



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

CEMVK-RD

3 October 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-2025-574](#)

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_Name	State	Cowardin_Code	Meas_Type	Amount	Units	Waters_Type	Latitude	Longitude
Ephemeral 1	MISSISSIPPI	R6	Linear	1191.26263	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.40246000	-90.22349900
Ephemeral 2	MISSISSIPPI	R6	Linear	650.245507	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.40285300	-90.22294300
Ephemeral 3	MISSISSIPPI	R6	Linear	317.635519	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.40188100	-90.22391500
Ephemeral 4	MISSISSIPPI	R6	Linear	1460.75454	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.40903800	-90.22033800
Ephemeral 5	MISSISSIPPI	R6	Linear	439.207713	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.41073000	-90.22050100
Ephemeral 6	MISSISSIPPI	R6	Linear	467.279438	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.40817300	-90.22446000
Ephemeral 7	MISSISSIPPI	R6	Linear	86.040139	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.40938200	-90.22413400
Intermittent 1	MISSISSIPPI	R4	Linear	1046.58661	FOOT	A5.TRIB-404	32.40212400	-90.22354600
PFO 1	MISSISSIPPI	PFO	Area	0.116069	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.40179600	-90.22444600
Pond 1	MISSISSIPPI	L1	Area	0.241463	ACRE	NON-JD - PREAMBLE - WATERFILL D.DEP-PITS	32.40878200	-90.22406400
Pond 2	MISSISSIPPI	L1	Area	1.472426	ACRE	NON-JD - PREAMBLE - WATERFILL D.DEP-PITS	32.41023200	-90.21900000
Pond 3	MISSISSIPPI	L1	Area	0.461626	ACRE	NON-JD - PREAMBLE - WATERFILL D.DEP-PITS	32.40968900	-90.22389400
PSS 1	MISSISSIPPI	PSS	Area	0.344777	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.40913600	-90.22419700

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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 proposed property contains approximately 119.64 acres and is located north of West County Line Road, west of North Livingston Road, and south of the Natchez Trace Parkway. (32.406824N, 90.223320W). The project area is situated within Section 32, Township 7 North, Range 1 East, Madison County, Mississippi. the subject property has been historically utilized for recreational hunting. A small component of mixed hardwood-pine forests, pine plantation, bottomland hardwoods, open water ponds, and riparian zones are present within the subject property.**

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 from the property is southeast via intermittent 1 (Hanging Moss Creek) for 9 miles until reaching section 10 waters of the Pearl River.**

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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): [N/A](#)
 - d. Impoundments (a)(4): [N/A](#)
 - e. Tributaries (a)(5):
 - [Intermittent one meets the relatively permanent standard to be considered an RPW and is therefore jurisdictional.](#)

Intermittent 1	MISSIS SIPPI	R4	Linear	1046.58661	FOOT	A5.TRIB-404	32.40212400	-90.22354600
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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.

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.

- **Ponds 1-3 meet the relatively permanent standard to be considered a preamble water and are therefore excluded and non-jurisdictional.**

Pond 1	MISSISSIPPI	L1	Area	0.241463	ACRE	NON-JD - PREAMBLE - WATERFILLE D.DEP-PITS	32.40878200	-90.22406400
Pond 2	MISSISSIPPI	L1	Area	1.472426	ACRE	NON-JD - PREAMBLE - WATERFILLE D.DEP-PITS	32.41023200	-90.21900000
Pond 3	MISSISSIPPI	L1	Area	0.461626	ACRE	NON-JD - PREAMBLE - WATERFILLE D.DEP-PITS	32.40968900	-90.22389400

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**

⁷ 51 FR 41217, November 13, 1986.

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- 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).

- PFO 1 and PSS 1 are not adjacent to or directly abut a requisite water and is therefore isolated and non-jurisdictional.

PFO 1	MISSISSIPPI	PFO	Area	0.116069	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.40179600	-90.22444600
PSS 1	MISSISSIPPI	PSS	Area	0.344777	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.40913600	-90.22419700

- Ephemerals 1-7 do not meet the relatively permanent standard to be a RPW and is therefore considered non-jurisdictional.

