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CESWL-RD

5 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),<sup>1</sup> SWL-2026-00079

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.<sup>2</sup> 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.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> 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 this state due to litigation.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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.

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. WL-1: non-jurisdictional, Section 404
  - ii. ED-1: non-jurisdictional, Section 404

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)

3. REVIEW AREA.

The review area totals approximately 25 acres within Section 23, Township 27N, Range 32W, in Joplin, Newton County, Missouri. Approximate center coordinates of the review area include 37.053342, -94.400218.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

The nearest TNW is the Grand (Neosho) River (Lat/ Lon: 35.869618, -95.230020). The Grand (Neosho) River was determined to be the nearest TNW, because of its listing on the Tulsa District (SWT) List of Navigable Waters subject to Section 10 RHA (see Section 9b below for source information).<sup>5</sup>

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<sup>5</sup> 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.

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

ED-1 drains into a roadside ditch that drains offsite into Turkey Creek which is located approximately 330 feet east of the Review Area. The subsequent flow path from Turkey Creek to the nearest TNW is as follows: Turkey Creek → Spring River → Grand Lake O the Cherokees (an impoundment of the Neosho River) → Neosho River (drains out of the Grand Lake O the Cherokees) → Hudson Lake (an impoundment of the Neosho River) → Neosho River drains out of Hudson Lake → Fort Gibson Reservoir (an impoundment of the Neosho River) where the Neosho River becomes a TNW at the Fort Gibson Dam.

WL-1 does not possess surface connections with any downstream aquatic resource, lacking a surface with any downstream TNW.

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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.

- 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”).<sup>8</sup> 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

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<sup>8</sup> 51 FR 41217, November 13, 1986.

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).

ED-1 was identified as a non-relatively permanent drainage constructed within uplands in the applicant’s delineation report. A desktop review conducted on May 5, 2026, confirmed the status of ED-1 as a non-relatively permanent water (NRPW). ED-1 totals approximately 185 linear feet within the review area, possesses an ephemeral flow regime, possesses upland vegetation within the channel, and lacks a well-defined ordinary high-water mark. Due to the classification as a NRPW and the supporting characteristics identified above, ED-1 is considered non-jurisdictional under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in the *Sackett* case.

WL-1 was identified as a forested wetland lacking downstream surface connections with Waters of the U.S., in the applicant’s delineation report. A desktop review conducted on May 5, 2026, confirmed that this feature does not directly abut a relatively permanent water (RPW), thus lacking a continuous surface connection with a downstream TNW. WL-1 totaled approximately 0.05 acres within the review area and met all three criteria (hydric soils, hydrophytic vegetation, and wetland hydrology) required to be classified as a wetland. WL-1 was dominated by red maple (*Acer rubrum*) and American elm (*Ulmus americana*), possessed soils meeting the redox dark surface (F6) criteria, and possessed one primary wetland indicator, i.e., drift deposits and four other secondary wetland indicators. Due to the lack of a continuous surface connection with a downstream TNW, WL-1 is considered non-jurisdictional under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in the *Sackett* case.

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. A desktop review conducted by USACE SWL personnel on May 5, 2026.
- b. <https://www.swt.usace.army.mil/Missions/Regulatory/Section-10-Waters/>, Accessed - May 5, 2026
- c. USGS National Hydrography Dataset (NHD) GIS Layers, Accessed - May 5, 2026

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- d. USDA Web Soil Survey, <https://websoilsurvey.nrcs.usda.gov/app/>, Accessed - May 5, 2026
- e. USGS 3D Elevation Program (3DEP) Bare Earth Digital Elevation Model (DEM), Accessed - May 5, 2026
- f. Google Earth Pro, open-source aerial imagery, dated 1990-2023, Accessed - May 5, 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 additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Figure 1. Vicinity

