



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, VICKSBURG DISTRICT
4155 CLAY STREET
VICKSBURG, MISSISSIPPI 39183-3435

May 22, 2026

SUBJECT: Department of the Army Regulatory Requirements – Economic Development Corporation of Clark County, Proposed Clark County Supersite Project, Clark County, Arkansas

Mr. David Rupe
Crafton Tull
901 N 47th Street, Suite 400
Rogers, Arkansas 72756

Dear Mr. Rupe:

I refer to the information submitted on behalf of the Economic Development Corporation of Clark County regarding the Department of the Army permit requirements for the proposed supersite project located in sections 10, 11, 12, 13, 14 and 23 T8S-R20W in Clark County, Arkansas (enclosure 1).

Based upon the information provided, we have determined that there are jurisdictional waters of the United States located on the property subject to regulation pursuant to Section 404 of the Clean Water Act. Any work involving the discharge of dredged and/or fill material (land clearing, ditching, filling, leveeing, culvert crossings, etc.) within the identified jurisdictional waters will require a Department of the Army Section 404 permit prior to beginning work. However, we have determined that a Department of the Army Section 404 permit will not be required for any of the proposed work, since the Economic Development Corporation of Clark County is planning to avoid all jurisdictional waters of the United States located on the proposed project site. For your information, I have enclosed a copy of the basis of our determination (enclosure 2) and appeals form (enclosure 3).

This jurisdictional determination is applicable for a period not to exceed five years from the date of this letter unless superseded by law or regulation. If the proposed work is not completed by this time, or if project location and plans change, you should contact this office for a reevaluation of permit requirements and refer to Identification No. MVK-2021-00993 when submitting the information.

This determination of Department of the Army regulatory requirements does not convey any property rights, either in real estate or material or any exclusive privileges and does not authorize any injury to property or invasion of rights or local laws or regulations or obviate the requirement to obtain state or local assent required by law for the activity discussed herein.

The decision regarding this action is based on information found in the administrative record, which documents the District's decision-making process, the basis for the decision, and the final decision.

