



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT
2488 E. 81ST STREET
TULSA, OK 74137-4290

CESWT-RO

31 March 2026

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 SWT-2026-00040

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 Oklahoma due to litigation.

1. SUMMARY OF CONCLUSIONS.

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.

CESWT-RO

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SWT-2026-00040](#)

- 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).
 - i. NJW-1, Non-jurisdictional wetlands, is not a waters of the United States
 - ii. S-1, Jurisdictional, Intermittent Stream Channel, is a waters of the United States
 - iii. OW-1, Stock Pond, Non-jurisdictional, is not a waters of the United States
 - iv. S-2, Jurisdictional, Perennial Stream, is a waters of the United States
 - v. NJD-1, Non-jurisdictional, is not a waters of the United States
 - vi. NJW-2, Non-jurisdictional, is not a waters of the United States
 - vii. NJD-2, Non-jurisdictional, is not a waters of the United States
 - viii. NJW-3, Non-jurisdictional, is not a waters of the United States
 - ix. S-3, Jurisdictional, Intermittent Stream Channel, is a waters of the United States
 - x. S-4, Non-Jurisdictional, Ephemeral Stream, is not a waters of the United States
 - xi. NJW-6, Stock Pond, Non-Jurisdictional, is not a waters of the United States
 - xii. NJW-4, Non-Jurisdictional, is not a waters of the United States
 - xiii. S-5, Jurisdictional, Intermittent Stream Channel, 0.31-acre, (584 lf), is a waters of the United States
 - xiv. S-6, Jurisdictional, Intermittent Stream Channel, is a waters of the United States
 - xv. NJD-3, Jurisdictional, Intermittent Stream Channel, is a waters of the United States
 - xvi. NJD-4, Jurisdictional, Intermittent Stream Channel, is a waters of the United States

CESWT-RO

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SWT-2026-00040](#)

- xvii. W-1, Jurisdictional, Forested Wetlands, is a waters of the United States
- xviii. S-7, Jurisdictional, Intermittent, is a waters of the United States
- xix. S-8, Jurisdictional, is a waters of the United States
- xx. S-9, Jurisdictional, is a waters of the United States
- xxi. NJW-5, Non-jurisdictional, Emergent Wetlands, is not a waters of the United States
- xxii. NJD-5, Non-jurisdictional, Erosional Feature, is not a waters of the United States
- xxiii. NJD-6, Non-jurisdictional, Erosional Feature, is not a waters of the United States
- xxiv. NJD-7, Non-jurisdictional, is not a waters of the United States
- xxv. NJD-8, Non-jurisdictional, is not a waters of the United States

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 review area containing is approximately 157.8 acres. The review areas are located in Sections 1 and 12, Township 6 South, Range 26 East; Sections 4, 5, 6, 7, 8, and 9, Township 6 South, Range 27 East, near Broken Bow, McCurtain County, Oklahoma. The project starts at Latitude 34.0533,
4. Longitude -94.5421 and ends at Latitude 34.059, Longitude -94.4823

CESWT-RO

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SWT-2026-00040](#)

5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Red River-Interstate Water
6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

Buck Creek and its unnamed tributaries flow to the Little River and discharge into the Red River, a TNW; Twomile Creek and its abutting wetlands, including its unnamed tributaries, drain into Rock Creek, which flows to the Little River and discharges into the Red River, a TNW.

7. 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]
8. 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.

CESWT-RO

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SWT-2026-00040](#)

c. Other Waters (a)(3): [N/A]

d. Impoundments (a)(4): [N/A]

e. Tributaries (a)(5):

S-1 0.06-acre (ac) approximately 335 linear feet (lf), unnamed tributary of Buck Creek is a relative permanent water within the review area.

S-2 0.14-ac (approximately 357 lf), Buck Creek is a relative permanent water within the review area.

S-3 0.04-ac (approximately 339 lf), unnamed tributary of Buck Creek is a relative permanent water within the review area.

NJD-3 0.02-ac (approximately 345 lf), unnamed tributary of Buck Creek is a relative permanent water within the review area. ODOT determined that this channel is an erosional feature. The Corps reviewed and determined that this channel is an intermittent channel that has seasonal groundwater contributions to benefit ecological functions that support plants and animals, including minnows to hold water enough to support aquatic life.

NJD-4 0.002-ac (approximately 22 lf), unnamed tributary of Buck Creek is a relative permanent water within the review area. ODOT determined that this channel is an erosional feature. The Corps reviewed and determined that this channel is an intermittent channel that has seasonal groundwater contributions to benefit ecological functions that support plants and animals, including minnows to hold water enough to support aquatic life.

S-5 0.31-ac (approximately 584 lf), unnamed tributary of Twomile Creek is a relative permanent water within the review area.

S-6 0.03-ac (approximately 65 lf), unnamed tributary of Twomile Creek is a relative permanent water within the review area.

S-7 0.11-ac (approximately 447 lf), Twomile Creek is a relative permanent water within the review area.

S-8 0.002-ac (approximately 21 lf), unnamed tributary of Twomile Creek is a relative permanent water within the review area.

S-9 0.01-ac (approximately 109 lf), unnamed tributary of Twomile Creek is a relative permanent water within the review area.

CESWT-RO

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SWT-2026-00040](#)

f. The territorial seas (a)(6): [N/A]

g. Adjacent wetlands (a)(7):

W-1 is approximately 0.79-acres are forested wetlands that is abutting the unnamed tributary of Twomile Creek is a relative permanent water within the review area.

9. 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.

The non-jurisdictional areas are upland depression areas that may or may not be indicated on the USGS Topo Map, USGS NHD, or USFWS NWI map as aquatic features. Additionally, the requestor’s delineation report indicated hydric soils were not present.

NJD-1 0.01-ac is approximately 40 lf.

NJD-2 0.01-ac is approximately 165 lf.

S-4 0.003-ac is approximately 38 lf.

NJD-5 0.01-ac is approximately 151 lf.

NJD-6 0.01-ac is approximately 122 lf.

NJD-7 0.002-ac is approximately 22 lf.

NJD-8 0.01-ac is approximately 117 lf.

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]

⁷ 51 FR 41217, November 13, 1986.

CESWT-RO

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SWT-2026-00040](#)

- 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.

OW-1 Stock Pond is approximately 0.13-ac and does not have continuous surface connection to a jurisdictional water.

NJW-6 Stock Pond is approximately 0.20-ac and does not have continuous surface connection to a jurisdictional water.

- 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).

NJW-1 Emergent Wetland (0.12-ac) the small depression are drainage features, within road-side drainages and current landform. The features appear to collect storm water (surface run off) from adjacent highway and/or county road and current landscape; does not have continuous surface connection to a jurisdictional water.

