



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. LOUIS DISTRICT
1222 SPRUCE STREET
ST. LOUIS, MO 63103

CEMVS-RD

10 APRIL 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ [MVS-2024-641](#)

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable [in this state, Missouri](#), due to litigation.

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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1. SUMMARY OF CONCLUSIONS.

a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States

- i. Stream 1, 173 linear feet, non-jurisdictional
- ii. Stream 2, 152 linear feet, non-jurisdictional
- iii. Stream 2 (RB), 167 linear feet, jurisdictional, Section 404
- iv. Stream 3, 382 linear feet, non-jurisdictional
- v. Stream 3 (RB), 167 linear feet, non-jurisdictional
- vi. Stream 4, 313 linear feet, non-jurisdictional
- vii. Stream 5, 104 jurisdictional, Section 404
- viii. Stream 6, 147 linear feet, non-jurisdictional
- ix. Stream 8, 135 linear feet, non-jurisdictional
- x. Stream 9, 358 linear feet, non-jurisdictional
- xi. Stream 10, 23 linear feet, non-jurisdictional
- xii. Stream 12, 565 linear feet, jurisdictional, Section 404
- xiii. Wetland 1, 0.27 acres, jurisdictional, Section 404
- xiv. Wetland 2, 0.24 acres, non-jurisdictional
- xv. Wetland 3, 0.03 acres, non-jurisdictional
- xvi. Wetland 4, 0.07 acres, jurisdictional, Section 404
- xvii. Wetland 4 RB, 2.72 acres, jurisdictional, Section 404
- xviii. Wetland 6, 4.67 acres, jurisdictional, Section 404

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xix. Wetland 7, 3.78 acres, jurisdictional, Section 404

xx. Wetland 10, 0.02 acres, non-jurisdictional

xxi. Pond 1, 0.5 acres, non-jurisdictional

xxii. Wastewater Pond, 1 acre, non-jurisdictional

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- e. Citing to the 27 September coordination memo, specifically to the language which reads, "Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the regulatory text that was not amended by the conforming rule, including the preamble relevant to the *Rapanos* plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended."
- f. Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of "Waters Of The United States" Under The Clean Water Act" (March 12, 2025).

3. REVIEW AREA. The review area consists of approximately 200 acres in the vicinity of the former Festus Memorial Airport, just outside of the City limits of Crystal City, Jefferson County, Missouri. The central coordinates of the site are: 38.193283°, - 90.383277°.