Ephemeral 1	MISSISSIPPI	R6	Linear	1191.26263	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.40246000	-90.22349900
Ephemeral 2	MISSISSIPPI	R6	Linear	650.245507	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.40285300	-90.22294300
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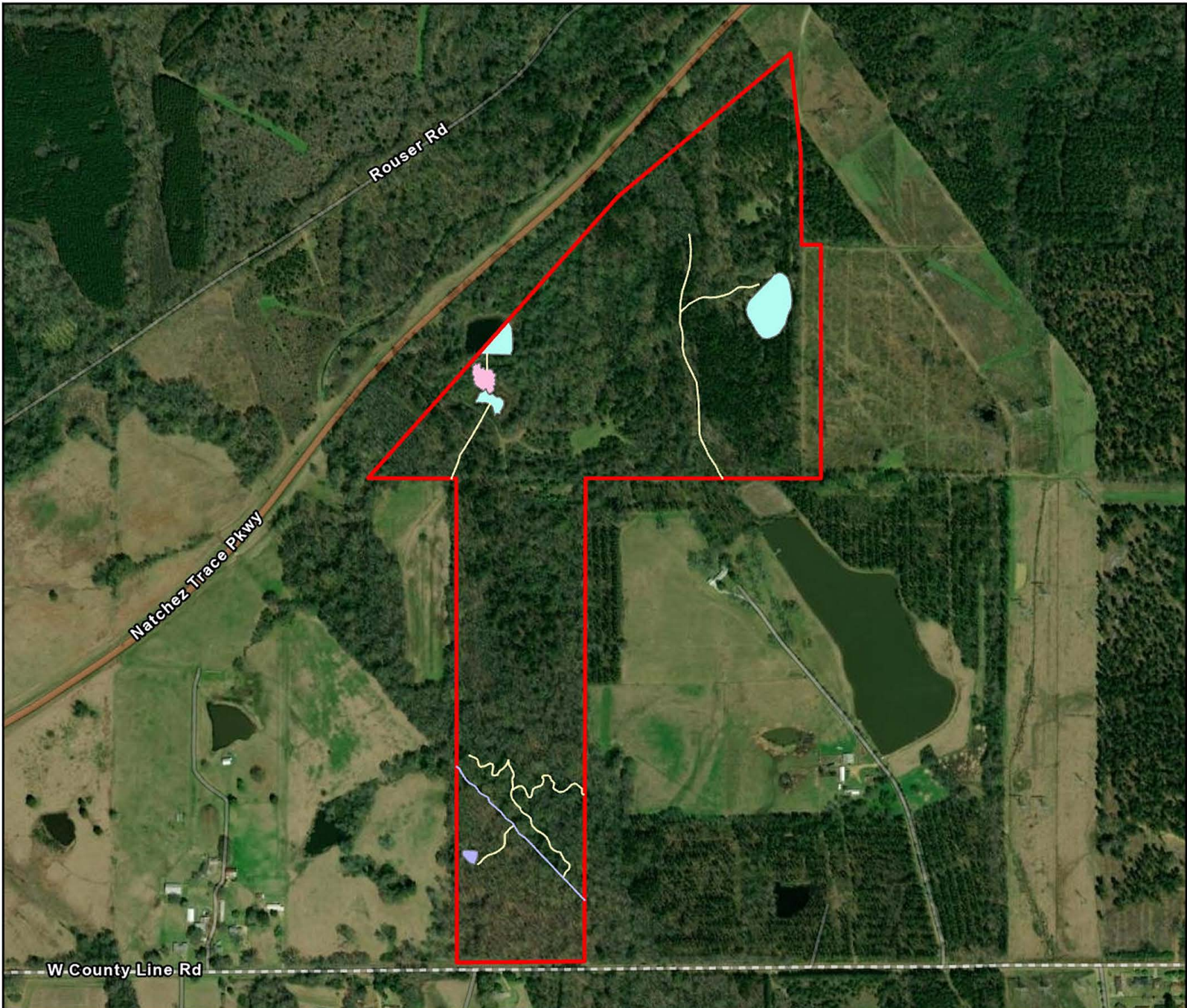
Ephemeral 5	MISSISSIPPI	R6	Linear	439.207713	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.41073000	-90.22050100
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Ephemeral 7	MISSISSIPPI	R6	Linear	86.040139	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	32.40938200	-90.22413400

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. [9.29.2025](#)
- b. GIS [9.29.2025](#)
- c. Aerial Photos [9.29.2025](#)
- d. NHD [9.29.2025](#)
- e. NWI [9.29.2025](#)
- f. LiDAR [9.29.2025](#)
- g. Google Earth Pro [9.29.2025](#)
- h. Digital Globe [9.29.2025](#)

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.