NJW-2 Emergent Wetland (0.13-ac) the small depression are drainage features, within road-side drainages and current landform. The features appear to collect storm water (surface run off) from adjacent highway and/or county road and current landscape; does not have continuous surface connection to a jurisdictional water.

CESWT-RO

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SWT-2026-00040](#)

NJW-3 Emergent Wetland (0.05-ac) the small depression are drainage features, within road-side drainages and current landform. The features appear to collect storm water (surface run off) from adjacent highway and/or county road and current landscape; does not have continuous surface connection to a jurisdictional water.

NJW-4 Emergent Wetland (0.14-ac) the small depression are drainage features, within road-side drainages and current landform. The features appear to collect storm water (surface run off) from adjacent highway and/or county road and current landscape; does not have continuous surface connection to a jurisdictional water.

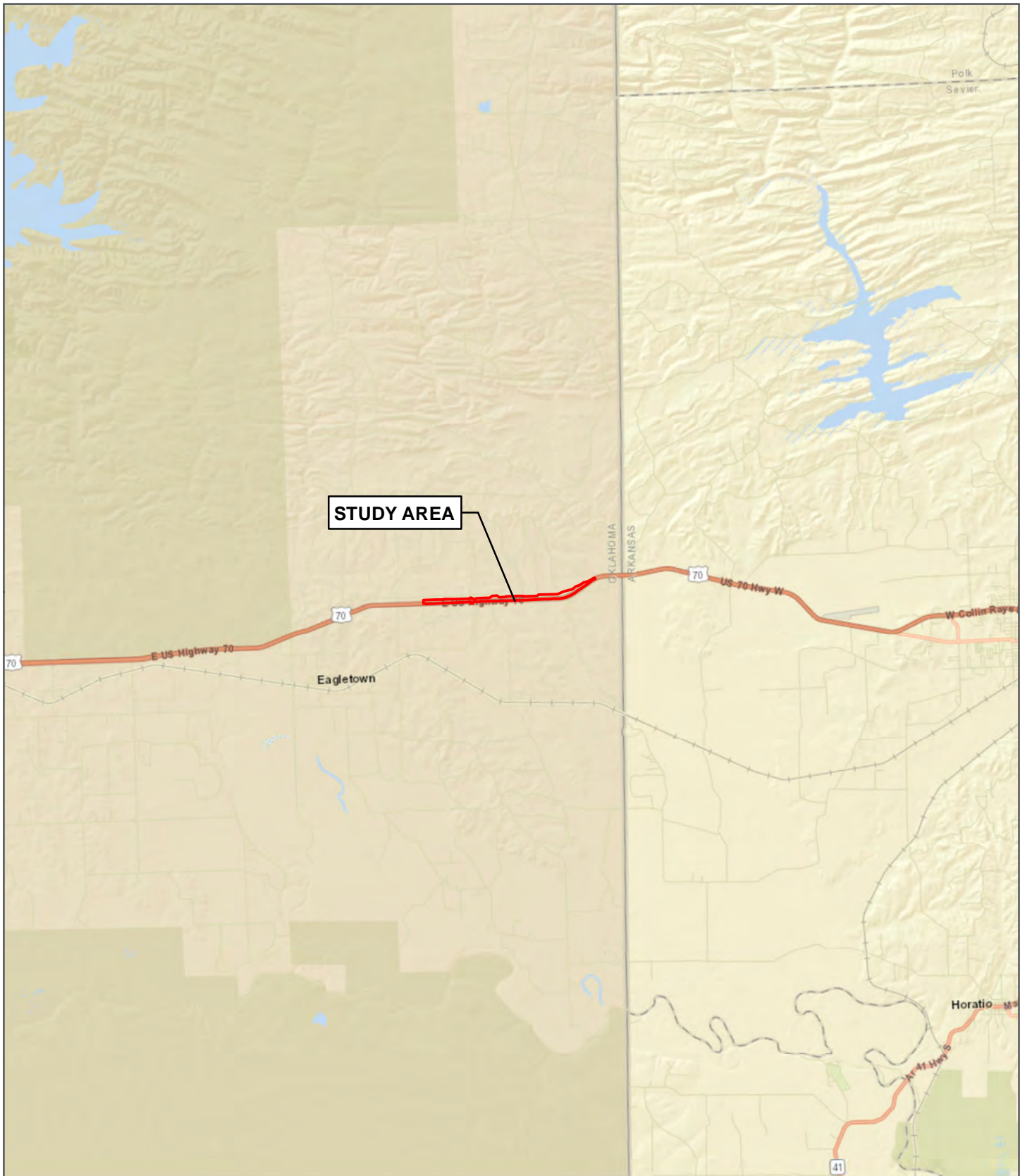
NJW-5 Emergent Wetland (0.01-acre) the small depression are drainage features, within road-side drainages and current landform. The features appear to collect storm water (surface run off) from adjacent highway and/or county road and current landscape; does not have continuous surface connection to a jurisdictional water.

10. 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.

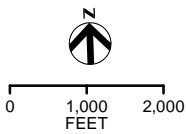
- a. The field visit was conducted on February 12, 2026, with Mr. Marcus Ware, USACE. The office evaluation was completed on March 12, 2026.
- b. Delineation and Proposed Jurisdictional Determination of Potential Waters of the U.S." from, HDR Engineering, Inc.". Job Piece 14427(15) SH-70, McCurtain County dated November 20, 2026.
- c. USGS Topographic Map, accessed on March 9, 2026.
- d. USFWS NWI, accessed on January 19, 2026

11. OTHER SUPPORTING INFORMATION. ODOT provided a Corps AJD request determination on January 19, 2026

12. 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.



