



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

CESWF-RD

25 SEPTEMBER 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),<sup>1</sup> SWF-2024-00300.

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.<sup>2</sup> 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.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> 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 amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Texas due to litigation.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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.

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).

Feature Name	Type	Jurisdictional Status	Authority
S-1	Perennial Stream	WOUS – RPW stream with CSC to TNW	404
WL-1	Forested Wetland	WOUS – wetland with CSC to RPW and TNW	404
S-2a	Intermittent Stream	Non-WOUS – no CSC to RPW or TNW	NA
S-2b	Intermittent Stream	Non-WOUS – no CSC to RPW or TNW	NA
S-3	Ephemeral Stream	Only has a CSC to WL2; Non-WOUS – no CSC to RPW or TNW	NA
WL-2	Forested Wetland	Only has a CSC to S-3 a non-RPW stream; Non-WOUS – no CSC to RPW or TNW	NA

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. 651, 143 S. Ct. 1322 (2023)

REVIEW AREA. The review area is located at 1110 N union Bower Road and contains approximately 34 acres, and site is located along and west of the Elm Fork Trinity River. The review area is bound to the north by Proctor Street, followed by industrial development, to the east by the Elm Fork Trinity River, to the south by wooded land and a recreational trail, and to the west by the Driver Pipeline Company industrial yard and headquarters. The majority of the subject area is also located within an easement associated with the Irving Flood Control District Section 1 – Est Levee. Elevations

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range from 400 to 430 feet above mean sea level (AMSL). Drainage is generally toward the east and into the Elm Fork Trinity River. The NHD (USGS 2023) identified two features, both channels of the Elm Fork Trinity River, within the review area. Per FEMA maps, the entire review area is within mapped floodplain areas, with the majority of the subject area located within a regulated floodway. Small portions along the western boundary of the review area are located within the 0.2% Annual Chance Flood Zone.

- USGS 7.5-min topographic quadrangle Irving, TX (2022)
  - Hydrologic unit: HUC 12-12030103007 –Elm Fork Trinity
  - FEMA FIRM Panel 48113C0310J, eff 8/23/2001
  - Center Coordinates: 32.827472, -96.896791
3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Trinity River
  4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS The flow-path is as follows: Elm Fork Trinity River, Trinity River (TNW)
  5. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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.<sup>6</sup> N/A
  6. 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

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<sup>5</sup> 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.

<sup>6</sup> 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.

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): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4):[N/A
- e. Tributaries (a)(5):

Feature Name	Type	Coordinates	Area (AC)	Length OHWM (LF)	Length in Review Area (LF)	Determination
S-1	Perennial Stream	32.825400, -96.896359	1.06	110-150	518	WOUS – RPW stream with CSC to TNW

S-1, the Elm Fork Trinity River, was identified on the NHD database as an Artificial Path flowline and a Stream/River feature and on the NWI database as a Riverine feature. Review of aerial photography indicates S-1 continues south and east, eventually merging with the West Fork Trinity River to form the Trinity River, which is designated as a navigable Section 10 (Rivers & Harbors Act) water way by the Southwest Fort Worth USACE District. S-1 was observed during site investigations as a perennial stream adjacent to and comprising the southeastern subject area boundary. Defined OHWM, bed, banks and perennial flow were observed during field investigations. The OHWM in the vicinity of the subject area is estimated to range from 110 to 150 feet (ft). Based on site investigation and review of historical aerial photographs, approximately 1.06-acres of the river overlap with the subject area. The Elm Fork Trinity River is a perennial, relatively permanent waterway with a downstream connection to a traditionally navigable water and is considered a potentially jurisdictional water of the U.S.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7):

Feature Name	Type	Coordinates	Area (AC)	Length OHWM (LF)	Length in Review Area (LF)	Determination
WL-1	Forested Wetland	32.825915, -96.896043	0.56	NA	NA	WOUS – wetland with CSC to RPW and TNW

WL-1 was not identified on either NHD or NWI databases. WL-1 was identified during field investigations. At the time of field investigation, WL-1 contained isolated pools of standing water (generally less than six inches in depth) and appeared as a forested wetland feature adjacent to the Elm Fork Trinity River. Hydrophytic vegetation, hydric soil, and wetland hydrology indicators were observed within WL-1 (Attachment D). WL-1 consisted of approximately 0.56-acre located in the southeastern portion of the subject area and appeared to continue off-site to the north, parallel to the Elm Fork Trinity River. Based on review of Lidar elevation data (USGS 2019) and historical aerial photographs (GE 2001-2025), WL-1 appears to share a continuous surface connection with the Elm Fork Trinity River. Historic aerials indicate that the southernmost portion of the assessed wetland area is within the bank full width of the Elm Fork Trinity River and is regularly (roughly every other year) inundated during flood or high flow events. A dry erosional drainage connecting WL-1 to S-1 was observed during field investigations. Therefore, WL-1 is considered a potentially jurisdictional water of the U.S.