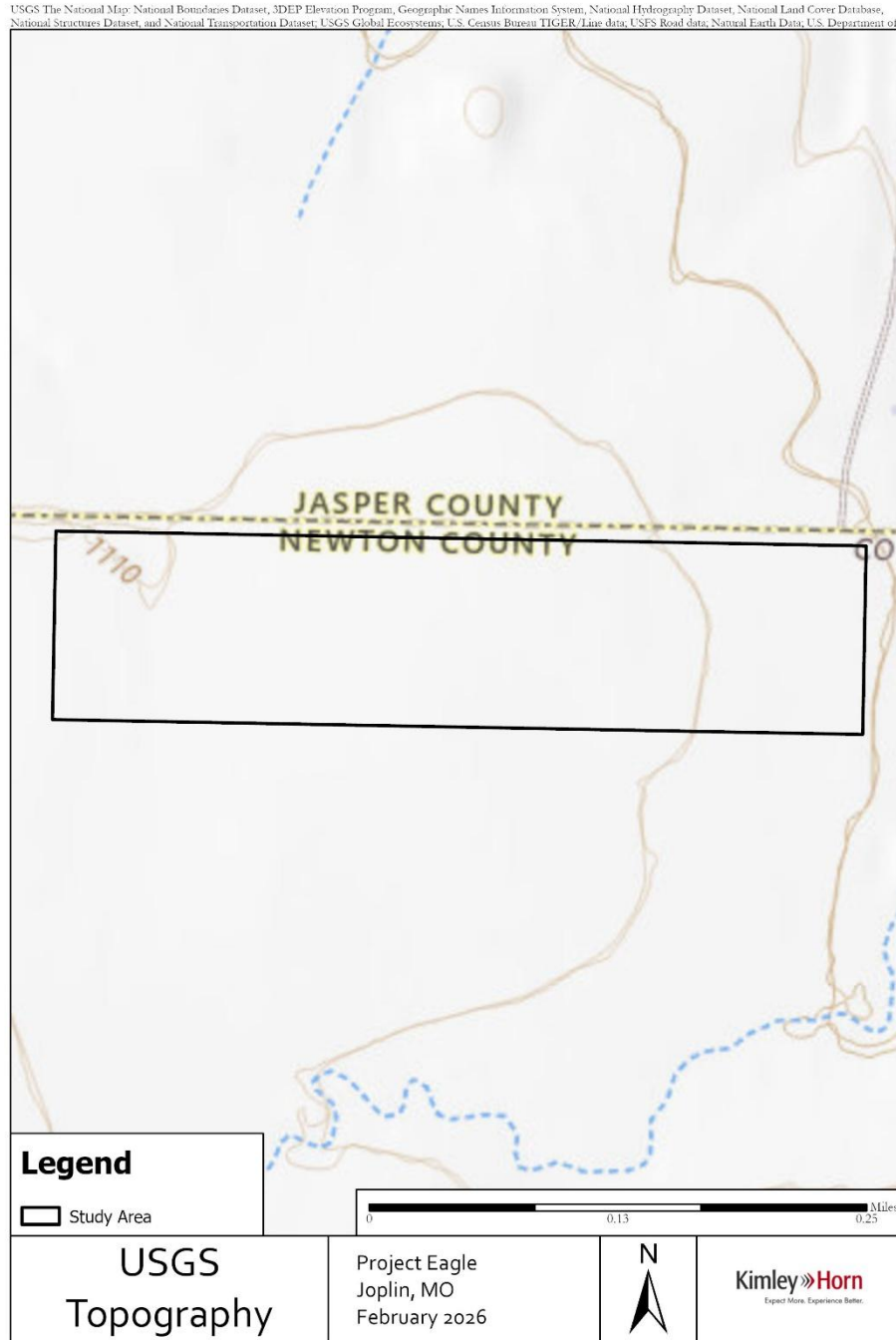


Figure 2. USGS Topographic



#### 4.1.2 Soils

There are three (3) Soil Map Units (SMU) identified within the study area by the NRCS Web Soil Survey (NRCS 2024; **Table 1. Soil Map Units within the Study Area; Figure 3. NRCS Soils**). None of the SMUs mapped within the study area are considered to be hydric soils.

Table 1. Soil Map Units within the Study Area

Soil Map Unit	Map Unit Symbol	Hydric Soil	Acres*	Percent of Study Area
Creldon silt loam, 1-3% slopes	70006	No	18	73%
Hoberg silt loam, 2-5% slopes	70012	No	6	24%
Gerald silt loam, 0-2% slopes	73031	No	<1	3%

\*Acreage rounded to the nearest whole number to prevent false precision.