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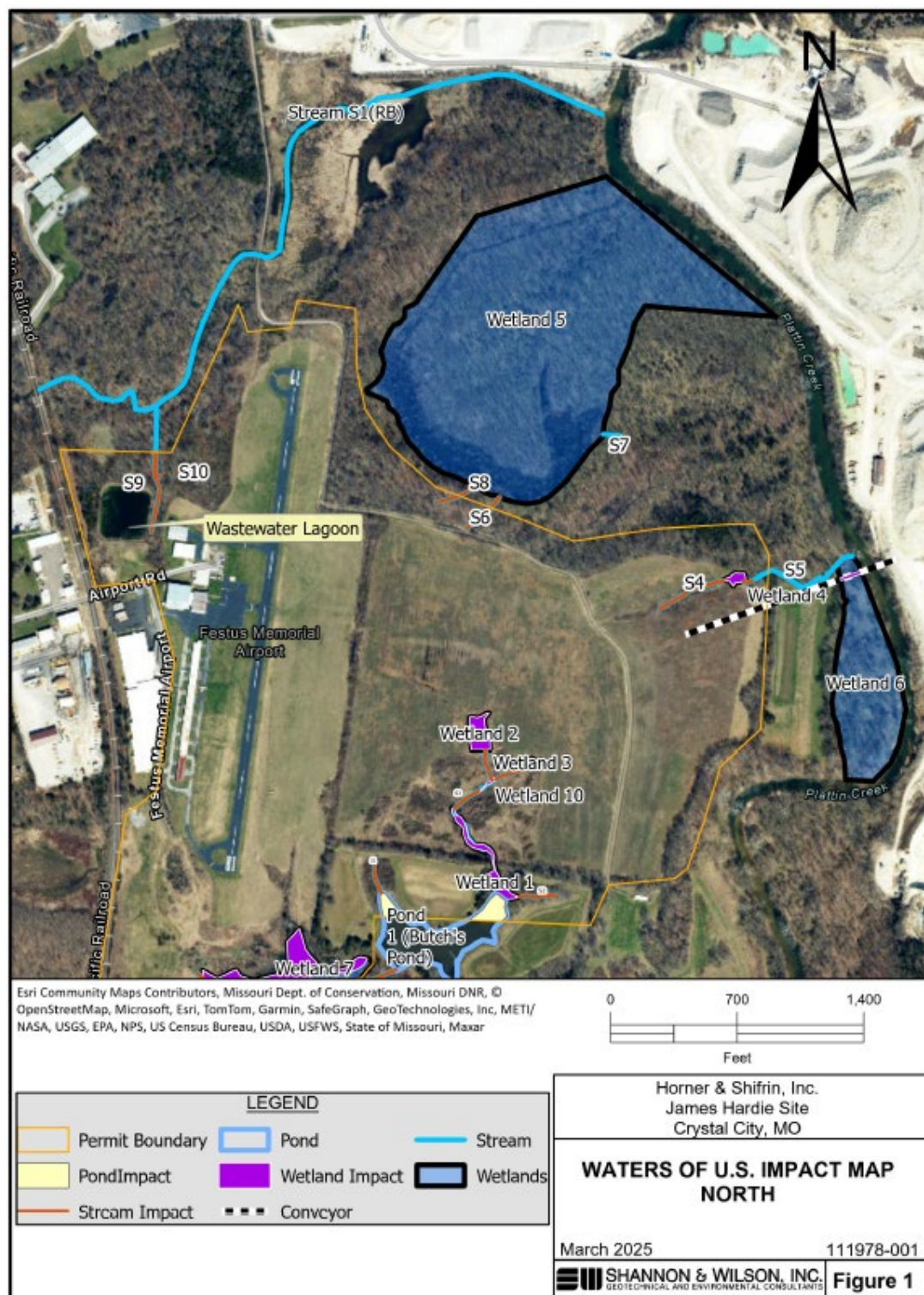


Figure 1: Aerial image of the northern portion of the review area.

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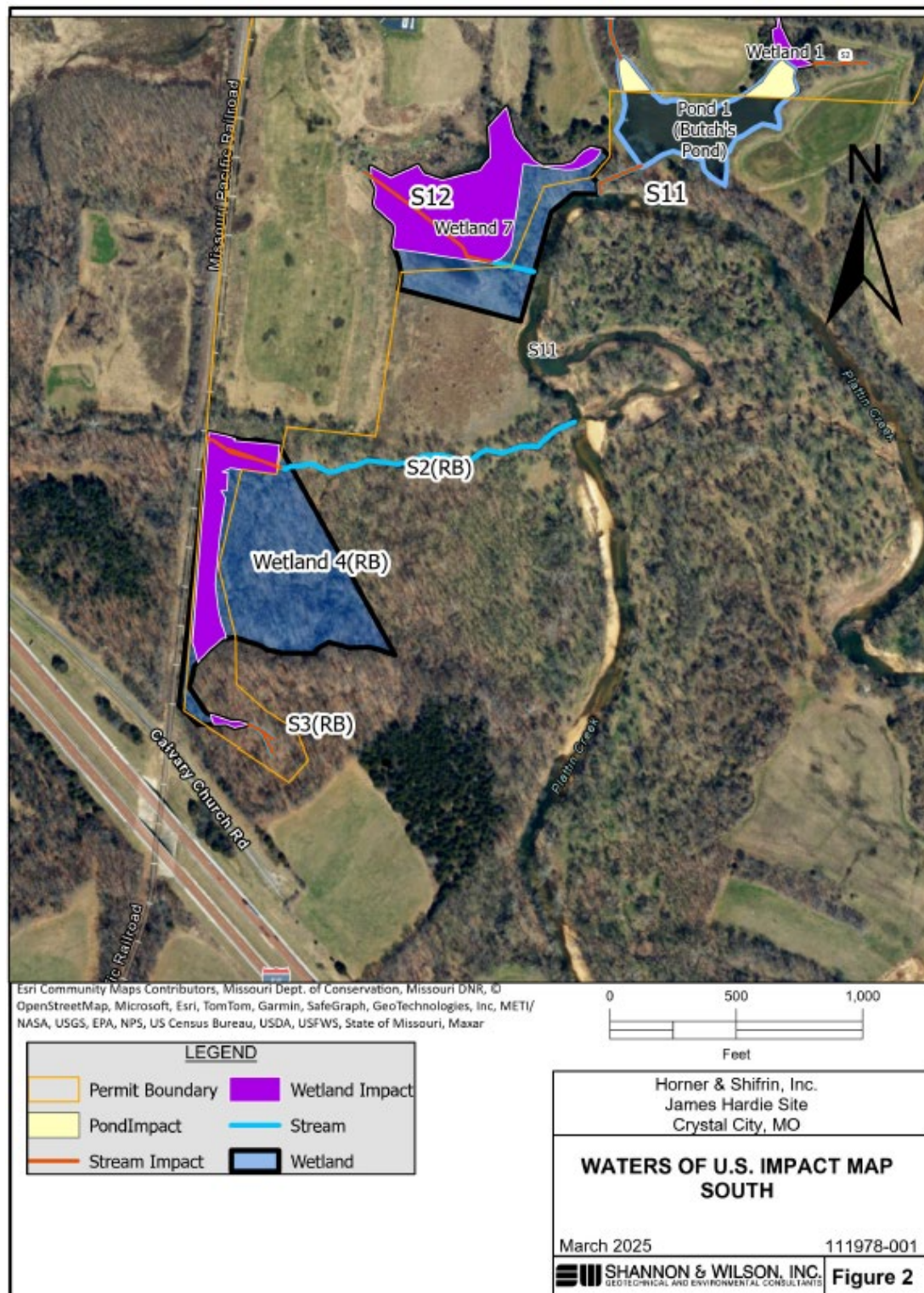


