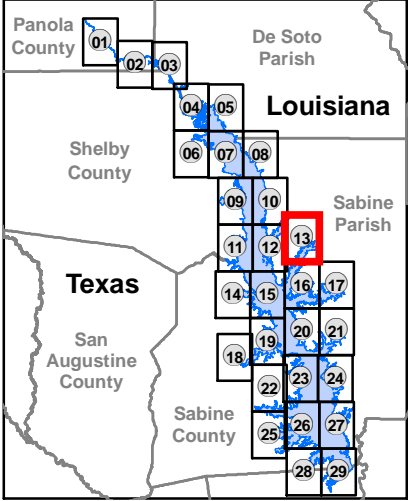
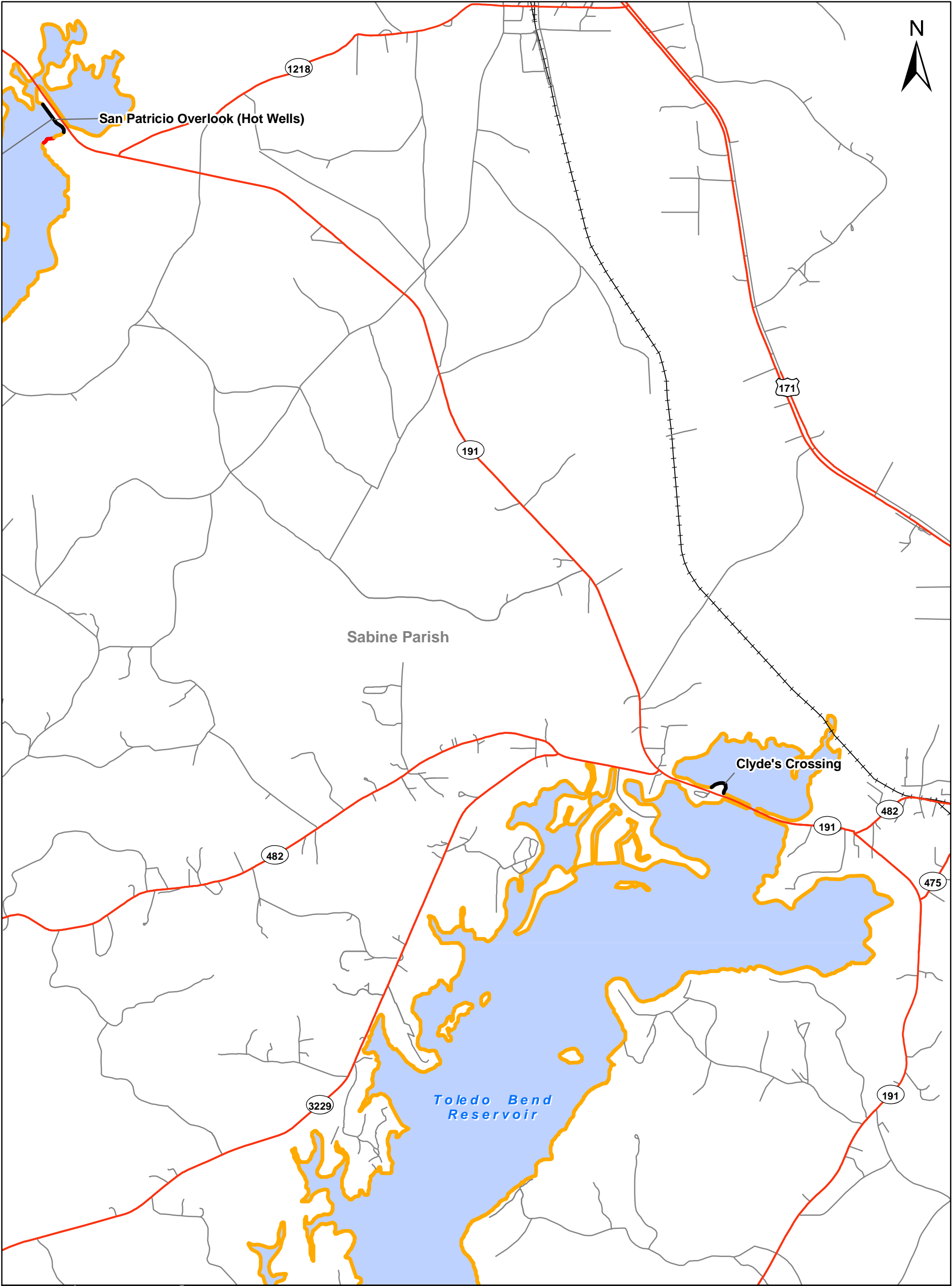
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09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 13 of 29**

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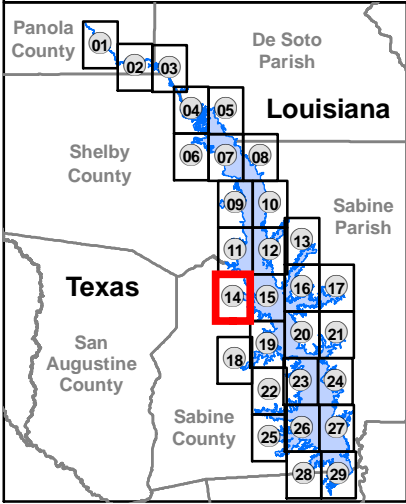
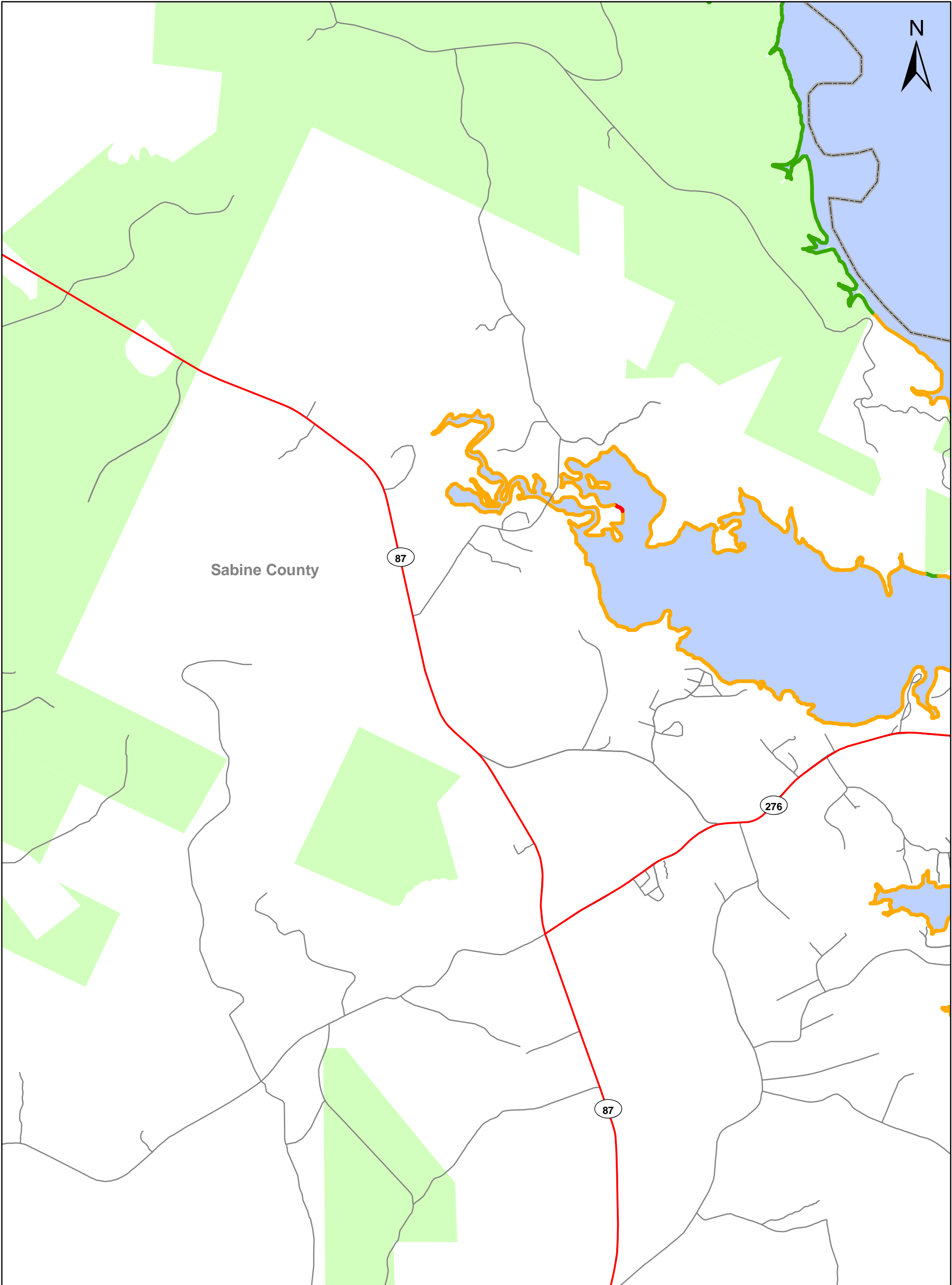
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

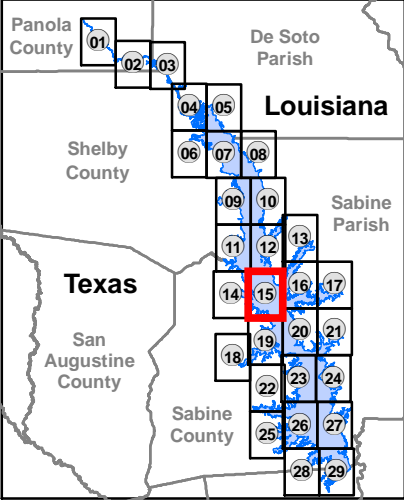
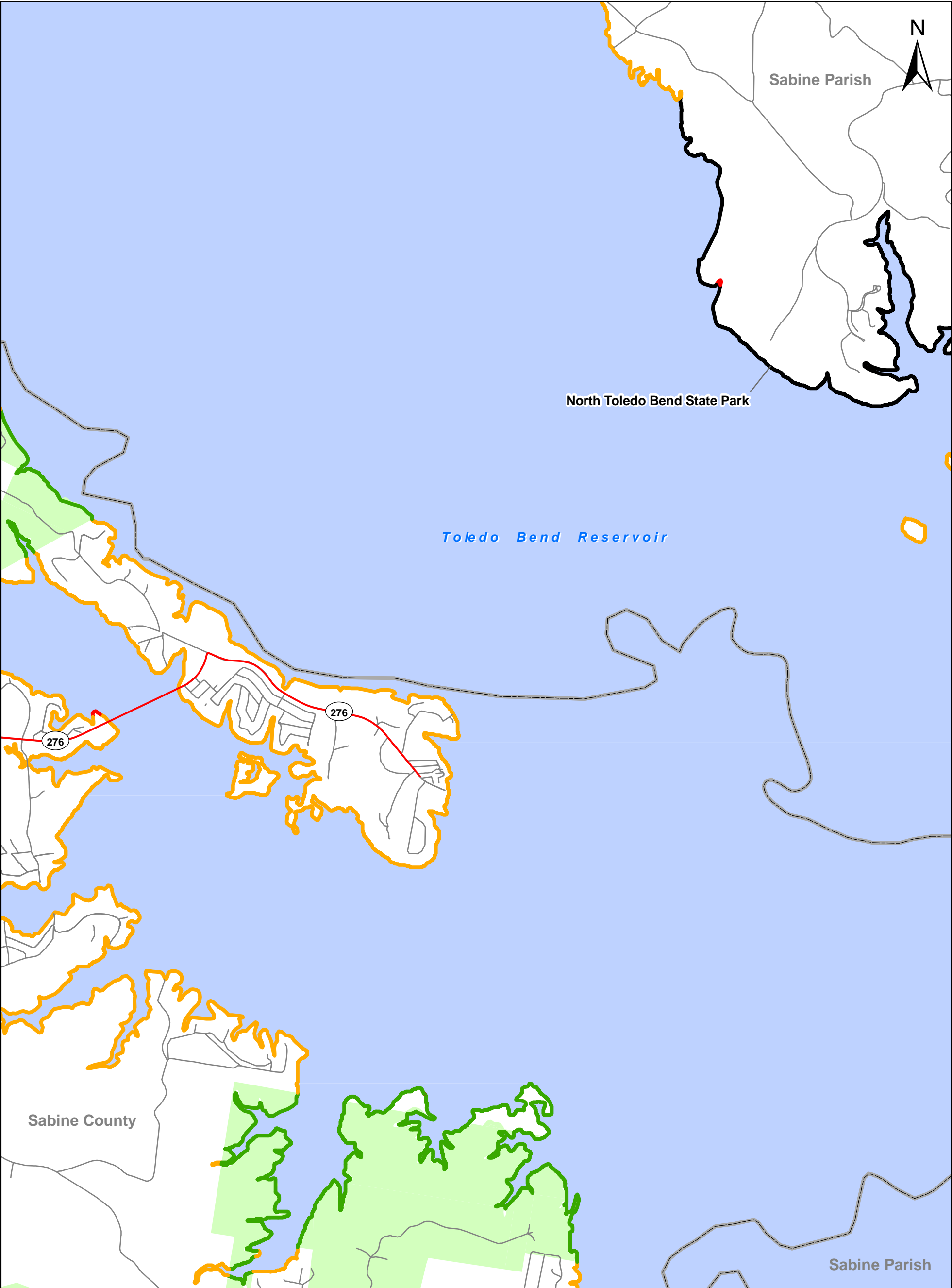
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011





**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 15 of 29**

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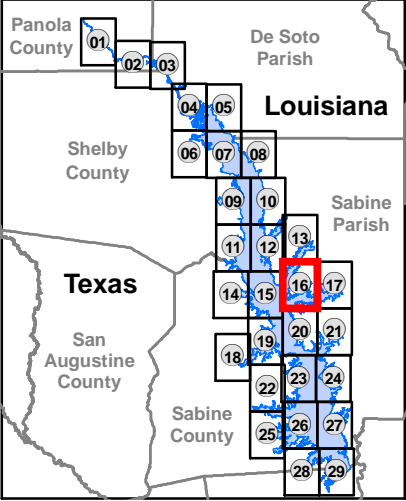
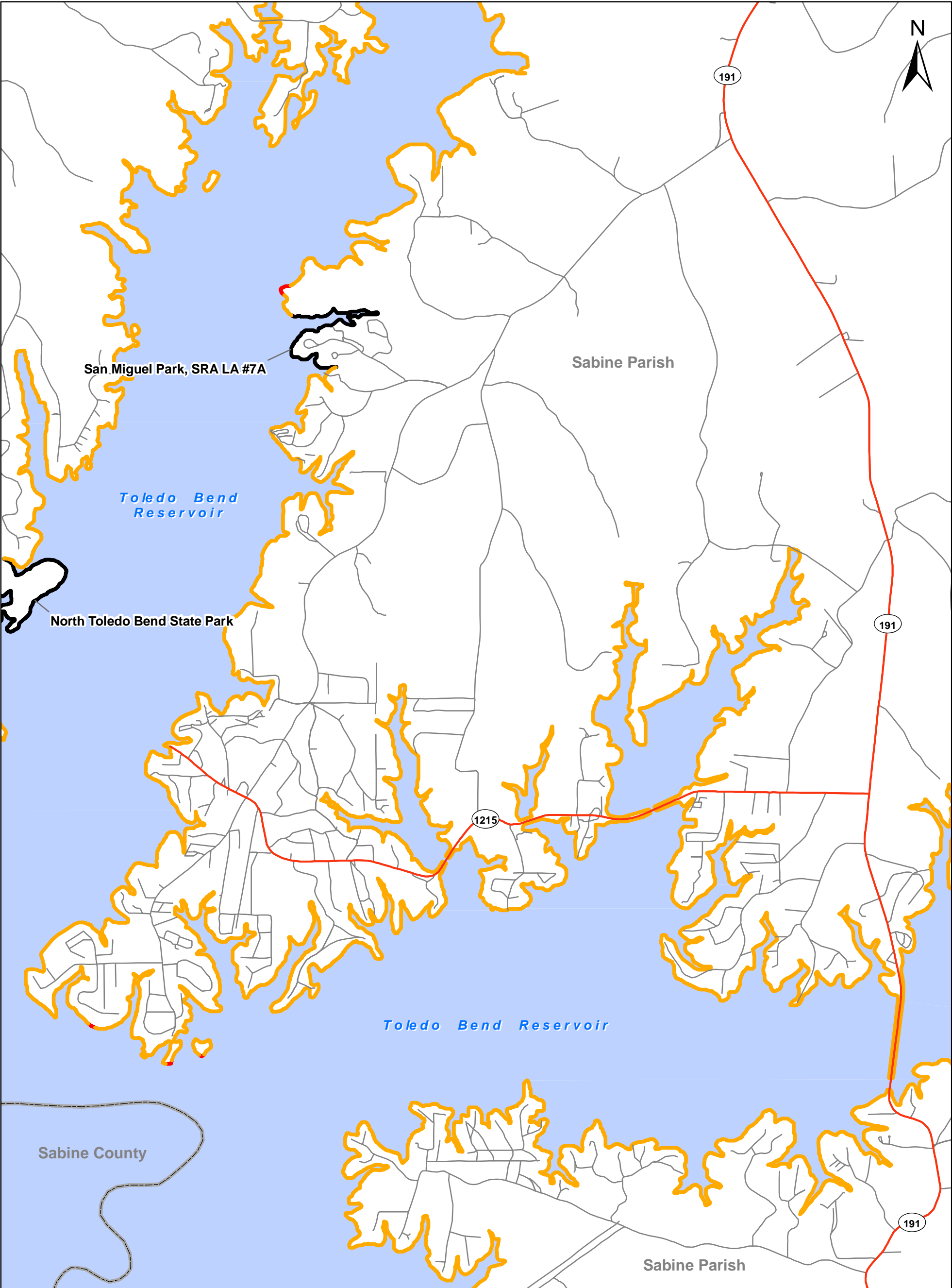
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

- County Boundary
- USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 16 of 29**

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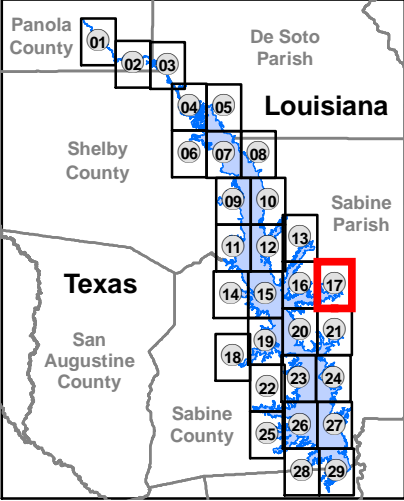
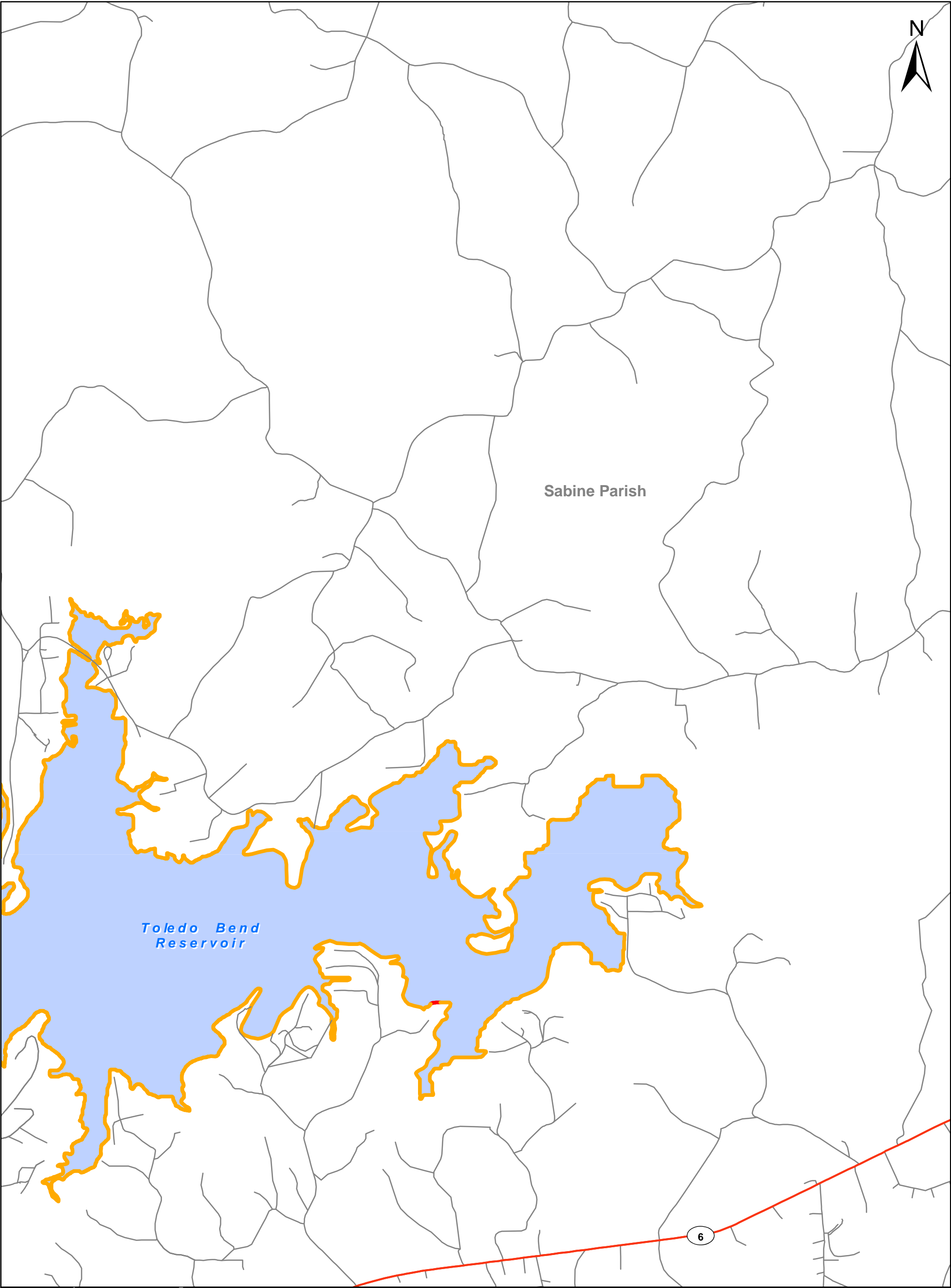
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 17 of 29**

