

No. 04-21-00118-CV

**In the
Fourth Court of Appeals
San Antonio, Texas**

STEVEN L. BRUINGTON AND NANCY R. BRUINGTON,
Appellants,

v.

LAKE MCQUEENEY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1,
ROBERT L. WORTH, JR., DAVID DOUGHTIE, JOHN EWALD, LINDSEY GILLUM, AND
PAUL A. MUELLER,
Appellees.

On Appeal from the 25th Judicial District Court of
Guadalupe County, Texas

**Brief & Appendix of *Amici Curiae* Friends of Lake McQueeney,
Association of Owners of the Waterfront Condominiums, Las Brisas
Homeowners Association, Las Hadas Homeowners Association, Inc.,
Long Creek Owners Association, Inc., and Treasure Island Homes
Association in Support of Appellees**

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STATEMENT OF *AMICI CURIAE* INTEREST

Friends of Lake McQueeney (“FOLM”), Association of Owners of the Waterfront Condominiums, Las Brisas Homeowners Association, Las Hadas Homeowners Association, Inc., Long Creek Owners Association, Inc., and Treasure Island Homes Association (collectively, “*Amici*”) submit this brief to assist the Court in understanding the history of Lake McQueeney and its precarious position due to the delays caused by this election contest.

This brief will provide background on the 93-year-old Lake McQueeney dam, prior litigation involving the dam, and the need to decide this case well in advance of February 2022, when the low-interest loan commitment to fund the rebuilding of the dam expires. FOLM also raises some additional merits arguments the Court may find helpful. FOLM urges this Court to rule expeditiously on this appeal so that any petition for review can be decided in advance of the funding deadline, and so the dam can be rebuilt before it fails (as have two neighboring dams).

FOLM is a 501(c)(3) corporation formed in 1994 to respond to an infestation of Hydrilla, a non-native aquatic plant that was rapidly spreading and endangering the lake. Since then, FOLM continues to focus

on issues of importance to Lake McQueeney, including water quality, regional water flow, water hazard removal, boating and water safety, and flooding. The remaining *Amici* consist of associations of homeowners in the Lake McQueeney area.

FOLM has paid the fee for preparing this brief. TEX. R. APP. P. 11(c).

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INTRODUCTION

Lake McQueeney is a Texas treasure that is threatened by two primary foes: aging infrastructure and litigation. Created by a dam that was built 93 years ago, the lake could disappear tomorrow if the dam fails, as two neighboring dams built in the same era did recently. Lives and property are at risk. Flooding, property damage, reduced property values, environmental impacts, and negative effects on the local economy, the County, and school district are just some of the likely outcomes.

Recognizing these risks, the community came together to petition for the creation of a water control and improvement district, the Lake McQueeney Water Control and Improvement District No. 1 (the “District”), which, once formed, was able to negotiate a long-term agreement to allow for the grant of a federally subsidized loan to rebuild the dam at a below-market interest rate of 0.5 percent. This loan commitment expires in February of 2022, however, and the project cannot go forward unless it is possible to certify that no litigation is pending – which is impossible while this case is on appeal. The total financial impact of losing the subsidized financing is an estimated \$15 million.

On November 3, 2020, 90 percent of eligible voters turned out and voted by a margin of 88 to 91 percent to confirm the district's creation, approve the contract to rebuild the dam and an *ad valorem* tax to pay for it, and authorize the district to levy and collect taxes.

Two voters, a husband and wife, brought an election contest complaining of various irregularities. The trial court properly granted summary judgment in favor of the district. Election contests are meant to be difficult—they require clear and convincing evidence that the alleged irregularities materially affected the election results. Appellants do not come close to meeting this standard, and nor do they even purport to do so.

None of the alleged irregularities made a difference in the outcome of an election that was approximately 90 percent in favor of the propositions. Moreover, the Water Code provisions relied upon by Appellants are directory, rather than mandatory, because none of them contain a noncompliance penalty. Texas courts have long recognized that the will of the people should not be overturned based on insignificant technicalities that do not affect the true outcome of the election.

Given the critical need for a non-litigation certificate prior to February 2022 to allow the funding for the repairs to go forward, *Amici* join Appellees in requesting that this Court decide this appeal expeditiously under TEX. ELEC. CODE § 231.009 – and in Appellees’ favor.

STATEMENT OF FACTS

A. A Texas Tradition Begins.

With its headwaters beginning about 20 miles west of Hunt in Kerr County, where the Edwards Plateau meets the Balcones Escarpment, the Guadalupe River flows southeast through New Braunfels, Seguin, Gonzales, Cuero, and Victoria until it eventually drains into the San Antonio Bay and the Gulf of Mexico. *See* Linda Williams & Bruce Coggin, *McQueeney, Texas: A Pictorial History* 9-10 (2011). Before the dams were built, heavy rainfalls would inundate the land, taking along trees, homes, and land from New Braunfels to the Gulf. *Id.* at 11.



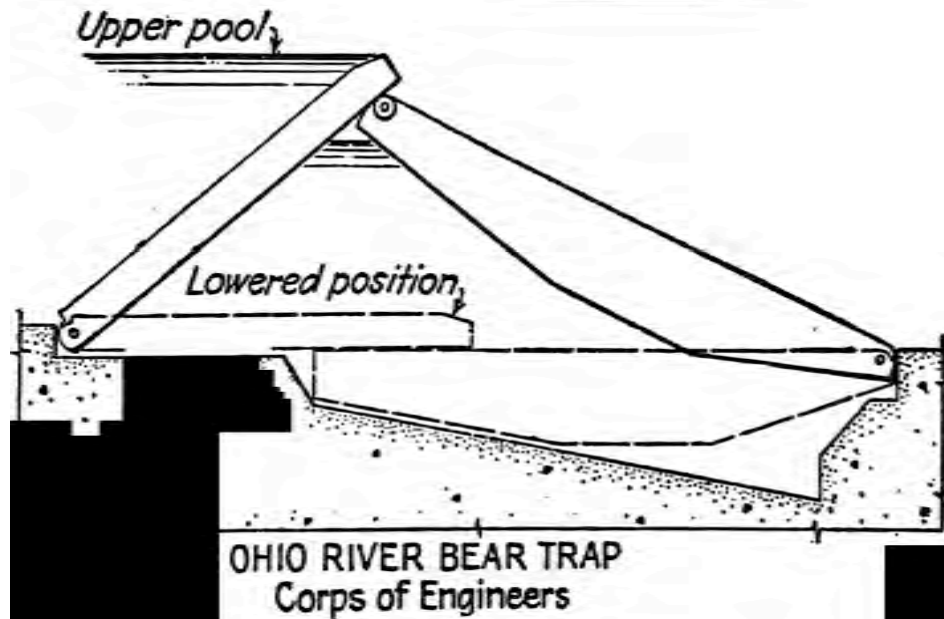
Id. at 9.

In the 1920s, the Texas Power Company was looking to build retention dams with floodgate controls that would retain enough water to operate a hydroelectric power generator. *Id.* at 8, 35. They found a spot near McQueeney, Texas. *Id.* at 35.

Using mule-drawn wagons hauling sacks of cement, workers piled up dirt over an unknown foundation and completed the dam two years later in 1928, creating a lake of approximately 396 acres. *Id.* at 37-38. The lake was originally named Lake Abbott, after Julius Abbott, who came up with the idea 20 years before. *Id.* at 8, 35, 39. Eventually, it became known as Lake McQueeney. *Id.* at 40.

The McQueeney dam is part of a network of six hydroelectric dams along the Guadalupe River that created the Guadalupe Valley hydroelectric system and their associated lakes. 1CR119; 2CR576-77. The lakes are Dunlap, Placid, Meadow, Gonzales, Wood, and McQueeney. 1CR119; 2CR577. The dams were all built between 1928 and 1931. 1CR119; 2CR577.

The Lake McQueeney dam, also known as the TP-3 dam, is nearly a third of a mile – or 1,555 feet – long, and forty feet high. Williams & Coggin, *supra*, at 37. The dam uses bear-trap spill gates, which consist of an upstream leaf and a downstream leaf with a sliding seal or hinge at their juncture. *Id.* The gates need no power source because they are held in place and powered by water, allowing them to be raised or lowered as needed to allow floodwaters to be released. *Id.* at 37-38.



Id. at 37.

From day one, Lake McQueeney became a haven for boating, fishing, swimming, and recreation. *Id.* at 39-40. Families built vacation and permanent homes along its banks, and on the island that formed in the middle of the lake, known as Treasure Island after the Robert Louis Stevenson classic. *Id.* at 38, 40, 133. Known as the water ski capital of Texas, the lake is home to the Ski Bees, who have inspired and trained generations of water skiers since the 1950s. *Id.* at 84, 94, 97. The lake has also hosted countless water ski tournaments and championships over the years. *Id.* at 84, 94, 97.



Id. at 6.

B. The GBRA Is Charged with Protecting the Lakes.

In 1933, the Texas Legislature created the Guadalupe Blanco River Authority (the “GBRA”) “to protect, conserve, reclaim, and steward” water resources in ten counties: Caldwell, Calhoun, Comal, DeWitt, Gonzales, Guadalupe, Hays, Kendall, Refugio, and Victoria. Act of Oct. 12, 1933, 43d Leg., 1st C.S., ch. 75, 1933 Tex. Gen. Laws 198, as amended (Vernon’s Ann. Tex. Civ. Stat. art. 8280-106); TEX. CONST. art. 16, § 59. The GBRA is the

owner and operator of Lake Dunlap, Lake McQueeney, Lake Placid, Lake Nolte (a.k.a. Lake Meadow), Lake Gonzales, and Lake Wood.¹

C. After 90 Years, the Dams Begin to Fail.

All six dams along the Guadalupe River are over 90 years old and have far surpassed their typical useful life of 50-75 years. 2CR577. Lake McQueeney dam is one of the oldest at 93 years old. 2CR577.

In March of 2016, the spill gate at the Lake Wood dam outside Gonzales collapsed, totally draining the lake by the end of the day. 2CR577.² On May 21, 2019, the spill gate at Lake Dunlap, in the New Braunfels area, collapsed – dropping the lake by over 7 feet and leaving it unusable for most recreational activities. 2CR577.³ GBRA engineers have reported that it is only a matter of time before the remaining dams fail as well. 2CR577. Given its advanced age, the Lake McQueeney spill gate must be replaced rather than repaired. 1CR119; App. C at 1.

¹ See GBRA, *GV Lakes Management*, <https://www.gbra.org/operations/gv-lakes-management/> (last visited July 28, 2021).

² See also *Water Board Meeting – Update 7/14/2020*, <https://www.lakemcqueeney.org/news.html#links> (last visited July 28, 2021).

³ See also *id.* The exact moment the Lake Dunlap dam failed was captured by video monitoring at the dam. See <https://www.ksat.com/news/2019/05/15/watch-exact-moment-of-partial-dam-failure-at-lake-dunlap/> (last visited July 28, 2021).

At Lake McQueeney, the risk of catastrophic failure creates a safety hazard for the whole neighborhood, including flooding, public safety risks, property damage and reduction in value, as well as environmental impacts. 1CR119-20. Falling property values would negatively impact the local economy, the school district, and Guadalupe County. 1CR120.

D. Litigation Stops the GBRA From Draining the Lakes.

In August of 2019, after the failures of the Lake Wood and Lake Dunlap dams, the GBRA announced that it would drain the remaining four lakes along the Guadalupe River, dropping lake levels to 12 feet starting that September.⁴ Residents sued the GBRA in Guadalupe County District Court seeking an injunction. *See* App. A. After an evidentiary hearing on September 11, 2019, the court issued a temporary restraining order. *Id.* at 2. On September 16, 2019, the court announced an agreed temporary injunction against the enforcement and implementation of the drawdown of the lakes. *Id.* at 2, 5.⁵

⁴ *See* Stacy Rickard, *GBRA to Drain 4 Lakes Along Guadalupe River Starting Sept. 16* (Aug. 16, 2019), https://spectrumlocalnews.com/tx/san-antonio/news/2019/08/16/gbra-to-drain-4-lakes-along-guadalupe-river-starting-sept--16?cid=share_clip (last visited July 28, 2021).

⁵ Interestingly, Appellants, the Bruingtons, intervened in the suit to enjoin the lowering of Lake McQueeney. *See* App. A at 11, Agreed Temp. Inj., *Skonnord v. Guadalupe-Blanco R. Auth., Williams v. Guadalupe-Blanco R. Auth.*, Nos. 19-CV-2053-CV, 19-2054-CV, 25th Jud. Dist. Ct. of Guadalupe Cty., Tex. (Sept. 16, 2019). This Court recently decided

Pursuant to the agreed injunction, *id.* at 6-7, an independent panel of experts modeled the risks posed by an instantaneous single gate failure. At Lake McQueeney, the experts concluded that in such an event, water levels could fall below normal levels at rates of up to 0.2 feet per minute and flow velocities could rapidly increase up to 3 feet per second. App. B, *Guadalupe Valley Lakes Report #1 of the Independent Expert Panel at 6* (Oct. 21, 2019).⁶



Id. at 12.

Williams v. Guadalupe-Blanco River Authority, No. 04-20-00445-CV, 2021 WL 2814902 (July 7, 2021, no pet. h.) (holding appellants lacked standing).

⁶ See <https://gvlakes.com/wp-content/uploads/2019/10/Guadalupe-Valley-Lakes-Independent-Expert-Panel-Report-1.pdf> (last visited July 28, 2021).

The experts noted that “nowhere in, on, or immediately adjacent to the water is 100% safe.” *Id.* at 2. Moreover, “[t]here are inherent risks of property damage, personal injury, and drowning in these areas and these risks may be elevated by rapidly changing flow conditions associated with gate adjustments, flood flow passage, and gate failure.” *Id.*

E. Friends of Lake McQueeney Take Action to Prevent Another Dam Failure.

Friends of Lake McQueeney is a 501(c)(3) corporation formed in 1994. Williams & Coggin, *supra*, at 124. Its primary work has been focused on water safety and combatting Hydrilla. *Id.* at 125. After the failures of the Lake Dunlap and Lake Wood dams, FOLM held multiple meetings with residents, property owners, and state and local governmental officials to address the possible failure of Lake McQueeney dam. 2CR577. The overwhelming majority of property owners and residents agreed that the only viable solution was to create a water control and improvement district. 2CR577. Landowners signed a petition requesting the creation of the Lake McQueeney Water Control and Improvement District No. 1, which was approved by order of the Guadalupe County Commissioners Court. 2CR577.

F. The District Obtains Low-Interest Financing for Repairs.

The District held its first organizational meeting on April 9, 2020 and began to prepare for the election that is the subject of this suit. 2CR578. The District also initiated negotiations with GBRA for a long-term agreement to finance, repair, operate, and maintain the dam. 2CR578. The District approved a contract for financing and operating the Lake McQueeney dam and hydroelectric facilities on August 31, 2020. 2CR578. The GBRA obtained a federally subsidized, low-interest financing commitment at 0.5 percent interest through the Texas Water Development Board (“TWDB”) 2020 Clean Water State Revolving Fund program authorized through the federal Clean Water Act. 2CR442, 493-94. The one-year loan commitment has an expiration date on February 28, 2022.⁷ However, to obtain the financing, the Attorney General of Texas must approve the bonds after the issuer, the GBRA, certifies that “no litigation is pending” questioning the levy of taxes to pay for the bonds. *See* TEX. WATER CODE § 49.184; 1 TEX.

⁷ *See* App. C at 1, *Tex. Water Dev. Bd. Project Funding Request* (Feb. 10, 2021) (stating 12-month commitment period, expiring Feb. 28, 2022), <https://www.twdb.texas.gov/board/2021/02/board/index.asp> (last visited July 28, 2021) (Board Agenda #10); Appellee’s Br. at 24.

ADMIN. CODE § 53.3(a)(13)(C) (2017) (Office of the Att’y Gen., Approval of Municipal Securities by Att’y Gen.).

If this appeal, including any petition for review to the Supreme Court of Texas, is not completely resolved by February 2022, the low-interest loan commitment would expire, and the GBRA would be forced to obtain market interest rates, resulting in a significant increase in the financing cost for the project in the range of \$15 million. 2CR493-94; 3CR476-77, 516-17. That amount would have to be absorbed through higher property taxes in the District. 2CR493-94.

G. Voters Overwhelmingly Approve the Project and Associated Taxes.

The Board of Directors of the District called for an election on November 3, 2020, the next available uniform election date after negotiations with the GBRA were substantially final. 2CR579. The voters overwhelmingly approved three ballot propositions: (A) to confirm the creation of the District; (B) to approve the contract with the GBRA to finance the repairs to the dam, including an *ad valorem* tax to pay the debt service on the bonds issued by the GBRA; and (C) to authorize the District to levy and collect various taxes to operate, maintain, and repair the dam. 2CR440, 582-83, 605. Ninety percent of eligible voters cast ballots, which

were between 88 percent and 91 percent in favor of the propositions.

2CR484, 579, 603-06. District General Counsel Steve Robinson testified that in his 29 years' experience advising public entities or units of local government, he had never seen such a high percentage voter turnout in a district election. 3CR507-08.

ARGUMENT

I. THE COURT SHOULD PROMPTLY DECIDE THIS CASE IN FAVOR OF APPELLEES.

As discussed below, the Plaintiffs in this case do not come close to meeting their burden in an election contest to “prove by clear and convincing evidence that voting irregularities materially affected the election results.” *Flores v. Cuellar*, 269 S.W.3d 657, 660 (Tex. App. – San Antonio 2008, no pet.); *see infra* Part II.

But regardless of the dubious merits of their appeal, the Plaintiffs will win this case by default if the outcome is delayed such that the Texas Supreme Court cannot rule on any petition for review before February 28, 2022, when the commitment for a low-interest loan to fund the repairs to the dam expires. *See supra* note 7. After that date, taxpayers will bear the brunt of an increased, market interest rate, which will raise the cost of the project by at least \$15 million. 2CR493-94; 3CR476-77, 516-17.

The Court has already granted in part Appellees' motion to expedite the briefing schedule under TEX. ELEC. CODE § 231.009, which provides that "[a]n election contest has precedence in the appellate courts and shall be disposed of as expeditiously as practicable." Order (June 22, 2021). The Court ordered that it would carry with the appeal the remainder of Appellees' motion, including their request that the Court refuse motions for rehearing and to expedite the mandate. *Id.* The Court has set this case for submission without oral argument on September 14, 2021.

Although Appellants did not expressly file this as an expedited appeal under § 231.009, *see* 4CR40, that section governs all election contests. *See* TEX. ELEC. CODE § 231.009. Section 231.009 serves as "an admonishment to appellate courts to expedite handling of all election contests on their dockets due to the time-sensitive nature of elections." *Perez v. Treviño*, No. 13-17-00087-CV, 2017 WL 2705477, at *5 n.1 (Tex. App. – Corpus Christi-Edinburg June 22, 2017, no pet.).

In election appeals where time is of the essence, a court of appeals may order that no motion for rehearing will be entertained and direct the clerk to issue the mandate immediately. *See, e.g., Reese v. Duncan*, 80 S.W.3d 650, 665 (Tex. App. – Dallas 2002, pet. denied); *Green v. Reyes*, 836 S.W.2d

203, 214 (Tex. App. – Houston [14th Dist.] 1992, no pet.); *Reyes v. Zuniga*, 794 S.W.2d 842, 846 (Tex. App. – San Antonio 1990, no writ); *see also* TEX. ELEC. CODE § 232.014(e) (“The court of appeals may refuse to permit a motion for rehearing to be filed or may reduce the time for filing the motion.”); TEX. ELEC. CODE § 232.015 (providing “appellate court may accelerate the appeal in a contest of a general or special election in a manner consistent with the procedures prescribed by Section 232.014”); TEX. R. APP. P. 49.4 (providing court may deny the right to file a motion for rehearing in accelerated appeals).

Amici urge the Court to grant the remainder of Appellees’ motion to expedite and decide this case in Appellees’ favor as expeditiously as possible, refusing motions for rehearing and expediting the mandate. Otherwise, even a ruling in Appellees’ favor would be Pyrrhic if the funding for the critical repairs to the dam is derailed simply by virtue of the normal delays inherent in the unexpedited appellate process. In this case, “justice too long delayed is justice denied.”⁸

⁸ Martin Luther King, Jr., *Letter from a Birmingham Jail* (Apr. 16, 1963), available at https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html (last visited July 28, 2021).

II. THE COURT SHOULD REJECT THIS ELECTION CONTEST.

No election is perfect. A disgruntled voter with a creative advocate generally can find a flaw in almost any election. Recognizing this, Texas courts do not overturn the outcome of an election without a showing that the alleged irregularity actually made a difference in the outcome. A reviewing court needs to know if it matters. In this case, it does not.

In an election contest, the trial court must “attempt to ascertain whether the outcome of the contested election, as shown by the final canvass, is not the true outcome.” TEX. ELEC. CODE § 221.003(a); *Galvan v. Vera*, No. 04-18-00309-CV, 2018 WL 4096383, at *2 (Tex. App. – San Antonio Aug. 29, 2018, no pet.). “To overturn an election, the contestant must prove by clear and convincing evidence that voting irregularities materially affected the election results.” *Flores*, 269 S.W.3d at 660. “An election contestant’s burden is a heavy one, and the declared results will be upheld in all cases except when there is clear and convincing evidence of an erroneous result.” *Id.* “The clear and convincing standard requires more proof than the preponderance of the evidence standard in ordinary civil cases. That standard is the degree of proof that will produce in the mind of

the trier of fact a firm conviction or belief as to the truth of the allegations to be proved.” *Id.* (internal citation and quotations omitted).

“A contestant can establish the outcome was materially affected by showing: (1) illegal votes were counted or an election official failed to count legal votes or engaged in other fraud, illegal conduct, or mistake; and (2) a different result would have been reached.” *Galvan*, 2018 WL 4096383, at *2; TEX. ELEC. CODE § 221.003(a).

Appellants do not come close to meeting this standard. Appellants allege a range of election violations – from the selection of the November 3, 2020 uniform election date to the location of polling places to the lack of voter affidavits to prove that voters are qualified to vote in the district. Not once do they even assert, much less attempt to prove, in their opening brief or reply that clear and convincing evidence exists to show that these alleged voting irregularities materially affected the election results. Even after Appellees correctly pointed out Appellants’ heavy burden to show clear and convincing evidence of a material effect on the election’s results, Appellants’ reply fails to address the clear-and-convincing evidence standard at all. *See* Appellees’ Br. at 28, 52, 58, 60, 65; *see generally* Reply. Their silence is telling.

Without addressing their evidentiary burden, Appellants do agree that the irregularities must have “materially affected the election’s results so as to have caused a different outcome.” Reply at 1 (citing *Willet v. Cole*, 249 S.W.3d 585, 589 (Tex. App. – Waco 2008, no pet.)). While they do not address it, the very page they cite from the *Willet* case states that “the declared results of an election will be upheld in all cases except where there is clear and convincing evidence of an erroneous result.” 249 S.W.3d at 589.

A. None of the alleged irregularities affected the outcome.

Regardless, it is obvious that none of the alleged irregularities made a difference in the outcome. For example, holding the election on the uniform November election date complied with TEX. WATER CODE § 49.102(a). *See* Appellees’ Br. at 29-30. Holding the election on this date did not preclude anyone from voting, and in fact, may have contributed to the record voter turnout of 90 percent of qualified voters. 3CR507-08 (District General Counsel Steve Robinson testifying that in his 29 years’ experience, he had never seen such a high percentage voter turnout in a district election).

Nor do Appellants point to any evidence – much less clear and convincing evidence – that the use of regular county election precincts and

polling places precluded anyone from voting. 3CR508 (Robinson testifying that he heard of no voters complaining that they did not know where to vote). Indeed, with 90 percent voter turnout, Appellants have not even attempted to prove that.

Instead, they claim without support in the record that 100 percent of the votes were illegal and should not have been counted. Reply at 2, 15. Appellants' *ipse dixit* does not make it so. Appellants have not shown that the outcome of the election was not the "true outcome." See TEX. ELEC. CODE § 221.003(a). The Court should reject Appellants' attempt to disenfranchise all District voters.

B. The lack of a voter affidavit didn't make a difference.

Appellants' argument primarily rests on the assumption that without a voter affidavit stating that the voter (1) did not have a prohibited relationship with a developer and (2) resided in the district for at least 30 days, all voters were unqualified and their votes were illegal. Reply at 2.

As Appellees established below and in their brief on appeal, the District was developed long ago and there are no developers related to the District. 2CR578, 611-12; Appellees' Br. at 50. Appellants do not dispute this.

Moreover, requiring voters to state that they have resided in the district for at least 30 days before the election is redundant given that the Election Code already ensures that voters cannot vote unless their voter registration has been on file for at least 30 days before the election. *See* TEX. ELEC. CODE § 13.143(a) (providing that a voter’s “registration becomes effective on the 30th day after the date the application is submitted to the registrar or on the date the applicant becomes 18 years of age, whichever is later”). Thus, it is a given that no voter could vote without being a resident for at least 30 days.⁹

Therefore, the lack of a voter affidavit did not materially affect the outcome of the election. Indeed, Appellees cite multiple cases holding that the lack of a statutorily required affidavit or signature did not affect or change the result of elections. *See* Appellees’ Br. at 55-57 & n.69.

⁹ The fact that five people out of 614 total voters, or 0.008 percent, allegedly voted who did not reside in the District, did not materially impact the outcome of the election. 1CR134; 2CR517-18; *see Galvan*, 2018 WL 4096383, at *4 (holding plaintiffs could not establish that 50 invalid votes materially affected the outcome of the election). Indeed, the Election Code includes provisions to dispose of rejected ballots and deal with votes mistakenly cast in the wrong precinct. *See* TEX. ELEC. CODE §§ 11.005; 65.056. Regardless, only three of the five voters provided affidavits, and none of them expressly stated that the affiant did not live within the District. 3CR385-87.