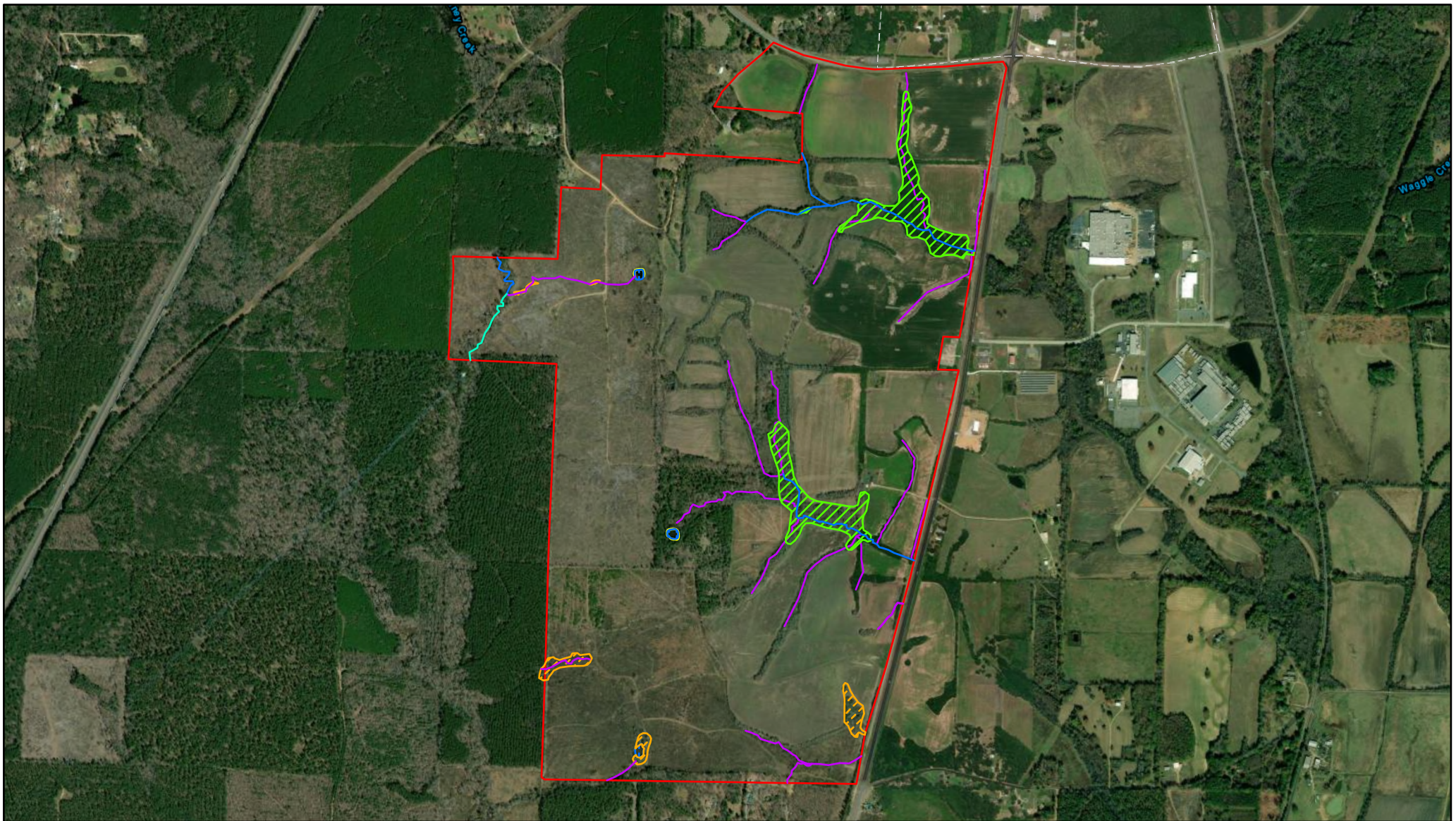
If we may be of any further assistance in this matter, please contact Mr. William McFarland of this office, telephone (601) 631-5721, or e-mail address: William.J.McFarland@usace.army.mil.

Sincerely,

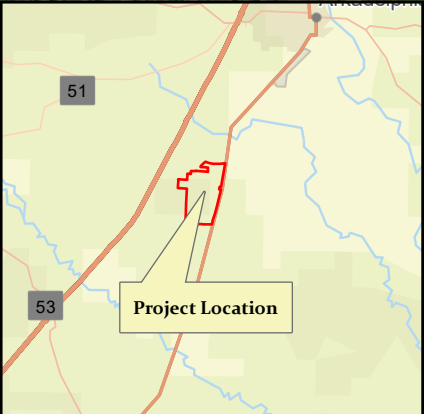
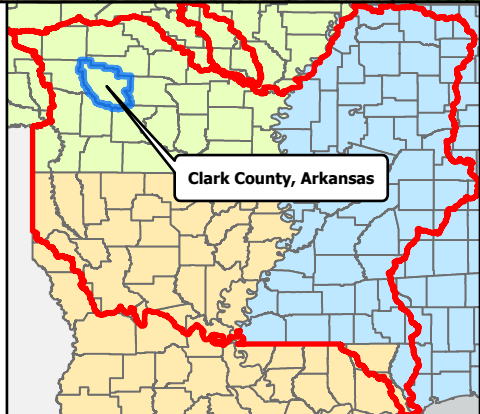
William L. Pigott

