DEPARTMENT OF THE ARMY

U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT
2488 EAST 81ST STREET
TULSA, OKLAHOMA 74137-4290

10 March 2026

CESWT-RD

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] **SWT-2024-00347**

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 in this state due to litigation.

---

[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.

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).

      Table 1. Summary of Aquatic Resources Within the Review Area.

Resource ID	Jurisdictional	Jurisdictional Authority
Open Water A	No	N/A
Stream A (Ephemeral)	No	N/A
Stream B (Ephemeral)	No	N/A
Stream C (Ephemeral)	No	N/A
Stream D (Ephemeral)	No	N/A
Stream E (Ephemeral)	No	N/A
Stream F (Ephemeral)	No	N/A
Stream G (Ephemeral)	No	N/A
Stream H (Ephemeral)	No	N/A
Stream I (Ephemeral)	No	N/A
Stream J (Ephemeral)	No	N/A
Stream K (Ephemeral)	No	N/A
Stream L (Ephemeral)	No	N/A
Stream M (Ephemeral)	No	N/A
Stream N (Ephemeral)	No	N/A
Stream O (Ephemeral)	No	N/A
Stream P (Ephemeral)	No	N/A

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 58 acres in Mannford, Creek County, Oklahoma (36.125024, -96.363315). The review area is located in Fish Creek-Salt Creek watershed (HUC 12 - 110500030508) which generally drains southwestward into Keystone Lake (impoundment of the Arkansas River).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW for aquatic resources within the northern two-thirds of the review area is the Arkansas River[5]

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

   Flow path to a point at which the Arkansas River becomes a TNW: Aquatic resources within the site drain generally southwestward, exiting the eastern project boundary and into an unnamed stream. From there, the unnamed stream continues generally southwestward before discharging into Keystone Lake (an impoundment of the Arkansas River). Keystone Lake discharges at Keystone Dam, at which the Arkansas River continues downstream becoming a TNW north of the town of Muskogee (35.817702, -95.350798).

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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.[7]

   N/A

[5] 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] 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.
[7] 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.

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): 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").[8] 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.

        Open Water A was observed totaling approximately 0.06 acres within east-central portions of the review area. This feature is a small waterfilled depression constructed along a terraced hillside within uplands. According to aerial imagery, the depression appears visible from 1995 to present day, with some imagery showing the depression dry some years. This feature is located just upgradient of Stream O but lacks a continuous surface connection with downstream Relatively

[8] 51 FR 41217, November 13, 1986.

Permanent Waters (RPWs). Therefore, it is not considered an impoundment of Stream O.

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

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).

Sixteen Non-Relatively Permanent Waters (NRPWs) possessing ephemeral flow regimes and well-defined beds and banks were identified within the review area. Table 2 provides a summary of the observed characteristics of onsite non-relatively permanent streams.

Table 2. Characteristics of Onsite Non-Relatively Permanent Streams

Feature ID	Flow Regime	Length (Feet)	Average Width (Feet)	Stream Area (Sq. Ft.)
Stream A	Ephemeral	30	15	435
Stream B	Ephemeral	524	16	8,276
Stream C	Ephemeral	205	8	1,742
Stream D	Ephemeral	62	7	435
Stream E	Ephemeral	180	15	2,613
Stream F	Ephemeral	53	8	435
Stream G	Ephemeral	1,386	4	5,227
Stream H	Ephemeral	221	10	2,187
Stream I	Ephemeral	179	10	1,742
Stream J	Ephemeral	167	8	1,306
Stream K	Ephemeral	226	13	3,049
Stream L	Ephemeral	812	11	8,712
Stream M	Ephemeral	135	6	871
Stream N	Ephemeral	117	11	1,306
Stream O	Ephemeral	438	12	5,227
Stream P	Ephemeral	51	9	435

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. Desktop evaluations concluded on 10 March 2026.

b. Imagery viewed using the Corps National Regulatory Viewer (NRV), which references the following resources: Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, IPaC, State of Florida, Maxar, Microsoft, accessed March 10, 2026

c. USFWS, National Wetlands Inventory (NWI) Mapper, March 10, 2026

d. USGS 3D elevation Program (3DEP) Bare Earth DEM, March 10, 2026

e. Google Earth Pro (years of record 1995-2025), March 10, 2026

f. The agent conducted a delineation report, dated April 18, 2025, in which they included pertinent information such as a formal delineation report, figures, drainage point data sheets, and photos of observed features.

