



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

SWFCE-RD

11 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),¹ SWF-2025-00406.

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.

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).

Aquatic Features				
Feature #	Name	Type	Jurisdictional	Notes
001	Unnamed Open Waterbody	Pond	No	No CSC to TNW or other aquatic feature
002	Unnamed Open Waterbody	Pond	No	No CSC to TNW or other aquatic feature

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 survey area is approximately 17.55 acres in size in Medina County, Texas. Latitude: 29.457754; Longitude: -98.823878. The survey area is a roadway corridor along CR 381 through primarily undeveloped land. The area intersects with the Medio Creek Watershed and the Lower San Geronimo Creek watershed. Topography on site is gently sloping from south to north before flattening in the northern portion (elevations range from 1050 to 960 feet above mean sea level). According to the FEMA FIRM maps, most of the survey area is outside of the 100-year floodplain, however, the northern end of the project area is within the 100 year floodplain of San Geronimo Creek. USFWS NWI map illustrated the presence of two water features a riverine feature (intermittent, streambed, seasonally flooded stream (R4SBC)) and pond (palustrine, unconsolidated bottom, semi-permanently flooded, diked/impound pond (PUBFh). The field assessments found the project site, and the survey area as a whole, support upland habitats (non-wetlands); only two water bodies were found with no evidence of having continuous surface

[connection to any traditionally navigable water \(TNW\). Surveys were conducted in the dry season during an extreme drought cycle and during below average hydrologic/precipitation conditions per the USACE APT. Local conditions within the Survey Area were dry.](#)

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A](#)
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [N/A](#)
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 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](#)

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.

- c. Other Waters (a)(3): [N/A](#)
- d. Impoundments (a)(4): [N/A](#)
- e. Tributaries (a)(5): [N/A](#)
- f. The territorial seas (a)(6): [N/A](#)
- g. Adjacent wetlands (a)(7): [N/A](#)

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 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

⁷ 51 FR 41217, November 13, 1986.

resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC.

Aquatic Features					
Feature #	Name	Type	Latitude, Longitude	Acres	Notes
001	Unnamed Open Waterbody	Pond – artificially flooded	29.457754, -98.823878	0.0177	Non-WOUS, no continuous connection to a TNW
002	Unnamed Open Waterbody	Pond – temporarily flooded	29.448408, -98.815469	0.0016	Non-WOUS, no continuous connection to a TNW

001 - is an artificially flooded pond that maintains relatively permanent water (RPW). This feature was not observed to have a continuous surface connection to any traditionally navigable water (TNW).

002 - is a temporarily flooded pond that does not maintain RPW. This feature was not observed to have a continuous surface connection to any TNW.

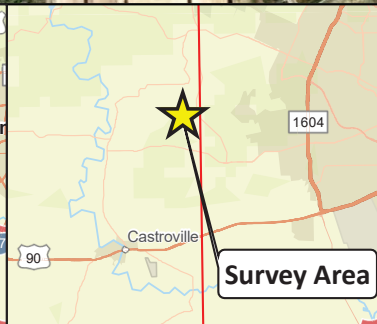
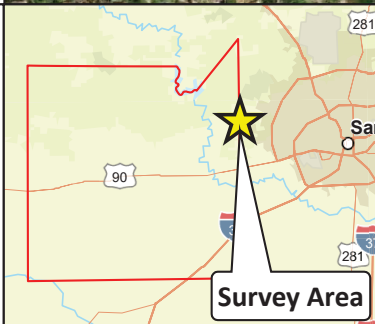
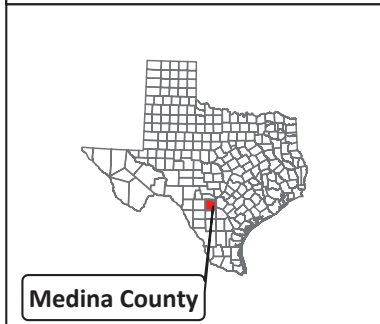
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). [N/A](#)
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 May 13, 2025; USACE internal office review occurred on September 11, 2025.](#)
 - b. [Google Earth aeriels and topographic layers](#)
 - c. [National Regulatory Mapper data layers for NWI, FEMA, NHD, HUC and topography](#)

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10. OTHER SUPPORTING INFORMATION. [Wetland Delineation Report, County Road \(CR\) 381-Microsoft Data Center Access Corrido Improvements, SAT93-99 Wurzbach Greenfield Site, Median County, Texas, project No: ASF25-035-01. Prepared by Raba Kistner.](#)

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.



