



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

CESWF-RDE

September 30, 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-2025-00153.

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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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).

Name	Type	Jurisdictional	Authority
S1	Intermittent Stream	Yes	404
S2	Intermittent Stream	Yes	404
S3	Intermittent Stream	Yes	404
W1	Wetland, CSC, On-channel, emergent	Yes	404
W2	Wetland, CSC, On-channel, emergent	Yes	404
W3	Wetland, CSC, On-channel, emergent	Yes	404
W4	Wetland, CSC, On-channel, emergent	Yes	404
OW1	Open Water, CSC	Yes	404
OW2	Open Water, CSC	Yes	404

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)

3. REVIEW AREA. The site is located on 35-acre parcel with address of 301 CR 372, City of Jarrell, Williamson County, Texas. The site is southeast of the intersection of CR 301 (NW boundary) and CR 372 (Southwest boundary) and Interstate 35 borders (Eastern boundary). The site appears to be undeveloped agricultural, and/or pastureland. There are two vegetational communities on the site including upland field, and freshwater, emergent wetland. The entire site is located in FEMA’s Zone X: Area of Minimal Flood Hazard. The USFWS NWI map indicates

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the presence of two freshwater ponds, one riverine feature and one freshwater, emergent wetland. Based on the site visit, there are three intermittent streams, four emergent wetlands and two open water features. Streams drain to the northwest and appear to be part of a stream-wetland complex originating offsite. The stream-wetland complex receives I-35 drainage flows, which appears to be the main driver along with valley-like topography for the stream-wetland vegetation and ponding. There are potential impoundments downstream and offsite that also inhibit flows from exiting the site. There is a culvert on the west side of the property that also restricts flow downstream.

- Latitude and Longitude: 30.841020, -97.597725
- Watershed: HUC 12-120702030402, Salado Creek
- FEMA FIRM: Panel 480127C0675E eff.9/26/2008 and 48191C0150F eff. 12/20/2019

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Brazos River
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS Unnamed, intermittent 1st order tributary joins with another 1st order stream and another 2 on its pathway to Salado Creek (3rd order stream), Lampasas River, Little River, Cut-off Slough and Little River, Brazos River (TNW).
6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ N/A
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

⁵ 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.

⁶ 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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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): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4):

ID	Features	Type	Coordinates	Linear Feet	Acres
OW1	Pond	Open Water	30.843243, -97.599084	-	0.21
OW2	Pond	Open Water	30.842559, -97.598558	-	0.12

OW1 and OW2, open water features, appeared to be on-channel ponds that were previously impounded but have since been breached. Both OW1 and OW2 connect downstream to stream S1 and W1

- e. Tributaries (a)(5): Three streams were found during site investigation and are listed below.

ID	Features	Coordinates	Linear Feet	Acres
S1	A(5) Intermittent Stream (RPW); 1 st Order	30.843516, -97.598998	245	0.03
S2	Intermittent Stream (RPW), 1 st Order	30.842796, -97.598514	77	0.01
S3	Intermittent Stream (RPW), 1 st Order	30.841382, -97.597858	626	0.12

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Streams S1-S3 appeared to exhibit a continuous pool of water during certain times of year based upon aerial reviews, field observations, stream size, stream bed composition and other indicators of a variable water flow. These streams appear to have direct surface connections to adjacent wetlands, ponds and down stream drainage which connects to other RPW streams off-site through a culvert on the western boundary. I-35 road drainage may be a significant contributor of runoff water that is feeding this system and the culvert could be blocked by sediment and vegetation and may be undersized to address the sediment transport coming from the road and other upland development. Historical photos show a continual linkage of the S1 Stream to other RPW streams to the west. Only man-made ponds were shown in these photos and upstream headwater from the eastern side of road did not appear to be a strong contributor. I-35 has been upgraded in this region within the last 5-10 years.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): Four wetland areas were identified on the property, W1-W4. These wetlands have a CSC, adjacency to S1, intermittent, RPW stream and ponds and they are considered to be jurisdictional waters.