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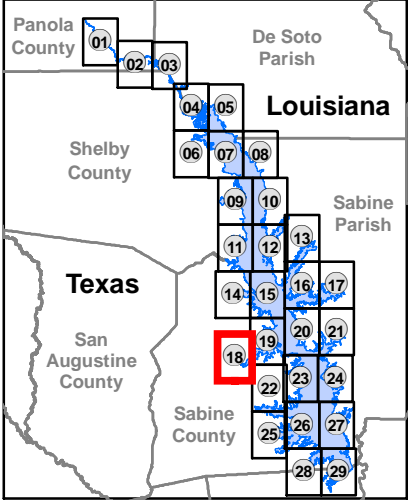
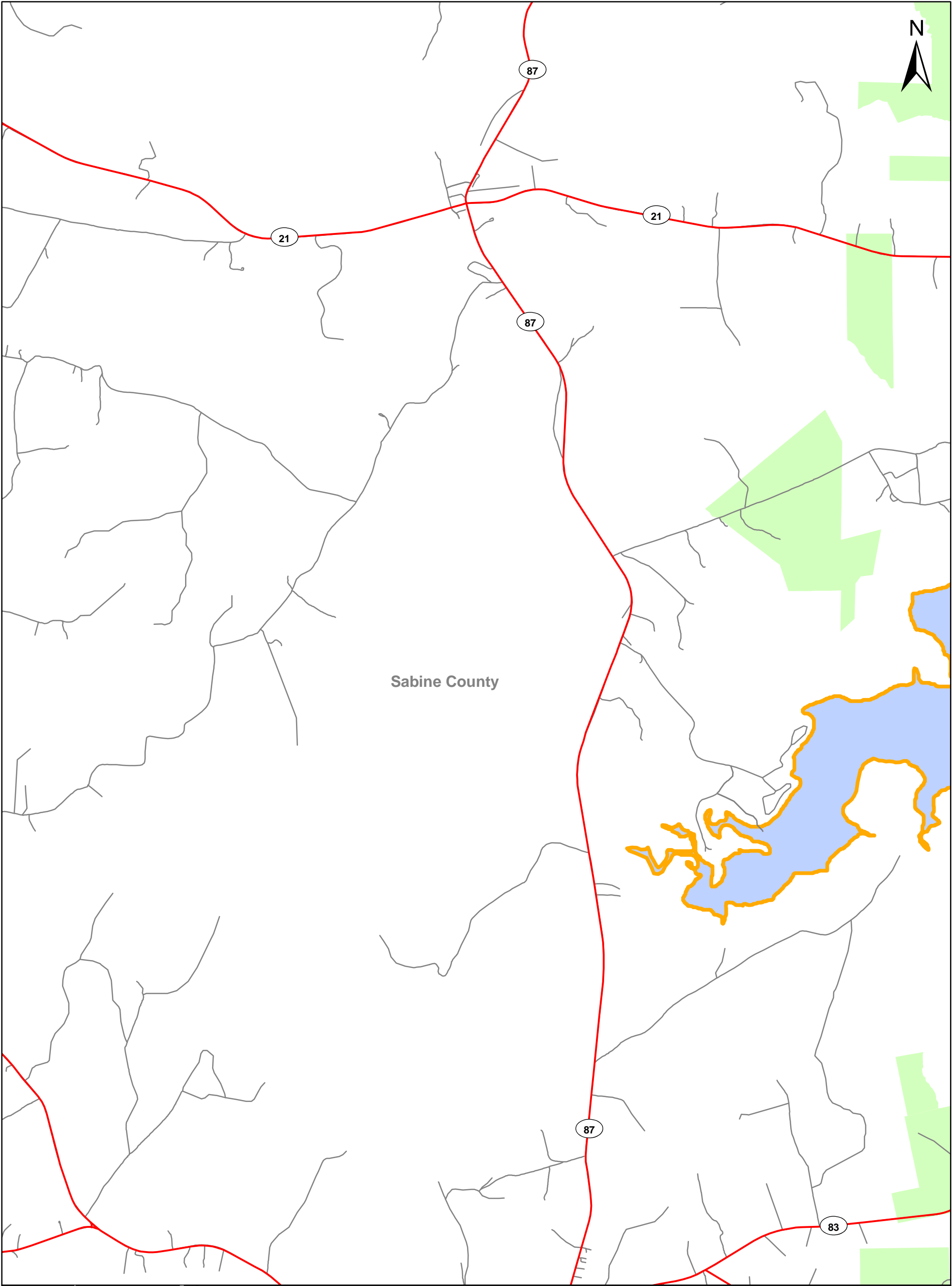
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011





**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary
 USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 18 of 29**

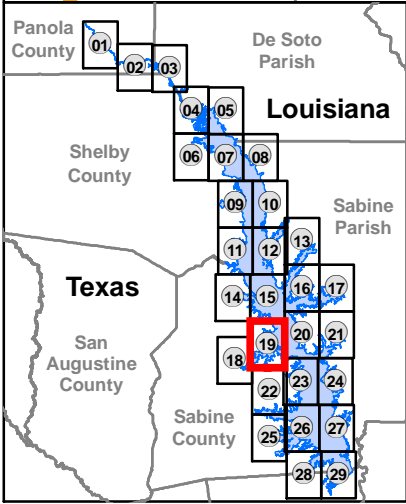
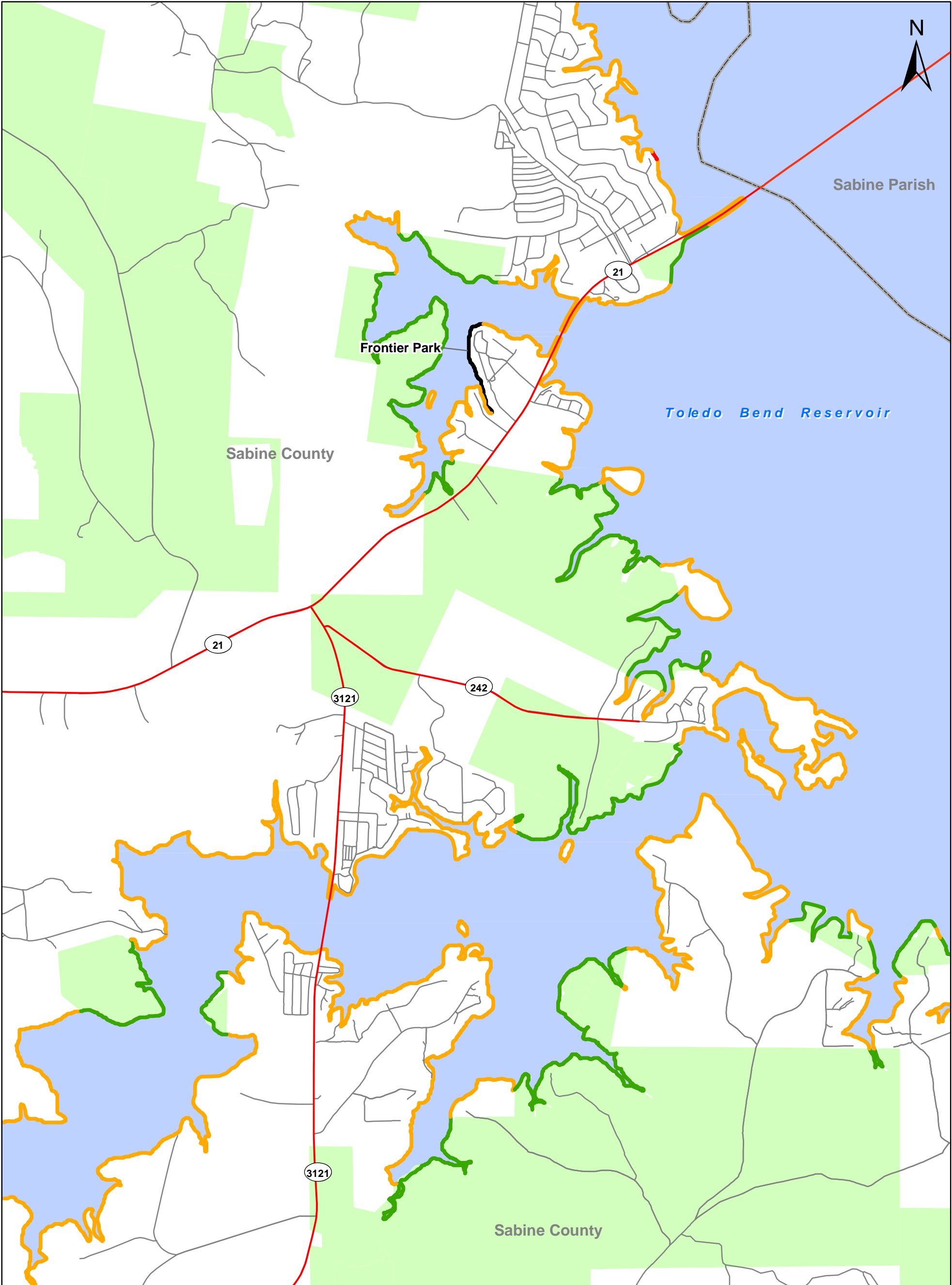
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



### Legend

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

## Toledo Bend Joint Operation FERC #2305

Toledo Bend Reservoir,  
Land Use Classifications

Sheet 19 of 29

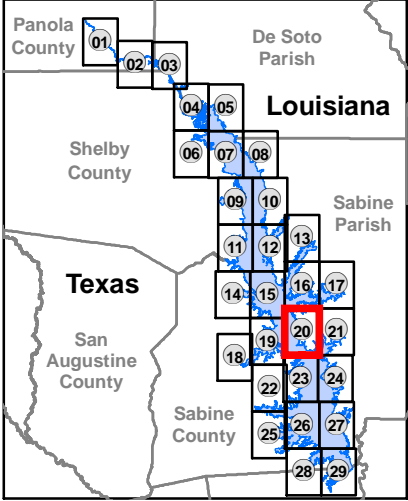
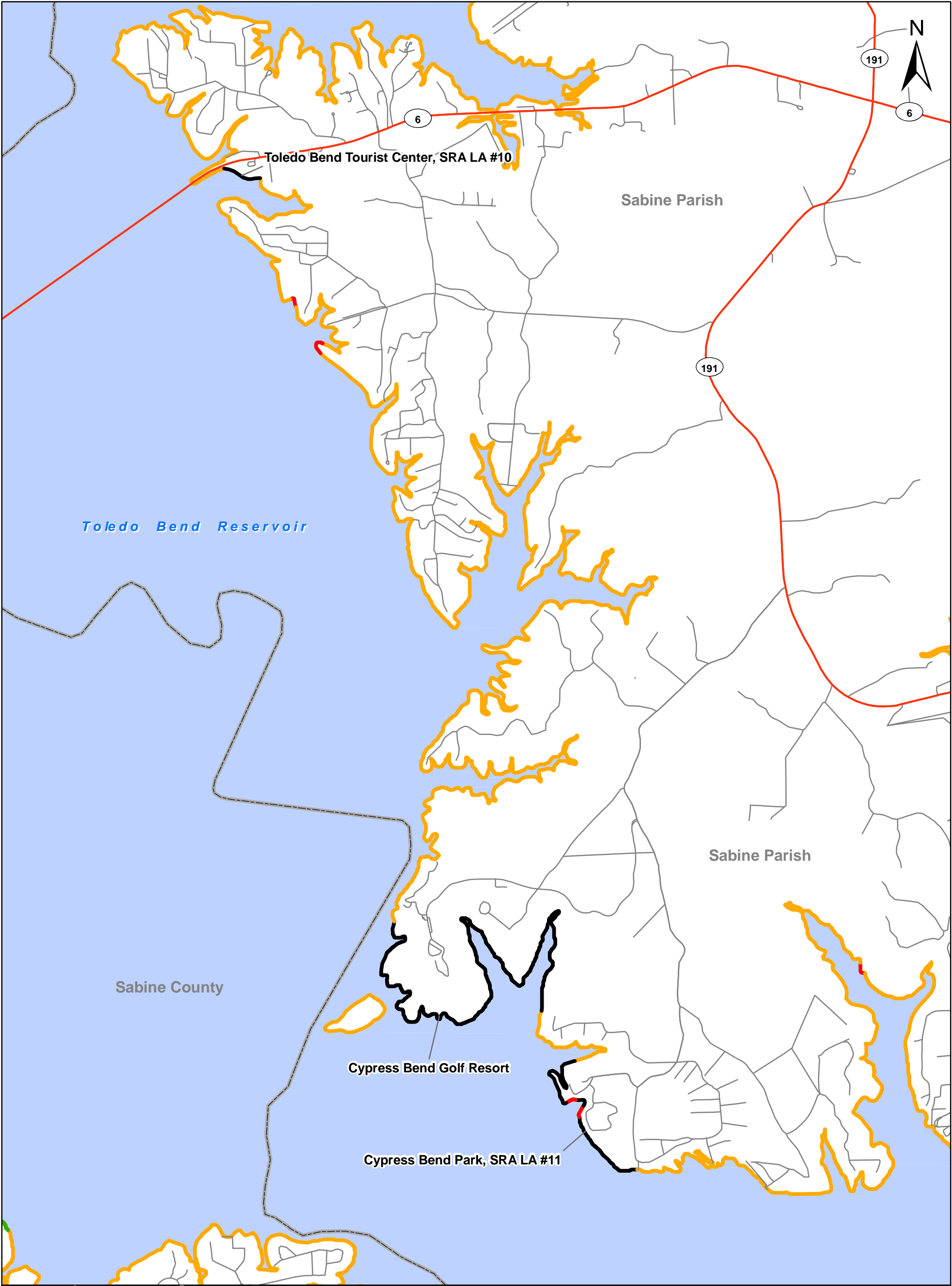
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



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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011




**Legend**

SMPClass	 County Boundary
 Conservation Lands	 USDA Forest Service
 General Use Lands	
 USFS Lands	
 Public Access Area	

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

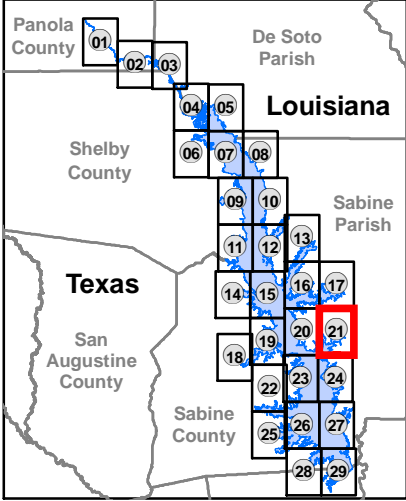
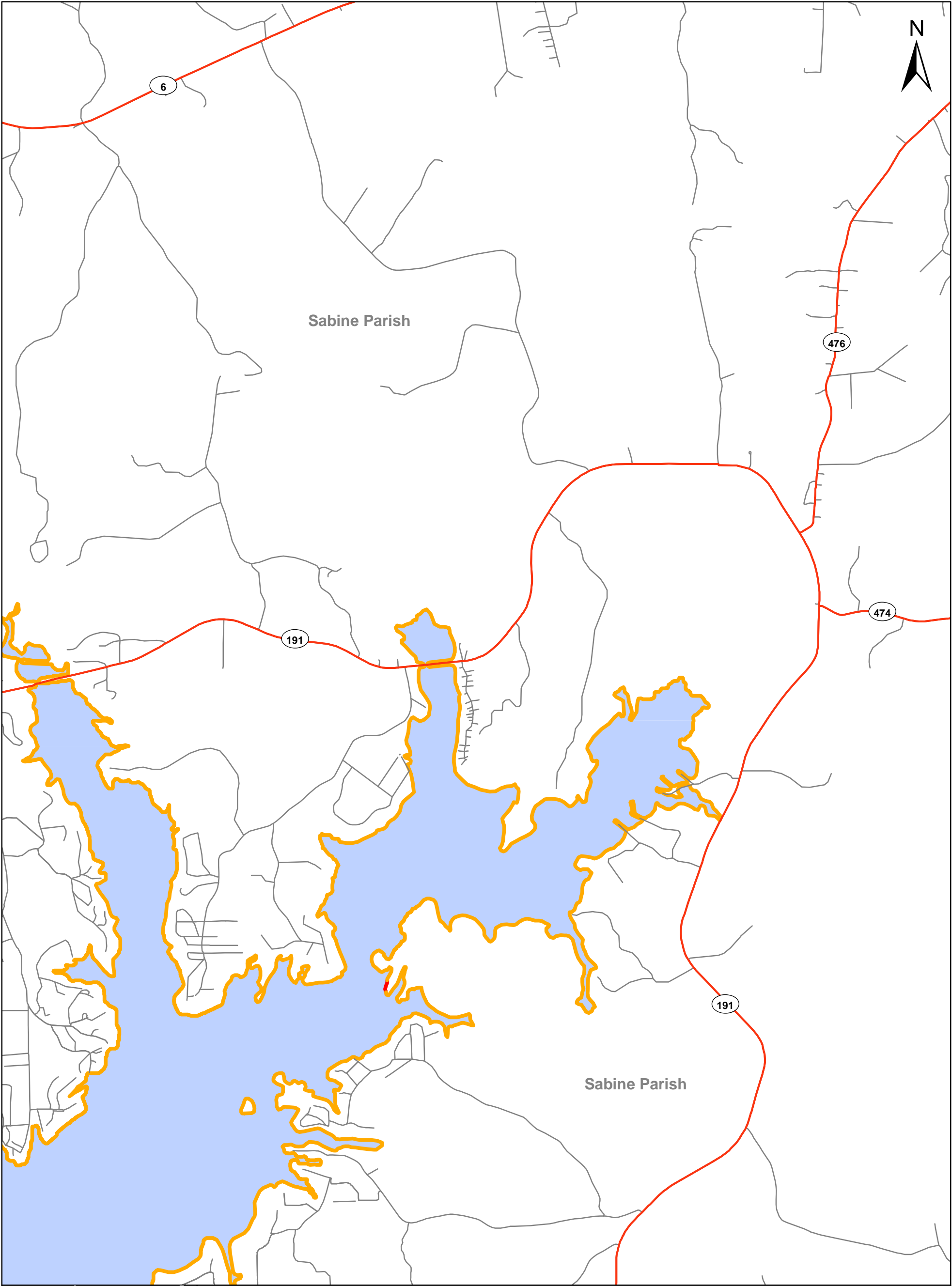
**Sheet 20 of 29**



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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

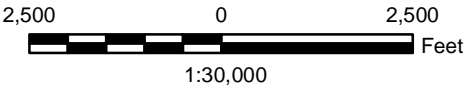
- SMPClass
- Conservation Lands
  - General Use Lands
  - USFS Lands
  - Public Access Area
- County Boundary
- USDA Forest Service

Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

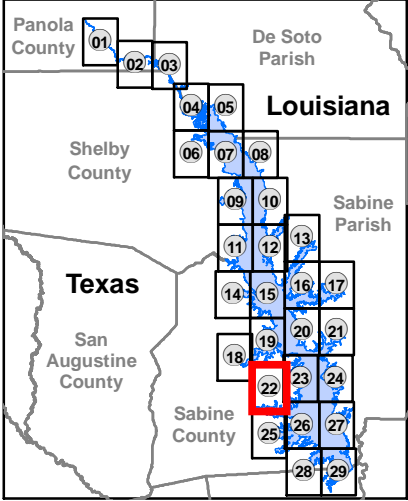
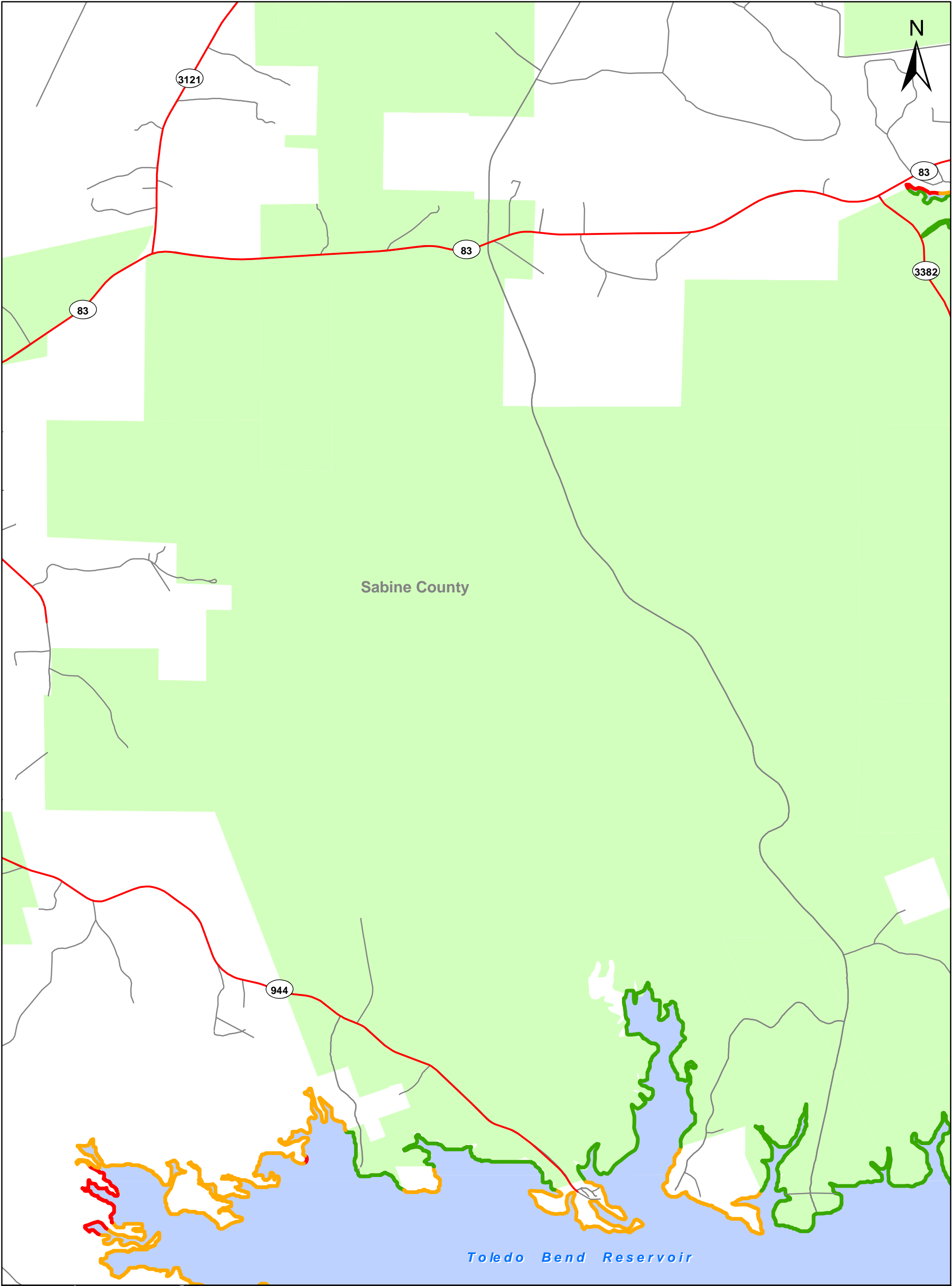
**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 21 of 29**



