



**US Army Corps
of Engineers** ®
Fort Worth District

Public Notice

Applicant: Mustang Creek Mitigation Holdings, LLC

Project No.: SWF-2020-00419

Date: March 2, 2022

Purpose

The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

Name: Mr. Brent Jasper

Phone Number: (817) 886-1733

PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS FORT WORTH DISTRICT

SUBJECT: This Public Notice is being issued to provide interested parties an opportunity to comment on a proposal by Mustang Creek Mitigation Holdings, LLC, to establish the Mustang Creek Mitigation Bank (MCMB or Bank), a proposed stream mitigation bank that would be located southeast of Cresson in Johnson County, Texas.

APPLICANT: Mustang Creek Mitigation Holdings, LLC
Attn: Mrs. Tamara Wood
1329 N. University Drive
Building A, Suite 1
Nacogdoches, TX 75961

APPLICATION NUMBER: SWF-2020-00419

DATE ISSUED: March 2, 2022

LOCATION: The proposed Bank is located along Mustang Creek, in northwest Johnson County, Texas, approximately two miles east of Cresson along Farm-to-Market 917. The approximate center of the proposed MCMB is located at latitude 32.525248 north and longitude -97.559591 west on the *Cresson, Texas* 7.5-minute U.S. Geological Survey quadrangle map. The site is located within the Lower West Fork Trinity watershed (8-digit HUC 12030102) and the Cross Timber U.S. Environmental Protection Agency (EPA) Level III Ecoregion (Griffin, et al. 2003). The Bank is proposed to encompass approximately 240 acres. Maps of the proposed MCMB are provided as Figure 1-3.

PROJECT DESCRIPTION: The Sponsor is proposing the restoration, creation, enhancement, and permanent protection of approximately 30,000 linear feet of intermittent streams and associated riparian habitats within the MCMB. The bank site is located within the Lower West Fork Trinity watershed of the Trinity River basin. The goal of the Sponsor in developing MCMB is to provide high quality restoration/creation/enhancement of stream ecosystems as compensation for adverse impacts to waters of the United States (WOTUS) occurring within the Bank's proposed Service Area. It is anticipated that ecological lift associated would generate In-Channel and Riparian Buffer Credits.

The purpose of the MCMB is to provide potential permittees with mitigation credits needed to compensate for unavoidable impacts to WOTUS within the proposed service areas in accordance with the Mitigation Banking Guidelines (CESWF-10-MIT, dated June 16, 2011, CESWF-12-MITB, dated July 5 2016, CESWF-18-MITB, dated January 24, 2019) and the Stream Mitigation Method (SWF-2011-00078, dated October 2, 2013).

The proposed service area includes like-kind habitat and out-of-kind habitat types wholly encompassed by the U.S. Army Corps of Engineers (USACE), Fort Worth District and the Upper Trinity Water Basin (HUC 120301). The Sponsor is proposing primary, secondary, and tertiary service areas, all within the Upper Trinity River basin (Figure 8). The proposed primary service area includes the Lower West Fork Trinity HUC (12030102). Lower West Fork Trinity covers portions of both the Cross Timber and Texas Blackland Prairie Ecoregions. It includes portions of Johnson, Parker, Tarrant, Dallas, and Ellis counties. The proposed secondary service area includes the Upper West Fork Trinity HUC (12030101), Denton HUC (12030104), Elm Fork Trinity HUC (12030103), and Chambers HUC (12030109) within the Cross Timbers Ecoregion. This includes portions of Johnson, Tarrant, Parker, Denton, Wise, Jack, Montague, Cooke, and Grayson counties. The proposed tertiary service area includes the Upper West Fork Trinity HUC (12030101), Elm Fork Trinity HUC (12030103), Upper Trinity HUC (12030105), Denton HUC (12030104), and Chambers HUC (12030109) within the Texas Blackland Prairie and Central Great Plains Ecoregions. This includes portions of Jack, Young, Archer, Clay, Montague, Grayson, Collin, Denton, Dallas, Tarrant, Kaufman, Ellis, Johnson, Hill, and Navarro counties.

