



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

CEMVS-RD

8 September 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), [MVS-2025-470](#)

Note: This AJD includes two (2) additional parcels that lie within the overall boundary of the potential development associated with MVS-2025-036 (AJD finalized 7/10/2025) but were not requested to be included in the previous AJD due to property ownership.

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.¹ 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.² For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),³ 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 [Missouri](#) due to litigation.

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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).

Note: This AJD utilizes the naming conventions provided by the agent for the identified aquatic resources to maintain consistency. However, the naming conventions given may not be an accurate representation of the aquatic resource it describes. For example, "F-Forested Wetland" is a linear depression within a forested area but does not include any rooted tree species within the wetland itself and therefore would be classified as an emergent wetland based on the herbaceous vegetation present (Data Sheet S-13).

Streams:

1. Channel (425 linear feet) – non-jurisdictional

Wetlands:

2. F – Forested Wetland (0.1-acre) – non-jurisdictional

2. REFERENCES.

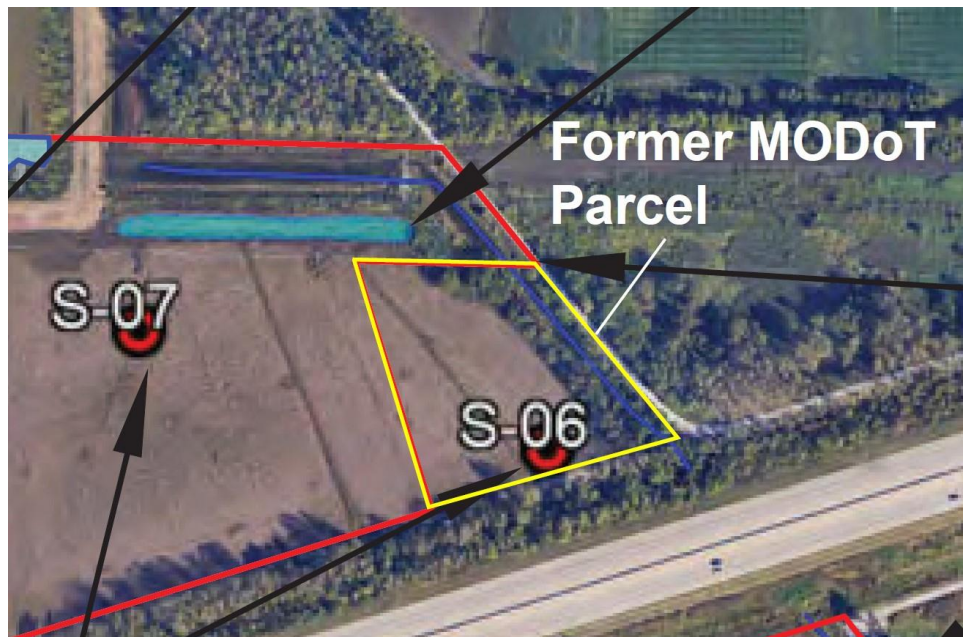
- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993)
- c. *Rapanos v. United States*, 547 U.S. 715 (2006)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- e. Memorandum 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 the approximately 6-acre area comprising two (2) separate parcels located east of Harry S. Truman Blvd. and both north and south of State Highway 370 in the City of St. Charles, St. Charles County, Missouri with approximate geographic coordinates 38.8222094°, -90.546357° (Former MoDOT Parcel) and 38.816129°, -90.539415° (Curry Parcel). See below:

Note: These two (2) parcels are geographically inside the overall boundary of the potential development which is the subject of MVS-2025-036 (AJD finalized on 7/10/2025), but they were previously not requested to be included due to property ownership per the requestor.

