



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, **MEMPHIS** DISTRICT
167 N. MAIN STREET
MEMPHIS, TENNESSEE 38103

[CEMVM-R]

[31 May 2024]

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 [MVM 2022-208] [MFR 1 of 2]²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

[CEMVM-R]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

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] due to litigation.

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. WTL-4 (latitude 36.956033° / longitude -89.875409°); 1.7-acre wetland; non-jurisdictional.
 - ii. UDF-14 (latitude 36.955413° / longitude -89.875699°); approximately 100 linear foot erosional feature, 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)
- e. 2008 Rapanos guidance

3. REVIEW AREA. [The review area is approximately 62.9 acres in size located at latitude 36.956933° / longitude -89.874328° near the city of Bloomfield in Stoddard County, Missouri (see attached relevant figures including one depicting the boundary of the review area. Features not associated with the subject wetland or upland erosional feature are addressed in a separate AJD memorandum.)]

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [At 33 linear miles to the southeast, the physically nearest TNW is the Mississippi River at New Madrid, Missouri.]⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [N/A; the subject waters are separated from downstream waters by a berm.]
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ [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]

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 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.

⁸ 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.

[CEMVM-R]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

- 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”).⁹ 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. [Feature UDF-14 is an upland drainage/erosional feature that drains into WTL-4. This feature lacks indicators of an ordinary high-water mark.]
- 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

⁹ 51 FR 41217, November 13, 1986.

[CEMVM-R]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

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).

[Wetland 4 includes approximately 1.7 acres of wooded and scrub-shrub wetland. This feature formed in the shallows of a man-made pond that was constructed in uplands decades ago. A review of other channels in the vicinity has indicated that the subject channels carry non-relatively permanent (ephemeral) flow, indicating the pond was not created by impounding a relatively permanent water. It is separated from downstream waters by the berm that was constructed to create the pond. There are no pipes or culverts through this berm that could constitute a continuous surface connection to downstream waters as shown in photo 52 provided by the consultants.]

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. [List the date(s) that any field visit(s) or office evaluation(s) were conducted:

13 September 2022

20 February 2024]

- b. [NRV LiDAR data]

- c. [Google Earth Imagery; various dates]

