



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SWF DISTRICT
819 TAYLOR STREET, ROOM 3A37
FORT WORTH, TEXAS 76102

CESWF-RDE

14 MARCH 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ SWF-2024-00291, MFR 1 of 1.²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Texas due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Relatively Permanent Waters					
Water Feature	TNW	Acres	LF	Jurisdictional	Rationale
Stream 1 (onsite segment 1a)	No	0.04	165	Jurisdictional	RPW segment merges with Rush Creek, which connects to Lake Ray Hubbard, the East Fork of the Trinity River, and Trinity River (TNW)
Stream 1 (off-site segments)	No	NA	1,582	NA	Computed for stream percentage only. Not given JD since these stretches are not in the project boundary. Stream continues off-site under a road and residential lot to daylight into another greenbelt and then a culvert for another road and daylights for a stretch prior to merging with Rush Creek.
Total RPW LF			1,747		Estimated using Google Earth
Percentage of stream that is RPW (LF)			55.0%		Total stream is 1,747 + 1,427 = 3,174 LF.
Non-Relatively Permanent Waters					
Water Feature	TNW	Acres	LF	Jurisdictional	Rationale
Stream 1 (on site segments S2, S3, swale, S4)	No	0.08 (AC)	875	Jurisdictional because these Non-RPW stretches are less than 50% of the total length of the stream.	Non-RPW stream segments that are on-site. The entire stream includes S-2, S-3, Swale and S-4 as well as segments outside of project boundary.
Stream 1 (Off-site segments)	No	NA	552	NA	Estimated using Google Earth
Total Non-RPW (LF)			1,427		
Percentage of stream that is Non-RPW (LF)			45%		Total stream is 1,747 + 1,427 = 3,174 LF.

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

The property is located at 1011 E. Brown St. in the City of Wylie, Texas. Center coordinates are: 33.018571, -96.520046 and the watershed is HUC 12-12030106042. The property has been utilized as a residential property, containing a house and shed since 1995. The property has also historically been used to store shipping containers, debris, haybales and automobile parts. Topography ranges 510 feet to 550 feet above mean sea level (msl). This area is within the Blackland Prairie Ecoregion, S. segment of Cross Timbers & S. Tallgrass Prairie Ecoregion. Vegetation is a mixture of riparian woodlands, grasses, herbs and vines. Two soil types were listed, Burleson clay (1-3 percent slopes) and Heiden clay (3-5 percent slopes), neither are listed as being hydric. No ponds or wetlands were identified; one stream runs along the western boundary of the Project site and is a tributary to Rush Creek which flows into Lake Ray Hubbard and eventually into the East Fork of the Trinity River, Trinity River (TNW). According to the FEMA FIRM map, 48085C0420J effective 6/2/2009, the site is not within the 100-year floodplain, or within a floodway regulated by Collin County.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Trinity River⁶

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS Ephemeral tributary to Rush Creek, Lake Ray Hubbard, East Fork of the Trinity River and Trinity River (TNW).
6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ Not applicable.
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): Not applicable.
 - b. Interstate Waters (a)(2): Not applicable.
 - c. Other Waters (a)(3): Not applicable.
 - d. Impoundments (a)(4): Not applicable.
 - e. Tributaries (a)(5):

Stream 1 per stream assessment calculations the RPW length of the stream is 55% of the total and therefore the entire stream (Segments 1, 2, 3, swale and 4) is Jurisdictional and defined as a Waters of the United States. Refer to the attached

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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Google Earth maps, National Viewer Maps and the Delineation Report's Aquatic Features Map and segment descriptions in the Delineation Report for more information. See table below for stream assessment.

Relatively Permanent Waters					
Water Feature	TNW	Acres	LF	Jurisdictional	Rationale
Stream 1 (onsite segment 1a)	No	0.04	165	Jurisdictional	RPW segment merges with Rush Creek, which connects to Lake Ray Hubbard, the East Fork of the Trinity River, and Trinity River (TNW)
Stream 1 (off-site segments)	No	NA	1,582	NA	Computed for stream percentage only. Not given JD since they are not in the project boundary. Stream continues off-site under a road and residential lot to daylight into another greenbelt and then a culvert for another road and daylights for a stretch prior to merging with Rush Creek.
Total RPW LF			1,747		Estimated using Google Earth
Percentage of stream that is RPW (LF)			54.7%		Total stream is 1,747 + 1,427 = 3,174 LF.
Non-Relatively Permanent Waters					
Water Feature	TNW	Acres	LF	Jurisdictional	Rationale
Stream 1 (on site segments S2, S3, swale, S4)	No	0.08 (AC)	875	Jurisdictional because it is less than 50% of the total length of the stream.	Non-RPW stream segments that are on-site. The entire stream includes S-2, S-3, Swale and S-4 as well as segments outside of project boundary.
Stream 1 (Off-site segments)	No	NA	552	NA	Estimated using Google Earth
Total Non-RPW (LF)			1,427		
Percentage of stream that is Non-RPW (LF)			45.3%		Total stream is 1,747 + 1,427 = 3,174 LF.

f. The territorial seas (a)(6): Not applicable.

g. Adjacent wetlands (a)(7): Not applicable.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred

to as “preamble waters”).⁹ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. Not applicable.

- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. Not applicable.
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. Not applicable.
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. Not applicable.
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. Not applicable.
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). Not applicable.

⁹ 51 FR 41217, November 13, 1986.

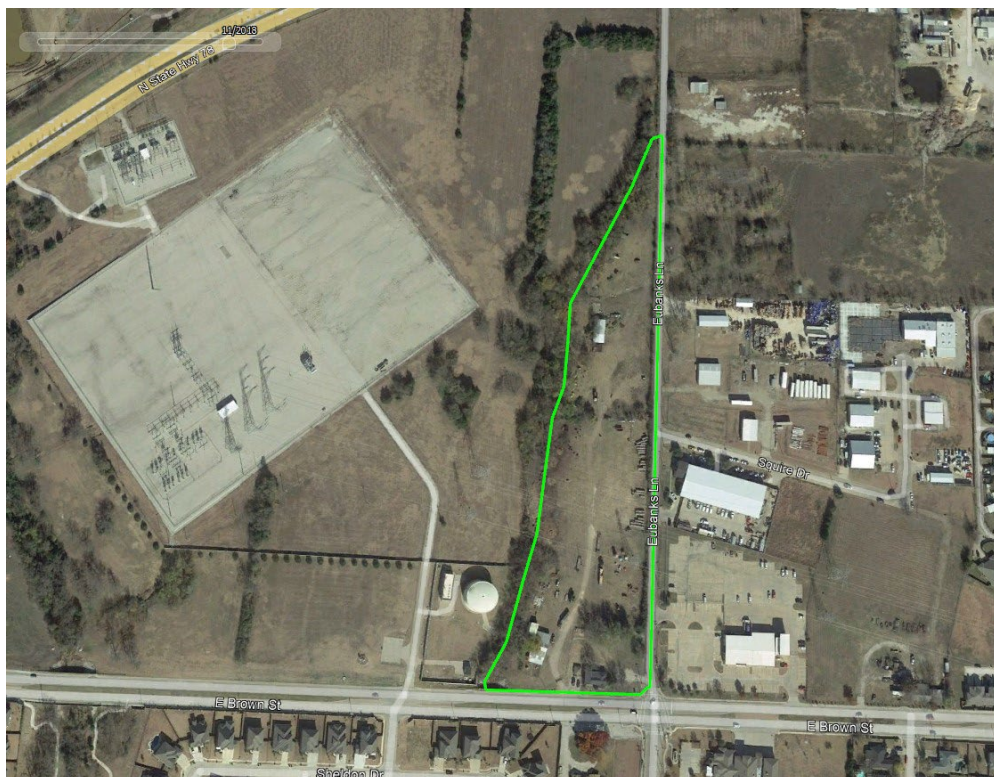
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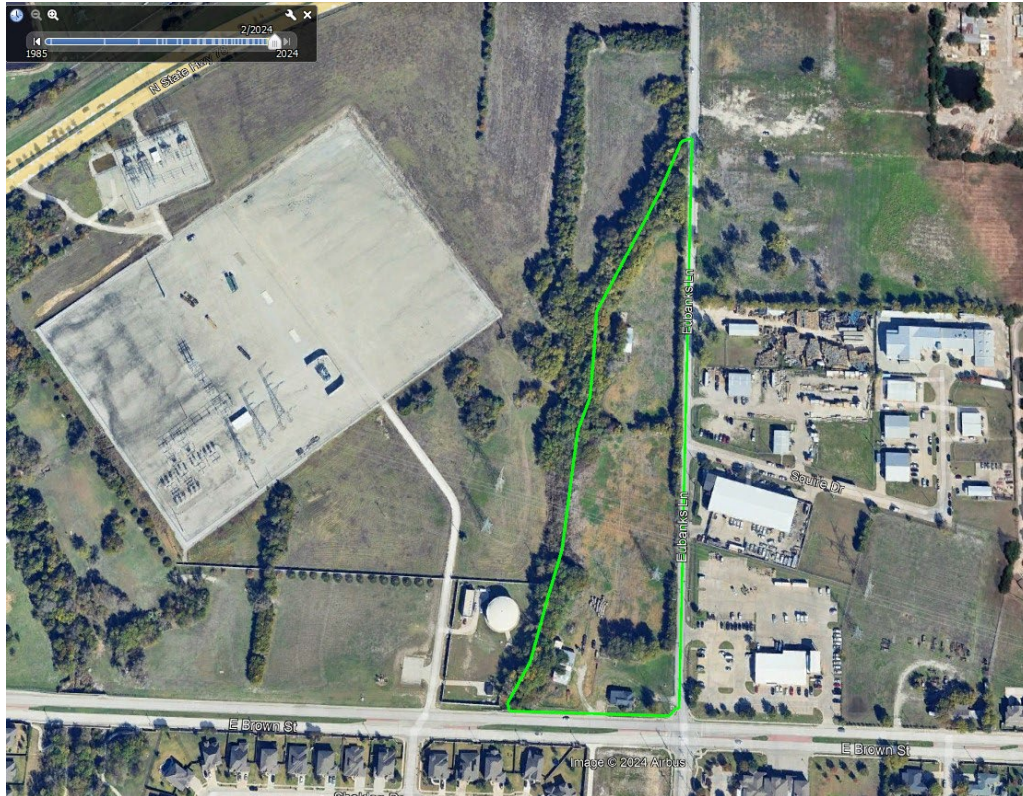
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Consultant site visits were conducted on September 26, 2024, USACE desktop evaluations were completed January 7, 2025.
 - b. Wetland Delineation Report: Aquatic Resources Delineation, Bufflehead BESS Project, Wylie, Collin County, Texas, by Black Mountain Energy Storage, October 2024.
 - c. Google Earth imagery (Aug 2012, Oct 2007, Nov 2018 and Feb 2024), and USGS topographic layer, accessed on January 07, 2024.
 - d. National Regulatory Viewer (Texas and Louisiana) topography, NWI, FEMA, NHD, imagery and LIDAR layers, accessed on January 7, 2025.
10. OTHER SUPPORTING INFORMATION. Not applicable.
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



