



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
5151 FLYNN PARKWAY, SUITE 306
CORPUS CHRISTI, TEXAS 78411-4318

CESWG-RDR

4 June 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 SWG-2023-00350 (MFR 1 of 1)²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

CESWG-RDR

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2023-00350

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. 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).

Table 1: Features and type within Review Area				
Feature Name	Latitude/ Longitude	Size (AC)	Feature Type	Jurisdiction
Wetland W-1	26.07648 N 97.40673 W	19.27	PEM Wetland with no surface connection to a RPW/TNW.	None
Wetland W-2	26.07778 N 97.41382 W	1.34	PEM Wetland with no surface connection to a RPW/TNW.	None
Pond P-1	26.07648 N 97.41222 W	1.51	Pond Feature excavated from uplands.	None
Feature Name	Latitude/ Longitude	Length (LF)	Feature Type	Jurisdiction
Irrigation Ditch	26.09330 N 97.41346 W	7,558	Elevated Irrigation ditch excavated from uplands.	None
Ditch 1	26.08543 N 97.42465 W	3,422	Relatively permanent drainage ditch with continuous flow to a TNW.	404
Ditch 2	26.08015 N 97.41785 W	6,838	Non-relatively permanent drainage ditch excavated from uplands.	None
Ditch 3	26.07938 N 97.41263 W	9,032	Relatively permanent drainage ditch with continuous flow to a TNW.	404
Ditch 4	26.08703 N 97.40549 W	4,585	Non-relatively permanent drainage ditch excavated from uplands.	None
Ditch 5	26.08703 N 97.40196 W	4,589	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 1	26.07911 N 97.41526 W	1,716	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 2	26.07747 N 97.41532 W	1,708	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 3	26.07571 N 97.41539 W	1,724	Non-relatively permanent drainage ditch excavated from uplands.	None

CESWG-RDR

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2023-00350

Lateral 4	26.07396 N 97.41540 W	1,716	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 5	26.07232 N 97.41550 W	1,749	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 6	26.07069 N 97.41550 W	1,749	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 7	26.08870 N 97.40800 W	2,271	Relatively permanent drainage ditch with continuous flow to a TNW.	404
Lateral 8	26.08653 N 97.40854 W	2,444	Relatively permanent drainage ditch with continuous flow to a TNW.	404
Lateral 9	26.09109 N 97.40368 W	1,159	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 10	26.08908 N 97.40372 W	1,147	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 11	26.08179 N 97.40375 W	1,181	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 12	26.08696 N 97.40028 W	1,104	Non-relatively permanent drainage ditch excavated from uplands.	None
Lateral 13	26.08484 N 97.40028 W	1,102	Non-relatively permanent drainage ditch excavated from uplands.	None

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)
- e. 12 March 2025 Memorandum to the Field Between the U.S. Department of Army, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency

Concerning the Proper Implementation of “Continuous Surface Connection”
Under the Definition of “Waters of the United States” Under the Clean Water Act.

3. REVIEW AREA. The approximate 1,600-acre site is located at the intersection of State Highway 100 and San Roman Road between Los Fresnos and Bayview, Cameron County, Texas.

LATITUDE/LONGITUDE (Decimal Degrees): Center,
Latitude: 26.078323° N; Longitude: 97.420105° W

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The drainage ditches that exhibit relatively permanent flow with the presence of an ordinary high water mark flow generally south from the review area an average of 8,000 linear feet to the Main Ditch Number 2, a relatively permanent water that flows an additional 6.07 miles east and south to San Martin Lake, a tidally influenced extension of the Laguna Madre, a Traditional Navigable Water.
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 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.

⁸ 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.

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
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): **Ditch 1, Ditch 3, Lateral 7, Lateral 8 (14,975 linear feet):**
These drainage ditches were excavated from uplands; however, they do exhibit relatively permanent flow with the presence of an ordinary high water mark. The waters from these ditches flow generally south from the review area an average of 8,000 linear feet to the Main Ditch Number 2, a relatively permanent water that flows an additional 6.07 miles east and south to San Martin Lake, a tidally influenced extension of the Laguna Madre, a Traditional Navigable Water.
- 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").⁹ 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.

⁹ 51 FR 41217, November 13, 1986.