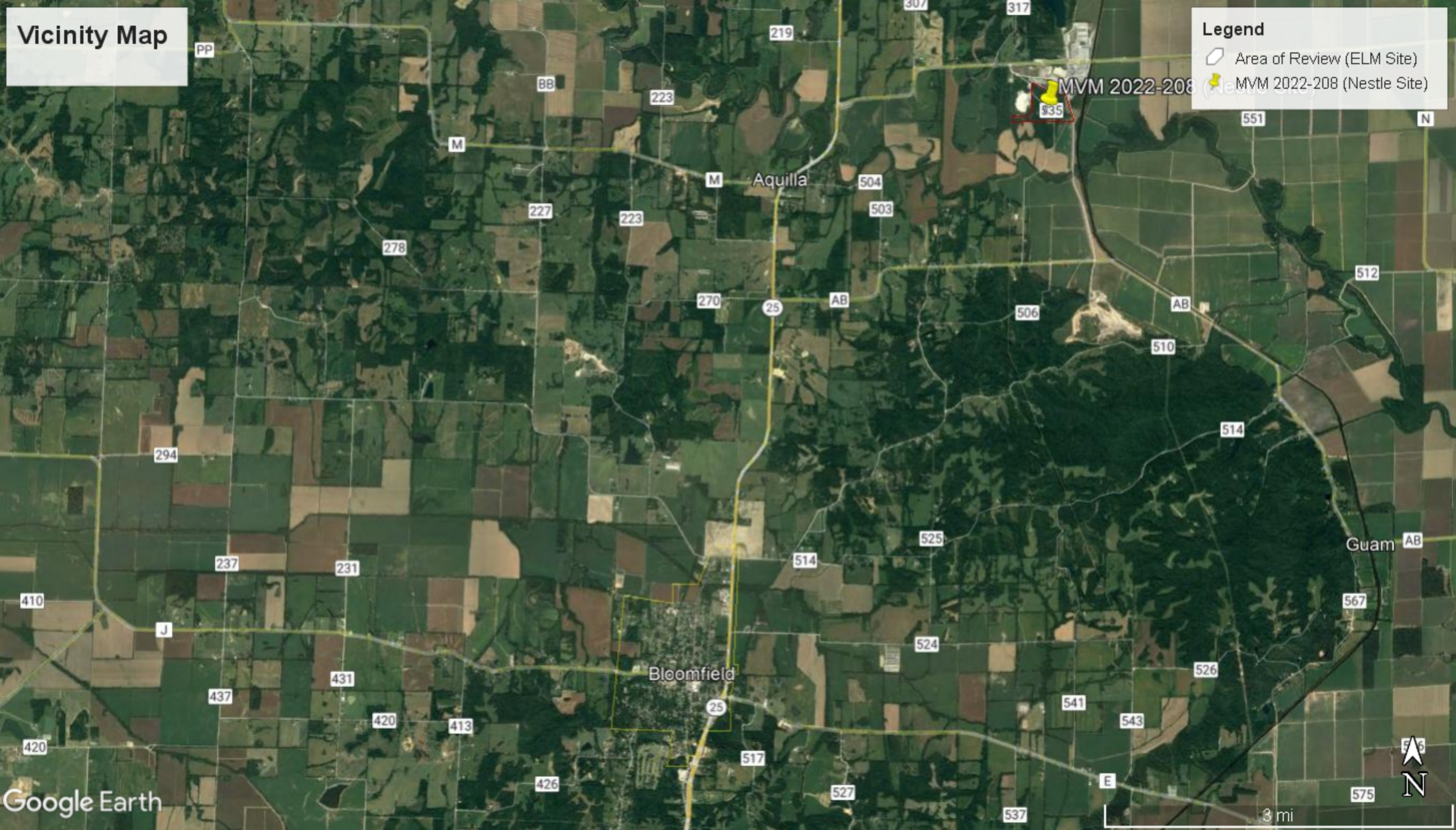
10. OTHER SUPPORTING INFORMATION. [N/A]

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

