DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT
601 E. 12TH STREET, 635 FEDERAL BUILDING
KANSAS CITY, MO 64106-2824

CENWK-ODR September 22, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023) ,[1] NWK-2025-00448 (MFR 1 of 1)[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

[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] 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, the territorial seas, or interstate water 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.

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 within the state of Missouri 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. Channel 1, Jurisdictional, Section 404
      ii. Channel 2, Non-Jurisdictional
      iii. Channel 3, Non-Jurisdictional
      iv. Channel 4, Non-Jurisdictional
      v. Channel 5, Non-Jurisdictional
      vi. Channel 6, Jurisdictional, Section 404
      vii. Channel 7, Jurisdictional, Section 404
      viii. Pond 1, Non-Jurisdictional
      ix. Pond 2, Non-Jurisdictional
      x. Wetland 1, Non-Jurisdictional
      xi. Wetland 2, Non-Jurisdictional
      xii. Wetland 3, Non-Jurisdictional
      xiii. Wetland 4, Non-Jurisdictional
      xiv. Wetland 5, Non-Jurisdictional
      xv. Wetland 6, Non-Jurisdictional

2. REFERENCES.

   a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

   b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

   c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)

   d. *"Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)"

   e. "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.
Approximately 159ac; Lat. 39.012147, Long. -94.156840; Oak Grove, Jackson County, Missouri. See attached map.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.
The Missouri River is the closest downstream TNW to the waters listed above in Section 1.a. The Missouri River is referenced on the District webpage under the Section 10 Navigable Waters list.[6]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

Channels 1, 2, 4, 5, and 6 flow through Channel 3, and Sni-A-Bar Creek, before entering the Missouri River (TNW).

Ponds 1 and 2 were constructed in upland areas. Should they fill to the point of discharge, they would drain via overland sheet flow and through swales and road ditches before entering Channels 1 or 3, after which flow would continue as described above.

Wetlands 1, 2, and 3 abut Channels 4 and 6, through which flow would continue as described above.

Wetlands 4 and 5 drain via overland sheet flow and through erosional features before entering Channel 1 or 3, after which flow would continue as described above.

Wetland 6 drains via overland sheet flow and through a road culvert and swale before entering an offsite tributary to Channel 3, after which flow would continue as described above.

[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.

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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 (ac) or linear feet (lf) 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

[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.

e. Tributaries (a)(5):

Channel 1: Order – 3rd
Length in Review Area – 554lf Total Reach Length – 3.1 miles
Drainage Area – 2,203ac
OHWM – Averages 8ft across. Identified by a clear, natural line impressed on the banks.
Flow Regime – Onsite and aerial photos compared with precipitation records indicate that the channel has continuous flow at least seasonally and in nearly all instances observed, with the upper portions of the reach only showing dry during the 2012 drought.
Determination – Based on meeting the characteristics of an RPW and its connection through the tributary system to the downstream TNW, Channel 1 satisfies the definition of an (a)(5) tributary and is jurisdictional.

Channel 6: Order – 2nd
Length in Review Area – 591lf Total Reach Length – 2,866lf
Drainage Area – 181ac
OHWM – Averages 3ft across. Identified by shelving.
Flow Regime – Onsite and aerial photos compared with precipitation records (see tables in Section 10) indicate that the channel has continuous flow at least seasonally and in the majority of instances where the channel could be observed.
Determination – Based on meeting the characteristics of an RPW and its connection through the tributary system to the downstream TNW, Channel 6 satisfies the definition of an (a)(5) tributary and is jurisdictional.

Channel 7: Order – 2nd
Length in Review Area – 2,364lf Total Reach Length – 3,935lf
Drainage Area – 601ac
OHWM – Averages 8ft across. Identified by a clear, natural line impressed on the banks.
Flow Regime – Onsite and aerial photos compared with precipitation records (see tables in Section 10) indicate that the channel has continuous flow at least seasonally and in nearly all instances observed, but for some drier than normal periods.
Determination – Based on meeting the characteristics of an RPW and its connection through the tributary system to the downstream TNW, Channel 7 satisfies the definition of an (a)(5) tributary and is jurisdictional.