	CO	KS	MO	<p>PROJECT AREA VICINITY MAP US 70 MCCURTAIN COUNTY, OKLAHOMA JP 17427(15)</p>
	NM		AR	
	TX			NOV 2025 FIGURE 1



LEGEND

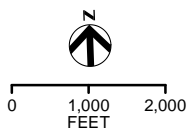
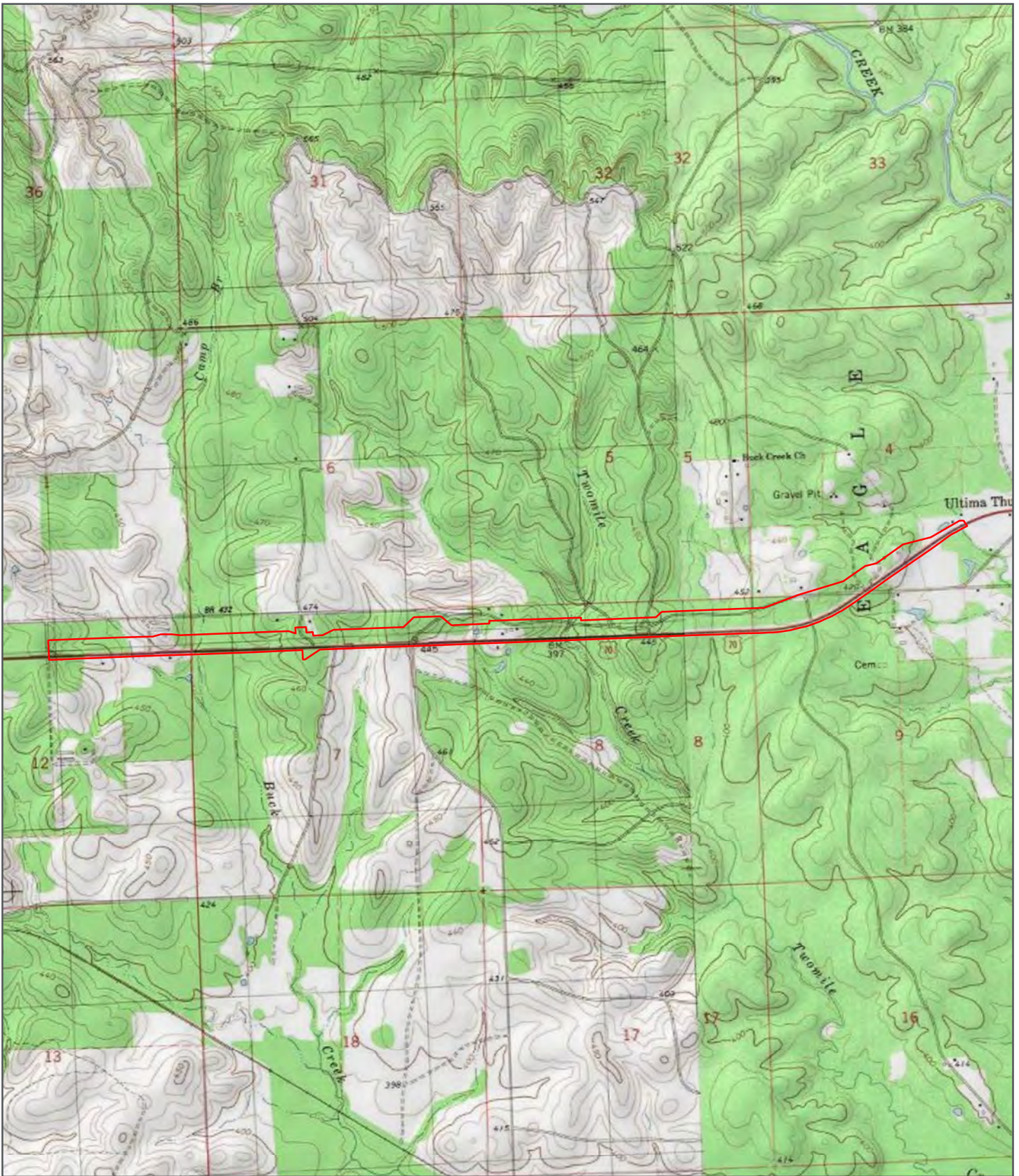
 STUDY AREA

SITE MAP ON AERIAL
US 70
MCCURTAIN COUNTY, OKLAHOMA
JP 17427(15)



NOV 2025

FIGURE 2



LEGEND

 STUDY AREA

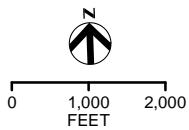
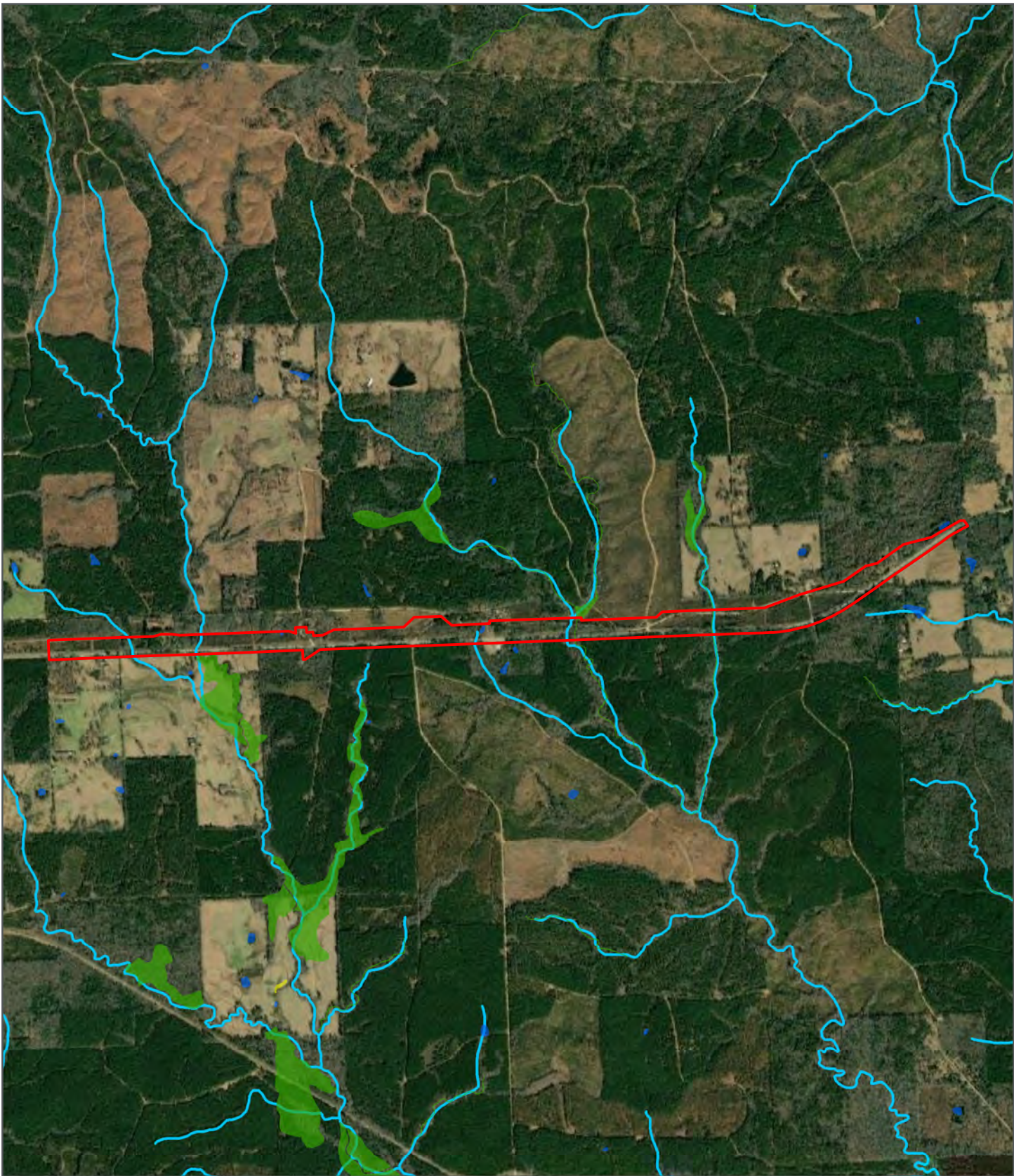
SITE MAP ON USGS TOPOGRAPHIC MAP