ID	Features	Coordinates	Acres
W1	(a)(7) Wetland, on-channel and CSC to RPW stream	30.843593, -97.599377	1.1
W2	(a)(7) Wetland, on-channel and CSC to RPW stream and impoundment	30.843225, -97.598751	0.04
W3	(a)(7) Wetland, on-channel and CSC to RPW stream and impoundment	30.842832, -97.598735	0.18
W4	(a)(7) Wetland, on-channel and CSC to RPW stream and impoundment	30.842133, -97.598353	0.09

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”).⁷ Include size of the aquatic resource or feature within

⁷ 51 FR 41217, November 13, 1986.

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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
 - 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). All other areas of the property are uplands and do not contain additional aquatic features.
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. Contractor’s site visit occurred on February 27, 2025; USACE office evaluation occurred on April 2 and September 30, 2025.

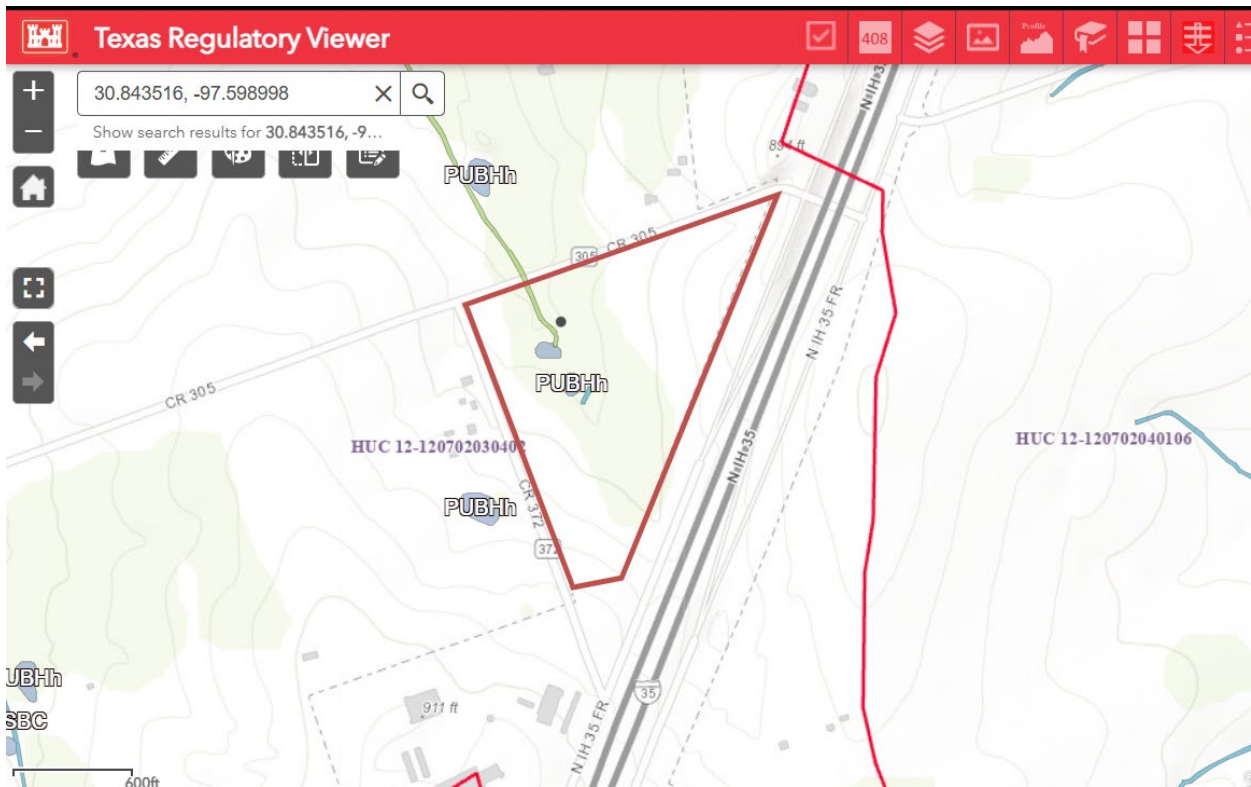
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- b. Google Earth topography, historical aeriels and applicant's kmz were accessed on April 2 and September 30, 2025.
- c. National Regulatory Viewer accessed on April 2 and September 30, 2025.