The MCMB property is currently used as a cattle ranch and has been historically managed for aquatic features and cattle. There are approximately 20 concrete or earthen dams and 30 acres of impoundments along the intermittent streams, including Mustang Creek and five unnamed tributaries. Approximately less than one acre of the Bank is mapped as wetland by the United States Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) map. The Natural Resource Conservation Service (NRCS) soil survey for Johnson County delineates 16 mapping units across the MCMB. These consist primarily of well-drained clay loam and silty clay complexes with no hydric soil designation. Sixteen (16) soil types are found within the proposed Bank (Figure 4), the most prominent soils include Slidell Clay (1 to 3% slopes), Sanger Clay (1 to 3% slopes), Frio silty clay (0 to 1% slopes, occasionally flooded). The proposed MCMB project would provide approximately 30,000 linear feet of intermittent stream restoration/creation with the associated riparian buffers (Figures 5-7). Bank streams and associated riparian buffers would be protected in perpetuity through a conservation easement administered by a 501(c)(3) land trust. The goal of MCMB is to create streams similar to an appropriate reference stream.

A mitigation banking instrument (MBI) would be developed in accordance with the Compensatory Mitigation for Losses of Aquatic Resources (CMLR), (Federal Register, Thursday, April 10, 2008, Vol. 73, No. 70, pp. 19594-19705). The MBI would detail the legal and physical characteristics of the Bank and how the Bank would be established and operated. Subjects addressed in detail in the MBI would include development of the site, service area, credit determination, short and long-term financial assurances, scope of agreement, purpose, and goals of the Bank, baseline conditions, performance standards for enhancement activities, accounting procedures, monitoring and reporting, long-term maintenance and protection, and transfer of bank ownership or sponsorship.

The USACE, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service (USFWS), Texas Commission on Environmental Quality, Railroad Commission of Texas, and Texas Parks and Wildlife Department comprise the Interagency Review Team (IRT), and would be involved in developing the MBI and may be signatories to the final document.

Implementation of the proposed mitigation bank would require Department of the Army Authorization under Section 404 of the Clean Water Act. Based on preliminary evaluation by the USACE, it appears that the proposed Bank may be authorized by Nationwide Permit 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the USFWS's latest published version of the endangered and threatened species to determine if any may occur in the project area. The proposed project area is in a county where the Whooping Crane (*Grus americana*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris cantus rufa*), and the Golden-cheeked Warbler (*Dendrocia chrysoparia*) are known to occur. These species are either endangered, threatened or otherwise protected. Our initial review indicated that the proposed work would have no effects on any federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: In accordance with 36CFR800 and 33CFR325 (Appendix C), the District Engineer has consulted the latest version of the National Register of Historic Places. The proposed Project area has never been surveyed for the presence of historic or prehistoric cultural resources. There are known archeological sites within the proposed Project that may be eligible for listing on the National Register of Historic Places. A survey of the permit area will be required to identify and assess known archeological sites and any cultural resources identified. The USACE will be coordinating with the Applicant and the Texas Historic Commission to ensure compliance with Section 106 of the National Historic Preservation Act.

FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons to allow the public an opportunity to comment on the bank proposal and to assist the USACE and other members of the IRT in developing the final MBI. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient details to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before April 4, 2022, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no

objections. Comments should be submitted to: U.S. Army Corps of Engineers, Fort Worth District, Regulatory Division, Permits Branch by emailing CESWF-Permits@usace.army.mil, and must include "Project Number SWF-2020-00419" in the email subject line. Requests for additional information should be submitted to: Mr. Brent Jasper by emailing brent.j.jasper@usace.army.mil, and must include "Project Number SWF-2020-00419" in the email subject line. Telephone inquiries should be directed to (817) 886-1733. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS

Figure 1 - Location
Mustang Creek Mitigation Bank

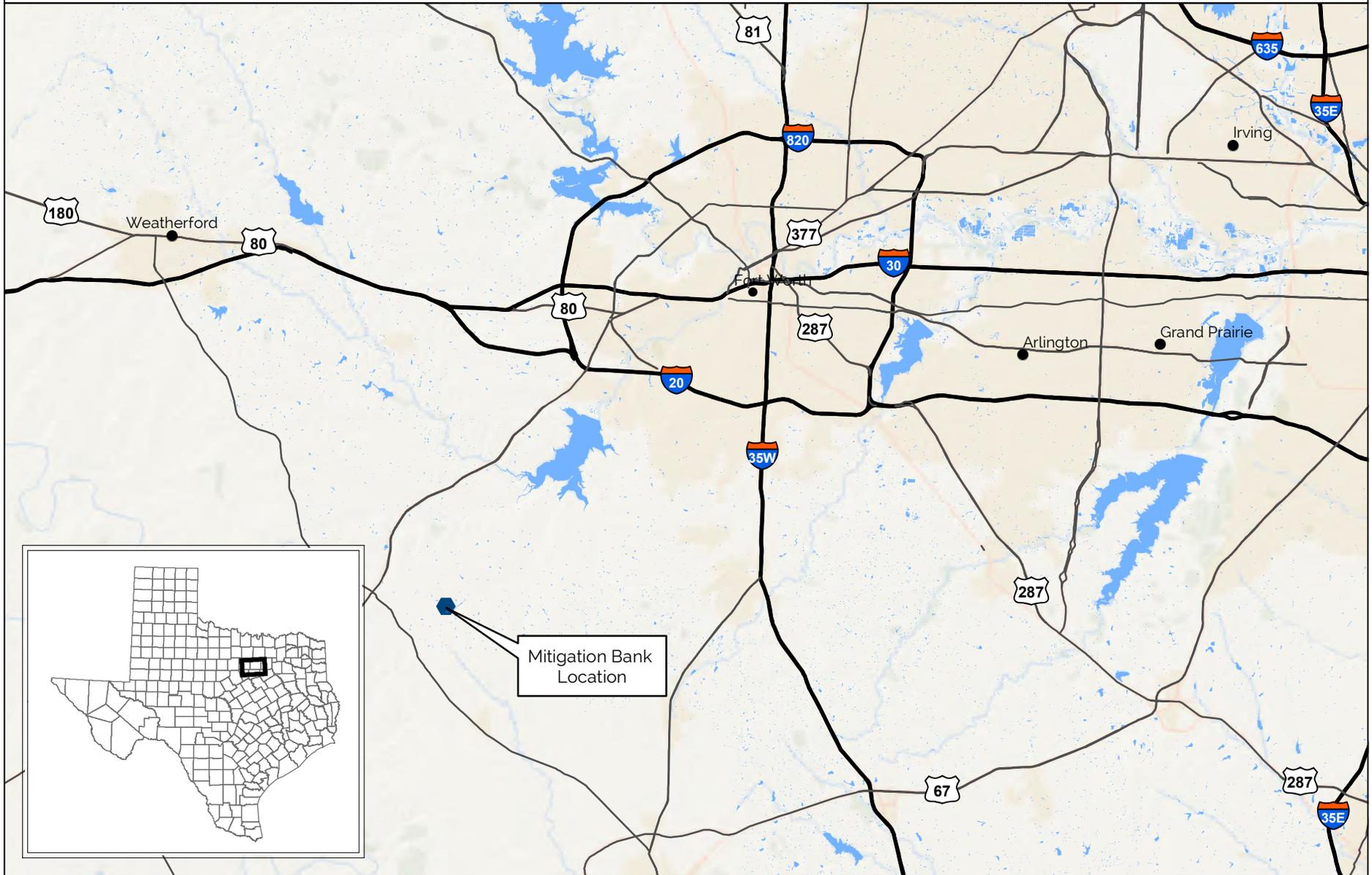
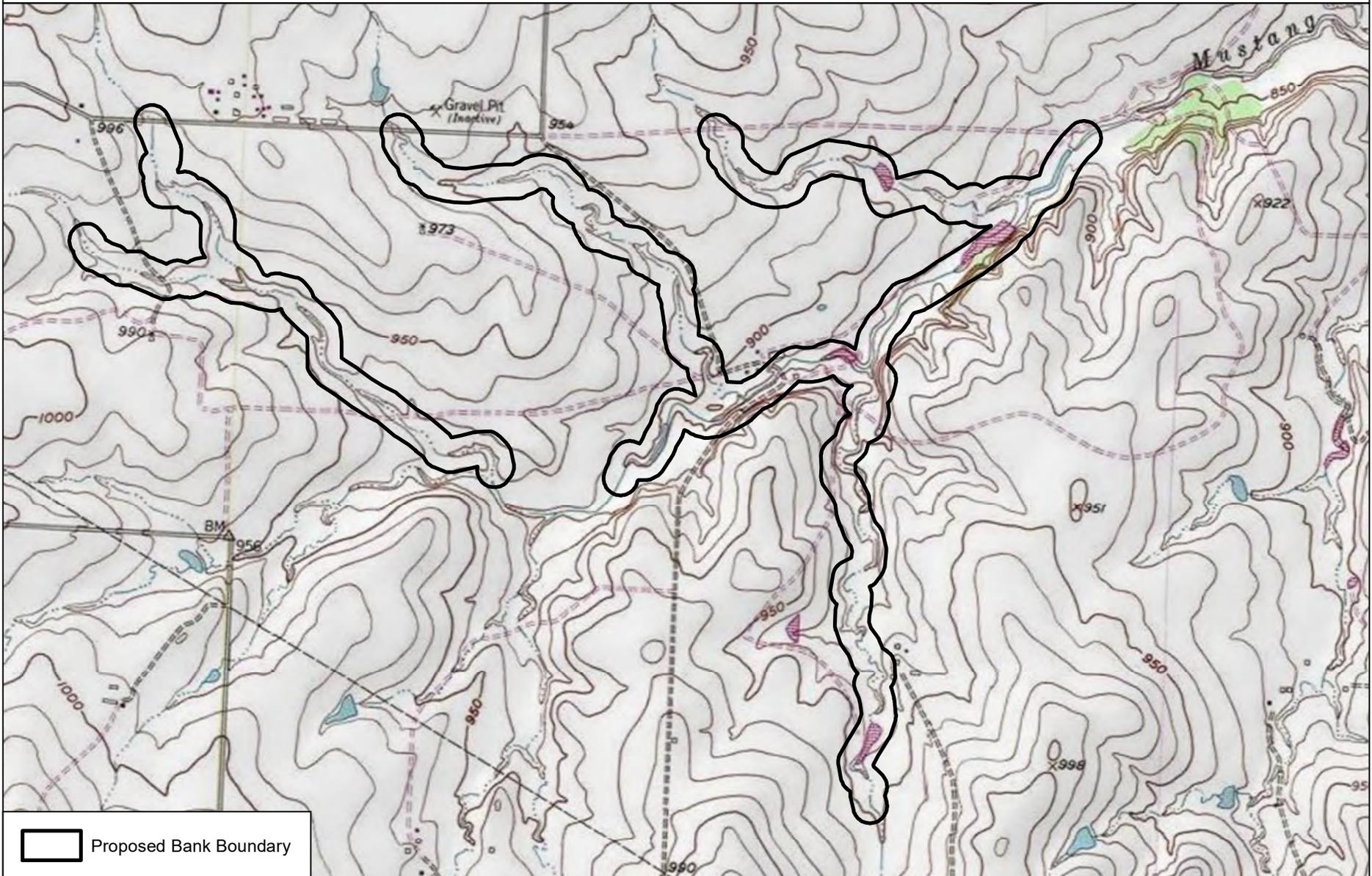