Pond P-1 (1.51 ac): Based on data sources listed in #9, we have determined this pond was excavated from uplands for agricultural use (retention of irrigation water) and has no continuous surface connection to an RPW or TNW. This pond is best described in the preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), which states, "For clarification, it should be noted that we generally do not consider the following waters to be Waters of the United States...(c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing."

- 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.

Irrigation Ditch (7,558 linear feet): This irrigation canal was excavated and constructed within uplands for the conveyance of water from the Rio Grande to agricultural fields. This feature is best described in the preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), which states, "For clarification, it should be noted that we generally do not consider the following waters to be Waters of the United States...(a) Non-tidal drainage and irrigation ditches excavated on dry land."

- 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).

Ditch 2, Ditch 4, Ditch 5, Lateral 1, Lateral 2, Lateral 3, Lateral 4, Lateral 5, Lateral 6, Lateral 9, Lateral 10, Lateral 11, Lateral 12, and Lateral 13 (32,067 linear feet): These drainage ditches were excavated from uplands and are best described as "ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are generally not waters of the United States because they are not tributaries, or they do not have a continuous surface connection to downstream traditional navigable waters."

Wetlands W-1 (19.29 ac) and W-2 (1.34 ac): Based on data sources listed in #9, we have determined these palustrine wetlands sit in depressional areas that collect rainwater from the surrounding countryside. Wetland W-1 extends eastward outside the review area approximately 800 feet, but does not provide a continuous surface connection, nor is there any evidence of sheet flow from it to an RPW or TNW. Wetland W-2 sits completely within the Review Area. In accordance with 33 CFR Part 328.3, a wetland is considered a WOUS when it is adjacent to waters identified in paragraph (a)(1)-(a)(3) of the federal regulations. In accordance with pre-2015 regulatory regime in light of *Sackett v. EPA*, a wetland is considered adjacent if connected by a continuous surface connection, meaning that the wetland must physically abut or touch the paragraph a(1) or relatively permanent water, or be connected to the paragraph (a)(1) or relatively permanent water by a discrete feature (i.e. non-jurisdictional ditch, swale, pipe, or culvert).

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. Wetland Delineation Report: *Puerto Del Sol, North of Hwy 100 and South of Hwy 2480 Los Fresnos, Cameron County, Texas*, prepared by Doucet & Associates, Inc., 30 June 2023
 - b. Aerials (1962, 2002, 2017, 2023; source: Google Earth)
 - c. USGS Topographic Map 1:24,000 Los Fresnos, Texas (2022)