09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 22 of 29**

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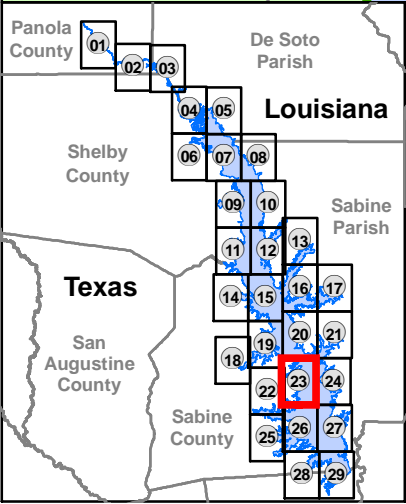
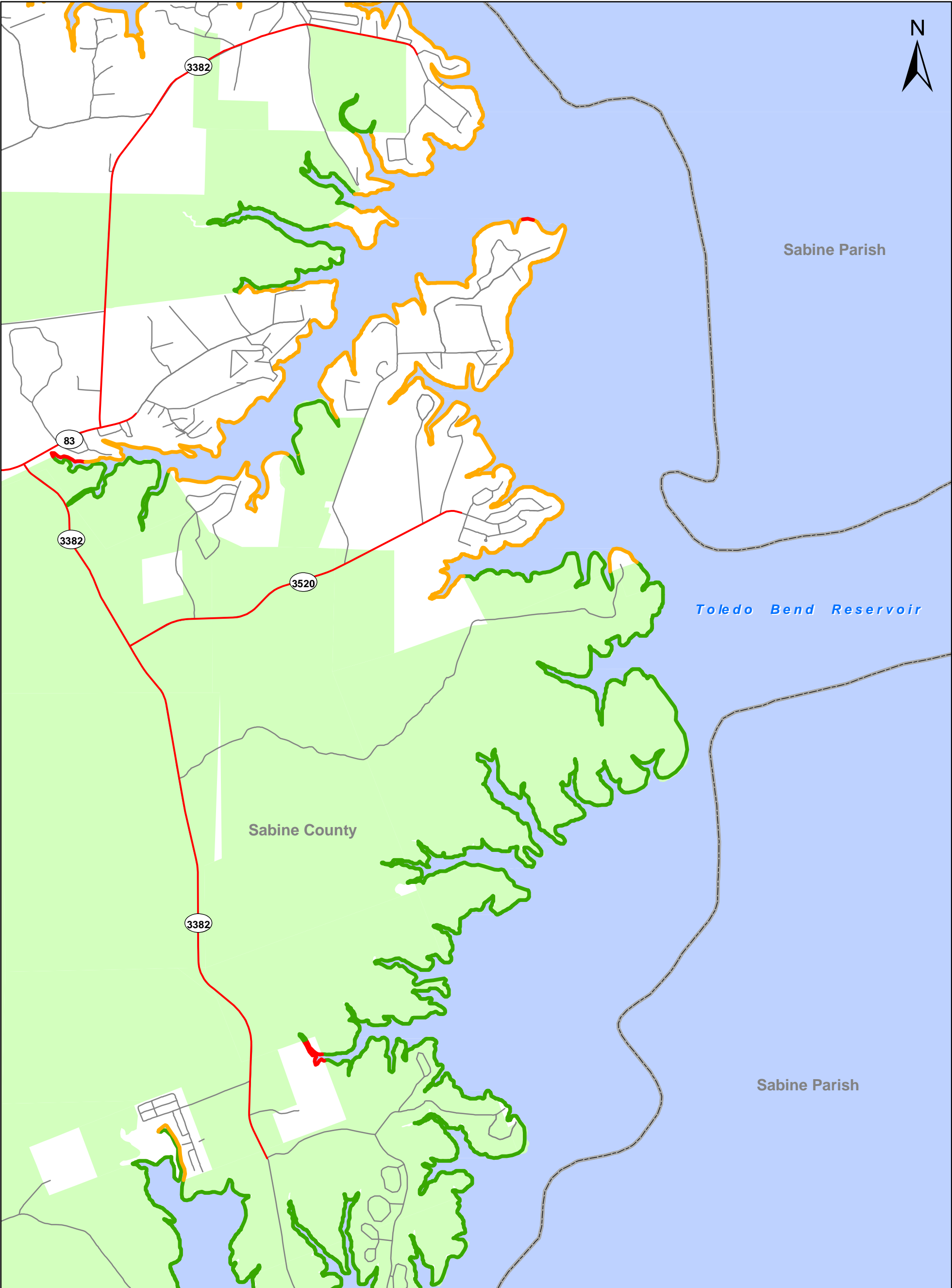
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011





**Legend**

SMPCClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

**Toledo Bend Joint Operation**

**FERC #2305**

**Toledo Bend Reservoir,**

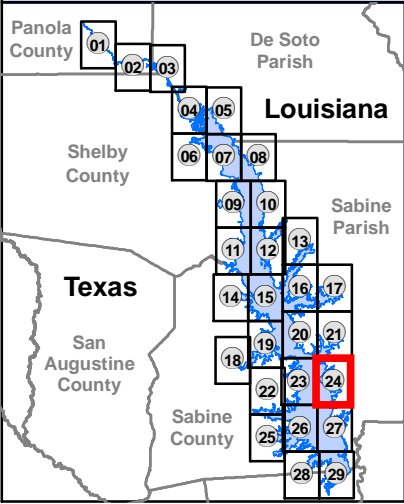
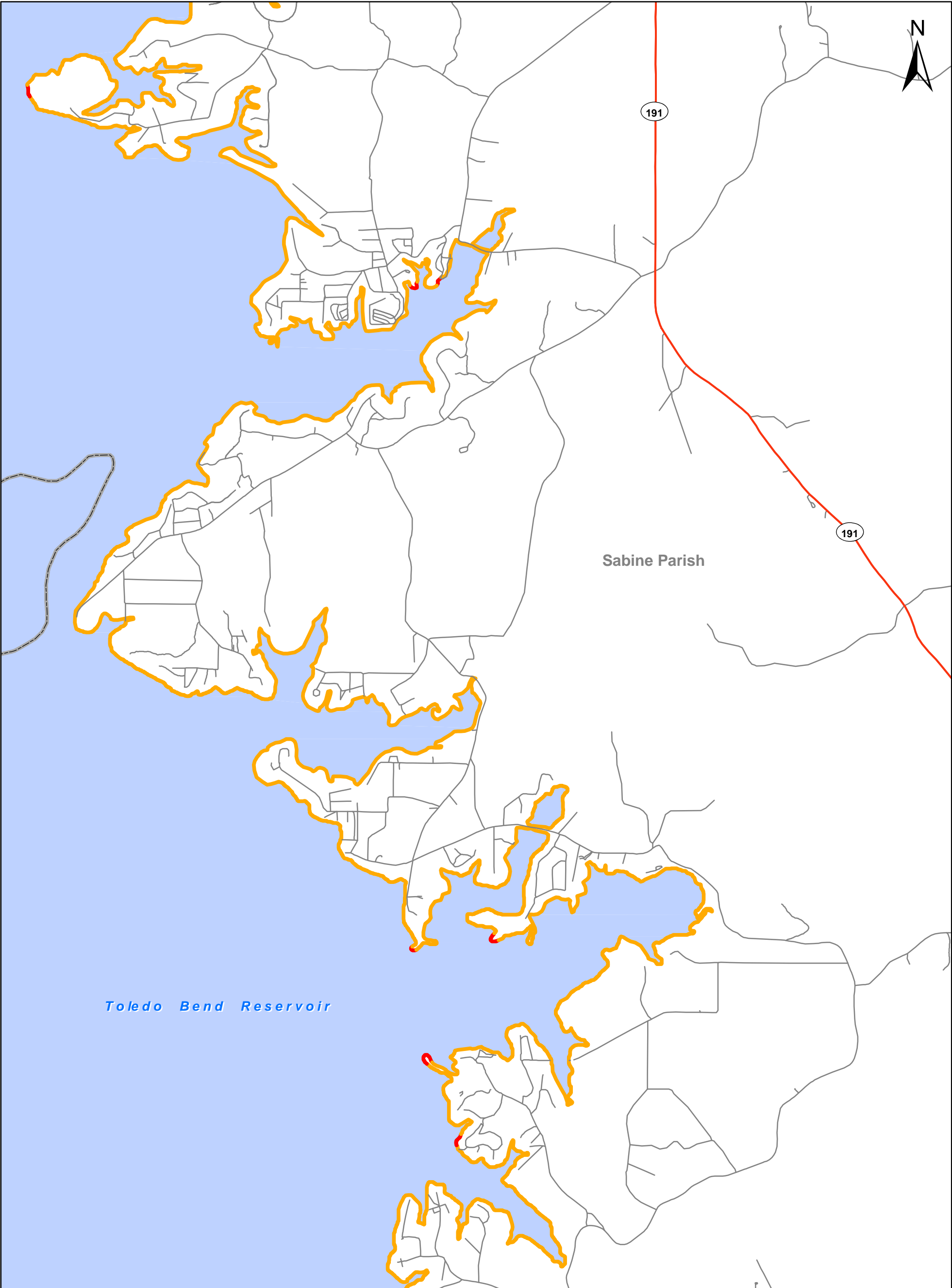
**Land Use Classifications**

**Sheet 23 of 29**

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**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

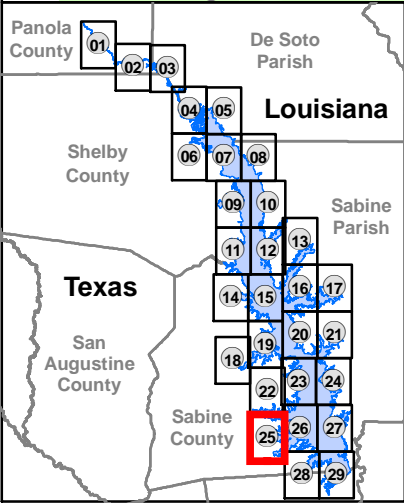
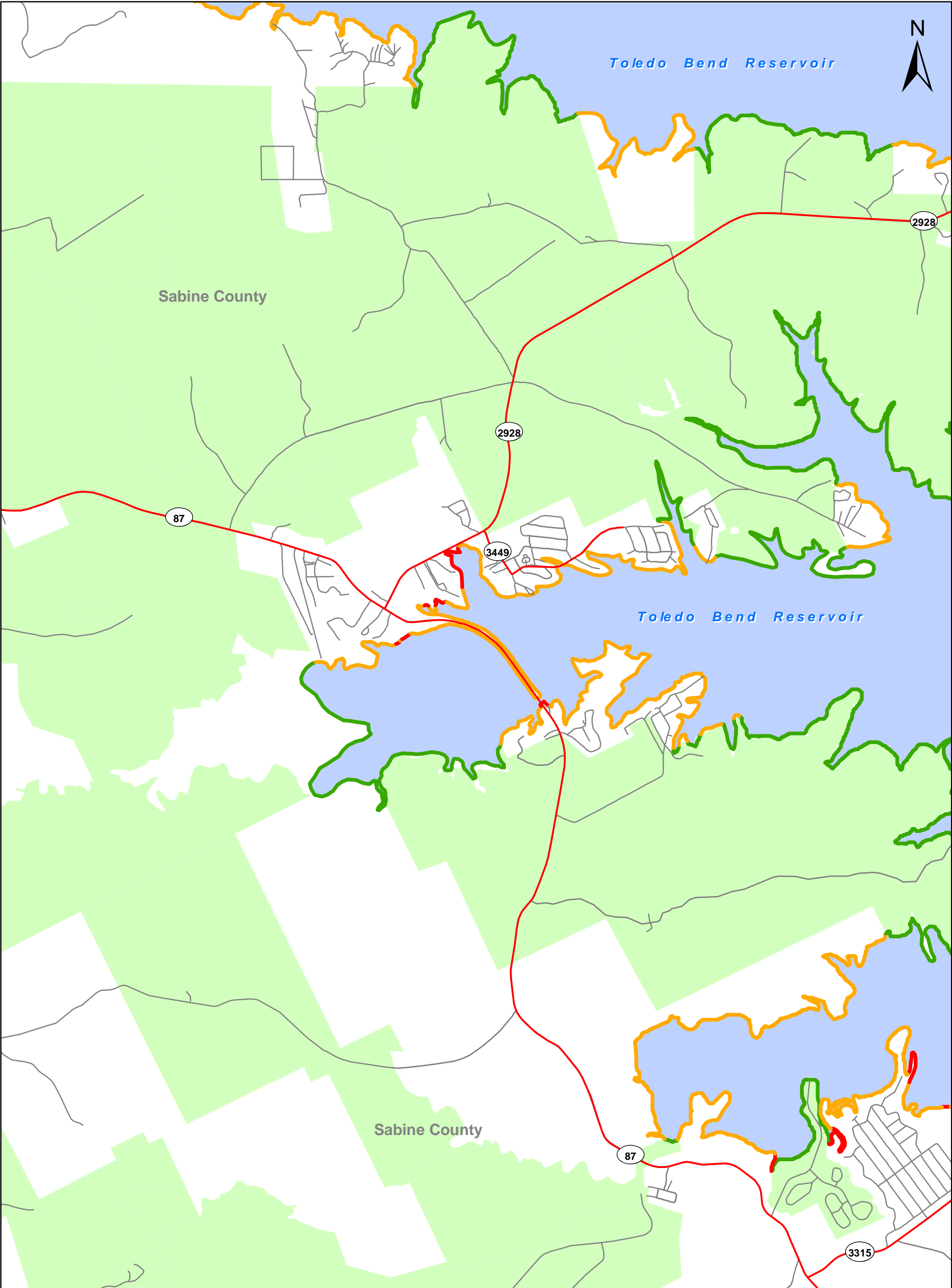
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Land Use Classifications**

**Sheet 24 of 29**

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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas;  
US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

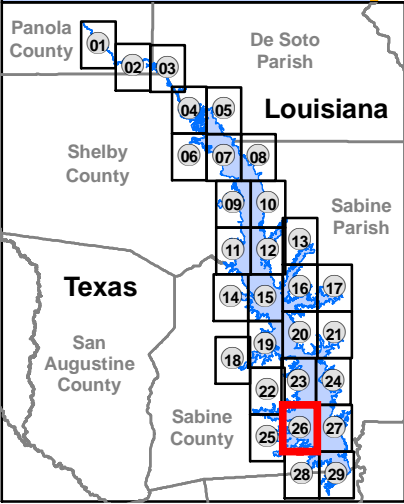
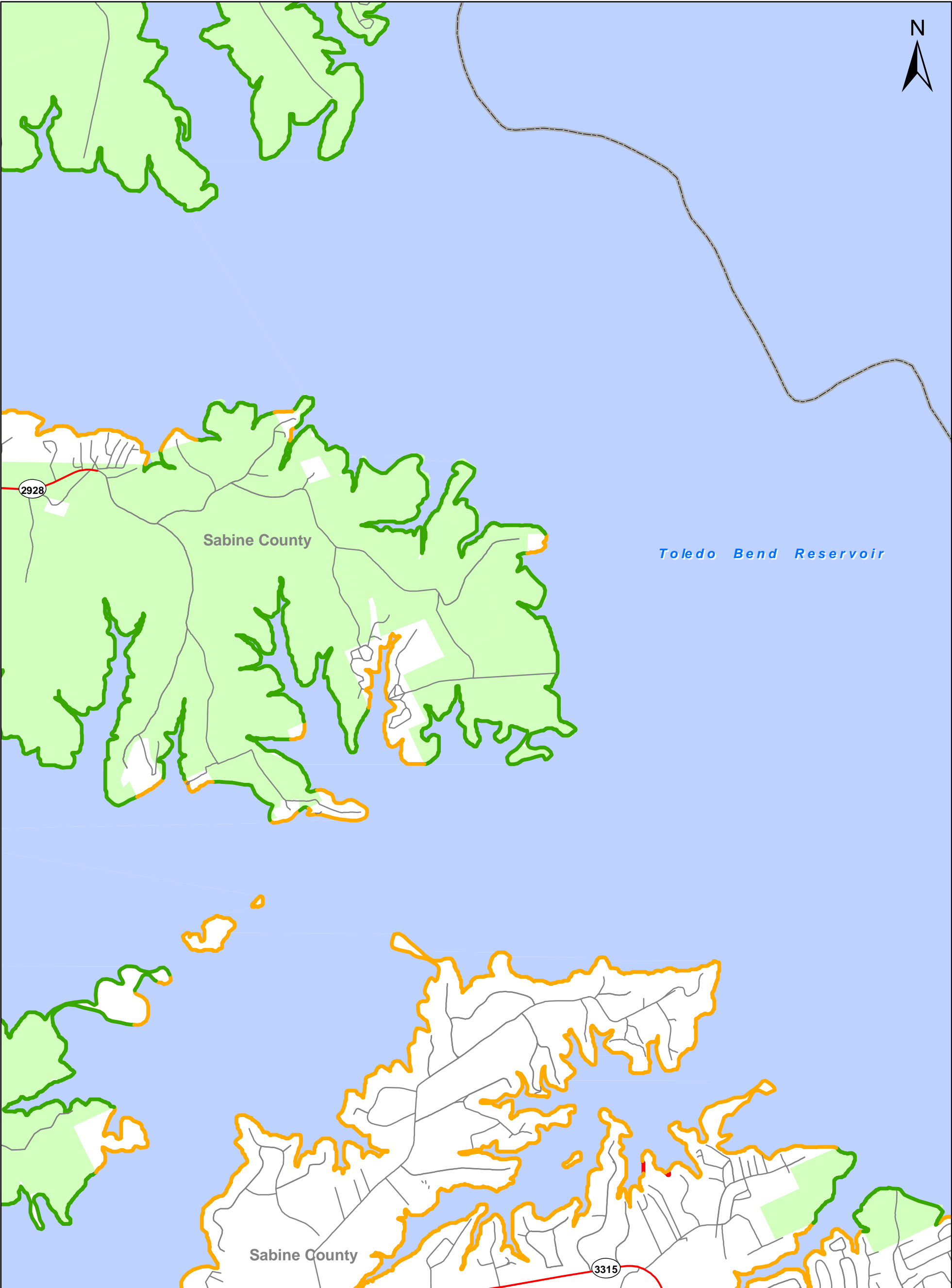
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011