Vicinity Map

Legend

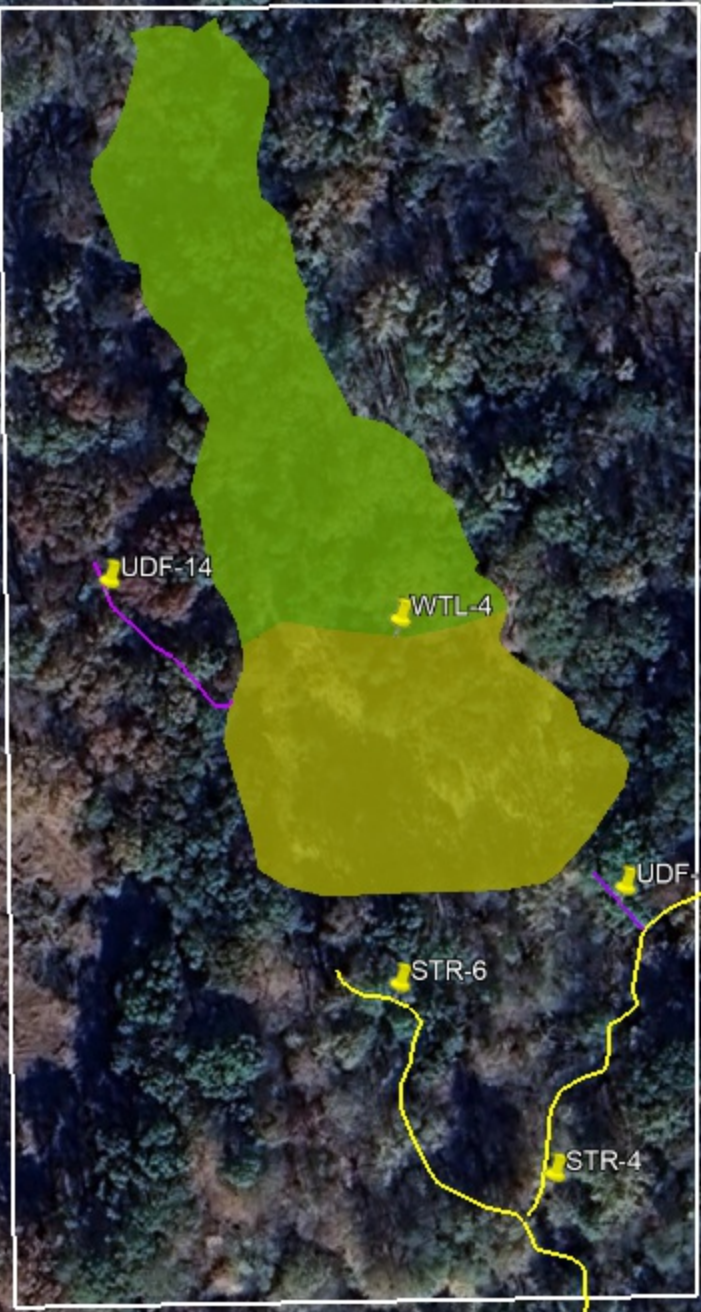
- Area of Review (ELM Site)
- MVM 2022-208 (Nestle Site)