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.

THE LAKE ESTATES OF MANNFORD

W 11th St S
48
Old Highway 48
Creek Ln
Basin Rd
Meadow Ln
Dunegan Rd
E 0610 Rd
Cimarron River
N Highway 48
S 361st West Ave
51
W Highway 51
Mannford
E Trower Blvd
Greenwood Ave
S 369th West Ave
S Highway 48
W 31st St S
D0620 Rd
Evans Ave
Dogwood
Eagle Dr
Graden Dr
Linwood Dr
W 41st St S
W 43rd Pl S
W 41st Pl
Esri, HERE, Garmin, INCREMENT P, Intermap, NGA, USGS
0 2,000 4,000 FT
Texas Parks & Wildlife, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS
1 IN = 2,000 FT

EWS
Endangered Wildlife Surveying Inc.

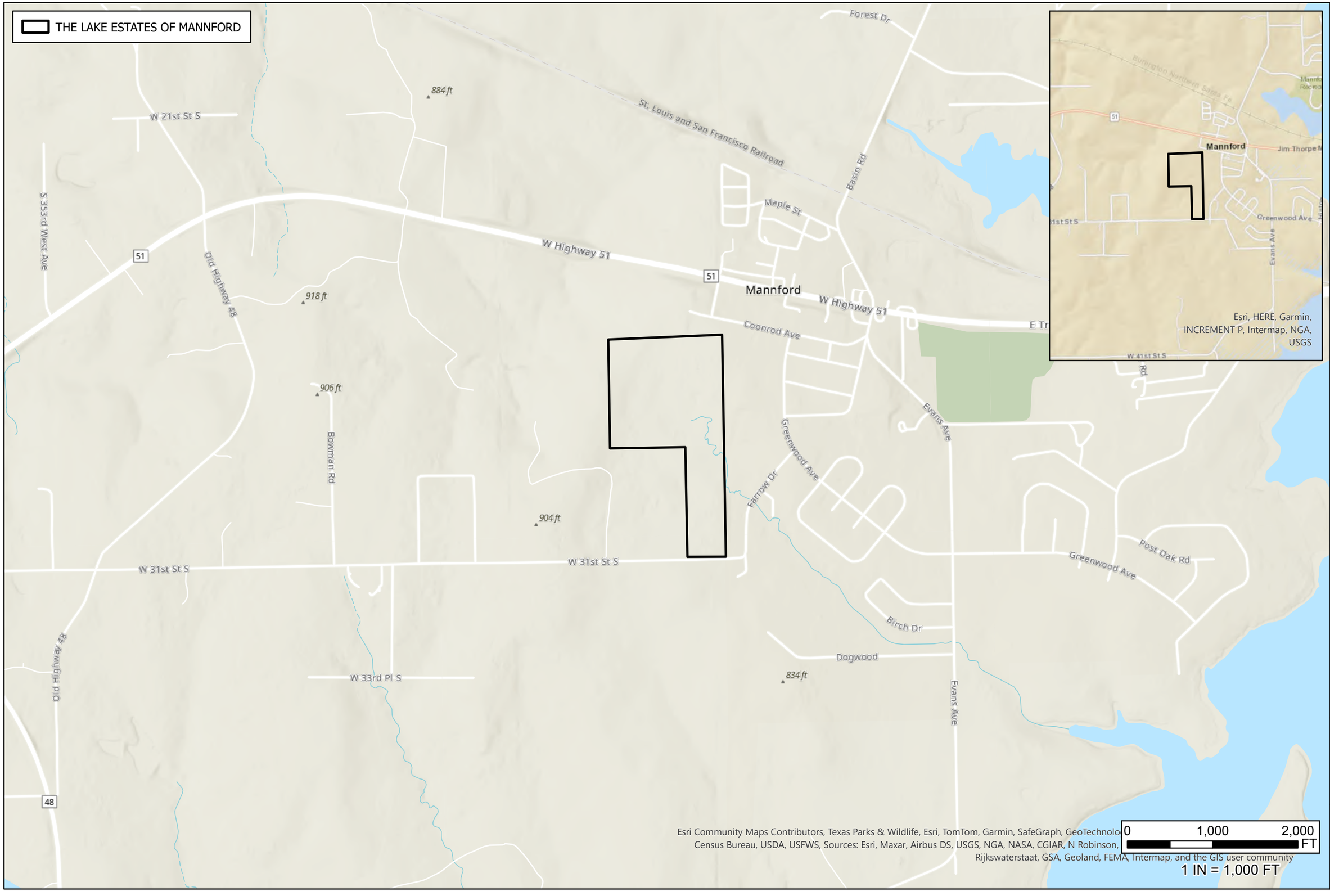
THE LAKE ESTATES OF MANNFORD
W. 31ST STREET SOUTH
MANNFORD, CREEK COUNTY, OKLAHOMA