**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation  
FERC #2305**

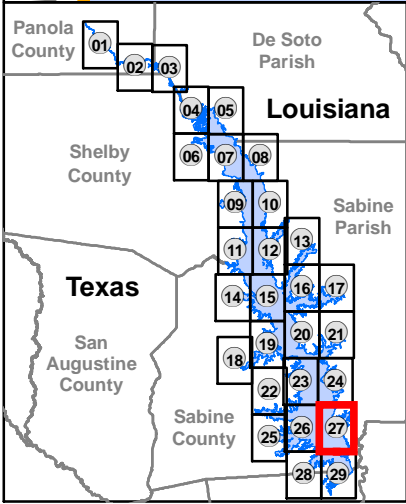
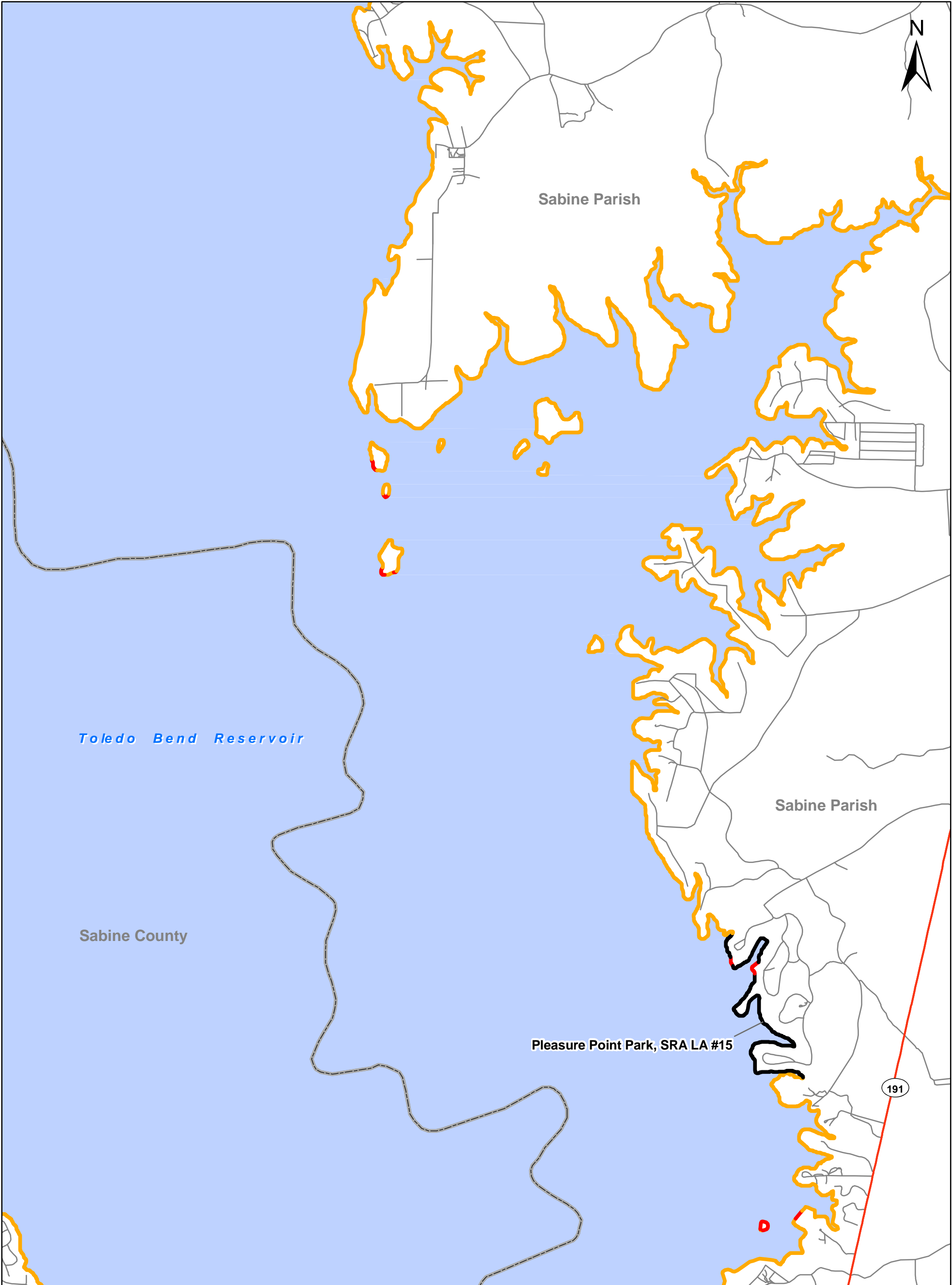
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Land Use Classifications**

**Sheet 26 of 29**

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Feet  
1:30,000

Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation**

**FERC #2305**

**Toledo Bend Reservoir,**

**Land Use Classifications**

**Sheet 27 of 29**

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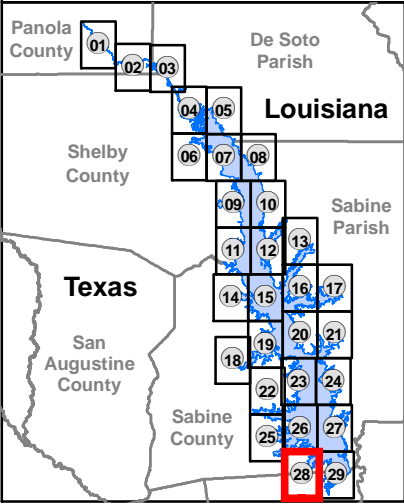
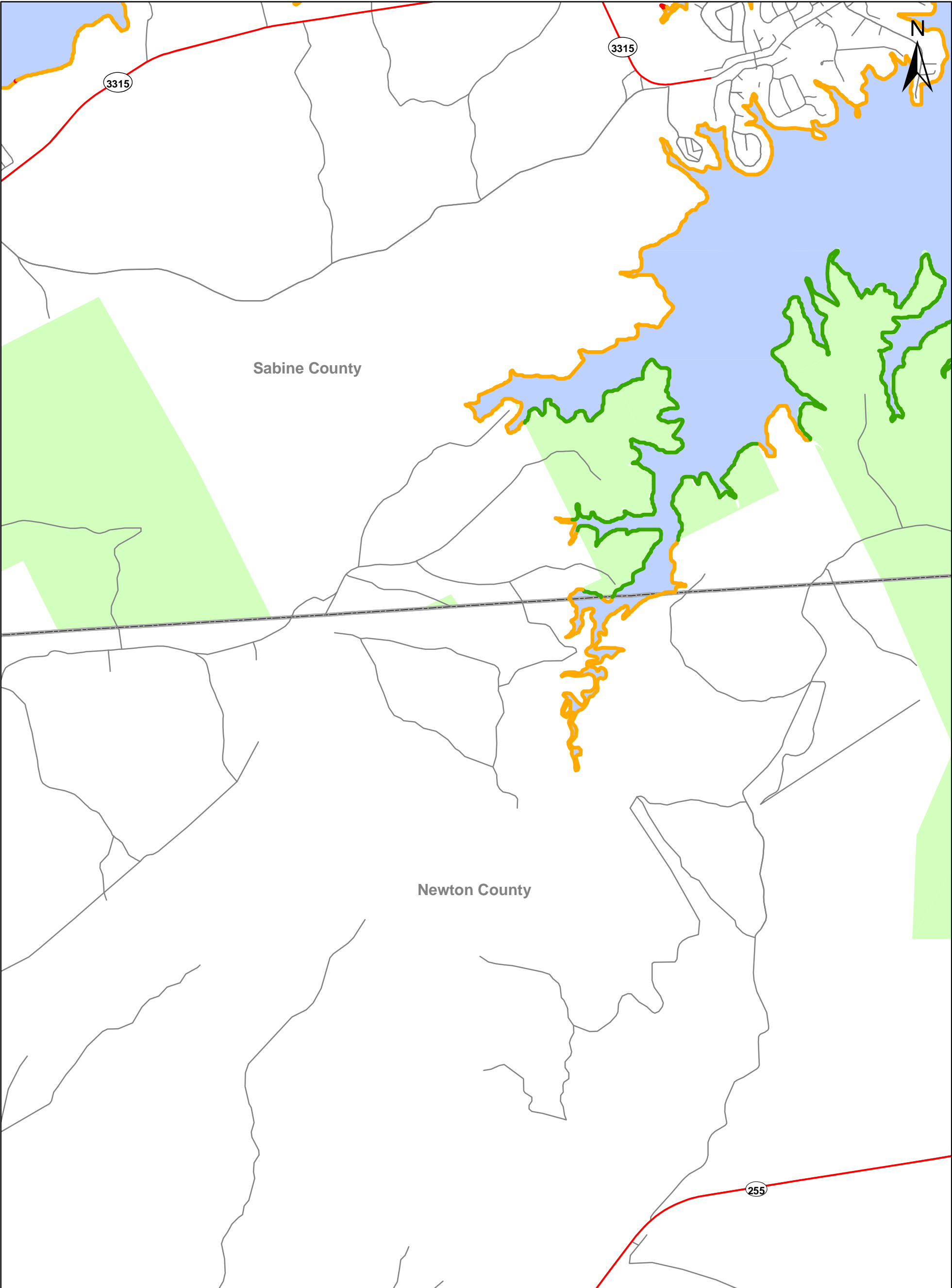
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

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- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

**Toledo Bend Joint Operation**

**FERC #2305**

**Toledo Bend Reservoir,**

**Land Use Classifications**

**Sheet 28 of 29**

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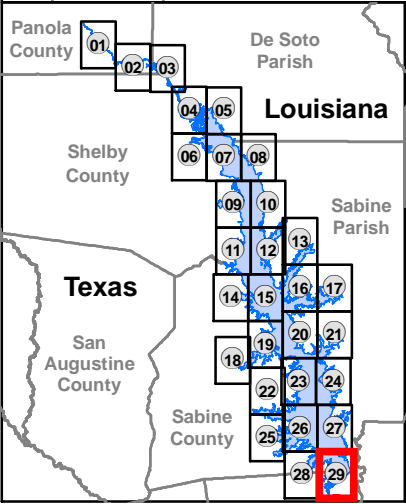
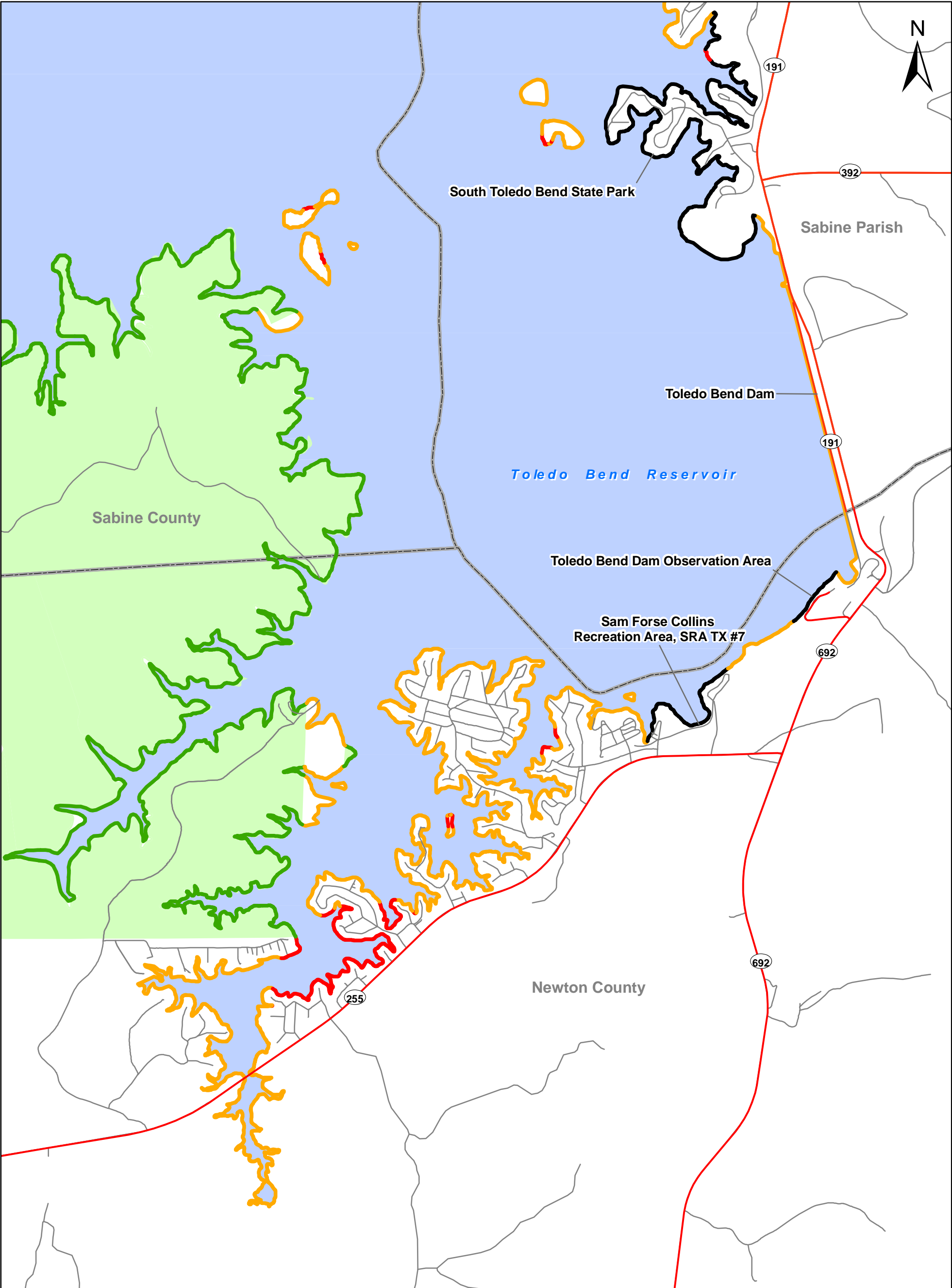
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Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

09/16/2011



**Legend**

SMPClass

- Conservation Lands
- General Use Lands
- USFS Lands
- Public Access Area

County Boundary

USDA Forest Service

Source: Sabine River Authority Survey Data; USDA US Forest Service Texas; US Census Bureau 2010 TIGER data; & Texas Department of Transportation.

**Toledo Bend Joint Operation  
FERC #2305**

**Toledo Bend Reservoir,  
Land Use Classifications**

**Sheet 29 of 29**

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## **APPENDIX E**

### **U.S. FISH AND WILDLIFE SERVICE LETTER DATED JANUARY 6, 2012**



In Reply Refer To:  
FWS/R2/CLES/

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Division of Ecological Services  
17629 El Camino Real, Suite 211  
Houston, TX 77058  
281/286-8282 / (FAX) 281/488-5882



January 6, 2012

Jack W. Tatum  
Sabine River Authority of Texas  
P.O. Box 579  
Orange, Texas 77632

Dear Mr. Tatum,

Thank you for requesting our review of the Sabine River Authorities' (SRA) draft Shoreline Management Plan (SMP) for the Toledo Bend Project (FERC No. 2305). The U.S. Fish and Wildlife Service's (Service) Clear Lake and Lafayette Ecological Services Field Offices have reviewed the SMP. We note that the SRA proposes to require shoreline permit applicants who wish to conduct certain shoreline development and use activities to coordinate with the Service regarding fish and wildlife impacts. Herein, we provide you with information and comments regarding the Service's trust resources, which include, but are not limited to federally listed species, bald eagles, and migratory birds. We recommend that the SRA provide this information to shoreline permit applicants directly and in lieu of mandatory coordination with the Service as proposed in the SMP. After review of this information, applicants are encouraged to contact the Service should they have any questions.

Our comments are provided in accordance with the provisions of the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668 et seq.), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661-667(e)), and the Federal Power Act (16 U.S.C. 791 et seq.).

### **Threatened and Endangered Species**

Section 9(a)(1) of the ESA prohibits "take" of endangered species of fish and wildlife within the United States or its territorial waters by any person. "Take" is defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." A county-by-county listing of federally listed threatened and endangered species that occur within the project area can be found at [http://www.fws.gov/southwest/es/EndangeredSpecies/EndangeredSpecies\\_Lists/EndangeredSpecies\\_Lists\\_Main.cfm](http://www.fws.gov/southwest/es/EndangeredSpecies/EndangeredSpecies_Lists/EndangeredSpecies_Lists_Main.cfm).

Section 7(a)(2) of the ESA requires Federal agencies to consult with the Service if it appears that any action they are proposing “may affect” a listed species. Please see the enclosed Section 7 form letter that describes the consultation process and associated responsibilities.

### **Freshwater Mussels**

The Service is currently reviewing the status of several species of freshwater mussels for potential listing under the ESA. It is known that sedimentation smothers and suffocates mussels and is one of the main contributors to mussel die offs. Therefore, the Service recommends that applicants use silt fences, filter fabric, and other best management practices to reduce sedimentation within streams crossed by or adjacent to any shoreline development and/or use projects. Shoreline permit applicants are encouraged to review the best management practices within the enclosed document entitled *Best Management Practices for Projects Affecting, Rivers, Streams and Tributaries* for further information.

### **Bald Eagles**

The bald eagle *Haliaeetus leucocephalus* was removed from the Federal List of Endangered and Threatened Wildlife on August 8, 2007 (72 FR 37346) yet still remains protected by the BGEPA and the MBTA. Accordingly, the Service recommends that shoreline permit applicants review and use the *National Bald Eagle Management Guidelines* to avoid harm or disturbance of bald eagles. These guidelines can be found at: <http://www.fws.gov/migratorybirds/baldeagle.htm>. Eagles are particularly vulnerable to disturbance throughout the nesting season, which in Texas is generally from October 1 to May 30.

### **Migratory Birds**

Please be advised that the MBTA protects all native migratory birds and does not permit take, unless permitted by regulation. “Take” is defined to mean “pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt any of the above” and may occur when land clearing activities destroy active nests (eggs or young present) or kills birds. To reduce the chances of take, the Service recommends that applicants review and implement the conservation actions for migratory birds outlined in the enclosed document entitled *Suggested Priority for Migratory Bird Conservation Actions for Projects*. A list of birds protected under the MBTA can be found in 50 CFR 10 of the MBTA and at: <http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/mbtandx.html#a>.

### **Colonial Waterbirds**

We recommend that applicants avoid the removal of colonial waterbird rookeries to the maximum extent practicable. Disturbance can also adversely affect colonial waterbird use of nesting sites and can result in nest abandonment and loss of reproduction<sup>1</sup>. Therefore, the Service recommends that applicants prohibit all project activities within 1,000 feet of active bird rookery areas during the nesting season from early February to late August.

Mr. Tatum

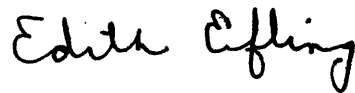
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**Section 404 of the Clean Water Act**

Section 404 of the Clean Water Act establishes a program administered by the U.S. Army Corps of Engineers that regulates the discharge of fill material into waters of the United States (e.g., wetlands, streams, reservoirs, etc.). We recommend that applicants consult the U.S. Army Corps of Engineers to ensure that project activities comply with the Clean Water Act.

Thank you for the opportunity to provide comments on your draft SMP. If you need any additional information, please contact project biologist A.J Vale at 281/286-8282 ext. 223.

Sincerely,

A handwritten signature in black ink that reads "Edith Erfling". The script is cursive and fluid.

Edith Erfling  
Field Supervisor

Enclosures

cc: Federal Energy Regulatory Commission, Attn: Alan Mitchnick, Washington D.C. 20426  
USFWS, Region 4, Ecological Services, Attn: Seth Bordelon, Lafayette, LA, 70506

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<sup>i</sup> Mueller, A.J. and P.O. Glass. 1988. Disturbance tolerance in a Texas waterbird colony. Colonial Waterbirds 11:119-122



## **BEST MANAGEMENT PRACTICES FOR PROJECTS AFFECTING RIVERS, STREAMS AND TRIBUTARIES**

The project crosses or potentially affects river, stream or tributary aquatic habitat. Therefore the Service recommends implementing the following applicable Best Management Practices:

1. Construct stream crossings during a period of low streamflow (e.g., July - September);
2. Cross streams, stream banks and riparian zones at right angles and at gentle slopes;
3. When feasible, directionally bore under stream channels;
4. Disturb riparian and floodplain vegetation only when necessary;
5. Construction equipment should cross the stream at one confined location over an existing bridge, equipment pads, clean temporary native rock fill, or over a temporary portable bridge;
6. Limit in-stream equipment use to that needed to construct crossings;
7. Place trench spoil at least 25 feet away landward from streambanks;
8. Use sediment filter devices to prevent movement of spoil off right-of-way when standing or flowing water is present;
9. Trench de-watering, as necessary, should be conducted to prevent discharge of silt laden water into the stream channel;
10. Maintain the current contours of the bank and channel bottom;
11. Do not store hazardous materials, chemicals, fuels, lubricating oils, and other such substances within 100 feet of streambanks;
12. Refuel construction equipment at least 100 feet from streambanks;
13. Revegetate all disturbed areas as soon as possible after construction to prevent unnecessary soil erosion. Use only native riparian plants to help prevent the spread of exotics;
14. Maintain sediment filters at the base of all slopes located adjacent to the streams until right-of-way vegetation becomes established;
15. Maintain a vegetative filtration strip adjacent to streams and wetlands. The width of a filter strip is based on the slope of the banks and the width of the stream. Guidance to determine the appropriate filter strip (stream management zone, SMZ) width is provided below; and
16. Direct water runoff into vegetated areas.

SMZ widths should consider watershed characteristics, risk of erosion, soil type, and stream width. SMZ widths are measured from the top of each bank and established on each side of the stream. Erosion risk is increased with sandy soil, steep slopes, large watersheds and increasing stream widths. Recommended primary and secondary SMZ widths are provided in the table below.

Stream Width (Feet)	Slope (Percent)	Primary SMZ (Feet)	Secondary SMZ (Feet)
<20	<7	35	0
<20	7-20	35	50
<20	>20	Top of slope or 150	75
20-50	<7	50	0
20-50	7-20	50	50
20-50	>20	Top of slope or 150	75
>50	<7	Width of stream or 100 max.	0
>50	7-20	Width of stream or 100 max.	50
>50	>20	Top of slope or 150	75

## Reference

Arkansas Forestry Commission. 2001. Draft Arkansas Forestry Best Management Practices for Water Quality Protection.



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Division of Ecological Services  
17629 El Camino Real, Suite 211  
Houston, Texas 77058-3051  
281/286-8282 / (FAX) 281/488-5882



May 2011

Thank you for your request for threatened and endangered species information in the Clear Lake Ecological Services Field Office's area of responsibility. According to Section 7(a)(2) of the Endangered Species Act and the implementing regulations, it is the responsibility of each Federal agency to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any federally listed species.

Please note that while a Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment, the Federal agency must notify the U.S. Fish and Wildlife Service (Service) in writing of such designation. The Federal agency shall also independently review and evaluate the scope and contents of a biological assessment prepared by their designated non-Federal representative before that document is submitted to the Service.

A county-by-county listing of federally-listed threatened and endangered species that occur within this office's work area can be found at [http://www.fws.gov/southwest/es/Endangered Species/lists/default.cfm](http://www.fws.gov/southwest/es/Endangered%20Species/lists/default.cfm). You should use the county-by-county listing and other current species information to determine whether suitable habitat for a listed species is present at your project site. If suitable habitat is present, a qualified individual should conduct surveys to determine whether a listed species is present.

After completing a habitat evaluation and/or any necessary surveys, you should evaluate the project for potential effects to the listed species and make one of the following determinations:

**No effect** – the proposed action will not affect federally listed species or critical habitat (i.e., suitable habitat for the species occurring in the project county is not present in, or adjacent to, the action area). No coordination or contact with the Service is necessary. However, if the project changes or additional information on the distribution of listed or proposed species becomes available, the project should be reanalyzed for effects not previously considered.

