



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

CEMVK-RD

12 June 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 [MVK-2025-295](#)

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 [Mississippi](#) 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.

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- 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).

Waters_Nam	Label	State	Cowardi n_C	Meas _Type	Amount	Units	Latitude	Longitude	Project_Nu
Ephemeral Stream Non-RPW (AJD) Non-jurisdictional	Ephemeral 1	MISSISSIPPI	R6	Linear	720.698346	FOOT	32.550974	-90.082447	MVK-2025-295
Ephemeral Stream Non-RPW (AJD) Non-jurisdictional	Ephemeral 2	MISSISSIPPI	R6	Linear	162.993324	FOOT	32.54396	-90.08072	MVK-2025-295
Ephemeral Stream Non-RPW (AJD) Non-jurisdictional	Ephemeral 3	MISSISSIPPI	R6	Linear	685.477549	FOOT	32.548304	-90.082038	MVK-2025-295
Ephemeral Stream Non-RPW (AJD) Non-jurisdictional	Ephemeral 4	MISSISSIPPI	R6	Linear	121.993082	FOOT	32.54268	-90.083658	MVK-2025-295
Ephemeral Stream Non-RPW (AJD) Non-jurisdictional	Ephemeral 5	MISSISSIPPI	R6	Linear	119.130496	FOOT	32.543128	-90.083502	MVK-2025-295
Ephemeral Stream Non-RPW (AJD) Non-jurisdictional	Ephemeral 6	MISSISSIPPI	R6	Linear	275.584265	FOOT	32.543842	-90.08498	MVK-2025-295
Intermittent Stream RPW (AJD) Jurisdictional	Intermittent 1	MISSISSIPPI	R4	Linear	1974.29201	FOOT	32.543092	-90.082876	MVK-2025-295
Forested Wetland Jurisdictional	PFO 1	MISSISSIPPI	PFO	Area	5.140983	ACRE	32.5495	-90.081079	MVK-2025-295
Forested Wetland Jurisdictional	PFO 2	MISSISSIPPI	PFO	Area	2.392356	ACRE	32.544957	-90.080874	MVK-2025-295
Forested Wetland Jurisdictional	PFO 3	MISSISSIPPI	PFO	Area	2.193329	ACRE	32.543472	-90.081353	MVK-2025-295
Forested Wetland Jurisdictional	PFO 4	MISSISSIPPI	PFO	Area	3.000184	ACRE	32.542854	-90.08136	MVK-2025-295
Forested Wetland Jurisdictional	PFO 5	MISSISSIPPI	PFO	Area	1.377258	ACRE	32.542779	-90.083056	MVK-2025-295
Forested Wetland Jurisdictional	PFO 6	MISSISSIPPI	PFO	Area	1.710748	ACRE	32.543243	-90.083219	MVK-2025-295
Forested Wetland Jurisdictional	PFO 7	MISSISSIPPI	PFO	Area	1.031385	ACRE	32.542688	-90.084334	MVK-2025-295
Forested Wetland Jurisdictional	PFO 8	MISSISSIPPI	PFO	Area	0.840813	ACRE	32.551016	-90.081974	MVK-2025-295
Open Water Non-jurisdictional	Pond 1	MISSISSIPPI	Open Water	Area	1.594232	ACRE	32.548372	-90.083245	MVK-2025-295
Open Water Non-jurisdictional	Pond 2	MISSISSIPPI	Open Water	Area	0.116498	ACRE	32.544318	-90.085122	MVK-2025-295

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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. "Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of "Waters Of The United States" Under The Clean Water Act" (March 12, 2025)

3. REVIEW AREA.

- **The subject property is an approximate 104-acre parcel of land located northeast of Gluckstadt, Mississippi and is situated east of Nissan Parkway and north of Sowell Road. More specifically, the property is located within Section 10 & 15, Township 8 North, Range 2 East, Madison County, Mississippi. (32.546842°N, -90.08288°W). The subject property revealed the prevalence of the property has been in its current state for approximately 30 years. A historical review of the subject property, along with the present assessment, concluded the property was previously occupied with agriculture fields with a singular tributary flowing east along the southern border. The surrounding properties were also previously occupied with agriculture fields until Nissan Parkway was built along the west boundary and Sowell Road was built along the south boundary. Based on available topography maps, a potential drainage was identified through the south portion of the subject property in a west to east orientation. The topography of the project area was identified as having a high elevation of approximately 268 feet mean sea level (msl) in the west portion of the property, to a low elevation of approximately 250 feet msl in the southeast portion of the site.**

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.
 - **The nearest TNW is Section 10 Waters of the Pearl River.**

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS
 - **The flow path off the property is east via ephemeral 1 and intermittent 1. Ephemeral 1 dumps into a unnamed intermittent tributary. It flows for 0.3 miles until reaching intermittent 1 off site. Intermittent 1 then flows for about 1.5 miles until reaching Bear Creek. Bear Creek then flows west for about 8.5 miles to an unnamed intermittent tributary. That then flows east for 3.5 miles until reaching Section 10 waters of the Pearl River located in the Ross Barnett Reservoir.**

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

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.