William Pigott
Chief (Acting), Arkansas/Louisiana Branch
Regulatory Division

Enclosures



- Legend**
- Jurisdictional Waters of the US (Perennial, ~1128 linear feet)
 - Jurisdictional Waters of the US (Intermittent, ~7,203 linear feet)
 - ▨ Jurisdictional Waters of the US (Palustrine Forested Wetlands, ~36 acres)
 - Non-Jurisdictional Aquatic Resources (Ephemeral, ~24,864 linear feet)
 - ▨ Isolated Non-Jurisdictional Aquatic Resources (PFO, ~6.11 acres)
 - ▨ Isolated Non-Jurisdictional Aquatic Resources (Open Water, ~0.95 acres)
 - ▨ Isolated Non-Jurisdictional Aquatic Resources (Emergent Wetlands, ~0.15 acres)
 - Project Boundary (~1,008 acres)



21 May 2026

MVK-2021-993

Economic Development Corporation of Clark County
Proposed Clark County Supersite Project

**Approved
Jurisdictional Determination**

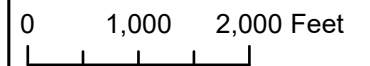
Prepared by
William McFarland



**US Army Corps
of Engineers®**



**Regulatory Division
Arkansas/Louisiana
Branch**





DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, VICKSBURG DISTRICT
4155 EAST CLAY STREET
VICKSBURG, MISSISSIPPI 39183

CEMVK-RD

22 May 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ **MVK-2021-993**

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 Louisiana due to litigation.

1. SUMMARY OF CONCLUSIONS.

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

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

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

- 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. **RPW 1 Perennial MVK-2021-993, 1,128 Linear Feet, Jurisdictional**
 - ii. **RPW 2 Intermittent MVK-2021-993, 825 Linear Feet, Jurisdictional**
 - iii. **RPW 3 Intermittent MVK-2021-993, 2,394 Linear Feet, Jurisdictional**
 - iv. **RPW 4 Intermittent MVK-2021-993, 1,140 Linear Feet, Jurisdictional**
 - v. **RPW 5 Intermittent MVK-2021-993, 2,081 Linear Feet, Jurisdictional**
 - vi. **RPW 6 Intermittent MVK-2021-993, 764 Linear Feet, Jurisdictional**
 - vii. **Non-RPW 1 MVK-2021-993, 571 Linear Feet, Non-Jurisdictional**
 - viii. **Non-RPW 2 MVK-2021-993, 461 Linear Feet, Non-Jurisdictional**
 - ix. **Non-RPW 3 MVK-2021-993, 1,415 Linear Feet, Non-Jurisdictional**
 - x. **Non-RPW 4 MVK-2021-993, 2,179 Linear Feet, Non-Jurisdictional**
 - xi. **Non-RPW 5 MVK-2021-993, 1,044 Linear Feet, Non-Jurisdictional**
 - xii. **Non-RPW 6 MVK-2021-993, 1,406 Linear Feet, Non-Jurisdictional**
 - xiii. **Non-RPW 7 MVK-2021-993, 1,782 Linear Feet, Non-Jurisdictional**
 - xiv. **Non-RPW 8 MVK-2021-993, 1,414 Linear Feet, Non-Jurisdictional**
 - xv. **Non-RPW 9 MVK-2021-993, 1,908 Linear Feet, Non-Jurisdictional**
 - xvi. **Non-RPW 10 MVK-2021-993, 730 Linear Feet, Non-Jurisdictional**
 - xvii. **Non-RPW 11 MVK-2021-993, 495 Linear Feet, Non-Jurisdictional**
 - xviii. **Non-RPW 12 MVK-2021-993, 1,510 Linear Feet, Non-Jurisdictional**
 - xix. **Non-RPW 13 MVK-2021-993, 786 Linear Feet, Non-Jurisdictional**
 - xx. **Non-RPW 14 MVK-2021-993, 511 Linear Feet, Non-Jurisdictional**
 - xxi. **Non-RPW 15 MVK-2021-993, 1,005 Linear Feet, Non-Jurisdictional**
 - xxii. **Non-RPW 16 MVK-2021-993, 1,879 Linear Feet, Non-Jurisdictional**
 - xxiii. **Non-RPW 17 MVK-2021-993, 447 Linear Feet, Non-Jurisdictional**
 - xxiv. **Non-RPW 18 MVK-2021-993, 1,167 Linear Feet, Non-Jurisdictional**
 - xxv. **Non-RPW 19 MVK-2021-993, 1,621 Linear Feet, Non-Jurisdictional**
 - xxvi. **Non-RPW 20 MVK-2021-993, 495 Linear Feet, Non-Jurisdictional**
 - xxvii. **Non-RPW 21 MVK-2021-993, 667 Linear Feet, Non-Jurisdictional**
 - xxviii. **Non-RPW 22 MVK-2021-993, 661 Linear Feet, Non-Jurisdictional**
 - xxix. **Non-RPW 23 MVK-2021-993, 708 Linear Feet, Non-Jurisdictional**
 - xxx. **PFO 1, MVK-2021-993, 15.37 Acres, Jurisdictional**
 - xxxi. **PFO 2, MVK-2021-993, 0.08 Acres, Jurisdictional**
 - xxxii. **PFO 3, MVK-2021-993, 14.53 Acres, Jurisdictional**
 - xxxiii. **Isolated PFO 1 MVK-2021-993, 0.15 Acres, Non-Jurisdictional**
 - xxxiv. **Isolated PFO 2 MVK-2021-993, 0.08 Acres, Non-Jurisdictional**
 - xxxv. **Isolated PFO 3 MVK-2021-993, 2.25 Acres, Non-Jurisdictional**
 - xxxvi. **Isolated PFO 4 MVK-2021-993, 1.07 Acres, Non-Jurisdictional**
 - xxxvii. **Isolated PFO 5 MVK-2021-993, 2.57 Acres, Non-Jurisdictional**
 - xxxviii. **Isolated Open Water 1 MVK-2021-993, 0.33 Acres, Non-Jurisdictional**

