



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
600 VESTAVIA PARKWAY, SUITE 203
VESTAVIA HILLS, ALABAMA 35216

CESAM-RD-N

March 28, 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 SAM-2023-01182-BAM, MFR #1 of #1²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Mississippi due to litigation.

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).

Waters_Name	Latitude	Longitude	Waters Size	Type Of Aquatic Resource	Geographic Authority
E-1	33.67685	-88.416	386 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
I-1	33.67804	-88.4164	1518 FEET	A5.TRIB-404	Section 404
OW-1-2-3	33.67782	-88.4182	1.22 ACRES	A5.TRIB-404	Section 404
P-1	33.67731	-88.4122	1256 FEET	A5.TRIB-404	Section 404
P-2	33.67588	-88.4114	394 FEET	A5.TRIB-404	Section 404
P-3	33.67793	-88.4068	2988 FEET	A5.TRIB-404	Section 404
P-4	33.67689	-88.407	1066 FEET	A5.TRIB-404	Section 404
P-5	33.67937	-88.4049	270 FEET	A5.TRIB-404	Section 404
P-6	33.68019	-88.4028	1431 FEET	A5.TRIB-404	Section 404
PEM-1	33.67785	-88.4108	1.57 ACRES	NON-WOTUS-WETL.NEGATIVE-A7	None
PFO-1	33.68004	-88.4182	.47 ACRES	A7-AJD.WETL-404	Section 404
PFO-10	33.68168	-88.4106	.19 ACRE	NON-WOTUS-WETL.NEGATIVE-A7	None
PFO-2	33.67813	-88.4076	.38 ACRE	NON-WOTUS-WETL.NEGATIVE-A7	None
PFO-3	33.67758	-88.4066	.61 ACRE	NON-WOTUS-WETL.NEGATIVE-A7	None
PFO-4	33.68019	-88.406	.43 ACRE	NON-WOTUS-WETL.NEGATIVE-A7	None
PFO-5	33.67985	-88.4059	.05 ACRE	NON-WOTUS-WETL.NEGATIVE-A7	None
PFO-6	33.67972	-88.4056	.1 ACRE	NON-WOTUS-WETL.NEGATIVE-A7	None
PFO-7	33.6803	-88.404	2.49 ACRES	NON-WOTUS-WETL.NEGATIVE-A7	None
PFO-8	33.67983	-88.4035	.34 ACRE	NON-WOTUS-WETL.NEGATIVE-A7	None
PFO-9	33.68156	-88.4046	.21 ACRE	NON-WOTUS-WETL.NEGATIVE-A7	None
PSS-1	33.6784	-88.4164	1.19 ACRES	A7-AJD.WETL-404	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 is a 208.6-acre site centered at latitude 33.680108, longitude -88.411745 near Caledonia, Monroe County, Mississippi. The site has had disturbances from previous mining and logging operations. The surrounding area, particularly the adjacent property to the north and west has had substantial disturbances due to mining, resulting in numerous areas of pits with standing water that eventually drain to the Buttahatchee River to the south.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Buttahatchee River, which is on the Mobile District's Section 10 waters list. Section 10 waters are a subset of TNWs. ⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

OW-1-2-3 is part of a larger abandoned mine pit which extends west outside of the review area, under a railroad into another abandoned mine pit, over a small access road to the Buttahatchee River for a total distance of approximately 0.5 mile.

PSS-1 and PFO-1 abut OW-1-2-3 and flows into the Buttahatchee River as described above.

P-1, P-2, P-3, P-4, P-5 and P-6 drain directly to the Buttahatchee River.

⁶ 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.

E-1 and I-1 flow into P-1 which drains directly to the Buttahatchee River.

PEM-1, PFO-2, PFO-3, PFO-4, PFO-5, PFO-6, PFO-7, PFO-8, PFO-9, and PFO-10 are surrounded by uplands and do not drain to a TNW, interstate water or territorial seas.

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁷ 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.

⁸ 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.

e. Tributaries (a)(5):

The Antecedent Precipitation Tool (APT) indicates at the time of the June 20, 2024 site visit it was the dry season, the area was experiencing mild drought, and it was drier than normal.

I-1 is 1,517.7 feet long that exhibits defined bed and banks, moderate sinuosity, depositional bars, wrack lines, and missing/bent vegetation. Water was flowing at the time of the site visit on June 20, 2024, giving an indication of strong base flow. Based on these hydrologic and geomorphologic indicators observed, it is concluded that I-1 is a relatively permanent tributary with year-round flow.

P-1 is 1,256 linear feet long and exhibits defined bed and banks, strong sinuosity, riffle-pool complexes, sediment sorting, depositional bars, high water table, macrobenthos, and wetland plants in streambed. Water was flowing at the time of the site visit on June 20, 2024, giving an indication of strong base flow. Based on these hydrologic, geomorphologic, and biological indicators observed, it is concluded that P-1 is a relatively permanent tributary with year-round flow.