Site Map
MVM 2022-208
(Post Sackett AJD MFR 1 of 2)

Legend

- Ephemeral Streams
- Feature IDs
- Review Area (in white)
- Upland Drainage Features
- Wetland (forested)
- Wetland (scrub-shrub)



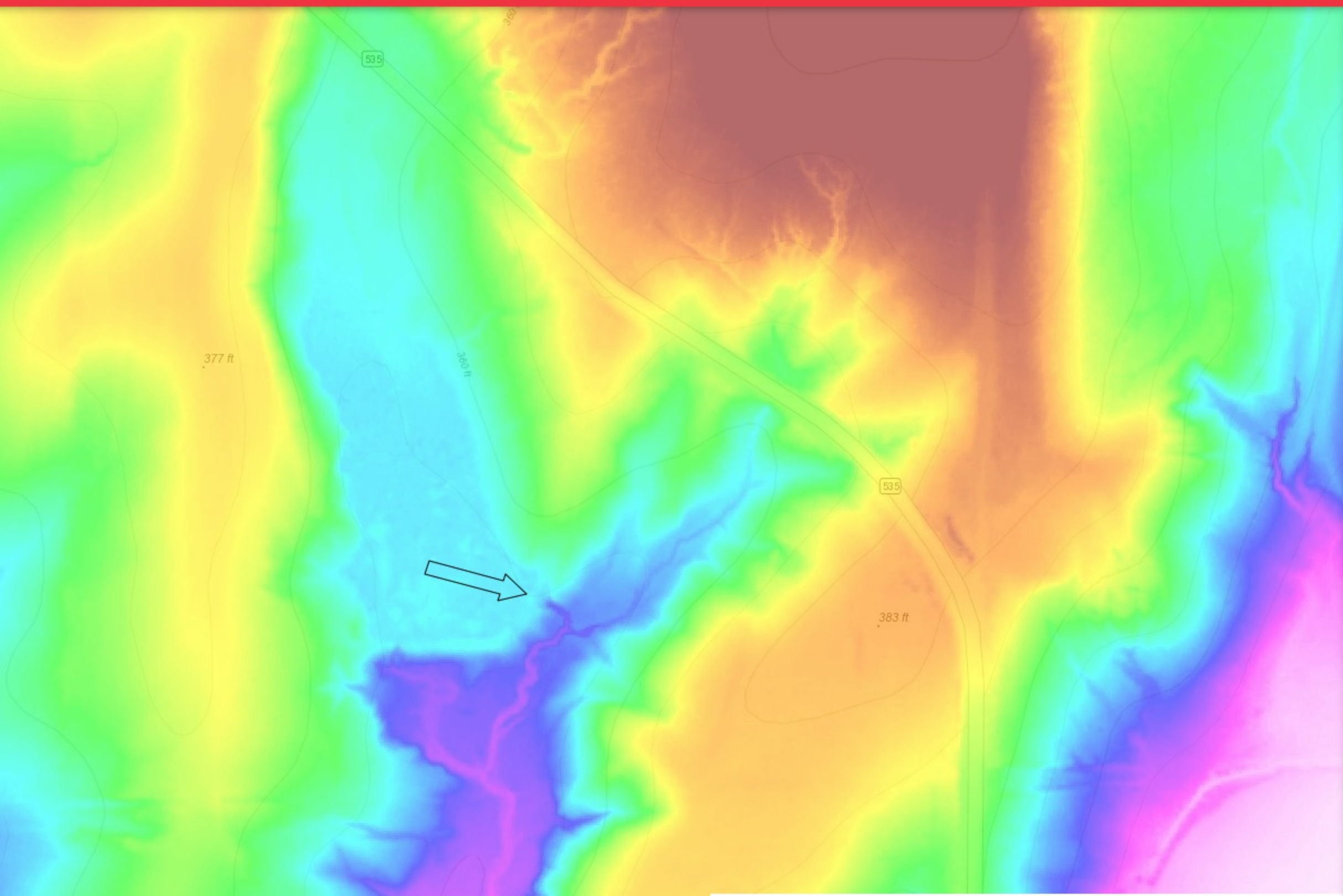






Photo Number: 51

Description: STR-4. DOV is northeast.



Photo Number: 52

Description: UDF-16. DOV is west.



Civil & Environmental Consultants, Inc.

Project Name: Proposed Earthen Litter
Material (ELM) Fill Areas

Client Name: Nestle Purina PetCare

Project Number: 301-169



DEPARTMENT OF THE ARMY
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167 N. MAIN STREET
MEMPHIS, TENNESSEE 38103

[CEMVM-R]

[31 May 2024]

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 [MVM 2022-208] [(MFR 2 of 2)]²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

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² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

[CEMVM-R]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

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] due to litigation.

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. STR-4; (latitude 36.955552° / longitude -89.874598°); non-relatively permanent water (ephemeral stream) 170' in length; non-jurisdictional.
 - ii. STR-5 (latitude 36.956215° / longitude -89.873345°); non-relatively permanent water (ephemeral stream) 170' in length; non-jurisdictional.
 - iii. STR-6 (latitude 36.955387° / longitude -89.875174°); non-relatively permanent water (ephemeral stream) 310' in length; non-jurisdictional.
 - iv. STR-7 (latitude 36.954864° / longitude -89.877700°); non-relatively permanent water (ephemeral stream) 96' in length; non-jurisdictional.
 - v. STR-8 (latitude 36.955144° / longitude -89.878256°); non-relatively permanent water (ephemeral stream) 203' in length; non-jurisdictional.
 - vi. UDF-4 (latitude 36.957084° / longitude -89.873279°); non-relatively permanent water (erosional feature) 110' in length; non-jurisdictional.
 - vii. UDF-5 (latitude 36.957190° / longitude -89.873440°); non-relatively permanent water (erosional feature) 79' in length; non-jurisdictional.
 - viii. UDF-6 (latitude 36.957112° / longitude -89.873760°); non-relatively permanent water (erosional feature) 63' in length; non-jurisdictional.
 - ix. UDF-7 (latitude 36.956973° / longitude -89.873719°); non-relatively permanent water (erosional feature) 100' in length; non-jurisdictional.
 - x. UDF-15 (latitude 36.955978° / longitude -89.873687°); non-relatively permanent water (erosional feature) 105' in length; non-jurisdictional.
 - xi. UDF-16 (latitude 36.955661° / longitude -89.874534°); non-relatively permanent water (erosional feature) 45' in length; non-jurisdictional.

