

Appendix I

Wetland Assessment



DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
STATE REGULATORY PROGRAM OFFICE - MISSOURI
221 BOLIVAR STREET, SUITE 103
JEFFERSON CITY, MISSOURI 65101
September 10, 2012

REPLY TO
ATTENTION OF:

Missouri State Regulatory Office
(2010-02097)

Ameren Missouri
Attn: Barbara Skitt
1901 Chouteau Avenue
P.O. Box 66149
St. Louis, Missouri 63166-6149

Dear Ms. Skitt:

This letter is in follow up to our August 15, 2012, site visit with Ameren Missouri regarding the 1,100 acre area on Ameren Missouri's property adjacent to the Labadie Power Plant in Franklin County, Missouri, for a potential coal ash waste landfill project. We previously provided Ameren Missouri with a Preliminary Jurisdictional Determination (PJD) for this area by letter dated May 23, 2012. The wetlands identified in the May 23 PJD remain jurisdictional waters of the United States.

During the site visit, we documented two additional wetlands totaling 9.58 acres, and have documented these new sites in the enclosed revised PJD as w13 (5.04 acres) and w14 (4.54 acres), shown on the aerial photo attached to the PJD (Attachment 1). This revised PJD consolidates and replaces the PJD of May 23, 2012.

Upon review of Ameren Missouri's revised drawings received on July 23, 2012, and our August 15, 2012 site visit, we conclude that jurisdictional wetlands are located within the revised project area. The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including the wetlands identified in the enclosed PJD, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-332.

The enclosed PJD was prepared at Ameren Missouri's request and in accordance with Corps regulations at 33 CFR Part 331. PJDs, while sufficient for permit determinations, are not appealable. If you wish, you may request an Approved Jurisdictional Determination (which may be appealed) by contacting our office for further instructions. To continue with review of your project using the PJD, please sign the PJD signature block, and return the form to our office.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid

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for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

Additionally, we received an August 28, 2012 letter from Daniel J. Deeb (Shiff Hardin LLP – representing Ameren Missouri) addressed to Mr. Matt Jeppson with our Office of Counsel. The subject letter indicates concern with a reevaluation of the May 23, 2012, PJD. As discussed in our June 29, 2012, conference call, we reported that we had learned of a piezometer study prepared for the Missouri Department of Natural Resources, and requested a copy of that report in addition to our information request of June 27, 2012. We concluded that the piezometer study was new information, information not considered in our original PJD, and that reevaluation of the PJD was necessary to ensure that it was a complete and accurate jurisdictional determination. We thank you for your cooperation in providing a copy of the piezometer study/report for our review.

The August 28, 2012 letter also requests that the Corps consider the applicability of “prior converted cropland” (PC) in any reevaluation. The USDA PC classification is an agricultural use classification, and generally, lands with a Certified PC determination, that remain in agricultural use, are not jurisdictional for Clean Water Act purposes. For lands not used for agricultural purposes, or proposed for a new use, the Corps provides Clean Water Act jurisdictional determinations using the Corps wetland delineation manual and applicable regional supplement. We will consider any information contained in a prior USDA determination when available. However, we note that the Natural Resources Conservation Service (NRCS), in a letter furnished to us as part of your December 2011 consultant prepared wetland delineation report, stated that NRCS had not made any certified determinations inside the boundary of the study area. A copy of the NRCS letter is enclosed (Attachment 2).

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. We have placed an automated version of our Customer Service Survey form on our website at: <http://per2.nwp.usace.army.mil/survey.html> which can be filled in and submitted online. At your request, we will mail a paper copy that you may complete and return to us by mail or fax.

If you have any questions concerning this matter, please feel free to write or call me at 816-389-3833.

Sincerely,



Kenny Pointer
Regulatory Project Manager
Missouri State Regulatory Office

Enclosures

Copies Furnished (w/enclosures):

Natural Resources Conservation Service
Attn: Ms. Rhonda Davault
10820 Hwy. 21, Suite 100
Hilsboro, MO 63050-5208

Mr. and Mrs. Edward G. Heisel
1776 Highway T
Labadie, MO 63055

DRN FARMS, LLC

Mr. and Mrs. Marvin J. Newman
929 Cobblestone Drive
Washington, MO 63090

Mr. Merle Newman
1352 Highway K
St. Clair, MO 63077

Mr. and Mrs. Dennis Eckelkamp
33 South Oak Street
Union, MO 63084

Mr. and Mrs. Jerry Newman
1702 Highway T
Labadie, MO 63055

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 7/23/2012.

