



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

CESWF-RD

24 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-2025-00217](#).

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.

---

<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.

CESWF-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWF-2025-00217

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 of Aquatic Resource	Jurisdictional Status	Authority
SB1A	Non-Jurisdictional	NA
SB1B	Non-Jurisdictional	NA
SB1C	Jurisdictional	404
T1	Non-Jurisdictional	NA
T2	Non-Jurisdictional	NA
EW01	Jurisdictional	404
EW02	Jurisdictional	404
EW03	Non-Jurisdictional	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 total project area is approximately 12.5 acres in the city of Thrall and unincorporated portions of Williamson County, Texas 76578. Land uses include undeveloped woodland, pastureland, existing roadway and residential properties. One soil is listed as being hydric. The project area is located within the Brazos River Basin. The site is within the FEMA designated 100-year floodplain of Spring Branch. NHD and NWI data show four aquatic features including 2 ponds, Spring Branch and an unnamed tributary to Spring Branch. Spring Branch was separated into two reaches (Reach 1 and Reach 2) based upon the Strahler stream order methodology.

Coordinates: 30.5945248925043, -97.29325119213148.

CESWF-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWF-2025-00217

3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Brazos River, as determined using topographic layers on Google Earth and following the flow path is approximately 62 miles to the northeast](#)
4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [The project area is located within the Brazos River Basin, drainage area of 43,000 square miles. The unnamed tributaries flow into Spring Branch which drains into Turkey Creek, thence to Brushy Slough, Brushy Creek, San Gabriel River, Little River and finally into the Brazos 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 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.

---

<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.

- 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	Aquatic Feature Type	Coordinates	Area (Acres)	Linear Feet
SB1C	Intermittent Stream	30.59609, -97.289239	0.03	1012.42

**SB1C** is a second-order reach that begins at the confluence of Spring Branch and T2. Within the project area, SB1C covers approximately 1,012 feet and 0.03 acres. Field investigations found that SB1C had a discernable bed and bank with a variable and discontinuous OHWM. Typical OHWM widths were between two and three feet. Isolated pools were present during the delineation; however, no flow was observed. Pools were presumably the result of recent rain. Portions of SB1C had apparently been excavated or otherwise disturbed to form an impoundment. This impoundment is identified as Emergent Wetland 02 (EW02). SB1C was determined to be a RPW and therefore it is a Waters of the U.S. and regulated under Section 404.

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

Feature Name	Aquatic Feature Type	Coordinates	Area (Acres)
EW01	Palustrine Emergent Wetland	30.5950435, -97.2917121	0.04
EW02	Palustrine Emergent Wetland	30.5960669, -97.2891770	0.17

**EW01** was not identified by NHD or NWI maps. EW01 is located within the 100-year floodplain. No standing water was present in the feature at the time of the field investigation. EW01 covered approximately 0.04 acres. The feature appeared to be excavated and impounded in the path of SB1B to collect and hold flow. Overflow from EW01 continues along SB1B. EW01 has a continuous surface connection to SB1B. EW01 is connected to SB1B and considered to

have a continuous surface connection with SB1C, an RPW stream; therefore, EW01 is continued to be a Water of the U.S. and regulated under the Section 404 regime.

**EW02** is identified by NHD as a lake feature and by NWI as a freshwater pond (PUBHh). The feature is located within the 100-year floodplain. No standing water was present in the feature at the time of the field investigation. EW02 covered approximately 0.17 acres. EW02 is an impoundment of SB1C. Overflow from EW02 continues into SB1C. EW02 has a continuous surface connection to SB1C. See WDP04 for a description of hydrophytic vegetation, hydric soils, and wetland hydrology indicators observed within the feature. EW02 has a continuous surface connection with SB1C, an RPW stream and Water of the U.S. Therefore, EW02 is a Water of the United States and regulated under the Section 404 permitting system.