Figure 2: Aerial image of the southern portion of the review area.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Mississippi River](#).
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. [The waters on site all drain to Platin Creek which flows approximately 3.2 river miles down to the navigable Mississippi River](#).
6. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ [N/A](#)
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): [N/A](#)
 - b. Interstate Waters (a)(2): [N/A](#)
 - c. Other Waters (a)(3): [N/A](#)

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁶ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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

e. Tributaries (a)(5):

Stream 2 RB, 167 linear feet, jurisdictional

Central Coordinates: 38.1883242193°, -90.3877231256°

A review of desktop resources showed the stream mapped as an intermittent tributary in USGS 1:24,000 scale topographic maps and by the USGS National Hydrological Dataset (USGS NHD). The stream has a watershed area of approximately 390 acres. USFWS National Wetland Inventory (NWI) mapper identifies the stream as a riverine habitat and FEMA flood map has the lower length mapped in Zone AE (100-year flood event) and floodway. The tributary can be influenced by Mississippi River backwater flooding. The Missouri Department of Natural Resources (MDNR) Water Quality Standards Map identifies the stream reach as Waterbody ID Number 5026, Reach 07140101000966 Warm Water Habitat. The identified presumed uses of waterbody include: irrigation, livestock and wildlife protection, secondary contact recreation, whole body contact recreation category B, Human Health protection. Stream 2 RB flows into Platin Creek, which is a primary tributary to the navigable Mississippi River. The narrow channel and dense riparian corridor make the channel conditions unobservable during leaf on conditions. A review of leaf off aerial imagery (February and March captures) available on the Jefferson County Parcel Viewer map shows flow present in the stream length in all of the capture years reviewed (2018, 2020, 2022 & 2024) and in all leaf off aeriels in Google Earth Pro reviewed (11/13/2002, 2/29/2004, 3/31/2008, 11/29/2013). During the Corps site visit on March 3, 2025 flow was actively flowing through the stream channel that was well defined with established meanders and riffle pool complexes. The ordinary high water mark's average dimension being 15 feet wide and 5 feet deep. In reviewing office and field data the Corps has determined that Stream 2 RB consistently supports relatively permanent flow and is a jurisdictional (a)(5) tributary.