US 70
MCCURTAIN COUNTY, OKLAHOMA
JP 17427(15)








NOV 2025

FIGURE 3



LEGEND

-  STUDY AREA
-  NHD FLOWLINE
-  FRESHWATER EMERGENT WETLAND (NWI)
-  FRESHWATER FORESTED/SHRUB (NWI)
-  FRESHWATER POND (NWI)

NWI/NHD MAP
 US 70
 MCCURTAIN COUNTY, OKLAHOMA
 JP 17427(15)

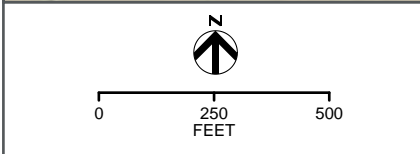
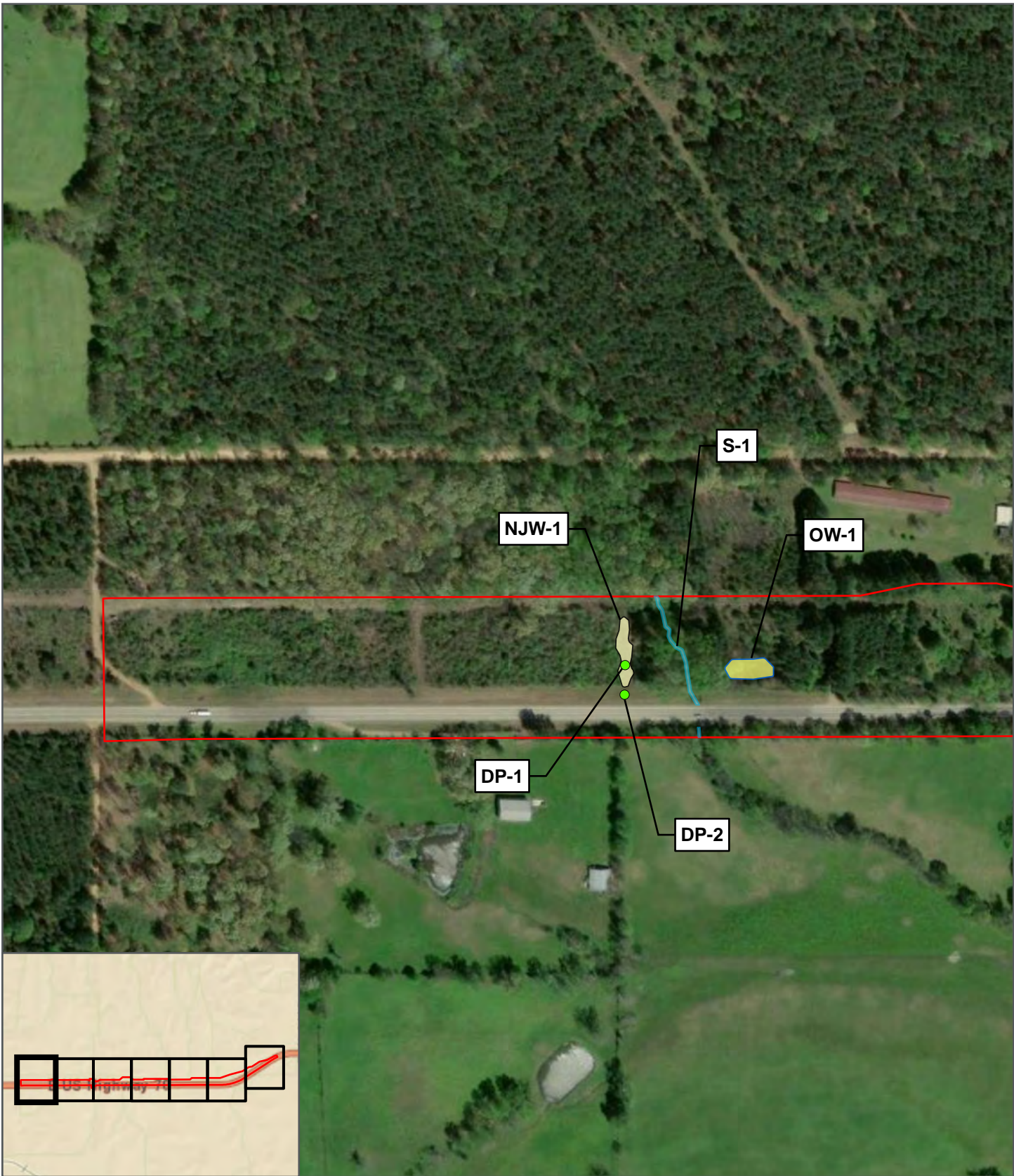
NOV 2025