## 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*
- 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*

---

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

- 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	Aquatic Feature Type	Coordinates	Area (Acres)	Linear Feet
SB1A	Ephemeral Stream, non-RPW	30.593726, -97.295166	0.11	1688.44
SB1B	Ephemeral Stream, non-RPW	30.594932, -97.291947	0.06	994.94
T1	Ephemeral Stream, non-RPW	30.594409, -97.293479	0.007	171.35
T2	Ephemeral Stream, non-RPW	30.595627, -97.290952	0.006	140.29
EW03	Palustrine Emergent Wetland	30.5964003, -97.2875424	0.27	N/A

**SB1A** is a first-order reach. Within the project area, SB1A covers approximately 1,688 linear feet and 0.11 acres. The downstream extent of SB1A is the confluence with the relict channel of the unnamed tributary, Tributary 1 (T1). Field investigations found that SB1A has a discontinuous OHWM that was typically two feet wide. Isolated pools were present during the delineation; however, no flow was observed. Pools were presumably the result of recent rain. NHD indicated that the headwaters of Spring Branch is approximately 820 feet west of the project area’s western terminus. For the RPW Assessment, SB1A was assessed from the headwaters of Spring Branch to the confluence with T1 (2,508 linear feet). SB1A was determined to be a non-RPW stream and is therefore not a regulated stream under the 404 permitting process.

**SB1B** is a second-order reach that begins at the confluence of Spring Branch and T1. SB1B covers approximately 995 linear feet and 0.06 acres. The

CESWF-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWF-2025-00217

downstream extent of SB1B is the confluence with T2. SB1B is completely contained within the project area. The RPW Assessment considered the entire extent. SB1B was determined to be a non-RPW stream, non-Water of the U.S. and is therefore not a regulated stream under Section 404 permitting process.

**T1** is a first-order reach identified during field investigations. T1 covers approximately 171 linear feet and 0.007 acres. The downstream extent of T1 is its confluence with Spring Branch. T1 is completely contained within the project area. Field investigations found that T1 had well-defined bed and banks and an OHWM. Typical OHWM widths were approximately two feet. No water was present in T1 during the delineation. The OHWM ended within the project area, and T1 is presumed to be the relict of a previous course of the unnamed tributary indicated by NHD and NWI. Stream T1 was determined to be a non-RPW, non-Water of the U.S. and is not regulated under Section 404 permitting process.

**T2** is a first-order reach indicated by aerial imagery but not identified during field investigations. The flow path of T2 and its confluence with Spring Branch were inferred from topographic data. Within the project area, this inferred flow path covers approximately 140 linear feet and 0.006 acres. Stream T2 was determined to be a non-RPW, non-Water of the U.S. and is not regulated under Section 404 permitting process.

**EW03** is identified by NHD as lake features and by NWI as freshwater ponds (PUBHh) (USGS 2024, USFWS 2024). The feature is not located within the 100-year floodplain (FEMA 2019). During field investigations, the feature did not contain standing water. EW03 covered approximately 0.27 acres. EW03 is an isolated open water feature that is not abutting or adjacent to a nearby stream. EW03 does not have a continuous surface connection to any reach of Spring Branch. EW03 does not have a continuous surface connection to an RPW and is therefore not a regulated feature or 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's field visit occurred in January 2025, USACE office evaluation was conducted on August 14, 2025.
  - b. Google Earth, aerials and topography and TNW layers