10. OTHER SUPPORTING INFORMATION. Aquatic Resources Delineation Report and Preliminary Jurisdictional Analysis, Jarrell JPIG 301 CR 372, Jarell, Williamson County, Texas, dated March 25, 2025, prepared by Kimley Horn.

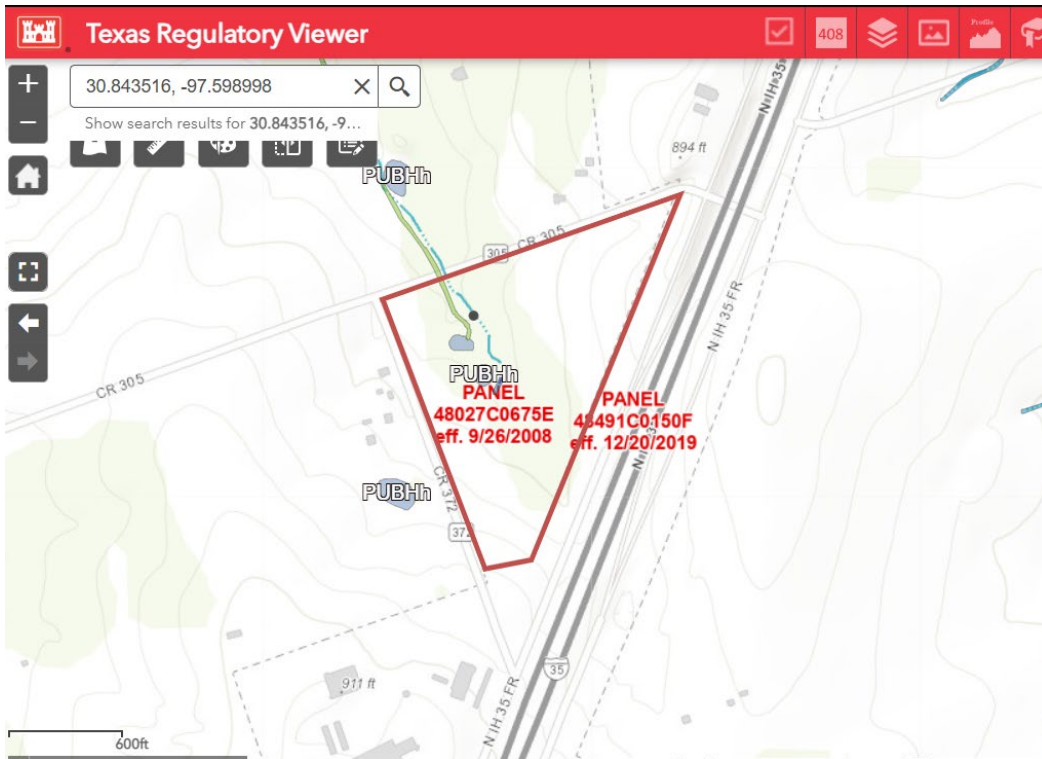
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