Stream 5, 105 linear feet, jurisdictional, Section 404

Central Coordinates: 38.1955035709°, -90.377402526°

A review of desktop resources showed that the stream was not mapped by USGS Topographic maps, USGS NHD, USFWS NWI Mapper, nor MDNR Water Quality Standards Map. The channel topographically is located within a drainage pattern and has a watershed area of approximately 11 acres. The FEMA flood map has the length mapped in Zone AE (100-year flood event) and floodway of

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Plattin Creek. Stream 5 flows into Plattin Creek, which is a primary tributary to the navigable Mississippi River. The USDA NRCS' ecological site is identified as Loamy Floodplain Forests are widely distributed on the tributary floodplains of the Missouri and Mississippi Rivers. Sites are typically associated with a variety of upland drainageway, terrace and foot slope ecological sites in the secondary stream valleys. Soils are loamy and very deep and are subject to frequent flooding. The site description states, "soils in this ecological site have seasonal water tables in the winter and spring, generally receding with the falling river levels in the early summer."

Field delineator measured the ordinary high water mark's average dimension being 3 feet wide and 4 feet deep. The identified the water as an intermittent channel that they believed fit the definition of a relative permanent water. The delineator stated that flow had been present any time that they had visited the site, and flow was present during the Corps site visit on March 3, 2025. Groundwater seeps in the tributary's location along the toe of the high floodplain terrace slopes appeared to be a contributor to flow. Flow was observed to be flowing from Wetland 4 into Stream 5 at the time of the Corps visit and seep areas along length and steeps was observed. The lower length of the stream shows evidence of the heavy influence of Plattin Creek flows through the floodway and deposition of materials during Mississippi River backwater flooding. The consistent presence of flow within the stream channel and the groundwater contributions to flow supports the Corps determination that the tributary has relatively permanent flow and is a jurisdictional (a)(5) tributary.

Stream 12, 564 linear feet, jurisdictional, Section 404

Central Coordinates: 38.1902836544°, -90.38583157°

A review of desktop resources showed that the stream was not mapped by USGS Topographic maps, USGS NHD, USFWS NWI Mapper, nor MDNR Water Quality Standards Map. The channel topographically is located within a drainage pattern and has a watershed area of approximately 100 acres. The FEMA flood map has the lower length mapped in Zone 2%, Zone AE (100-year flood event) and the floodway of where channel flows into Plattin Creek. Stream 12 flows into Plattin Creek, which is a primary tributary to the navigable Mississippi River. Field delineator measured the ordinary high water mark's average dimension being 5 feet wide and 3 feet deep. The identified the water as a perennial channel that they believed fit the definition of a relative permanent water.

Upstream of the review area the railroad embankment and culvert appear to influence the stream's transport of sediments and flow. Stream 12 above the bridge is not a stream channel but a wetland complex. This seems to suggest

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that flows may be attenuated by the railroad embankment and crossing structure and may extend flows to the channel in addition the ecological site is identified to be Wet Terrace Forest, which is stated to be influenced by a seasonal high water table from high groundwater levels. These factors all appear to contribute to relatively permeant flow being sustained in this tributary. The Corps has determined that Stream 12 has relatively permanent flow and is a jurisdictional (a)(5) tributary.

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

g. Adjacent wetlands (a)(7):

Wetland 1, 0.27 acres, jurisdictional

Central Coordinates: 38.1919128735°, -90.3818939115°

A review of desktop resources does not have this wetland feature identified by USGS Topographic maps nor by USFWS NWI Mapper. The feature is located immediately upgradient of Pond 1, with a drainage area of approximately 23.5 acres. Field delineators described the feature as, "Emergent wetland bordering Pond". Wetland 1 directly abuts Pond 1, and at the downgradient most area is a backwater wetland feature from Pond 1. Pond 1 was determined to be a generally non-jurisdictional aquatic resources in accordance with the 1986 preamble and while Pond 1 is not considered jurisdictional it does function as a tributary and serves as an RPW. The flow path through the tributary system flows from Stream 3 (382 linear feet non-RPW length)→Wetland 1 (RPW length)→Pond 1 (688 liner feet RPW length)→Stream 11 (115 linear feet RPW length*) and then into Platin Creek (presumed RPW**). The dominant condition along the tributary length is relatively permanent and therefore the Corps has determined that Wetland 1 abuts a relatively permanent water.