CESWF-RD

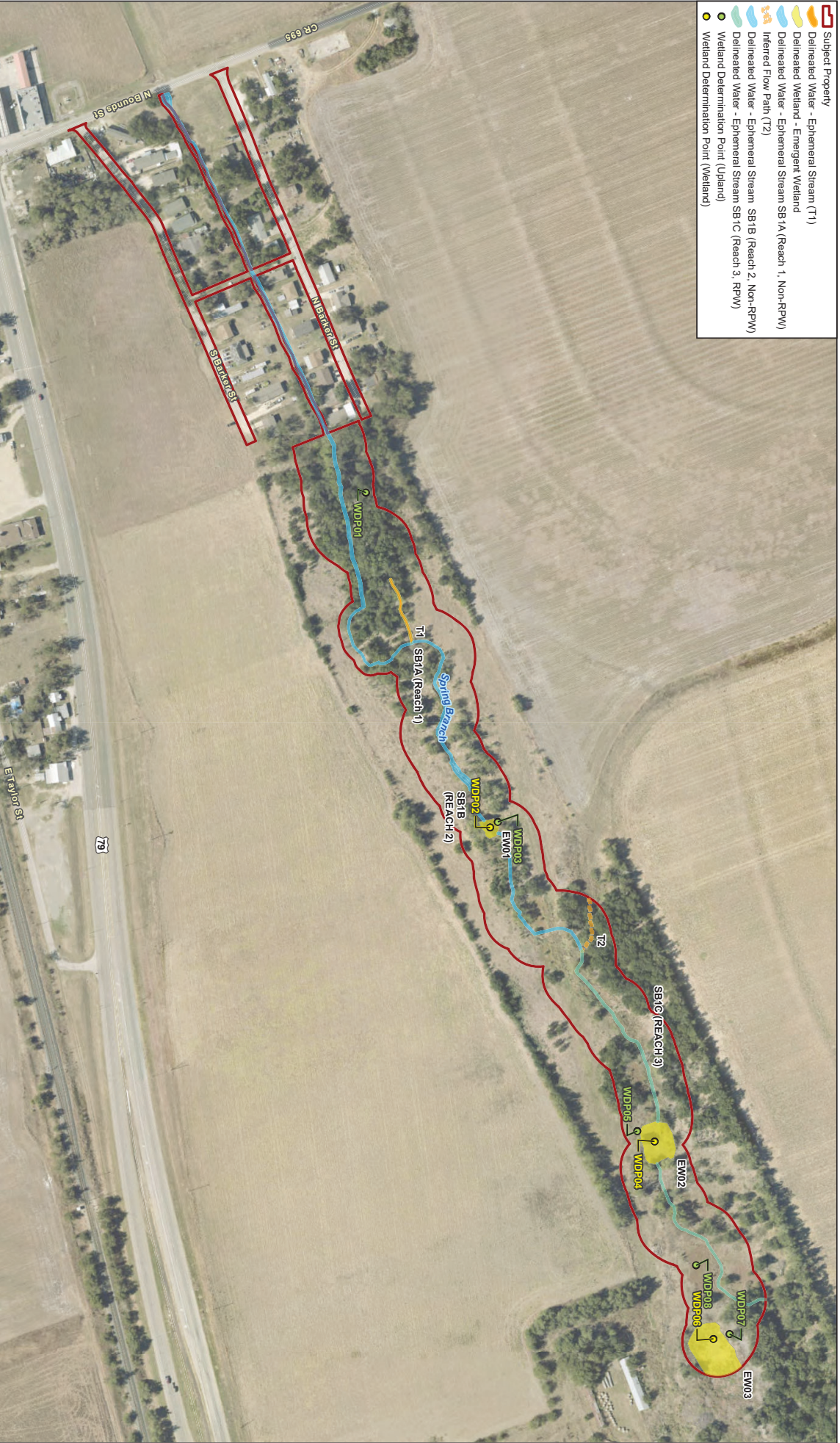
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWF-2025-00217

c. National Regulatory Mapper, layers for topography, USFWS-NWI, NHD, HUC and FEMA-FIRM; aeriels and Hill Shade

9. OTHER SUPPORTING INFORMATION. North Barker Street Delineation Report, dated July 2025, prepared by Stantec consulting Services, Inc.

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.


-  Subject Property
-  Delineated Water - Ephemeral Stream (T1)
-  Delineated Wetland - Ephemeral Wetland
-  Delineated Water - Ephemeral Stream SB1A (Reach 1, Non-RPW)
-  Inferred Flow Path (T2)
-  Delineated Water - Ephemeral Stream SB1B (Reach 2, Non-RPW)
-  Delineated Water - Ephemeral Stream SB1C (Reach 3, RPW)
-  Wetland Determination Point (Upland)
-  Wetland Determination Point (Wetland)