## 7. 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”).<sup>7</sup> 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. N/A
- 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. N/A

<sup>7</sup> 51 FR 41217, November 13, 1986.

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- 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. N/A
- 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. N/A
- 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*. N/A
- 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).

Feature Name	Type	Coordinates	Area (AC)	Length OHWM (LF)	Length in Review Area (LF)	Determination
S-2a	Intermittent Stream	32.829450, -96.898173	0.008	3-4	89	Non-WOUS – no CSC to RPW or TNW
S-2b	Intermittent Stream	32.829341, -96.896931	0.02	3-4	225	Non-WOUS – no CSC to RPW or TNW
S-3	Ephemeral Stream	32.826771, -96.897920	0.02	1.5-2	465	Only has a CSC to WL2; Non-WOUS – no CSC to RPW or TNW
WL-2	Forested Wetland	32.826669, -96.896996	3.87	NA	NA	Only has a CSC to S-3 a non-RPW stream; Non-WOUS – no CSC to RPW or TNW

**S-2 (a and b)** was identified during field investigations and was not identified on either NHD or NWI databases. At the time of field investigations, S-2 was an eroded drainage containing water, which entered the subject area via the northwestern boundary and continued east for approximately 89 ft before exiting the northern site boundary. S-2 continues parallel to the northern boundary for approximately 260 feet before re-entering the subject area. The feature then continues for an additional 225 ft eastward within the subject area before visible indications of surface water flow and hydrology were no longer observed. S-2 exhibits surface water flow and intermittently defined bed, banks and OHWM for approximately 314 ft within the subject area, beyond which point visible indications of bed, bank, OHWM, and surface water flow were not observed; water appeared to continue east as diffuse overland flow. Analysis of the site location for the month preceding the site investigation using the Antecedent Precipitation Tool (APT) indicated that the area was experiencing “normal conditions” consistent with a mild drought. Based on the results of the APT analysis and field observations, the stream appeared to be intermittent in nature and did not appear to be a “relatively permanent” water. A continuous surface water connection was not observed between S-2 and nearby relatively permanent or jurisdictional waters. Therefore, S-2 is not a jurisdictional water of the U.S.

**S-3** was identified during field investigations conducted by WESTWARD and was not depicted on either the NHD or NWI databases. At the time of field investigations, S-3 appeared as an eroded ephemeral drainage which appeared to receive surface water draining from one of the ponds associated with the facility west of the subject area. The feature exhibited a poorly defined bed, bank, and OHWM throughout the majority of its length within the subject area. The OHWM width ranged from 1.5 – 2 feet within the subject area. S-3 enters the subject area via the western subject area boundary and continues southeast for approximately 465 feet before draining into WL-2. S-3 is considered a Non-relatively permanent water (Non-RPW) and likely only receives surface water in response to rainfall events that result in stormwater runoff from the west-adjacent facility, and/or overflow from pond(s) west of the subject area. Neither S-3 nor WL-2 shared a continuous surface connection with any downstream jurisdictional waters. Therefore, S-3 does is not a jurisdictional water of the U.S.

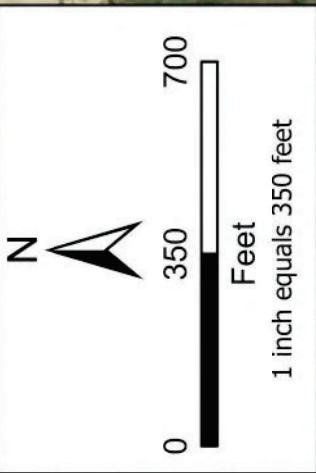
**WL-2** was identified during field investigations and was not indicated on either of the NHD or NWI databases. At the time of field investigations, WL-2 appeared as a forested wetland within the floodplain of the Elm Fork Trinity River. Hydrophytic vegetation, hydric soil, and wetland hydrology indicators were observed within WL-2. WL-2 was approximately 3.87 acres located in the central portion of the subject area and appeared to continue off-site to the northeast. WL-2 appeared


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to receive runoff primarily from S-3 and standing water was observed in the northern and southwestern portions of the feature. A continuous surface water connection was not observed between WL-2 and the Elm Fork Trinity River or any other nearby jurisdictional waters. Therefore, WL-2 is not a jurisdictional water of the U.S.