**Is not likely to adversely affect** – the project may affect listed species and/or critical habitat; however, the effects are expected to be discountable, insignificant, or completely beneficial. Certain avoidance and minimization measures may need to be implemented in order to reach this level of effects. The Federal agency or the designated non-Federal representative should seek written concurrence from the Service that adverse effects have been eliminated. Be sure to include all the information and documentation used to reach your decision with your request for concurrence. The Service must have this documentation before issuing a concurrence.

**Is likely to adversely affect** – adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable, insignificant, or beneficial. If the overall effect of the proposed action is beneficial to the listed species but also likely to cause some adverse effect to individuals or that species, then the proposed action "is likely to adversely affect" the listed species. An "is likely to adversely affect" determination requires the Federal action agency to initiate formal Section 7 consultation with this office.

Regardless of your determination, the Service recommends that you maintain a complete record of the evaluation, including steps leading to the determination of effect, the qualified personnel conducting the evaluation, habitat conditions, site photographs, and any other related articles. The Service's Consultation Handbook is available online to assist you with further information on definitions, process, and fulfilling Endangered Species Act requirements for your projects at [http://endangered.fws.gov/consultations/s7hndbk/s7\\_hndbk.htm](http://endangered.fws.gov/consultations/s7hndbk/s7_hndbk.htm).

If we can further assist you in understanding a federal agency's obligations under the Endangered Species Act, please contact Donna Anderson, Moni Belton, Kelsey Gocke, Jeff Hill, Charrish Stevens, or Arturo Vale at 281-286-8282.

Sincerely,

Edith Erling  
Field Supervisor

**Suggested Priority of Migratory Bird Conservation Actions for Projects  
U.S. Fish and Wildlife Service (USFWS), Migratory Bird Management**

**March 9, 2010**

1. Avoid any take of migratory birds and/or minimize the loss, destruction, or degradation of migratory bird habitat while completing the proposed project or action.
2. Determine if the proposed project or action will involve below- and/or above-ground construction activities since recommended practices and timing of surveys and clearances could differ accordingly.
3. If the proposed project or action includes a reasonable likelihood that take of migratory birds will occur, then complete actions that could take migratory birds outside of their nesting season. This includes clearing or cutting of vegetation, grubbing, etc. The primary nesting season for migratory birds varies greatly between species and geographic location, but generally extends from early April to mid-July. However, the maximum time period for the migratory bird nesting season can extend from early February through late August. Also, eagles may initiate nesting as early as late December or January depending on the geographic area. Due to this variability, project proponents should consult with the appropriate Regional Migratory Bird Program (USFWS) for specific nesting seasons. Strive to complete all disruptive activities outside the peak of migratory bird nesting season to the greatest extent possible. Always avoid any habitat alteration, removal, or destruction during the primary nesting season for migratory birds. Additionally, clearing of vegetation in the year prior to construction (but not within the nesting season) may discourage birds from attempting to nest in the proposed construction area, thereby decreasing chance of take during construction activities.
4. If a proposed project or action includes the potential for take of migratory birds and/or the loss or degradation of migratory bird habitat and work cannot occur outside the migratory bird nesting season (either the primary or maximum nesting season), project proponents will need to provide the USFWS with an explanation for why work has to occur during the migratory bird nesting season. Further, in these cases, project proponents also need to demonstrate that all efforts to complete work outside the migratory bird nesting season were attempted, and that the reasons work needs to be completed during the nesting season were beyond the proponent's control.

Also, where project work cannot occur outside the migratory bird nesting season, project proponents must survey those portions of the project area during the nesting season prior to construction occurring to determine if migratory birds are present and nesting in those areas. In addition to conducting surveys during the

nesting season/construction phase, companies may also benefit from conducting surveys during the prior nesting season. Such surveys will assist the company in any decisions about the likely presence of nesting migratory birds or sensitive species in the proposed project or work area. While individual migratory birds will not necessarily return to nest at the exact site as in previous years, a survey in the nesting season in the year before construction allows the company to become familiar with species and numbers present in the project area well before the nesting season in the year of construction. Bird surveys should be completed during the nesting season in the best biological timeframe for detecting the presence of nesting migratory birds, using accepted bird survey protocols. USFWS Offices can be contacted for recommendations on appropriate survey guidance. Project proponents should also be aware that results of migratory bird surveys are subject to spatial and temporal variability. Finally, project proponents will need to conduct migratory bird surveys during the actual year of construction, if they cannot avoid work during the primary nesting season (see above) and if construction will impact habitats suitable for supporting nesting birds.

5. If no migratory birds are found nesting in proposed project or action areas immediately prior to the time when construction and associated activities are to occur, then the project activity may proceed as planned.
6. If migratory birds are present and nesting in the proposed project or action area, contact your nearest USFWS Ecological Services Field Office and USFWS Region Migratory Birds Program for guidance as to appropriate next steps to take to minimize impacts to migratory birds associated with the proposed project or action.

\* Note: these proposed conservation measures assume that there are no Endangered or Threatened migratory bird species present in the project/action area, or any other Endangered or Threatened animal or plant species present in this area. If Endangered or Threatened species are present, or they could potentially be present, and the project/action may affect these species, then consult with your nearest USFWS Ecological Services Office before proceeding with any project/action.

\*\* The Migratory Bird Treaty Act prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, parts, and nests, except when specifically permitted by regulations. While the Act has no provision for allowing unauthorized take, the USFWS realizes that some birds may be killed during construction and operation of energy infrastructure, even if all known reasonable and effective measures to protect birds are used. The USFWS Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to avoid take of migratory birds, and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve

individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, the Office of Law Enforcement focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent and effective measures to avoid that take. Companies are encouraged to work closely with Service biologists to identify available protective measures when developing project plans and/or avian protection plans, and to implement those measures prior to/during construction or similar activities.

\*\*\* Also note that Bald and Golden Eagles receive additional protection under the Bald and Golden Eagle Protection Act (BGEPA). BGEPA prohibits the take, possession, sale, purchase, barter, offer to sell, purchase, or barter, transport, export or import, of any Bald or Golden Eagle, alive or dead, including any part, nest, or egg, unless allowed by permit. Further, activities that would disturb Bald or Golden Eagles are prohibited under BGEPA. "Disturb" means to agitate or bother a Bald or Golden Eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an Eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. If a proposed project or action would occur in areas where nesting, feeding, or roosting eagles occur, then project proponents may need to take additional conservation measures to achieve compliance with BGEPA. New regulations (50 CFR § 22.26 and § 22.27) allow the take of bald and golden eagles and their nests, respectively, to protect interests in a particular locality. However, consultation with the Migratory Bird, Ecological Services, and Law Enforcement programs of the Service will be required before a permit may be issued.

## **APPENDIX F**

### **STATE AND FEDERAL CONSULTATION AND PERMITTING GUIDELINES**

## STATE AND FEDERAL CONSULTATION AND PERMITTING GUIDELINES

### Federal Agencies, Bureaus, and Other Entities

#### *U.S. Army Corps of Engineers*

The U.S. Army Corps of Engineers (USACE) is a federal agency that serves as the chief federal steward of wetlands (e.g., marshes, tidelands, and vernal pools) and the USACE's regulatory division is responsible for regulating and enforcing federal environmental standards while balancing appropriate development. The permitting process is the USACE's official means of balancing societal needs while protecting the environment. In cases where an impact on aquatic resources is unavoidable, organizations and individuals must obtain a permit from the USACE.

When seeking a permit from the Sabine River Authority ("SRA"), State of Louisiana, and the Sabine River Authority of Texas (together, "the Authorities"; individually "SRA-LA" and "SRA-TX," respectively) under this Shoreline Management Plan (SMP), a permit applicant may be required to consult with, or obtain a permit from, the USACE.

#### Mailing Address:

U.S. Army Corps of Engineers  
Fort Worth District  
P.O. Box 17300  
Fort Worth, TX 76102

Regulatory Program Phone Number: (817) 886-1731

#### *U.S. Fish and Wildlife Service*

The U.S. Fish and Wildlife Service (USFWS) is a federal government agency within the U.S. Department of the Interior. The USFWS is dedicated to the management of fish, wildlife, and their associated habitats. The mission of the agency is to work with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats. The USFWS has authority under multiple federal laws including, but not limited to the Bald and Golden Eagle Protection Act, Endangered Species Act, Marine Mammal Protection Act, and the Migratory Bird Treaty Act (USFWS 2002). When seeking a permit from the Authorities under this SMP (other than a Type 5 activity), applicants may be provided information on USFWS's trust resources, which include, but are not limited to, federally listed species, bald eagles, and migratory birds. Applicants will be required to adhere to the USFWS recommendations and instructions provided by the Authorities. USFWS consultation will be required for a Type 5 activity, and may be required in conjunction with any required USACE permit.

<b>Texas USFWS</b>	<b>Louisiana USFWS</b>
Mailing Address: U.S. Fish & Wildlife Service 17629 El Camino Real, #211 Houston, TX 77058-3051 Office Phone Number: (281) 286-8282	Mailing Address: U.S. Fish & Wildlife Service 646 Cajundome Blvd., Suite 400 Lafayette, LA 70506 Office Phone Number: (337) 291-3100



## State Resource Agencies - Texas

### *Texas Commission on Environmental Quality*

The Texas Commission on Environmental Quality (TCEQ) is the environmental agency for the State of Texas. TCEQ's mission is to protect the State's human and natural resources while remaining consistent with sustainable economic development. TCEQ's goals are clean air, clean water, and the safe management of waste (TCEQ 2011).

The TCEQ is the grantor of water quality state certifications under Section 401 of the Clean Water Act, 33 U.S.C. § 1341. With respect to this SMP, a Section 401 Water Quality Certification may be required in conjunction with a USACE permit.

<b>Sabine, Shelby, and Newton Counties</b>	<b>Panola County</b>
Mailing Address: Texas Commission on Environmental Quality, Region 10 3870 Eastex Fwy. Beaumont, TX 77703-1830 Office Phone Number: (409) 898-3838	Mailing Address: Texas Commission on Environmental Quality, Region 5 2916 Teague Dr. Tyler, TX 75701-3734 Office Phone Number: (903) 535-5100

### *Texas Parks and Wildlife Department*

The Texas Parks and Wildlife Department (TPWD) Wildlife Permitting Section is responsible for the issuance of permits for the handling of state-listed threatened or endangered species. With regard to this SMP, permit applicants for proposed activities within the Federal Energy Regulatory Commission (FERC) Toledo Bend Project (or "Project") Boundary in Texas may be required to consult with TPWD, as well as in any required USACE permitting process associated with the proposed activity.

Mailing Address:

Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, TX 78744

Main Phone: (512) 389-4800

### *Texas Historic Commission*

The Texas Historical Commission (THC) is the state agency for historic preservation. Under the Historical Properties Management Plan for the Toledo Bend Project, THC must be consulted with regard to proposed land-disturbing activities that may affect historic properties within the Project Boundary in Texas.

Mailing Address:

Texas Historical Commission  
P.O. Box 12276  
Austin, TX 78711-2276

Main Phone: (512) 463-6100

*The Railroad Commission of Texas*

The Railroad Commission (RRC) of Texas is a state agency that is charged with regulating the oil and gas industry, gas utilities, safety for the liquefied petroleum gas industry, pipeline safety, and uranium and surface coal mining. The RRC issues permits pertaining to mining, oil and gas (drilling, environmental, and injection/storage permits), and pipelines (construction and operation permits). Should a permittee desire to drill or extract oil and/or natural gas on lands within the FERC Project Boundary owned by SRA-TX, the permittee must obtain any necessary permit or authorization from the RRC prior filing its permit application with the Authorities.

Mailing Address:

Texas Railroad Commission  
P.O. Box 12967  
Austin, TX 78711-2967

Main Phone: (877) 228-5740

**State Permitting Requirements - Louisiana**

*Louisiana Department on Environmental Quality*

The Louisiana Department on Environmental Quality is responsible for implementing and issuing the State's water quality certification program under Section 401 of the Clean Water Act. With respect to this SMP, a Section 401 Water Quality Certification may be required in conjunction with a USACE permit.

<b>De Soto and Sabine Parishes</b>	<b>Vernon Parish</b>
Mailing Address: Louisiana Department on Environmental Quality 1525 Fairfield, Room 520 Shreveport, LA 71101-4388 Main Phone: (318) 676-7227	Mailing Address: Louisiana Department on Environmental Quality 1301 Gadwall Street Lake Charles, LA 70615 Main Phone: (337) 491-2667

*Louisiana Department of Wildlife and Fisheries*

The Louisiana Department of Wildlife and Fisheries (LDWF) is a fish and game regulatory state agency responsible for management of the State's renewable natural resources including all wildlife and all aquatic life. LDWF partners with various state and federal agencies and private land owners on wetland management and restoration projects. With regard to this SMP, permit applicants for proposed activities within the FERC Project Boundary in Louisiana may be required to consult with LDWF, as well as in any required USACE permitting process associated with the proposed activity.

Louisiana Department of Wildlife and Fisheries  
P.O. Box 98000  
Baton Rouge, LA 70898  
Main Phone: (225) 765-2800

*Louisiana Department of Natural Resources*

The purpose of the Louisiana Department of Natural Resources (LDNR) is to preserve and enhance the nonrenewable natural resources of the State. These resources consist of land, water, oil, gas, and other minerals, and preservation and enhancement are achieved through conservation, regulation, management, and development. The LDNR performs regulatory and permitting functions through the Office of Coastal Management and the Office of Conservation.

The Offices of Conservation and Mineral Resources are vital to the exploration and production activity occurring in the state. The Office of Conservation's responsibilities include the declaration of properties as units for oil and gas drilling and production purposes, the permitting and inspection of wells, and audits of well production. The Office of Conservation is responsible for issuing air, water, and waste permits. Water permits include biosolids, industrial water, and municipal and general water permits.

Should a permittee desire to drill or extract oil and/or natural gas on lands within the FERC Project Boundary owned by SRA-LA, the permittee must obtain any necessary permit from the LDNR prior to engaging in the intended ground disturbing activity.

Mailing Address:

Louisiana Dept of Natural Resources  
P.O. Box 94396  
Baton Rouge, LA 70804-9396  
Main Phone: (225) 342-4500

*Louisiana Office of Cultural Development*

The Louisiana Office of Cultural Development (LOCD) performs the role of the Louisiana State Historic Preservation Office. Under the Historical Properties Management Plan for the Toledo Bend Project, LOCD must be consulted with regard to proposed land-disturbing activities that may affect historic properties within the Project Boundary in Louisiana.

Mailing Address:

Office of Historic Preservation  
P.O. Box 44247  
Baton Rouge, LA 70804  
Main Phone: (225) 342-8160

Toledo Bend Project (FERC No. 2305)  
Response to Comments on the Preliminary Draft Shoreline Management Plan  
February 3, 2012

<b>Cmnt No.</b>	<b>Stakeholder</b>	<b>Date of Comment</b>	<b>Comment</b>	<b>Response to Comment</b>
1	USFWS	1/6/12	Thank you for requesting our review of the Sabine River Authorities' (SRA) draft Shoreline Management Plan (SMP) for the Toledo Bend Project (FERC No. 2305)...We recommend that the SRA provide this information to shoreline permit applicants directly and in lieu of mandatory coordination with the Service....	<p>The Authorities appreciate USFWS review and comment on the SMP, and agree to provide information on the Service's trust resources directly to permit applicants in lieu of coordination with USFWS.</p> <p>SMP Section 4.3 has been revised to include the commitment to provide information on USFWS's trust resources which include, but are not limited to, federally listed species, bald eagles, and migratory birds, directly to shoreline permit applicants in lieu of mandatory coordination with USFWS. Applicants will be required to adhere to the USFWS recommendations and instructions provided by the Authorities. In implementing the SMP, the Authorities will update the information to be provided to applicants as requested by USFWS.</p> <p>The USFWS's January 6, 2012 is included as Appendix E to the SMP.</p>
2	TPWD	12/9/11	Dave Terre, Craig Bonds, and I reviewed the Shoreline Management Plan on behalf of TPWD – Inland Fisheries/Management. We appreciate the opportunity to provide input on this document relative to shoreline stabilization and protection of aquatic habitat at Toledo Bend Reservoir. We thought the document was very comprehensive and well-written, and only had the following comments below:	Comment noted.
3	TPWD	12/9/11	Regarding erosion control measures, we feel it is very important to use material that also creates fish habitat (i.e., vegetation or rip-rap) when possible. Retaining walls/bulkheads should only be permitted when absolutely necessary. When walls/bulkheads are constructed, it should also be required to enhance these with rip-rap, vegetation, or some form of wave-attenuating and fish habitat enhancing structures.	<p>The Authorities think that retaining walls/bulkheads are an efficient and practical alternative for shoreline stabilization. And SRA-LA encourages the use of bioengineering techniques and landscape plantings for purposes of shoreline stabilization.</p> <p>As stated in Section 2.6 of Appendix B and Section 2.7 of Appendix C, all shoreline stabilization activities must comply with all applicable local, state, and federal requirements, and must be completed in accordance with any required permit from the USACE. And the Authorities reserve the right to modify, limit, or deny any proposed shoreline stabilization activities as necessary to protect environmental values at the Toledo Bend Project.</p>

<b>Cmnt No.</b>	<b>Stakeholder</b>	<b>Date of Comment</b>	<b>Comment</b>	<b>Response to Comment</b>
4	TPWD	12/9/11	<p>We were pleased to see that the FERC letter included in Appendix A also emphasized use of habitat-enhancing structures. On page 3:</p> <p>Before granting permission for construction of bulkheads or retaining walls, the licensees shall: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.</p>	Comment noted.
5	TPWD	12/9/11	<p>In Appendix B, page 11 – SRA-LA states:</p> <p>Lessees and permittees are encouraged to use bioengineering techniques and landscape plantings before seeking authorization from SRA-LA for more invasive, expensive, and unsightly shoreline stabilization measures, such as rip-rap.</p> <p>We suggest removing the “unsightly” reference concerning riprap. Relative to providing fish habitat, rip-rap is always preferred over walls/bulkhead. Some might misinterpret this negative reference and assume that walls/bulkhead are more visually appealing and thus preferred.</p>	The SMP has been revised as suggested.
6	TPWD	12/9/11	<p>Toledo Bend Reservoir supports a very productive recreational fishery for multiple sport fish, and the economic impacts of the fishery are significant. TPWD appreciates the ongoing recreational commitment of the Sabine River Authorities.</p>	Comment noted.

<b>Cmnt No.</b>	<b>Stakeholder</b>	<b>Date of Comment</b>	<b>Comment</b>	<b>Response to Comment</b>
7	F. Davis	12/19/11	Please justify the 80 miles of shoreline on the Louisiana side of the lake that the Department of Wildlife and Fisheries has reserved for “conservation” (fish spawning areas?). Why do the Louisiana biologists believe this is necessary while those from Texas do not? My experience as a fisherman is that much of the spawning occurs on shallow humps in the lake as well as along the shoreline. Further, I believe the fish will move to an acceptable area should a shoreline area be impacted so as to impede the spawn. Why must we continue to try to establish different regulations, requirements on each side of the Sabine River? This would seem to be unproductive and confusing for those of us who enjoy both sides of the river.	During the consultation process on the preliminary draft SMP, LDWF initially suggested that an additional 80 miles of shoreline be classified as “conservation” for purposes of spawning habitat. Subsequently, LDWF withdrew this request, and the Shoreline Use Classification Maps included as Appendix D to the final SMP do not classify these 80 miles as “conservation.”
8	TBCC	12/20/11	<p>The Toledo Bend Community Club (TBCC) is a 5013c tax exempt organization of approximately 200 property owners who live on the Texas side of Toledo Bend Lake. Our membership lives in close proximity to the Toledo Bend hydroelectric dam and most are retirees who have chosen Toledo Village as their permanent retirement home.</p> <p>TBCC members are concerned and have questions about the proposed relicensing and proposed Shoreline Management Plan (SMP). These concerns have been expressed verbally to representatives of the Sabine River Authority (SRA) of Texas at their required meeting on December 1, 2011 in Hemphill, TX. In addition, individual TBCC members have informally discussed the relicensing and SMP with various SRA officials over the past several months. Our concerns are as follows:</p>	Comment noted.
9	TBCC	12/20/11	Recreation was one of the primary reasons for the creation of Toledo Bend Lake some 50 years ago.	The Toledo Bend Project was initially conceived, licensed, and developed as, and today functions primarily as, a water supply facility, with hydroelectric power generation and recreation as secondary purposes.

<b>Cmnt No.</b>	<b>Stakeholder</b>	<b>Date of Comment</b>	<b>Comment</b>	<b>Response to Comment</b>
10	TBCC	12/20/11	Unfortunately, using the lake for fun and recreation including retirement recreation is a purpose for which is not well represented in the relicensing process. We are not organized and do not have the funds for legal representation, nor do we have the state and federal agency strength to have our concerns appropriately considered or negotiated.	The Toledo Bend relicensing has been open and public, carried out under FERC's Integrated Licensing Process. The Authorities appreciate TBCC's interest and input.
11	TBCC	12/20/11	Toledo Bend Lake is approximately 12 feet below full pool stage.... But the SRAs because of drought conditions are releasing over 550 cubic feet per second of non-generated water which is 250% above the 144 cfs requirement established by the current license to meet downstream needs. As a result, the water level continues to drop causing additional recreational challenges. Our boat houses and many boats are on dry land and approximately 90% of the boat ramps are closed. Fishing tournaments, a major economic booster, are being cancelled and fishing in general has slowed dramatically causing a hardship for the small business owner of marinas, motels, restaurants, and bait/tackle shops.	TBCC is correct that drought conditions led to historically low reservoir levels in 2011. The Sabine River drainage has never recorded a drought as exceptional as the one we are in at this time. Clearly the economy, business owners, and also recreationists have been affected by this drought.  Hydropower operations are described in the Toledo Bend Project Operating Guide Rule Curve (see Final License Application Exhibit B, Table 3.3-1). As TBCC notes, the Authorities have continued in recent months to release water from Toledo Bend Reservoir through the spillway; this is to meet contractual obligations to provide water at intakes located downstream.
12	TBCC	12/20/11	The relicensing application includes a request for increasing continuous water flow from 144 cfs to 225 cfs. After 50 years of successful releases of 144 cfs, we can find no justification for approving this increase.	The Final License Application (FLA) Exhibit E 2.2.4 presents the details of the Authorities' proposal to operate with a 225 cfs year-round minimum flow, with drought contingencies. Exhibit E 3.5.2.4 presents a discussion of the environmental effects of this proposed action. Copies of the Final License Application on compact disk are available by contacting Mel Swoboda at mswoboda@sratx.org or (409) 746-2192.
13	TBCC	12/20/11	The relicensing application includes a request for the preliminary approval of a low water generator....A low water level generator could seriously impact this long sought after agreement to stabilize the water level....  Generating power during the summer months when demand is greatest, causes water level challenges at a time when we receive the smallest amount of rain....	The minimum flow generating unit proposed in the FLA is sized to generate electricity using the proposed minimum flow released at the spillway (see response to Comment 12). The installation and operation of the minimum flow generating unit will have no effect on the volume or timing of releases from Toledo Bend Reservoir.