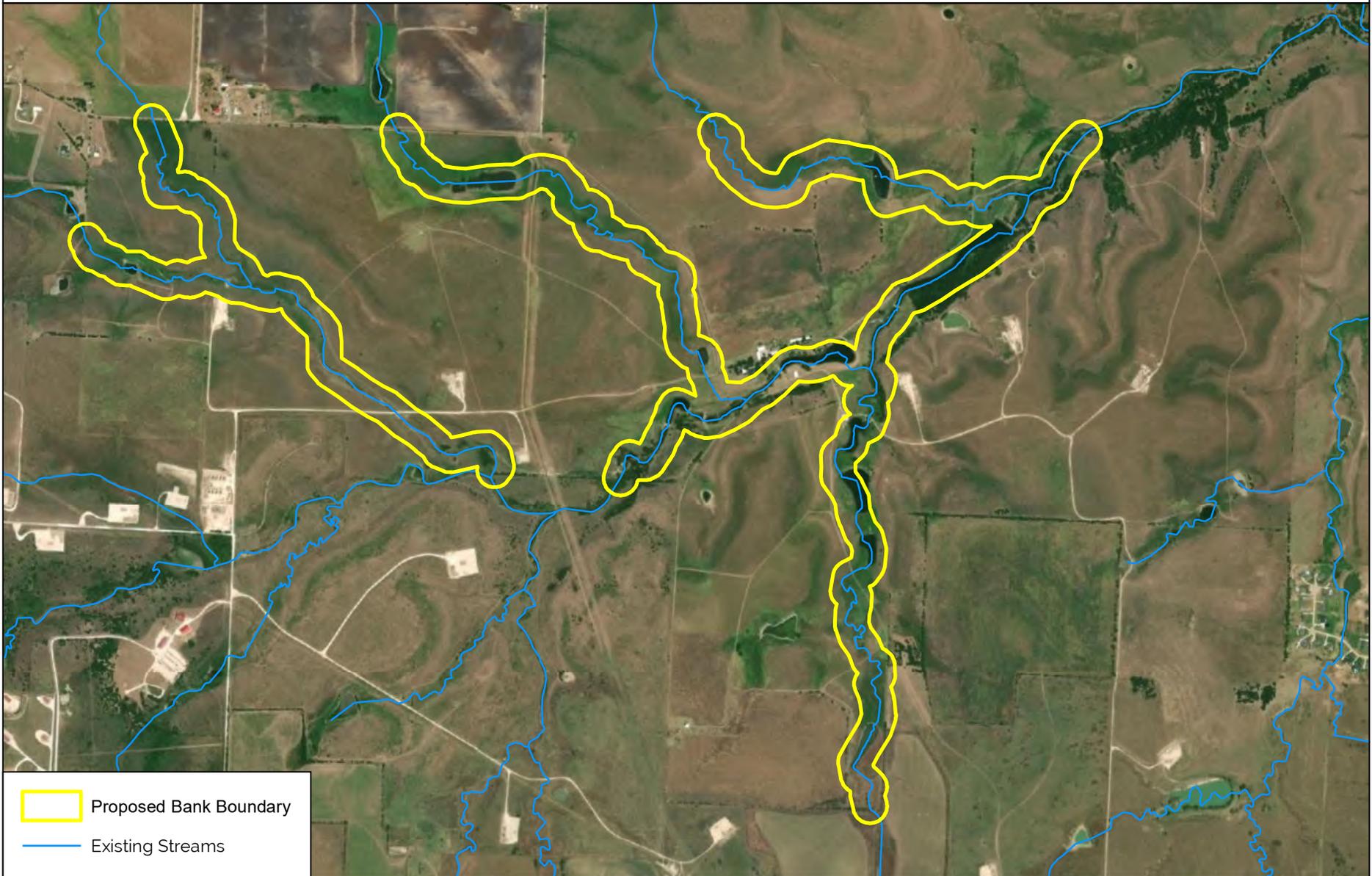
Figure 2 - Topography
Mustang Creek Mitigation Bank