Wetland 4, 0.07 acres, jurisdictional

Central coordinates: 38.1953379633°, -90.3784284349°

A review of desktop resources found the area not identified as a wetland but mapped within a drainage pattern in USGS Topographic maps with a watershed area of 4 acres. The USFWS NWI mapper has the area mapped as a freshwater forested/shrub wetland. It is located within the FEMA 0.2% annual chance flood hazard area. The NRCS Soil Web maps the wetland at a transition area between two soils series, Deible & Haymond Series. Deible series has a hydric rating and is described as, "Deible silt loam, 1 to 3 percent slopes...very deep, poorly drained soils formed in either silty colluvium or loess and the underlying alluvium on stream terraces and foot slopes." Haymond series is non-hydric and described as, "Haymond silt loam, 0 to 3 percent slopes, frequently

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flooded...consists of very deep, well drained, soils that formed in silty alluvium...on flood plains and flood-plain steps.”

Field delineators identified wetland 4 but did not provide any description relatively to connectivity or adjacency. During the Corps site visit on March 3, 2025, it was found that Wetland 4 was immediately downstream of an upland drainage swale along a sloped hillside. It is hypothesized that wetland 4 may receive groundwater seep discharge along the lower portion of the hillside slope. Flow was observed to be actively flowing from wetland 4 into Stream 5 (a relatively permanent tributary) which flows further down the hillslope down into the Platin Creek floodplain before Stream 5 discharges into Platin Creek. Wetland 4 was determined to have a continuous surface connection to a relatively permanent tributary, Stream 5, which it physically abuts and therefore is an (a)(7) adjacent wetland.

Wetland 4 RB, 2.72 acres, jurisdictional

Central coordinates: 38.1875780615°, -90.3879385305°

A review of office resources found that the USGS topographic maps does not have wetlands mapped but shows the area within a floodplain position along Platin Creek. It is also not mapped by USFWS NWI mapper. The FEMA Flood Map identifies the area within the Zone AE (100-year floodplain) and Platin Creek floodway. NRCS SoilWeb map identifies soils as Haymond soil series, silt loam, 0 to 3 percent slopes, frequently flooded. The Haymond soil series is described as, “very deep, somewhat poorly drained soils that formed in silty alluvial sediments...on high flood plains and stream terraces along small streams and creeks, and on upland foot slopes.” Field delineators and archaeologist noted that this area had been borrowed approximately 60 years ago for cover soils for the old, closed landfill adjacent to the north.

Field delineators identified wetland 4B but did not provide any description relatively to connectivity or adjacency. Upon further discussion delineators clarified that the wetland conditions in Wetland 4 RB continues outside of the review area down to Platin Creek and would physically abut both to Stream 2 RB and Platin Creek*. In addition, Wetland 4 RB’s location within the regulatory floodway indicated that the area is regularly inundated by the adjacent tributary, in addition to receiving flows from Stream 2 RB and adjacent hillslopes down to this low-lying location. Wetland 4 RB was found to be adjacent to two (a)(5) tributaries and therefore the Corps has determined that Wetland 4 RB is a jurisdictional (a)(7) adjacent wetland.

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Wetland 6, 4.67 acres, jurisdictional

Central coordinates: 38.1950058703°, -90.3765356462°

A review of office resources found that the USGS topographic maps does not have wetlands mapped but shows the area within a floodplain terrace position along Plattin Creek. It is mapped by USFWS NWI mapper as a freshwater forested/shrub wetland. The FEMA Flood Map identifies the area within the Plattin Creek floodway. The NRCS SoilWeb map identifies soils as Haymond soil series, silt loam, 0 to 3 percent slopes, frequently flooded. The Haymond soil series is described as, “very deep, well drained, soils that formed in silty alluvium. These soils are on flood plains and flood-plain steps.”

Field delineators identified Wetland 6 but did not provide any description regarding the continuity of surface connection nor adjacency but identifies the wetland as forested floodplain. Wetland 6 is mapped in the delineation to be physically directly abutting Plattin Creek and is also located within the regulatory floodway indicating that the area is regulatory inundated by the adjacent tributary. In addition, it receives overland flow and potentially groundwater seeps from the adjacent high floodplain terraces which slope down to this location. Wetland 6 is mapped in the delineation to be directly abutting Plattin Creek* an anticipated (a)(5) tributary) and determined to be is a jurisdictional (a)(7) adjacent wetland.