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:
Barbara Skitt (Ameren Missouri), 1901 Chouteau Avenue, P.O. Box 66149, St. Louis, MO 63166-6149

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWK, Ameren Missouri, NWK-2010-02097.

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:
Wetlands adjacent to the Missouri River on a 1,110 acre site adjacent to Ameren Missouri's Labadie Power Plant in Franklin, County Missouri.

State: Missouri County/parish/borough: Franklin City:
Center coordinates of site (lat/long in degree decimal format): Lat.
38.558638° N, Long. -90.815669° E.

Name of nearest waterbody: Missouri River.

Identify (estimate) amount of waters in the review area: **See attached table for multiple waterbodies at different locations.**

Non-wetland waters: linear feet: width (ft) and/or acres.

Cowardin Class:

Stream Flow:

Wetlands: **See attached table** acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☐ Office (Desk) Determination. Date:

☒ Field Determination. Date(s): 4/24/2012 and 8/15/2012.

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "*may be*" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: information submitted by Ameren Missouri.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant. (March 2011, December 2011 and March 2012 reports)
- ☐ Office concurs with data sheets/delineation report.
- ☒ Office does not concur with data sheets/delineation report. There are additional wetlands on the property in addition to the wetlands identified in the reports prepared by the consultant.
- ☐ Data sheets prepared by the Corps: .
- ☒ Corps navigable waters' study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
- ☐ USGS NHD data.
- ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute U.S.G.S. topographic map, Labadie, Missouri Quadrangle.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Franklin County Soil Survey.
- ☒ National wetlands inventory map(s). Cite name: USFWS NWI mapping.
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth (2002-2011) and USDA/NRCS aerial photos included in consultant prepared reports.
- or ☐ Other (Name & Date): .
- ☒ Previous determination(s). File no. and date of response letter: 2010-02097, 5/23/2012.
- ☒ Other information (please specify): 8/17/2011, 4/24/2012 and 8/15/2012 site visits.

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

 8/30/2012
Signature and date of
Regulatory Project Manager

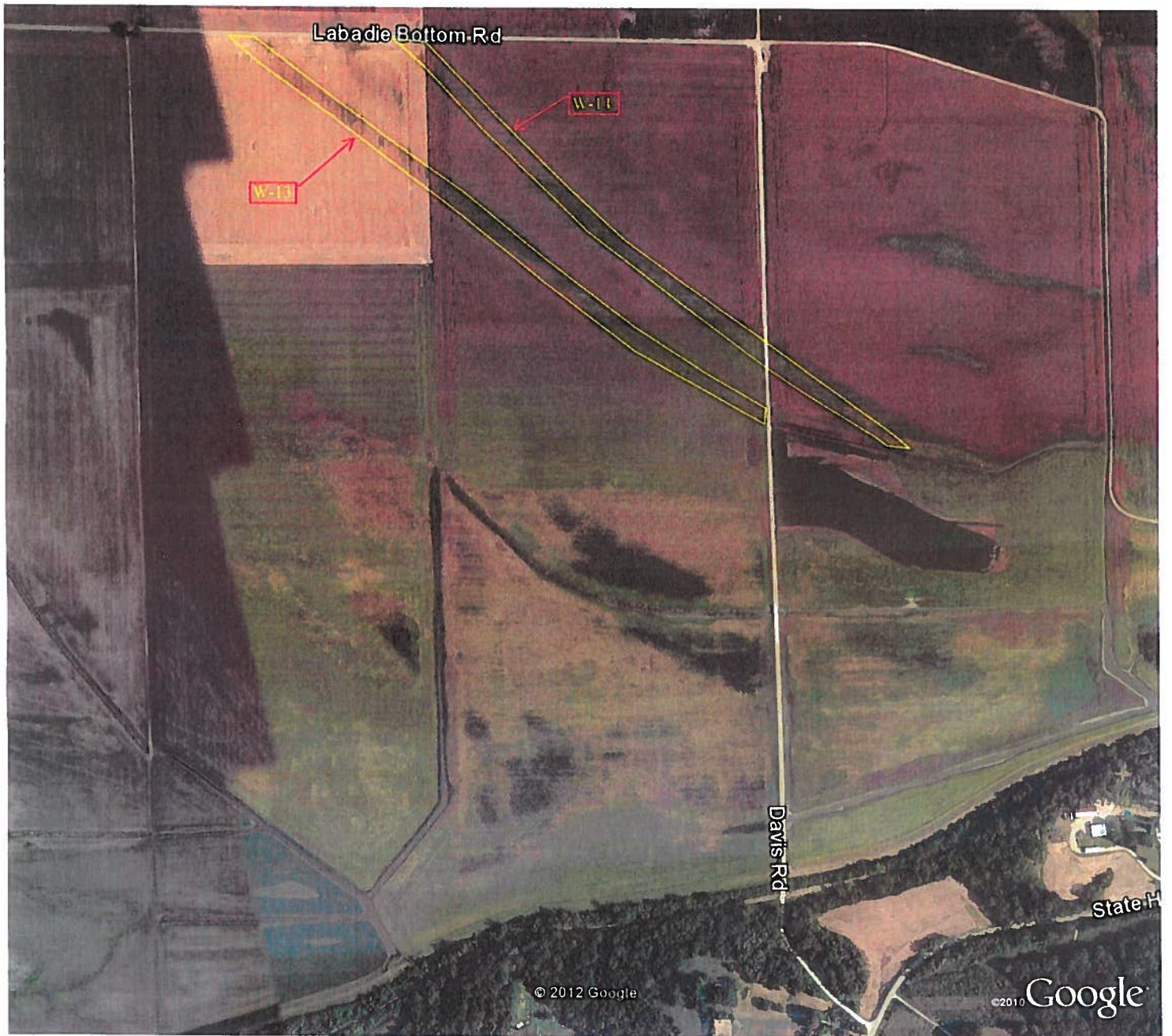
Signature and date of
person requesting preliminary JD