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.

The 2008 Rapanos guidance states, "Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow) are generally not waters of the United States because they are not tributaries or they do not have a significant nexus to downstream traditional navigable waters."

A review of LiDAR imagery indicated some possible channels draining Wetland 5 to Channel 5 and draining into Channel 7 at the southern tip of the review area. An additional site visit was conducted (16 Sep 2025) and photos provided by the agent (17 Sep 2025), demonstrating these to be erosional features that failed to show a stable bed and bank formation or the consistent presence of an OHWM throughout the feature.

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.

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*.

   Pond 1:
   Size in Review Area – 1.59ac Total Size – 1.59ac
   Geomorphic Position – Pond 1 is an isolated manmade water, constructed in uplands between 1990 and 1996. A review of multiple years of aerial imagery (1947 to 2023) and an analysis of LiDAR, topographic, NWI, and NHD mapping provided no evidence of channels flowing in, out, or through Pond 1.
   Relation to RPW – Pond 1 is not an impoundment of a historic or current RPW.
   Commercial Potential – Pond 1 is located on private property and has no potential to be used by interstate or foreign travelers for recreational purposes, produce fish or shellfish which are or could be taken and sold in interstate or foreign commerce, or be used for industrial purposes by industries in interstate commerce.
   Determination – Based on the information gathered above Pond 1 is a non-jurisdictional water.

   Pond 2:
   Size in Review Area – 0.06ac Total Size – 0.1ac
   Geomorphic Position – Pond 2 is an isolated manmade water, constructed in uplands prior to 1947. A review of multiple years of aerial imagery (1947 to 2023) and an analysis of LiDAR, topographic, NWI, and NHD mapping provided no evidence of channels flowing in, out, or through Pond 2.
   Relation to RPW – Pond 2 is not an impoundment of a historic or current RPW.
   Commercial Potential – Pond 2 is located on private property and has no potential to be used by interstate or foreign travelers for recreational purposes, produce fish or shellfish which are or could be taken and sold in interstate or foreign commerce, or be used for industrial purposes by industries in interstate commerce.
   Determination – Based on the information gathered above Pond 2 is a non-jurisdictional water.

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).

Channel 2: Order – 1st
Length in Review Area – 1,092lf Total Reach Length – 1,092lf
Drainage Area – 26ac
OHWM – The channel has a discontinuous OHWM with a section fading out where it enters the former pond basin that contains Wetland 3. As mapped in LiDAR and aerial imagery, the upper section is approximately 629lf, and the lower section is approximately 469lf, though the agent has reported that the OHWM was only sporadically present in some of these areas when delineated. The OHWM averages 2ft across. Identified by a clear, natural line impressed on the banks.
Flow Regime – Onsite and aerial photos compared with precipitation records found the channel to be dry in all but one observable instance, in which water was pooled but not flowing 3 days after the last previous rain.
Determination – Based on the small drainage area size, the location within the landscape, and the lack of evidence of continuous flow at least seasonally, Channel 2 is a non-RPW. As such, Channel 2 is a non-jurisdictional channel.

Channel 3: Order – 1st
Length in Review Area – 530lf Total Reach Length – 530lf
Drainage Area – 14ac
OHWM – The channel has a discontinuous OHWM with a section fading out where it enters the former pond basin that contains Wetland 1. The upper section was measured as 362lf by the agent, and the lower section was mapped in LiDAR imagery at approximately 168lf. The OHWM averages 3ft across, as identified by shelving.
Flow Regime – Onsite and aerial photos compared with precipitation records found the channel to be dry on each date where it could be observed.
Determination – Based on the small drainage area size, the location within the landscape, and the lack of evidence of continuous flow at least seasonally, Channel 3 is a non-RPW. As such, Channel 3 is a non-jurisdictional channel.