SITE VICINITY MAP

N

DATE:
4-9-2025

FIGURE:
1



EWS
Endangered Wildlife Surveying Inc.

THE LAKE ESTATES OF MANNFORD
W. 31ST STREET SOUTH
MANNFORD, CREEK COUNTY, OKLAHOMA

USGS TOPOGRAPHIC MAP

N

DATE:
4-9-2025

FIGURE:
2

THE LAKE ESTATES OF MANNFORD

HUC8 -11050003

NWI WETLANDS

- FRESHWATER EMERGENT WETLAND
- FRESHWATER FORESTED/SHRUB WETLAND
- FRESHWATER POND
- LAKE
- RIVERINE

PUBFh

R5UBF

Woodland Rd

W 31st St S

W 31st St S

W 31st St S

Farrow Dr

Greenbrier Cir

Gardenia Cir

New Mannford

Mannford

Jim Thorpe

Greenwood Ave

Evans Ave

W 41st St S

Esri, HERE, Garmin, INCREMENT P, Intermap, NGA, USGS

Maxar, Esri Community Maps Contributors, Texas Parks & Wildlife, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

0 300 600 FT

1 IN = 300 FT

EWS Endangered Wildlife Surveying Inc.

THE LAKE ESTATES OF MANNFORD
W. 31ST STREET SOUTH
MANNFORD, CREEK COUNTY, OKLAHOMA

USFWS NWI MAP

N

DATE: 4-9-2025

FIGURE: 4

EWS
Endangered Wildlife Surveying Inc.

THE LAKE ESTATES OF MANNFORD
W. 31ST STREET SOUTH
MANNFORD, CREEK COUNTY, OKLAHOMA

FEMA-FIRM MAP

N

DATE:
4-9-2025

FIGURE:
5

THE LAKE ESTATES OF MANNFORD

Mannford

Mannford Police Department

Mannford Post Office

New Mannford

Sunset Rd

Woodland Rd

W 31st St S

Farrow Dr

Greenbrier Cir

Esri, HERE, Garmin, INCREMENT P, Intermap, NGA, USGS

Mexar, Microsoft, Esri Community Maps Contributors, Texas Parks & Wildlife, © OpenStreetMap, Mi… GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

0 400 800 FT

1 IN = 400 FT

EWS
Endangered Wildlife Surveying Inc.