(REQUIRED)

(REQUIRED, unless obtaining
the signature is impracticable)

Site number	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
1 wetlands adjacent to Missouri River – w1	38.559695 ° N	- 90.823825 ° E	PEM – Palustrine, Emergent	2.75 acres	non-section 10 – wetland
2 Wetlands adjacent to Missouri River – w2	38.555153 ° N	- 90.825708 ° E	PEM – Palustrine, Emergent	1.3 acres	non-section 10 – wetland
3 Wetlands adjacent to Missouri River – w3	38.553148 ° N	- 90.820124 ° E	PEM – Palustrine, Emergent	0.67 acres	non-section 10 – wetland
4 Wetlands adjacent to Missouri River – w4	38.557749 ° N	- 90.815697 ° E	PEM – Palustrine, Emergent	1.76 acres	non-section 10 – wetland
5 Wetlands adjacent to Missouri River – w5	38.561567 ° N	- 90.804698 ° E	PEM – Palustrine, Emergent	1.17 acres	non-section 10 – wetland
6 Wetlands adjacent to Missouri River – w6	38.556807 ° N	- 90.811979 ° E	PEM – Palustrine, Emergent	8.11 acres	non-section 10 – wetland

7 Wetlands adjacent to Missouri River – w7	38.554125 ° N	- 90.810176 ° E	PEM – Palustrine, Emergent	0.87 acres	non-section 10 – wetland
8 Wetlands adjacent to Missouri River – w8	38.560733 ° N	- 90.821406 ° E	PEM – Palustrine, Emergent	1.08 acres	non-section 10 – wetland
13 Wetlands adjacent to Missouri River – w13	38.560732 ° N	- 90.813483 ° E	PEM – Palustrine, Emergent	5.04 acres	non-section 10 – wetland
14 Wetlands adjacent to Missouri River – w14	38.561222 ° N	- 90.812759 ° E	PEM – Palustrine, Emergent	4.54 acres	non-section 10 – wetland



Attachment 1

United States Department of Agriculture



Natural Resources Conservation Service
10820 Hwy. 21, Suite 100
Hillsboro, Missouri 63050-5208
Fax: 636-789-2175

Phone: 636-789-2441 ext. 3

Subject: Ameren Property in Franklin Co. Date: May 24, 2011

To: Barbara Skitt
Ameren Services

Barbara-

I have examined the maps for certified wetland determinations in the area outlined on the map received from you. NRCS has not made any certified determinations inside the boundary of the area.

If you need additional information feel free to call.