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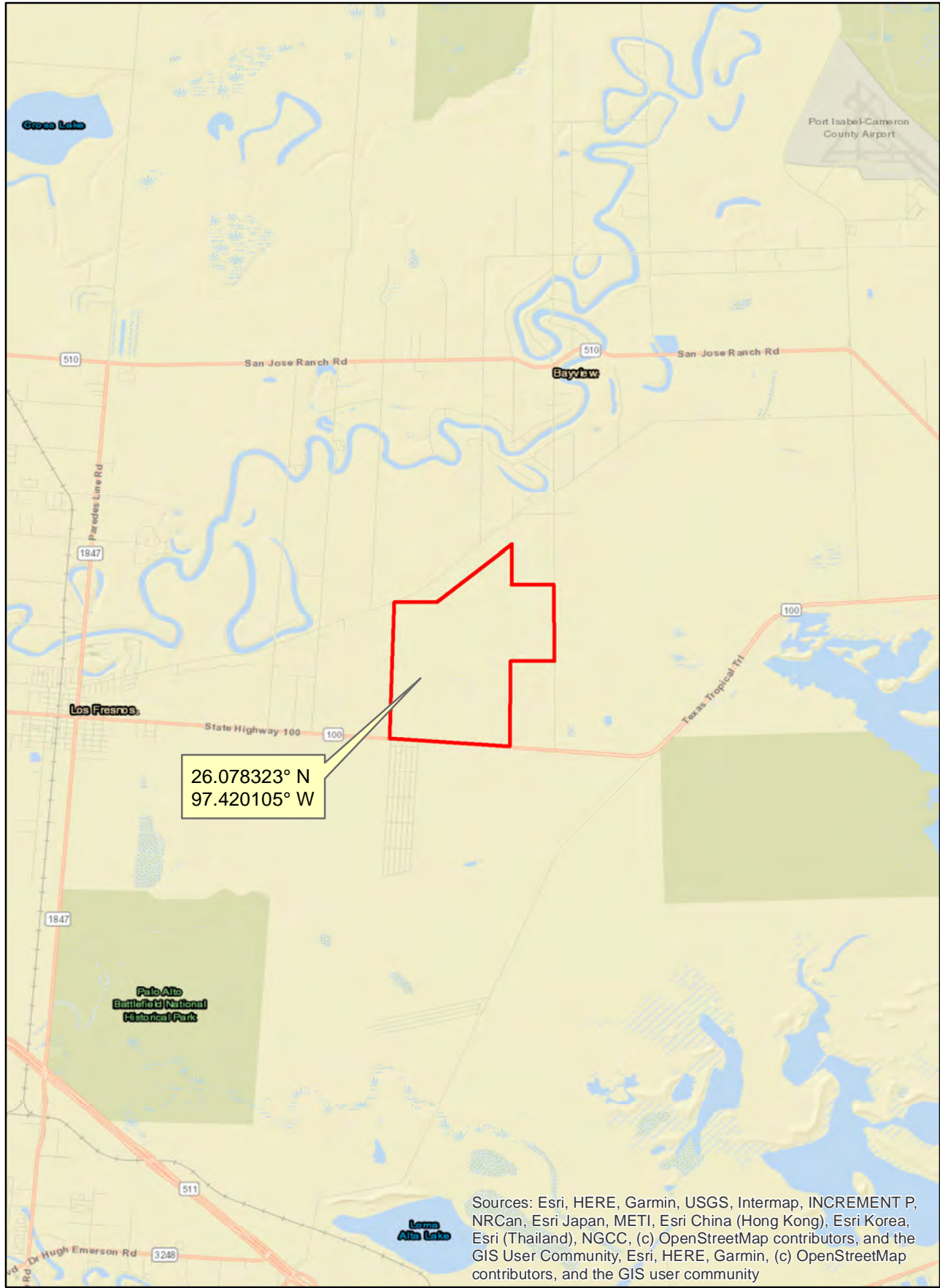
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2023-00350