3 October 2025
MVK-2025-574

Wohlden Capital Property

Approved Jurisdictional
 Determination

Hayleigh Rogers



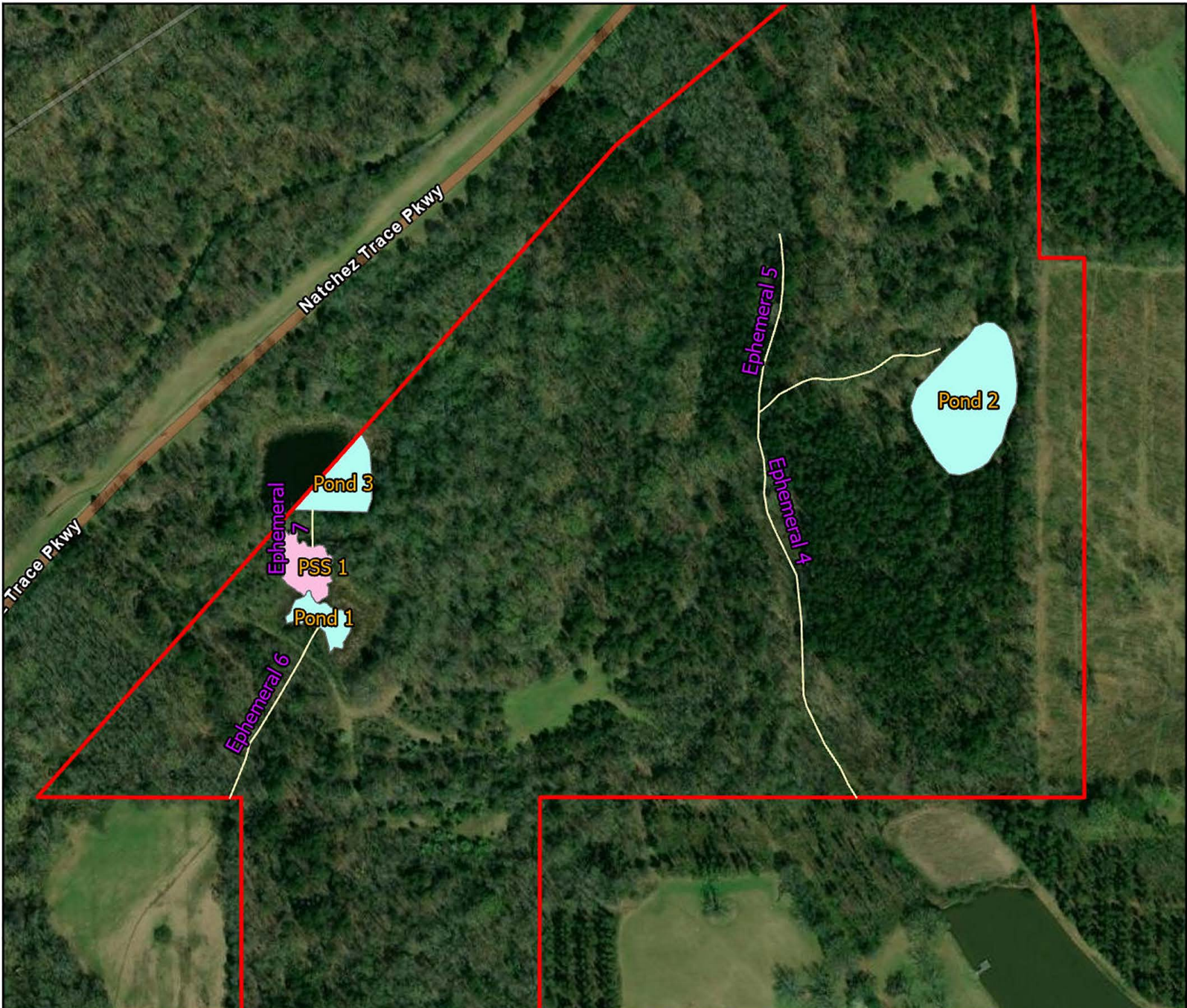
Legend

- Boundary (119 Acres)
- Forested Wetland Non-Jurisdictional (0.11 Acres)
- Open Water Non-jurisdictional (2.17 Acres)
- Scrub Shrub Wetlands Non-jurisdictional (0.34 Acres)
- Ephemeral Stream Non-RPW (AJD) Non-jurisdictional (4,600'lf)
- Intermittent Stream RPW (AJD) Jurisdictional (1,046'lf)

**US Army Corps
 of Engineers**

REGULATORY DIVISION
 MISSISSIPPI BRANCH

0 500 1,000
 Feet



3 October 2025
MVK-2025-574

Wohlden Capital Property

Approved Jurisdictional Determination

Hayleigh Rogers



Legend

- Boundary (119 Acres)
- Forested Wetland Non-Jurisdictional (0.11 Acres)
- Open Water Non-jurisdictional (2.17 Acres)
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- Ephemeral Stream Non-RPW (AJD) Non-jurisdictional (4,600'lf)
- Intermittent Stream RPW (AJD) Jurisdictional (1,046'lf)