<b>Cmnt No.</b>	<b>Stakeholder</b>	<b>Date of Comment</b>	<b>Comment</b>	<b>Response to Comment</b>
14	TBCC	12/20/11	The relicensing/SMP generally calls for more restrictive protection of the lake's shoreline. While current enforcement may be described as loose, we are concerned how additional requirements and their enforcement will impact labor costs and the overall operational costs of our SRAs. Will additional operating costs be passed on to the individual property owners through increased limited use permit fees? Overall, we are concerned about the size of government and its growth.	<p>The SMP was developed with implementation costs in mind and the SMP proposes a straightforward, streamlined process for shoreline permitting and management. As an example, to assist shoreline developers in completing the permitting process as expeditiously and efficiently as possible, the Authorities are in the process of obtaining a Programmatic General Permit (PGP) from the U.S. Army Corps of Engineers (USACE) that would apply to some dredging and filling activities within Toledo Bend Reservoir.</p> <p>The SMP does not propose permit fee increases.</p>
15	TBCC	12/20/11	In summary, we have expressed several concerns. We request that you review the above matters as you proceed through the relicensing process. While we would prefer less generation and less water release to better support our and others' recreational needs, we also have a basic understanding of the water needs of our neighbors downstream. Therefore, we believe a status quo of continuous flow of 144 cfs while maintaining the agreement to stop generating at the 168 ft level may be the best solution to relicensing the Toledo Bend Project.	<p>The FLA Exhibit E 2.2.4 presents the details of the Authorities' proposal to operate with a 225 cfs year-round minimum flow, with drought contingencies.</p> <p>The Authorities are proposing to continue to operate based on the Toledo Bend Project Operating Guide Rule Curve (FLA Exhibit B, Table 3.3-1).</p>
16	J. King, Anacoco, LA	1/4/12	I have read the Plan one thing that I see that might want to be researched further would be the statement concerning boat houses being able to float at 160' msl. This might need to be closer to 155' msl. My boat house currently sites at 165' msl.	<p>The general rule under SRA-LA policies and guidelines is, subject to other length limitations in the SMP, boathouses, docks, and piers will be the minimum length needed to: (1) accommodate a single watercraft, and (2) reach the 160-foot msl contour.</p> <p>SRA-LA believes this is an appropriate rule to ensure safe navigation, and to balance resource protection with reservoir access for adjacent residents. In all but extreme drought conditions, docks, boathouses, and piers at elevation 160 ft will facilitate reservoir access.</p>



Cmnt No.	Stakeholder	Date of Comment	Comment	Response to Comment
17	J. Toliver, Many, LA	1/6/12	<p>I reviewed the Chinese Tallow study and I think it was well done. I really don't have any significant comments about it. I do think the maps and data relative to the distribution of Chinese Tallow indicate that it will be virtually impossible to really do much to control it other than encourage people to eradicate it if they can. It appears to me that both SRA's will need to be the eradicators along the shoreline and leaseback areas.</p> <p><i>Chinese Tallow and Other Invasives. Permittees and lessees are strictly prohibited from planting or maintaining any invasive terrestrial or aquatic species on the leased or permitted premises. In particular, permittees and lessees must immediately remove any Chinese tallow trees from the leased or permitted premises, regardless of the diameter.</i></p> <p>I don't see how you can enforce this. The leaseback is not really our (permittee or lessee) property, it belongs to the SRAs. How can you require someone to immediately remove a specific species, particularly if they don't know what it is. Late you tell us that we can't cut trees except Chinese Tallow. Removal of Chinese Tallow appears to me to be an SRA job instead of mine as a permittee or lessee. Who will enforce this? What exactly will they do if they find Chinese Tallow on my leased/permitted property, issue a ticket. I don't think it is reasonable to expect this to be enforce so why state it this way. I think a statement encouraging people to try to control such invasives is really all you can reasonably say.</p>	<p>The Authorities expect and require lessees and permittees to comply with conditions of leases and permits, including control of invasive species such as Chinese tallow. In the event of a violation, the Authorities will work with the party in an effort to bring the inconsistent activity into conformance with the SMP. Such efforts may include providing information on the Authorities' permitting procedures, and notifying an offending landowner or permittee that continued violations could result in the loss of the privilege to occupy shoreline areas through termination of the permit, lease, or other authorization.</p>

Cmnt No.	Stakeholder	Date of Comment	Comment	Response to Comment
18	J. Toliver, Many, LA	1/6/12	<p>For the most part it doesn't look like the proposed SMPs are much different than the old. Most of my comments relative to the SMP have to do with enforcing the regulations. Having lived here for four years, I see or have seen numerous violations and nothing done about any of them. I can stand on my deck and see at least three violations all relative to Landscaping and when I go out in my boat, I see many more. I have never seen or heard of anyone being forced to do anything about them. Why put regulations in here when they aren't enforceable and don't get enforced?</p> <p>...I know of a couple of boats that have been abandoned on the leaseback and by nature of design, I would guess they have been there for 10 or 20 years. Where is the enforcement?</p>	Mr. Toliver is correct that the SMP describes and affirms the shoreline permitting programs already being implemented by the Authorities. Under the current programs and continuing under the SMP, the Authorities are committed to a reasonable effort to enforce the requirements of the SMP and elicit the cooperation of adjoining landowners, whose interests are aligned with the Authorities' insofar as maintaining a safe, enjoyable reservoir recreation setting is concerned.
19	J. Toliver, Many, LA	1/6/12	<p>All proposed water withdrawal facilities must comply with all applicable local, state, and federal requirements. In addition, the following conditions and restrictions apply to water withdrawal facilities within the FERC Project Boundary and subject to a PLUP issued by SRA-LA:</p> <p><i>On lands subject to a PLUP, SRA-LA will authorize water withdrawal facilities only for private, residential use. Water withdrawal pumps must be electric. SRA-LA will approve only one pump per leased or PLUP permit, and each permitted pump will serve only a single lessee or permittee. Piping from the pump is limited to a 1-1/2-inch nominal diameter restriction.</i></p> <p>Does this mean the size of the intake pipe or the size of the pipe going into the pump?</p>	SMP Appendix B Section 2.7 has been revised to clarify that <b>discharge</b> piping from the pump is limited to a 1-1/2-inch nominal diameter restriction.
20	J. Toliver, Many, LA	1/6/12	Is there any limit as on how far the pipe may extend out into a bay or the lake?	To accommodate fluctuating reservoir levels, the Authorities place no limits on how far water withdrawal pipes laid on floor of the reservoir may extend.

<b>Cmnt No.</b>	<b>Stakeholder</b>	<b>Date of Comment</b>	<b>Comment</b>	<b>Response to Comment</b>
21	J. Toliver, Many, LA	1/6/12	One thing I don't see anything about is required use of filter cloth barriers during construction. I have seen numerous construction projects around the lake where they don't put a filter cloth barrier up between the site; i.e., house pad and the leaseback/lake. This allows for large amounts of silt and debris to run off a property and into the lake, thus contributing to silting in of bays and the lake. Did I just miss it, or is there no regulation on this?	For construction that is permitted within the Project boundary under the SMP, USACE permits may require use of silt fences or other run-off control techniques. Best management practices of the USFWS may also apply. Construction that occurs outside the Project boundary is beyond the scope of the SMP.
22	B. Hines, Many, LA	1/4/12	I am opposed to Shoreline Management Plan. At this time it would hurt the lake with future sells. It would also cause owners around the shoreline to leave the lake.	The SMP describes and affirms the shoreline permitting programs already being implemented by the SRAs. SMP-proposed changes to the current programs include measures to streamline required state and federal permitting procedures. It is a goal of the SMP to assure that development of the shoreline provides for economic development.
23	T. Cathey, Many, LA	1/4/12	Not for the Corps of Engineers controlling the docks, piers, boathouses etc. around Toledo Bend Lake! People do not want to be saddled with so many restrictions when buying a piece of waterfront property.	The SMP includes measures to streamline required state and federal permitting procedures. To assist shoreline developers in completing the USACE permitting process as expeditiously and efficiently as possible, the Authorities are in the process of obtaining a Programmatic General Permit (PGP) from USACE that would apply to some dredging and filling activities within Toledo Bend Reservoir.
24	J. Cathey, Many, LA	1/4/12	I do not want this lake to become a Corps lake. Toledo Bend Lake has become a popular lake because it was not a Corps lake. It will hurt retirement as well as second home purchase.	No consideration has been given in this relicensing for a federal takeover of the Toledo Bend Project. The Authorities are seeking a new license to continue to operate the Project.

<b>Cmnt No.</b>	<b>Stakeholder</b>	<b>Date of Comment</b>	<b>Comment</b>	<b>Response to Comment</b>
25	R. and D. Pennington, Many, LA	12/30/11	...A Shoreline Management Plan (SMP) is included in the SRA's submittal to the Federal Energy Regulatory Commission (FERC) for license amendment and renewal. The SRA stated in their SMP (Section 1.2 Purpose of the Shoreline Management Plan) that they implement the Plan "to manage the multiple resources and uses of the Project's shoreline in a manner that is consistent with license requirements and Project purposes, and to address the needs of the public. Although the Authorities do not anticipate new environmental effects to shoreline soils, the Authorities propose to continue monitoring shoreline erosion along the impoundment within the project area, pursuant to an Erosion Monitoring Program in the SMP." While these statements are admirable, and intended to establish a level of commitment to protect our shorelines, the SRA's plan is not designed to prevent the unintentional drainage of our canals, cove, or wetlands along the entire reservoir, either....	<p>The Penningtons remarked on the SMP to SRA-LA in comments about a proposed water reservation and sale agreement with Toledo Bend Partners, L.P. The Authorities note that the SMP will guide management of the Toledo Bend shoreline under any and all water contract circumstances. The Authorities also note that in January of 2012 the SRA-LA Board voted to suspend Out-of-State water sales considerations until a comprehensive water plan for the State of Louisiana has been developed.</p> <p>See also response to Comments 11 and 12.</p>
26	A.Hanks, Welsh, LA	12/19/11	I have had e-mail communication with Mr. Pratt and appreciate his efforts. I do understand and appreciate the revenue advantage of selling water rather than power...Most important is that lower lake levels be established at a reasonable level (possibly 165') where there will be no more water withdrawal from the lake. I do appreciate the opportunity to voice my opinion. For being such a beautiful place it appears that the states of Louisiana and Texas have not promoted the recreation value available.	<p>Mr. Hanks remarked on the SMP to SRA-LA in comments about a proposed water reservation and sale agreement with Toledo Bend Partners, L.P. The Authorities note that the SMP will guide management of the Toledo Bend shoreline under any and all water contract circumstances. The Authorities also note that in January of 2012 the SRA-LA Board voted to suspend Out-of-State water sales considerations until a comprehensive water plan for the State of Louisiana has been developed.</p> <p>See also response to Comments 11 and 12.</p>



In Reply Refer To:  
FWS/R2/CLES/

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Division of Ecological Services  
17629 El Camino Real, Suite 211  
Houston, TX 77058  
281/286-8282 / (FAX) 281/488-5882



January 6, 2012

Jack W. Tatum  
Sabine River Authority of Texas  
P.O. Box 579  
Orange, Texas 77632

Dear Mr. Tatum,

Thank you for requesting our review of the Sabine River Authorities' (SRA) draft Shoreline Management Plan (SMP) for the Toledo Bend Project (FERC No. 2305). The U.S. Fish and Wildlife Service's (Service) Clear Lake and Lafayette Ecological Services Field Offices have reviewed the SMP. We note that the SRA proposes to require shoreline permit applicants who wish to conduct certain shoreline development and use activities to coordinate with the Service regarding fish and wildlife impacts. Herein, we provide you with information and comments regarding the Service's trust resources, which include, but are not limited to federally listed species, bald eagles, and migratory birds. We recommend that the SRA provide this information to shoreline permit applicants directly and in lieu of mandatory coordination with the Service as proposed in the SMP. After review of this information, applicants are encouraged to contact the Service should they have any questions.

Our comments are provided in accordance with the provisions of the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668 et seq.), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661-667(e)), and the Federal Power Act (16 U.S.C. 791 et seq.).

### Threatened and Endangered Species

Section 9(a)(1) of the ESA prohibits "take" of endangered species of fish and wildlife within the United States or its territorial waters by any person. "Take" is defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." A county-by-county listing of federally listed threatened and endangered species that occur within the project area can be found at [http://www.fws.gov/southwest/es/EndangeredSpecies/EndangeredSpecies\\_Lists/EndangeredSpecies\\_Lists\\_Main.cfm](http://www.fws.gov/southwest/es/EndangeredSpecies/EndangeredSpecies_Lists/EndangeredSpecies_Lists_Main.cfm).

Section 7(a)(2) of the ESA requires Federal agencies to consult with the Service if it appears that any action they are proposing “may affect” a listed species. Please see the enclosed Section 7 form letter that describes the consultation process and associated responsibilities.

### **Freshwater Mussels**

The Service is currently reviewing the status of several species of freshwater mussels for potential listing under the ESA. It is known that sedimentation smothers and suffocates mussels and is one of the main contributors to mussel die offs. Therefore, the Service recommends that applicants use silt fences, filter fabric, and other best management practices to reduce sedimentation within streams crossed by or adjacent to any shoreline development and/or use projects. Shoreline permit applicants are encouraged to review the best management practices within the enclosed document entitled *Best Management Practices for Projects Affecting, Rivers, Streams and Tributaries* for further information.

### **Bald Eagles**

The bald eagle *Haliaeetus leucocephalus* was removed from the Federal List of Endangered and Threatened Wildlife on August 8, 2007 (72 FR 37346) yet still remains protected by the BGEPA and the MBTA. Accordingly, the Service recommends that shoreline permit applicants review and use the *National Bald Eagle Management Guidelines* to avoid harm or disturbance of bald eagles. These guidelines can be found at: <http://www.fws.gov/migratorybirds/baldeagle.htm>. Eagles are particularly vulnerable to disturbance throughout the nesting season, which in Texas is generally from October 1 to May 30.

### **Migratory Birds**

Please be advised that the MBTA protects all native migratory birds and does not permit take, unless permitted by regulation. “Take” is defined to mean “pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt any of the above” and may occur when land clearing activities destroy active nests (eggs or young present) or kills birds. To reduce the chances of take, the Service recommends that applicants review and implement the conservation actions for migratory birds outlined in the enclosed document entitled *Suggested Priority for Migratory Bird Conservation Actions for Projects*. A list of birds protected under the MBTA can be found in 50 CFR 10 of the MBTA and at: <http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/mbtandx.html#a>.

### **Colonial Waterbirds**

We recommend that applicants avoid the removal of colonial waterbird rookeries to the maximum extent practicable. Disturbance can also adversely affect colonial waterbird use of nesting sites and can result in nest abandonment and loss of reproduction<sup>1</sup>. Therefore, the Service recommends that applicants prohibit all project activities within 1,000 feet of active bird rookery areas during the nesting season from early February to late August.

Mr. Tatum

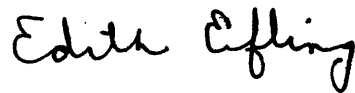
3

**Section 404 of the Clean Water Act**

Section 404 of the Clean Water Act establishes a program administered by the U.S. Army Corps of Engineers that regulates the discharge of fill material into waters of the United States (e.g., wetlands, streams, reservoirs, etc.). We recommend that applicants consult the U.S. Army Corps of Engineers to ensure that project activities comply with the Clean Water Act.

Thank you for the opportunity to provide comments on your draft SMP. If you need any additional information, please contact project biologist A.J Vale at 281/286-8282 ext. 223.

Sincerely,

A handwritten signature in black ink that reads "Edith Erfling". The script is cursive and fluid, with the first name "Edith" and last name "Erfling" clearly distinguishable.

Edith Erfling  
Field Supervisor

Enclosures

cc: Federal Energy Regulatory Commission, Attn: Alan Mitchnick, Washington D.C. 20426  
USFWS, Region 4, Ecological Services, Attn: Seth Bordelon, Lafayette, LA, 70506

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<sup>i</sup> Mueller, A.J. and P.O. Glass. 1988. Disturbance tolerance in a Texas waterbird colony. Colonial Waterbirds 11:119-122

## **BEST MANAGEMENT PRACTICES FOR PROJECTS AFFECTING RIVERS, STREAMS AND TRIBUTARIES**

The project crosses or potentially affects river, stream or tributary aquatic habitat. Therefore the Service recommends implementing the following applicable Best Management Practices:

1. Construct stream crossings during a period of low streamflow (e.g., July - September);
2. Cross streams, stream banks and riparian zones at right angles and at gentle slopes;
3. When feasible, directionally bore under stream channels;
4. Disturb riparian and floodplain vegetation only when necessary;
5. Construction equipment should cross the stream at one confined location over an existing bridge, equipment pads, clean temporary native rock fill, or over a temporary portable bridge;
6. Limit in-stream equipment use to that needed to construct crossings;
7. Place trench spoil at least 25 feet away landward from streambanks;
8. Use sediment filter devices to prevent movement of spoil off right-of-way when standing or flowing water is present;
9. Trench de-watering, as necessary, should be conducted to prevent discharge of silt laden water into the stream channel;
10. Maintain the current contours of the bank and channel bottom;
11. Do not store hazardous materials, chemicals, fuels, lubricating oils, and other such substances within 100 feet of streambanks;
12. Refuel construction equipment at least 100 feet from streambanks;
13. Revegetate all disturbed areas as soon as possible after construction to prevent unnecessary soil erosion. Use only native riparian plants to help prevent the spread of exotics;
14. Maintain sediment filters at the base of all slopes located adjacent to the streams until right-of-way vegetation becomes established;
15. Maintain a vegetative filtration strip adjacent to streams and wetlands. The width of a filter strip is based on the slope of the banks and the width of the stream. Guidance to determine the appropriate filter strip (stream management zone, SMZ) width is provided below; and
16. Direct water runoff into vegetated areas.



SMZ widths should consider watershed characteristics, risk of erosion, soil type, and stream width. SMZ widths are measured from the top of each bank and established on each side of the stream. Erosion risk is increased with sandy soil, steep slopes, large watersheds and increasing stream widths. Recommended primary and secondary SMZ widths are provided in the table below.

Stream Width (Feet)	Slope (Percent)	Primary SMZ (Feet)	Secondary SMZ (Feet)
<20	<7	35	0
<20	7-20	35	50
<20	>20	Top of slope or 150	75
20-50	<7	50	0
20-50	7-20	50	50
20-50	>20	Top of slope or 150	75
>50	<7	Width of stream or 100 max.	0
>50	7-20	Width of stream or 100 max.	50
>50	>20	Top of slope or 150	75

## Reference

Arkansas Forestry Commission. 2001. Draft Arkansas Forestry Best Management Practices for Water Quality Protection.



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Division of Ecological Services  
17629 El Camino Real, Suite 211  
Houston, Texas 77058-3051  
281/286-8282 / (FAX) 281/488-5882



May 2011

Thank you for your request for threatened and endangered species information in the Clear Lake Ecological Services Field Office's area of responsibility. According to Section 7(a)(2) of the Endangered Species Act and the implementing regulations, it is the responsibility of each Federal agency to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any federally listed species.

Please note that while a Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment, the Federal agency must notify the U.S. Fish and Wildlife Service (Service) in writing of such designation. The Federal agency shall also independently review and evaluate the scope and contents of a biological assessment prepared by their designated non-Federal representative before that document is submitted to the Service.

A county-by-county listing of federally-listed threatened and endangered species that occur within this office's work area can be found at <http://www.fws.gov/southwest/es/EndangeredSpecies/lists/default.cfm>. You should use the county-by-county listing and other current species information to determine whether suitable habitat for a listed species is present at your project site. If suitable habitat is present, a qualified individual should conduct surveys to determine whether a listed species is present.

After completing a habitat evaluation and/or any necessary surveys, you should evaluate the project for potential effects to the listed species and make one of the following determinations:

**No effect** – the proposed action will not affect federally listed species or critical habitat (i.e., suitable habitat for the species occurring in the project county is not present in, or adjacent to, the action area). No coordination or contact with the Service is necessary. However, if the project changes or additional information on the distribution of listed or proposed species becomes available, the project should be reanalyzed for effects not previously considered.

**Is not likely to adversely affect** – the project may affect listed species and/or critical habitat; however, the effects are expected to be discountable, insignificant, or completely beneficial. Certain avoidance and minimization measures may need to be implemented in order to reach this level of effects. The Federal agency or the designated non-Federal representative should seek written concurrence from the Service that adverse effects have been eliminated. Be sure to include all the information and documentation used to reach your decision with your request for concurrence. The Service must have this documentation before issuing a concurrence.

**Is likely to adversely affect** – adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable, insignificant, or beneficial. If the overall effect of the proposed action is beneficial to the listed species but also likely to cause some adverse effect to individuals or that species, then the proposed action "is likely to adversely affect" the listed species. An "is likely to adversely affect" determination requires the Federal action agency to initiate formal Section 7 consultation with this office.