 Proposed Bank Boundary



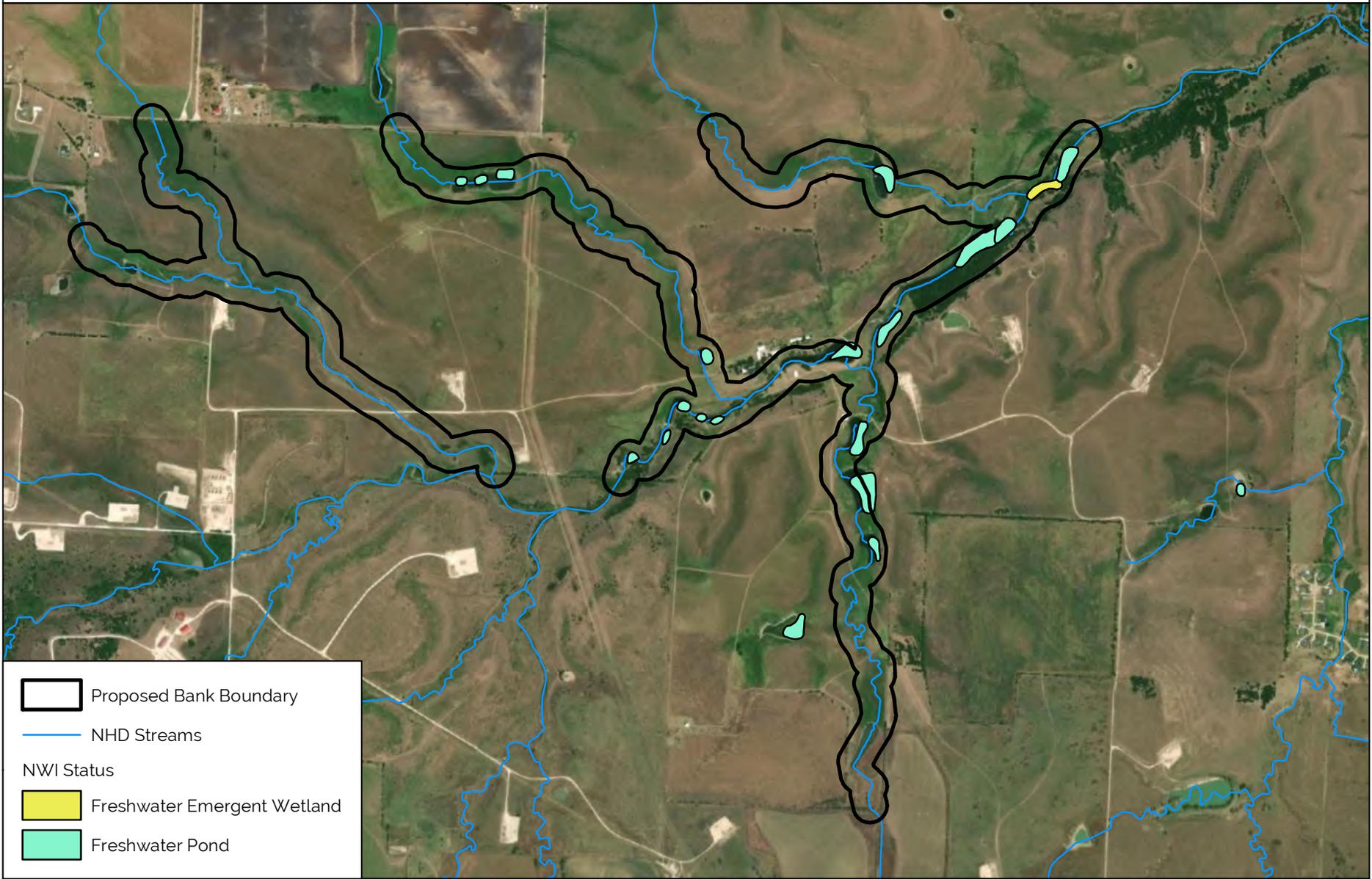
Figure 3 - 2020 Aerial Imagery
Mustang Creek Mitigation Bank