FIGURE 5



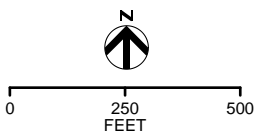
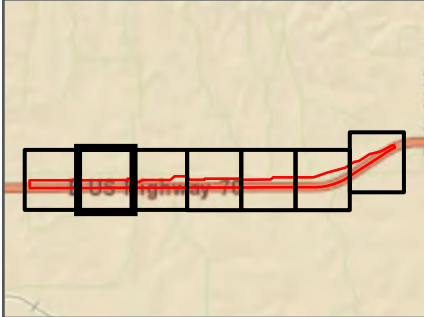
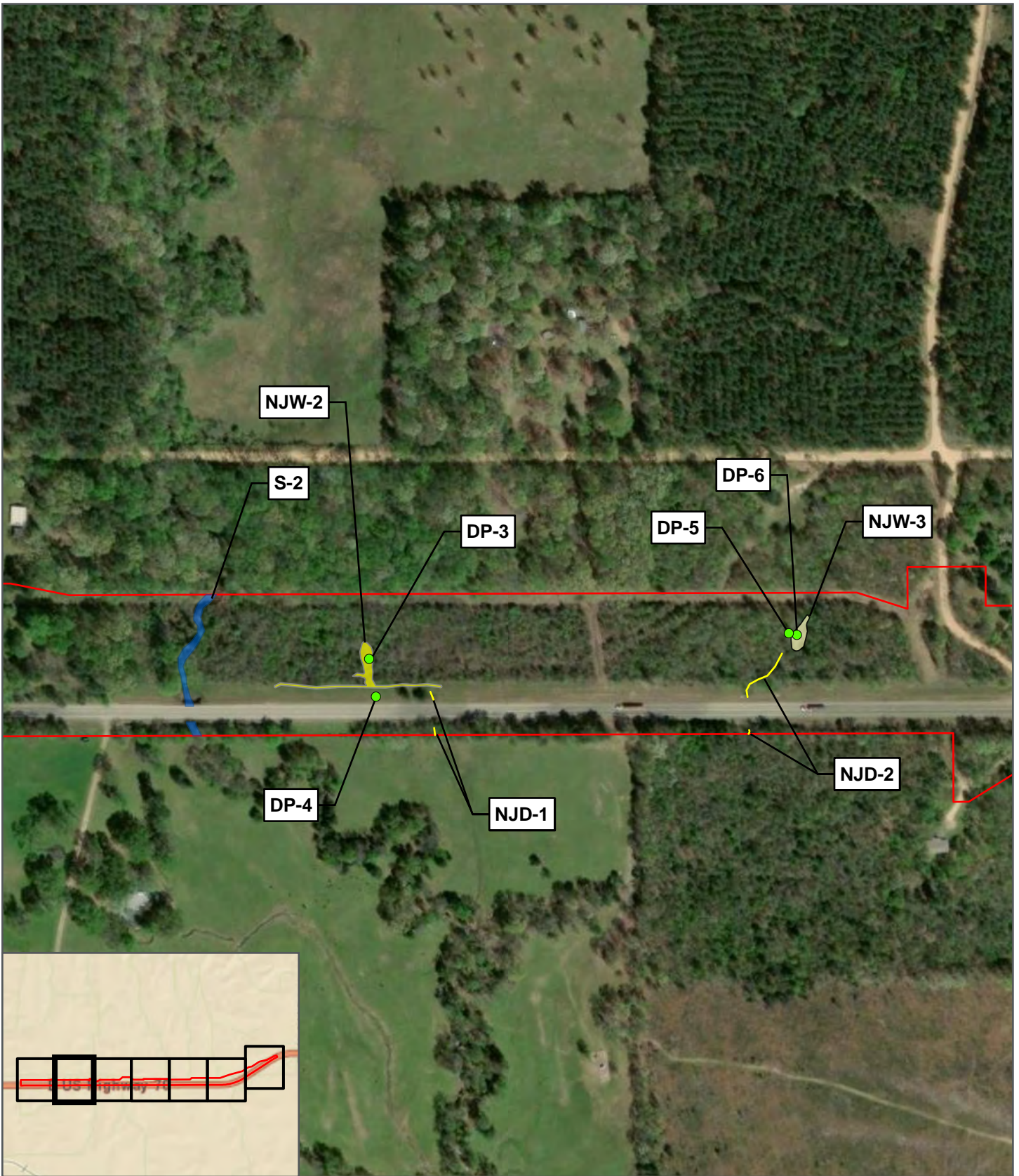


	<p>LEGEND</p> <p> STUDY AREA</p> <p> 100-YEAR FLOODPLAIN</p>	<p>FEMA FLOODPLAIN MAP US 70 MCCURTAIN COUNTY, OKLAHOMA JP 17427(15)</p>	
		<p>NOV 2025</p>	<p>FIGURE 6</p>



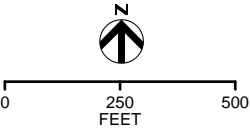
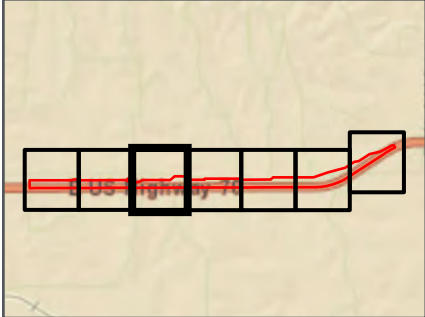
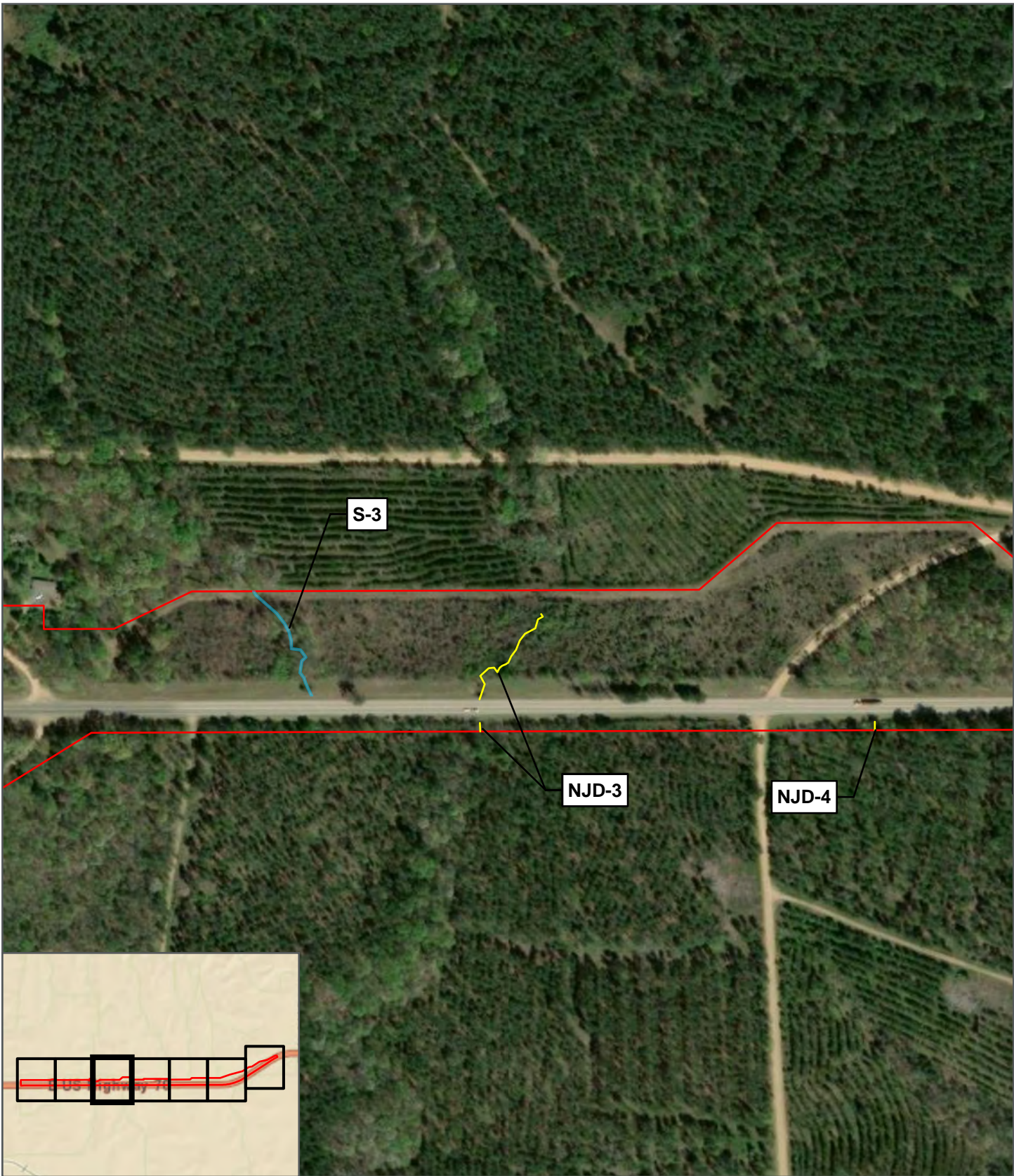
POTENTIAL WATERS OF THE U.S.	
	PERENNIAL STREAM
	INTERMITTENT STREAM
	FORESTED WETLAND
NOT WATERS OF THE U.S.	
	EPHEMERAL STREAM
	NON-JURISDICTIONAL FORESTED WETLAND
	NON-JURISDICTIONAL SCRUB-SHRUB WETLAND
	NON-JURISDICTIONAL EMERGENT WETLAND
	NON-JURISDICTIONAL OPEN WATER
	NON-JURISDICTIONAL DRAINAGE
	DATA POINT
	STUDY AREA