Channel 4: Order – 1st
Length in Review Area – 158lf Total Reach Length – 158lf
Drainage Area – 1ac
OHWM – Averages 4ft across. Identified by destruction of terrestrial vegetation.
Flow Regime – Onsite and aerial photos compared with precipitation records found the channel to be dry on each date where it could be observed.

Determination – Based on the small drainage area size, the location within the landscape, and the lack of evidence of continuous flow at least seasonally, Channel 4 is a non-RPW. As such, Channel 4 is a non-jurisdictional channel.

Channel 5: Order – 1st
Length in Review Area – 664lf Total Reach Length – 2,008lf
Drainage Area – 41ac
OHWM – Averages 3ft across. Identified by shelving.
Flow Regime – The lower offsite portion of the channel includes an impoundment with consistent standing water for approximately 370lf. Onsite and aerial photos compared with precipitation records found the majority of the channel, including the discharge for the impoundment, to be dry in most observable instances.
Determination – Based on the small drainage area size, the location within the landscape, and the lack of evidence of continuous flow at least seasonally, Channel 5 is a non-RPW. As such, Channel 5 is a non-jurisdictional channel.

Wetland 1:
Size in Review Area – 0.26ac Total Size – 0.26ac
Relation to RPW – Wetland 1 has formed in the bed of a former pond (in aerials from 1963-2009). It does not physically touch/abut any jurisdictional waters. Wetland 1 receives flow from, and discharges through, Channel 2 (non-RPW).

Wetland 2:
Size in Review Area – 0.54ac Total Size – 0.54ac
Relation to RPW – Wetland 2 has formed across the aquatic bed of a shallow pond (in aerials from 2010-2025). It does not physically touch/abut any jurisdictional waters. Should it fill to the point of discharge, it would drain via Channel 2 (non-RPW).

Wetland 3:
Size in Review Area – 0.07ac Total Size – 0.07ac
Relation to RPW – Wetland 3 has formed in the bed of a former pond (in aerial from 1963). It does not physically touch/abut any jurisdictional waters. Wetland 3 receives flow from, and discharges through, Channel 3 (non-RPW).

Wetland 4:
Size in Review Area – 0.06ac Total Size – 0.06ac
Relation to RPW – Wetland 04 has formed in a low-lying area near a bend in Channel 7 (RPW), but it does not physically touch/abut Channel 7 or any jurisdictional waters. LiDAR imagery confirms the findings of the agent, that Wetland 4 has formed in a depression within the bench of Channel 7, but does

not directly abut or have a clear channel connecting it with the RPW. Despite being within the floodplain bench of the channel, it is still situated well above and outside of the OWHM of Channel 7. Should it fill to the point of discharge, it would drain via overland sheet flow before entering Channel 7.

Wetland 5:
Size in Review Area – 0.08ac Total Size – 0.08ac
Relation to RPW – Wetland 5 has formed across the aquatic bed of a shallow pond (in aerials from 1963-2025). It does not physically touch/abut any jurisdictional waters. Should it fill to the point of discharge, it would drain via erosional features before entering Channel 5 (non-RPW).

Wetland 6:
Size in Review Area – 0.03ac Total Size – 0.03ac
Relation to RPW – Wetland 6 has formed in a low-lying area near the north boundary of the review area. It does not physically touch/abut any jurisdictional waters. Should it fill to the point of discharge, it would drain north through a culvert under Interstate 70 and its outer road. No images of the culvert were provided to assess connection of an OHWM through it; however, the drainage to the north includes a swale and erosional features that would not be considered RPWs.