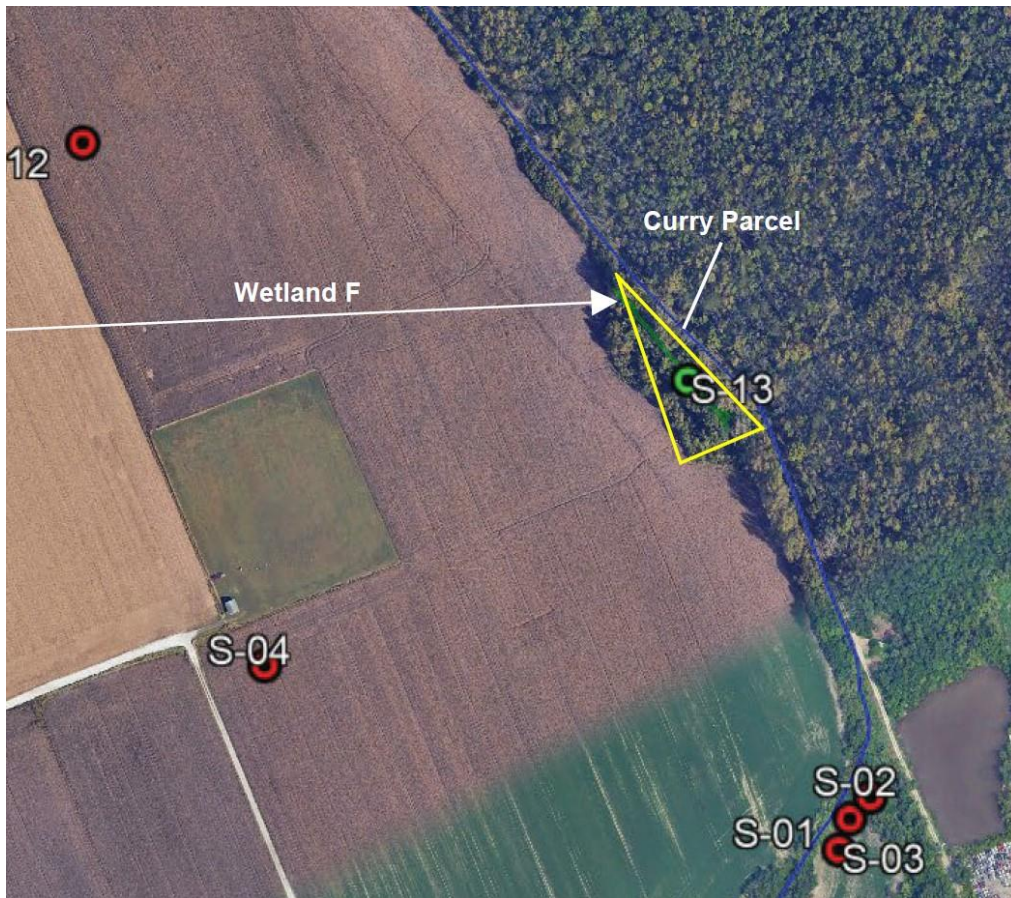
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Note: The above three (3) map figures/images were taken from MVS-2025-036 (AJD finalized on 7/10/2025) and therefore depicts additional data surrounding the MoDOT and Curry parcels.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Mississippi River \(TNW\)](#) (See map below)
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [The subject site generally drains north to Dardenne Creek which flows to the Mississippi River, a TNW](#) (See map below).

6. SECTION 10 JURISDICTIONAL WATERS⁴: 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 10.⁵ [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](#)
 - d. Impoundments (a)(4): [N/A](#)
 - e. Tributaries (a)(5): [N/A](#)
 - f. The territorial seas (a)(6): [N/A](#)
 - g. Adjacent wetlands (a)(7): [N/A](#)
8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES
 - a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").⁶ 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. [N/A](#)

⁴ 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.

⁵ 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.

⁶ 51 FR 41217, November 13, 1986.

- 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. [N/A](#)
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. [N/A](#)
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. [N/A](#)
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

F – Forested Wetland (0.1-acre): Linear, depressional wetland located in a forested area along the edge of an agricultural field. Although this feature lies within a forested area, the revised data sheet (S-13) indicates no tree species rooted within the wetland. Therefore, this feature would be classified as an emergent wetland based on the herbaceous vegetation observed. The wetland does not have a surface connection to the non-RPW tributary (“Channel”) and is separated by a gravel access road from wetlands to the east. No culvert or other surface connection was observed. Because the wetland does not abut an RPW it is considered a non-adjacent wetland lacking a CSC to a requisite water. Therefore, the Corps has determined this feature would not fall under Corps jurisdiction.