THE LAKE ESTATES OF MANNFORD
W. 31ST STREET SOUTH
MANNFORD, CREEK COUNTY, OKLAHOMA

AERIAL SITE MAP

N

DATE: 4-9-2025

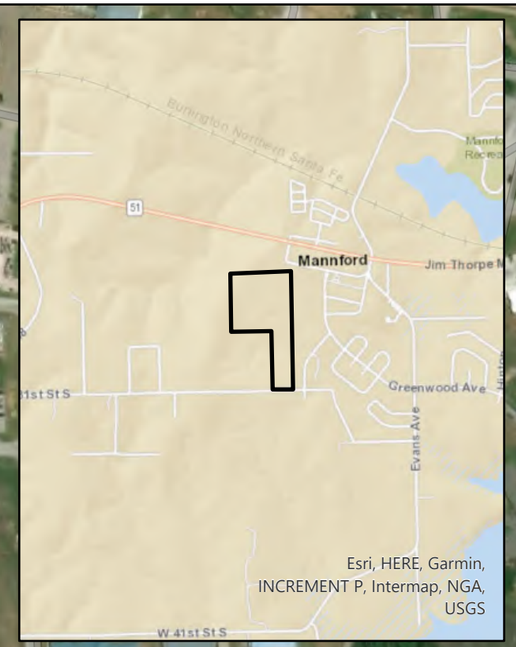
FIGURE: 6

THE LAKE ESTATES OF MANNFORD
STREAM
WETLAND
SOIL SAMPLE

Wetland A
0.06 acres

Figure 8

Figure 9



New Mannford
Gardenia Cir
Farrow Dr
Greenbrier Cir
Woodland Rd
W 31st St S

NOTES:
DELINEATED FEATURES DEPICTED HAVE NOT BEEN FORMALLY VERIFIED BY THE USACE. AQUATIC RESOURCE BOUNDARIES ARE SUBJECT TO CHANGE BASED ON REGULATORY AGENCY REVIEW. THE EXHIBIT SHOULD BE USED FOR PRELIMINARY PLANNING PURPOSES ONLY.

Mexar, Microsoft, Esri Community Maps Contributors, Texas Parks & Wildlife, © OpenStreetMap, Mi
GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

0 300 600 FT
1 IN = 300 FT

EWS
Endangered Wildlife Surveying Inc.

THE LAKE ESTATES OF MANNFORD
W. 31ST STREET SOUTH
MANNFORD, CREEK COUNTY, OKLAHOMA

AQUATIC RESOURCES DELINEATION MAP

N

DATE:
4-15-2025

FIGURE:
7

THE LAKE ESTATES OF MANNFORD
CORPS PROJECT # SWT-2024-00347
W. 31ST STREET SOUTH
MANNFORD, CREEK COUNTY, OKLAHOMA

AQUATIC RESOURCES DELINEATION MAP

N

DATE:
2-9-2026

FIGURE:
8

THE LAKE ESTATES OF MANNFORD
STREAM
WETLAND
SOIL SAMPLE

Stream F (Ephemeral)
53 LF, 0.01 acres

Stream E (Ephemeral)
180 LF, 0.06 acres

Stream D (Ephemeral)
62 LF, 0.01 acres

Stream C (Ephemeral)
205 LF, 0.04 acres

Stream B (Ephemeral)
524 LF, 0.19 acres

Farrow Dr
Greenbrier Cir
W 31st St S
W 31st St S

NOTES:
DELINEATED FEATURES DEPICTED HAVE NOT BEEN FORMALLY VERIFIED BY THE USACE. AQUATIC RESOURCE BOUNDARIES ARE SUBJECT TO CHANGE BASED ON REGULATORY AGENCY REVIEW. THE EXHIBIT SHOULD BE USED FOR PRELIMINARY PLANNING PURPOSES ONLY.

0 200 400 FT
1 IN =200 FT

Maxar, Microsoft, Esri Community Maps Contributors, Texas Parks & Wildlife, © OpenStreetMap, Mi
GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

EWS
Endangered Wildlife Surveying Inc.

THE LAKE ESTATES OF MANNFORD
W. 31ST STREET SOUTH
MANNFORD, CREEK COUNTY, OKLAHOMA

AQUATIC RESOURCES DELINEATION MAP

N

DATE:
4-15-2025

FIGURE:
9