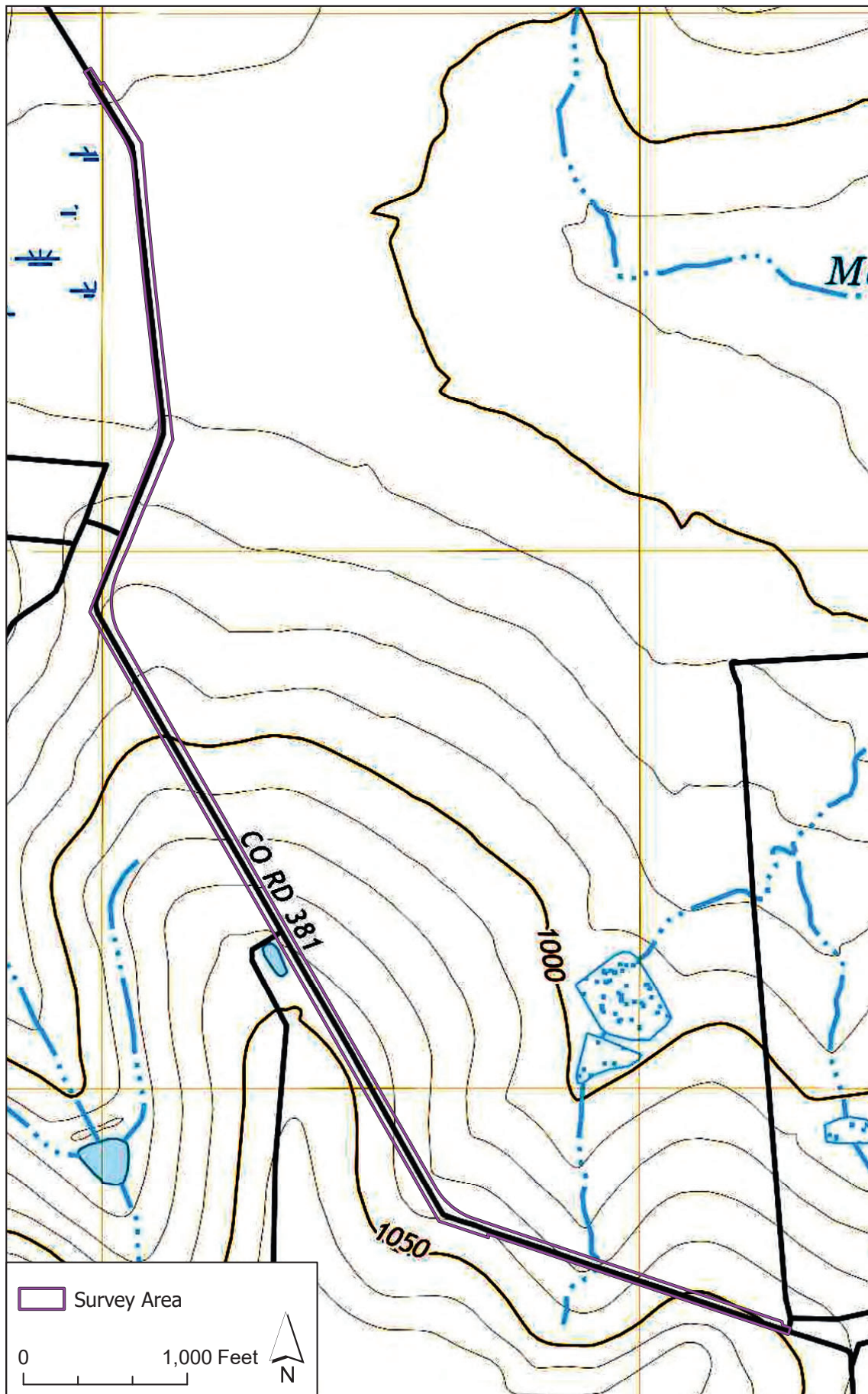
SOURCE: World Street Map: Medina County 911 ECD, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, NPS, USFWS
World Street Map: Medina County 911 ECD, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, SafeGraph, FAO,