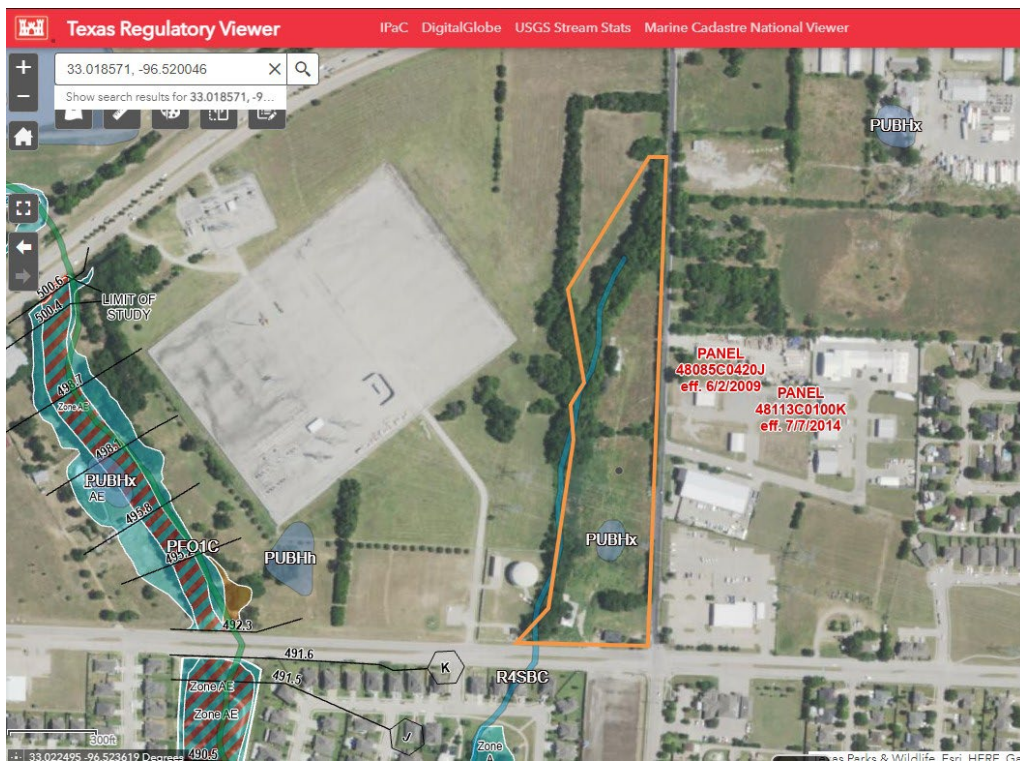
2012 Google Earth Image



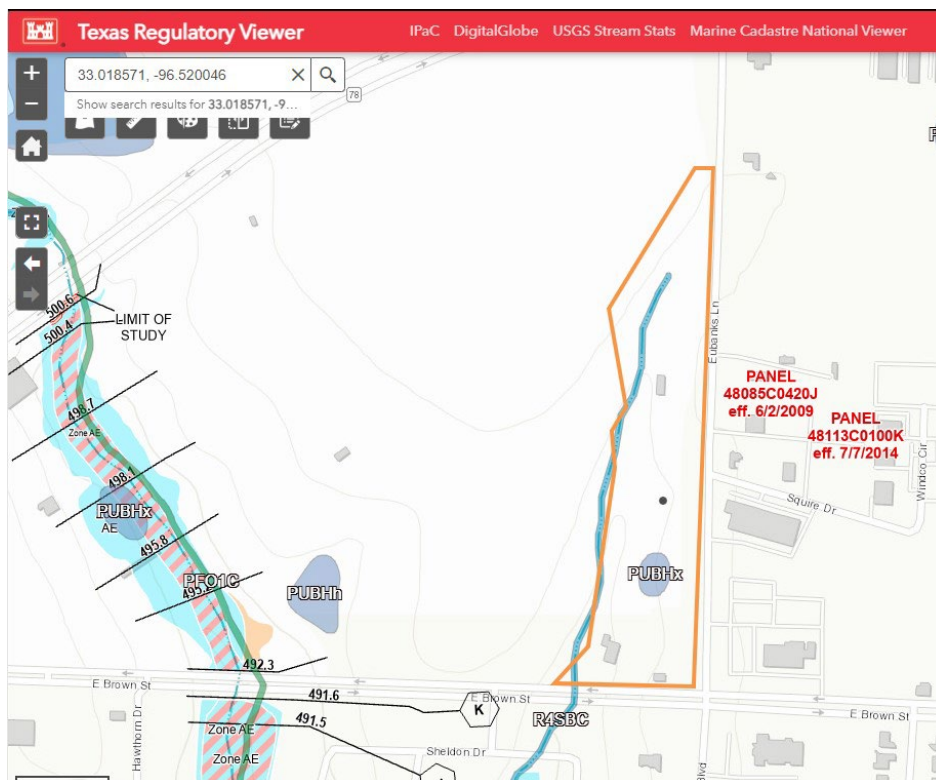
2018 Google Earth image