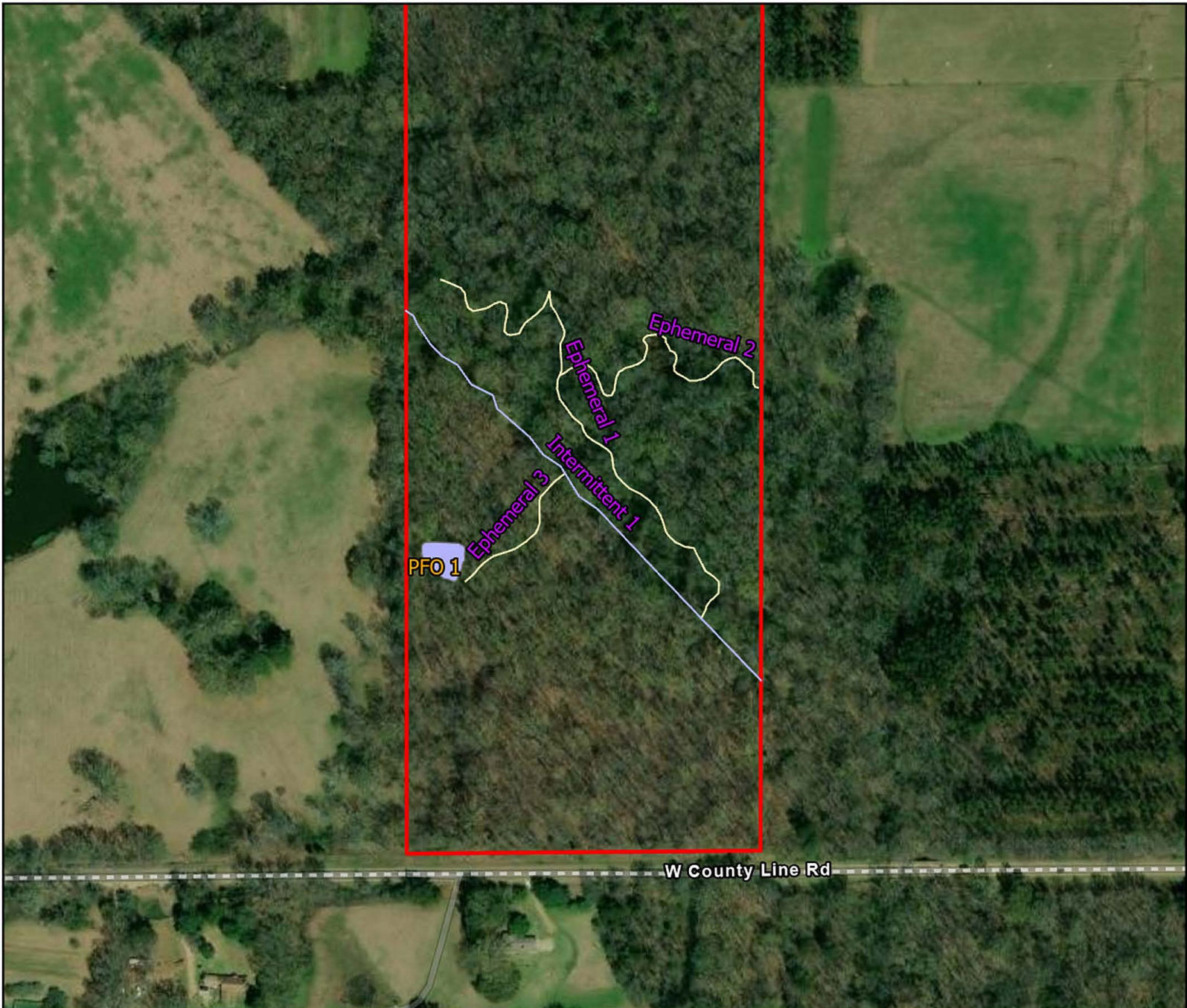



US Army Corps of Engineers

REGULATORY DIVISION
 MISSISSIPPI BRANCH

0 265 530 Feet





3 October 2025
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Wohlden Capital Property

Approved Jurisdictional Determination

Hayleigh Rogers



Legend

- Boundary (119 Acres)
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US Army Corps of Engineers

REGULATORY DIVISION
 MISSISSIPPI BRANCH

0 220 440 Feet