C. The Water Code’s provisions are directory.

Appellants also contend that § 49.102 and § 49.1025 of the Texas Water Code are mandatory. Reply at 7. Even when a statute uses the word “shall,” however, it “may be treated as directory” and held “as having been used in the sense of ‘may.’” *Thomas v. Groebl*, 212 S.W.2d 625, 630 (Tex. 1948). “Where the article itself contains no provision that ballots cast without compliance with the statute shall not be counted, the article is directory and not mandatory.” *Walker v. Thetford*, 418 S.W.2d 276, 292 (Tex. Civ. App. – Austin 1967, writ ref’d n.r.e.); see also *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (“The word ‘must’ is given a mandatory meaning when followed by a noncompliance penalty.” (citation omitted)).

The Water Code statutes in question contain no noncompliance penalty providing that an election official’s failure to follow their provisions requires that no ballots shall be counted. See TEX. WATER CODE §§ 49.102, 49.1025; *Walker*, 418 S.W.2d at 292.¹⁰ Thus, they are directory, not

¹⁰ Section 49.1025(c) of the Water Code says nothing about what happens if an election officer fails to provide voters with the affidavit. It addresses only the voter’s failure to submit the affidavit provided by the election officer, or the voter’s submission of an affidavit demonstrating the voter is not qualified, in which case the voter may be accepted to vote provisionally under TEX. ELEC. CODE § 63.011. This means the vote can still be counted. This is not a penalty providing that the ballot shall not be counted. See

mandatory, and noncompliance does not invalidate the entire election as Appellants contend. *Walker*, 418 S.W.2d at 292.

D. Courts strive to uphold the will of the people.

Ninety percent of eligible voters turned out to vote on Propositions A, B, and C. 2CR484, 579, 603-06. By a margin of 88 to 91 percent, voters approved the propositions to confirm the creation of the District; approve the contract with the GBRA to finance the repairs to the dam, including an *ad valorem* tax; and authorize the District to levy and collect various taxes to operate, maintain, and repair the dam. 2CR440, 582-83, 605. Such high approval rates – for tax measures no less – make clear that voters were aware of the prior dam failures in the area and the grave consequences that could occur if the dam is not rebuilt promptly. *See supra* Statement of Facts Part C.

Courts do not overturn the results of an election lightly, and that is especially true when the will of a substantial majority of the electorate supports the outcome:

It has many times been said by our courts that the object of every popular election is to ascertain the will of the qualified electors in the area to be affected thereby upon the issue or

Walker, 418 S.W.2d at 292. Nothing in § 49.1025(c) says that all votes must be thrown out and the election voided if the election official neglects to provide any affidavits.

issues submitted to them. Mere informalities that afford no just grounds for the conclusion that the will of the qualified electors has been in any manner thwarted, diverted or suppressed will not be considered of sufficient importance to render an election void. Especially does the rule apply in cases such as this where the record clearly shows that the will of a substantial majority of the electors in the district is reflected by the ultimate declarations of results and orders entered by the authorities charged with the duty of entering them.

Lightner v. McCord, 151 S.W.2d 362, 367 (Tex. Civ. App. – Amarillo 1941, no writ); *Stafford v. Stegle*, 271 S.W.2d 833, 834-35 (Tex. Civ. App. – San Antonio 1954, no writ) (quoting same).

E. If Appellants prevail, the impact will be grave.

Against the will of approximately 90 percent of voters, two individuals – a husband and wife – brought this election contest and derailed the District’s plans to begin construction on a renovated dam and safeguard the community. Their claims are meritless and should be rejected by this Court.

However, if the Court grants Appellants’ requested relief of vacating the judgment and rendering judgment in their favor, the 93-year-old Lake McQueeney dam will have to wait even longer on critical repairs while a new election is called and held, and new financing is obtained. The price

tag for taxpayers – at much higher market interest rates – is estimated to increase by approximately \$15 million. 2CR493-94; 3CR476-77, 516-17.

In the meantime, every day that goes by without repairing the dam could result in a catastrophic failure that could endanger property and the lives of anyone unlucky enough to be on or near the lake when the breach occurs.

The Court should not allow that to happen.

PRAYER

Amici respectfully request the Court to promptly affirm the judgment of the trial court, refuse to entertain any motions for rehearing, and order that the mandate will issue instanter.

Respectfully submitted,

/s/ Meredith Parenti

Meredith Parenti

State Bar No. 00797202

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CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using Microsoft® Word and contains 4,682 words, as determined by the computer software's word-count function, excluding the sections of the document listed in TEX. R. APP. P. 9.4(i)(1).

/s/ Meredith B. Parenti
Meredith B. Parenti

CERTIFICATE OF SERVICE

I certify that on July 29, 2021, I served a copy of the above brief electronically, in accordance with the rules on electronic filing, on the following counsel of record:

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/s/ Meredith Parenti
Meredith Parenti

No. 04-21-00118-CV

**In the
Fourth Court of Appeals
San Antonio, Texas**

STEVEN L. BRUINGTON AND NANCY R. BRUINGTON,
Appellants,

v.

LAKE MCQUEENEY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1,
ROBERT L. WORTH, JR., DAVID DOUGHTIE, JOHN EWALD, LINDSEY GILLUM, AND
PAUL A. MUELLER,
Appellees.

On Appeal from the 25th Judicial District Court of
Guadalupe County, Texas

Appendix of *Amici Curiae* Friends of Lake McQueeney, et al.

- A. Agreed Temporary Injunction, *Skonnord v. Guadalupe-Blanco River Authority*, No. 19-CV-2053-CV and *Williams v. Guadalupe-Blanco River Authority*, No. 19-2054-CV, In the 25th Jud. Dist. Ct. of Guadalupe Cty., Tex. (Sept. 16, 2019).
- B. Guadalupe Valley Lakes Report #1 of the Independent Expert Panel (Oct. 21, 2019).
- C. Tex. Water Dev. Bd. Project Funding Request (Feb. 10, 2021).

FILED
2370 M
SEP 16 2019

NO. 19-CV-2053-CV

LINDA BALK
Clerk, Dist. Court, Guadalupe Co. Tx.
By: [Signature] Deputy

KEVIN SKONNORD, ET AL.,

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IN THE DISTRICT COURT OF

GUADALUPE COUNTY, TEXAS

Plaintiffs,

vs.

GUADALUPE-BLANCO RIVER
AUTHORITY,

Defendant.

25TH JUDICIAL DISTRICT

NO. 19-2054-CV

JIMMY AND CHERYL WILLIAMS,
ET AL.,

§
§
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IN THE DISTRICT COURT OF

GUADALUPE COUNTY, TEXAS

Plaintiffs,

vs.

GUADALUPE-BLANCO RIVER
AUTHORITY AND ITS OFFICERS
AND DIRECTORS

Defendants.

25TH JUDICIAL DISTRICT

AGREED TEMPORARY INJUNCTION

Before the Court are (i) the Applications for Temporary Injunction filed on September 5, 2019 by Plaintiffs in both captioned causes of action (collectively "Plaintiffs"), requesting an order enjoining Defendants, GUADALUPE-BLANCO RIVER AUTHORITY ("GBRA"), and Kevin Patteson, Jonathan Stinson, Dennis L. Patillo, Don Meador, Kenneth A. Motl, Rusty Brockman, William Carbonara, Steve Ehrig, Oscar Fogle, Ronald J. Hermes, Tommy Matthews, II, (collectively, "Defendants"), during the pendency of a full trial on the merits of this case, from drawing down the lakes known as Lake Placid, Lake McQueeney, Lake Gonzales and Meadow Lake, which are part of the Guadalupe River basin and within the jurisdiction of the GBRA.

On September 11, 2019, the Court conducted an evidentiary hearing on Plaintiffs' Applications for Temporary Injunction and entered a Temporary Restraining Order until the completion of the Temporary Injunction Hearing. All parties received notice of the hearing and appeared through counsel. Based on the pleadings, evidence presented and admitted at this hearing, and the arguments of counsel, the Court finds that (i) Plaintiffs have pleaded and proved (i) a cause of action against the GBRA; (ii) a probable right to the relief sought by Plaintiffs; and (iii) that Plaintiffs will suffer probable, imminent, and irreparable injury if a temporary injunction does not issue to maintain the status quo pending a full trial on the merits of this case. Accordingly, the Court finds that Plaintiffs' Application for Temporary Injunction should be, in all things, GRANTED. The parties have agreed that Defendant's Plea to the Jurisdiction shall be set for re-hearing and ruling by the Court on a later date no earlier than seventy-five (75) days before the trial date set by this Order, with proper notice.

The Court specifically FINDS and CONCLUDES as follows:

1. The Court FINDS that the Plaintiffs and the GBRA present circumstances that require a careful balancing of interests. The Plaintiffs claim imminent harm and irreparable injury that would result from the immediate dewatering of the subject lakes. The Defendants present a concern over the integrity of a dam system that Defendants claim is at the end of its useful life and, therefore, presents a threat of imminent and irreparable harm. The Court finds that injunctive relief is necessary in order to maintain the status quo and balance the interest of the parties. The parties have themselves reached an agreement that the Court FINDS is reasonable and in the interest of all parties. The Court therefore makes the following findings and rulings based in substantial part on the agreements of the parties. The parties' agreements and the Court's findings are effective for purposes of this Order only and may not be used against a party at any subsequent proceeding.

2. The GBRA is a conservation and reclamation district, governmental agency, and political subdivision of the State of Texas created by special act of the Texas Legislature in 1933 as the Guadalupe River Authority under Article XVI, Section 59, of the Texas Constitution and reauthorized by special act of the Texas Legislature as the Guadalupe-Blanco River Authority and codified in Article 8280-106 V.T.C.S.

3. Plaintiffs own real and personal property located on the waterfront of the Guadalupe Valley Lakes, which such lakes are part of the Guadalupe River basin and within the jurisdiction of the GBRA (collectively, "Plaintiffs' Property").

4. Plaintiffs have alleged the following causes of action against the GBRA relating to the GBRA's intentional, knowing and affirmative decision to commence a systematic drawdown of the Guadalupe Valley Lakes commencing on September 16, 2019:

- a. Inverse condemnation and unconstitutional taking of Plaintiffs' real and personal property in violation of Article I, Section 17 of the Texas Constitution;
- b. Statutory taking under Section 2007 of the Texas Government Code; and
- c. A request for declaratory judgment that GBRA's failure to perform a takings impact assessment in violation of Section 2007.043 of the Texas Government Code invalidates the GBRA's action to drawdown the Guadalupe Valley Lakes; and
- d. Plaintiffs in Cause No. 19-2054-CV's *ultra vires* claims against the individual Defendants for injunction relief as a result of the Defendants' failure to perform ministerial acts as required by Texas law, specifically, Art. 8280-106, Vernon Civ. Stat., as amended by S.B. 626, effective September 1, 2019, and § 299.41, Tex. Adm. Code and the individual Defendants' actions undertaken without legal authority. See *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154 (Tex. 2016).

5. Plaintiffs in both causes of action have demonstrated a probable right to the relief sought by offering competent evidence supporting their causes of action against the Defendants pursuant to Chapter 2007, §§ 2007.002, *et seq.*, Tex. Gov't Code and pursuant to the Constitution

of the State of Texas, and for *ultra vires* acts, for the unlawful “taking” of the Plaintiffs’ waterfront, improved real estate appurtenant to the Guadalupe River and all tributaries and back-waters thereof located in Comal, Guadalupe and Gonzales Counties, Texas on the Guadalupe Valley Lakes, which include Lakes Dunlap, McQueeney, Placid, Meadow, Gonzales and Wood (referred to herein as the “GV Lakes” or the “Guadalupe Valley Lakes”) based upon the unreasonable interferences by the Defendants with those property owners’ rights to use and enjoy their properties and by further restricting or limiting their rights to their properties.

6. The decision by the GBRA to drawdown the Guadalupe Valley Lakes is an intentional governmental action undertaken for a public use or benefit.

7. The GBRA has not prepared a written takings impact assessment in accordance with Texas Government Code Section 2007.0043.

8. Plaintiffs have alleged, and for the purposes of this Order Defendants concede, that there are reasonable alternatives to drawing down the Guadalupe Valley Lakes that are available to the GBRA to protect public safety.

9. Plaintiffs have alleged, and for purposes of this Order Defendants concede, that a potential loss of rights in Plaintiffs’ real property with respect to the diminution in market value of Plaintiffs’ Property that will occur from GBRA’s systematic drawdown of the Guadalupe Valley Lakes, which such potential loss in Plaintiffs’ real property is a probable, imminent, and irreparable injury that qualifies a party for a temporary injunction. *Rus–Ann Dev., Inc. v. ECGC, Inc.*, 222 S.W.3d 921, 927 (Tex. App.—Tyler 2007, no pet.) (“In Texas, the potential loss of rights in real property is a probable, imminent, and irreparable injury that qualifies a party for a temporary injunction.”).

10. The Court has considered Defendants' contention , that immediate action is necessary to assess and address Defendant's claim of potential imminent harm of a spill gate failure at one or more of the Guadalupe Valley Lakes, including possible loss of life, damage to property, and exposure to claims as a result of loss of life or damage to property.

11. The Court has considered Defendants' contention that there exists a potential threat of imminent and irreparable harm to property and public safety if the spill gates at Lakes McQueeney, Placid, Meadow and Gonzales were to fail.

12. The GBRA has not offered to compensate Plaintiffs monetarily for damages to Plaintiffs' Property that may result from the GBRA's drawdown of the Guadalupe Valley Lakes. A temporary injunction against the enforcement and implementation of the drawdown, in combination with a mechanism to assess and manage Defendants' claim of risk of harm from a potential dam failure, will preserve the status quo and will not impose an undue burden on Plaintiffs or the Defendants.

INJUNCTIVE RELIEF

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, during the pendency of a full trial on the merits of this case:

- a. Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, are hereby **ENJOINED** from dewatering, drawing down, or draining Lake Placid, Lake McQueeney, Lake Gonzales and Meadow Lake, except as otherwise permitted by this Order and that the water levels of the lakes shall remain the same as they were on September 11, 2019, under normal operating conditions, except as otherwise permitted by this Order;
- b. Subject to subparagraph (l) below, all activity and recreation on Lake Placid, Lake McQueeney, Lake Gonzales and Meadow Lake shall, effective as of 12:00 a.m. on September 19, 2019, cease, including but not limited to, boating, skiing, fishing from watercraft, swimming, kayaking, tubing, canoeing or wading, which shall include all activity and recreation on the Guadalupe River from Dunlap dam through Farm to Market Road 1117 (F.M. 1117) and from State Highway 80 (SH

80) through Gonzales County Road 143 (C.R. 143); *provided, however, notwithstanding the foregoing*, nothing herein shall be deemed or construed as prohibiting activities contemplated by this Order;

- c. All parties to this suit shall reasonably cooperate with each other, and with state and local governing bodies, to enact such ordinances, laws or other regulations as are reasonably necessary to enforce this Order;
- d. The Court orders that all parties to this suit shall reasonably cooperate, to the extent lawful, with each other and with law enforcement personnel to patrol the Guadalupe Valley Lakes to ensure that the prohibitions of this Order are enforced. Such cooperation shall include the hiring of additional persons qualified to patrol the Guadalupe Valley Lakes and eject, cite, or arrest persons violating the prohibitions of this Order.
- e. Within 3 (three) days of the signing of this Order, Defendants, at Defendants' expense, shall designate an outside independent expert (the "GBRA Designated Expert") qualified to render an unbiased opinion on the safety of the Guadalupe Valley Lakes, given the current condition of the hydroelectric dams;
- f. Within 3 days of the signing of this order, all Plaintiffs, at Plaintiffs' expense, shall collectively designate one (1) independent expert (the "Plaintiff Designated Expert"), qualified to render an unbiased opinion on the safety of the Guadalupe Valley Lakes, given the current condition of the hydroelectric dams;
- g. The GBRA Designated Expert and the Plaintiff Designated Expert shall agree on a third independent expert (the "Third Designated Expert") qualified to render an unbiased opinion on the safety of the Guadalupe Valley Lakes, given the current condition of the hydroelectric dams;
- h. The GBRA is ordered to fully cooperate with the GBRA Designated Expert, the Plaintiff Designated Expert and the Third Designated Expert (collectively, the "Independent Expert Panel") by providing any and all available information, including, without limitation, third party consultant and expert data provided to and/or relied upon by Plaintiffs and/or the GBRA;
- i. Plaintiffs in Cause No. 19-2053-CV shall be solely responsible for the payment of all costs for the Plaintiff Designated Expert and Defendant shall be solely responsible for all costs for the GBRA Designated Expert. All costs of the Third Designated Expert shall be paid one-half (1/2) by the GBRA and one-half (1/2) by Plaintiffs in Cause No. 19-2053-CV;
- j. As soon as reasonably practicable, but in no event later than thirty (30) days from the date of this Order, (the "Initial Determination Period"), the Independent Expert Panel shall provide a report to the Court and all of the parties to this suit, which such report shall include the Independent Expert Panel's determination of

designated “unsafe zones,” if any, not suitable for activity or recreation on the Guadalupe Valley Lakes; *provided, however,* if the Independent Expert Panel determines that it cannot make such determination within such 30-day period, then the Independent Expert Panel shall, prior to the expiration of such-30 day period, notify the Court and the parties accordingly (which such notice shall include detailed explanation of the reasons for such extension) and the Initial Determination Period shall be extended for up to an additional thirty (30) days.

- k. If and when “unsafe zones” are identified by the Independent Expert Panel, the parties to this suit shall use those safety measures prescribed by Independent Expert Panel regarding appropriate warnings and this Order shall be deemed amended to provide that access, activity and recreation, including but not limited to, boating, skiing, fishing from watercraft, swimming, kayaking, tubing, canoeing or wading, shall be prohibited in such designated “unsafe zones” on the Guadalupe Valley Lakes;
- l. If and when “unsafe zones” on the Guadalupe Valley Lakes are identified by the Independent Expert Panel in accordance with sub-paragraph (j), all other areas on the Guadalupe Valley Lakes shall reopen and the prohibitions set forth in paragraph (b), above, shall immediately and automatically terminate in all respects regarding all areas of the Guadalupe Valley Lakes other than designated “unsafe” zones.” All designated “unsafe zones” shall remain closed and subject to the prohibitions set forth in subparagraph (b), above.
- m. The Independent Expert Panel shall consider the circumstances, if any, under which property owners may access the “unsafe zones” and shall devise a procedure through which property owners may apply to the GBRA for such access, such decision being made in accordance with the time period provided in subparagraph (j).
- n. Notwithstanding anything herein to the contrary, the GBRA is not prohibited herein from lowering the spill gates on the Guadalupe Valley Lakes as part of its reasonable ordinary course of operations (including without limitation, allowing water to pass downstream in response to, or in anticipation of increased flow in the river, for debris removal, for necessary maintenance on generators, or for other reasonable and necessary periodic operations);
- o. Notwithstanding anything herein to the contrary, the GBRA is not prohibited from lowering the spill gates in the event of a flood event, permanent spill gate failure, or other bona fide emergency;
- p. Nothing in this Order is intended to nor shall it affect any statutory and/or regulatory obligations that the GBRA has with regard to the operations, maintenance, and/or replacement of the Guadalupe Valley Lakes, and that any such obligations remain completely intact.; and

- q. Any party to this suit may apply to the Court at any time for relief from, or modification to this Order, as such party may deem necessary.

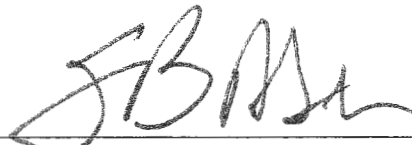
BOND

The Court finds that Texas Rule of Civil Procedure 684 is applicable to this temporary injunction because Defendant is a subdivision of the State of Texas, has no pecuniary interest in the suit and has shown no monetary damages. Defendant is unlikely to suffer any injury or damage as a result of this temporary injunction. IT IS, THEREFORE, ORDERED that Plaintiffs' payment of the cash in lieu of a bond posted on September 11 2019, and filed with the Clerk of the Court in the total amount of One Hundred and No/100 Dollars (\$100.00) is and shall continue to be adequate and sufficient to to secure this temporary injunction. The Clerk shall forthwith issue a temporary injunction in conformity with this Order.

TRIAL SETTING

IT IS ORDERED, that a full trial on the merits of this cause is hereby set on Oct. 5, 2020 at 9:00 o'clock A.m in the above referenced Court.

SIGNED this 16[✓] day of Spt. 2019 at 2:35 o'clock P. m.



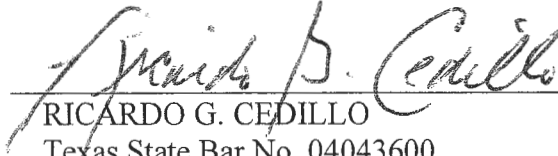
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JUDGE PRESIDING

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Cause Nos. 19-2053-CV & 19-2054-CV
In the District Court of Guadalupe County, Texas
25th Judicial District, Honorable Stephen B. Ables, Judge Presiding

Guadalupe Valley Lakes
Report #1 of the Independent Expert Panel

21Oct2019

Background & Introduction

Pursuant to an Agreed Temporary Injunction (ATI) issued 16Sep2019 by the Honorable Stephen B. Ables, Judge Presiding, for the District Court of Guadalupe County, Texas in the matter of Cause Nos. 19-2053-CV and 19-2054-CV, an Independent Expert Panel (IEP) qualified to render an unbiased opinion on the safety of the Guadalupe Valley Lakes (GVL), given the current condition of the hydroelectric dams, has been assembled to provide a report addressing the following three specific charges:

- 1) **Determination of designated “unsafe zones,” if any, not suitable for activity or recreation on the Guadalupe Valley Lakes (GVL) [ATI, Injunctive Relief (j)].** The IEP has adopted a geographic scope extending from Dunlap dam through FM 1117 and from SH 80 through Gonzales CR 143 [ATI, Injunctive Relief (b)] on the Guadalupe River. Upstream to downstream, this reach of the Guadalupe River includes Dunlap Dam (TP-1), Lake McQueeney, TP-3 Dam, Lake Placid, TP-4 Dam, Meadow Lake, Nolte Dam (TP-5), Lake Gonzales, H-4 Dam, and interspersed segments of the Guadalupe River.
- 2) **If and when “unsafe zones” are identified by the IEP, prescribe safety measures regarding appropriate warnings [ATI, Injunctive Relief (k)].**
- 3) **Consider the circumstances, if any, under which property owners may access the “unsafe zones” and devise a procedure through which property owners may apply to GBRA for such access [ATI, Injunctive Relief (m)].**

In accordance with the ATI, the IEP was assembled as follows:

- 1) On or about 16Sep2019, Defendants designated Samuel K. Vaughn, PE, of HDR Engineering, Inc. (HDR) as an outside independent expert [the Guadalupe-Blanco River Authority (GBRA) Designated Expert] [ATI, Injunctive Relief (e)].
- 2) On or about 16Sep2019, Plaintiffs designated Gregory R. Wine, PE, of Huitt-Zollars, Inc. (H-Z) as an independent expert (the Plaintiff Designated Expert) [ATI, Injunctive Relief (f)].
- 3) After identification and consideration of four (4) potentially qualified candidates willing to serve, the GBRA Designated Expert and the Plaintiff Designated Expert agreed on W. Nim Kidd, MPA, CEM, Chief of the Texas Division of Emergency Management (TDEM), as a third independent expert (the Third Designated Expert) [ATI, Injunctive Relief (g)] on or about 27Sep2019.

The IEP respectfully offers this Report #1 documenting consensus responses to its charges along with the activities and fundamental assumptions leading to the consensus responses. Such responses are provided on the bases of relevant information received from the Defendant, Plaintiff, a third party technical consultant (Black & Veatch, Inc.), HDR and H-Z technical staff, and other sources as well as the experience and professional judgment of each member of the IEP as applied within the time constraints specified in the ATI. Report #1 focuses on the lakes and river segments between Dunlap Dam and FM 1117. Report #2 will be submitted on or before 15Nov2019 and will focus on the lake and river segments between SH 80 and Gonzales CR 143.

The IEP recommendations in this report are provided with the understanding that designated Unsafe Zones shall remain in effect until: a) The gates and dams have been replaced or restored to serviceable conditions; or b) Other actions (e.g., lowering the gates and reservoirs) have sufficiently mitigated the safety risks. Furthermore, the IEP cautions that designation of Unsafe Zones and implementation of prescribed safety measures shall not be viewed as “permanent solutions” resolving dam safety issues and enabling long-term operations of existing facilities deemed unsafe.

Activities of the IEP

Key activities of the IEP (and associated dates of performance) include the following:

- 1) Teleconferences (Sep 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, & 30 and Oct 1, 2, 4, 7, 10, 12, 14, 15, 16, 17, 19, & 21).
- 2) Download and initial review of reference documentation and summaries of hydraulic modeling results (Sep 17 – Oct 1).
- 3) Receipt & review of available hydraulic models and request for & receipt of supplemental model results (Oct 1 – Oct 7).
- 4) Meetings (Oct 7 & 11).
- 5) Reconnaissance of system (Oct 9).
- 6) Research and report preparation (Sep 16 – Oct 21).

Fundamental Assumptions

It is fundamentally understood by the IEP that nowhere in, on, or immediately adjacent to the water is 100% safe. There are inherent risks of property damage, personal injury, and drowning in these areas and these risks may be elevated by rapidly changing flow conditions associated with gate adjustments, flood flow passage, and gate failure. For the purposes of addressing its charges, the IEP has identified some areas of elevated risk as “unsafe zones.”

Populations at risk (PAR) considered by the IEP include: people in the water (swimmers, waders, tubers, etc.), people on the water (boaters, jet skiers, skiers, etc.) and people adjacent to the water (campers, picnickers, residents, etc.).

An instantaneous SINGLE gate failure, which results in a maximum flow of around 11,000 cubic feet per second (cfs) to 13,000 cfs (depending on gate size), was modeled by a third party consultant using the U.S. Army Corps of Engineers Hydrologic Engineering Center River Analysis System (HEC-RAS 2D)¹. This is deemed the most likely failure scenario at each dam based on IEP interpretation of technical evaluations by third-party consultants, not multiple gates at one dam. The IEP's understanding of technical evaluations by third-party consultants further suggests that cascading failures of gates at downstream dams would not be expected in the event of single gate failure at an upstream dam.