8. 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. Contractor site visit occurred on March 25-26, 2025; USACE in-office review occurred on September 25, 2025.
  - b. Google Earth topographic and aerial layers
  - c. National Regulatory Viewer layers for topography, NWI, NHD, HUC, FEMA, Hillshade and Aerial
9. OTHER SUPPORTING INFORMATION. Jurisdictional Waters of the U.S. Assessment Driver Irving Site, Project No. 10908.010-002, May 2025, prepared by Westward Environmental, Engineering, Natural Resources, Boerne, Texas 78006
10. 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.



**Legend**  
 Subject Area

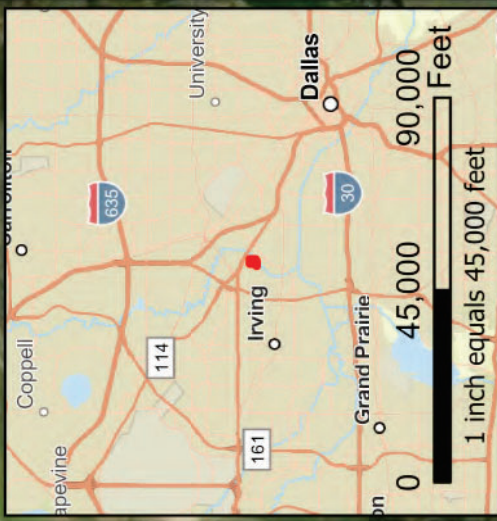


IMAGE: ESRI Aerial Imagery (2023)	
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DRAWN BY:	MG
CHECKED BY:	WS
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JOB NO.:	10908,010-002