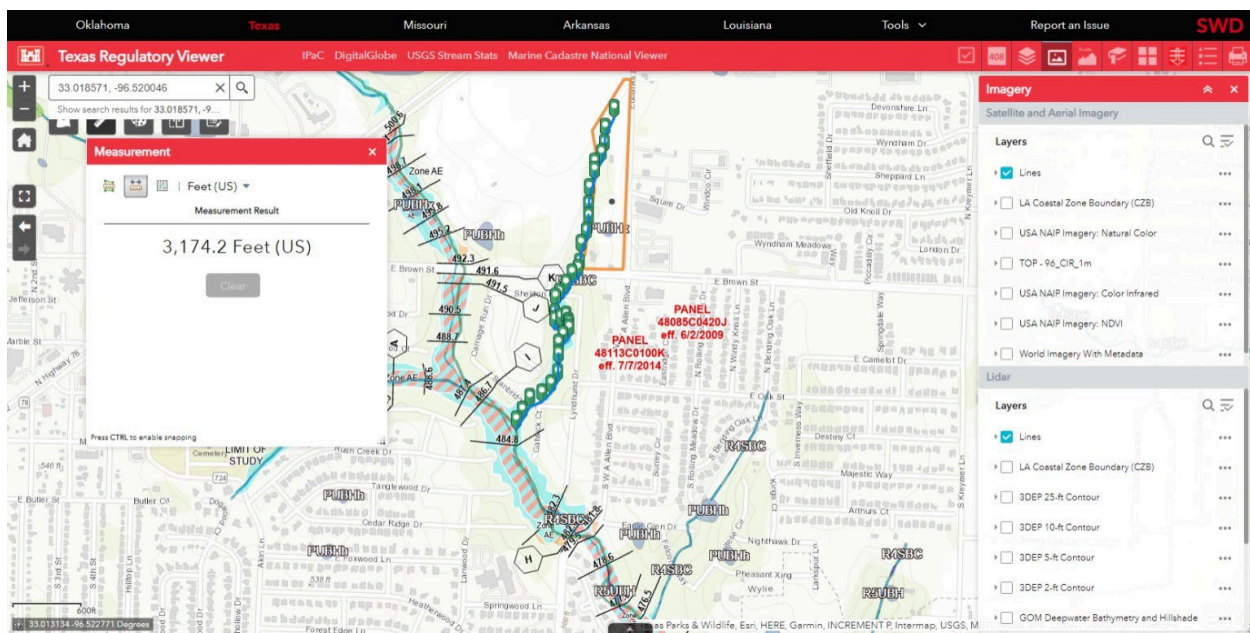
2024 Google Earth Image



National Viewer Image



National Viewer image



National Viewer image – Stream Length Estimation