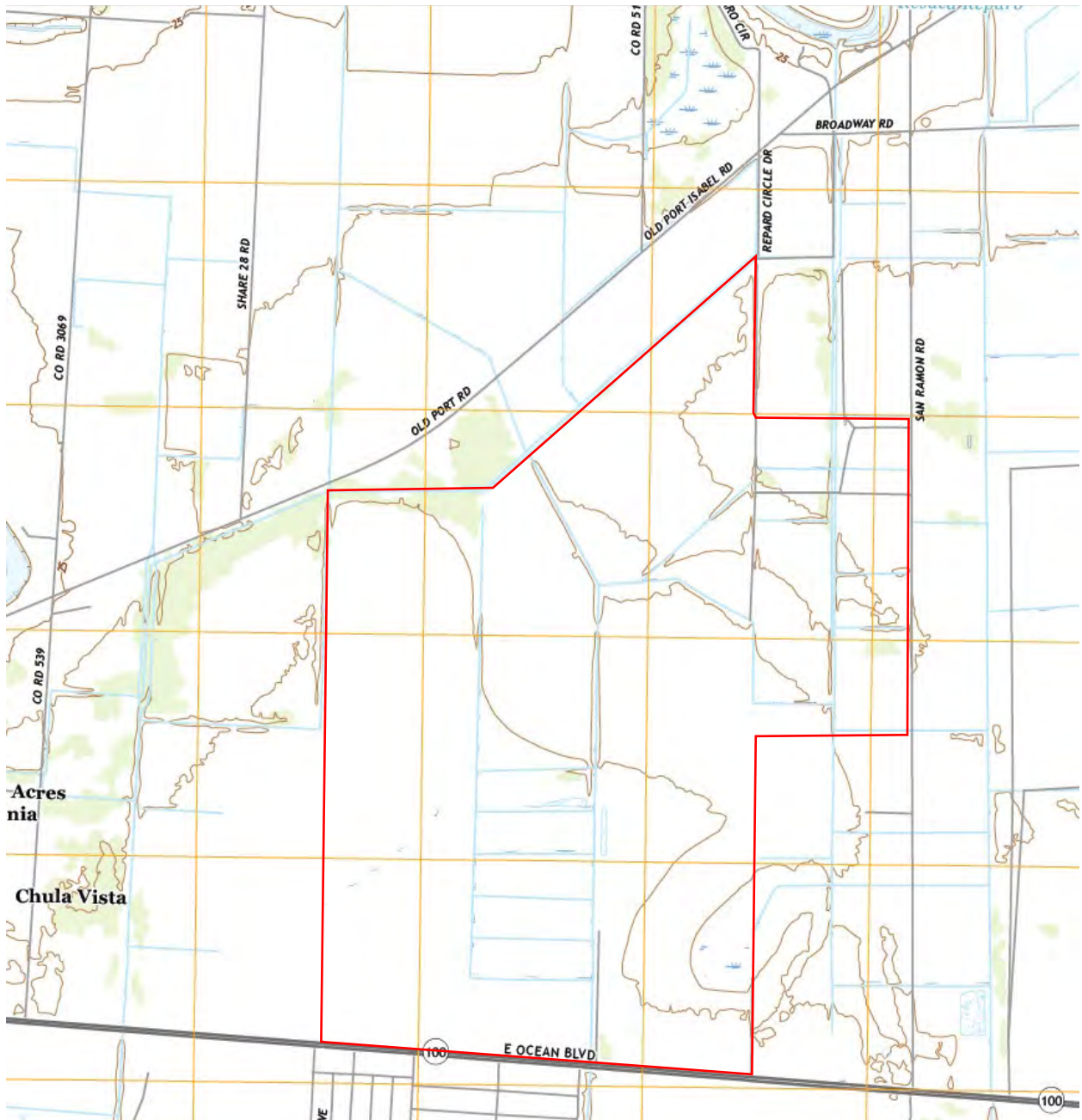
- d. USGS LiDAR: South Texas (2018) Vertical Accuracy (cm): 4.5 - Tested to meet vertical root mean square error (RMSEz) in open terrain.
- e. Web Soil Survey Hydric Rating Map for Cameron County, Texas (NRCS website accessed 23 AUG 2023)
- f. National Wetland Inventory (NWI) (USFWS website accessed 23 AUG 2023)
- g. National Hydrologic Dataset (NHD) – 12110208 South Laguna Madre
- h. ORM2 Database: A jurisdictional determination (JD) was issued for this property in 19 JAN 2005 (D-17164) for a proposed municipal waste landfill, which was never constructed.