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references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): [N/A](#)
- b. Interstate Waters (a)(2): [N/A](#)
- c. Other Waters (a)(3): [N/A](#)
- d. Impoundments (a)(4): [N/A](#)
- e. Tributaries (a)(5):

Intermittent Stream RPW (AJD) Jurisdictional	Intermittent 1	MISSISSIPPI	R4	Linear	1974.29201	FOOT	32.543092	-90.082876	MVK-2025-295
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- **Intermittent 1 is meets the relatively permanent standard to be considered an RPW and is therefore jurisdictional.**

- f. The territorial seas (a)(6): [N/A](#)
- g. Adjacent wetlands (a)(7):

Forested Wetland Jurisdictional	PFO 1	MISSISSIPPI	PFO	Area	5.140983	ACRE	32.5495	-90.081079	MVK-2025-295
Forested Wetland Jurisdictional	PFO 2	MISSISSIPPI	PFO	Area	2.392356	ACRE	32.544957	-90.080874	MVK-2025-295
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Forested Wetland Jurisdictional	PFO 8	MISSISSIPPI	PFO	Area	0.840813	ACRE	32.551016	-90.081974	MVK-2025-295

- **PFO 1-8 are all adjacent to and directly abut a requisite water and are therefore considered jurisdictional.**

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.

- **All aquatic resources below meet the relatively permanent standards to be considered a preamble water and are therefore considered non-jurisdictional.**

Open Water Non-jurisdictional	Pond 1	MISSISSIPPI	Open Water	Area	1.594232	ACRE	32.548372	-90.083245	MVK-2025-295
Open Water Non-jurisdictional	Pond 2	MISSISSIPPI	Open Water	Area	0.116498	ACRE	32.544318	-90.085122	MVK-2025-295

- 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**

⁷ 51 FR 41217, November 13, 1986.

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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).

- **All aquatic resources below do not meet the relatively permanent standard to be considered an RPW or WOTUS and are therefore considered non-jurisdictional.**

Ephemeral Stream Non-RPW (AJD) Non-jurisdictional	Ephemeral 1	MISSISSIPPI	R6	Linear	720.698346	FOOT	32.550974	-90.082447	MVK-2025-295
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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. **Office determination based on consultant delineation. Accessed on 6-9-2025**