Flooding is a fact of life along the Guadalupe River and most residential structures are elevated accordingly to avoid frequent property damage and minimize risks of injury or drowning. Simplified statistical analyses suggest that the instantaneous peak discharge associated with a single upstream gate failure is greater than the 5-yr flood event (20% chance of being equaled or exceeded in any year) and less than the 10-yr flood event (10% chance of being equaled or exceeded in any year). Highway and railroad bridges are typically constructed providing clearance for passage of flood flows in excess of those associated with a 10-yr event.

It is the opinion of the IEP that a “sunny day” gate failure (i.e. a gate failure occurring during non-high-flow periods) is the critical scenario due to gates being in full upright position, elevated population at risk, and no advanced warning of the failure.

GBRA has a Control Panel Operator staffing its Control Center at all times who (in addition to other duties) monitors lake levels as well as sensors on each gate at each dam. When a sensor indicates gate movement, an alarm sounds at the Control Center alerting the Operator. The Control Panel Operator also has real time visual images of the gates at each dam and can remotely pan and zoom the camera around to view the gates and other parts of the dam area. In the event of gate failure or dam breach, the Control Panel Operator immediately calls the Guadalupe County Emergency Management Coordinator (EMC). The IEP visited this control center on 11Oct2019.

Guadalupe County operates and maintains outdoor alarm sirens with continuous coverage along the Guadalupe River from the upstream county line to the downstream county line. The alarm sirens are tested each Saturday and are assumed always available to be sounded to make individuals on the river and lakes as well as residents aware of a high water event and/or other emergency situations (tornados, etc.). The alarms are normally sounded when the flow in the river and lakes exceeds about 10,000 cfs. A single gate failure at any of the GVL dams will result in flows immediately downstream that exceed this threshold. During 15Oct2019 discussions with

¹ HEC-RAS 2D models with geographic coverage extending from Dunlap Dam to FM 1117 were received by HDR and H-Z on 10Oct2019. The models were generally reviewed by HDR and H-Z personnel under the supervision of the GBRA Designated Expert and the Plaintiff Designated Expert, respectively, and found suitable for use in development of this report.

the Guadalupe County EMC, the IEP was advised that the alarm sirens can be initiated by the County EMC or the County Sheriff's Dispatch upon receipt of notification of an event. If the County EMC is in the office, the alarm can be sounded immediately. The Dispatch can also sound the alarm immediately after communications with the County EMC. In a worst case scenario, the alarm initiation could take up to 30 minutes after occurrence of an event, should the County EMC need to travel to their office to initiate the alarm. The County EMC is in the process of installing technology to initiate the alarm sirens remotely using a cell phone application. It is the IEP's understanding that this enhanced alarm initiation procedure will be in place within 30 days of this report.

In addition, Guadalupe County participates in the Regional Emergency Alert Network (REAN). This Alert Emergency Call-Out System enables individuals to sign up to receive emergency notifications on their phones (home and cell) and pagers and by emails and text messages. Furthermore, the County is covered by the Integrated Public Alert and Warning System (IPAWS). IPAWS is the nation's alert and warning infrastructure which enables officials to provide the public with timely life-saving information.

The IEP is aware of Texas Parks & Wildlife Department general Boating Safety Tips and legal requirements which include the following with respect to Personal Flotation Devices (PFDs):

- 1) Always wear a PFD;
- 2) Children younger than 13 years old must wear a PFD while underway; and
- 3) Personal watercraft operators and passengers must wear a PFD.

It is assumed that the public is similarly aware of such tips and requirements and will act responsibly given the current condition of the hydroelectric dams.

Finally, the IEP assumes that implementation and enforcement activities associated with designated "unsafe zones" and prescribed safety measures will be accomplished through the cooperative efforts of governmental entities including, but not limited to, GBRA, Guadalupe County, and affected cities.

Determination and Designation of "Unsafe Zones"

The IEP adopted Evaluation Criteria for determination and designation of "unsafe zones" with due consideration of readily available information including, but not limited to, the following:

- 1) Summaries of technical information developed by a third-party consultant using HEC-RAS 2D including:
 - a) Increased depth, maximum rate of rise, and time to peak depth at selected locations downstream of a single gate failure.
 - b) Aerial photography based reservoir or river segment maps including color-shaded, maximum velocity contours for each reservoir or river segment in the event of a single gate failure (Attachment A).
 - c) Aerial photography based reservoir or river segment maps including color-shaded, maximum depth times velocity (DV) contours for each reservoir or river segment in the event of a single gate failure.

- 2) Summaries of technical information derived through HDR and H-Z applications of the HEC-RAS 2D models developed by a third party consultant including:
 - a) Aerial photography based reservoir or river segment maps including color-shaded velocity contours immediately before and at 5-minute increments up to 20 minutes after a single gate failure.
 - b) Time series plots of velocity and depth at selected locations downstream of a single gate failure.
- 3) Effective GBRA monitoring and immediate coordination with the County EMC to initiate the County's alert siren system and other emergency notification methods.
- 4) Reference literature including:
 - a) United States Bureau of Reclamation, "RCEM – Reclamation Consequence Estimating Methodology, Guidelines for Estimating Life Loss for Dam Safety Risk Analysis, Interim," U.S. Department of the Interior, July 2015.
 - b) S.N. Jonkman & E. Penning-Rousell, "Human Instability in Flood Flows," Journal of the American Water Resources Association, August 2008.
 - c) National Park Service, "Instream Flows for Recreation: A Handbook on Concepts and Research Methods," U.S. Department of the Interior, January 1993.
 - d) City of New Braunfels, "Guadalupe River Recreation Thresholds," <https://www.nbtexas.org/2326/Guadalupe-River-Info> .
 - e) Texas Parks & Wildlife Department, "Texas River Guide, Information on River Safety," <https://tpwd.texas.gov/landwater/water/habitats/rivers/safety.phtml> .
 - f) Texas Parks & Wildlife Department, "Boating Safety Tips," https://tpwd.texas.gov/fishboat/boat/safety/safety_tips/ .

The following Evaluation Criteria were applied by the IEP in determining and designating PROHIBITED and RESTRICTED UNSAFE ZONES:

- 1) PROHIBITED UNSAFE ZONE Upstream of Dam & Gates: An Unsafe Zone for All Activities on or in the water (boating, canoeing, jet skiing, swimming, wading, tubing, etc.) extending the distance upstream required to swim at 1 foot per second from the center of the reservoir to safety on the shore with water flowing at simulated maximum velocity based on single gate failure immediately downstream plus 25% to account for recognition of hazardous situation and panic decision-making.
- 2) PROHIBITED UNSAFE ZONE Downstream of Dam & Gates: An Unsafe Zone for All Activities on or in the water (boating, canoeing, jet skiing, swimming, wading, tubing, etc.) extending the distance downstream where the increased depth exceeds four (4) feet and/or the increased velocity of flows exceeds six (6) feet per second within 30 minutes of upstream gate failure.
- 3) RESTRICTED UNSAFE ZONE Downstream of Dam & Gates: An Unsafe Zone for Activities in the water (swimming, wading, tubing, etc.) extending the distance downstream where the increased velocity of flows exceeds four (4) feet per second within 30 minutes of upstream gate failure.

Following is a summary of the IEP recommendations regarding designation of “unsafe zones” and safety measures by reservoir and/or segment of the Guadalupe River:

Lake McQueeney (single gate failure at TP-3 Dam)

- 1) Upstream of the TP-3 Dam (Lake McQueeney Dam) - The area approximately 900 feet upstream of the TP-3 Dam and gates impounding Lake McQueeney is considered a PROHIBITED UNSAFE ZONE and shall be marked by a line of buoys and signage. All activities on and in the water shall be prohibited in this zone. See Attachment B.
- 2) Participants in activities in or on Lake McQueeney should be made aware of the possibilities of water levels falling below normal level at rates of up to 0.2 feet per minute and rapidly increasing flow velocities of up to 3 feet per second.

Lake Placid (single gate failure at TP-3 Dam or TP-4 Dam)

- 1) Downstream of TP-3 Dam - The area upstream of a line approximately 250 feet downstream of the SH 78 bridge is considered a “PROHIBITED UNSAFE ZONE” and shall be marked by a line of buoys and signage. All activities on and in the water shall be prohibited in this zone. See Attachment B.
- 2) Downstream of TP-3 Dam – The area approximately 300 feet upstream of Son’s Island and downstream of the existing buoys in the vicinity of the SH 78 crossing identified above, is considered a “RESTRICTED UNSAFE ZONE” for all activities in the water such as swimming, wading, tubing, etc. See Attachment C.
 - a) A line of buoys with signage marking this unsafe zone shall be installed approximately 300 feet upstream of Son’s Island.
 - b) A properly fitted Type I or Type III Personal Floatation Device (PFD) shall be worn at all times for all activities on the water in this zone.
- 3) Upstream of TP-4 Dam - The area within approximately 850 feet upstream of the TP-4 Dam impounding Lake Placid is considered a “PROHIBITED UNSAFE ZONE” and shall be marked by a line of buoys and signage. All activities on and in the water shall be prohibited in this zone. See Attachment B.
- 4) Participants in activities in, on, or adjacent to Lake Placid should be made aware of the possibilities of water rising 3 to 7 feet above normal level at maximum rates of 0.05 to 1.9 feet per minute, respectively, and rapidly increasing flow velocities of up to 8 feet per second.
 - a) For Participants adjacent to the water (campers, picnickers, residents, etc.), their awareness of rising water and increasing velocity is of particular importance at locations such as Dam Camp (immediately downstream of the TP-3 Dam) and Son’s Island where overnight camping occurs.
- 5) Participants in activities in or on Lake Placid should be made aware of the possibilities of water levels falling below normal level at rates of up to 0.4 feet per minute and rapidly increasing flow velocities of up to 3 feet per second.

Meadow Lake (single gate failure at TP-4 Dam or Nolte Dam)

- 1) Downstream of TP-4 Dam - The segment of the Guadalupe River and Meadow Lake approximately 1050 feet downstream of TP-4 Dam is considered a “PROHIBITED UNSAFE ZONE” and shall be marked by a line of buoys and signage. All activities on and in the water shall be prohibited in this zone. See Attachment B.
- 2) Downstream of TP-4 Dam – The area downstream of the PROHIBITED UNSAFE ZONE and upstream of the river access area in Max Starcke Park (on the left bank approximately 230 feet upstream of Saffold Dam) is considered a “RESTRICTED UNSAFE ZONE” for all activities in the water such as swimming, wading, tubing, etc. See Attachment C.
 - a) A line of buoys and signage marking this unsafe zone shall be installed from the downstream edge of the river access area in Max Starcke Park to the center of the river at a point approximately 450 feet upstream of Saffold Dam and thence, by the shortest distance, to the right bank.
 - b) A properly fitted Type I or Type III Personal Floatation Device (PFD) shall be worn at all times for all activities on the water in this zone.
- 3) Downstream of TP-4 Dam – The area downstream of the river access area in Max Starcke Park and upstream of the Walnut Branch tributary confluence is considered a “PROHIBITED UNSAFE ZONE” and activities on and in the water shall be prohibited. See Attachment B.
 - a) A line of buoys and signage marking the downstream boundary of this unsafe zone shall be installed immediately upstream of the Walnut Branch tributary confluence.
- 4) Downstream of TP-4 Dam – The area downstream of the Walnut Branch tributary confluence and upstream of the GBRA River Annex is considered a “RESTRICTED UNSAFE ZONE” for all activities in the water such as swimming, wading, tubing, etc. See Attachment C.
 - a) A line of buoys with signage marking this unsafe zone shall be installed across Meadow Lake south of the GBRA River Annex.
 - b) A properly fitted Type I or Type III Personal Floatation Device (PFD) shall be worn at all times for all activities on the water in this zone.
- 5) The area within approximately 1250 feet upstream of the Nolte (TP-5) Dam and gates impounding Meadow Lake is considered a “PROHIBITED UNSAFE ZONE” and shall be marked by a line of buoys and signage. All activities on and in the water shall be prohibited in this zone. See Attachment B.
 - a) Observations during the IEP reconnaissance suggest that the existing line of buoys upstream of Nolte (TP-5) Dam is located consistent with this designation.
- 6) Participants in activities in, on, or adjacent to Meadow Lake and the segment of the Guadalupe River between Meadow Lake and TP-4 Dam should be made aware of the possibilities of water rising 3 to 4.7 feet above normal level at maximum rates of 0.1 to 2.7 feet per minute and rapidly increasing flow velocities of up to 7 feet per second.
 - a) Participant awareness is of particular importance at locations immediately downstream of the TP-4 Dam and near Max Starcke Park where Saffold Dam spans the river.

- 7) Participants in activities in or on Meadow Lake should be made aware of the possibilities of water levels falling below normal level at rates of up to 0.6 feet per minute and rapidly increasing flow velocities of up to 3 feet per second.

Guadalupe River Downstream of Nolte Dam (single gate failure at Nolte Dam)

- 1) The segment of the Guadalupe River from Nolte (TP-5) Dam downstream to the FM466 crossing is considered a “PROHIBITED UNSAFE ZONE” and all activities in and on the water should be prohibited. See Attachment B.
 - a) A line of buoys and signage marking this designated unsafe zone shall be installed about 200 feet upstream of the FM466 crossing.
- 2) The segment of the Guadalupe River from FM466 downstream to FM1117, is considered a “RESTRICTED UNSAFE ZONE” for all activities in the water such as swimming, wading, tubing, etc. See Attachment C.
 - a) A properly fitted Type I or Type III Personal Floatation Device (PFD) shall be worn at all times for all activities on the water in this zone.
- 3) Participants in activities in, on, or adjacent to the Guadalupe River downstream of Nolte (TP-5) Dam should be made aware of the possibilities of water rising 5.1 to 8.5 feet above normal level at maximum rates of 0.1 to 5.3 feet per minute and rapidly increasing flow velocities of up to 10 feet per second.
- 4) Participant awareness is of particular importance at locations immediately downstream of the Nolte (TP-5) Dam near the park on Nolte Island.

Safety Measures

The PROHIBITED UNSAFE ZONES for All Activities on or in the water as designated upstream and downstream of all dams shall be identified by Texas Parks and Wildlife Department (TPWD) recommended Regulatory Markers for Prohibited Areas. PROHIBITED UNSAFE ZONES identified above shall be delineated by White Buoys with a single Orange Band above and below an Orange Crossed Diamond Marking and the words “DANGER” and “OFF LIMITS ALL ACTIVITIES” in black lettering. The buoys shall be anchored at approximately 25 feet on center along the limit lines of all PROHIBITED UNSAFE ZONES, from shoreline to shoreline, both above and below each dam. In addition, floating red placards (6 feet wide by 4 feet tall) at approximately 100 feet on center shall be anchored approximately 25 feet behind the buoys in the PROHIBITED UNSAFE ZONES. The placards shall state, “PROHIBITED AREA - NO ENTRY BY COURT ORDER” in 12-inch white lettering.

The RESTRICTED UNSAFE ZONES for Activities in the water shall be identified by TPWD recommended Regulatory Markers for Restricted Areas. RESTRICTED UNSAFE ZONES identified above shall be delineated by White Buoys with a single Orange Band above and below an Orange Circle and the words “NO SWIMMING” in black lettering. The buoys shall be anchored at approximately 25 feet on center along the limit lines of all RESTRICTED UNSAFE AREAS, from shoreline to shoreline. In addition, floating red placards (6 feet wide by 4 feet tall) at approximately 100 feet on center shall be anchored approximately 25 feet behind the buoys in

the RESTRICTED UNSAFE ZONES. The placards shall state, “RESTRICTED AREA - NO SWIMMING, WADING, OR TUBING BY COURT ORDER” in 12 inch white lettering.

Access Procedures

It is the IEP’s understanding that GBRA has application processes in place and may grant access for activities such as construction on the lakes and boat access to Lake McQueeney from the Laguna Marina adjacent to TP-3 Dam. It is recommended that limited boat access and egress within the PROHIBITED UNSAFE ZONES be allowed only by written application request and approval by GBRA-issued permit. A permit for movement through PROHIBITED UNSAFE ZONES shall include provisions granting GBRA, law enforcement, emergency management, and rescue officials as well as the IEP comprehensive immunity from any and all claims in the event of gate failure. A properly fitted Type I or Type III Personal Floatation Device (PFD) shall be worn at all times for all activities on and in the water in this zone. Movement through PROHIBITED UNSAFE ZONES shall be as close to the shoreline as practical. The path of travel through the PROHIBITED UNSAFE ZONE shall be the shortest distance required to exit the zone. Persons traversing through this zone shall have a copy of the permit issued by GBRA in their possession.

In addition, a public information board shall be installed at the public boat ramp at Interstate Highway 10, to explain the PROHIBITED and RESTRICTED UNSAFE ZONES on Lake Placid as well the actions to be taken should the County’s Alert Sirens be sounded. Furthermore, information regarding registration for and receipt of email and text message alerts from the Guadalupe County EMC shall be provided.

Respectfully Submitted,
Independent Expert Panel



Samuel K. Vaughn, PE
GBRA Designated Expert



Gregory R. Wine, PE, LEED AP
Plaintiff Designated Expert

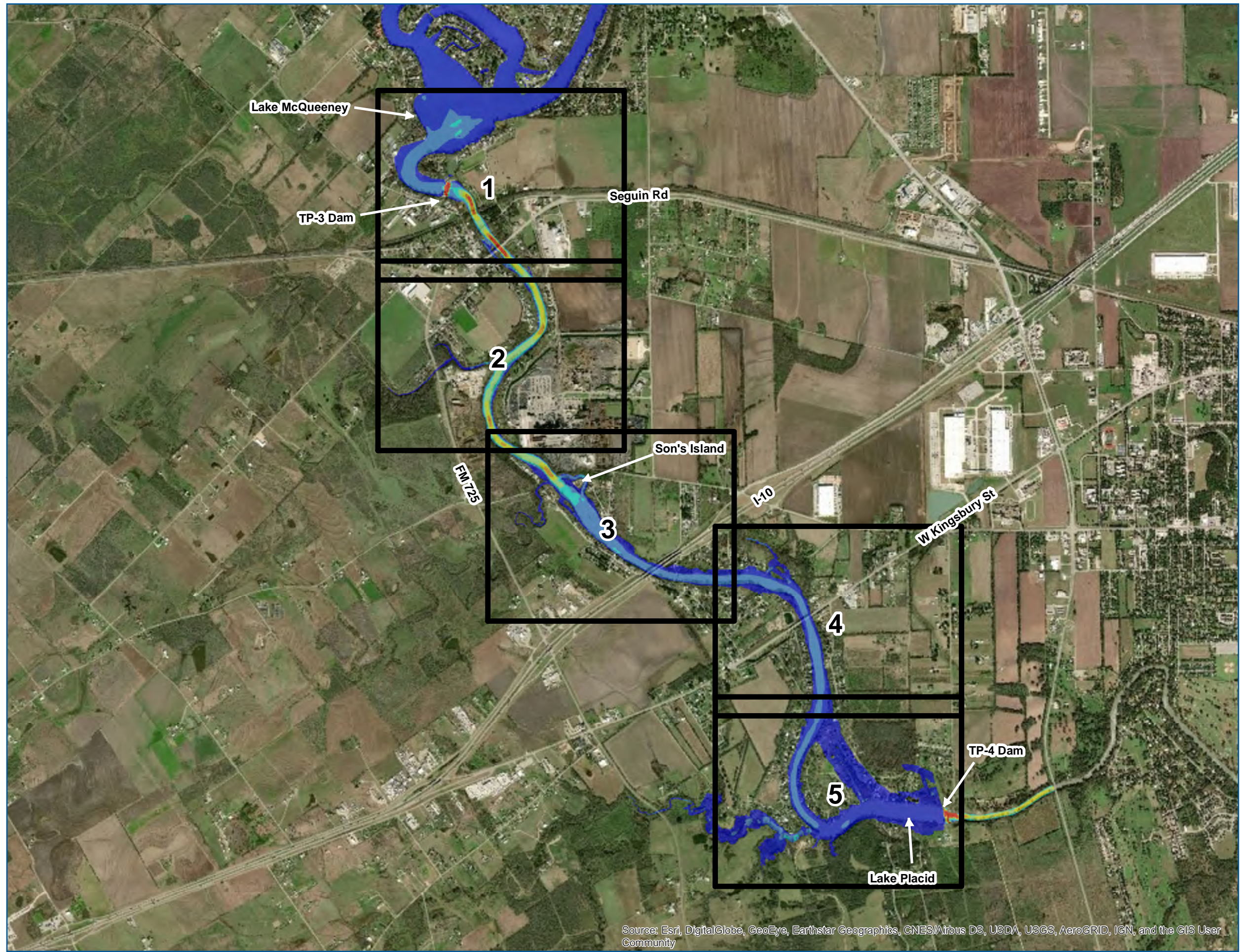
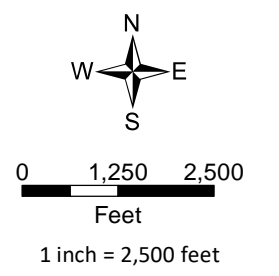
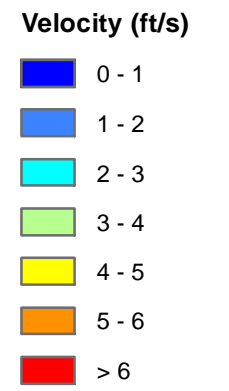


W. Nim Kidd, MPA, CEM
Third Designated Expert

Attachment A

Guadalupe Valley Lakes
Maximum Velocity Contours
with Single Gate Failure

**McQueeney Dam (TP-3)
Dam Failure (1 Gate)
Velocity Overall Map**



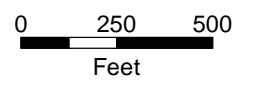
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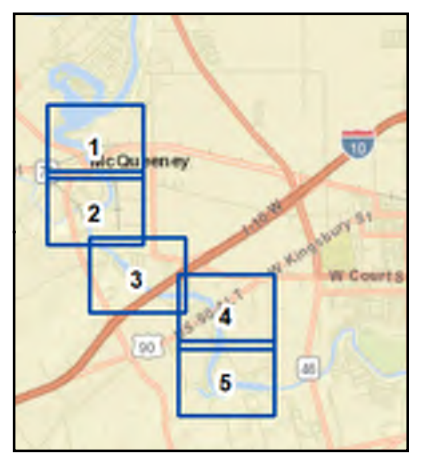
**McQueeney Dam (TP-3)
Dam Failure (1 Gate)
Velocity Map**

Page 1 of 5

Velocity (ft/s)



1 inch = 500 feet



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

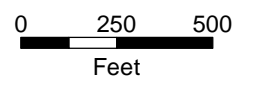


**McQueeney Dam (TP-3)
Dam Failure (1 Gate)
Velocity Map**

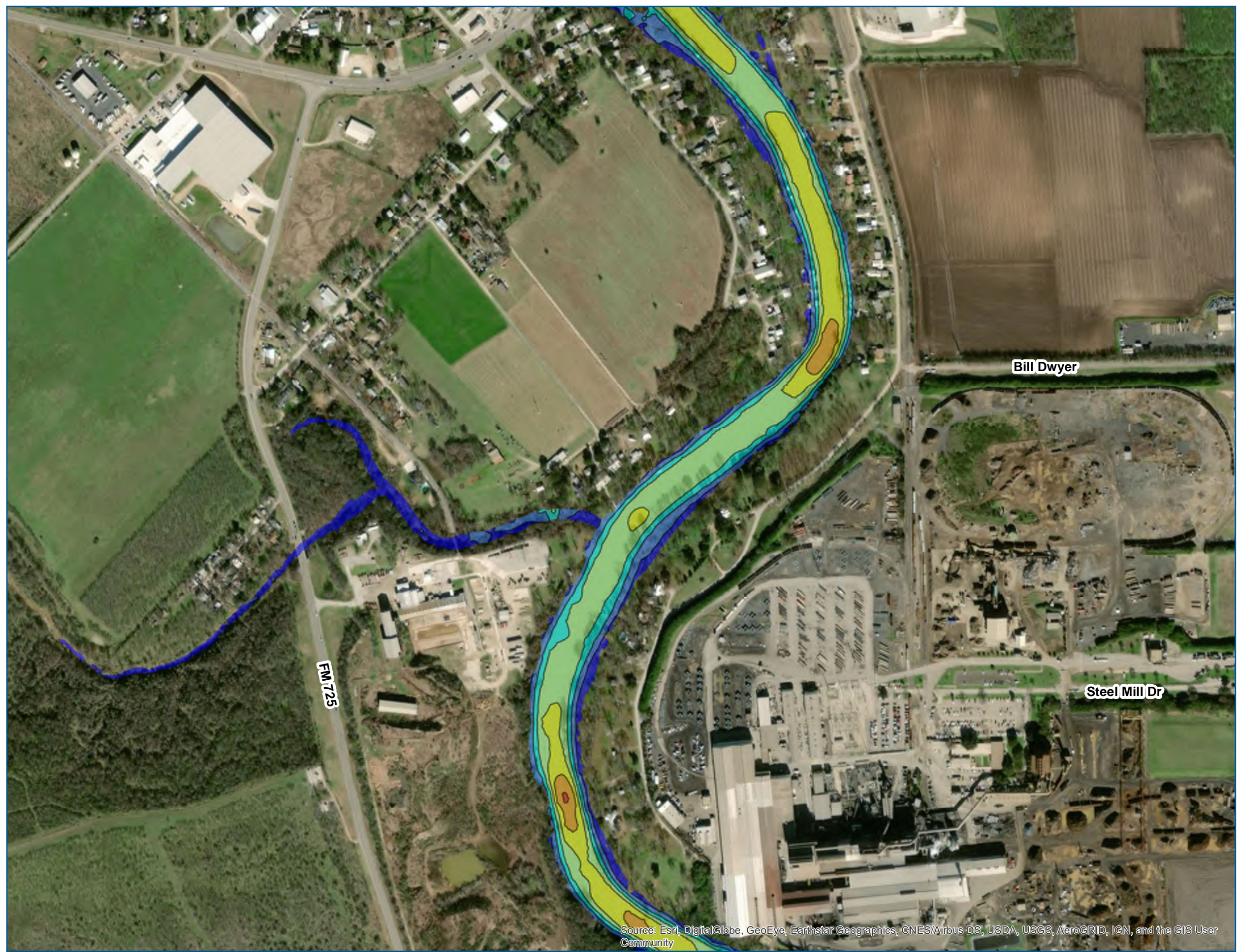
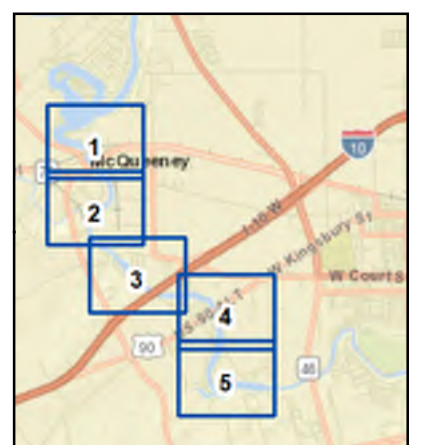
Page 2 of 5