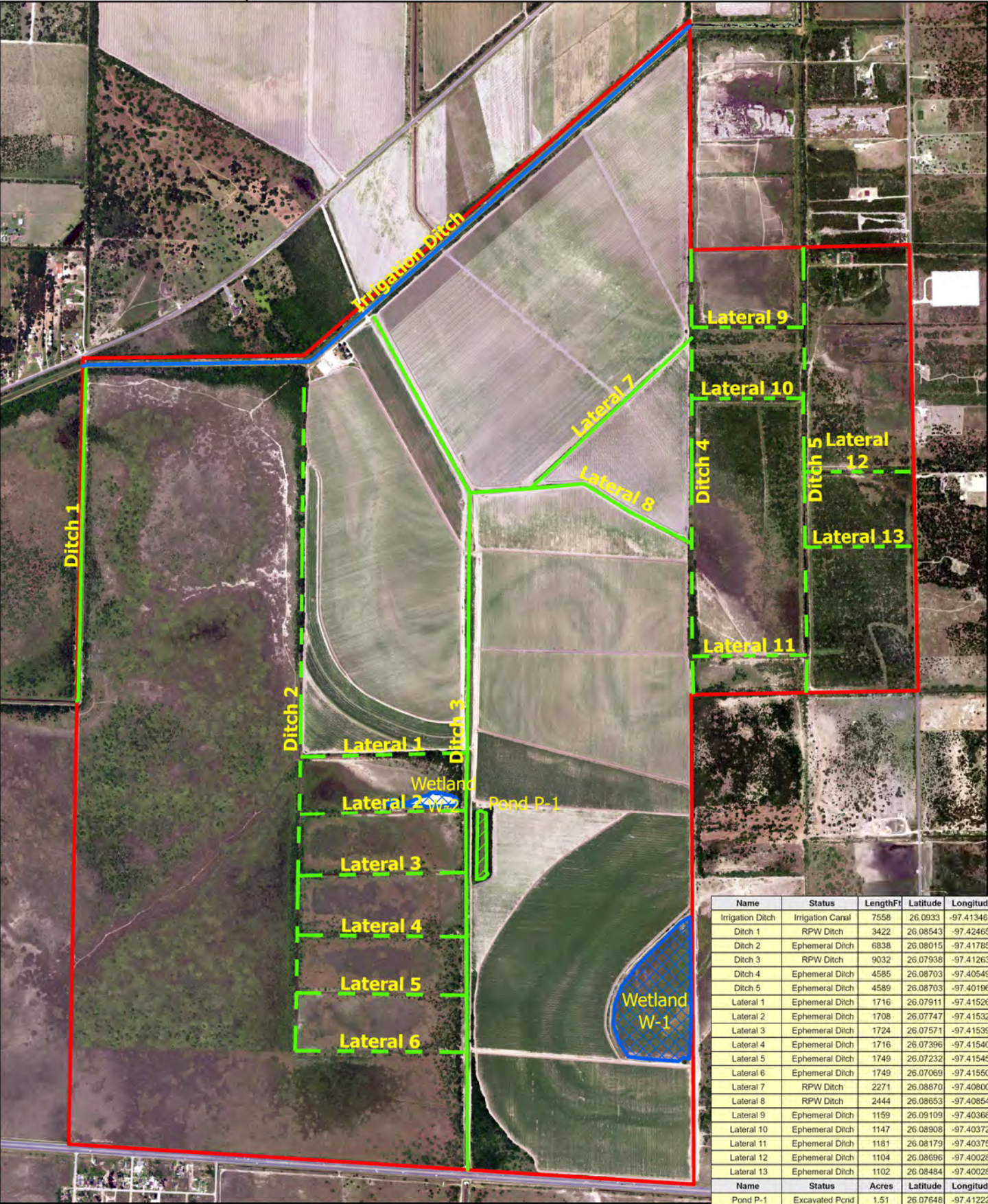
10. OTHER SUPPORTING INFORMATION. N/A

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.

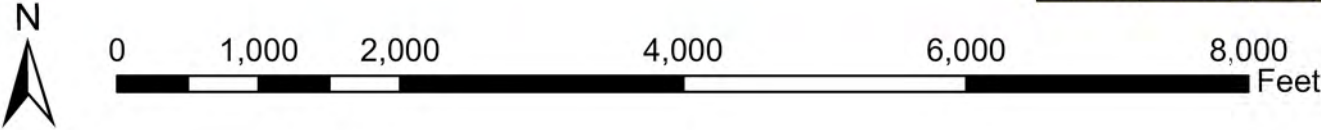
SWG-2023-00350 - Vicinity Map
1,600-Acre Review Area, Cameron County, Texas