b. **GIS Accessed on 6-9-2025**

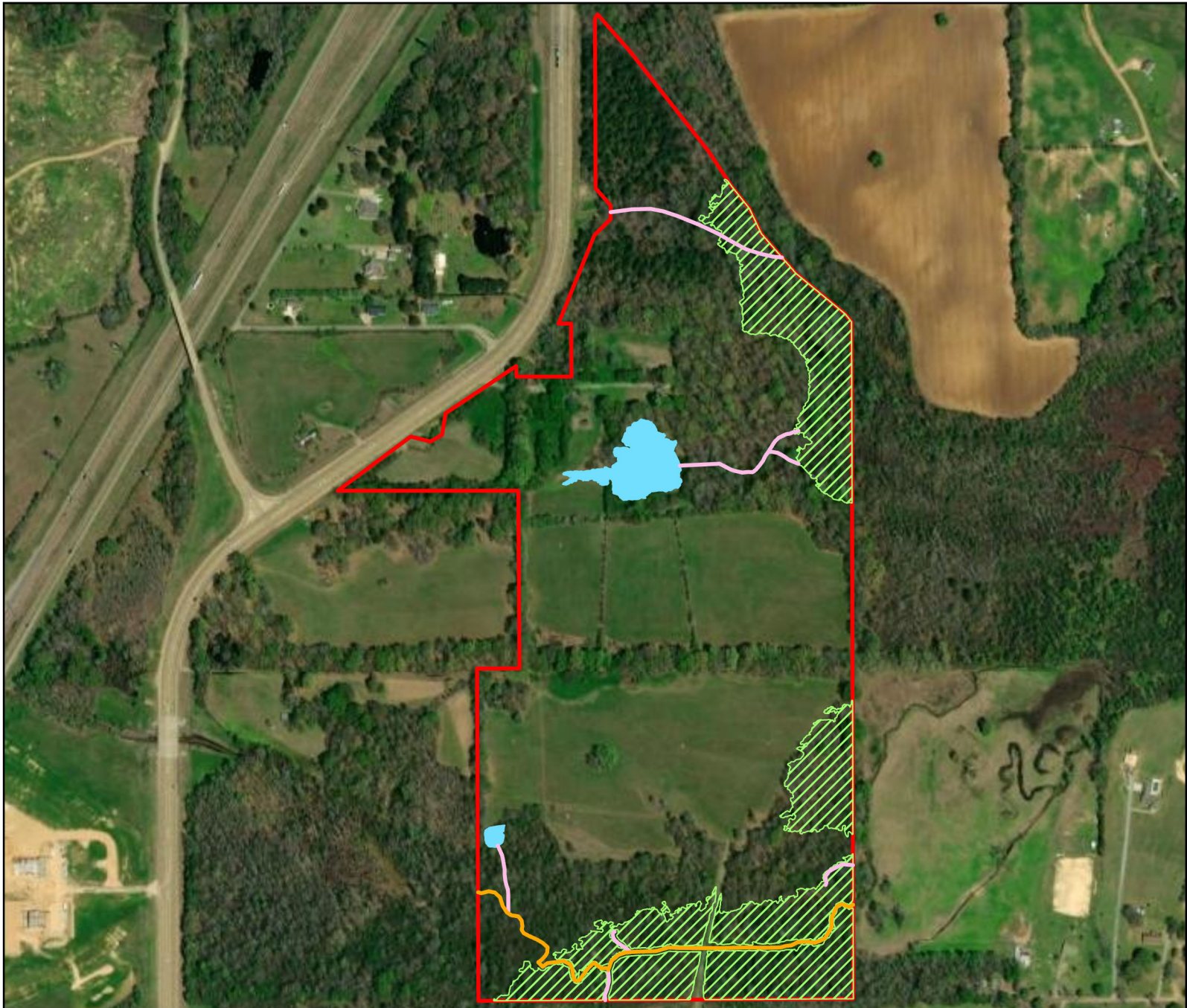
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- c. **Aerial Photos Accessed on 6-9-2025**
- d. **NHD Accessed on 6-9-2025**
- e. **NWI Accessed on 6-9-2025**
- f. **LiDAR Accessed on 6-9-2025**
- g. **Google Earth Pro Accessed on 6-9-2025**
- h. **Digital Globe Accessed on 6-9-2025**

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.

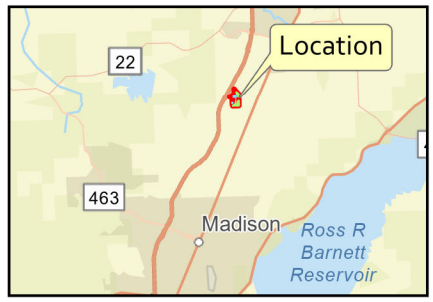


12 JUNE 2025
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Madison County Economic
 Development Authority - Watson
 SRC Property

Approved Jurisdictional
 Determination

Hayleigh Rogers



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0 435 870
 Feet

Legend

- Boundary (104 Acres)
- Forested Wetland Jurisdictional (17.6 Acres)
- Open Water Non-jurisdictional (1.7 Acres)
- Ephemeral Stream Non-RPW Non-jurisdictional (2,085.9 Feet)
- Intermittent Stream RPW Jurisdictional (1974.3 Feet)