Wetland 7, 3.78 acres, jurisdictional

Central coordinates: 38.1902836544°, -90.38583157°

A review of office resources found that the USGS topographic maps does not have wetlands mapped but shows the area within a floodplain position along Plattin Creek. It is also not mapped by USFWS NWI mapper. The FEMA Flood Map identifies the area within the Zone 2%, AE (100-year floodplain) and Plattin Creek floodway. The NRCS SoilWeb map identifies soils as Haymond soil series, silt loam, 0 to 3 percent slopes, frequently flooded. The Haymond soil series is described as, “very deep, somewhat poorly drained soils that formed in silty alluvial sediments...on high flood plains and stream terraces along small streams and creeks, and on upland foot slopes.” Deilbe soil series, which has a hydric rating, is a mapped inclusion and described as, “very deep, poorly drained soils formed in either silty colluvium or loess and the underlying alluvium on stream terraces and foot slopes.”

Field delineators identified wetland 7 but did not provide any description regarding the continuity of surface connection nor adjacency but stated the wetland is located within the floodplain of Plattin Creek. Wetland 7 is mapped in the delineation to be physically directly abutting Plattin Creek** and Stream 12 (an (a)(5) tributary) and is mapped within a range of regulatory flood zones

indicated that is it regularly inundated by the adjacent tributaries. Wetland 7 is at the base of adjacent high floodplain terraces which contribute to overland potential groundwater seeps to the wetland area. The review found that Wetland 7 was directly abutting and determined to be a jurisdictional (a)(7) adjacent wetland.

****Note for Stream 11:** Stream 11 is not within the review area for the approved jurisdictional determination, however, its status in regard to a water of the U.S. is relevant for the determination for Wetland 1. A review of leave off aerial imagery shows flow present during all captures of the stream length and a portion is likely in direct hydrological connection with Plattin Creek. The site delineators identified the stream reach as a non-RPW however the Corps disagrees with their assessment and found flow consistently present within the stream length.*

*****Note for Wetland 4 RB, 6, & 7:** Plattin Creek is not within the review area for jurisdictional determination, however, its status in regard to a water of the U.S. is relevant to the determinations for the below adjacent wetlands. Plattin Creek was assumed an (a)(5) jurisdictional tributary based on the robust field and offices resources documenting the stream as a relatively permanent tributary. Plattin Creek is a primary tributary to the navigable, Mississippi River, and in its lower length is within the Mississippi River backwater flooding floodplain. A review of all aerial imagery shows flow present within the substantial tributary. The channel is mapped as a perennial stream channel in all USGS topographic maps reviewed.*

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁷ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.

Stream 4, 313 linear feet, non-jurisdictional

Central Coordinates: 38.1950798519°, -90.379293347°

A review of office resources showed that the stream length is not mapped by USGS Topographic maps, USGS NHD nor the USFWS NWI Mapper. The swale is located within a minor topographic drainage area with significant slope (approximately 20 feet of elevation change through its length) and has an

⁷ 51 FR 41217, November 13, 1986.

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approximately watershed area of 7 acres. The lidar data of the feature shows a contrasting lack of definition of a stream channel compared to the downstream delineated, Stream 5. During the Corps' site visit on March 3, 2025 the Corps disagreed with the delineation report identifying the feature as a ephemeral stream and determined that it was more appropriately characterized as a erosional swale as no defined bed and bank were present within the length. The feature collects upland flows from rainfall events and is characterized by low volume short duration flows and would be considered a generally non-jurisdictional feature that would not be considered a waters of the U.S.

Stream 6, 147 linear feet, non-jurisdictional

Central Coordinates: 38.1959990613°, -90.3822298058°

Stream 8, 135 linear feet, non-jurisdictional

Central Coordinates: 38.1962462921°, -90.3827116948°

These features are grouped to their similar conditions of high slope (both have around 25 feet of elevation change in their short lengths), erosional features, that have cut down of the high floodplain terrace down to an old oxbow channel that is part of the larger Wetland 5. These features both are incised features in sharp ravines that have cut through the deep loess soils. The USDA NRCS maps the soils as the Menfro series, which is described as, "very deep, well drained, moderately permeable soils formed in thick loess deposits on upland ridgetops, backslopes and benches adjacent to the Missouri and Mississippi Rivers and their major tributaries. Slopes range from 2 to 60 percent." Neither feature is mapped as a stream by the USGS Topographic Maps, USGS NHD, nor the USFWS NWI Mapper. They have very limited watersheds of 2-3 acres which transport low volume flows for a very short duration during to the high slope within the lengths. The Corps has determined that the features are best described as erosional features that would be considered a generally non-jurisdictional feature and would not be considered a water of the U.S.