Missouri Dept. of Conservation, Missouri DNR, Esri, TomTom, Garmin, SafeGraph, FAO, METI/NASA, USGS, EPA, NPS, USFWS, Esri, NASA, NGA, USGS, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

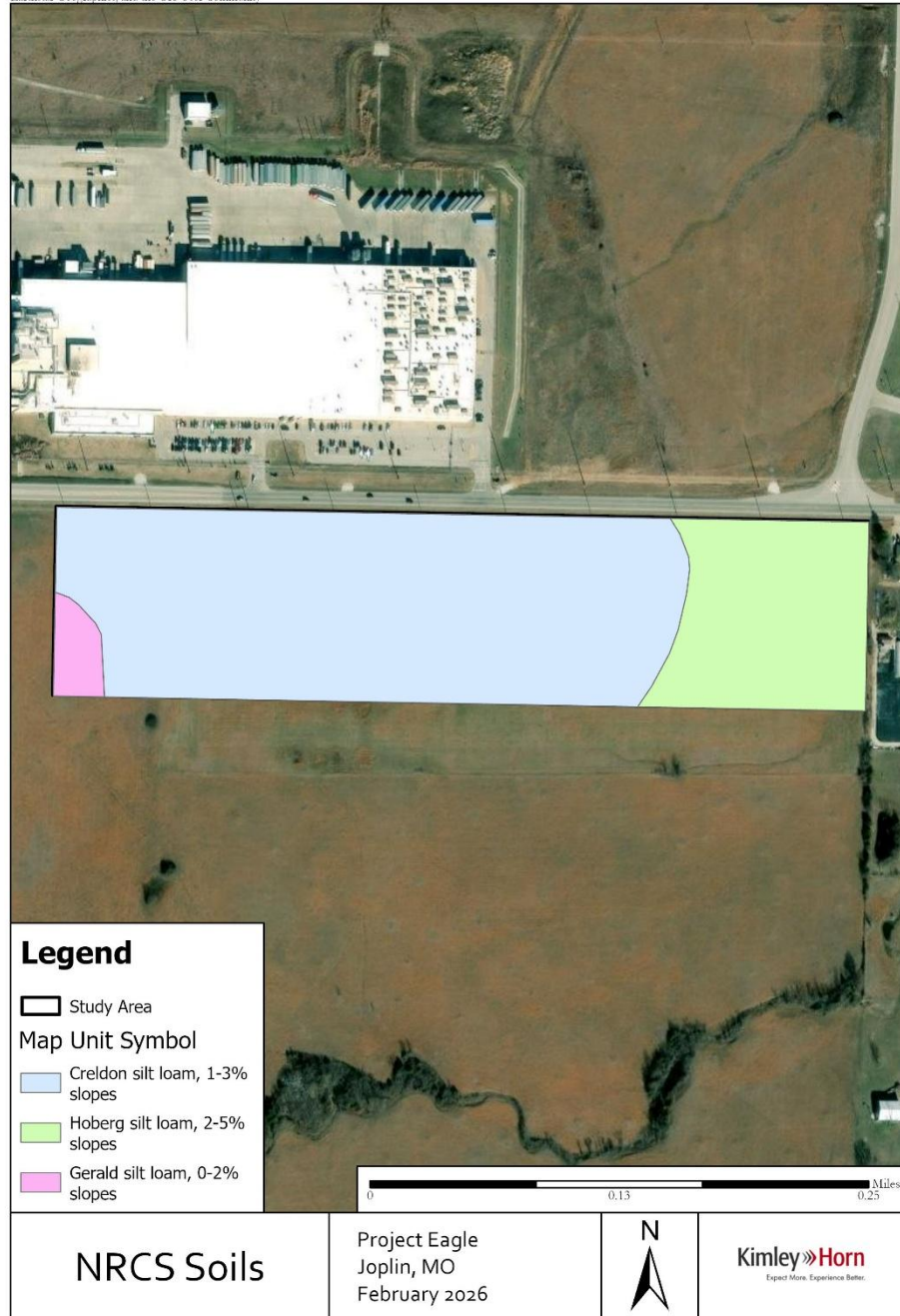


Figure 3. NRCS Soils



Figure 5. Desktop Hydrology

Esri Community Maps Contributors, Missouri Dept. of Conservation, Missouri DNR, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS, Missouri Dept. of Conservation, Missouri DNR, Esri, TomTom, Garmin, SafeGraph, FAO, METI/NASA, USGS, EPA, NPS, USFWS