Velocity (ft/s)

- 0 - 1
- 1 - 2
- 2 - 3
- 3 - 4
- 4 - 5
- 5 - 6
- > 6



1 inch = 500 feet



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

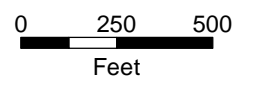


**McQueeney Dam (TP-3)
Dam Failure (1 Gate)
Velocity Map**

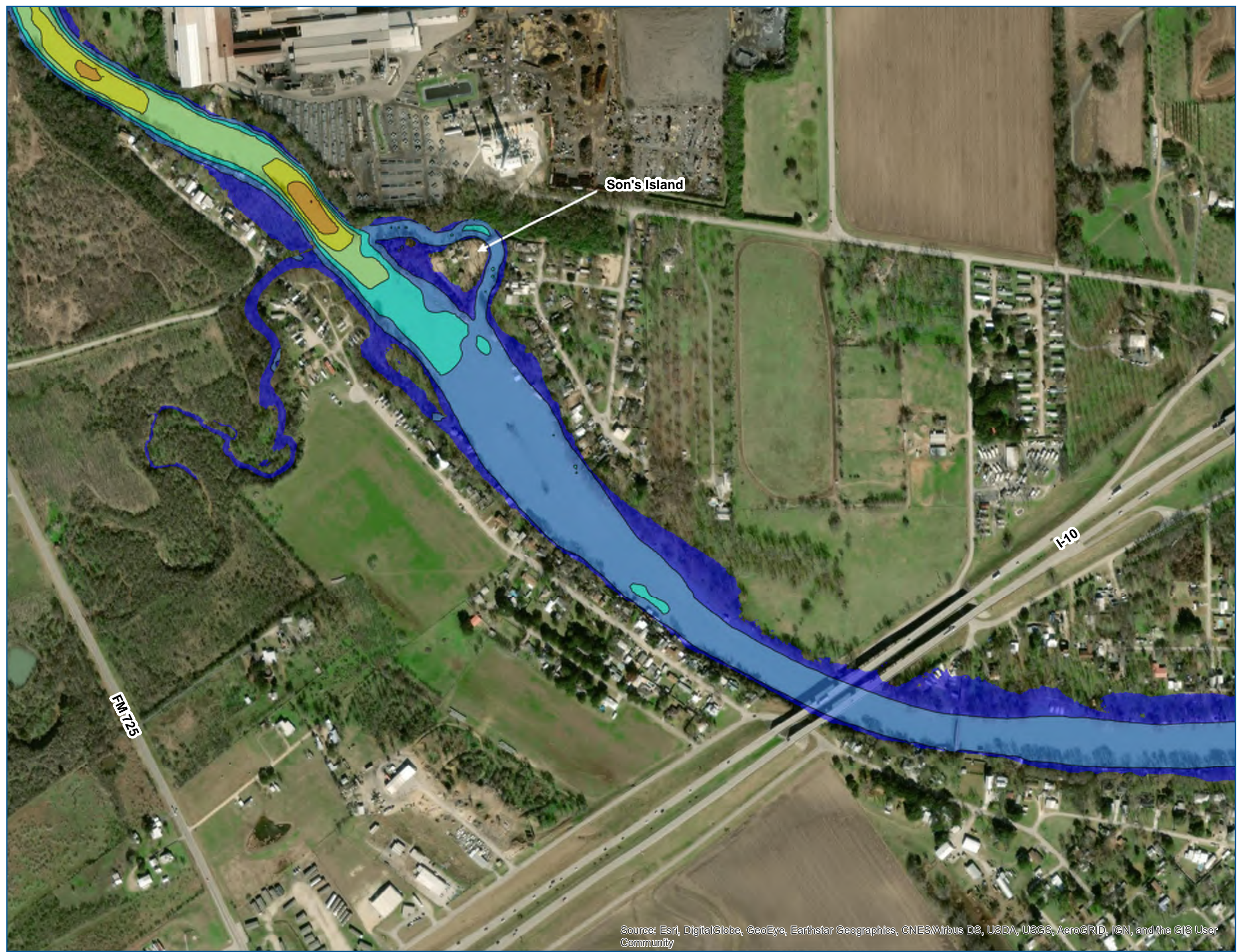
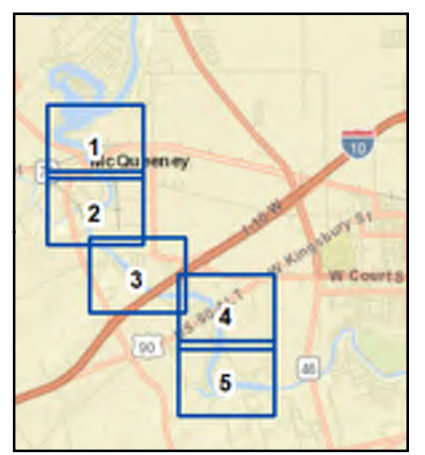
Page 3 of 5

Velocity (ft/s)

- 0 - 1
- 1 - 2
- 2 - 3
- 3 - 4
- 4 - 5
- 5 - 6
- > 6



1 inch = 500 feet



Son's Island

FM 225

I-10

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

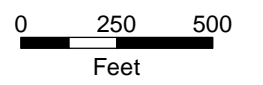


**McQueeney Dam (TP-3)
Dam Failure (1 Gate)
Velocity Map**

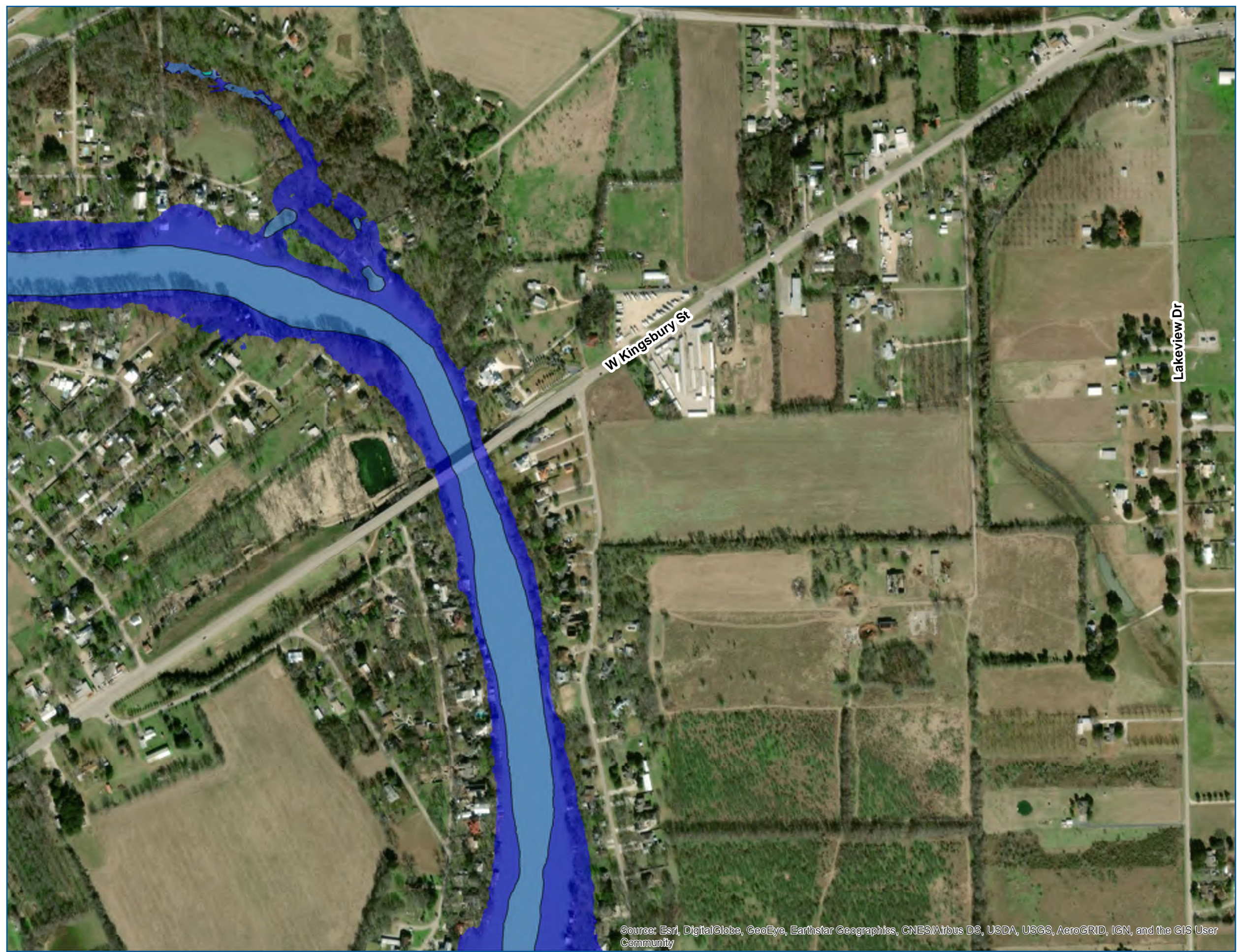
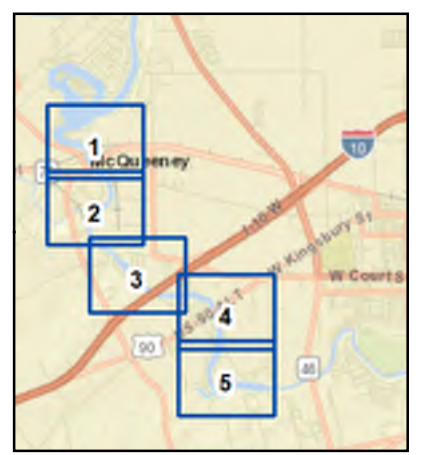
Page 4 of 5

Velocity (ft/s)

- 0 - 1
- 1 - 2
- 2 - 3
- 3 - 4
- 4 - 5
- 5 - 6
- > 6



1 inch = 500 feet



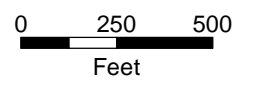
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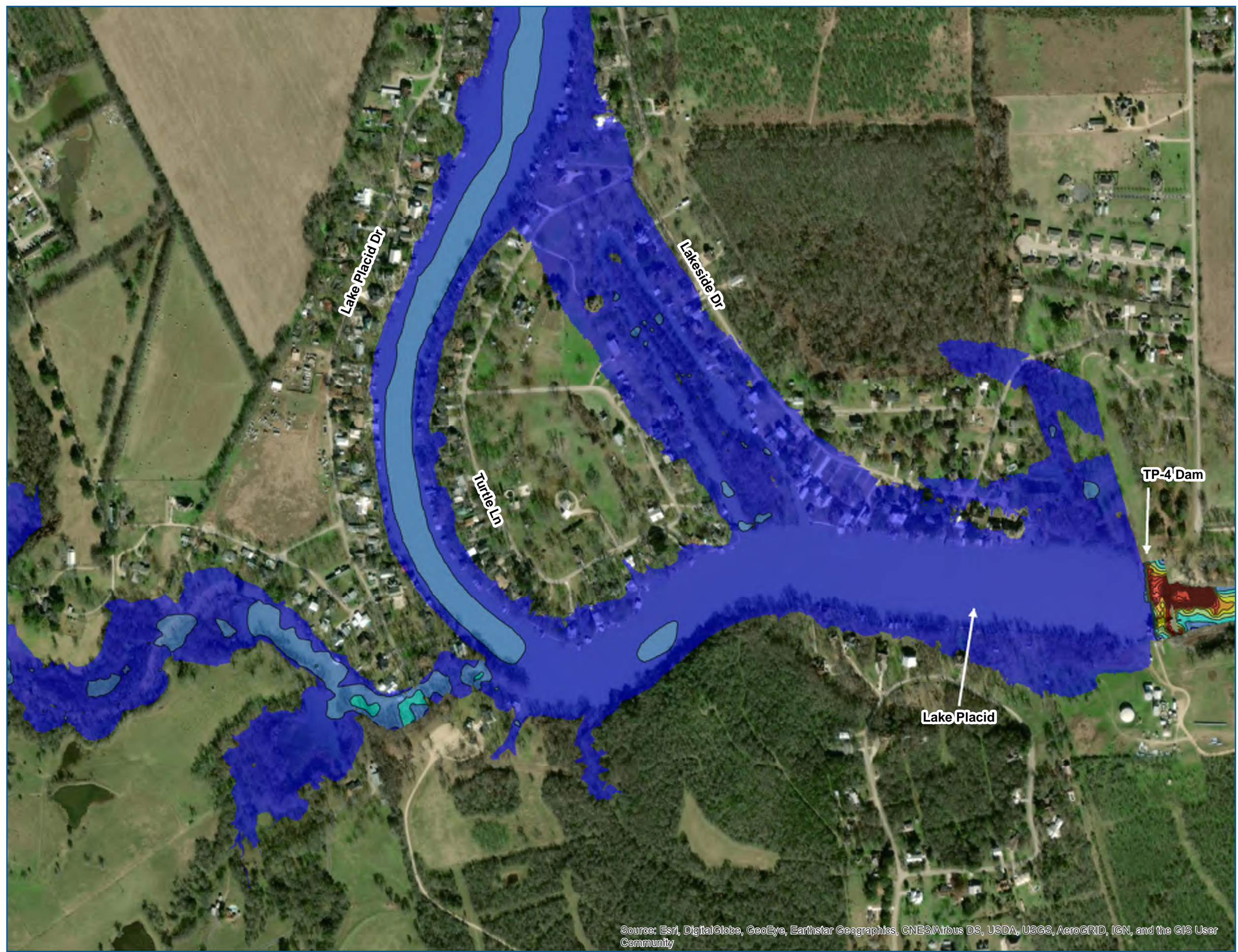
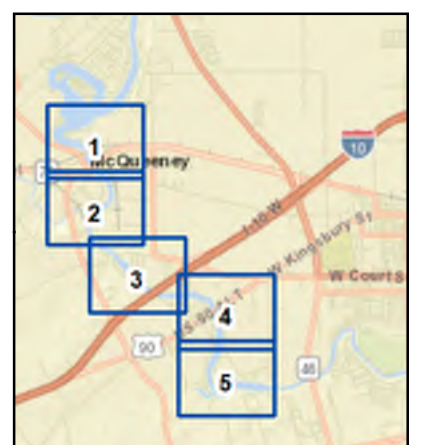
**McQueeney Dam (TP-3)
Dam Failure (1 Gate)
Velocity Map**

Page 5 of 5

Velocity (ft/s)



1 inch = 500 feet

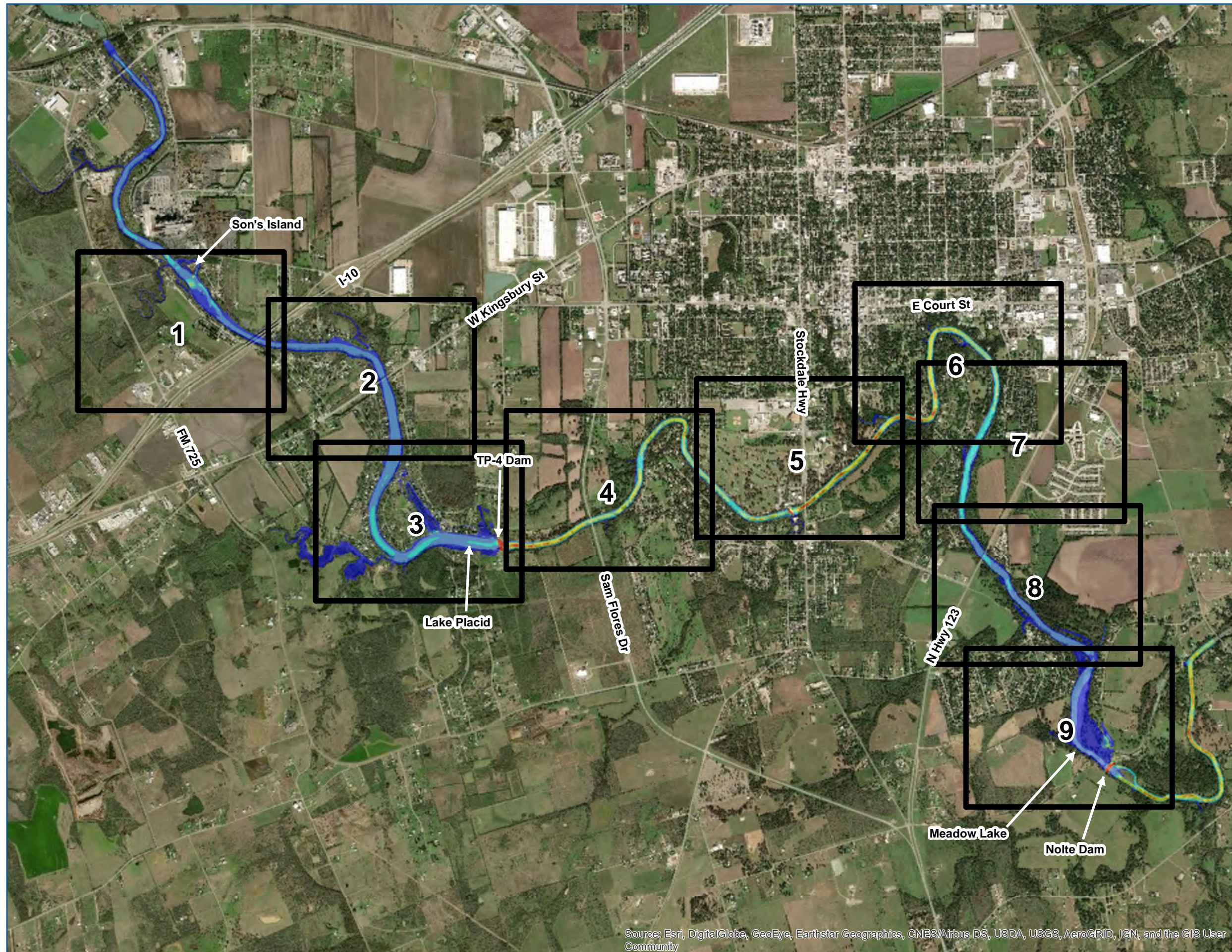
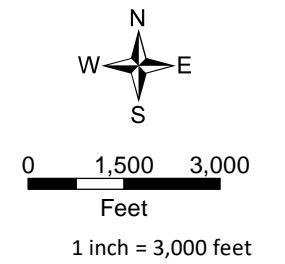


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Overall Map**

Velocity (ft/s)

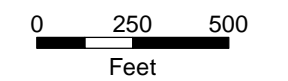
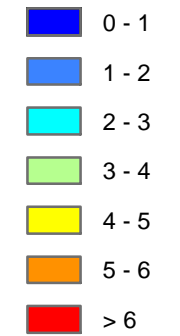


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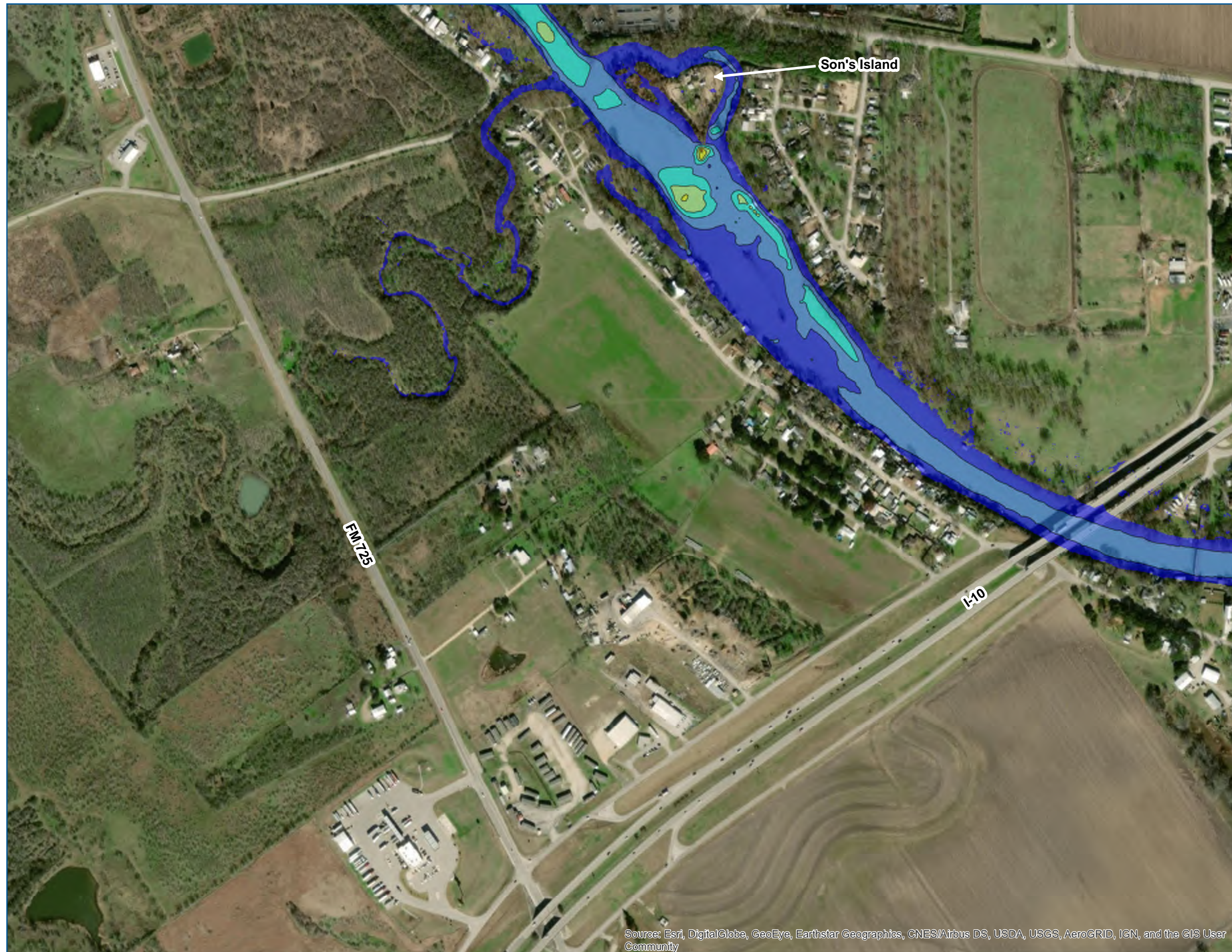
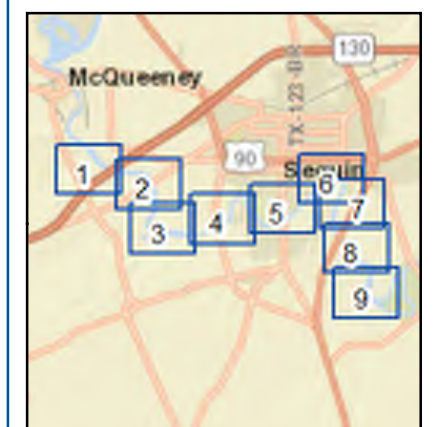
**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Map**

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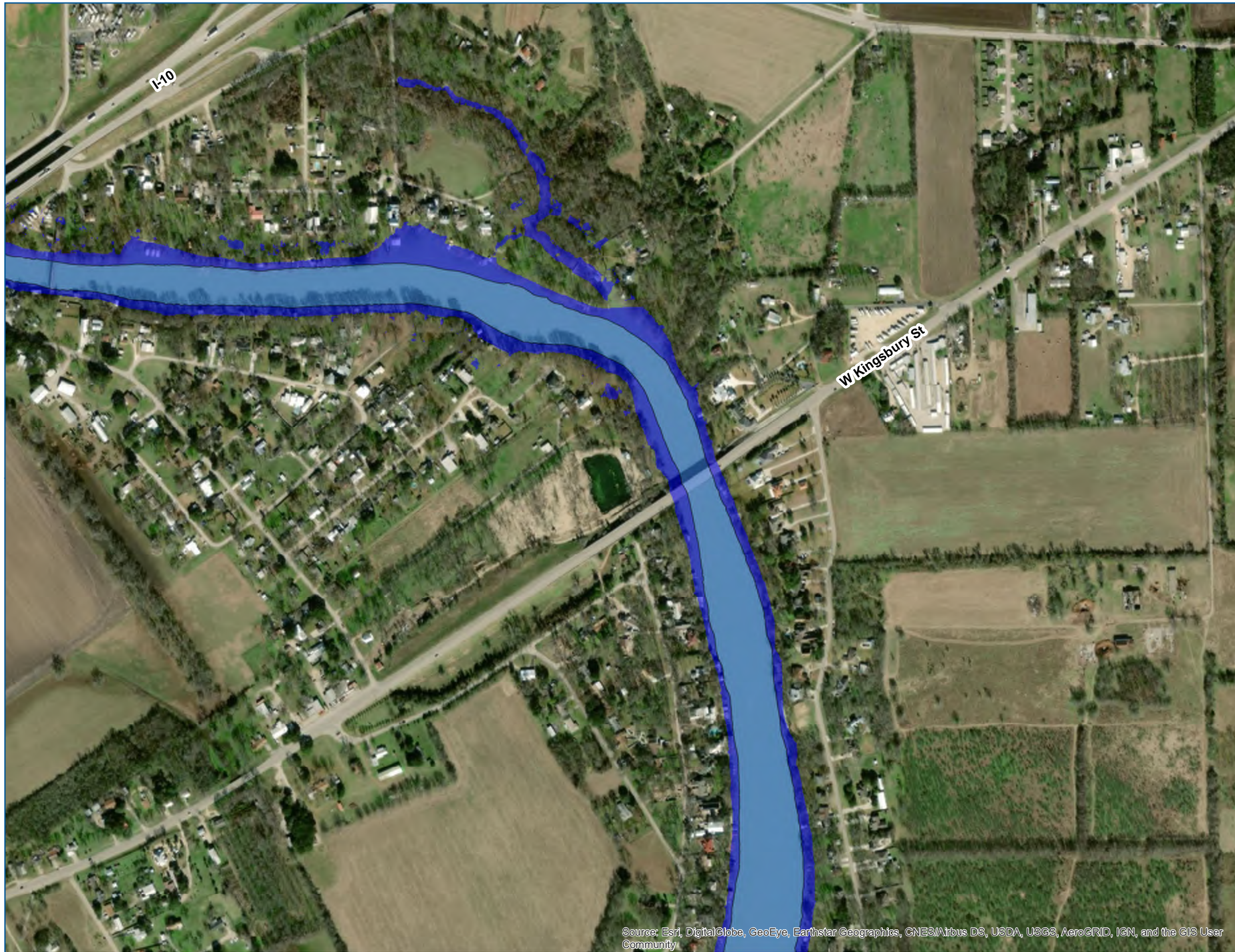
Velocity (ft/s)