[CEMVM-R]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

- xii. UDF-17 (latitude 36.954915° / longitude -89.877485°); non-relatively permanent water (erosional feature) 350' in length; non-jurisdictional.
- xiii. UDF-18 (latitude 36.954984° / longitude -89.877753°); non-relatively permanent water (erosional feature) 60' in length; 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. [The review area is approximately 62.9 acres in size located at latitude 36.956933° / longitude -89.874328° near the city of Bloomfield in Stoddard County, Missouri (see attached relevant figures including one depicting the boundary of the review area. The subject aquatic features were previously found to be jurisdictional prior to the *Sackett* decision in a PJD dated 16 March 2023. Other aquatic features in the review area were examined and found to be non-jurisdictional in an AJD dated 14 July 2023.)]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [At 33 linear miles to the southeast, the Traditional Navigable Water that is physically nearest is the Mississippi River at New Madrid, Missouri. Before reaching the Mississippi River, runoff from the subject tributaries must first flow over 90 miles to reach Little River and/or the St. Francis River which are both considered historically navigable.]⁶

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

[CEMVM-R]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [The aquatic features, all of which are ephemeral, flow out of the review area and into the Castor River nearby (approximately 0.4 miles). The Castor River then combines with flows of other tributaries in southeast Missouri and into large man-made constructed floodway ditches that all flow south and southwest. Other equally large man-made floodway ditches across the region carrying flows from Little River and its tributaries until they come together in a series of parallel ditches, flowing towards Big Lake National Wildlife Refuge in northeast Arkansas where they combine and flow out as Little River per USGS quadrangle maps. Little River then continues to flow another 25 miles or more towards its confluence with the St. Francis River (a Traditional Navigable Water).]
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ [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]

⁷ 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.

⁸ 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.

[CEMVM-R]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

- 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”).⁹ 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. [Features UDF-4, 5, 6, 7, 15, 16, 17, and 18 are all erosional features that lack indicators of an ordinary high-water mark and are therefore not considered waters of the United States.]
- 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]

⁹ 51 FR 41217, November 13, 1986.

[CEMVM-R]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

- 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).

[Feature STR-4 begins at the confluence of two upland erosional features and combines with channel STR-5 to become a second-order, non-relatively permanent (ephemeral) water. This channel joins STR-6 near the southern property boundary; STR-6 flows off the property to the south and remains a non-relatively permanent (ephemeral) channel until it flows into the Castor River. Because STR-4, STR-5, and STR-6 are non-relatively permanent waters, they are not considered Waters of the United States.

Feature STR-7 is a first-order, non-relatively permanent water that joins with STR-8, which is another first-order, non-relatively permanent water to form a second-order channel which flows offsite. These channels flow into another stream (STR-9) off the project site. At the point of confluence, STR-9 becomes a third-order channel, so STR-7 and -8 carry non-relatively permanent flows for the entirety of their lengths as either first- or second-order channels. Therefore, they are not considered Waters of the United States.]

- 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. [List the date(s) that any field visit(s) or office evaluation(s) were conducted:

13 September 2022

20 February 2024]
 - b. [National Regulatory Viewer LiDAR data, including 3DEP Hillshade and 3DEP digital Elevation Model]

[CEMVM-R]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVM 2022-208]

c. [Google Earth Imagery, various dates]

d. [Consultant's report dated March 26, 2024.]