Wetland 2, 0.24 acres, non-jurisdictional

Central Coordinates: 38.1934668418°, -90.3821564621°

Desktop resources show that the wetland areas is not mapped in USGS Topographic maps nor USFWS NWI Mapper. The feature is within a low slope (1-3%) topographic relief area with a watershed of approximately 7 acres that contributes overland flows to this area. A review of Google Earth Pro aerial imagery shows that this is a sediment forebay constructed in uplands to help reduce sediment and erosion that was contributing to sediment accumulation in the downstream, Pond 1. The feature was constructed in an upland drainage swale are, generally not jurisdictional waters of the U.S., and was not visible on aerial imagery until the October 2018 Google Earth Pro aerial image capture. The downgradient portion of the drainage feature appears to have been dug out

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for borrow for the berm that was constructed immediately adjacent to capture stormwater runoff from the high terrace. In aerial imagery from 2018-2022 varying areas of pool are shown above the berm and then it appears to have been breached by August 2022. No standing water is present in the aerals following that when the dam is breached. The field delineators identified the area as a wetland and discussion was had about relic conditions being present from the basins former impoundment of flow however annual vegetation from the previous growing season was hydrophilic. The Corps has determined that this sediment capture basin most appropriately meets the definition of an artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as... settling basins.

- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance.
N/A
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system.

Wastewater Pond, 1 acre, non-jurisdictional

Central coordinates: 38.1960784359°, -90.3875992455°

A review of historic aerals show that the wastewater pond was constructed feature in a drainage area completed sometime between 1964 and 1984. The 1982 USGS Topographic Map identifies the basin and a waste pond, not present in earlier (1915, 1950, 1959, nor 1965) maps. The 1 acre square shaped basin is clearly a man made feature and there were Missouri Department of Natural Resources wastewater discharge permits associated with the ponds as part of the Festus Memorial Airport site. The wastewater pond discharges into the receiving Stream 9. There were no streams mapped prior to the basins construction but a drainage feature was visible in pre-construction aerial images which likely is Stream 9 that was relocated adjacent to the basin. The Wastewater Pond 1 is a wastewater treatment lagoon that was designed to meet requirements of CWA and is a non-jurisdictional aquatic feature.

- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference

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2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. [N/A](#)

- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. [N/A](#)
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Stream 3 RB, 167 linear feet, non-jurisdictional

Central coordinates: 38.1874127514°, -90.3880105677°

A review of desktop resources found that this stream is not mapped by any desktop resources. There is an area of topographic relief with 5-9% slope and a limited drainage area of approximately 17 acres. The feature is within the 100-year flood plain along Platin Creek, which experiences Mississippi River backwater flooding effects. Field delineators identified the streams as ephemeral stream channels with erosional characteristics. The OHWM was delineated to have a width and depth of less than 1 foot. The flow regime of the channel is primarily driven by over land stormwater runoff that flows for a short time following rainfall events. The Corps has determined that the stream does not support relatively permanent flow and therefore in light of *Sackett* is not a jurisdictional waters of the U.S.

Stream 9, 358 linear feet, non-jurisdictional

Central coordinates: 38.1960499021°, -90.3870858787°

Stream 10, 23 linear feet, non-jurisdictional

Central coordinates: 38.1970076559°, -90.3867743621°

Stream 10 has a very limited length before flowing into Stream 9 which received overland and discharge flow from Wastewater Pond 1 before discharging into a perennial unnamed tributary to Platin Creek. Streams 9 & 10 are not mapped in USGS Topographic maps but drainage topography present with a combined watershed area of approximately 15 acres. These features are both within the Platin Creek, Mississippi River backwater 100 year floodplain. A review of

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historic aerial imagery shows evidence of a channel, and the upper portion was likely relocated sometime between 1964 and 1982 to the west of the wastewater treatment lagoon constructed (wastewater pond).

Field delineators identified the streams as an ephemeral channel that were also characterized as erosional features. The streams were determined not to support relatively permeant flow with flow regimes primarily driven by over land stormwater runoff that has a limited duration following rainfall events. The Corps has determined that the streams do not support relatively permanent flow and therefore in light of *Sackett* are not jurisdictional waters of the U.S.