1 inch = 500 feet



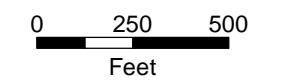
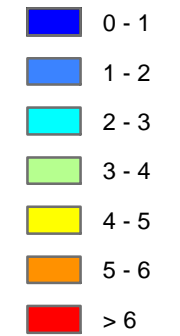
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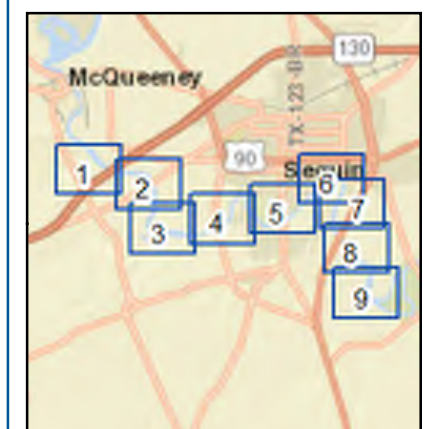
**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Map**

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Velocity (ft/s)



1 inch = 500 feet

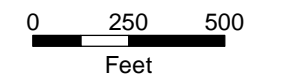
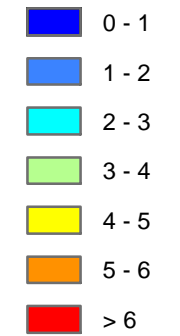


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

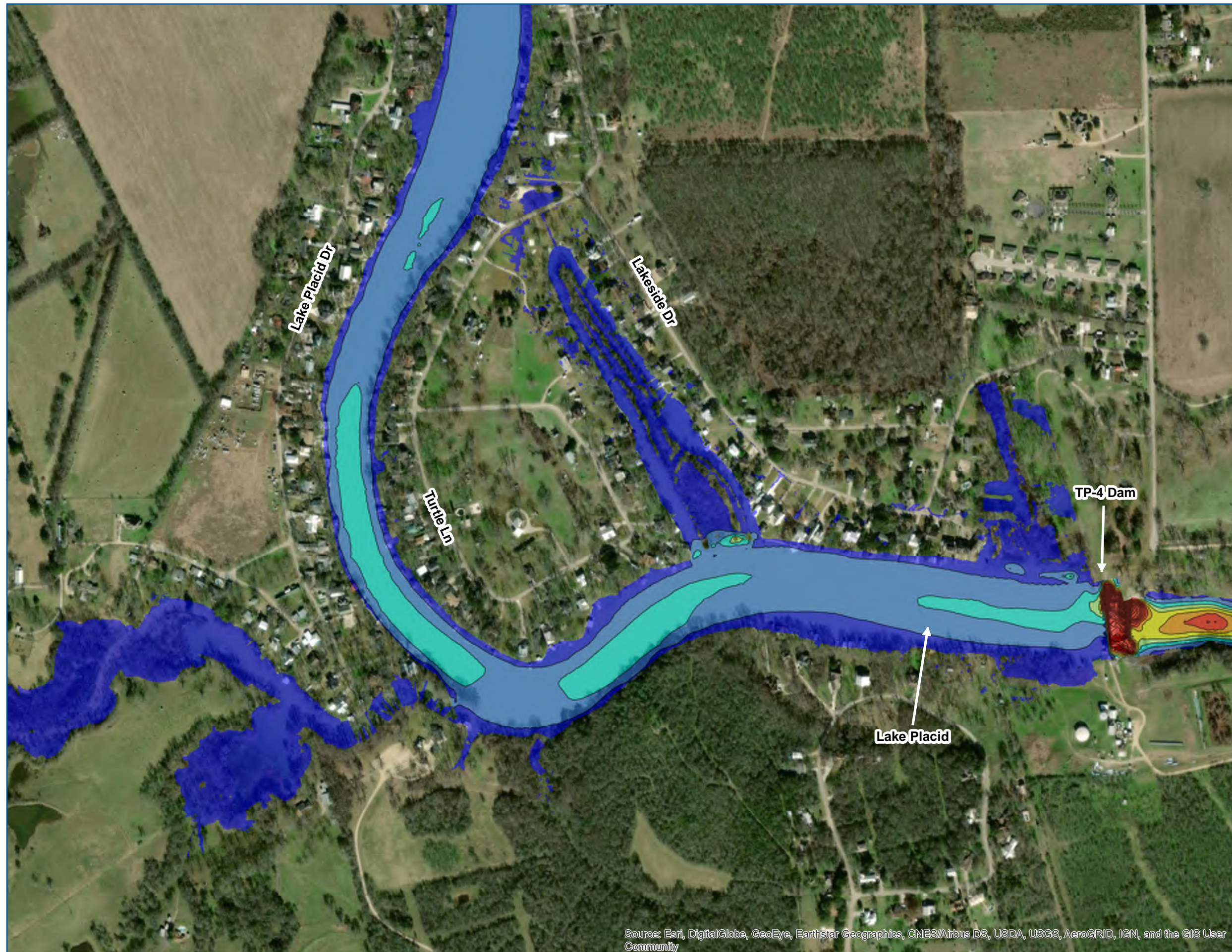
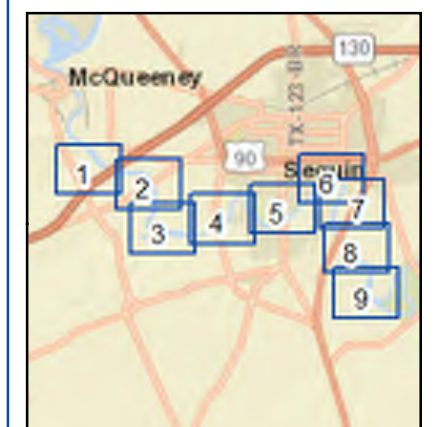
**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Map**

Page 3 of 9

Velocity (ft/s)



1 inch = 500 feet



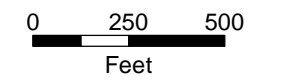
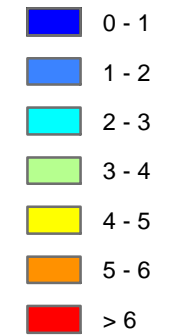
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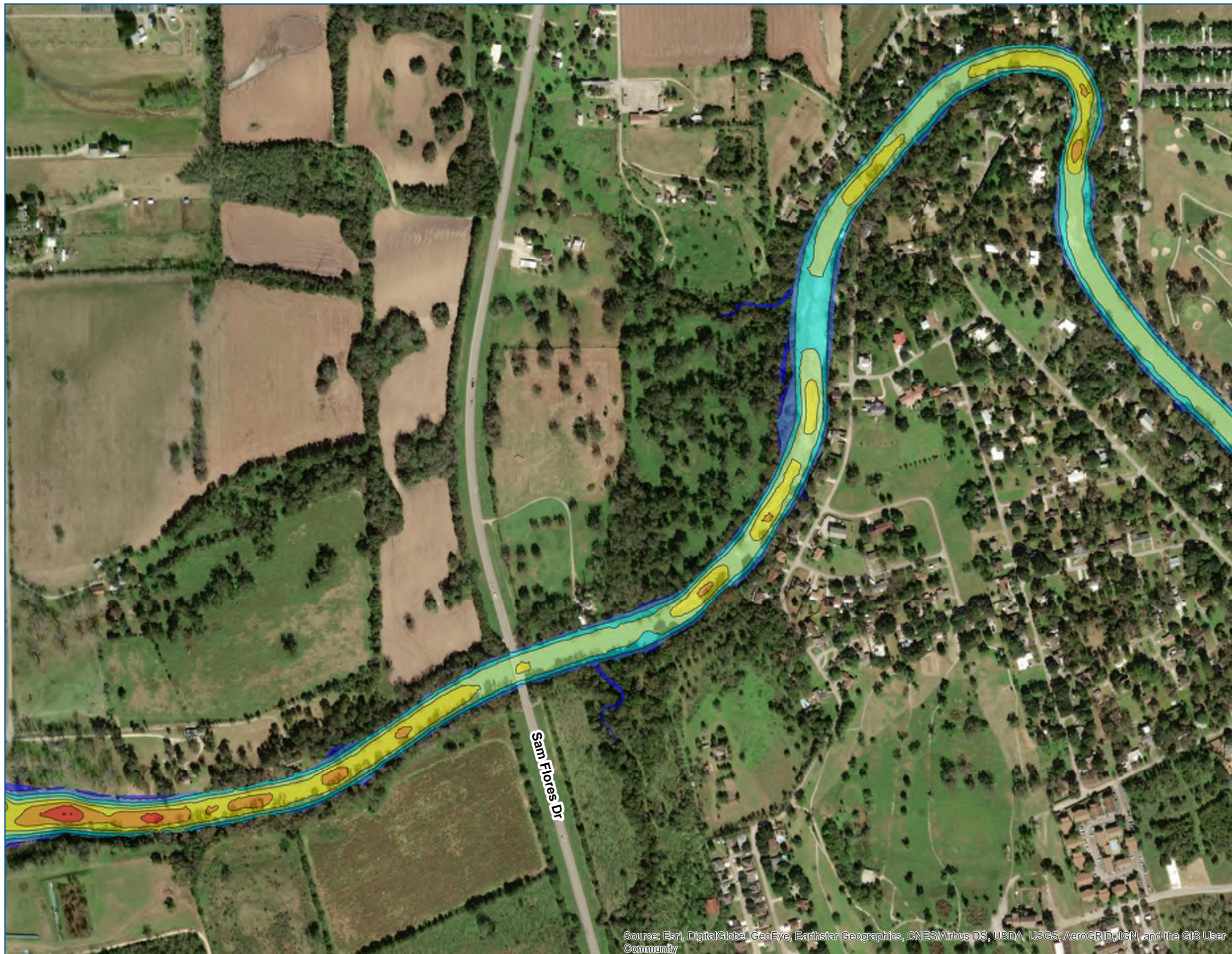
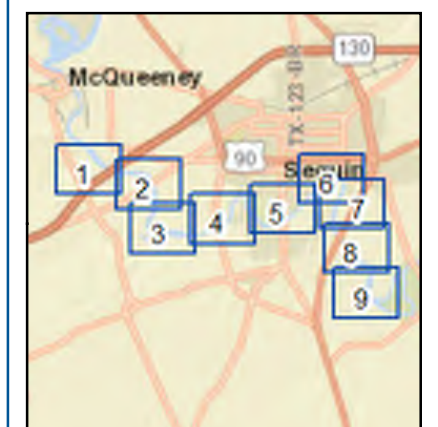
**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Map**

Page 4 of 9

Velocity (ft/s)



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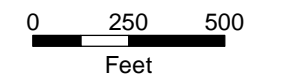
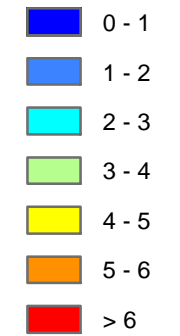


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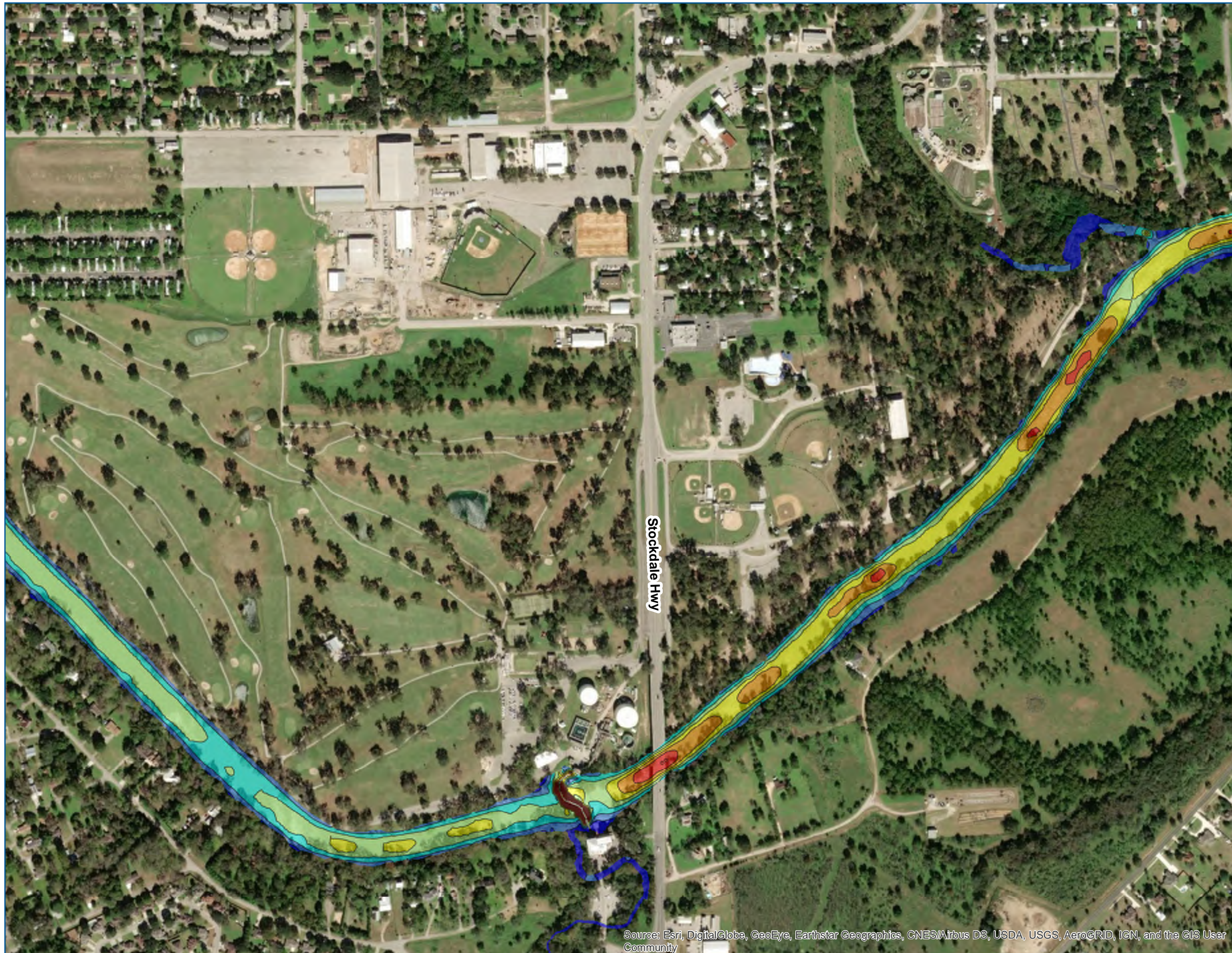
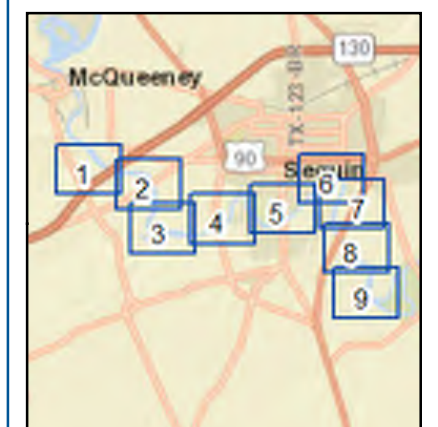
**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Map**

Page 5 of 9

Velocity (ft/s)



1 inch = 500 feet

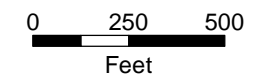


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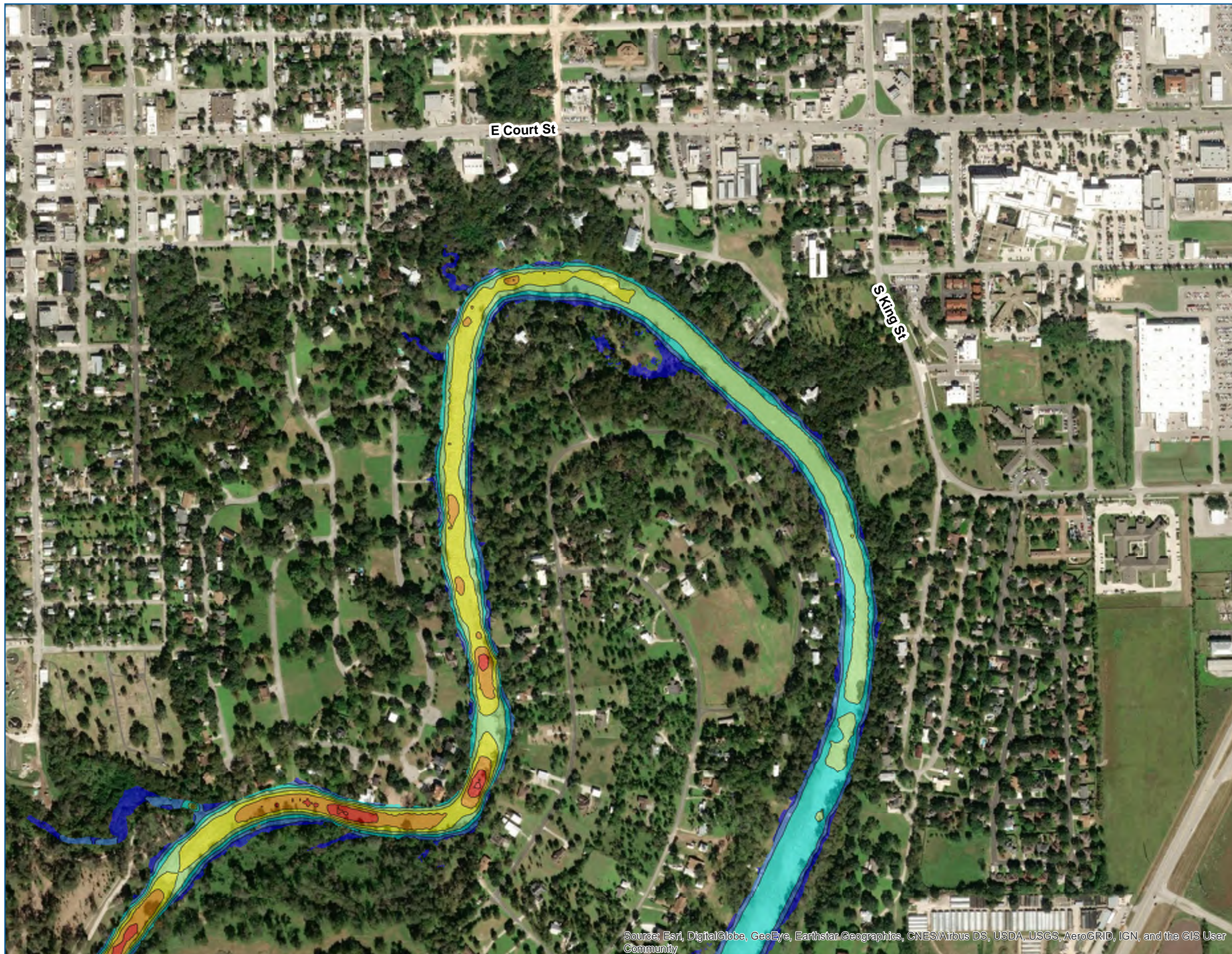
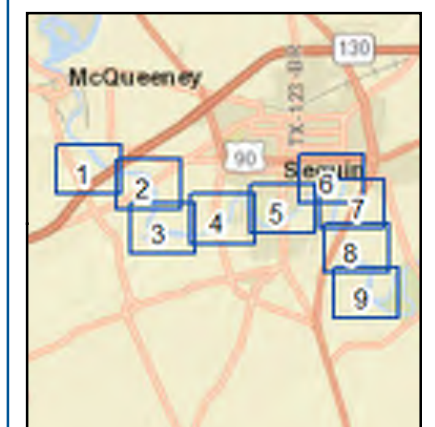
**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Map**

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Velocity (ft/s)



1 inch = 500 feet

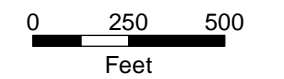
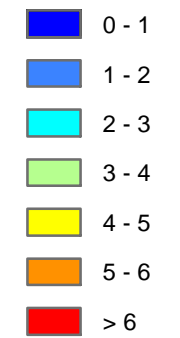


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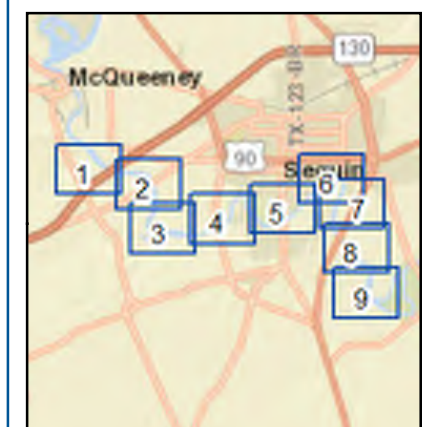
**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Map**

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Velocity (ft/s)



1 inch = 500 feet

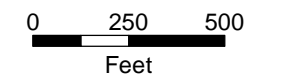
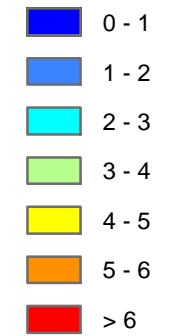


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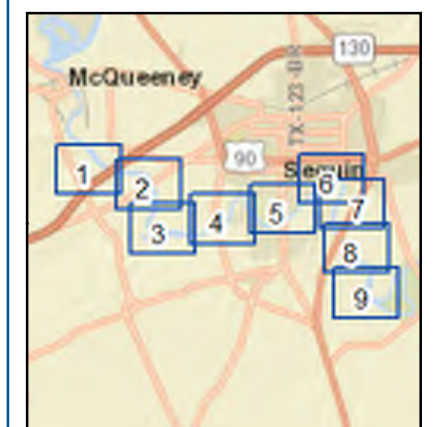
**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Map**

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Velocity (ft/s)



1 inch = 500 feet

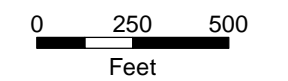
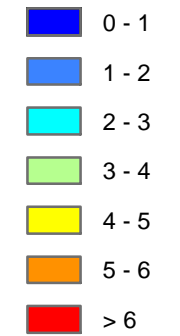


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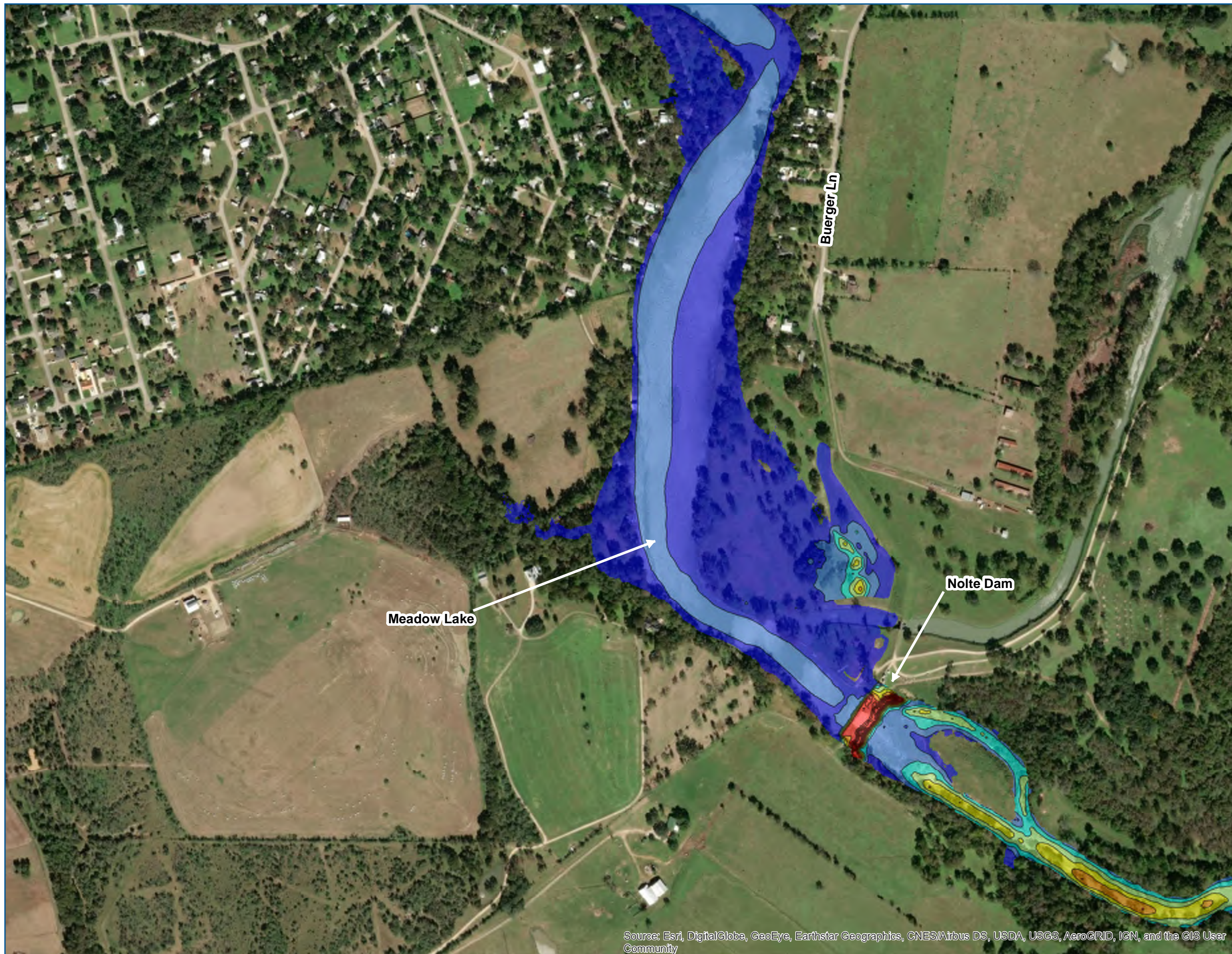
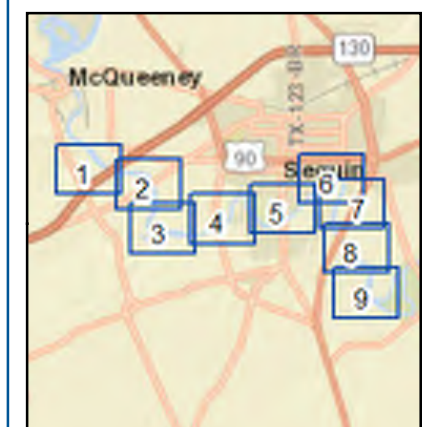
**Placid Dam (TP-4)
Dam Failure (1 Gate)
Velocity Map**