PROJECT LOCATION

Country Road 381 -
Microsoft Data Center Access Corridor Improvements
Medina County, Texas
RKI Project No. ASF25-035-01

FIGURE

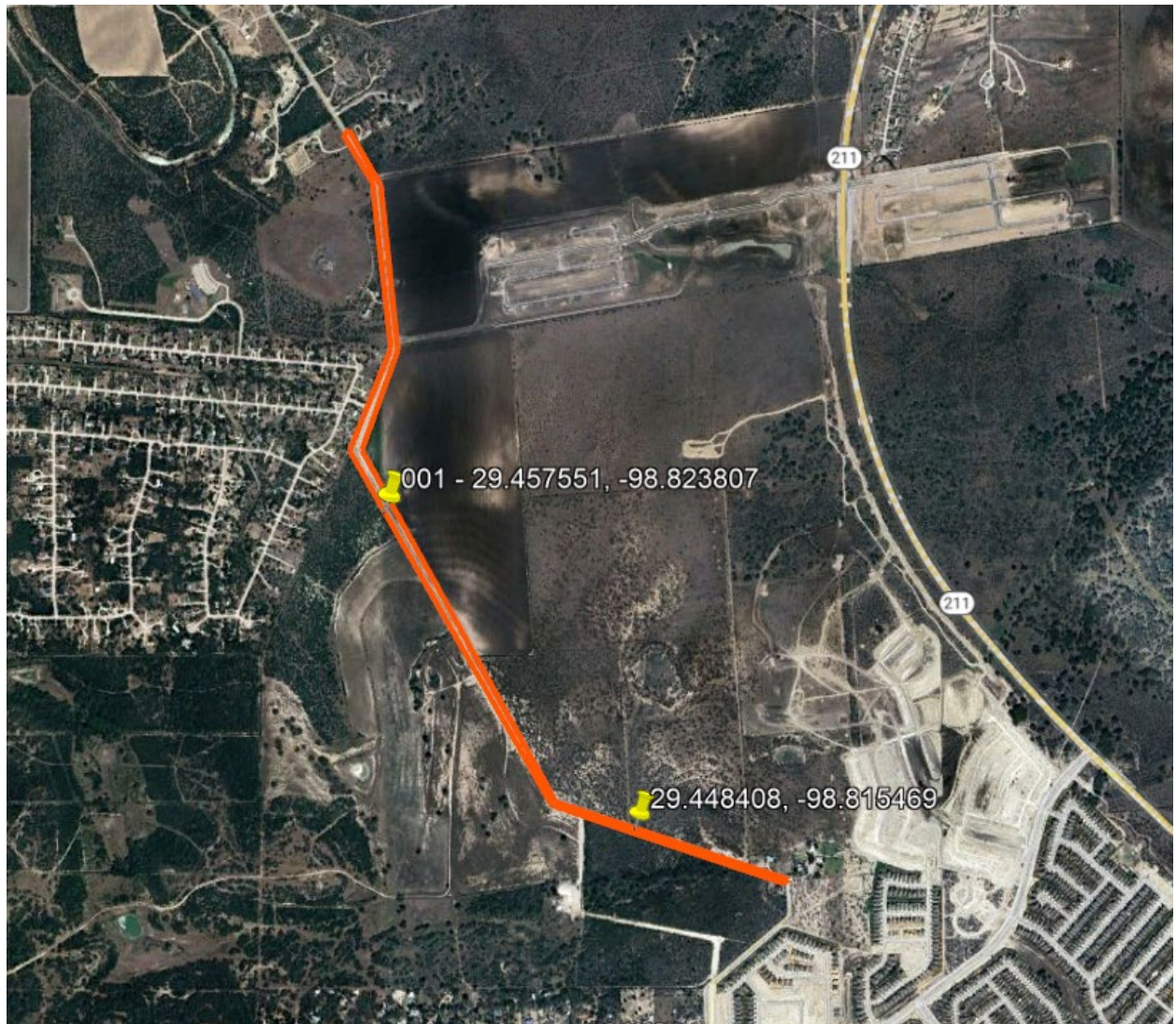
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