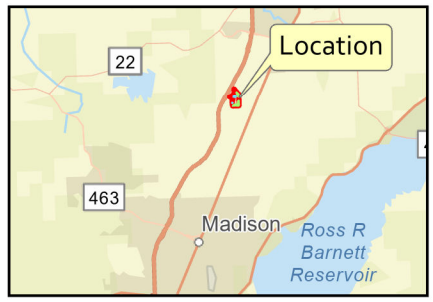


12 JUNE 2025
MVK-2025-295






Madison County Economic
 Development Authority - Watson
 SRC Property

Approved Jurisdictional
 Determination

Hayleigh Rogers



Legend

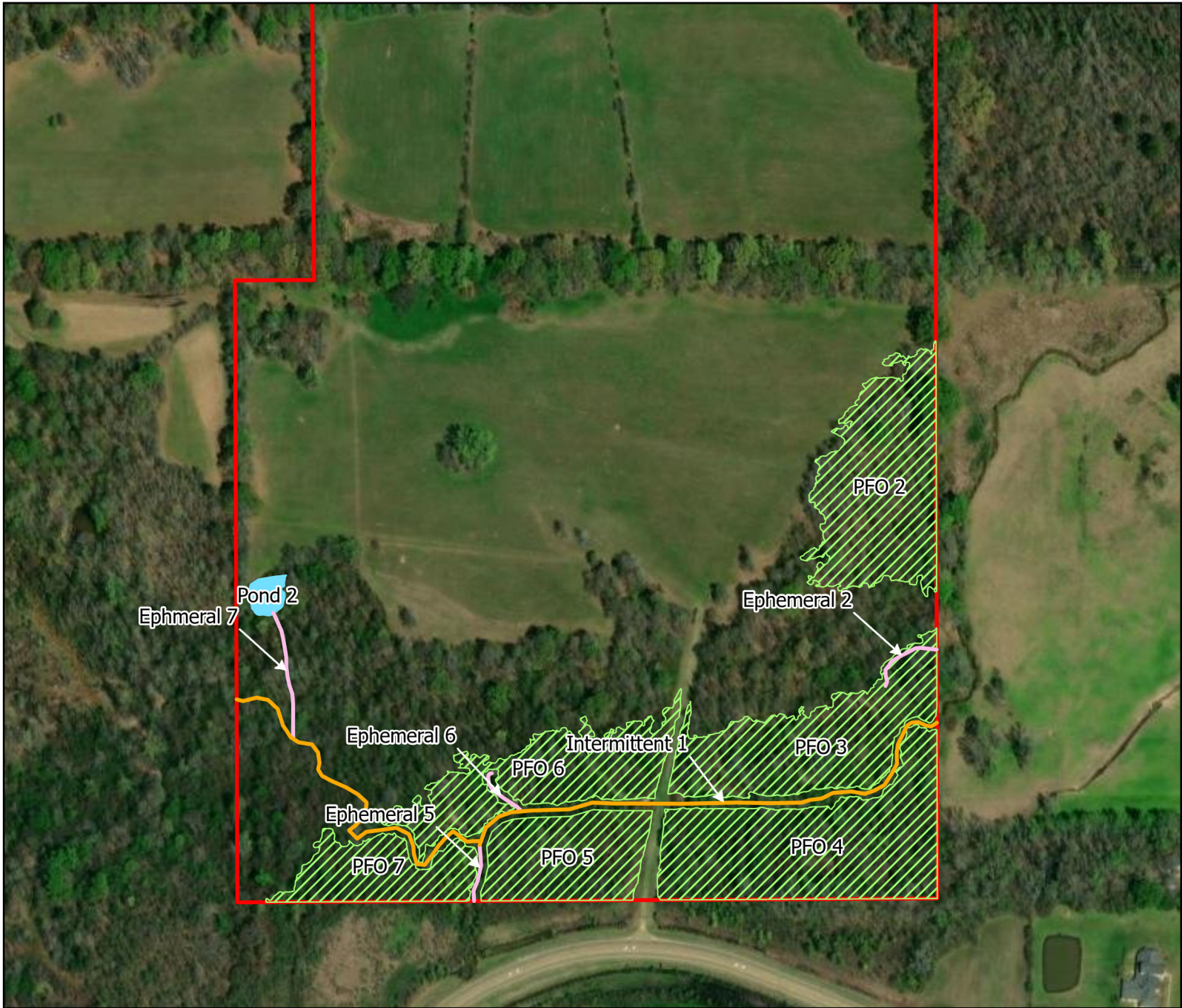
-  Boundary (104 Acres)
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-  Intermittent Stream RPW Jurisdictional (1974.3 Feet)




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0 275 550
 Feet

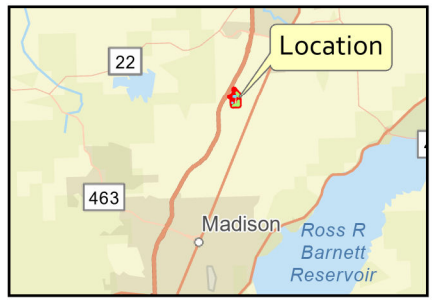


12 JUNE 2025
MVK-2025-295

Madison County Economic
 Development Authority - Watson
 SRC Property

Approved Jurisdictional
 Determination

H a y l e i g h R o g e r s



Legend

- Boundary (104 Acres)
- Forested Wetland Jurisdictional (17.6 Acres)
- Open Water Non-jurisdictional (1.7 Acres)
- Ephemeral Stream Non-RPW Non-jurisdictional (2,085.9' Feet)
- Intermittent Stream RPW Jurisdictional (1974.3' Feet)




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0
230
460



Feet