“Channel” (425 linear feet): This portion of the feature known as “Channel” is a segment of a previously determined non-RPW tributary (MVS-2025-036) that was completed as part of a JD Request that did not include this “Former MoDOT” parcel within the boundary of the review area. The description of this previously determined non-RPW tributary, which also generally applies to this specific segment that falls within this additional parcel, is below:

“Channel” (4,745 linear feet): *A ditch/modified channel crosses the southeast portion of the review area and runs along the east and north sides of the site. The channel begins approximately 350 linear feet south of the subject site at the outfall of a small lake that was created by impounding the headwaters of the original stream. Approximately 750 linear feet above the small lake is a larger lake created in the same way. Most of the stream between the lakes has been piped beneath residential development and roadway infrastructure. From the lower lake, the channel flows beneath a railroad and Elm Point Road before entering the subject site at the southeast corner. From here the channel flows northeast across the corner of the review area until it meets the east edge of the review area. The channel then flows north along the east edge. A narrow tree line is located along both sides of the channel across the field and mostly on the west side of the channel along the east edge of the site. A narrow gravel lane, Hayford Road, is located along the east side of the channel for the entire length of the east side of the southern portion of the site.*

The channel crosses beneath Highway 370 and continues off-site until it rejoins the review area along the east and north edges of the northern portion of the northern Hollrah Tract. Here the channel becomes an open, broad feature, which appears to impound water more than convey flowing water. After leaving the review area, the channel continues north approximately 600 feet and terminates at a 124-foot-long culvert beneath the agricultural levee located north of the review area. The culvert outfall has a flap gate and discharges into the north end of “N-Open Water” (outside of review area).

The segment of channel crossing the southeast portion of the review area and along the boundary of the southern portion of the site is approximately 6-feet wide and 3-feet deep overall. The segment of the channel along the boundary of the northern portion of the review area is up to 25-feet wide and flatter overall. The channel substrate comprises silt with vegetation growth within the southern portion of the site and bare soil with desiccation cracking within the northern portion of the site. The channel receives some surface drainage from the eastern portions of the site but most of the approximately 200-acre watershed of the channel is above the floodplain south of the site. The channel was dry throughout the subject site at the time of the consultant site visit, and no signs of

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recent flow were apparent. Some water was observed in the channel during the joint field visit between the Corps and Midwest testing on 3/3/2025, however vegetation growth was observed within the channel and evidence of consistent standing or flowing water was not apparent.

Based on the above-described channel and flow characteristics, the channel described above would not be considered a relatively permanent water and therefore would not fall under Corps jurisdiction.

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.

*Note: These data sources were utilized for the MVS-2025-036 AJD that was finalized on July 10, 2025, and generally apply to this AJD Request for the additional parcels (Former MoDOT and Curry parcels).

- a. Midwest Testing; Waters of the U.S. Delineation (Ostmann Tract), 12-20-2024
- b. Midwest Testing; Waters of the U.S. Delineation (Griggs Tract), 11-18-2024
- c. Midwest Testing; Waters of the U.S. Delineation (Hollrah Tract), 11-18-2024
- d. Midwest Testing; GHO Aquatic Features Exhibit, 1-14-2025
- e. Midwest Testing; GHO Aquatic Features Table, 1-16-2025
- f. Midwest Testing; GHO Addendum, 3-13-2025
- g. Midwest Testing; Connections, 4-1-2025
- h. Midwest Testing; Elevation Data – Ostmann Culverts & Triangle, 4-10-2025
- i. Midwest Testing; Aquatic Features Exhibit & Table, 4-16-2025
- j. Midwest Testing; Aquatic Features Exhibit & Table, 4-21-2025
- k. Midwest Testing; Draft Response to Draft AJD, 05-28-2025
- l. Midwest Testing Site Visits: September 17-19, October 9, November 9-10 (2024)
USACE & Midwest Testing Site Visits: March 3, March 10, April 2 (2025)
USACE Site Visit: May 29 (2025)
- m. USGS Topographic Maps, Accessed March 27, 2025
- n. Antecedent Precipitation Tool, Data Provided by Midwest Testing
- o. USDA-NRCS Soil Survey, Accessed March 27, 2025
- p. USFWS National Wetland Inventory, Accessed March 27, 2025
- q. LiDAR, Accessed March 27, 2025
- r. Google Earth Pro Aerial Imagery, Accessed March 27, 2025