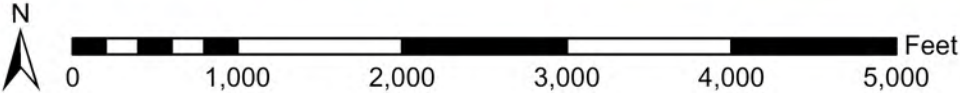


Name	Status	LengthFt	Latitude	Longitude	Juris
Irrigation Ditch	Irrigation Canal	7558	26.0933	-97.413462	No
Ditch 1	RPW Ditch	3422	26.08543	-97.42465	404
Ditch 2	Ephemeral Ditch	6838	26.08015	-97.41785	No
Ditch 3	RPW Ditch	9032	26.07938	-97.41263	404
Ditch 4	Ephemeral Ditch	4585	26.08703	-97.40549	No
Ditch 5	Ephemeral Ditch	4589	26.08703	-97.40196	No
Lateral 1	Ephemeral Ditch	1716	26.07911	-97.41526	No
Lateral 2	Ephemeral Ditch	1708	26.07747	-97.41532	No
Lateral 3	Ephemeral Ditch	1724	26.07571	-97.41539	No
Lateral 4	Ephemeral Ditch	1716	26.07396	-97.41540	No
Lateral 5	Ephemeral Ditch	1749	26.07232	-97.41545	No
Lateral 6	Ephemeral Ditch	1749	26.07069	-97.41550	No
Lateral 7	RPW Ditch	2271	26.08870	-97.40800	404
Lateral 8	RPW Ditch	2444	26.08653	-97.40854	404
Lateral 9	Ephemeral Ditch	1159	26.09109	-97.40368	No
Lateral 10	Ephemeral Ditch	1147	26.08908	-97.40372	No
Lateral 11	Ephemeral Ditch	1181	26.08179	-97.40375	No
Lateral 12	Ephemeral Ditch	1104	26.08696	-97.40028	No
Lateral 13	Ephemeral Ditch	1102	26.08484	-97.40028	No
Name	Status	Acres	Latitude	Longitude	Juris
Pond P-1	Excavated Pcmd	1.51	26.07648	-97.41222	No
Wetland W-1	PEM Wetland	19.27	26.07199	-97.40673	No
Wetland W-2	PEM Wetland	1.34	26.07778	-97.41382	No



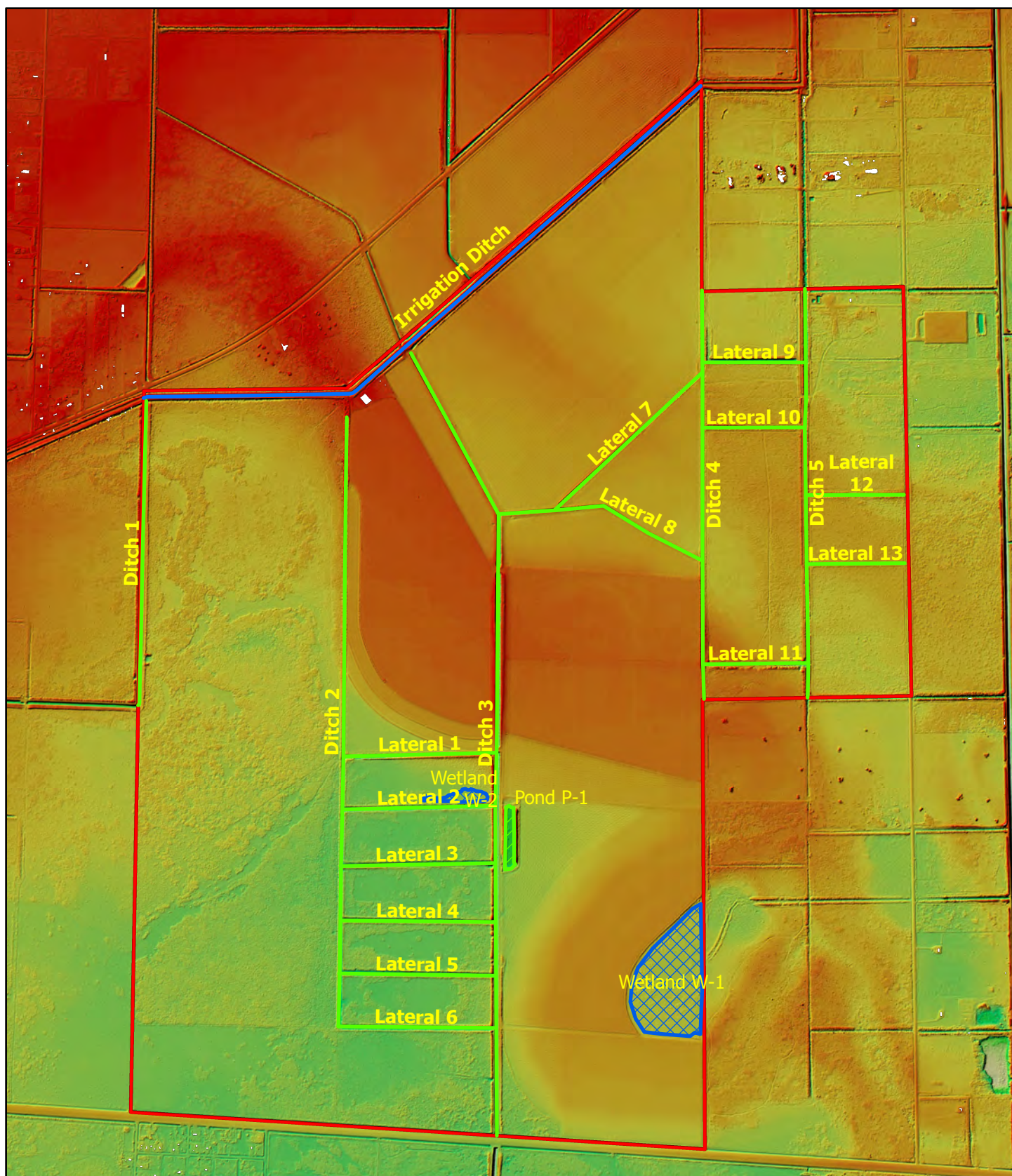
SWG-2023-00350 1,600-acre Review Area North Portion