**Figure 1**  
**Delineated Water Features**

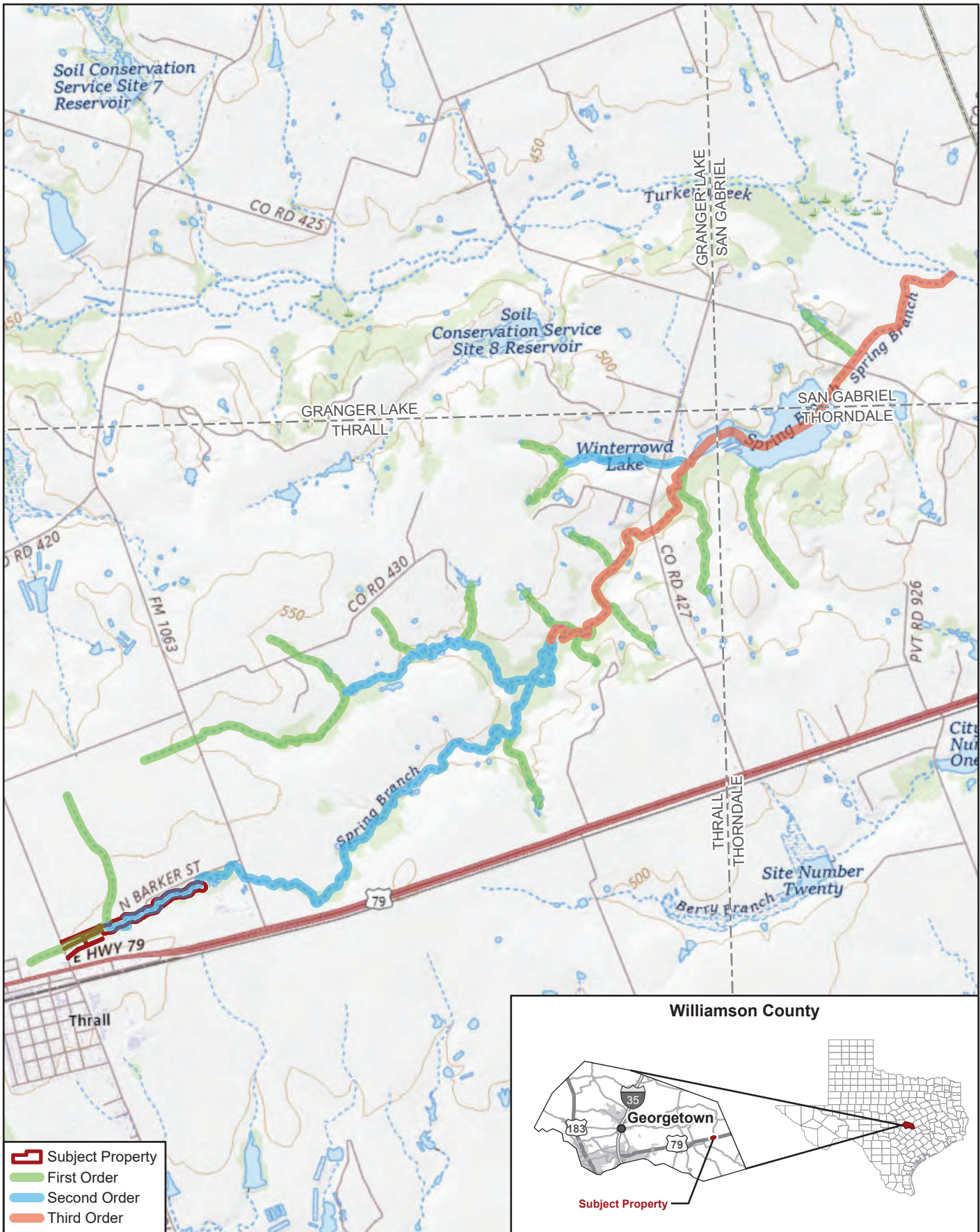
North Barks Street  
 U:\25323830\07293\_04\049\_04\07293\_04\07293\_04.apx

Data Sources: Shantec (2025), JMT (2025), FEMA-NPL (2024)  
 Aerial Source: Williamson County, TX (2024)