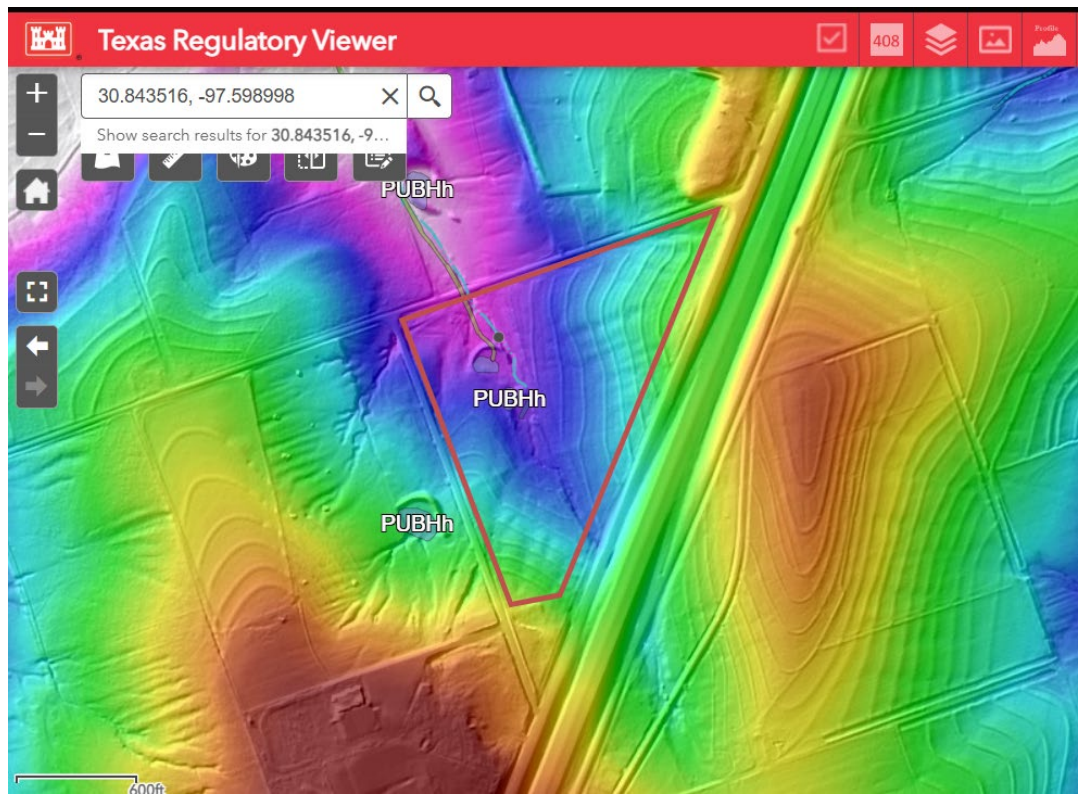
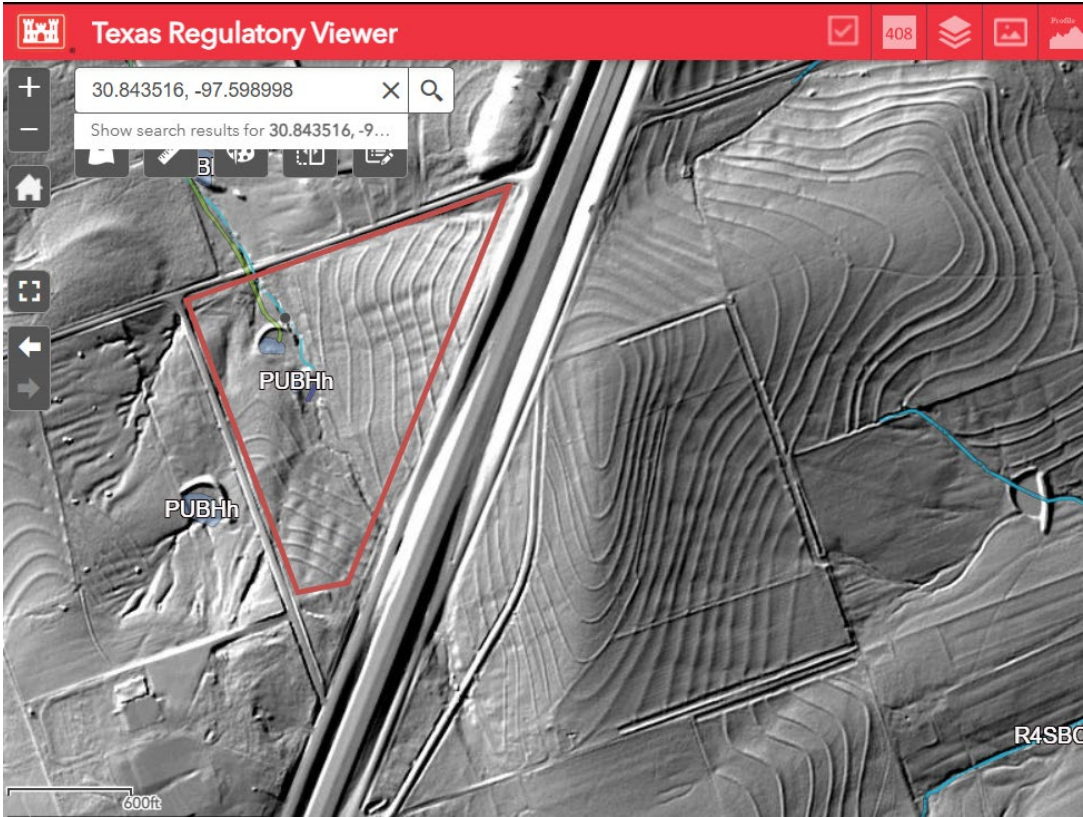