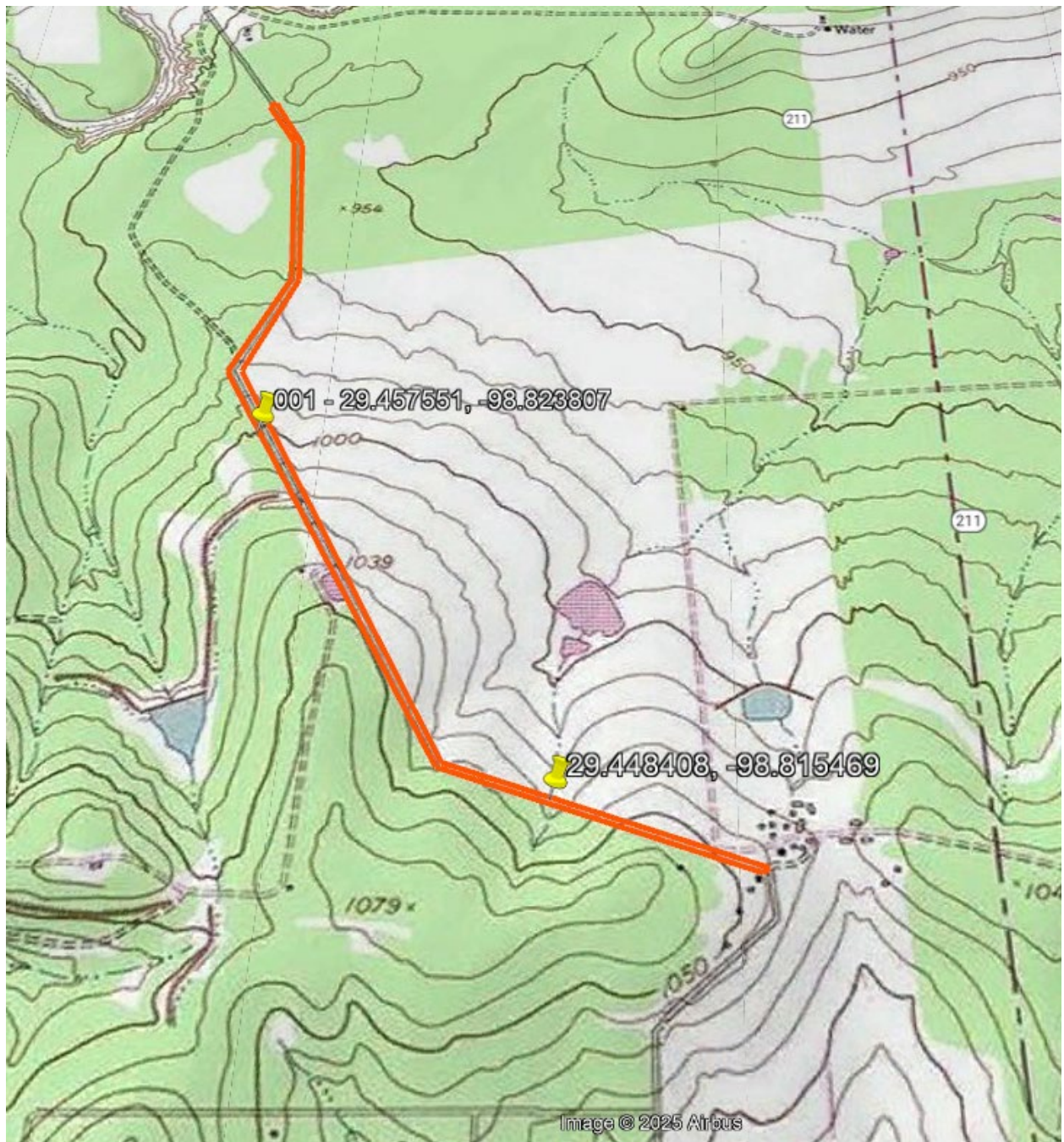


SOURCE:
USGS 7.5 Minute Topographic Map: La Coste NE TX, Quadrangle (2022)



SOURCE: 1) Aerial basemap from ESRI







Texas Regulatory Viewer

IPaC DigitalGlobe USGS Stream Stats Marine Cadastre