POTENTIAL WATERS OF THE U.S.	
US-70 MCCURTAIN COUNTY, OKLAHOMA JP 17427(15)	
NOV 2025	FIGURE 7-1



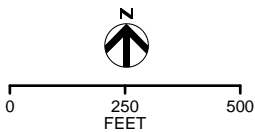
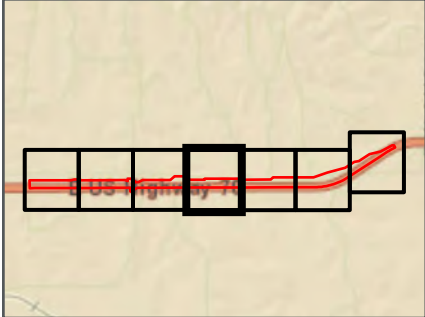
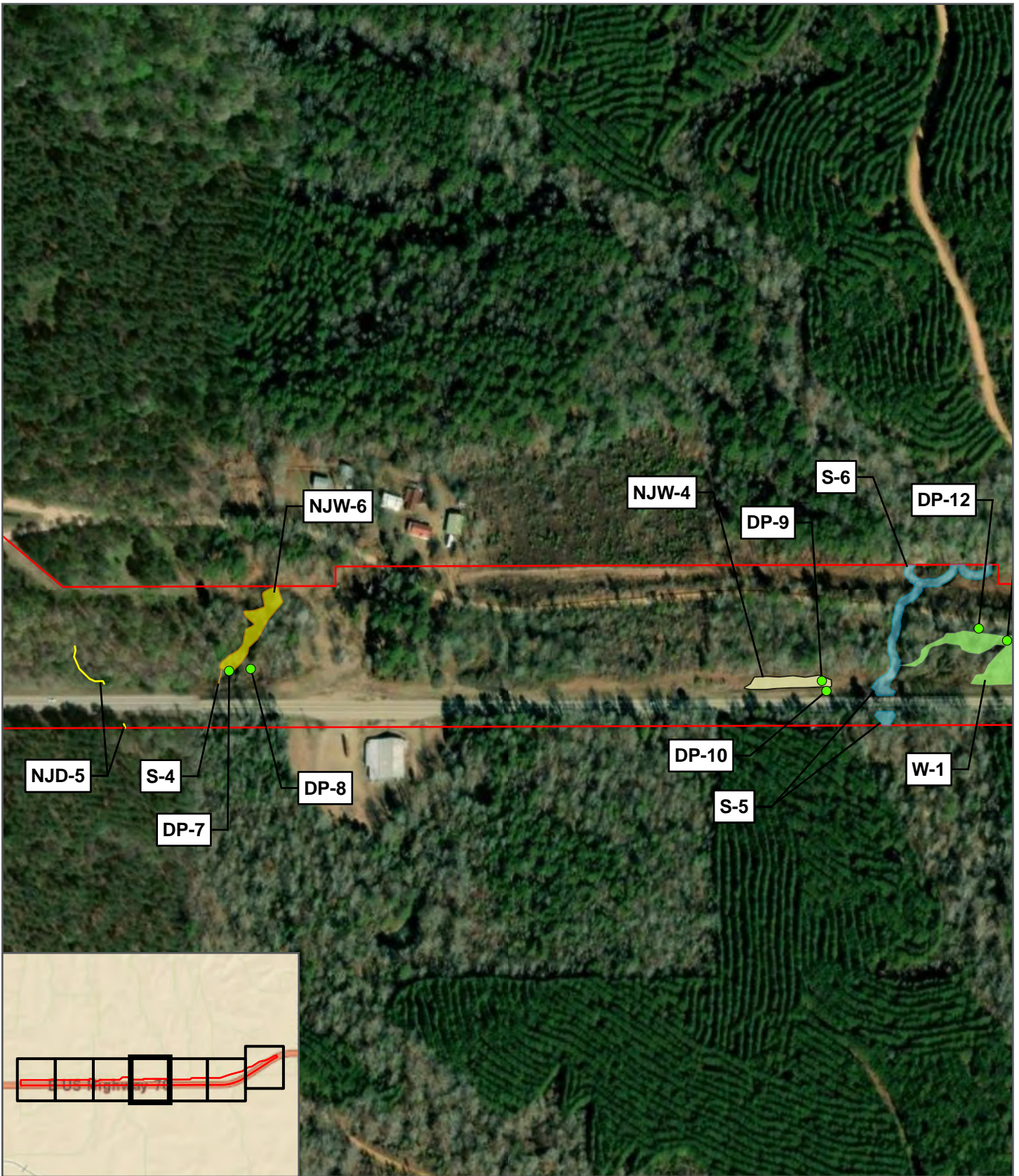
POTENTIAL WATERS OF THE U.S.	
	PERENNIAL STREAM
	INTERMITTENT STREAM
	FORESTED WETLAND
NOT WATERS OF THE U.S.	
	EPHEMERAL STREAM
	NON-JURISDICTIONAL FORESTED WETLAND
	NON-JURISDICTIONAL SCRUB-SHRUB WETLAND
	NON-JURISDICTIONAL EMERGENT WETLAND
	NON-JURISDICTIONAL OPEN WATER
	NON-JURISDICTIONAL DRAINAGE
	DATA POINT
	STUDY AREA