Regulatory Viewer



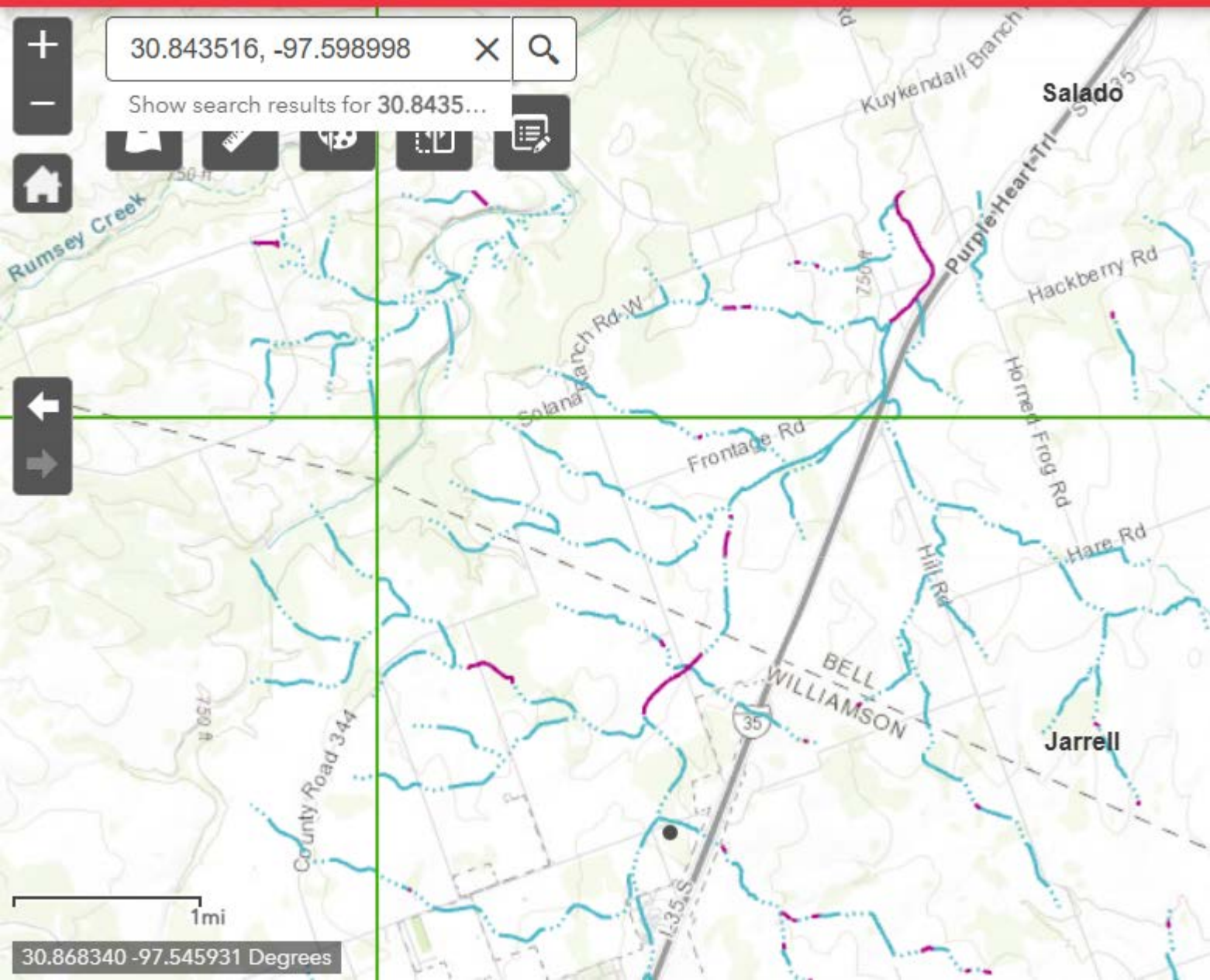






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