



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

CEMVS-RD

29 September 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),¹ MVS-2025-275.

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

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

¹ While the Revised Definition of "Waters of the United States"; Conforming 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.

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. First-Order Streams (Streams A1, B1, B2, and C1)

Stream A1 – 2,795 Linear Feet, non-jurisdictional

Stream B1 – 669 Linear Feet, non-jurisdictional

Stream B2 – 545 Linear Feet, non-jurisdictional

Stream C1 – 458 Linear Feet, non-jurisdictional

- ii. Second-Order Streams (Stream B3)

Stream B3 – 1,363 Linear Feet, non-jurisdictional

Note: Streams D1, D2, D3, and E1 are illustrated on Figure 1 to demonstrate the application of the Strahler Stream Order Methodology. Stream D1 enters the Review Area, but was excluded from this AJD review as it is not proposed to be affected by the proposed project.

2. REFERENCES.

- a. “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”)
- b. “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 (September 8, 2023)
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- d. 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 is approximately 50-acres located north of Possum Road near Ava, Jackson County, Illinois. Approximate geographic coordinates for the center of the Review Area are Latitude 37.8358° and Longitude -89.4640°.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Big Muddy River.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. All waters in the Review Area flow into an unnamed tributary to Kinkaid Lake, identified as Stream E1 in Attachment 1. Kinkaid Lake, an impoundment of Kinkaid Creek, travels over the Lake's spillway into Kinkaid Creek, a tributary to the Big Muddy River, a TNW. The Big Muddy River is a Section 10 water from mile 0 to mile 51.9, near DeSoto, Illinois.
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 2023 Rule as amended, 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 2023 Rule as amended. 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. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
 - b. The Territorial Seas (a)(1)(ii): N/A
 - c. Interstate Waters (a)(1)(iii): 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.

- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁷ N/A
- b. 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 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Four first-order ephemeral streams (**Stream A1**, **Stream B1**, **Stream B3**, and **Stream C1**) were identified within the Review Area and are proposed to be affected by the proposed lake project. Each of the first-order streams contain a watershed ranging from 8-acres to 71-acres in size. None of these streams were observed with flowing water during either of the USACE field evaluations in June or September 2025. Although the visits were conducted during the “dry season”, between 0.25-inch and 2-inches of precipitation had fallen within the prior 24 hours (see Section 10 below). These four headwater streams flow for short durations following precipitation events but cease to convey water following the termination of overland flow. The watershed sizes for each of the streams do not provide enough overland flow to maintain continuous seasonal flow without a groundwater connection. No groundwater connections were observed within the streams; however, groundwater was observed providing stream flow to the north (downstream) within Stream D3 and E1, as well as the northernmost limits of B3. The weight of evidence for each of the features is that they do not flow continuously at least seasonally, and therefore, do not meet the Relatively Permanent Standard.

⁷ 88 FR 3004 (January 18, 2023)

Stream B3 is an approximately 1,363 linear foot second-order tributary with an approximately 132-acre watershed that displays characteristics of both relatively permanent and non-relatively permanent flows. Characteristics of Stream B3 at the furthest downstream accessible limits, near latitude 37.8377° and longitude -89.4656° were determined to meet the Relatively Permanent Standard, containing flow from precipitation events as well as evidence of ground water influence. These relatively permanent characteristics continue upstream until latitude 37.8371° and longitude -89.4654°, approximately 250 linear feet to where a large perennial pool sits below a large bedrock stream run. This 250-foot reach was observed flowing during both field evaluations conducted by USACE. However, these relatively permanent characteristics are not representative nor continuous throughout the reach of Stream B3. From the previous geographic point to the confluence of Stream B1 and Stream B2, approximate geographic coordinates latitude 37.8363° and longitude -89.4628°, Stream B3 lacks groundwater influence and displays non-relatively permanent characteristics; approximately 1,111 linear feet. The 1,111 linear foot reach of Stream B3 is more ephemeral in nature, was not observed flowing, and only contained intermittent pooling across its predominant bedrock substrate where infiltration cannot occur but relies on evaporation to dissipate. Overland flow during and following precipitation events across its high-gradient 132-acre watershed do not sustain flows for long enough to maintain continuous seasonal flows. Therefore, the weight of evidence for Stream B3 is that it does not flow continuously at least seasonally and is best characterized as a non-relatively permanent feature and therefore, does not meet the Relatively Permanent Standard.

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. USACE Site Visit(s), 4 June 2025 and 5 September 2025
 - b. USGS Oraville, IL 2024 (US Topo) Scale 1:24000
 - c. USGS NHDPlus, accessed 15 September 2025
 - d. USGS Streamstats, accessed 15 September 2025
 - e. Illinois Geospatial Data Clearing House, accessed 15 September 2025
 - f. Google Earth Pro Aerial Imagery, various years, accessed 15 September 2025
 - g. USFWS National Wetland Inventory, accessed 15 September 2025
 - h. IL Statewide LiDAR DEM WGS Hillshade, accessed 15 September 2025
 - i. Antecedent Precipitation Tool
 - j. Joint Policy Memorandum(s): MVS-2023-288

CEMVS-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVS-2025-275

10. OTHER SUPPORTING INFORMATION.

A review of USGS topographic maps from 1968-2024(1:24,000 scale) and NHD Plus only identify a single “blue line” tributary traversing south to north through the Review Area with the flow indicated as intermittent changing to perennial near Kincaid Lake. The blue line indicated traverses the delineated extent of Stream A1, a portion of Stream B3, and on to Stream E1 north. The U. S. Fish & Wildlife Service’s (USFWS) National Wetland Inventory (NWI) mapper identifies the same stream reach as a riverine system and no wetlands.