POTENTIAL WATERS OF THE U.S.	
US-70 MCCURTAIN COUNTY, OKLAHOMA JP 17427(15)	
NOV 2025	FIGURE 7-2



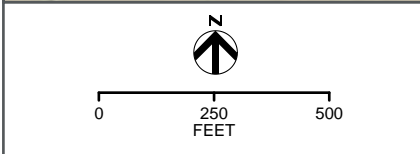
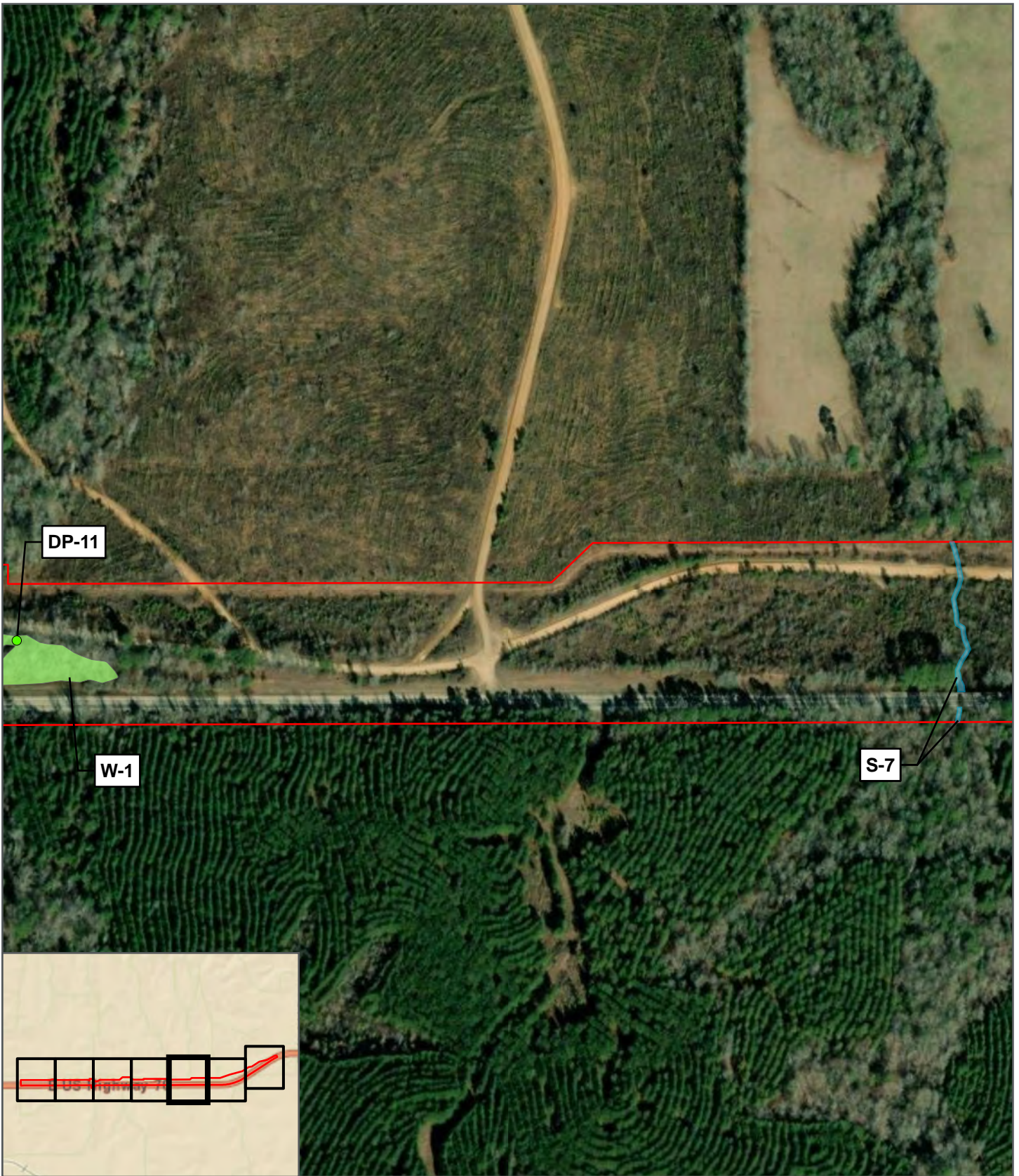
POTENTIAL WATERS OF THE U.S.	
	PERENNIAL STREAM
	INTERMITTENT STREAM
	FORESTED WETLAND
NOT WATERS OF THE U.S.	
	EPHEMERAL STREAM
	NON-JURISDICTIONAL FORESTED WETLAND
	NON-JURISDICTIONAL SCRUB-SHRUB WETLAND
	NON-JURISDICTIONAL EMERGENT WETLAND
	NON-JURISDICTIONAL OPEN WATER
	NON-JURISDICTIONAL DRAINAGE
	DATA POINT
	STUDY AREA