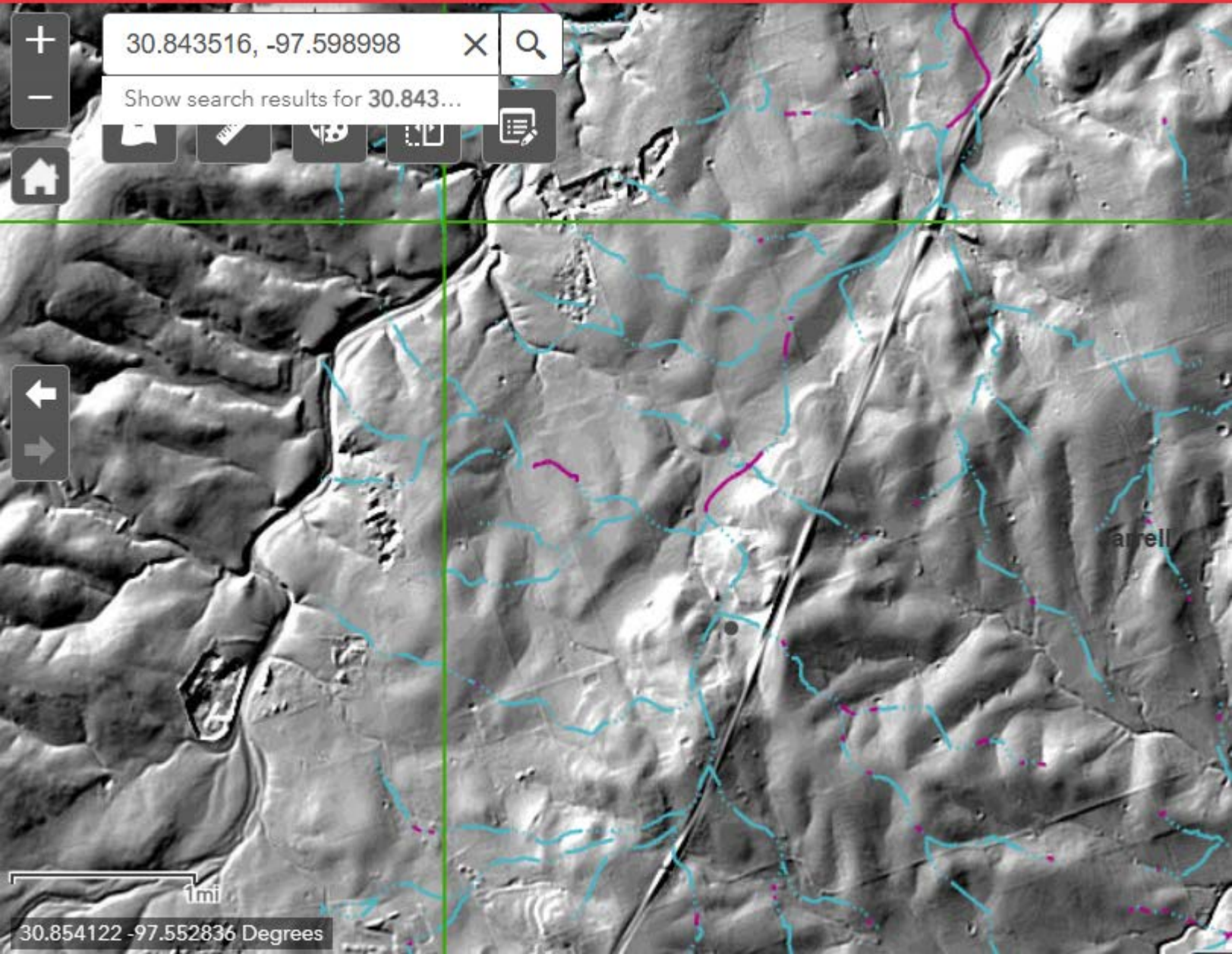


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