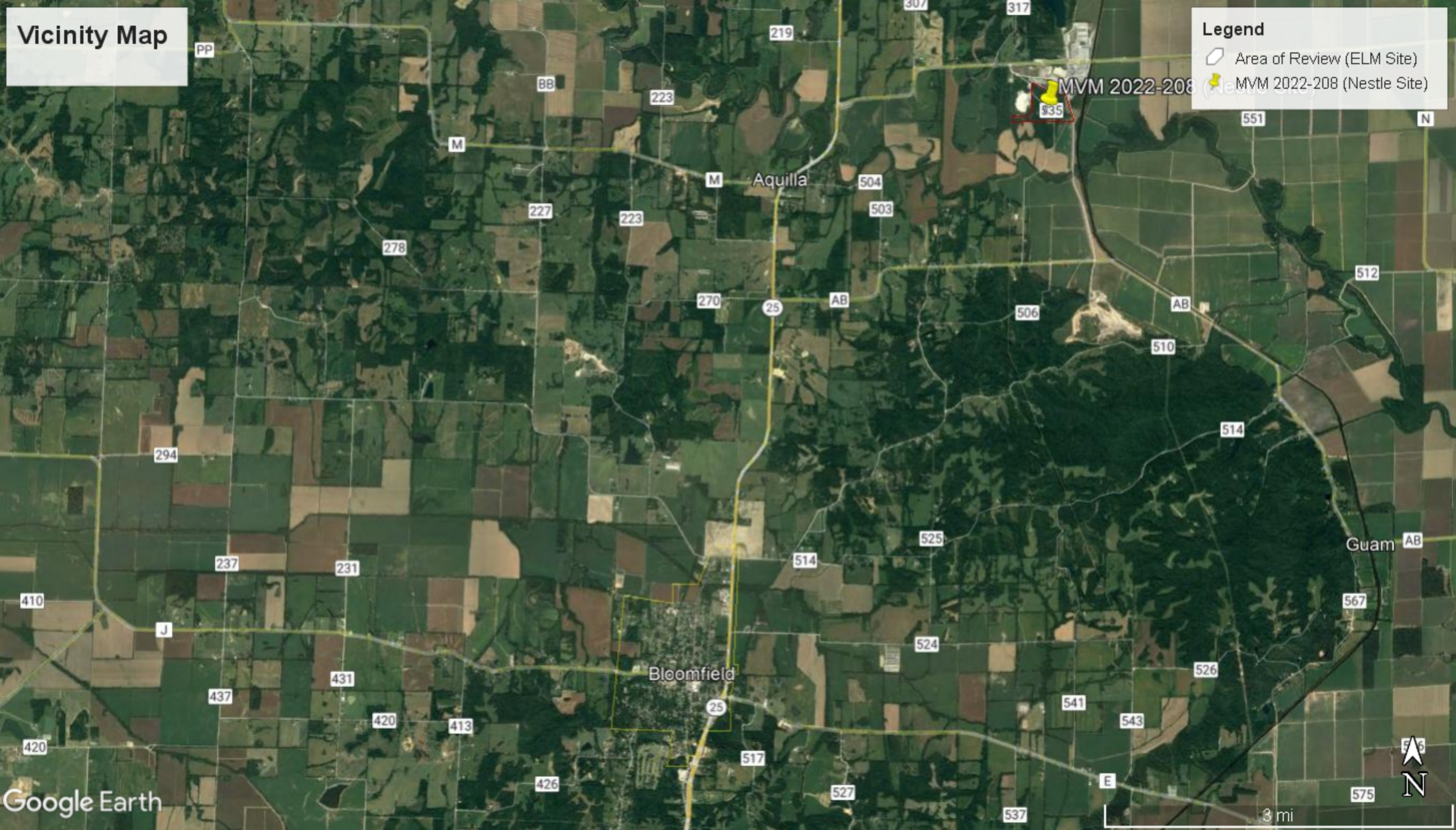
10. OTHER SUPPORTING INFORMATION. [Features WTL-4 and UDF-14 are addressed on a separate MFR.]

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.

Vicinity Map

Legend

- Area of Review (ELM Site)
- MVM 2022-208 (Nestle Site)



Site Map

MVM 2022-208
Post Sackett AJD 2

Legend

- Area of Review (in red)
- Ephemeral Streams
- Upland Drainage Features
- Wetlands (forested)
- Wetlands (scrub-shrub)