Determination – Army/EPA Memorandum to the field 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) explains that "consistent with Sackett, the agencies are interpreting "waters of the United States" to include "only those adjacent wetlands that have a continuous surface connection because they directly abut the [requisite jurisdictional water] (e.g., they are not separated by uplands, a berm, dike or similar feature)." 2008 Rapanos Guidance at 7, footnote 29; see also 88 FR 3090 (Jan. 18, 2023) Considering the above described disconnection between Wetlands 1-6 and the nearest downstream RPW, Wetlands 1-6 do not have a continuous surface connection with the downstream relatively permanent tributary and, consistent with Sackett, are not "adjacent." As such, Wetlands 1-6 are not jurisdictional waters.

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. "Aquatic Resources and Jurisdictional Summary" created by Hg Consult Inc.

b. Office (Desk) Determination: 17 September 2025

c. Topographic and Aerial Images on Google Earth Pro and USGS TopoView; various dates between 1990 and 2023. Particular dates evaluated in more detail were 20 Apr 2020, 20 Feb 2020, 5 May 2016, 27 Mar 2016, 30 Mar 2015, 8 Apr 2014, 27 Aug 2012, 5 Jun 2011, and 3 May 2010.

d. Historic aerial images from historicaerials.com, dated 1947-2022.

e. Onsite Photos provided by Agent, dated 16 Sep 2025, 17 Jun 2025 and 29 May 2024.

f. Precipitation Condition Records from the Corps Antecedent Precipitation Tool, dated 17 Jun 2025, 29 May 2024, 20 Apr 2020, 20 Feb 2020, 5 May 2016, 27 Mar 2016, 30 Mar 2015, 8 Apr 2014, 27 Aug 2012, 5 Jun 2011, and 3 May 2010.

g. LiDAR imagery and NWI and NHD mapping from the Corps Northwest Division GIS Map Viewer.

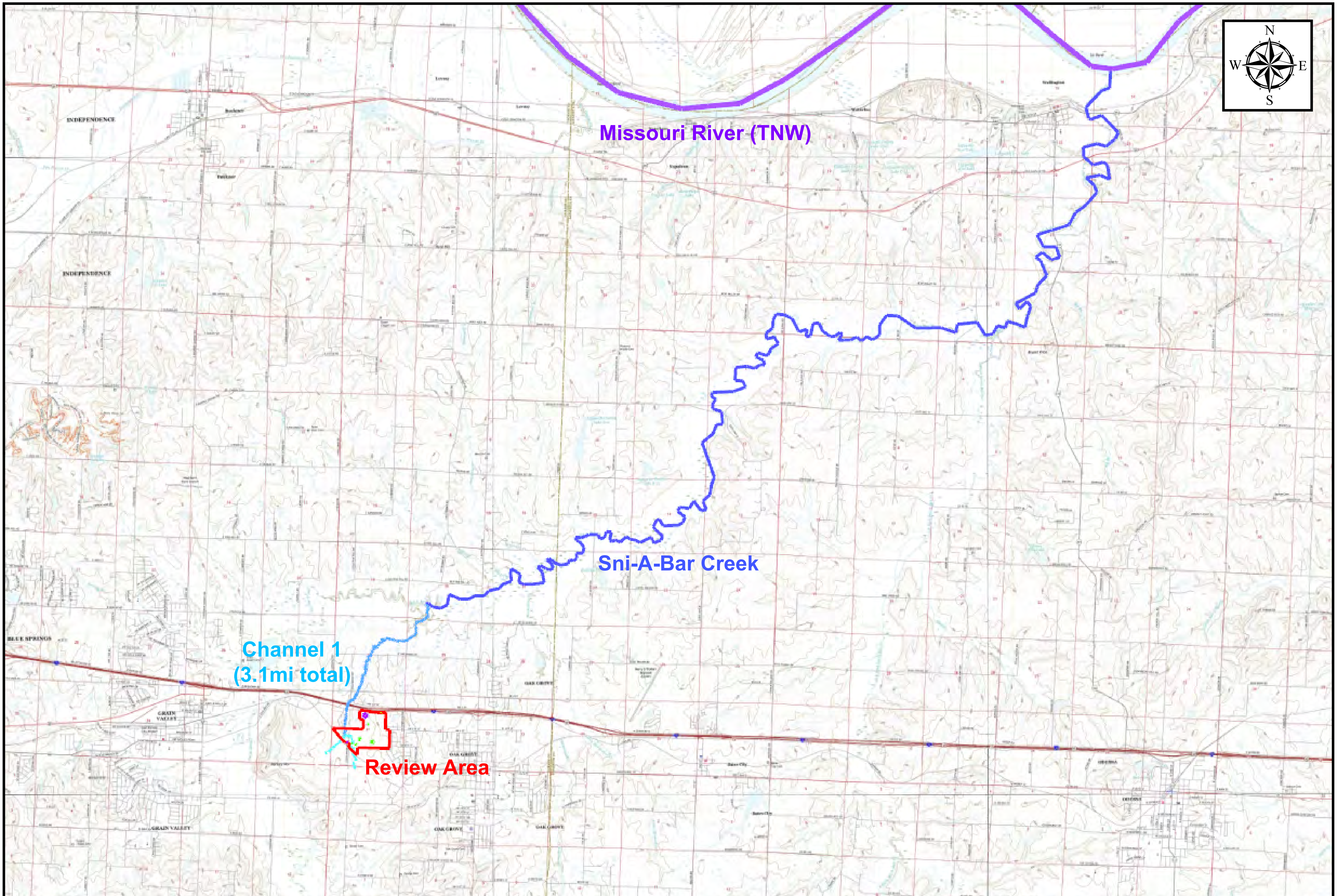
10. OTHER SUPPORTING INFORMATION.