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Velocity (ft/s)



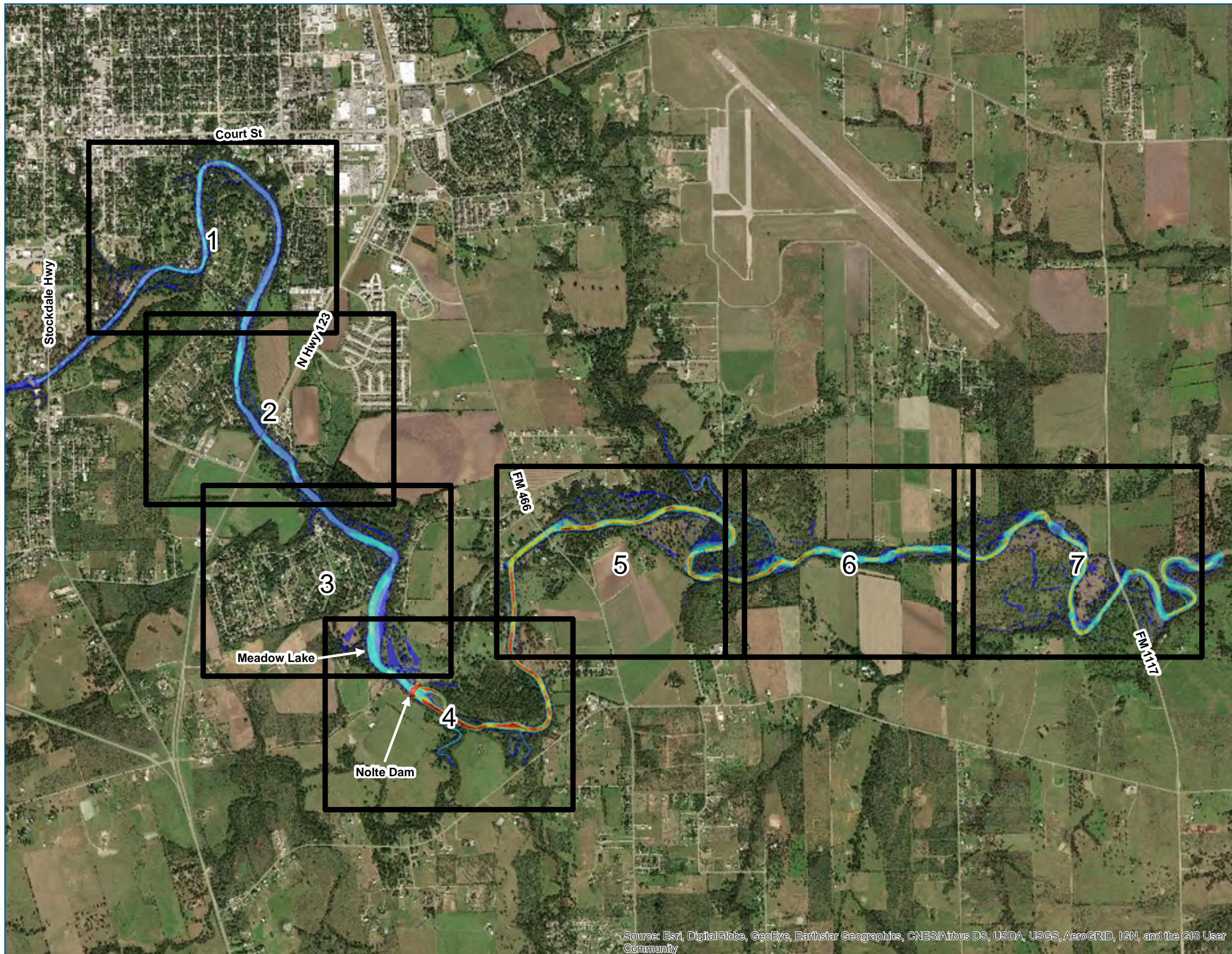
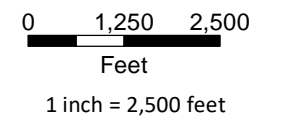
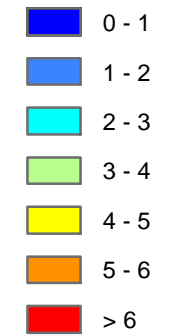
1 inch = 500 feet



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**Nolte Dam
Dam Failure (1 Gate)
Velocity Overall Map**

Velocity (ft/s)

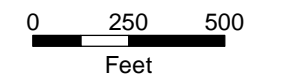
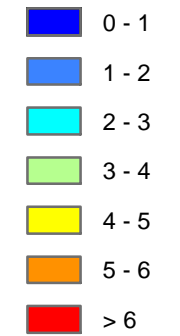


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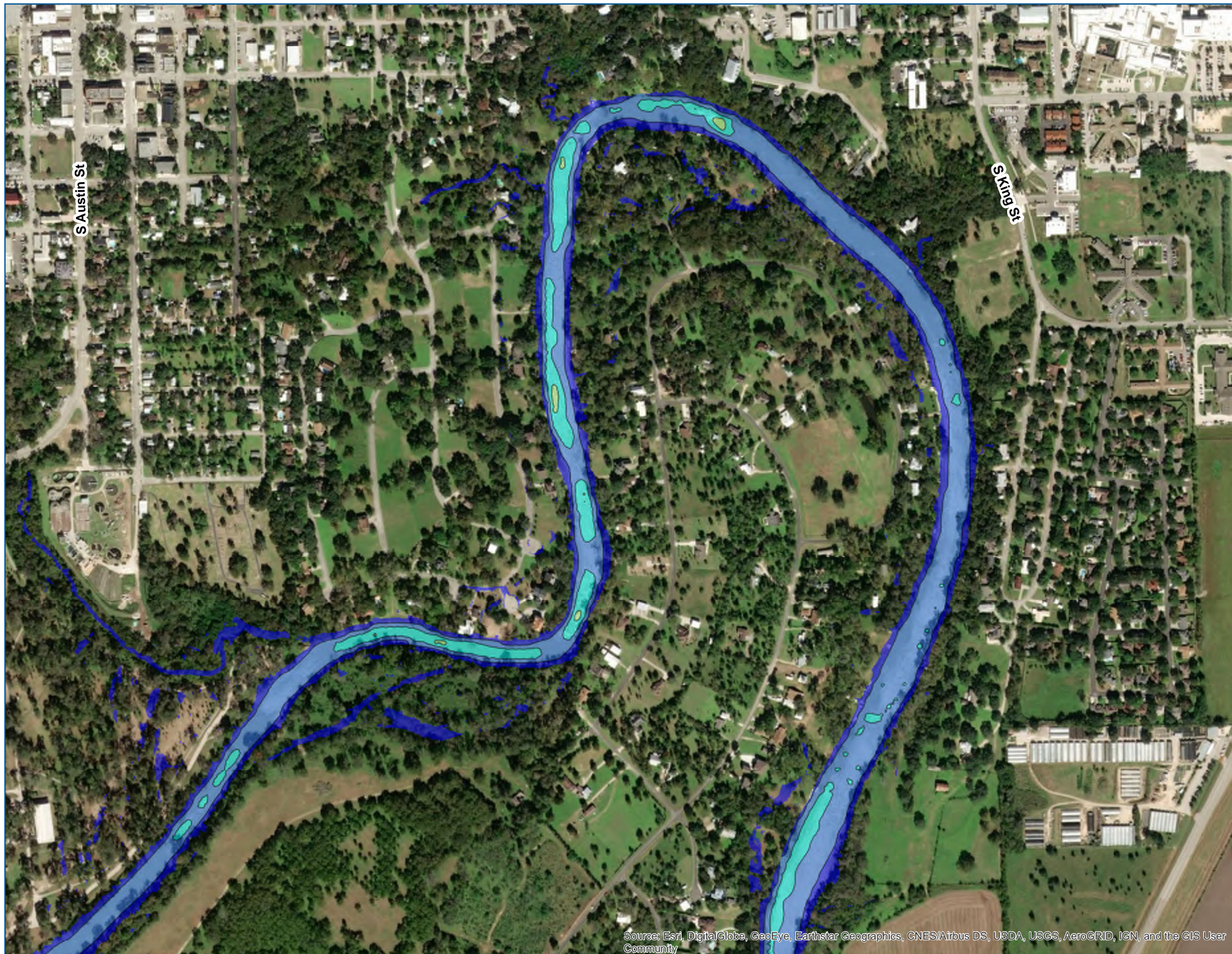
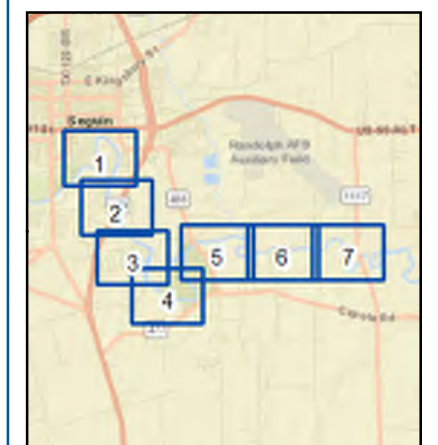
Nolte Dam Dam Failure (1 Gate) Velocity Map

Page 1 of 7

Velocity (ft/s)



1 inch = 500 feet

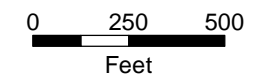


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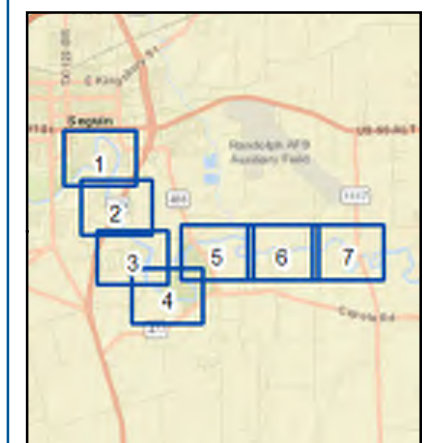
**Nolte Dam
Dam Failure (1 Gate)
Velocity Map**

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Velocity (ft/s)



1 inch = 500 feet

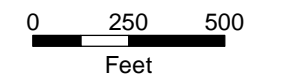
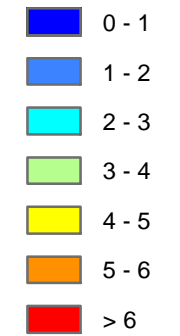


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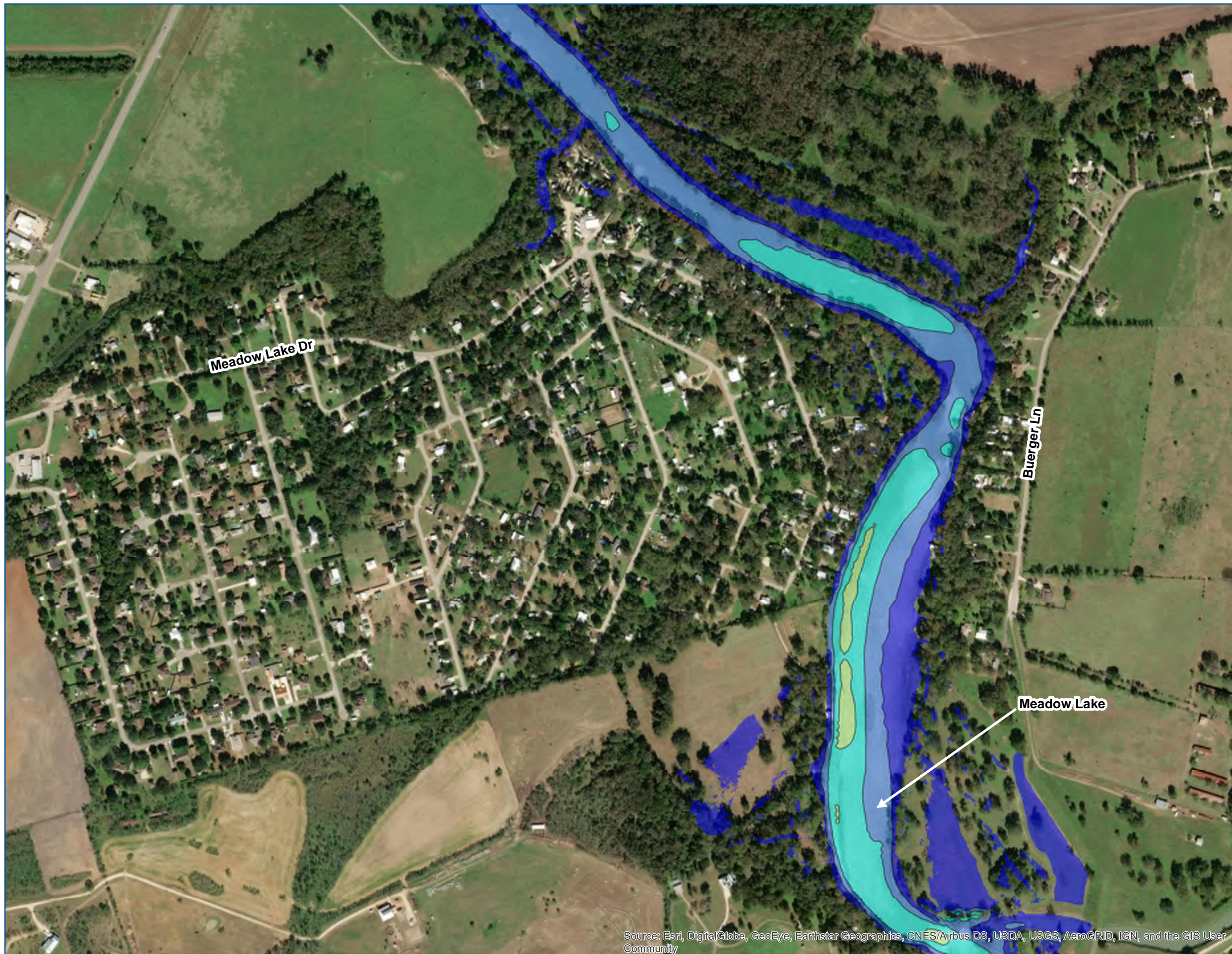
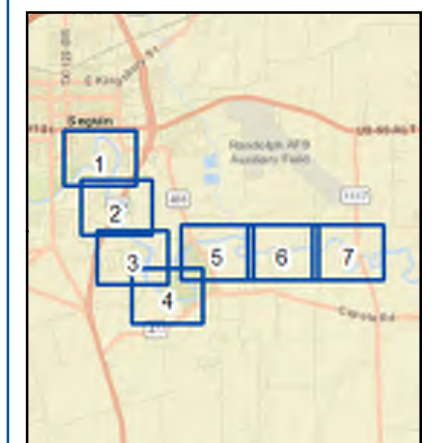
**Nolte Dam
Dam Failure (1 Gate)
Velocity Map**

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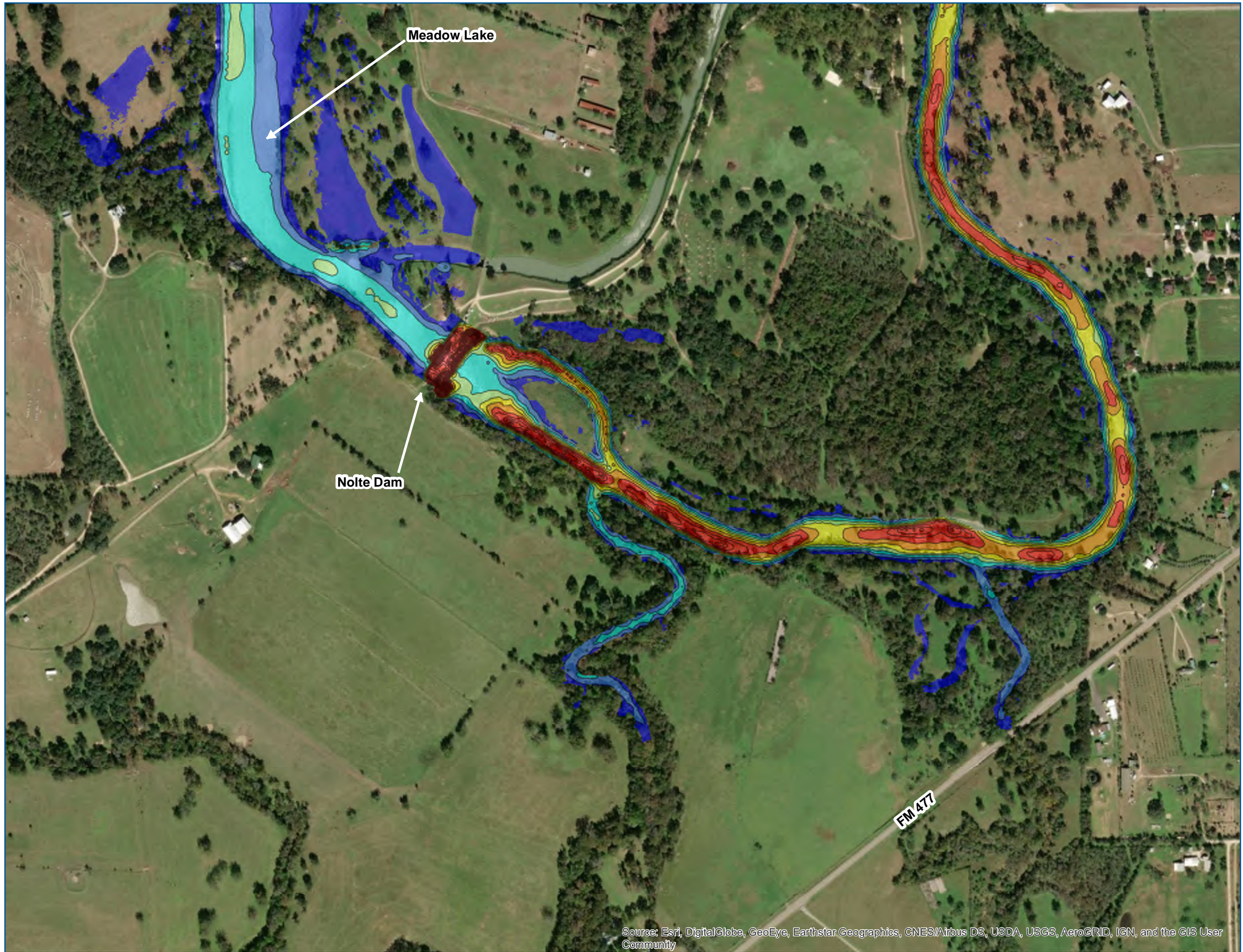
Velocity (ft/s)



1 inch = 500 feet



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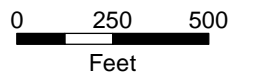


**Nolte Dam
Dam Failure (1 Gate)
Velocity Map**

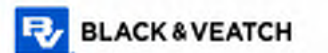
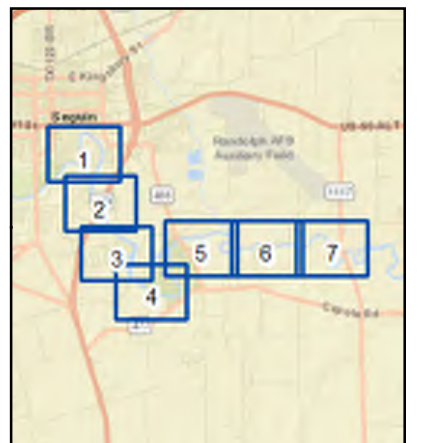
Page 4 of 7

Velocity (ft/s)

- 0 - 1
- 1 - 2
- 2 - 3
- 3 - 4
- 4 - 5
- 5 - 6
- > 6



1 inch = 500 feet

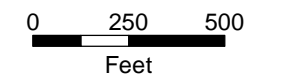


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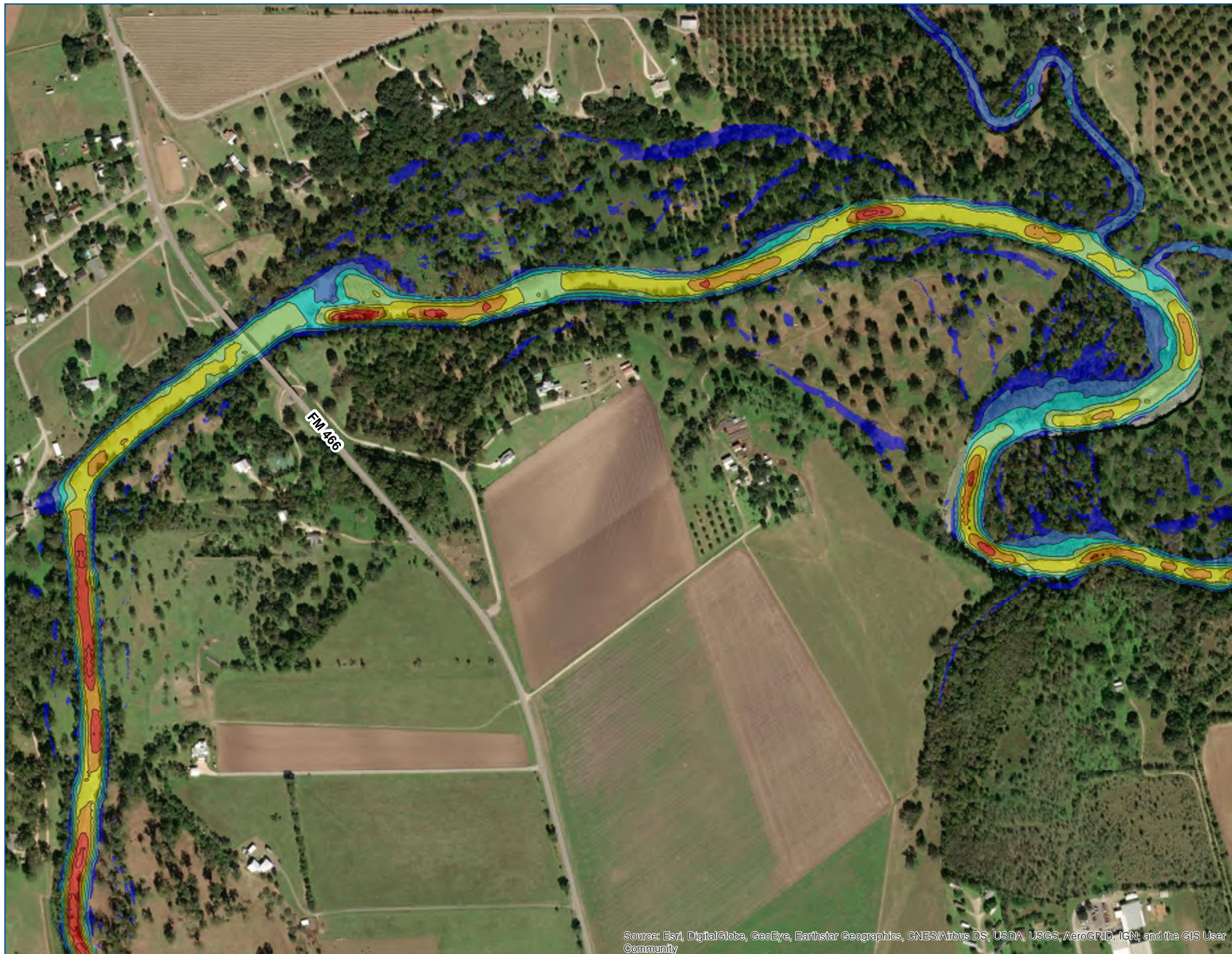
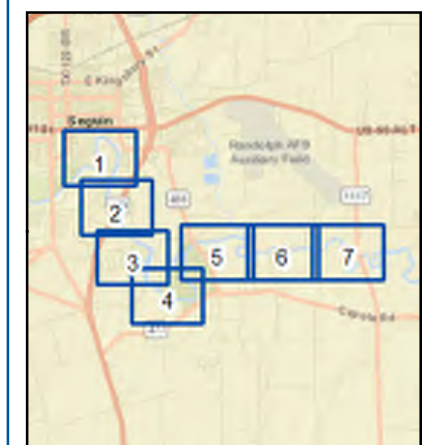
Nolte Dam Dam Failure (1 Gate) Velocity Map

Page 5 of 7

Velocity (ft/s)