POTENTIAL WATERS OF THE U.S.	
US-70 MCCURTAIN COUNTY, OKLAHOMA JP 17427(15)	
NOV 2025	FIGURE 7-3



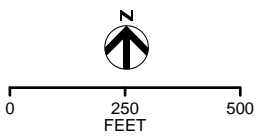
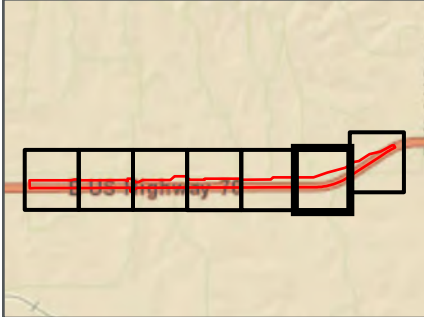
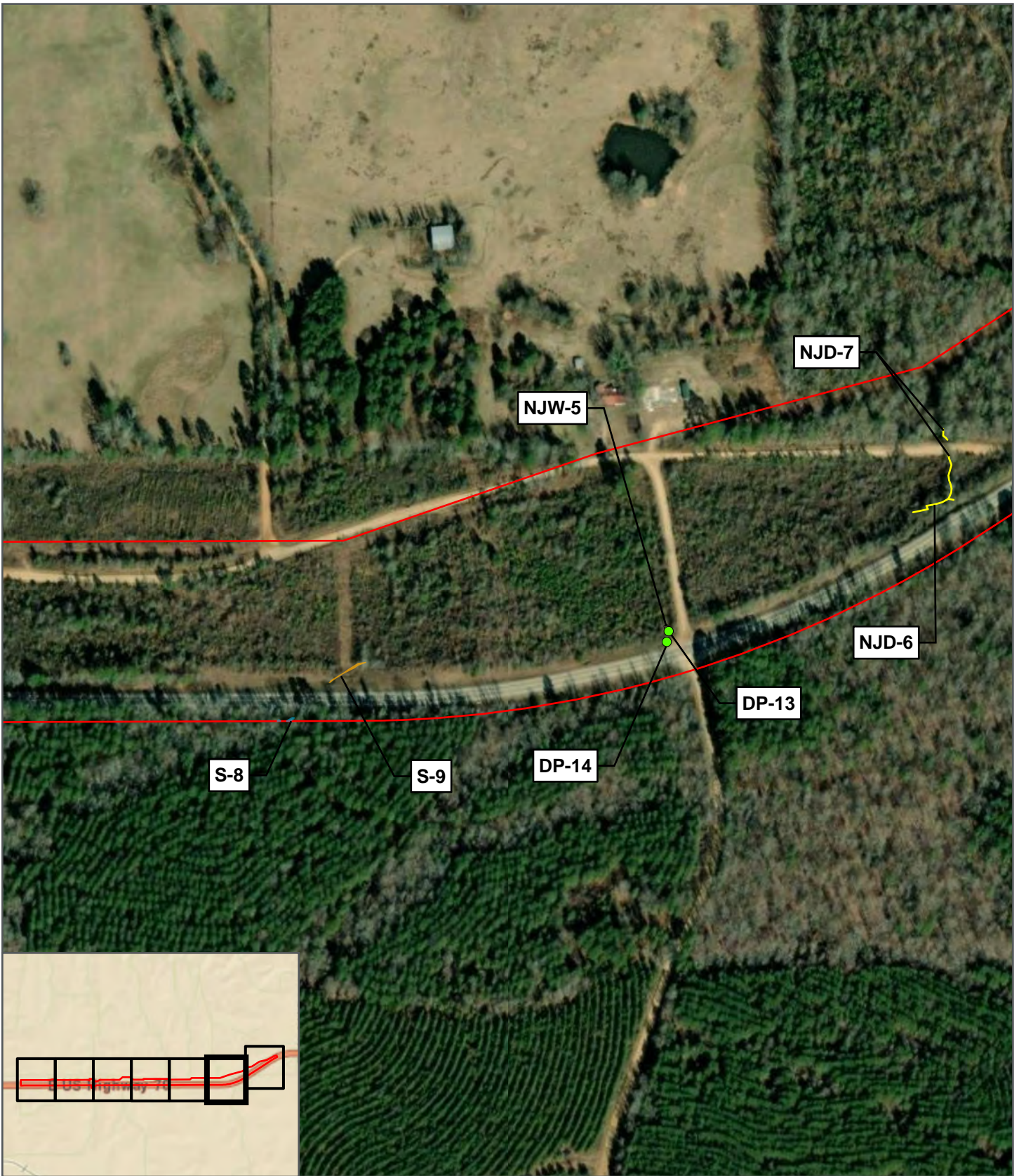
POTENTIAL WATERS OF THE U.S.	
	PERENNIAL STREAM
	INTERMITTENT STREAM
	FORESTED WETLAND
NOT WATERS OF THE U.S.	
	EPHEMERAL STREAM
	NON-JURISDICTIONAL FORESTED WETLAND
	NON-JURISDICTIONAL SCRUB-SHRUB WETLAND
	NON-JURISDICTIONAL EMERGENT WETLAND
	NON-JURISDICTIONAL OPEN WATER
	NON-JURISDICTIONAL DRAINAGE
	DATA POINT
	STUDY AREA

POTENTIAL WATERS OF THE U.S.	
US-70 MCCURTAIN COUNTY, OKLAHOMA JP 17427(15)	
NOV 2025	FIGURE 7-4



POTENTIAL WATERS OF THE U.S.	
—	PERENNIAL STREAM
—	INTERMITTENT STREAM
—	FORESTED WETLAND
NOT WATERS OF THE U.S.	
—	EPHEMERAL STREAM
—	NON-JURISDICTIONAL FORESTED WETLAND
—	NON-JURISDICTIONAL SCRUB-SHRUB WETLAND
—	NON-JURISDICTIONAL EMERGENT WETLAND
—	NON-JURISDICTIONAL OPEN WATER
—	NON-JURISDICTIONAL DRAINAGE
●	DATA POINT
—	STUDY AREA

POTENTIAL WATERS OF THE U.S.	
US-70 MCCURTAIN COUNTY, OKLAHOMA JP 17427(15)	
NOV 2025	FIGURE 7-5

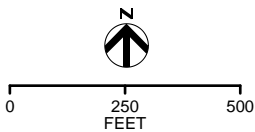
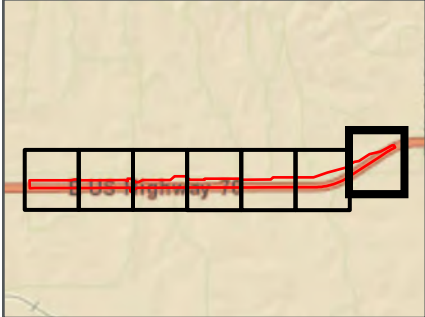


POTENTIAL WATERS OF THE U.S.	
	PERENNIAL STREAM
	INTERMITTENT STREAM
	FORESTED WETLAND
NOT WATERS OF THE U.S.	
	EPHEMERAL STREAM
	NON-JURISDICTIONAL FORESTED WETLAND
	NON-JURISDICTIONAL SCRUB-SHRUB WETLAND
	NON-JURISDICTIONAL EMERGENT WETLAND
	NON-JURISDICTIONAL OPEN WATER
	NON-JURISDICTIONAL DRAINAGE
	DATA POINT
	STUDY AREA

POTENTIAL WATERS OF THE U.S.	
US-70 MCCURTAIN COUNTY, OKLAHOMA JP 17427(15)	
NOV 2025	FIGURE 7-6



NJD-8



POTENTIAL WATERS OF THE U.S.	
	PERENNIAL STREAM
	INTERMITTENT STREAM
	FORESTED WETLAND
NOT WATERS OF THE U.S.	
	EPHEMERAL STREAM
	NON-JURISDICTIONAL FORESTED WETLAND
	NON-JURISDICTIONAL SCRUB-SHRUB WETLAND
	NON-JURISDICTIONAL EMERGENT WETLAND
	NON-JURISDICTIONAL OPEN WATER
	NON-JURISDICTIONAL DRAINAGE
	DATA POINT
	STUDY AREA

POTENTIAL WATERS OF THE U.S.	
US-70 MCCURTAIN COUNTY, OKLAHOMA JP 17427(15)	
NOV 2025	FIGURE 7-7