APT and Onsite Photo / Aerial Imagery Analysis:

	Days Since Last Likely Runoff	Calendar Season	Wet/Dry Season	Precipitation Condition
6/17/2025	>5	Summer	Dry	Drier Than Normal
5/29/2024	3	Spring	Wet	Normal
4/20/2020	3	Spring	Wet	Normal
2/20/2020	>5	Winter	Wet	Normal
5/5/2016	5	Spring	Wet	Drier Than Normal
3/27/2016	3	Spring	Wet	Normal
3/30/2015	>5	Spring	Wet	Drier Than Normal
4/8/2014	5	Spring	Wet	Normal
8/27/2012	1	Summer	Dry	Drier Than Normal
6/5/2011	5	Summer	Dry	Normal
5/3/2010	1	Spring	Wet	Normal

	Channel 1	Channel 2	Channel 3	Channel 4	Channel 5	Channel 6	Channel 7
6/17/2025	Water	No Observation	No Observation	No Observation	No Observation	Pools / Recent Flow	Pools / Recent Flow
5/29/2024	No Observation	Pools / Recent Flow	Dry	Dry	Dry	No Observation	Water
4/20/2020	Water	Water	No Observation	No Observation	Water	Water	Water
2/20/2020	Water	Dry	Dry	Dry	Dry	Water	Water
5/5/2016	Water	Dry	No Observation	Dry	Pools / Recent Flow	No Observation	Dry
3/27/2016	Water	Dry	No Observation	No Observation	Dry	Water	Water
3/30/2015	Water	No Observation	No Observation	No Observation	Dry	Water	Water
4/8/2014	Water	Dry	Dry	Dry	No Observation	Water	Water
8/27/2012	Dry	No Observation	Dry	No Observation	Dry	Dry	Dry
6/5/2011	Water	Dry	No Observation	No Observation	Pools / Recent Flow	No Observation	Water
5/3/2010	Water	Dry	No Observation	No Observation	Pools / Recent Flow	Water	Water

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.



NWK-2025-00448
Approved Jurisdictional Determination
Topographic Location & Flowpath

39.012147, -94.156840

Source: USGS TopoView
Issued: 22 September 2025

	NWK-2025-00448 **Approved Jurisdictional Determination** **Aerial Image & Waters Map**	39.012147, -94.156840	Source: Google Earth Pro Issued: 22 September 2025