 Proposed Bank Boundary
 Existing Streams



Figure 5 - National Wetlands Inventory
Mustang Creek Mitigation Bank



Proposed Bank Boundary

NHD Streams

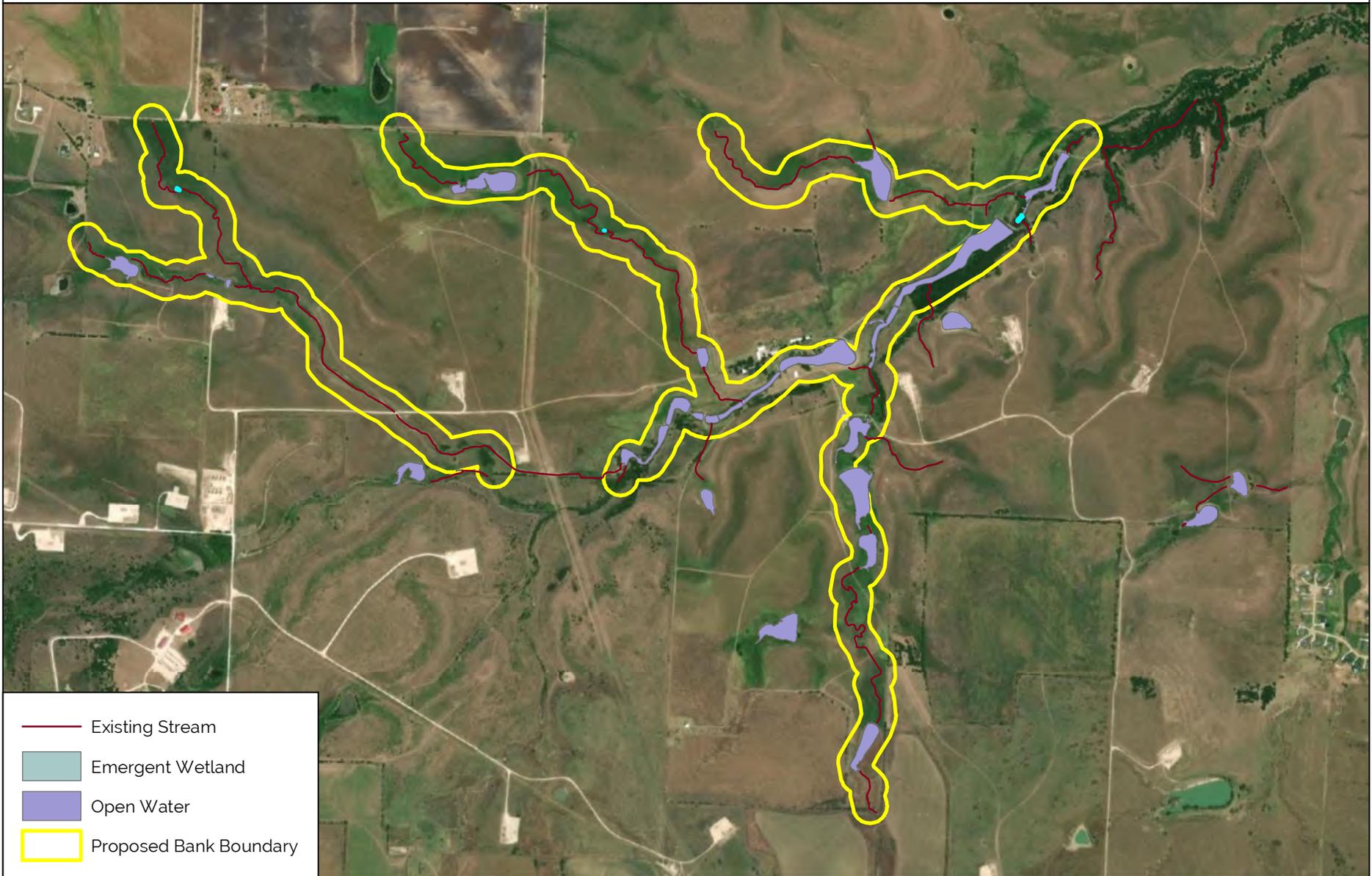