 0 200 Feet  
 0 60 Meters

 Stantec

1/15/2025 1:51  
 Date: 7/23/2025



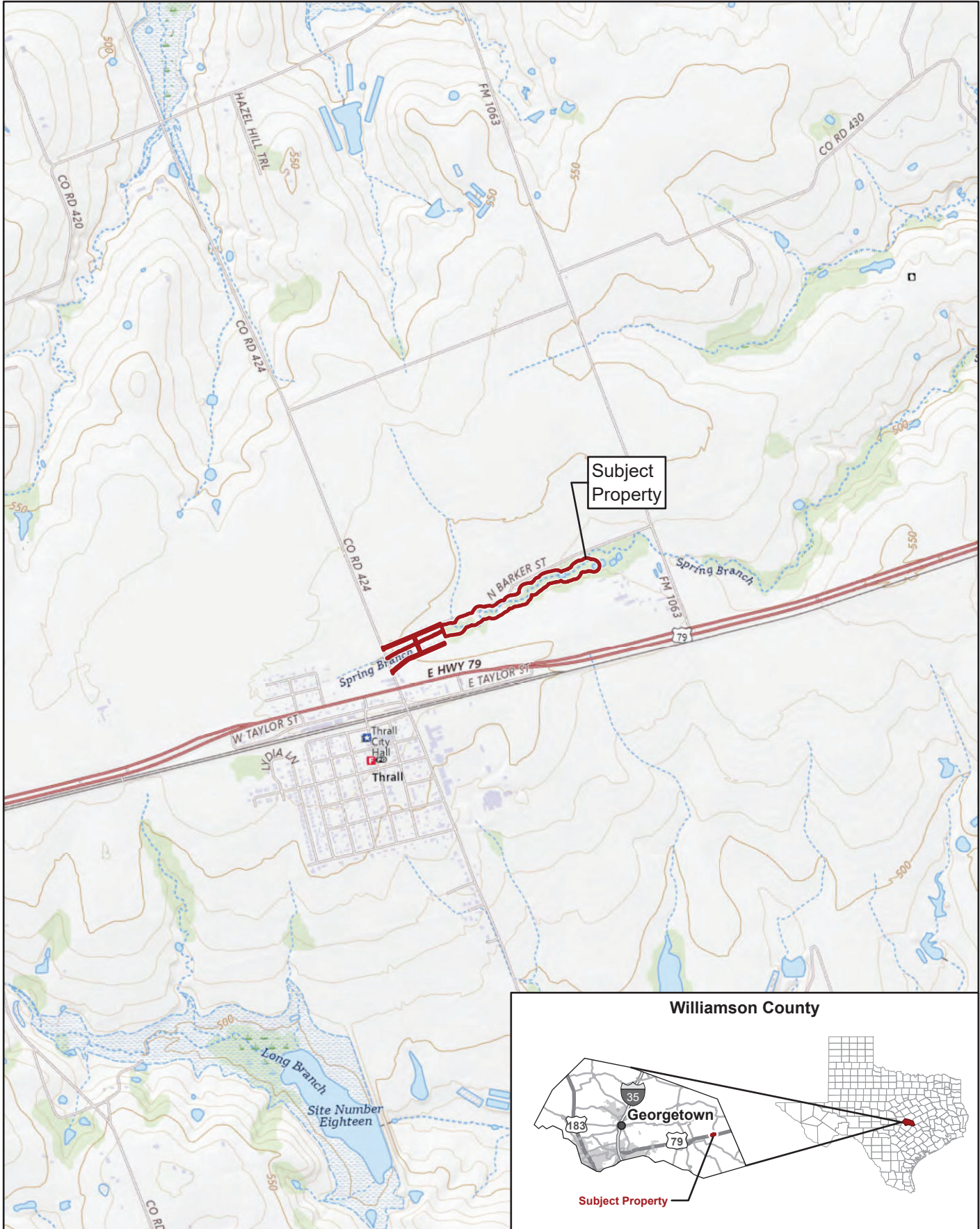
**Figure 2.**  
**Stream Order (Topographic Base)**

North Barker Street

Data Source: JMT (2025), Stantec (2025)  
 Topographic Source: USGS (2024) 7.5' Quadrangle:

**Stantec**

0 3,000 Feet 1 in = 3,000 feet  
 0 800 Meters Scale: 1:36,000  
 Date: 6/9/2025



**Figure 2.**  
**Subject Property (Topographic Base)**

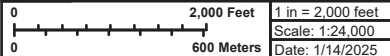
North Barker Street

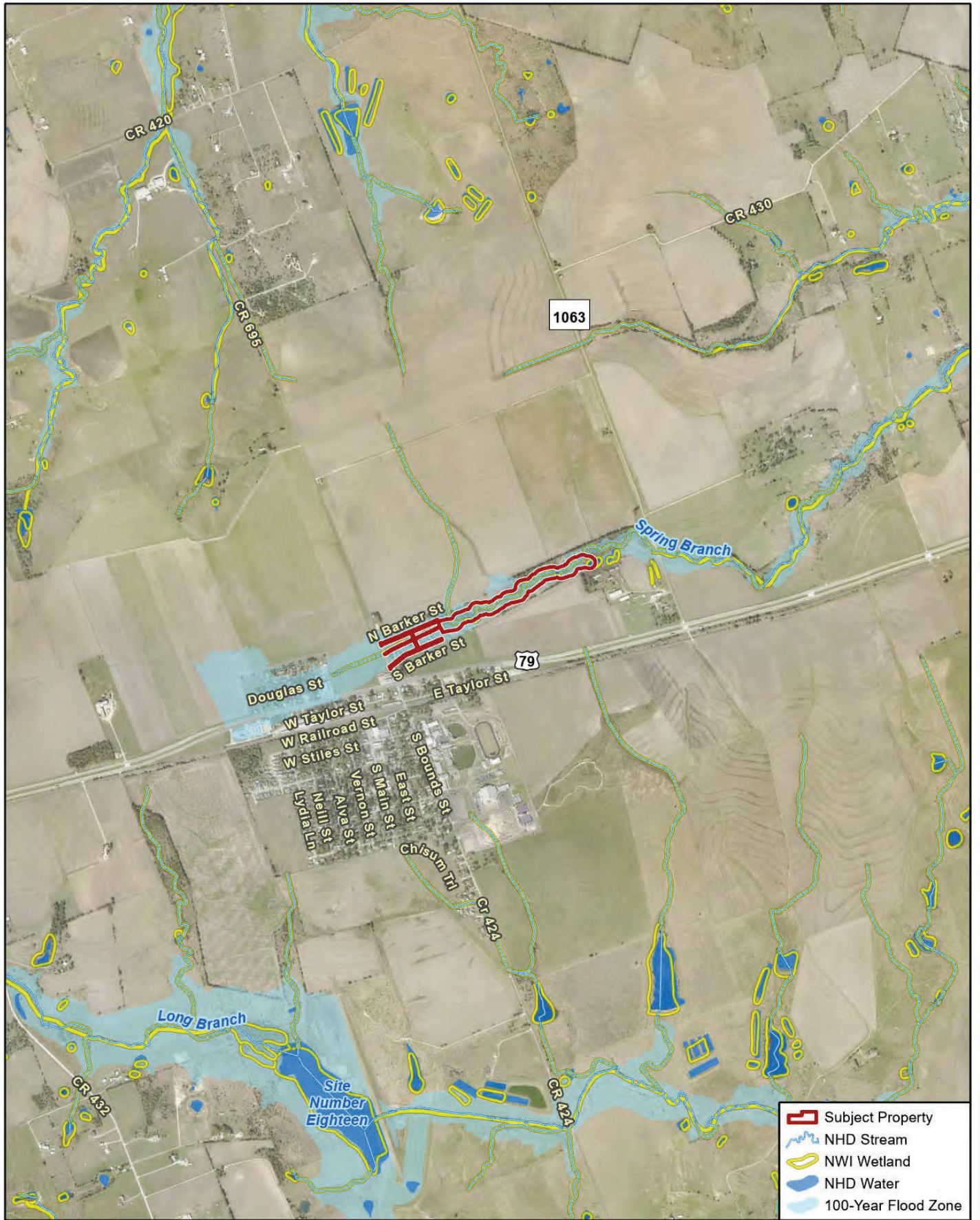
 Subject Property



 **Stantec**

Topographic Source: USGS (2024)  
 USGS 7.5' Quadrangle: Thrall



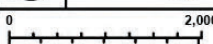




-  Subject Property
-  NHD Stream
-  NWI Wetland
-  NHD Water
-  100-Year Flood Zone

**Figure 4.**  
**Water Resources**

North Barker Street

		
	0 2,000 Feet 	1 in = 2,000 feet Scale: 1:24,000 Date: 1/16/2025

Data Sources: NHD (2023),  
NWI (2024), FEMA NFHL (2024)  
Aerial Source: Williamson County TX (2023)

Path: U:\2353\235301677\03\_data\gis\in\_barker\_st\_natural\_resources.aprx - n\_barker\_st\_constraints\_figure\_4\_water\_resources\_20250114.sgl