1 inch = 500 feet

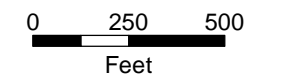
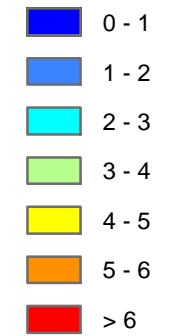


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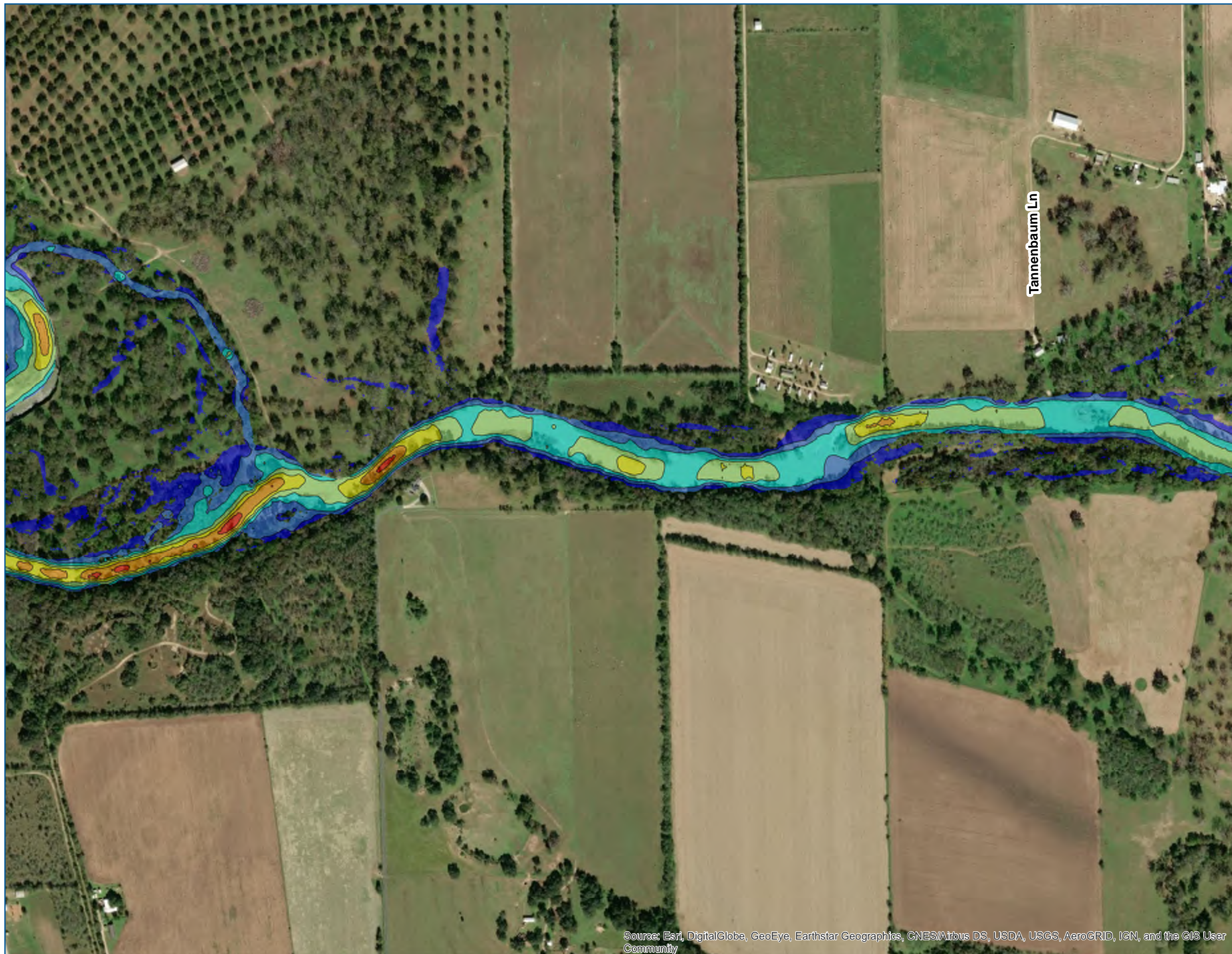
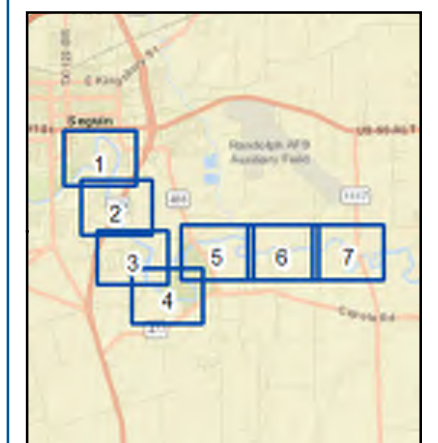
**Nolte Dam
Dam Failure (1 Gate)
Velocity Map**

Page 6 of 7

Velocity (ft/s)



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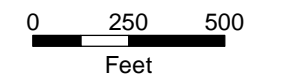
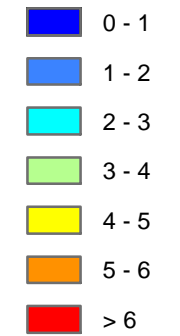


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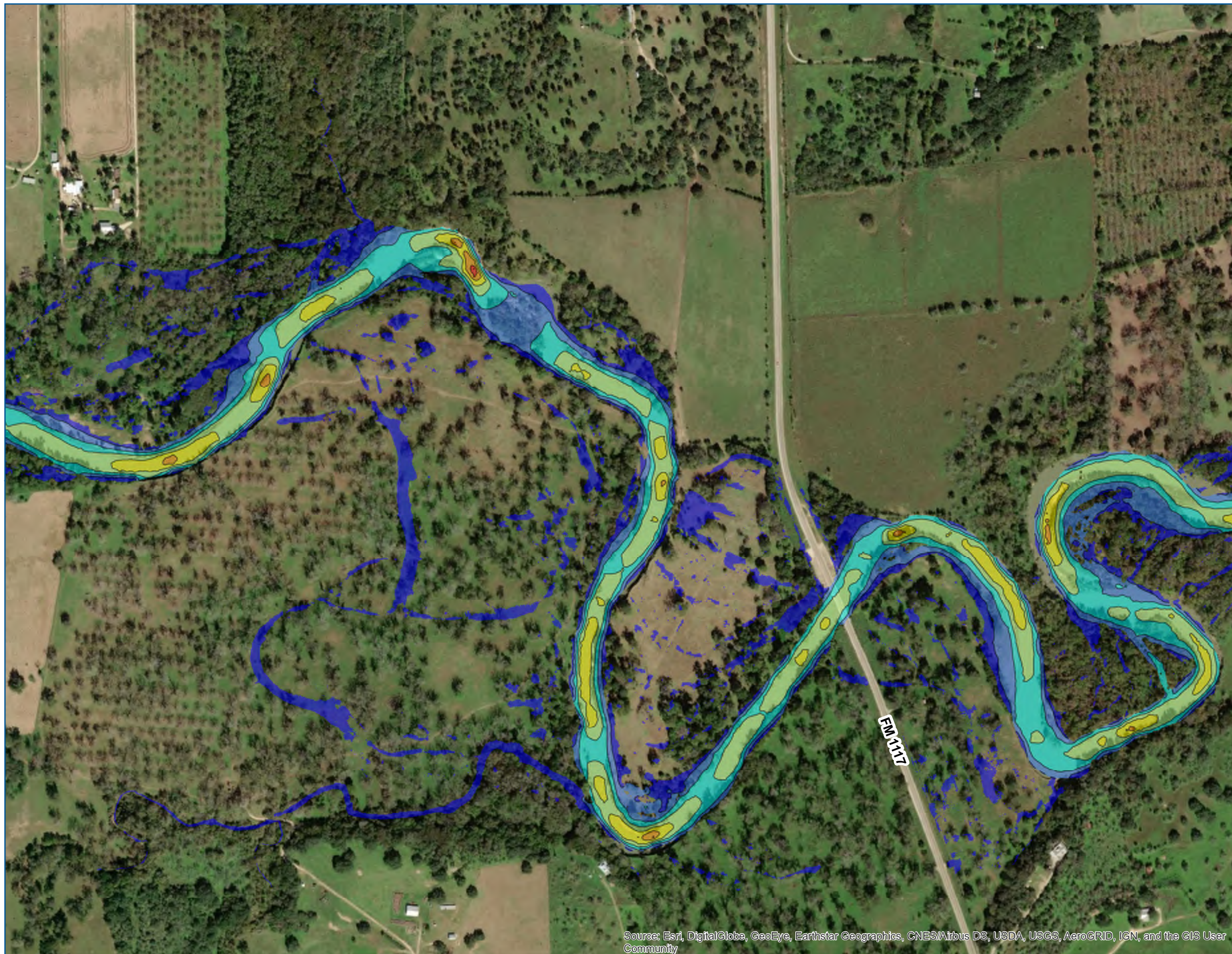
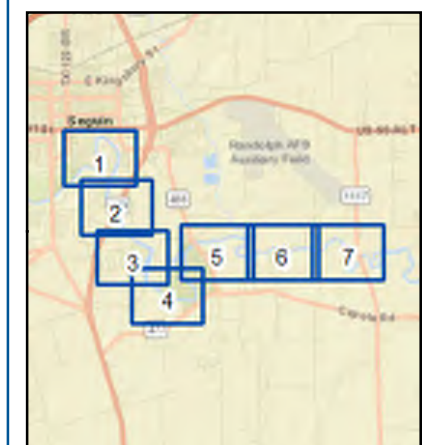
**Nolte Dam
Dam Failure (1 Gate)
Velocity Map**

Page 7 of 7

Velocity (ft/s)



1 inch = 500 feet



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Attachment B

Guadalupe Valley Lakes
PROHIBITED UNSAFE ZONES



Lake McQueeney

Refer to text of Report #1 for delineation of PROHIBITED & RESTRICTED UNSAFE ZONES.

TP-3 Dam

PROHIBITED UNSAFE ZONE

RESTRICTED UNSAFE ZONE

Lake Placid

Google Earth

29°35'39.32" N 98°02'38.84" W elev 566 ft eye alt 6563 ft



Refer to text of Report #1 for delineation of PROHIBITED & RESTRICTED UNSAFE ZONES.

PROHIBITED UNSAFE ZONE

Guadalupe River / Meadow Lake

Lake Placid

TP-4 Dam

RESTRICTED UNSAFE ZONE

405

46

Google Earth

© 2018 Google

29°32'57.32" N 98°00'04.59" W elev 499 ft eye alt 6563 ft



Meadow Lake

RESTRICTED UNSAFE ZONE

PROHIBITED UNSAFE ZONE

Guadalupe River /
Meadow Lake

RESTRICTED
UNSAFE ZONE

Max Starcke Reservoir

Sawald Dam

Refer to text of Report #1 for delineation of
PROHIBITED & RESTRICTED UNSAFE ZONES.

Google Earth

© 2018 Google

29°33'00,55" N 97°57'57,34" W elev. 501 ft eye alt. 6563 ft



Guadalupe River

RESTRICTED UNSAFE ZONE

Meadow Lake

PROHIBITED UNSAFE ZONE

Nolte Dam

Guadalupe River

Refer to text of Report #1 for delineation of PROHIBITED & RESTRICTED UNSAFE ZONES.

Google Earth

29°32'03.38" N 97°55'30.37" W elev 472 ft eye alt 8765 ft

Attachment C

Guadalupe Valley Lakes RESTRICTED UNSAFE ZONES



PROHIBITED UNSAFE ZONE

Refer to text of Report #1 for delineation of PROHIBITED & RESTRICTED UNSAFE ZONES.

RESTRICTED UNSAFE ZONE

Lake Placid

Google Earth

© 2018 Google

29°34'56.43" N 98°01'37.07" W elev 542 ft eye alt 10378 ft

1995







Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: February 10, 2021

Team Manager: Dain Larsen

ACTION REQUESTED

Approve by resolution a request from the Guadalupe-Blanco River Authority (Comal and Guadalupe Counties) for \$80,000,000 in financing from the Clean Water State Revolving Fund for planning, design and construction of two dams.

STAFF RECOMMENDATION

Approve No Action

BACKGROUND

In November 2020, to rehabilitate and maintain the dams for Lake McQueeney and Lake Placid the Guadalupe-Blanco River Authority (Authority) entered into separate contracts with the water control and improvement districts Lake McQueeney WCID and Lake Placid WCID. The Lake McQueeney WCID is located within Guadalupe County, and has a population of approximately 1,618 residents. The Lake Placid WCID is located within Guadalupe County, and has a population of approximately 888 residents.

PROJECT NEED AND DESCRIPTION

The Authority owns and operates the Guadalupe Valley Hydroelectric System (GVHS), which includes six dams that generate hydroelectricity and provide recreational opportunities in Comal, Guadalupe and Gonzales counties. Fifteen spill gates at the six dams were put into service between 1928-1932, and they have reached the end of their useful life. The gates provide primary control of headwater levels in their corresponding reservoirs, and while they have been regularly maintained, the advanced age of the gates has resulted in increased maintenance requirements, unreliable operation, and the unrepairable failure of gates at two of the six dams. Replacement of spill gates with a modern design is necessary to continue operations.

The Authority proposes to also replace existing bear-trap style crest gates with new hydraulically actuated steel crest gates at Lake McQueeney and Lake Placid dams. Replacement of the gates will include structural modifications to the existing spillway structure, upgrades to the mechanical system, upgrades to electrical distribution power, improved backup power, new instrumentation and controls, improved headwater and tailwater measurement, new video surveillance, supervisory control and data acquisition interface, and hardening the earthen dam.

COMMITMENT PERIOD: TWELVE (12) MONTHS TO EXPIRE FEBRUARY 28, 2022.

PROJECT SCHEDULE

Task	Schedule Date
Closing	May 15, 2021
Engineering Feasibility Report Completion (End of Planning Phase)	April 1, 2021
Design Phase	September 1, 2021
Start of Construction	December 1, 2021
Construction Completion	June 1, 2024

KEY ISSUES

The Authority's long-term contracts with the districts include terms for repayment of debt service, operations, maintenance and capital improvement expenses. Each district is only responsible for repayment of \$40 million of financing for their respective service areas. The Lake McQueeney and Placid WCIDs plan to close on planning and design funds only in early 2021 and the remainder for construction in late 2021.

The Authority is offering contract revenue pledges from each of the districts for the proposed debt. Each district is unconditionally obligated to pay the project debt service which is supported by an unlimited pledge of ad valorem property taxes. In addition, the Authority will provide individually to each district the revenues from Authority's electricity sales from each of the dams. Each dam has generated an average of just over \$500,000 annually in electricity revenues for the prior 15 years. These additional revenues were not included in the revenues available for debt service, but were assumed to be used for operations, maintenance and capital expenses for the dams. The agreements with the districts specify the allowable uses of the revenues from electricity sales. The revenues are unrestricted, though each have a condition when revenues are above an annual threshold then the additional funds are required to be deposited into a capital improvements fund.

The Districts are newly formed without prior financial reporting. The evaluation of repayment ability was based on current total assessed valuations for the service areas and the interest and sinking fund tax rates required for the repayment of their proposed debt service. Due to the timing of when the tax rates can be implemented, the initial interest payments will be provided from capitalized interest.

LEGAL

Special Conditions

- None.

Attachments:

1. Financial Review (including Project Data Summary and Debt Service Schedule)
2. Project Budget
3. Resolutions (20-)
4. Water Conservation Review
5. Location Map

Financial Review

Guadalupe-Blanco River Authority

Risk Score: 2C – Lake McQueeney Water Control and Improvement District
2C – Lake Placid Water Control and Improvement District

Key Indicators

Indicator	Lake McQueeney WCID	Lake Placid WCID	Benchmark
Population Growth, Average Annual 2010-2019	1.43%	1.43%	State: 1.24%
Top 10 Taxpayers as % Total AV	4.7%	5.7%	<15%
Median Household Income as % of State	119%	119%	100%
Direct Debt as % Total AV	9.22%	22.33%	2-5%
Debt per Capita	\$24,722	\$45,045	\$1,500-\$1,999
Total AV per Capita	\$268,012	\$201,767	\$30,000-\$64,999
Total AV Growth County 2015-2020	11.74%	11.74%	Stable Trend
Unemployment Per County (November 2020)	Guadalupe: 6.2%	Guadalupe: 6.2%	State: 8.0%

Key Risk Score Strengths

- Lake McQueeney and Lake Placid WCIDs have strong socioeconomic indicators, with low unemployment levels, a growing population, and a median household income above the median for the state overall.
- The Authority is pledging contract revenues, which is secured by an unlimited tax pledge of the Lake McQueeney and Lake Placid WCIDs.

Key Risk Score Concerns

- These are new districts, which means that they have no prior information to reference to analyze for system strength; however, Lake McQueeney and Lake Placid WCIDs are pledging unlimited taxes to the Authority and have the expertise of the Authority staff for managing the project.
- The proposed debt of \$40 million for each district results in a high level of direct debt as a percentage of the total assessed values.

PLEDGE

Legal Pledge Name	Contract Revenues (from the unlimited taxes of the districts)
Type of Pledge	<input type="checkbox"/> Tax <input type="checkbox"/> Revenue <input type="checkbox"/> Tax & Revenue <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Other
Revenue Pledge Level	<input checked="" type="checkbox"/> First <input type="checkbox"/> Second <input type="checkbox"/> Third <input type="checkbox"/> N/A

TAXES - Lake McQueeney Water Control and Improvement District

	2020 Tax Year Rate	Max Projected Tax Rate (2024)	Maximum Allowable Rate	Tax Collections Projected	Assessed Valuation	Average Property Value Per Household
Maintenance & Operation	\$0.00	\$0.050	Unlimited	90%	\$433,642,650	\$513,187
Interest & Sinking	\$0.00	\$0.730				
Total Tax Rate	\$0.00	\$0.780				

TAXES - Lake Placid Water Control and Improvement District

	2020 Tax Year Rate	Max Projected Tax Rate (2024)	Maximum Allowable Rate	Tax Collections Projected	Assessed Valuation	Average Property Value Per Household
Maintenance & Operation	\$0.00	\$0.120	Unlimited	90%	\$179,168,769	\$429,171
Interest & Sinking	\$0.00	\$1.767				
Total Tax Rate	\$0.00	\$1.887				

Cost Savings

Based on a 30-year maturity and current interest rates, Lake McQueeney and Lake Placid WCIDs could save approximately \$8,343,761 each over the life of the financing.

Project Data Summary

Responsible Authority	Guadalupe Blanco RA
Program	CWSRF
Commitment Number	L1001197, L1001198, L1001199, L1001200
Project Number	73897
List Year	2020
Type of Pledge	Contract Revenue Pledge
Pledge Level (if applicable)	First Lien
Legal Description	\$1,560,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake McQueeney Dam Facilities Project), Proposed Series 2021A, \$38,440,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake McQueeney Dam Facilities Project), Proposed Series 2021B, \$1,560,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021C, \$38,440,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021D
Tax-exempt or Taxable	Tax-Exempt
Refinance	No
Outlay Requirement	Yes
Disbursement Method	Escrow
Outlay Type	Outlay <> Escrow Release
Qualifies as Disadvantaged	No
State Revolving Fund Type	Non-Equivalency
Financial Managerial & Technical Complete	N/A
Phases Funded	Planning, Design, and Construction
Pre-Design	Yes
Project Consistent with State Water Plan	Yes
Water Conservation Plan	Adopted
Overall Risk Score	2C

PROJECT TEAM

Team Manager	Financial Analyst	Engineering Reviewer	Environmental Reviewer	Attorney
Dain Larsen	Arnoldo Rubio	David Firgens	Kristin Miller	Alexis Lorick

ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY
Guadalupe Blanco River Authority

\$1,560,000 Guadalupe Blanco River Authority, Contract Revenue Bonds (Lake Mequeoney Dam Facilities Project), Proposed Series 2021A

Dated Date:	5/15/2021	Source:	CWSRF-NON-EQUIVALENCY
Delivery Date:	5/15/2021	Rate:	1.48%
First Interest:	8/15/2021	IUP Year:	2020
First Principal:	8/15/2024	Case:	Unlimited Tax
Last Principal:	8/15/2050	Admin.Fee:	\$26,830
Fiscal Year End:	12/31	Admin. Fee Payment Date:	5/15/2021
Required Coverage:	1.0	Total Assessed Valuation:	\$433,642,650

\$38,440,000 Guadalupe Blanco River Authority, Contract Revenue Bonds (Lake Mequeoney Dam Facilities Project), Proposed Series 2021B

Dated Date:	9/15/2021	Source:	CWSRF-NON-EQUIVALENCY
Delivery Date:	9/15/2021	Rate:	1.48%
First Interest:	2/15/2022	IUP Year:	2020
First Principal:	8/15/2024	Case:	Unlimited Tax
Last Principal:	8/15/2050	Admin.Fee:	\$661,130
Fiscal Year End:	12/31	Admin. Fee Payment Date:	9/15/2021
Required Coverage:	1.0		

FISCAL YEAR	REQUIRED TAX RATE	REQUIRED TAX REVENUES WITH COLL. @ 90%	PROJECTED TOTAL REVENUES	CURRENT DEBT SERVICE	\$1,560,000 ISSUE				\$38,440,000 ISSUE				DEBT SERVICE	ACTUAL COVERAGE
					PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT		
2021	\$0.010	\$39,028	\$39,028	-	-	-	\$4,791	\$4,791	-	-	-	-	\$4,791	8.15
2022	0.115	448,751	448,751	-	-	-	19,162	19,162	-	-	\$429,589	\$429,589	448,751	1.00
2023	0.125	487,805	487,805	-	-	-	19,162	19,162	-	-	468,643	468,643	487,805	1.00
2024	0.489	1,907,805	1,907,805	-	\$55,000	0.60%	19,162	74,162	\$1,365,000	0.60%	468,643	1,833,643	1,907,805	1.00
2025	0.488	1,904,285	1,904,285	-	55,000	0.60%	18,832	73,832	1,370,000	0.60%	460,453	1,830,453	1,904,285	1.00
2026	0.487	1,900,735	1,900,735	-	55,000	0.60%	18,502	73,502	1,375,000	0.60%	452,233	1,827,233	1,900,735	1.00
2027	0.486	1,897,155	1,897,155	-	55,000	0.60%	18,172	73,172	1,380,000	0.60%	443,983	1,823,983	1,897,155	1.00
2028	0.485	1,893,545	1,893,545	-	55,000	0.60%	17,842	72,842	1,385,000	0.60%	435,703	1,820,703	1,893,545	1.00
2029	0.484	1,889,905	1,889,905	-	55,000	0.60%	17,512	72,512	1,390,000	0.60%	427,393	1,817,393	1,889,905	1.00
2030	0.483	1,886,235	1,886,235	-	55,000	0.60%	17,182	72,182	1,395,000	0.60%	419,053	1,814,053	1,886,235	1.00
2031	0.482	1,882,535	1,882,535	-	55,000	0.60%	16,852	71,852	1,400,000	0.60%	410,683	1,810,683	1,882,535	1.00
2032	0.481	1,878,805	1,878,805	-	55,000	0.60%	16,522	71,522	1,405,000	0.60%	402,283	1,807,283	1,878,805	1.00
2033	0.479	1,870,045	1,870,045	-	55,000	0.60%	16,192	71,192	1,405,000	0.60%	393,853	1,798,853	1,870,045	1.00
2034	0.478	1,866,285	1,866,285	-	55,000	0.71%	15,862	70,862	1,410,000	0.71%	385,423	1,795,423	1,866,285	1.00
2035	0.477	1,860,884	1,860,884	-	55,000	0.89%	15,472	70,472	1,415,000	0.89%	375,412	1,790,412	1,860,884	1.00
2036	0.476	1,857,801	1,857,801	-	60,000	1.04%	14,982	74,982	1,420,000	1.04%	362,819	1,782,819	1,857,801	1.00
2037	0.473	1,847,409	1,847,409	-	60,000	1.18%	14,358	74,358	1,425,000	1.18%	348,051	1,773,051	1,847,409	1.00
2038	0.470	1,834,886	1,834,886	-	60,000	1.30%	13,650	73,650	1,430,000	1.30%	331,236	1,761,236	1,834,886	1.00
2039	0.465	1,815,516	1,815,516	-	60,000	1.40%	12,870	72,870	1,430,000	1.40%	312,646	1,742,646	1,815,516	1.00
2040	0.461	1,799,656	1,799,656	-	60,000	1.50%	12,030	72,030	1,435,000	1.50%	292,626	1,727,626	1,799,656	1.00
2041	0.457	1,782,231	1,782,231	-	60,000	1.59%	11,130	71,130	1,440,000	1.59%	271,101	1,711,101	1,782,231	1.00
2042	0.452	1,763,381	1,763,381	-	60,000	1.67%	10,176	70,176	1,445,000	1.67%	248,205	1,693,205	1,763,381	1.00
2043	0.447	1,743,247	1,743,247	-	60,000	1.74%	9,174	69,174	1,450,000	1.74%	224,073	1,674,073	1,743,247	1.00
2044	0.441	1,721,973	1,721,973	-	60,000	1.80%	8,130	68,130	1,455,000	1.80%	198,843	1,653,843	1,721,973	1.00
2045	0.436	1,699,703	1,699,703	-	60,000	1.86%	7,050	67,050	1,460,000	1.86%	172,653	1,632,653	1,699,703	1.00
2046	0.430	1,676,431	1,676,431	-	60,000	1.90%	5,934	65,934	1,465,000	1.90%	145,497	1,610,497	1,676,431	1.00
2047	0.422	1,647,456	1,647,456	-	60,000	1.94%	4,794	64,794	1,465,000	1.94%	117,662	1,582,662	1,647,456	1.00
2048	0.416	1,622,871	1,622,871	-	60,000	1.98%	3,630	63,630	1,470,000	1.98%	89,241	1,559,241	1,622,871	1.00
2049	0.409	1,597,577	1,597,577	-	60,000	2.02%	2,442	62,442	1,475,000	2.02%	60,135	1,535,135	1,597,577	1.00
2050	0.403	1,571,570	1,571,570	-	60,000	2.05%	1,230	61,230	1,480,000	2.05%	30,340	1,510,340	1,571,570	1.00
			\$49,595,507	-	\$1,560,000		\$382,798	\$1,942,798	\$38,440,000		\$9,178,472	\$47,618,472	\$49,561,270	