CEMVK-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVK-2021-993

- xxxix. **Isolated Open Water 2 MVK-2021-993, 0.33 Acres, Non-Jurisdictional**
- xl. **Isolated Open Water 3 MVK-2021-993, 0.30 Acres, Non-Jurisdictional**
- xli. **Isolated PEM 1 MVK-2021-993, 0.08 acres, Non-Jurisdictional**
- xlii. **Isolated PEM 2 MVK-2021-993, 0.06 acres, 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. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. **Review area is comprised of ~1,008 acres located in Clark County, Arkansas. (34.047149, -93.109254). It is located south of Gum Springs off US 67. The site is primarily agricultural with some forested areas within the boundary. Surrounding properties are primarily agricultural and forested, with some residential and commercial properties.**

The applicant has requested an approved jurisdictional determination for this project.

- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.**The nearest TNW is the Ouachita River**
- 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS **RPWs 1 and 6 share a flowpath through Caney Creek to Terre Noire Creek into the Little Missouri River. PFOs 1, 2, and 3, and RPWs 2, 3, 4, and 5 share a flowpath through Waggle Creek to Terre Noire Creek into the Little Missouri River.**

CEMVK-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVK-2021-993

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):
 - **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, PFO 1 has a continuous surface connection to a jurisdictional water, as it is adjacent to/abutting an RPW. Therefore, it is a jurisdictional water of the US.**

 - **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, PFO 2 has a continuous surface connection to a jurisdictional water, as it is adjacent to/abutting an RPW. Therefore, it is a jurisdictional water of the US.**

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.

CEMVK-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVK-2021-993

- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, PFO 3 has a continuous surface connection to a jurisdictional water, as it is adjacent to/abutting an RPW. Therefore, it is a jurisdictional water of the US.**

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

e. Tributaries (a)(5):

- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, RPW 1 Perennial maintains year-round flow and is therefore a jurisdictional water of the US.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, RPW 2 Intermittent maintains intermittent flow throughout the year and is therefore a jurisdictional water of the US.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, RPW 3 Intermittent maintains intermittent flow throughout the year and is therefore a jurisdictional water of the US.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, RPW 4 Intermittent maintains intermittent flow throughout the year and is therefore a jurisdictional water of the US.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, RPW 5 Intermittent maintains intermittent flow throughout the year and is therefore a jurisdictional water of the US.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, RPW 6 Intermittent maintains intermittent flow throughout the year and is therefore a jurisdictional water of the US.**

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”).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. **N/A**

- 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).
- **Based on a consultant’s delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 1 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**

⁷ 51 FR 41217, November 13, 1986.

- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 2 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 3 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 4 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 5 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 6 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 7 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 8 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 9 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 10 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 11 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.
- Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 12 is a non-

jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.

- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 12 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 13 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 14 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 15 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 16 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 17 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 18 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 19 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 20 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 21 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**

- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 22 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of Google Imagery, NHD, NWI, and Topo Maps from multiple years, Non-RPW 23 is a non-jurisdictional feature because it appears to be dry a majority of the year and therefore has less than seasonal flow.**
- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated PFO 1 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW.**
- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated PFO 2 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW.**
- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated PFO 3 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW.**
- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated PFO 4 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW.**
- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated PFO 5 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW.**
- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated Open Water 1 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW.**
- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated Open Water 2 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a**

jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW.

- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated Open Water 3 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW.**
- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated PEM 1 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW.**
- **Based on a consultant's delineation, and a review of LiDAR data, Google Imagery, and NWI maps, Isolated PEM 2 is a non-jurisdictional, isolated feature, and does not have a continuous surface connection to a jurisdictional water, as it is surrounded by uplands and is not adjacent to or abutting an RPW**

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. **Consultant's Delineation – Conducted on 6-13-2022**
- b. **ArcGIS Pro – Accessed on 5-20-2026**
- c. **NHD Data – Added to Regulatory Viewer on 12-06-2021**
- d. **NWI Data – Added to Regulatory Viewer on 3-29-2021**
- e. **Web Soils Survey – Survey Area Data 9-10-2025**
- f. **LiDAR Data – Added to Regulatory Viewer on 3-29-2021**
- g. **Google Earth Pro – Accessed on 5-20-2026**

10. OTHER SUPPORTING INFORMATION. N/A

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

CEMVK-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVK-2021-993

additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

| | | |
|-------------------------------------|--|-------------------|
| Applicant: David Rupe | File Number: MVK-2021-993 | Date: 5/22/2026 |
| Attached is: | | See Section below |
| <input type="checkbox"/> | INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission) | A |
| <input type="checkbox"/> | PROFFERED PERMIT (Standard Permit or Letter of permission) | B |
| <input type="checkbox"/> | PERMIT DENIAL WITHOUT PREJUDICE | C |
| <input type="checkbox"/> | PERMIT DENIAL WITH PREJUDICE | D |
| <input checked="" type="checkbox"/> | APPROVED JURISDICTIONAL DETERMINATION | E |
| <input type="checkbox"/> | PRELIMINARY JURISDICTIONAL DETERMINATION | F |

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

Attn: William McFarland
Regulatory Division
4155 Clay Street
Vicksburg, MS 39183-3435
(601) 631-5721
William.J.Mcfarland@usace.army.mil

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Administrative Appeals Review Officer
Mississippi Valley Division
U.S. Army Corps of Engineers
1400 Walnut Street
Vicksburg, MS 39181-0080
601-634-5820

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

| | |
|---|-------------------|
| <hr/> <p>Signature of appellant or agent.</p> | Date: |
| Email address of appellant and/or agent: | Telephone number: |

NAP/RFA Explanatory Comments

The enclosed letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 C.F.R. part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Mississippi Valley Division office at the following address:

Division Engineer
Attn: Appeals Review Officer
Mississippi Valley Division
Post Office Box 80
Vicksburg, MS 39181-0080
(601) 634-5820

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division office within 60 days of the date of the NAP. Should you decide to submit a RFA form, it must be received at the above address by July 20, 2026.

It is not necessary to submit an RFA form to the Division office if you do not object to the determination in the enclosed letter.