NWI Status

Freshwater Emergent Wetland

Freshwater Pond



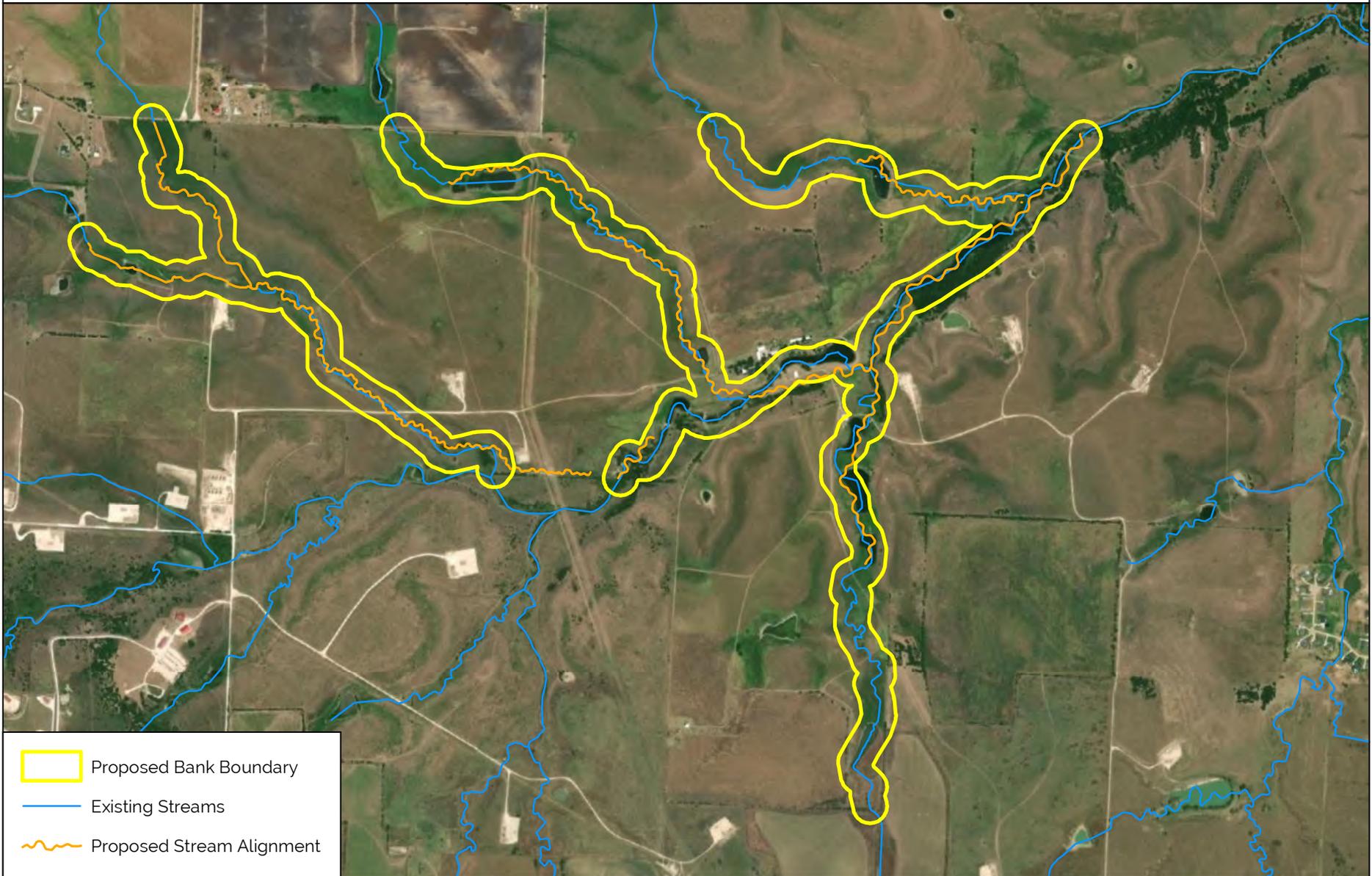
Figure 6 - Current Conditions
Mustang Creek Mitigation Bank