Regardless of your determination, the Service recommends that you maintain a complete record of the evaluation, including steps leading to the determination of effect, the qualified personnel conducting the evaluation, habitat conditions, site photographs, and any other related articles. The Service's Consultation Handbook is available online to assist you with further information on definitions, process, and fulfilling Endangered Species Act requirements for your projects at <http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>.

If we can further assist you in understanding a federal agency's obligations under the Endangered Species Act, please contact Donna Anderson, Moni Belton, Kelsey Gocke, Jeff Hill, Charrish Stevens, or Arturo Vale at 281-286-8282.

Sincerely,

Edith Erling  
Field Supervisor

**Suggested Priority of Migratory Bird Conservation Actions for Projects  
U.S. Fish and Wildlife Service (USFWS), Migratory Bird Management**

**March 9, 2010**

1. Avoid any take of migratory birds and/or minimize the loss, destruction, or degradation of migratory bird habitat while completing the proposed project or action.
2. Determine if the proposed project or action will involve below- and/or above-ground construction activities since recommended practices and timing of surveys and clearances could differ accordingly.
3. If the proposed project or action includes a reasonable likelihood that take of migratory birds will occur, then complete actions that could take migratory birds outside of their nesting season. This includes clearing or cutting of vegetation, grubbing, etc. The primary nesting season for migratory birds varies greatly between species and geographic location, but generally extends from early April to mid-July. However, the maximum time period for the migratory bird nesting season can extend from early February through late August. Also, eagles may initiate nesting as early as late December or January depending on the geographic area. Due to this variability, project proponents should consult with the appropriate Regional Migratory Bird Program (USFWS) for specific nesting seasons. Strive to complete all disruptive activities outside the peak of migratory bird nesting season to the greatest extent possible. Always avoid any habitat alteration, removal, or destruction during the primary nesting season for migratory birds. Additionally, clearing of vegetation in the year prior to construction (but not within the nesting season) may discourage birds from attempting to nest in the proposed construction area, thereby decreasing chance of take during construction activities.
4. If a proposed project or action includes the potential for take of migratory birds and/or the loss or degradation of migratory bird habitat and work cannot occur outside the migratory bird nesting season (either the primary or maximum nesting season), project proponents will need to provide the USFWS with an explanation for why work has to occur during the migratory bird nesting season. Further, in these cases, project proponents also need to demonstrate that all efforts to complete work outside the migratory bird nesting season were attempted, and that the reasons work needs to be completed during the nesting season were beyond the proponent's control.

Also, where project work cannot occur outside the migratory bird nesting season, project proponents must survey those portions of the project area during the nesting season prior to construction occurring to determine if migratory birds are present and nesting in those areas. In addition to conducting surveys during the

nesting season/construction phase, companies may also benefit from conducting surveys during the prior nesting season. Such surveys will assist the company in any decisions about the likely presence of nesting migratory birds or sensitive species in the proposed project or work area. While individual migratory birds will not necessarily return to nest at the exact site as in previous years, a survey in the nesting season in the year before construction allows the company to become familiar with species and numbers present in the project area well before the nesting season in the year of construction. Bird surveys should be completed during the nesting season in the best biological timeframe for detecting the presence of nesting migratory birds, using accepted bird survey protocols. USFWS Offices can be contacted for recommendations on appropriate survey guidance. Project proponents should also be aware that results of migratory bird surveys are subject to spatial and temporal variability. Finally, project proponents will need to conduct migratory bird surveys during the actual year of construction, if they cannot avoid work during the primary nesting season (see above) and if construction will impact habitats suitable for supporting nesting birds.

5. If no migratory birds are found nesting in proposed project or action areas immediately prior to the time when construction and associated activities are to occur, then the project activity may proceed as planned.
6. If migratory birds are present and nesting in the proposed project or action area, contact your nearest USFWS Ecological Services Field Office and USFWS Region Migratory Birds Program for guidance as to appropriate next steps to take to minimize impacts to migratory birds associated with the proposed project or action.

\* Note: these proposed conservation measures assume that there are no Endangered or Threatened migratory bird species present in the project/action area, or any other Endangered or Threatened animal or plant species present in this area. If Endangered or Threatened species are present, or they could potentially be present, and the project/action may affect these species, then consult with your nearest USFWS Ecological Services Office before proceeding with any project/action.

\*\* The Migratory Bird Treaty Act prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, parts, and nests, except when specifically permitted by regulations. While the Act has no provision for allowing unauthorized take, the USFWS realizes that some birds may be killed during construction and operation of energy infrastructure, even if all known reasonable and effective measures to protect birds are used. The USFWS Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to avoid take of migratory birds, and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve

individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, the Office of Law Enforcement focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent and effective measures to avoid that take. Companies are encouraged to work closely with Service biologists to identify available protective measures when developing project plans and/or avian protection plans, and to implement those measures prior to/during construction or similar activities.

\*\*\* Also note that Bald and Golden Eagles receive additional protection under the Bald and Golden Eagle Protection Act (BGEPA). BGEPA prohibits the take, possession, sale, purchase, barter, offer to sell, purchase, or barter, transport, export or import, of any Bald or Golden Eagle, alive or dead, including any part, nest, or egg, unless allowed by permit. Further, activities that would disturb Bald or Golden Eagles are prohibited under BGEPA. "Disturb" means to agitate or bother a Bald or Golden Eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an Eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. If a proposed project or action would occur in areas where nesting, feeding, or roosting eagles occur, then project proponents may need to take additional conservation measures to achieve compliance with BGEPA. New regulations (50 CFR § 22.26 and § 22.27) allow the take of bald and golden eagles and their nests, respectively, to protect interests in a particular locality. However, consultation with the Migratory Bird, Ecological Services, and Law Enforcement programs of the Service will be required before a permit may be issued.

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**From:** Todd Driscoll [<mailto:Todd.Driscoll@tpwd.state.tx.us>]  
**Sent:** Friday, December 09, 2011 2:30 PM  
**To:** [twilliams@sratx.org](mailto:twilliams@sratx.org)  
**Cc:** Kevin Mayes; Craig Bonds; Dave Terre  
**Subject:** RE: Shoreline Management Plan Review (1 of 3 e-mails)

Travis;

Dave Terre, Craig Bonds, and I reviewed the Shoreline Management Plan on behalf of TPWD – Inland Fisheries/Management. We appreciate the opportunity to provide input on this document relative to shoreline stabilization and protection of aquatic habitat at Toledo Bend Reservoir. We thought the document was very comprehensive and well-written, and only had the following comments below:

Regarding erosion control measures, we feel it is very important to use material that also creates fish habitat (i.e., vegetation or rip-rap) when possible. Retaining walls/bulkheads should only be permitted when absolutely necessary. When walls/bulkheads are constructed, it should also be required to enhance these with rip-rap, vegetation, or some form of wave-attenuating and fish habitat enhancing structures.

We were pleased to see that the FERC letter included in Appendix A also emphasized use of habitat-enhancing structures. On page 3:

Before granting permission for construction of bulkheads or retaining walls, the licensees shall:

(1) inspect the site of the proposed construction;

- (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and
- (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

In Appendix B, page 11 – SRA-LA states:

Lessees and permittees are encouraged to use bioengineering techniques and landscape plantings before seeking authorization from SRA-LA for more invasive, expensive, and unsightly shoreline stabilization measures, such as rip-rap.

We suggest removing the “unsightly” reference concerning riprap. Relative to providing fish habitat, rip-rap is always preferred over walls/bulkhead. Some might misinterpret this negative reference and assume that walls/bulkhead are more visually appealing and thus preferred.

Toledo Bend Reservoir supports a very productive recreational fishery for multiple sport fish, and the economic impacts of the fishery are significant. TPWD appreciates the ongoing recreational commitment of the Sabine River Authorities. Please contact me with questions regarding these comments.

Todd Driscoll  
TPWD - District Fisheries Biologist  
900 CR 218  
Brookeland, TX 75931  
409-698-9114

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**From:** Travis Williams [<mailto:twilliams@sratx.org>]  
**Sent:** Tuesday, November 15, 2011 9:28 AM  
**To:** Tom Heger; Todd Driscoll; Amy Turner  
**Cc:** 'Ann Galassi'; Kevin Mayes  
**Subject:** Shoreline Management Plan Review (1 of 3 e-mails)

Good morning,

On behalf of the Sabine River Authority of Texas and Sabine River Authority, State of Louisiana please find attached herewith for your review a copy of the Shoreline Management Plan developed as part of the FERC relicensing of Toledo Bend that will become effective once FERC issues a new license for the Project, approves the SMP and makes it part of the new license.

The Authorities would request that TPWD review the SMP and provide comments, if any, as they relate to the SMP. Additionally, we would like to set up a meeting or conference call in the near future to review the SMP with the TPWD.

Note that due to size I will be sending a total of three e-mails. The first e-mail is the bulk of the SMP. The last two e-mails will be Appendix D – Shoreline Use Classification Maps.

Should you have any questions or comments please do not hesitate to call.

Travis Williams  
Sabine River Authority  
409/746-2192

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**From:** Kevin Mayes [<mailto:Kevin.Mayes@tpwd.state.tx.us>]  
**Sent:** Monday, November 14, 2011 2:17 PM  
**To:** [twilliams@sratx.org](mailto:twilliams@sratx.org)  
**Cc:** Ann Galassi; Tom Heger; Amy Turner; Todd Driscoll; John Botros  
**Subject:** FW: preliminary shoreline erosion plan for Toledo Bend

Travis,

Here are the names and addresses for coordination/review of shoreline management. Thanks. Kevin

Todd Driscoll  
TPWD - District Fisheries Biologist  
900 CR 218  
Brookeland, TX 75931  
409-698-9114

Amy Turner  
TPWD  
2805 N NAVARRO  
SUITE 600-B  
VICTORIA, TX 77901

Tom Heger  
Wetlands Conservation  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, TX 78744



## Mel Swoboda

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**From:** Frank T Davis [ftdavis@hughes.net]  
**Sent:** Monday, December 19, 2011 11:56 AM  
**To:** Melvin Swoboda  
**Cc:** Mike Carr; Ricky Yeldell  
**Subject:** Comments on Preliminary Draft of Shoreline Management Plan

Dear Mr. Swoboda,

I have not yet completed my review of the subject plan but wanted to send you the following comment as I feel it is of utmost importance:

### Comment

Please justify the 80 miles of shoreline on the Louisiana side of the lake that the Department of Wildlife and Fisheries has reserved for "conservation" (fish spawning areas?). Why do the Louisiana biologists believe this is necessary while those from Texas do not? My experience as a fisherman is that much of the spawning occurs on shallow humps in the lake as well as along the shoreline. Further, I believe the fish will move to an acceptable area should a shoreline area be impacted so as to impede the spawn. Why must we continue to try to establish different regulations, requirements on each side of the Sabine River? This would seem to be unproductive and confusing for those of us who enjoy both sides of the river.

Thank you for your consideration.

Dr. Frank T. Davis  
110 North Star Dr.  
Many, La. 71449

[ftdavis@hughes.net](mailto:ftdavis@hughes.net)

12.19.11

FILED  
SECRETARY OF THE  
COMMISSION

2011 DEC 29 A 11: 06

FEDERAL ENERGY  
REGULATORY COMMISSION

# *Toledo Bend Community Club*

LOCATED AT TOLEDO VILLAGE



560 Hickory Hill Dr.  
Burkeville, TX 75932

December 20, 2011

Jon Wellingshoff, Chairman  
Phillip D. Moeller, Commissioner  
John P. Norris, Commissioner  
Cheryl A. LaFleur, Commissioner  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

**RE: P-2305 – Relicensing of Toledo Bend Lake Hydroelectric Generating Facility**

**Dear Commissioners:**

The Toledo Bend Community Club (TBCC) is a 501c3 tax exempt organization of approximately 200 property owners who live on the Texas side of Toledo Bend Lake. Our membership lives in close proximity to the Toledo Bend hydroelectric dam and most are retirees who have chosen Toledo Village as their permanent retirement home.

TBCC members are concerned and have questions about the proposed relicensing and proposed Shoreline Management Plan (SMP). These concerns have been expressed verbally to representatives of the Sabine River Authority (SRA) of Texas at their required meeting on December 1, 2011 in Hemphill, TX. In addition, individual TBCC members have informally discussed the relicensing and SMP with various SRA officials over the past several months. Our concerns are as follows:

- Recreation was one of the primary reasons for the creation of Toledo Bend Lake some 50 years ago. Unfortunately, using the lake for fun and recreation including retirement recreation is a purpose for which is not well represented in the relicensing process. We are not organized and do not have the funds for legal representation, nor do we have the state and federal agency strength to have our concerns appropriately considered or negotiated.
- Toledo Bend Lake is approximately 12 feet below full pool stage. The drop to this level has occurred over the past several months. An unanticipated drop of three feet in June was required to repair damage to a small portion of the earthen dam. Since the repair,

the low water level has made it impossible to generate. But the SRAs because of drought conditions are releasing over 500 cubic feet per second (cfs) of non-generated water which is 250% above the 144cfs requirement established by the current license to meet downstream needs. As a result, the water level continues to drop causing additional recreational challenges. Our boat houses and many boats are on dry land and approximately 90% of the boats ramps are closed. Fishing tournaments, a major economic booster, are being cancelled and fishing in general has slowed dramatically causing a hardship for the small business owner of marinas, motels, restaurants and bait/tackle shops.

- The relicensing application includes a request for increasing continuous water flow from 144cfs to 225cfs. After 50 years of successful releases of 144cfs, we can find no justification for approving this increase.
- The relicensing application includes a request for the preliminary approval of a low water generator at an undisclosed future date. While admittedly, such a facility is now not feasible because of current pricing for hydroelectric power, it is argued that it may become feasible in the future.

Approximately a year ago and after years of considerable effort, an agreement was reached with the SRAs and others to cease generating when the lake level reaches 168 feet. A low water level generator could seriously impact this long sought after agreement to stabilize the water level.

In addition, it is our understanding that it is more economically beneficial to sell water than to run it through a generator. Selling water in appropriate quantities will also have the added benefit of conserving our water resources. Generating power, during the summer months when demand is greatest, causes water level challenges at a time when we receive the smallest amount of rain. Instead of generating during times of little rainfall, selling water throughout the year has the effect of leveling demand requirements and providing water when it is more readily available.

- The relicensing/SMP generally calls for more restrictive protection of the lake's shoreline. While current enforcement may be described as loose, we are concerned how additional requirements and their enforcement will impact labor costs and the overall operational costs of our SRAs. Will additional operating costs be passed on to the individual property owners through increased limited use permit fees? Overall, we are concerned about the size of government and its growth.

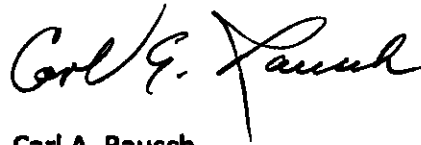
In summary, we have expressed several concerns. We request that you review the above matters as you proceed through the relicensing process. While we would prefer less generation and less water release to better support our and others' recreational needs, we also have a basic understanding of the water needs of our neighbors downstream. Therefore, we believe a

status quo of a continuous flow of 144cfs while maintaining the agreement to stop generating at the 168 ft. level may be the best solution to relicensing the Toledo Bend Project.

Respectfully submitted,



Lee A. Shands  
Chairman



Carl A. Rausch  
Treasurer

Cc:

Mr. Alan Mitchnick (FERC)

Mr. Melvin T. Swoboda, SRA of Texas

Senator Kay Huthinson

Senator John Cornyn

Representative Kevin Brady

State Senator Robert Nichols

State Representative Mike Hamilton



# Toledo Bend Project Joint Operation



## Comments on the Preliminary Draft Shoreline Management Plan

The SRAs are seeking written comments from local businesses, members of the public, and other interested stakeholders on the preliminary draft Shoreline Management Plan (SMP). A copy of the preliminary draft SMP, as well as other information related to the SMP and the ongoing relicensing process for the Toledo Bend Project, is available at [www.tbpjo.org](http://www.tbpjo.org)

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1. Filling out this form and dropping it in the comment box at the information workshop
2. Mailing written comments to:

Mr. Melvin Swoboda, Licensing Manager  
Toledo Bend Project Joint Operation  
P.O. Box 579, Orange TX 77631-0579

3. Emailing comments to [mswoboda@sratx.org](mailto:mswoboda@sratx.org)

### Please Provide Comments by January 6, 2012

By providing an email address below, you will be added to our contact list and receive information related to the SMP, Toledo Bend, and other activities of the SRAs.

PLEASE PRINT CLEARLY AND LEGIBLY

Name: James R. King II owner Toledo Bend Resort Date: 1/4/2012

Address: 350 Toledo Resort Dr.

City, State, Zip Code: Anacoco LA 71403

Email: jamesrkingii@msn.com

Comments: I have read the plan one thing that I see  
that might want to researched further would be the  
statement concerning boat houses being able to float  
at 160' msl. This might need to be closer to 155' msl.  
My boat house currently sits @ 165' msl.

(additional space is provided on back)

## Mel Swoboda

---

**From:** John Toliver [jtoliver@soft-spec.com]  
**Sent:** Friday, January 06, 2012 7:55 PM  
**To:** mswoboda@sratx.org  
**Cc:** 'Carl Chance'  
**Subject:** Comments -- Chinese Tallow Study and Shoreline management plan.

Melvin and Carl. I reviewed the Chinese Tallow study and I think it was well done. I really don't have any significant comments about it. I do think the maps and data relative to the distribution of Chinese Tallow indicate that it will be virtually impossible to really do much to control it other than encourage people to eradicate it if they can. It appears to me that both SRA's will need to be the eradicators along the shoreline and leaseback areas.

Chinese Tallow and Other Invasives. Permittees and lessees are strictly prohibited from planting or maintaining any invasive terrestrial or aquatic species on the leased or permitted premises. In particular, permittees and lessees must immediately remove any Chinese tallow trees from the leased or permitted premises, regardless of the diameter.

I don't see how you can enforce this. The leaseback is not really our (permittee or lessee) property, it belongs to the SRAs. How can you require someone to immediately remove a specific species, particularly if they don't know what it is. Late you tell us that we can't cut trees except Chinese Tallow. Removal of Chinese Tallow appears to me to be an SRA job instead of mine as a permittee or lessee. Who will enforce this? What exactly will they do if they find Chinese Tallow on my leased/permitted property, issue a ticket. I don't think it is reasonable to expect this to be enforce so why state it this way. I think a statement encouraging people to try to control such invasives is really all you can reasonably say.

## Shoreline Management Plan

For the most part it doesn't look like the proposed SMPs are much different than the old. Most of my comments relative to the SMP have to do with enforcing the regulations. Having lived here for four years, I see or have seen numerous violations and nothing done about any of them. I can stand on my deck and see at least three violations all relative to Landscaping and when I go out in my boat, I see many more. I have never seen or heard of anyone being forced to do anything about them. Why put regulations in here when they aren't enforceable and don't get enforced?

For example under 1.2.2.2 Landscaping:

Lessees and permittees must keep their leased or permitted premises clear of garbage, refuse, debris, and other unsightly objects and materials that detract from the aesthetic qualities at Toledo Bend Project.

The lake shoreline and leaseback areas are covered with old tires, old boats, fallen down boat houses, walkways, docks etc. but no one seems to be required to remove

them. This in fact is one of most trashy lakes I have ever been on. Given this, why have this regulation if it is not going to be enforced?

Tree Removal. Unless authorized in advance by SRA-LA, lessees and permittees are strictly prohibited from removing: (1) any cypress trees on the leased or permitted premises; (2) any trees below the conservation pool elevation of 172 feet msl, except for non-native invasive species discussed below; and (3) any trees on the leased or permitted premises more than three inches in diameter, except for non-native invasive species discussed below. As a matter of policy, SRA-LA generally will not authorize removal of more than 10 trees per acre from any leased or permitted premises.

Does this pertain to live trees only or any dead tree standing, floating or just laying on the ground? What constitutes removal? Virtually every cypress tree I see has had the top cut out of it, some numerous times. One must assume that leaving the stump with a few sprouts on it meets the standard of not removing a tree and hence authorization to remove tops and limbs is not needed. To prevent this I think it should at least be stated as: “prohibited from removing a tree or any part of the tree.” However, I still question how this will be enforced. It doesn’t appear to have been enforced in the past.

#### 1.2.4 Stump Removal

Permittees and lessees are prohibited from removing any tree stumps from Toledo Bend Reservoir below the conservation pool elevation of 172 feet msl, except as approved in advance of such removal by SRA-LA.

What constitutes stumps. Does this pertain to standing stumps i.e. that are attached to the lake bed or does it mean any stump floating or not? Strictly speaking, this tells me I can’t go out into my cove and clear a couple of stumps or possibly a floating log out of my boat lane leading up to my boat house unless I get approval from SRA. Is this really enforceable?

#### 1.2.7 Abandoned or Non-Conforming Property

SRA-LA is authorized, at the expense of the lessee or permittee, to seize any structures, fixtures, or personal property located on permitted or leased premises, or in the adjoining Reservoir area of the Toledo Bend Project, which is unauthorized, abandoned, unattended for unreasonably lengthy periods, non-conforming with these Policies and Guidelines, or where the permittee or lessee fails to timely submit payment for any fee or charge issued by SRA-LA.

There are a bunch of these near my property and they have been there for four years now. I wish SRA would remove them, but they don’t. Again, without reasonable enforcement why have this regulation.

#### 1.2.8 Vehicles on Leased and Permitted Premises

Unused or inoperable motor vehicles, including but not limited to watercraft, must not be stored on any lands subject to any lease or permit issued by SRA-LA.

Same reasoning again. I know of a couple of boats that have been abandoned on the leaseback and by nature of design, I would guess they have been there for 10 or 20 years. Where is the enforcement?