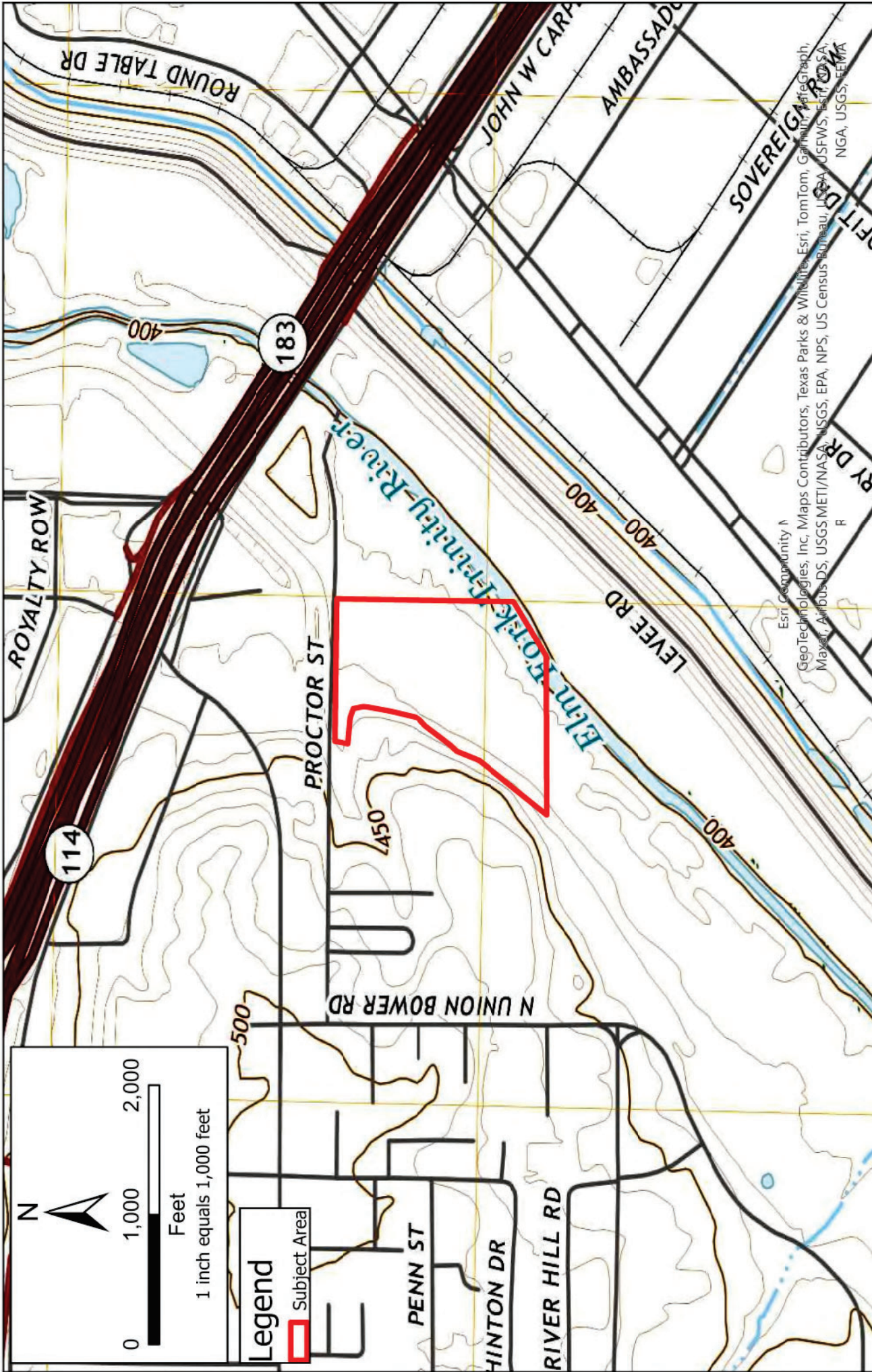
SHEET NO.:  
**001**  
 OF 009

Subject Area		
Jurisdictional Waters Assessment Driver Pipeline Co. 1110 N. Union Bower Drive, Irving, Texas		
REV.	DESCRIPTION	BY DATE

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**WESTWARD**  
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 P.O. Box 2205, Boerne, Texas 78006  
 (830) 249-8284 Fax: (830) 249-0221  
 TBPE REG. NO.: F-4524  
 TBPG REG. NO.: 50112



Esri, Community N  
 GeoTechnologies, Inc, Mmaps Contributors, Texas Parks & Wildlife, Esri, TomTom, Garmin, AirGraph,  
 Mayer, Airbus-DS, USGS METI/NASA-USGS, EPA, NPS, US Census Bureau, USGS, USFWS, USFWS,  
 NGA, USGS, FEMA



# WESTWARD

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### Topographic Map

Jurisdictional Waters Assessment  
 Driver Pipeline Co.  
 1110 N. Union Bower Drive, Irving, Texas

REV.	DESCRIPTION	BY	DATE

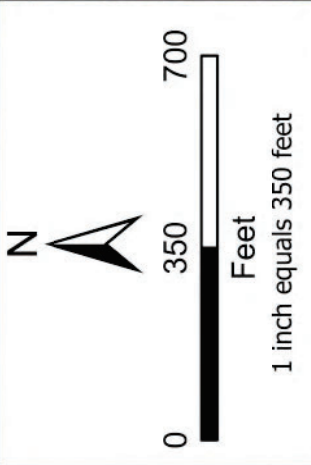
IMAGE: USGS 7.5 Minute Topographic Quadrangle Irving, TX (2022)	
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CHECKED BY:	WS
SCALE: 1" =	1,000'
JOB NO.:	10908,010-002

SHEET NO.: **002**

OF 009



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community









<b>Legend</b>	
	Subject Area
<b>Wetland Type</b>	
	Freshwater Emergent Wetland
	Freshwater Forested/Shrub Wetland
	Freshwater Pond
	Lake
	Riverine

IMAGE: ESRI Aerial Imagery (2023) USFWS NWI Map	
ISSUE DATE:	4/11/2025
DRAWN BY:	MG
CHECKED BY:	WS
SCALE: 1" =	350'
JOB NO.:	10908,010-002

SHEET NO.:  
**004**  
OF 009

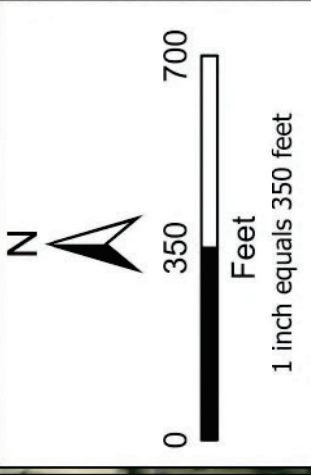
National Wetlands Inventory			
-Jurisdictional Waters Assessment Driver Pipeline Co. 1110 N. Union Bower Drive, Irving, Texas			
REV.	DESCRIPTION	BY	DATE