Stream 1, 173 linear feet, non-jurisdictional

Central coordinates: 38.1917989916°, -90.3836940833°

Stream 2, 152 linear feet, non-jurisdictional

Central coordinates: 38.1916133844°, -90.3812766473°

Stream 3, 382 linear feet, non-jurisdictional

Central coordinates: 38.1925894975°, -90.3824769764°

These stream channels were grouped because they are all upstream of Pond 1, minor channels (with OHWM width and depth of 1 foot or less) that lose definition from impoundment and deposition of material from the pond pool altering channel profiles. These streams are not mapped in any online resources and have limited drainage areas (less than 17 acres). The channels are not visible in lidar data. They are features that appear to be experiencing increased hydrology from the alteration of channel slope resulting in long flow duration through the reaches than before the construction of Pond 1. The channels appear to support very low flow velocities for short duration that would not meet the definition of a relatively permanent water and therefore in light of *Sackett* are not jurisdictional waters of the U.S.

Wetland 3, 0.03 acres, non-jurisdictional

Central coordinates: 38.1931164862°, -90.3814831942°

Wetland 10, 0.02 acres, non-jurisdictional

Central coordinates: 38.1928564419°, -90.3819572813°

These wetlands are not mapped in any online resources and have limited drainage areas of less than 3 acres. These wetland features are disconnected from a RPW by ephemeral stream lengths that lead to another wetland before flowing to a permanent, but preamble excluded, pond feature before flowing through a presumed RPW stream length*, Stream 11, which then discharges into Plattin Creek. Because the wetlands do not directly abut and are not

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indistinguishable from an RPW these features were determined to not meet the definition of an adjacent wetland in light of *Sackett*.

Pond 1, 0.5 acres (2.15 acres total feature area), non-jurisdictional

Central Coordinates: 38.191053364°, -90.3831029292°

From a review of historic aerial imagery and USGS Topographic maps the pond was constructed sometime between 1955 and 1962, according to HistoricAerials.com, in what appears to have been a topographic drainage to Platin Creek, located within the floodplain. Aerial imagery show a riparian coordinator along the stream length which is notable because most of the areas were cleared. This area may have experienced flooding from high water in Platin Creek itself but also is within an area of backwater influence flooding from the Mississippi River. The watershed areas is estimated to be approximately 40 acres, of primarily flat pasture land (1-3% slope) and a portion of the small Festus Memorial Airport, which is relatively low sloped overall and steeper slopes in the impounded drainage feature off Platin Creek. USFWS NWI Mapper identifies the feature as a freshwater pond but does not map any other aquatic resources upgradient, flowing into the pond. Forested wetland areas are extensively mapped along Platin Creek and its adjacent floodplain to the south. The USDA Soils map shows 64008: Freeburg silt loam, 2 to 5 percent slopes (2533383) as the predominant mapped soil 90% with two other hydric soils inclusions, Moniteau (5%) and Deible (5%). USGS Topographic maps, pre and post construction do not show a mapped stream flowing through the impoundment area nor mapped wetlands. There is potential the wetlands might have been present in some of the pond features area however the USACE is not able to definitively determine the presence of wetland pre-construction. The USGS maps do not show a mapped stream, only an undefined drainage pattern in the pond area. Due to the pond being constructed in upland the Corps has determined that the aquatic resource is most appropriately characterized as an artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. Therefore Pond 1 was found to be generally non-jurisdictional in accordance with the 1986 preamble and is not a jurisdictional water of the U.S.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. James Hardie Facility Waters of the U.S. Summary Report, March 28, 2025

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- b. [USACE Site Visit, March 3, 2025](#)
- c. [USDA NRCS SoilWeb map, accessed](#)
- d. [Google Earth Pro, accessed 4/8/2025](#)
- e. [HistoricAerials.com, accessed 4/4/2025](#)
- f. [USGS Topographic maps, accessed 3/13/2025](#)
- g. [FEMA Floodmap, accessed 3/5/2025](#)
- h. [USGS NHD, accessed 3/14/2025](#)
- i. [USFWS NWI Wetland Mapper, accessed 3/14/2025](#)
- j. [Jefferson County Parcel Viewer, accessed 4/8/2025](#)

10. OTHER SUPPORTING INFORMATION.

[Corps File MVS-2024-240, *JD Desktop Review*, completed May 2024](#)

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.