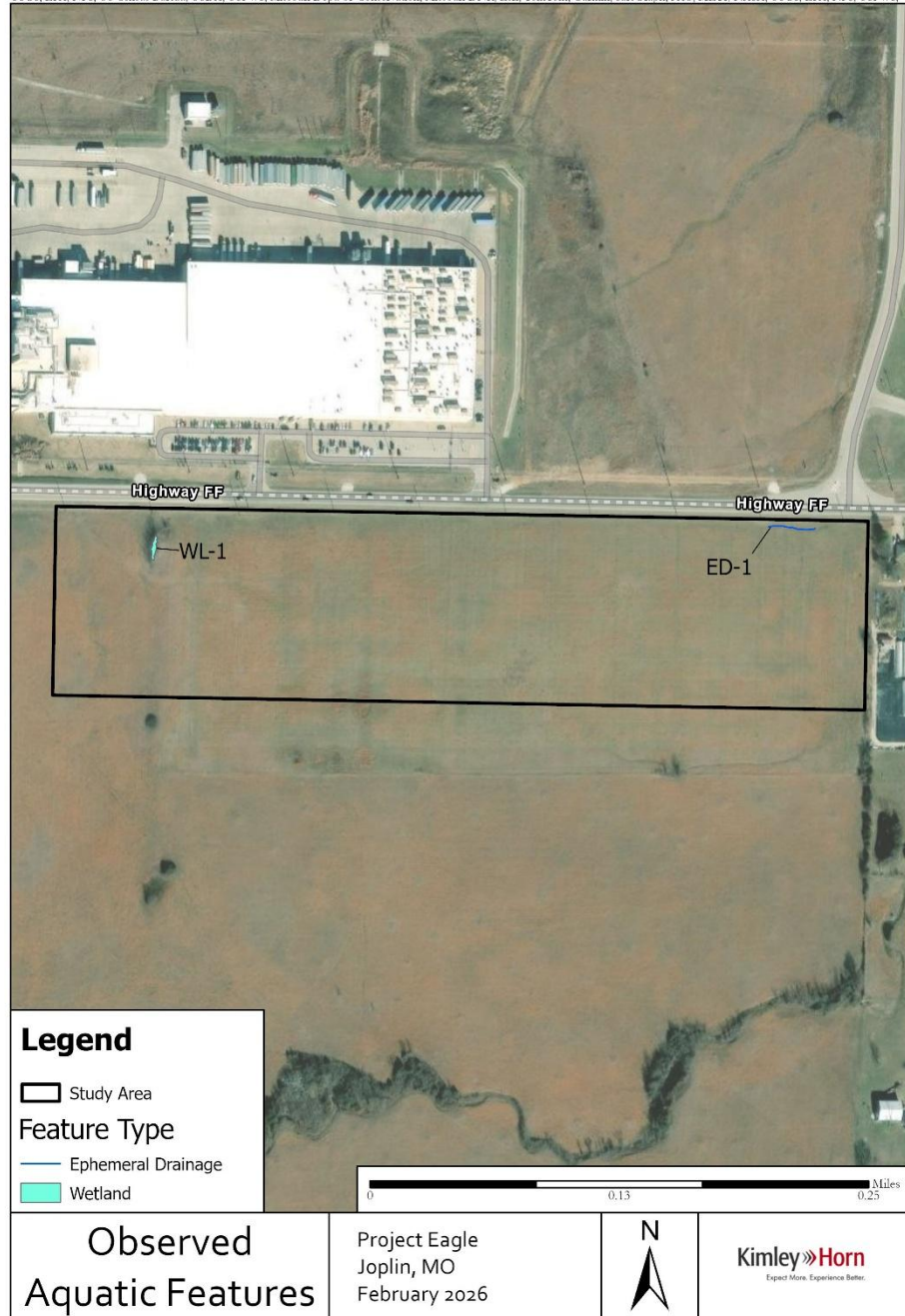


Figure 6. Observed Aquatic Features