## 2.7 Water Withdrawal Facilities

All proposed water withdrawal facilities must comply with all applicable local, state, and federal requirements. In addition, the following conditions and restrictions apply to water withdrawal facilities within the FERC Project Boundary and subject to a PLUP issued by SRA-LA:

- ☐ On lands subject to a PLUP, SRA-LA will authorize water withdrawal facilities only for private, residential use.
- ☐ Water withdrawal pumps must be electric.
- ☐ SRA-LA will approve only one pump per leased or PLUP permit, and each permitted pump will serve only a single lessee or permittee.
- ☐ Piping from the pump is limited to a 1-1/2-inch nominal diameter restriction.

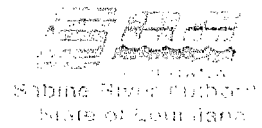
Does this mean the size of the intake pipe or the size of the pipe going into the pump?  
Is there any limit as on how far the pipe may extend out into a bay or the lake?

One thing I don't see anything about is required use of filter cloth barriers during construction. I have seen numerous construction projects around the lake where they don't put a filter cloth barrier up between the site; i.e., house pad and the leaseback/lake. This allows for large amounts of silt and debris to run off a property and into the lake, thus contributing to silting in of bays and the lake. Did I just miss it, or is there no regulation on this?

Thanks for requesting public comment and feedback. I hope my comments will help.

John Toliver  
1886 Queens Road  
Many, LA 71449  
318-256-2401





## Comments on the Preliminary Draft Shoreline Management Plan

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You may submit your comments by:

1. Filling out this form and dropping it in the comment box at the information workshop
2. Mailing written comments to:

Mr. Melvin Swoboda, Licensing Manager  
Toledo Bend Project Joint Operation  
P.O. Box 579, Orange TX 77631-0579

3. Emailing comments to [mswoboda@sra.tx.org](mailto:mswoboda@sra.tx.org)

### Please Provide Comments by January 6, 2012

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PLEASE PRINT CLEARLY AND LEGIBLY

Name: Beth Hines Date: 1-4-12

Address: 4549 Texas Hwy

City, State, Zip Code: Many, La

Email: bethhinesrealtor@yahoo.com

Comments: I am opposed to Shoreline Management Plan.  
At this time it would hurt the lake with future  
sales. It would also cause owners around the  
shoreline to leave the lake.

(additional space is provided on back)



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PLEASE PRINT CLEARLY AND LEGIBLY

Name: TORI CATHEY Date: 1/4/12

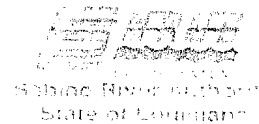
Address: 2304 Hwy 476

City, State, Zip Code: Mary LA 71449

Email: toricatheyrealtor@yahoo.com

Comments: Not for the ~~State~~ Corps of Engineers Controlling docks, piers, boathouses etc. around Toledo Bend Lake! People do not want to be saddled with so many restrictions when buying a piece of waterfront property.

(additional space is provided on back)



## Comments on the Preliminary Draft Shoreline Management Plan

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### Please Provide Comments by January 6, 2012

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PLEASE PRINT CLEARLY AND LEGIBLY

Name: Judy Cathey Date: Jan. 4, 2012

Address: 12000 TX HWY

City, State, Zip Code: Many LA 71447

Email: judycatheybroker@yahoo.com

Comments: I do not want this lake to become

a corp lake. Toledo Bend Lake has become

a popular lake because it was not a corp

lake. It will hurt retirement as well as

second home purchases

(additional space is provided on back)

Pennington  
97 First Point Rd.  
Many, Louisiana 71449

December 30, 2011

Governor Bobby Jindal  
Office of the Governor  
P.O. Box 94004  
Baton Rouge, LA 70804-9004

2012 JAN 6 10:00  
EXT. 10:00  
RECEIVED

**RE: P-2305 – Relicensing of the Toledo Bend Project**

It is our understanding that The Sabine River Authority of Louisiana (herein referred to as the SRA-LA) serves as a steward for the management of the Toledo Bend Reservoir. It is also our understanding that in executing said stewardship, the SRA-LA is charged with the economic utilization and preservation of the waters of the Sabine River and its tributaries, as presented in the SRA-LA Mission Statement.

We believe that the SRA-LA is dedicated to its stewardship and its Mission and Values. We also recognize the statutory authority of the SRA-LA to develop and implement plans and procedures to execute their stewardship. However, we are concerned about recent actions and the proposed water sale contract engaged in by the SRA-LA that appears to be in conflict with their stated Mission and Values. The promise of expansive operating funds from the sale of the water from Toledo Bend Reservoir to Toledo Bend Partners, L.P. appears to have taken precedence over all other aspects of their core values. As stated in the SRA-LA Strategic Plan FY 2008-2009 THROUGH FY 2012-2013, Vision, "The Sabine River Authority of Louisiana will be the premier agency of the State to facilitate economic development and promote recreation, tourism, and retirement within the Sabine River Basin of Louisiana." In addition, the SRA-LA Mission is stated as "...to provide for economic utilization and preservation of the waters of the Sabine River and its tributaries by promoting economic development, irrigation, navigation, improved water supply, drainage, public recreation and hydroelectric power for the citizens of Louisiana."

The SRA-LA is preparing to engage in a 50-year contract (with a 49 year renewal option) to sell water from the Toledo Bend Reservoir to Toledo Bend Partners, L.P., a Texas entity. This water will be resold for use in the State of Texas. This contract hinges on approval of an amendment and reauthorization of the Toledo Bend Project permit F-2305, which is targeted for submission to the Federal Energy Regulatory Committee (FERC) for review and approval in February, 2012. Included in the permit application submission is an updated Shoreline Management Plan. Included in the proposed water sale contract is Exhibit E, Drought Contingency Plan.

While the sale of water is not objectionable, the conditions of the sale and the content of both the SRA-LA Shoreline Management Plan and the Drought Contingency Plan have an extremely limited focus on the protection of the local economies, lake navigation safety, community water supplies and recreation. The following provides a summary of issues of concern that warrant further scrutiny by the Office of the Governor of the State of Louisiana, and applicable state and federal agencies.

**Water Reservation and Sale Agreement by and between Sabine River Authority, State of Louisiana and Toledo Bend Partners, L.P.**

As outlined in the proposed Water Reservation and Sale Agreement by and between Sabine River Authority, State of Louisiana and Toledo Bend Partners, L.P., the SRA-LA is preparing to engage in a contract to sell up to 600,000 acre-feet (approximately 196 billion gallons) of water per year, from the Toledo Bend Reservoir, to Toledo Bend Partners, L.P. for resale in the State of Texas.

The Toledo Bend Reservoir area is currently experiencing the worst drought in its history. The lake level stands at approximately 11 feet below full conservation pool stage. This drop in lake level is largely attributable to the current weather pattern in the South Central states. Other factors causing reductions in the water level are releases downstream during hydroelectric power generation, releases required to effect repairs on the dam, and water released to prevent saltwater intrusion into the Sabine River from the Gulf of Mexico. Additionally, water is taken by oil and gas operations for drilling and completion activities, citizens of the area, and the local community water systems. These factors, coupled with the natural water evaporation rate, collectively, result in periodically low water level in the reservoir; however, neither Mother Nature nor these existing obligations are targeted for dispute, herein.

The aforementioned water sale contract Exhibit E includes a Drought Contingency Plan that, as titled, is presented as a method to help maintain an adequate lake water level during drought conditions. However, the SRA response actions to the 3 stages of drought (as defined in the Drought Contingency Plan as Stage 1- Mild Water Shortage Conditions (elevation of 168 ft. m.s.l.), Stage 2 - Moderate Water Shortage Conditions (elevation of 163.71 ft. m.s.l.), and Stage 3 - Severe Water Shortage Conditions (elevation of 160.42 ft. m.s.l.) indicate that the agency will curtail water use by the public without halting the sale of water to Toledo Bend Partners, L.P. In fact, there is **NO PROVISION** in the Drought Contingency Plan mandating that the **SALE OF WATER BE STOPPED AT ANY LAKE LEVEL**. In addition, even at the stated Severe Water Storage Conditions, the reduction of water sales is only 20% of the original contract volume. The following excerpt is from said Drought Contingency Plan:

**a. Stage 1 - Mild Water Shortage Conditions**

Goal: Inform the SRA's customers and the general public of the situation and encourage the wise use of water.

Measures:

1. When mild water shortage conditions exist, the SRA will inform its customers of the drought condition by mail and telephone.
2. The customers will be asked to activate an information center to answer inquiries from the citizens. At the same time, representatives of the SRA and its customers will discuss the drought condition and its impact on the water supply situation in the news media.
3. The SRA will continue to advise its customers of the reservoir elevations monthly. Each customer in turn will follow its individual emergency measures.
4. Cease hydropower generation.

## **b. Stage 2 - Moderate Water Shortage Conditions**

**Goal:** Achieve a voluntary reduction in non-essential outdoor water use.

**Measures:**

1. When the system reaches moderate water shortage conditions, the SRA will inform its customers by mail and by telephone that the drought has reached the moderate trigger level. This information will be given at weekly intervals as long as the moderate drought condition continues.
2. During the moderate water shortage conditions, the SRA may, if necessary, reduce water delivered to its customers on a pro-rata basis, such that customers' Monthly Maximum Water Diversions shall be reduced by up to 10 percent (10%). For the avoidance of doubt, a customer whose Monthly Maximum Water Diversions are equal to 10,000 acre-feet, will be subject to a reduction of up to 1,000 acre-feet (10% of 10,000 acre-feet) during the moderate water shortage.
3. The SRA may request its municipal customers to implement voluntary lawn irrigation restrictions through the media. The SRA itself will use the media to inform the general public of the need to curtail outdoor water use.
4. The SRA may request its municipal customers to prohibit such other non-essential outdoor uses as car washing, filling of swimming pools, etc.
5. If the restrictions of this Stage of the Plan cause undue hardship on a customer, that customer may request a variance from the Executive Director of the SRA. These requests will be considered on a case-by-case basis.
6. Continue to cease hydropower generation.

## **c. Stages 3 - Severe Water Shortage Conditions**

**Goal:** Achieve a reduction in total water use.

**Measures:**

1. When the system reaches severe water shortage conditions, the SRA will inform its customers by mail or telephone about the serious water supply situation. Similar action will be taken in the event of a major emergency. The news media also will be informed. Situation reports will be issued to the SRA's customers and the news media weekly. The SRA management may call emergency meetings to discuss with its customers major operational changes if it finds such action necessary during the progress of a severe drought.
2. During a severe water shortage conditions, the SRA may, if necessary, reduce water delivered to its customers on a pro-rata basis, such that customers' Monthly Maximum Water Diversions shall be reduced by up to 20 percent (20%). For the avoidance of doubt, a customer whose Monthly Maximum Water Diversions are equal to 10,000 acre-feet, will be subject to a reduction of up to 2,000 acre-feet (20% of 10,000 acre-feet) during the severe water shortage.
3. The SRA may request all its municipal customers to prohibit outdoor water use and to activate applicable drought measures to minimize indoor uses until the drought condition changes to a moderate condition or better.

4. If the restrictions of this Stage of the Plan cause undue hardship on a customer, that customer may request a variance from the Executive Director of the SRA. These requests will be considered on a case-by-case basis.

5. Continue to cease hydropower generation.

To continue to sell water to the Toledo Bend Partners, L.P beyond the point when water is rationed to the public is not responsible management of the lake, and will have devastating effects on our residents and businesses, as discussed below.

### **Potable Water Supply**

The majority of the potable water delivered to the communities along the Toledo Bend Reservoir comes from the lake. Due to low water levels in the year 2011, numerous water intake lines were no longer under water. Some communities had to extend their intake lines to reach the water, and/or relocate existing pumps and/or purchase larger pumps to deliver the lake water this further distance and/or accommodate the addition elevation rise. Water rationing became a reality in the town of Many, as well as in other area communities. Some rationing was mandatory, other rationing was voluntary. Lowering the lake level in excess of the natural rate of recharge and current FERC permit obligations by irresponsible water sales will create additional economic hardships on these communities through excess expenditures and water rationing.

### **Navigation Safety**

The Toledo Bend Reservoir is heavily populated with standing timber that was not cleared when the reservoir was created. The SRA-LA and SRA-TX maintain cleared boat lanes to facilitate navigation around the lake. At full conservation pool stage of 172 m.s.l., most of the timber in the boat lanes is under water at a level that does not pose a significant threat to recreational activities. At a lake level of approximately 164 m.s.l. and above, the majority of the boat lanes are navigable at on-plane speeds. As the lake level falls below 164 m.s.l., navigation becomes increasingly treacherous, not only due to the stumps, but the lack of sufficient water depth. At a level of 160 m.s.l. the lake is virtually impossible to navigate at on-plane speeds with any level of safety confidence.

Selling water during times of low water levels will result in a complete halt of recreational activities, as the lake will not only be less accessible, but will be less safe to navigate.

### **Firefighting**

Community Volunteer Fire Departments (VFDs) along the Toledo Bend Reservoir depend on this water supply for use in firefighting. At the current lake level of 161' m.s.l., many water hydrants along our roadways are now inoperable, and cannot deliver water for fire control. According to VFD representatives, a historic back-up plan for the lack of normal hydrant water supply is the nearest boat launch, where the fire trucks use their suction pumps to load directly from the lake. This is a slower and less effective alternative, but is a last line of defense. With the lower lake levels and accessibility of very few boat launches, even our last line of defense is severely compromised. Selling water during times of low water levels will result in a complete inability of the local VFDs to function and protect our community.

As per the assistant fire chief for the South Sabine Volunteer Fire Protection District (speaking at the Toledo Bend Citizens Advisory Committee meeting, on December 20, 2011), with the

inability to sustain an effective VFD, each community faces inferior fire protection, a downgrade in its fire rating, and subsequent significant increases in insurance premiums.

### **Protection of the Environment**

Reductions in the lake level essentially results in the drainage of the wetlands. Habitats for wildlife and aquatic resources, such as the egret, herons, the American alligator and largemouth bass during spawning season, are adversely affected by the loss of shallows and wetland areas. The Toledo Bend Partners, L.P. has completed studies of terrestrial resources, recreational resources, water resources, cultural resources, and water quality and aquatic resources as part of the Final License Application. Included in Exhibit E-Environmental Exhibit (September 2011) of, Section 1, part 1.3.3 Endangered Species Act, is a summary of the 5 Endangered Species Act listed terrestrial species found to have the potential to occur in habitats within or adjacent to the Toledo Bend Project boundaries. The Louisiana black bear, red-cockaded woodpecker, Louisiana pine snake, earth fruit and the Texas golden gladeceess were noted. In addition, the Sprague's pipit was listed as a candidate species. Toledo Bend Partners, L.P. has determined that this project will not have an adverse effect on these endangered species. However, the studies do not effectively address the disruption of the natural hydrology of the Toledo Bend Reservoir's canals, coves and wetlands by a forced drainage project which will reduce the reservoir level beyond natural occurrences and current water delivery obligations.

A Shoreline Management Plan (SMP) is included in the SRA's submittal to the Federal Energy Regulatory Commission (FERC) for license amendment and renewal. The SRA stated in their SMP (Section 1.2, Purpose of the Shoreline Management Plan) that they implement the Plan "to manage the multiple resources and uses of the Project's shoreline and to address the needs of the public. Although the Authorities do not anticipate new environmental effects to shoreline soils, the Authorities propose to continue monitoring shoreline erosion along the impoundment within the project area, pursuant to an Erosion Monitoring Program in the SMP." While these statements are admirable, and intended to establish a level of commitment to protect our shorelines, the SRA's plan is not designed to prevent the unintentional drainage of our canals, coves, or wetlands along the entire reservoir, either.

### **Small Business Owners**

The effects of the low lake level have been devastating to the local businesses. Fishing tournaments normally bring millions of dollars to the local businesses near and adjacent to the lake. As reported in the SRA-LA October 27, 2011 meeting minutes, Ms. Kellie Ferguson, Administrative Program Director, "the lake level has been responsible for the reduction in revenue due to no power generation; previously cleared boat lanes are now hazardous showing an estimated 600-800 stumps per mile of previously cleared boat lanes; 21 of 28 launches on Louisiana side are closed; and of 25 tournaments scheduled for 2012, three have cancelled and will not return regardless of stump clearing and 10 will only come if the lake level reaches at least 163.7' msl."

Fishermen and recreational boating has almost come to a halt. Boat houses and many boats are on dry land. The majority of the lake's boat launches remain inoperable at the current low lake level of 161 m.s.l. Only a very few launches are accessible without considerable difficulties in launching and taking the crafts out of the water.



Small business owners of marinas, motels, restaurants and bait/tackle shops are threatened with closing their doors. Tourism is almost non-existent during times of water rationing and/or low water levels.

Property sales in the Toledo Bend Reservoir area have dwindled to a level never before seen. Lake front property values, as well as interior properties, have decreased as the result of inability to utilize the lake.

As stated in the Water Reservation and Sale Agreement, Recitals, E., "The economic, social and environmental benefits to the SRA resulting from this Agreement are projected to exceed the value of the obligations of the SRA undertaken herein, this Agreement has a public purpose and is in the public interest of the SRA." Forsaking the preservation of the waters of the Sabine River and its tributaries for purpose of enhancing the SRA-LA's revenue generation appears to us to be similar to an action of eminent domain, where the SRA determines that this project is in the best public interest, over the objections of the public. No amount of revenue or recreational facility development will offset the negative impacts from the sale of water during low water levels in the reservoir.

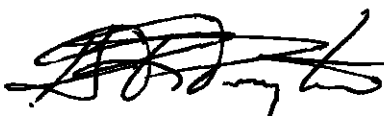
The residents of Louisiana, area residents of the Toledo Bend Reservoir, and fulfillment of the power generation obligations should constitute the "first rights" to the reservoir's water. Sale of this water to an **EXTERNAL ENTITY** should be only allowed **WHEN THERE IS AN EXCESS OF WATER**, that being a lake level over the minimum water level of 168' m.s.l.

In summary, we present the following actions to facilitate responsible management of waters from the Toledo Bend Reservoir


- Drought contingency and shoreline maintenance plans should be developed from a risk management perspective, with a tiered approach that includes worst-case scenarios. These plans should be developed for the entire lake area. The plans should present the respective actions to be taken at the various low water conditions, including the point where all water sales cease.
- Louisiana residents, businesses, VFDs and existing contractual obligations should be given "first rights" to the water in the Toledo Bend Reservoir.
- Only water in excess of the state-mandated 168' m.s.l. can be responsibly considered for sale to private entities.

Please assist the residents of the Toledo Bend Reservoir in protecting their most valuable resource and the lifeblood of the local economies, by prohibiting the execution of the Water Reservation and Sale Agreement by and between Sabine River Authority, State of Louisiana and Toledo Bend Partners, L.P., as written.

Sincerely,



Randy Pennington



Deborah Pennington

CC:

Jon Wellinghoff, Chairman  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

Senator Gerald Long, District 31  
[long@legis.state.la.us](mailto:long@legis.state.la.us)

Representative Frankie Howard, District 21  
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Louisiana Department of Wildlife and Fisheries  
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# Sabine River Authority



BOBBY JINDAL  
GOVERNOR

## COMMENTS ON THE PROPOSED WATER RESERVATION AND SALE AGREEMENT WITH TOLEDO BEND PARTNERS, L.P.

Sabine River Authority, State of Louisiana, is seeking comments from local businesses, members of the public, and other interested stakeholders on the proposed Water Reservation and Sale Agreement with Toledo Bend Partners, L.P. A copy of the agreement is available on [www.srala-toledo.com](http://www.srala-toledo.com)

You may submit your comments by:

1. Filling out this form and dropping it off at SRA's Pendleton Bridge Office; or
2. Mailing written comments to:

Jim Pratt, Executive Director  
Sabine River Authority, State of Louisiana  
15091 Texas Hwy  
Many, LA 71449

3. Emailing comments to [becky.anderson@la.gov](mailto:becky.anderson@la.gov)

**Please Provide Comments by January 6, 2012**

PLEASE PRINT CLEARLY AND LEGIBLY

Name: AL HANKS

Date: 12/19/2011

Address: 12447 Abell Rd.

City, State, Zip Code: Welsh LA. 70591

Email: AVHANKS@HOTMAIL.COM / AHANKS@RECON-GROUP.COM

Comments: I HAVE HAD E-MAIL COMMUNICATION WITH MR. PRATT

(Additional space is provided on back)

15091 TEXAS HIGHWAY • MANY, LOUISIANA 71449-5718  
(318) 256-4112 • FAX NO. (318) 256-4179

AND APPRECIATE HIS EFFORTS. I DO UNDERSTAND AND APPRECIATE  
THE REVENUE ADVANTAGE OF SELLING WATER RATHER THAN POWER.  
I ALSO AGREE WITH IT AS LONG AS APPROPRIATE LIMITS ARE IN PLACE.  
THESE RESTRICTIONS MUST PROVIDE PROTECTION TO THE BUSINESSES,  
ENVIRONMENT AND PROPERTY OWNERS. MY THOUGHTS WOULD BE THAT  
A LARGE HOLDING AREA SHOULD BE BUILT NEAR THE POINTS OF  
CONSUMPTION SO THAT SRA CAN PUMP OUT OF THE LAKE AT OUR  
HIGH WATER PERIODS AND STORE IT IN THE HOLDING AREA. ALSO  
THE MAJOR ADVANTAGE OF SELLING WATER, RATHER THAN POWER  
(BESIDES THE PROFIT) IS THE FACT THAT WATER CAN BE STORED AND  
POWER CANNOT.

MOST IMPORTANT IS THAT LOWER LAKE LEVELS BE  
ESTABLISHED AT A REASONABLE LEVEL (POSSIBLY 165')  
WHERE THERE WILL BE NO MORE WITHDRAWAL FROM THE LAKE.  
I DO APPRECIATE THE OPPORTUNITY TO VOICE MY OPINION.  
FOR BEING SUCH A BEAUTIFUL PLACE IT APPEARS  
THAT THE STATES OF LOUISIANA AND TEXAS HAVE  
NOT PROMOTED THE RECREATIONAL VALUE AVAILABLE

AGAIN, THANKS  
Steve V. Kish

Thank you for your comments!