ArcGIS was utilized in combination with available lidar to uniformly identify streams with a particular watershed size (i.e., 7-acres) within the overall drainage basin, to apply the Strahler Stream Order methodology, as provided by the Agencies. The chosen watershed size was based headwater ephemeral streams and upland drainages within the Review Area observed during the site evaluation in September 2025. We utilized this methodology, as it did not require numerous assumptions for determining which drainage features should be utilized (i.e., headwater streams) versus those that should not (i.e., upland drainages) when applying stream orders to drainages that could not be directly observed outside of the Review Area.

Antecedent Precipitation Tool Results

Field Evaluation Dates:

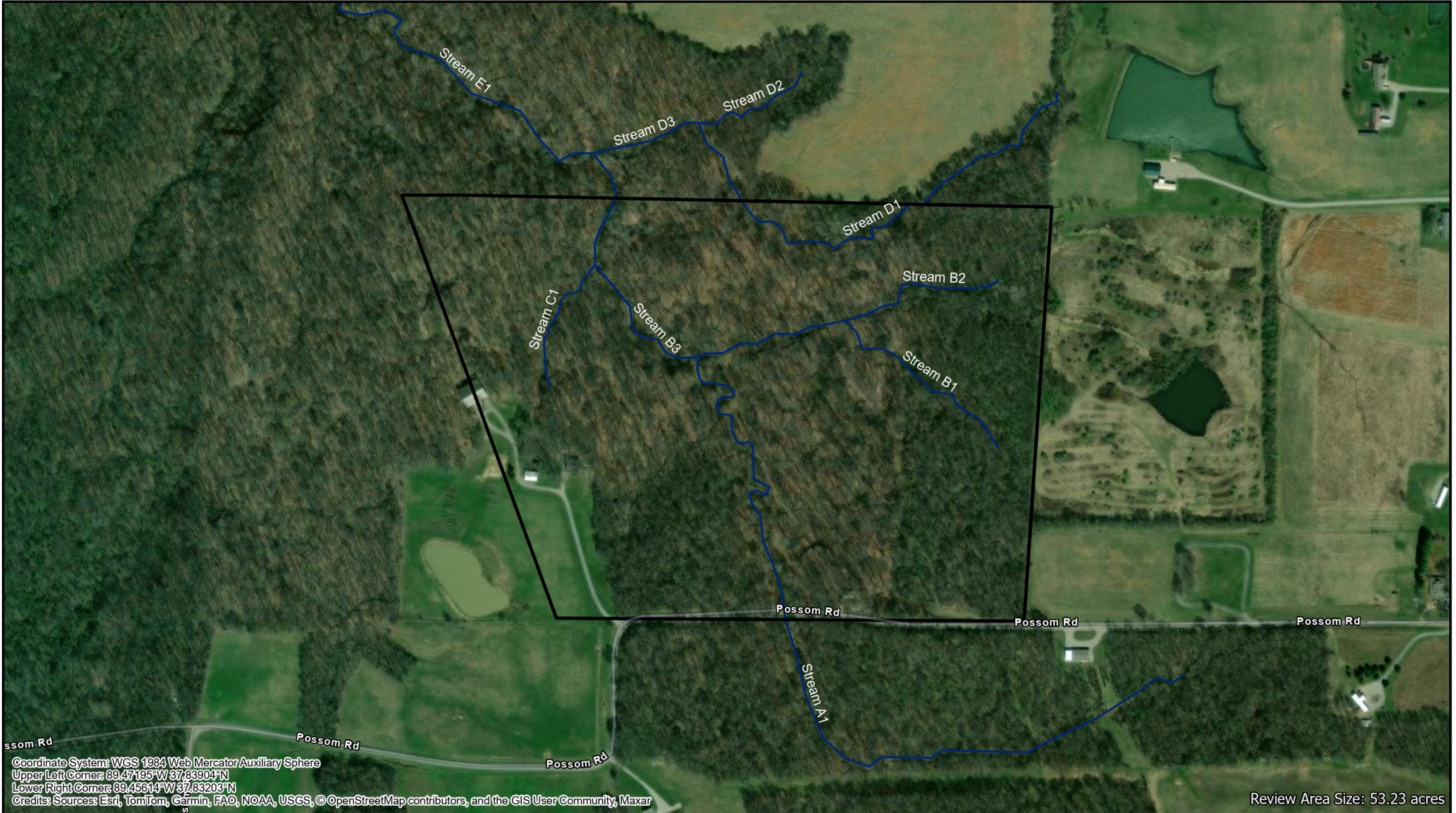
June 4, 2025: Dry Season / Normal Conditions / Mild Wetness

- 1-2-inch of rain within 24 hr. of visit

September 5, 2025: Dry Season / Drier than Normal / Incipient Wetness

- 0.25-0.50-inch of rain within 12 hr. of visit

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.



Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Upper Left Corner: 89.47195°W 37.83904°N
Lower Right Corner: 89.45614°W 37.83203°N
Credits: Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, Maxar

Review Area Size: 53.23 acres

	<u>TITLE</u> Delineation Overview	<u>LEGEND</u> Review Area Tributary	<u>AUTHOR</u> K. Metzger		<u>FIGURE</u> NO. 1 of 1	<u>REVISION</u> NO. 0
	<u>PROJECT</u> Kinkaid Timbers Lake (MVS-2025-275)					<u>DATE</u> 9/12/2025
				Scale in Feet		