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TBPG REG. NO.: 50112



**Legend**

- Subject Area
- Flood Hazard Zone**
- 1% Annual Chance Flood Hazard
- 0.2% Annual Chance Flood Hazars
- 1% Annual Chance Flood Hazard Contained in Channel
- Area of Minimal Flood Hazard
- Area with Reduced Flood Risk Due to Levee
- Regulatory Floodway



Maxair, Microsoft

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Flood Hazard Zones		
Jurisdictional Waters Assessment		
Driver Pipeline Co.		
1110 N. Union Bower Drive, Irving, Texas		
REV.	DESCRIPTION	BY DATE

IMAGE:	ESRI Aerial Imagery (2023)
	FEMA FIRM (eff. 8/23/2001)
ISSUE DATE:	4/11/2025
DRAWN BY:	MG
CHECKED BY:	WS
SCALE: 1" =	350'
JOB NO.:	10908,010-002

SHEET NO.: **005**

OF 009

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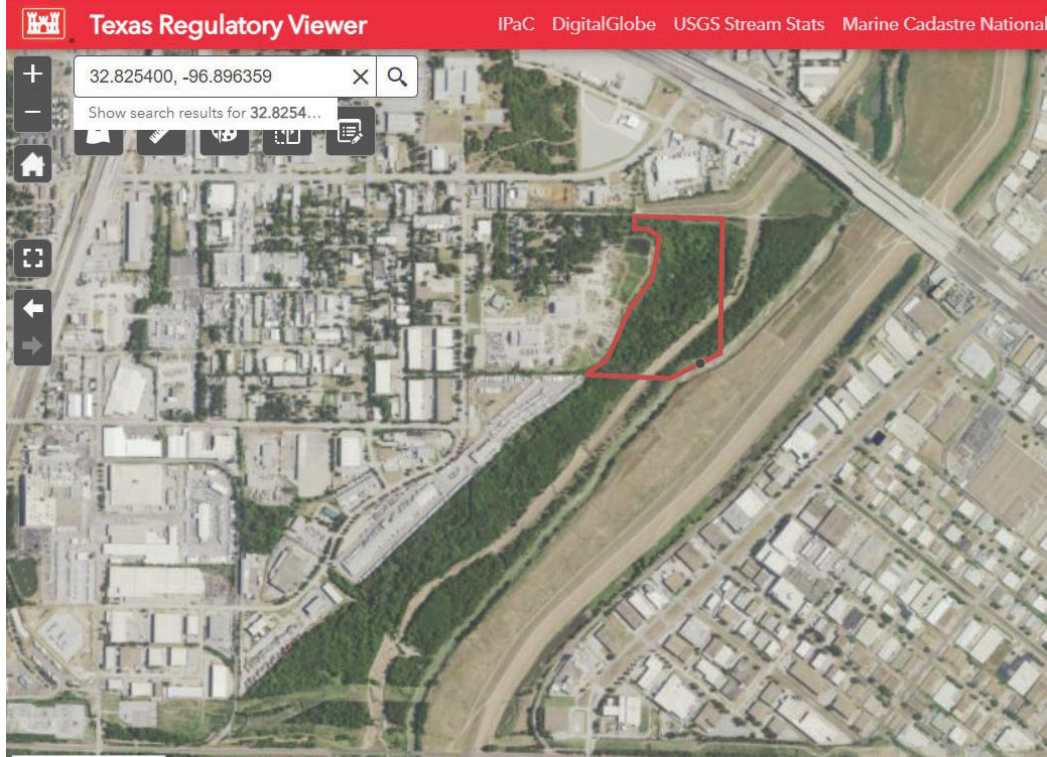
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Jurisdictional Determination			
Jurisdictional Waters Assessment			
Driver Pipeline Co.			
1110 N. Union Bower Drive, Irving, Texas			
REV.	DESCRIPTION	BY	DATE

IMAGE:	ESRI Aerial Imagery (2023)
Field Data	
ISSUE DATE:	7/23/2025
DRAWN BY:	MG
CHECKED BY:	WS
SCALE: 1" =	350'
JOB NO.:	10908,010-002

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**009**  
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