- Existing Stream
- Emergent Wetland
- Open Water
- Proposed Bank Boundary



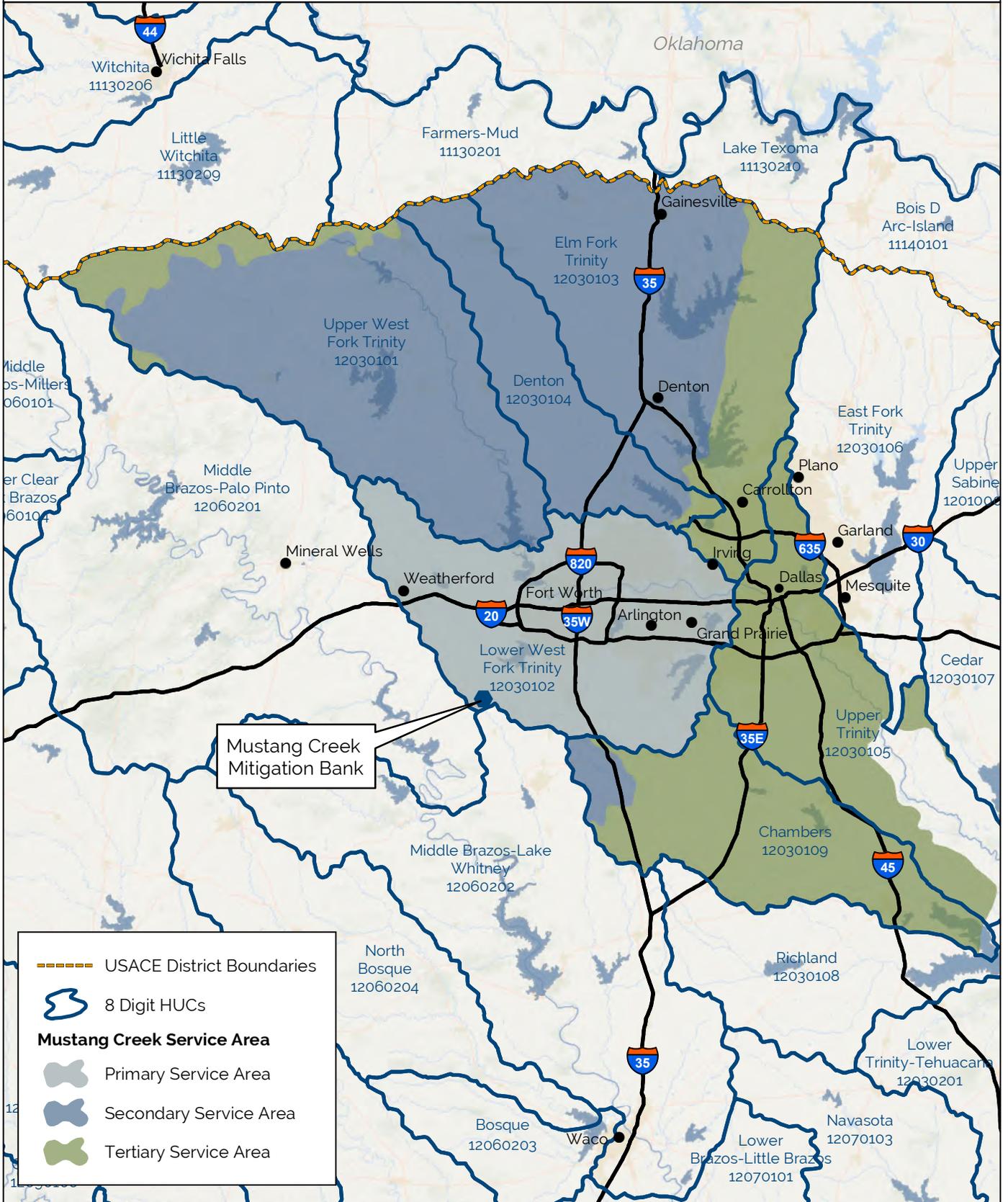
Figure 7 - Proposed Stream Alignments
Mustang Creek Mitigation Bank



-  Proposed Bank Boundary
-  Existing Streams
-  Proposed Stream Alignment



Figure 8 - Service Area
Mustang Creek Mitigation Bank



- - - - - USACE District Boundaries
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Mustang Creek Service Area
 Primary Service Area
 Secondary Service Area
 Tertiary Service Area