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10. OTHER SUPPORTING INFORMATION.

*Note: Information below provided by agent is in italics.

Field data for both parcels were included in the delineation of the “Hollrah Tract” which is the subject of the report: Waters of the United States Delineation – MT Job No. 15973 – Approximately 255-acre Hollrah Tract, East of Harry S. Truman Road, St. Charles, St. Charles County, Missouri, dated November 18, 2024. The parcels were, however, ultimately excluded from the JD Request under MVS-2025-036 (submitted on same date) as it had been determined that their respective owners were not part of the Hollrah property ownership.

Sample locations (S-06 and S-13) are indicated on Figure 6 and described in their respective Wetland Determination data forms (Curry, S-13 and Former MoDOT, S-06) in the delineation report. Photo 7 in the report is at the S-13 location and Photos 9 and 10 are of the arable field in which S-06 is located.

Since the date of the delineation report, both parcels have been brought under CRG control and form part of the Cumulus project which is the subject of the File No. MVS-2025-036. General information on each parcel is as follows:

- 1. Former MoDOT parcel (now part of the Hollrah property) is estimated at 4.8 acres. A 425-linear foot segment on the Hollrah “Channel”, a non-RPW tributary, is located on the parcel. Wetlands were not identified on the parcel or elsewhere in the arable field of which it is part.*
- 2. The Curry parcel (now in purchase agreement with CRG) is, according to survey information, 1.261 acres in area. Wetland F, a 0.1-acre linear, isolated, wooded wetland was identified on the parcel.*

USACE sent email to agent on 8/15/2025 requesting additional data for the Curry parcel wetland and surrounding area, followed up by a phone call discussing discrepancies on the data sheet (S-13) related to hydrology and vegetation. In response, the agent sent email on 8/22/2025 with revised data sheet (S-13), as well as an additional data sheet (S-13a), for the area adjacent to the linear wetland. Results of the data sheets provided by the agent are summarized below:

Data sheet S-13 was updated to clarify results of vegetation sampling. The data sheet now only reports vegetation sampling from within the linear depression. The vegetation that was previously reported included vegetation from within standard plot sizes, but outside the linear depression. The vegetation outside the linear depression has been removed. This change aligns the vegetation results with the hydrology indicators for S-13, B8 (Sparsely Vegetated Concave Surface) and B6 (Surface Soil Cracks), which were only found within the linear depression. Also

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noted in the remarks section of the data sheet under Hydrology is that the linear depression receives surface drainage from the adjacent agricultural field but does not have a surface connection to the Hollrah channel. It's further noted that the Ostmann gravel road separates the linear depression from the Ostmann forested wetland.

Data sheet S-13a was introduced to describe the vegetation and hydrology of the wooded area surrounding the linear depression on the Curry parcel. S-13a reports that hydrophytic vegetation is present in the wooded area; however, wetland hydrology is not. The only wetland indicator present in the area adjacent to the linear depression is D2 (Geomorphic Position), which is present throughout the entire GHO site (MVS-2025-036) due to the location of the site in the geomorphic floodplain of the Mississippi River.

In summary, data from the Curry parcel indicates that the linear depression meets the 3-parameter definition of a wetland, but that the area outside of the linear depression on the Curry parcel does not. Although no soil data is available, the lack of a primary hydrology or two secondary hydrology indicators is sufficient to exclude the area outside of the linear depression as wetland.

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.