\$1,560,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	16.54 YEARS
NET INTEREST RATE	1.484%
COST SAVINGS	\$330,911
AVERAGE ANNUAL REQUIREMENT	\$64,760

\$38,440,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	16.1 YEARS
NET INTEREST RATE	1.483%
COST SAVINGS	\$8,012,850
AVERAGE ANNUAL REQUIREMENT	\$1,642,016

TOTAL AVERAGE ANNUAL REQUIREMENTS
\$1,652,042

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ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY
Guadalupe Blanco River Authority

\$1,560,000 Guadalupe Blanco River Authority, Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021A

Dated Date:	5/15/2021	Source:	CWSRF-NON-EQUIVALENCY
Delivery Date:	5/15/2021	Rate:	1.48%
First Interest:	8/15/2021	IUP Year:	2020
First Principal:	8/15/2024	Case:	Unlimited Tax
Last Principal:	8/15/2050	Admin.Fee:	\$26,830
Fiscal Year End:	12/31	Admin. Fee Payment Date:	5/15/2021
Required Coverage:	1.0	Total Assessed Valuation:	\$179,168,769

\$38,440,000 Guadalupe Blanco River Authority, Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021B

Dated Date:	9/15/2021	Source:	CWSRF-NON-EQUIVALENCY
Delivery Date:	9/15/2021	Rate:	1.48%
First Interest:	2/15/2022	IUP Year:	2020
First Principal:	8/15/2024	Case:	Unlimited Tax
Last Principal:	8/15/2050	Admin.Fee:	\$661,130
Fiscal Year End:	12/31	Admin. Fee Payment Date:	9/15/2021
Required Coverage:	1.0		

FISCAL YEAR	REQUIRED TAX RATE	REQUIRED TAX REVENUES WITH COLL. @ 90%	PROJECTED TOTAL REVENUES	CURRENT DEBT SERVICE	\$1,560,000 ISSUE			\$38,440,000 ISSUE			DEBT SERVICE	ACTUAL COVERAGE		
					PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	PRINCIPAL PAYMENT	INTEREST RATE			INTEREST PAYMENT	TOTAL PAYMENT
2021	\$0.0100	\$16,125	\$16,125	-	-	-	\$4,791	\$4,791	-	-	-	\$4,791	3.37	
2022	0.2783	448,751	448,751	-	-	-	19,162	19,162	-	-	\$429,589	\$429,589	448,751	1.00
2023	0.3025	487,805	487,805	-	-	-	19,162	19,162	-	-	468,643	468,643	487,805	1.00
2024	1.1831	1,907,805	1,907,805	-	\$55,000	0.60%	19,162	74,162	\$1,365,000	0.60%	468,643	1,833,643	1,907,805	1.00
2025	1.1809	1,904,285	1,904,285	-	55,000	0.60%	18,832	73,832	1,370,000	0.60%	460,453	1,830,453	1,904,285	1.00
2026	1.1787	1,900,735	1,900,735	-	55,000	0.60%	18,502	73,502	1,375,000	0.60%	452,233	1,827,233	1,900,735	1.00
2027	1.1765	1,897,155	1,897,155	-	55,000	0.60%	18,172	73,172	1,380,000	0.60%	443,983	1,823,983	1,897,155	1.00
2028	1.1743	1,893,545	1,893,545	-	55,000	0.60%	17,842	72,842	1,385,000	0.60%	435,703	1,820,703	1,893,545	1.00
2029	1.1720	1,889,905	1,889,905	-	55,000	0.60%	17,512	72,512	1,390,000	0.60%	427,393	1,817,393	1,889,905	1.00
2030	1.1697	1,886,235	1,886,235	-	55,000	0.60%	17,182	72,182	1,395,000	0.60%	419,053	1,814,053	1,886,235	1.00
2031	1.1674	1,882,535	1,882,535	-	55,000	0.60%	16,852	71,852	1,400,000	0.60%	410,683	1,810,683	1,882,535	1.00
2032	1.1651	1,878,805	1,878,805	-	55,000	0.60%	16,522	71,522	1,405,000	0.60%	402,283	1,807,283	1,878,805	1.00
2033	1.1597	1,870,045	1,870,045	-	55,000	0.60%	16,192	71,192	1,405,000	0.60%	393,853	1,798,853	1,870,045	1.00
2034	1.1574	1,866,285	1,866,285	-	55,000	0.71%	15,862	70,862	1,410,000	0.71%	385,423	1,795,423	1,866,285	1.00
2035	1.1540	1,860,884	1,860,884	-	55,000	0.89%	15,472	70,472	1,415,000	0.89%	375,412	1,790,412	1,860,884	1.00
2036	1.1521	1,857,801	1,857,801	-	60,000	1.04%	14,982	74,982	1,420,000	1.04%	362,819	1,782,819	1,857,801	1.00
2037	1.1457	1,847,409	1,847,409	-	60,000	1.18%	14,358	74,358	1,425,000	1.18%	348,051	1,773,051	1,847,409	1.00
2038	1.1379	1,834,886	1,834,886	-	60,000	1.30%	13,650	73,650	1,430,000	1.30%	331,236	1,761,236	1,834,886	1.00
2039	1.1259	1,815,516	1,815,516	-	60,000	1.40%	12,870	72,870	1,430,000	1.40%	312,646	1,742,646	1,815,516	1.00
2040	1.1161	1,799,656	1,799,656	-	60,000	1.50%	12,030	72,030	1,435,000	1.50%	292,626	1,727,626	1,799,656	1.00
2041	1.1052	1,782,231	1,782,231	-	60,000	1.59%	11,130	71,130	1,440,000	1.59%	271,101	1,711,101	1,782,231	1.00
2042	1.0936	1,763,381	1,763,381	-	60,000	1.67%	10,176	70,176	1,445,000	1.67%	248,205	1,693,205	1,763,381	1.00
2043	1.0811	1,743,247	1,743,247	-	60,000	1.74%	9,174	69,174	1,450,000	1.74%	224,073	1,674,073	1,743,247	1.00
2044	1.0679	1,721,973	1,721,973	-	60,000	1.80%	8,130	68,130	1,455,000	1.80%	198,843	1,653,843	1,721,973	1.00
2045	1.0541	1,699,703	1,699,703	-	60,000	1.86%	7,050	67,050	1,460,000	1.86%	172,653	1,632,653	1,699,703	1.00
2046	1.0396	1,676,431	1,676,431	-	60,000	1.90%	5,934	65,934	1,465,000	1.90%	145,497	1,610,497	1,676,431	1.00
2047	1.0217	1,647,456	1,647,456	-	60,000	1.94%	4,794	64,794	1,465,000	1.94%	117,662	1,582,662	1,647,456	1.00
2048	1.0064	1,622,871	1,622,871	-	60,000	1.98%	3,630	63,630	1,470,000	1.98%	89,241	1,559,241	1,622,871	1.00
2049	0.991	1,597,577	1,597,577	-	60,000	2.02%	2,442	62,442	1,475,000	2.02%	60,135	1,535,135	1,597,577	1.00
2050	0.975	1,571,570	1,571,570	-	60,000	2.05%	1,230	61,230	1,480,000	2.05%	30,340	1,510,340	1,571,570	1.00
			\$49,572,605	-	\$1,560,000		\$382,798	\$1,942,798	\$38,440,000		\$9,178,472	\$47,618,472	\$49,561,270	

\$1,560,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	16.54 YEARS
NET INTEREST RATE	1.484%
COST SAVINGS	\$330,911
AVERAGE ANNUAL REQUIREMENT	\$64,760

\$38,440,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	16.1 YEARS
NET INTEREST RATE	1.483%
COST SAVINGS	\$8,012,850
AVERAGE ANNUAL REQUIREMENT	\$1,642,016

TOTAL AVERAGE ANNUAL REQUIREMENTS
\$1,652,042

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Project Budget Summary
 Guadalupe Blanco RA
 73897 - Guadalupe Valley Hydroelectric System (GVHS)

Budget Items	Lake McQueeney WCID No. 1 L1001197	Lake McQueeney WCID No. 1 L1001198	Lake Placid WCID L1001199	Lake Placid WCID L1001200	Total
Construction					
Construction	\$0	\$32,500,000	\$0	\$32,500,000	\$65,000,000
Subtotal for Construction	\$0	\$32,500,000	\$0	\$32,500,000	\$65,000,000
Basic Engineering Services					
Basic Engineering Other	\$35,000	\$0	\$35,000	\$0	\$70,000
Construction Engineering	\$470,000	\$0	\$470,000	\$0	\$940,000
Design	\$625,000	\$0	\$625,000	\$0	\$1,250,000
Planning	\$185,000	\$0	\$185,000	\$0	\$370,000
Subtotal for Basic Engineering	\$1,315,000	\$0	\$1,315,000	\$0	\$2,630,000
Special Services					
Environmental	\$27,000	\$0	\$27,000	\$0	\$54,000
Inspection	\$0	\$900,000	\$0	\$900,000	\$1,800,000
O&M Manual	\$0	\$20,000	\$0	\$20,000	\$40,000
Project Management (by engineer)	\$0	\$115,000	\$0	\$115,000	\$230,000
Surveying	\$40,000	\$0	\$40,000	\$0	\$80,000
Testing	\$0	\$100,000	\$0	\$100,000	\$200,000
Subtotal for Special Services	\$67,000	\$1,135,000	\$67,000	\$1,135,000	\$2,404,000
Fiscal Services					
Bond Counsel	\$3,900	\$96,100	\$3,900	\$96,100	\$200,000
Financial Advisor	\$5,119	\$126,131	\$5,119	\$126,131	\$262,500
Fiscal/Legal	\$9,060	\$17,000	\$9,060	\$17,000	\$52,120
Issuance Costs	\$11,000	\$11,000	\$11,000	\$11,000	\$44,000
Loan Origination Fee	\$26,830	\$661,130	\$26,830	\$661,130	\$1,375,921
Subtotal for Fiscal Services	\$55,909	\$911,361	\$55,909	\$911,361	\$1,934,541
Other					
Administration	\$114,058	\$0	\$114,058	\$0	\$228,116
Subtotal for Other	\$114,058	\$0	\$114,058	\$0	\$228,116
Contingency					
Contingency	\$8,033	\$3,893,639	\$8,033	\$3,893,639	\$7,803,343
Subtotal for Contingency	\$8,033	\$3,893,639	\$8,033	\$3,893,639	\$7,803,343
Total	\$1,560,000	\$38,440,000	\$1,560,000	\$38,440,000	\$80,000,000

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN AN AGGREGATE
PRINCIPAL AMOUNT OF \$40,000,000 TO THE GUADALUPE-BLANCO RIVER AUTHORITY
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$1,560,000 GUADALUPE-BLANCO RIVER AUTHORITY CONTRACT REVENUE BONDS (LAKE
MCQUEENEY DAM FACILITIES PROJECT), PROPOSED SERIES 2021A AND \$38,440,000
GUADALUPE-BLANCO RIVER AUTHORITY CONTRACT REVENUE BONDS (LAKE
MCQUEENEY DAM FACILITIES PROJECT),
PROPOSED SERIES 2021B

(21 -)

WHEREAS, the Guadalupe-Blanco River Authority (Authority), located in Comal and Guadalupe Counties, has filed an application for financial assistance in the amount of \$40,000,000 from the Clean Water State Revolving Fund (CWSRF) to finance the planning design and construction of certain stormwater system improvements for Lake McQueeney identified as Project No. 73897; and

WHEREAS, the Authority seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake McQueeney Dam Facilities Project), Proposed Series 2021A and 2021B in an aggregate principal amount not to exceed \$40,000,000 (together with all authorizing documents, (Obligations)), all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the Authority has offered a pledge of contract revenues from an agreement between the Authority and Lake McQueeney Water Control and Improvement District as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 375.14; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the Authority will be sufficient to meet all the Obligations assumed by the Authority, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the Authority has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and

conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB's rules.

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the Guadalupe-Blanco River Authority for financial assistance in an aggregate principal amount not to exceed \$40,000,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake McQueeney Dam Facilities Project) as follows:

(a) \$1,560,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake McQueeney Dam Facilities Project), Proposed Series 2021A; and

(b) \$38,440,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake McQueeney Dam Facilities Project), Proposed Series 2021B

The commitment for each series will expire on February 28, 2022.

Such commitment is conditioned as follows:

Standard Conditions

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the Authority;
3. this commitment is contingent upon the Authority's compliance with all applicable requirements contained in 31 TAC Chapter 375;
4. the Obligations must provide that the Authority agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;
5. the Obligations must provide that the Obligations can be called for early redemption on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
6. the Authority, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually

or in combination with other issuers of the Authority's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the Authority's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Authority is an obligated person with respect to such bonds under SEC Rule 15c2-12;

7. the Obligations must contain a provision requiring the Authority to enforce provisions in its contract with Lake McQueeney Water Control and Improvement District to levy a tax to produce funds in an amount necessary to meet the debt service requirements of the Authority for of all outstanding obligations and to maintain the funds established and required by the Obligations;
8. the Obligations must include a provision requiring the Authority to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the Authority to submit a final accounting and disposition of any unused funds;
9. the Obligations must include a provision requiring the Authority to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting in a manner as approved by the Executive Administrator;
10. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
11. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;
12. loan proceeds shall not be used by the Authority when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the Authority agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any

contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the Authority, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

13. prior to closing, the Authority shall submit documentation evidencing the obligation of Lake McQueeney Water Control and Improvement District to levy an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
14. prior to closing, and if not previously provided with the application, the Authority shall submit executed contracts for engineering, and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;
15. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the Authority shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
16. the Executive Administrator may require that the Authority execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
17. the Obligations must provide that the Authority will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
18. the Obligations must provide that the Authority must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;
19. the Obligations must contain a provision requiring the Authority to maintain insurance coverage sufficient to protect the TWDB's interest in the project;

Conditions Related to Tax-Exempt Status

20. the Authority's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the Authority when rendering this opinion;

21. the Authority's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the Authority when rendering this opinion;
22. the Obligations must include a provision prohibiting the Authority from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of section 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
23. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of section 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:
 - a. proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
 - b. amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Regulations; and
 - c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;
24. the Obligations must include a provision requiring the Authority take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of section 148 of the Code. The Obligations must provide that the Authority will:
 - a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The Authority may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the Authority, provided that the Authority separately

accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;

- b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in section 148(f) of the Code, section 1.148-3 of the Regulations, and the rulings thereunder. The Authority shall maintain a copy of such calculations for at least six years after the final Computation Date;
 - c. as additional consideration for the making of the loan, and in order to induce the making of the loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;
 - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;
- 25. the Obligations must include a provision prohibiting the Authority from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 - 26. the Obligations must provide that the Authority will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of section 149(b) of the Code;
 - 27. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the Authority's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
 - 28. the Obligations must contain a provision that the Authority will refrain from using the proceeds provided by this TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Obligations in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);
 - 29. the transcript must include evidence that the information reporting requirements of section 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of section 149(e) have been satisfied must be provided to

the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;

30. the Obligations must provide that neither the Authority nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the Authority by the TWDB;

State Revolving Fund Conditions

31. the Authority shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
32. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The Authority, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB;
33. the Obligations must include a provision stating that the Authority shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The Authority shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
34. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the Authority will adhere to the approved project schedule;
35. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;
36. the Authority shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the

applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

37. the Authority shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant 31 TAC Chapter 375;
38. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;

Pledge Conditions for the Loan

39. upon request by the Executive Administrator, the Authority shall submit annual audits of contracting parties for the Executive Administrator's review;
40. the Obligations must contain a provision requiring the Authority to maintain and enforce the contract with the Lake McQueeney Water Control and Improvement District so that revenues paid to the Authority by the District are sufficient to meet the Authority's obligations relating to the Obligations;
41. the Obligations must contain a provision that the pledged contract revenues from the Authority may not be pledged to the payment of any additional parity obligations of the Authority secured by a pledge of the same contract revenues unless the Authority demonstrates to the Executive Administrator's satisfaction that the pledged contract revenues will be sufficient for the repayment of all Obligations and additional parity obligations;
42. prior to closing, the Authority must submit an executed contract between the Authority and the Lake McQueeney Water Control and Improvement District regarding the contract revenues pledged to the payment of the Authority's Obligations, in form and substance acceptable to the Executive Administrator. Such contract shall include provisions consistent with the provisions of this Resolution regarding the District's annual audits, the levy of ad valorem taxes sufficient to collect the Authority's debt service obligations and additional parity obligations.

APPROVED and ordered of record this 10th day of February 2021.

TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN AN AGGREGATE
PRINCIPAL AMOUNT OF \$40,000,000 TO THE GUADALUPE-BLANCO RIVER AUTHORITY
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$1,560,000 GUADALUPE-BLANCO RIVER AUTHORITY CONTRACT REVENUE BONDS (LAKE
PLACID DAM FACILITIES PROJECT), PROPOSED SERIES 2021A AND \$38,440,000
GUADALUPE-BLANCO RIVER AUTHORITY CONTRACT REVENUE BONDS (LAKE PLACID
DAM FACILITIES PROJECT),
PROPOSED SERIES 2021B

(21 -)

WHEREAS, the Guadalupe-Blanco River Authority (Authority), located in Comal and Guadalupe Counties, has filed an application for financial assistance in the amount of \$40,000,000 from the Clean Water State Revolving Fund (CWSRF) to finance the planning design and construction of certain stormwater system improvements for Lake Placid identified as Project No. 73897; and

WHEREAS, the Authority seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021A and 2021B in an aggregate principal amount of not to exceed \$40,000,000 (together with all authorizing documents, (Obligations)), all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the Authority has offered a pledge of contract revenues from an agreement between the Authority and Lake Placid Water Control and Improvement District as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 375.14; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the Authority will be sufficient to meet all the Obligations assumed by the Authority, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the Authority has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and

conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB's rules.

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the Guadalupe-Blanco River Authority for financial assistance in an aggregate principal amount not to exceed \$40,000,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project) as follows:

(a) \$1,560,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021A; and

(b) \$38,440,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021B

The commitment for each series will expire on February 28, 2022.

Such commitment is conditioned as follows:

Standard Conditions

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the Authority;
3. this commitment is contingent upon the Authority's compliance with all applicable requirements contained in 31 TAC Chapter 375;
4. the Obligations must provide that the Authority agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;
5. the Obligations must provide that the Obligations can be called for early redemption on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
6. the Authority, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually

or in combination with other issuers of the Authority's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the Authority's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Authority is an obligated person with respect to such bonds under SEC Rule 15c2-12;

7. the Obligations must contain a provision requiring the Authority to enforce provisions under its contract with the Lake Placid Water Control and Improvement District which requires the District to levy a tax rate and/or maintain and collect sufficient rates and charges, as applicable, to produce funds in an amount necessary to meet the debt service requirements of the Authority for of all outstanding obligations and to maintain the funds established and required by the Obligations;
8. the Obligations must include a provision requiring the Authority to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the Authority to submit a final accounting and disposition of any unused funds;
9. the Obligations must include a provision requiring the Authority to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting in a manner as approved by the Executive Administrator;
10. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
11. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;
12. loan proceeds shall not be used by the Authority when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the Authority agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from

the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the Authority, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

13. prior to closing, the Authority shall submit documentation evidencing the obligation of Lake Placid Water Control and Improvement to levy an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
14. prior to closing, and if not previously provided with the application, the Authority shall submit executed contracts for engineering, and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;
15. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the Authority shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
16. the Executive Administrator may require that the Authority execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
17. the Obligations must provide that the Authority will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
18. the Obligations must provide that the Authority must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;
19. the Obligations must contain a provision requiring the Authority to maintain insurance coverage sufficient to protect the TWDB's interest in the project;

Conditions Related to Tax-Exempt Status

20. the Authority's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the Authority when rendering this opinion;

21. the Authority's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the Authority when rendering this opinion;
22. the Obligations must include a provision prohibiting the Authority from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of section 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
23. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of section 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:
 - a. proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
 - b. amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Regulations; and
 - c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;
24. the Obligations must include a provision requiring the Authority take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of section 148 of the Code. The Obligations must provide that the Authority will:
 - a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The Authority may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the Authority, provided that the Authority separately

accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;

- b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in section 148(f) of the Code, section 1.148-3 of the Regulations, and the rulings thereunder. The Authority shall maintain a copy of such calculations for at least six years after the final Computation Date;
 - c. as additional consideration for the making of the loan, and in order to induce the making of the loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;
 - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;
- 25. the Obligations must include a provision prohibiting the Authority from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 - 26. the Obligations must provide that the Authority will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of section 149(b) of the Code;
 - 27. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the Authority's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
 - 28. the Obligations must contain a provision that the Authority will refrain from using the proceeds provided by this TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Obligations in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);
 - 29. the transcript must include evidence that the information reporting requirements of section 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of section 149(e) have been satisfied must be provided to

the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;

30. the Obligations must provide that neither the Authority nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the Authority by the TWDB;

State Revolving Fund Conditions

31. the Authority shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
32. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The Authority, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB;
33. the Obligations must include a provision stating that the Authority shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The Authority shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
34. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the Authority will adhere to the approved project schedule;
35. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;
36. the Authority shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the

TWDB does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

37. the Authority shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant 31 TAC Chapter 375;
38. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;

Pledge Conditions for the Loan

39. upon request by the Executive Administrator, the Authority shall submit annual audits of contracting parties for the Executive Administrator's review;
40. the Obligations must contain a provision requiring the Authority to maintain and enforce the contract with the Lake Placid Water Control and Improvement District so that revenues paid to the Authority by the District are sufficient to meet the Authority's obligations relating the Obligations;
41. the Obligations must contain a provision that the pledged contract revenues from the Authority may not be pledged to the payment of any additional parity obligations of the Authority secured by a pledge of the same contract revenues unless the Authority demonstrates to the Executive Administrator's satisfaction that the pledged contract revenues will be sufficient for the repayment of all Obligations and additional parity obligations;
42. prior to closing, the Authority must submit an executed contract between the Authority and the Lake Placid Water Control and Improvement District regarding the contract revenues pledged to the payment of the Authority's Obligations, in form and substance acceptable to the Executive Administrator. Such contract shall include provisions consistent with the provisions of this Resolution regarding the District's annual audits, the levy of ad valorem taxes sufficient to collect the Authority's debt service obligations and additional parity obligations.

APPROVED and ordered of record this 10th day of February 2021.

TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

Water
 Wastewater
 Other

WATER CONSERVATION REVIEW

Entity: _____

Review date: _____

WATER CONSERVATION PLAN DATE: **Approvable** **Adopted**

	Total GPCD	Residential GPCD	Water Loss GPCD	Water Loss Percent
Baseline				
5-year Goal				
10-year Goal				

WATER LOSS AUDIT YEAR:

Total water loss (GPCD): _____ Total water loss (percent): _____ Wholesale Water
 Total no. of connections: _____ Length of mains (miles): _____ Connections per mile: _____
 If > 16 connections per mile and > 3,000 connections, Infrastructure Leakage Index (ILI): _____

WATER LOSS THRESHOLDS:

	Apparent Loss Gallons per connection per day	Real Loss Gallons per mile per day	Real Loss Gallons per connection per day	Apparent Threshold Gallons per connection per day	Real Threshold Gallons per mile per day	Real Threshold Gallons per connection per day
If population ≤ 10K, connections/mile < 32 :			NA			NA
If population ≤ 10K, connections/mile ≥ 32 :		NA			NA	
If population > 10K :		NA			NA	

Does the applicant meet Water Loss Threshold requirements? Yes No NA

ADDITIONAL INFORMATION:

STAFF NOTES AND RECOMMENDATIONS:

DEFINITIONS

Adopted refers to a water conservation plan that meets the minimum requirements of the water conservation plan rules and has been formally approved and adopted by the applicant's governing body.

Apparent loss refers to unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

Approvable refers to a water conservation plan that substantially meets the minimum requirements of the water conservation plan rules but has not yet been adopted by the applicant's governing body.

Best Management Practices are voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

GPCD means gallons per capita per day.

Infrastructure Leakage Index (ILI) is the current annual real loss divided by the unavoidable annual real loss (theoretical minimum real loss) and only applies to utilities with more than 5,000 connections, average pressure greater than 35 psi, and a connection density of more than 32 connections per mile. The **ILI** is recommended to be less than 3 if water resources are greatly limited and difficult to develop, between 3 and 5 if water resources are adequate to meet long-term needs but water conservation is included in long-term water planning, and between 5 and 8 if water resources are plentiful, reliable, and easily extracted. The **ILI** is recommended as a benchmarking tool, but until there is increased data validity of the variables used in the calculation, the **ILI** should be viewed with care.

NA means not applicable.

Produced water is the total amount of water purchased or produced by the utility.

Real loss comes from main breaks and leaks, storage tank overflows, customer service line breaks, and leaks.

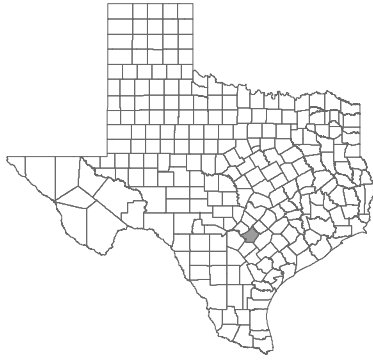
Residential GPCD is the amount of water per capita used solely for residential use and ideally includes both single and multi-family customer use.

Total baseline GPCD is the amount of all water purchased or produced by the utility divided by the service area population and then divided by 365.

Total water loss is the sum of the apparent and real water losses.

Water loss is the difference between the input volume and the authorized consumption within a water system. Water Loss consists of real losses and apparent losses.

Water Loss Thresholds are levels of real and apparent water loss determined by the size and connection density of a retail public utility, at or above which a utility receiving financial assistance from the Texas Water Development Board must use a portion of that financial assistance to mitigate the utility's system water loss.



Guadalupe-Blanco RA (GBRA) Guadalupe County