Name	Status	LengthFt	Latitude	Longitude	Juris
Irrigation Ditch	Irrigation Canal	7558	26.0933	-97.413462	No
Ditch 1	RPW Ditch	3422	26.08543	-97.42465	404
Ditch 2	Ephemeral Ditch	6838	26.08015	-97.41785	No
Ditch 3	RPW Ditch	9032	26.07938	-97.41263	404
Ditch 4	Ephemeral Ditch	4585	26.08703	-97.40549	No
Ditch 5	Ephemeral Ditch	4589	26.08703	-97.40196	No
Lateral 1	Ephemeral Ditch	1716	26.07911	-97.41526	No
Lateral 2	Ephemeral Ditch	1708	26.07747	-97.41532	No
Lateral 3	Ephemeral Ditch	1724	26.07571	-97.41539	No
Lateral 4	Ephemeral Ditch	1716	26.07396	-97.41540	No
Lateral 5	Ephemeral Ditch	1749	26.07232	-97.41545	No
Lateral 6	Ephemeral Ditch	1749	26.07069	-97.41550	No
Lateral 7	RPW Ditch	2271	26.08870	-97.40800	404
Lateral 8	RPW Ditch	2444	26.08653	-97.40854	404
Lateral 9	Ephemeral Ditch	1159	26.09109	-97.40368	No
Lateral 10	Ephemeral Ditch	1147	26.08908	-97.40372	No
Lateral 11	Ephemeral Ditch	1181	26.08179	-97.40375	No
Lateral 12	Ephemeral Ditch	1104	26.08696	-97.40028	No
Lateral 13	Ephemeral Ditch	1102	26.08484	-97.40028	No
Name	Status	Acres	Latitude	Longitude	Juris
Pond P-1	Excavated Pond	1.51	26.07648	-97.41222	No
Wetland W-1	PEM Wetland	19.27	26.07199	-97.40673	No
Wetland W-2	PEM Wetland	1.34	26.07778	-97.41382	No





Name	Status	LengthFt	Latitude	Longitude	Juris
Irrigation Ditch	Irrigation Canal	7558	26.0933	-97.413462	No
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Lateral 3	Ephemeral Ditch	1724	26.07571	-97.41539	No
Lateral 4	Ephemeral Ditch	1716	26.07396	-97.41540	No
Lateral 5	Ephemeral Ditch	1749	26.07232	-97.41545	No
Lateral 6	Ephemeral Ditch	1749	26.07069	-97.41550	No
Lateral 7	RPW Ditch	2271	26.08870	-97.40800	404
Lateral 8	RPW Ditch	2444	26.08653	-97.40854	404
Lateral 9	Ephemeral Ditch	1159	26.09109	-97.40368	No
Lateral 10	Ephemeral Ditch	1147	26.08908	-97.40372	No
Lateral 11	Ephemeral Ditch	1181	26.08179	-97.40375	No
Lateral 12	Ephemeral Ditch	1104	26.08696	-97.40028	No
Lateral 13	Ephemeral Ditch	1102	26.08484	-97.40028	No
Name	Status	Acres	Latitude	Longitude	Juris
Pond P-1	Excavated Pond	1.51	26.07648	-97.41222	No
Wetland W-1	PEM Wetland	19.27	26.07199	-97.40673	No
Wetland W-2	PEM Wetland	1.34	26.07778	-97.41382	No



0 1,000 2,000 3,000 4,000 5,000 Feet

Elevation (Ft)