David Skaer
NRCS ARSS

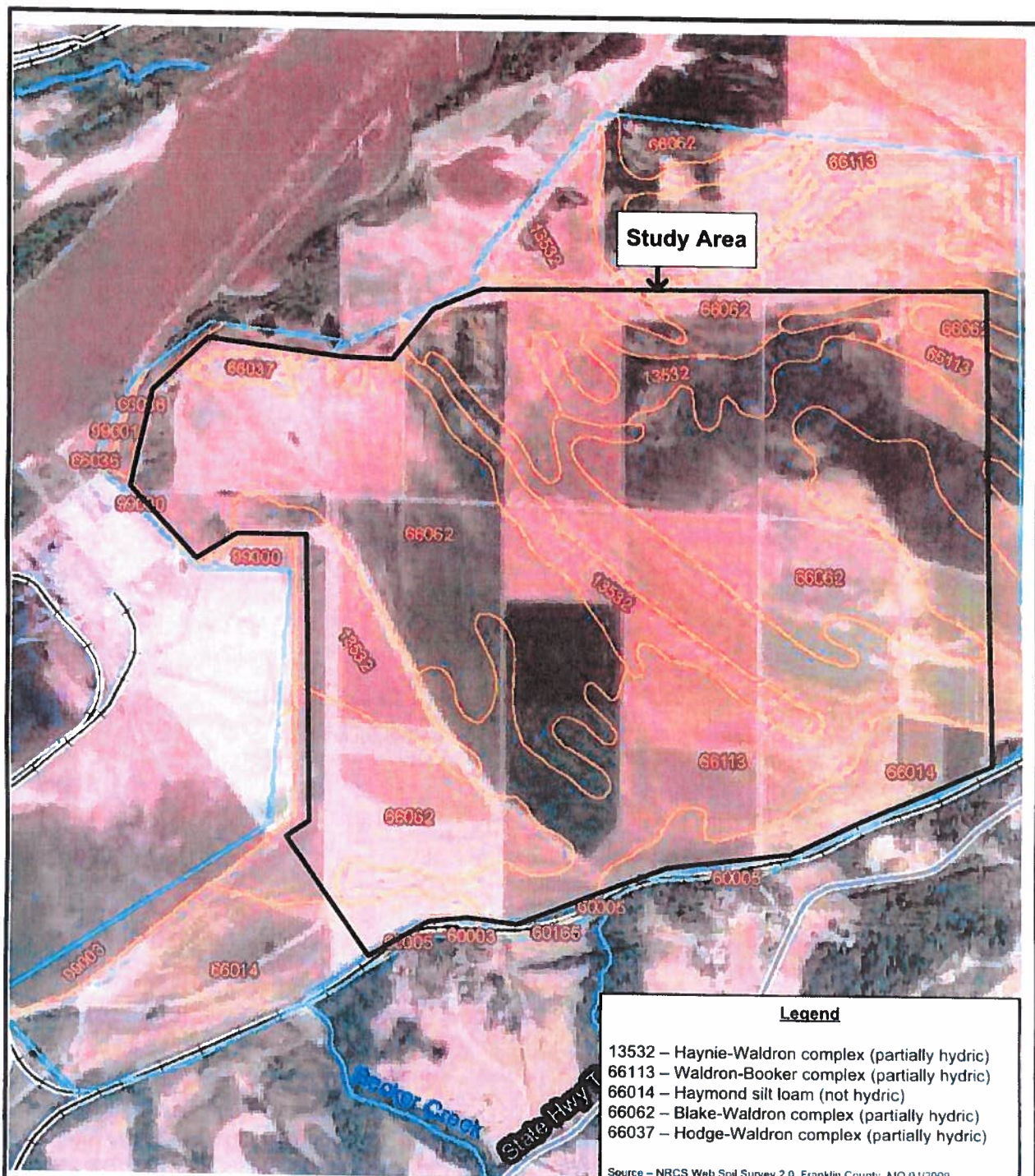
Cc Rhonda Davault, NRCS District Conservationist

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

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Attachment 2, pg. 1

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Source: NRCS Web Soil Survey, Franklin County, Missouri



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NRCS Soil Map

Reitz & Jens, Inc
1,198-Acre Labadie Site
Franklin County, Missouri

JOB NO. 08E0229

FIGURE 4

Attachment 2, pg. 2

SCHEDULE CJG-ST1