P-2 is 394 linear feet long and exhibits defined bed and banks, strong sinuosity, riffle-pool complexes, sediment sorting, depositional bars, high water table, macrobenthos, and wetland plants in streambed. Water was flowing at the time of the site visit on June 20, 2024, giving an indication of strong base flow. Based on these hydrologic, geomorphologic, and biological indicators observed, it is concluded that P-2 is a relatively permanent tributary with year-round flow.

P-3 is 2,988 linear feet long and exhibits defined bed and banks, strong sinuosity, riffle-pool complexes, sediment sorting, depositional bars, high water table, macrobenthos, and wetland plants in streambed. Water was flowing at the time of the site visit on June 20, 2024, giving an indication of strong base flow. Based on these hydrologic, geomorphologic, and biological indicators observed, it is concluded that P-3 is a relatively permanent tributary with year-round flow.

P-4 is 1,066 linear feet long and exhibits defined bed and banks and strong sinuosity. Historic Google Earth images depict water in P-4. Based on these observations, and the observations made by the agent, it is concluded that P-4 is a relatively permanent tributary with year-round flow.

P-5 is 270 linear feet long and exhibits defined bed and banks. Historic Google Earth images depict water in P-5 consistently. Based on these observations and the observations made by the agent, it is concluded that P-5 is a relatively permanent tributary with year-round flow.

P-6 is 1,431 linear feet long and exhibits defined bed and bank and strong sinuosity. Historic Google Earth images depict water in P-5 consistently. Based on these observations and observations made by the agent, it is concluded that P-6 is a relatively permanent tributary with year-round flow.

OW-1-2-3 appears to have been created in a tributary and possibly wetlands during previous mining operations. OW-1-2-3 is part of a larger abandoned mine pit that holds water year-round based on a review of historic Google Earth images, indicating it is relatively permanent. Water in OW-1-2-3 flows under the railroad into another abandoned mine pit which connects directly to the Buttahatchee River. Because OW-1-2-3 was created in waters and has a tributary flowing into it, holds water year-round and is directly connected to the Buttahatchee River, it is jurisdictional as a tributary.

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7):

PFO-1 is a 0.47 acre forested wetland that abuts OW-1-2-3, meaning the wetland extends laterally to the bank of OW-1-2-3, a relatively permanent water connected to the Buttahatchee River. Because PFO-1 abuts a RPW, it is considered an adjacent, jurisdictional wetland.

PSS-1 is a 1.19-acre scrub-shrub wetland that abuts OW-1, meaning the wetland extends laterally to the bank of OW-1-2-3, a relatively permanent water connected to the Buttahatchee River. Because PSS-1 abuts a RPW, it is considered an adjacent, jurisdictional wetland.

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”).⁹ 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

⁹ 51 FR 41217, November 13, 1986.

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).

E-1 is approximately 386 linear feet in length and flows into P-1. E-1 exhibits weak bed and banks characteristics and lacked signs of groundwater contribution to flow regime. No hydrophytic vegetation was found in or near the channel. No hydric soils were observed from a sample taken from the edge of channel indicating there is not a high water table at this location. Based on these observations, it appears E-1 only flows in response to rainfall events and is therefore a non-relatively permanent tributary and is not jurisdictional.

PEM-1 is a 1.57-acre emergent wetland that is situated in a depression. It is completely surrounded by uplands and therefore does not abut a requisite water. Approximately 275 feet of uplands are between the wetland and P-1. Therefore, PEM-1 is not adjacent and not jurisdictional.

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PFO-2 is a 0.38-acre forested wetland that is situated in a depression. It is completely surrounded by uplands and does not abut a requisite water; therefore. PFO-2 is non-jurisdictional.

PFO-3 is a 0.61-acre forested wetland that is situated in a depression. It is completely surrounded by uplands and does not abut a requisite water; therefore. PFO-3 is non-jurisdictional.

PFO-4 is a 0.43-acre forested wetland that is situated in a depression. It is completely surrounded by uplands and does not abut a requisite water; therefore. PFO-4 is non-jurisdictional.

PFO-5 is a 0.05-acre forested wetland that is situated in a depression. It is completely surrounded by uplands and does not abut a requisite water; therefore. PFO-5 is non-jurisdictional.

PFO-6 is a 0.1-acre forested wetland that is situated in a depression. It is completely surrounded by uplands and does not abut a requisite water; therefore. PFO-6 is non-jurisdictional.

PFO-7 is a 2.49-acre forested wetland that is situated in a depression. It is completely surrounded by uplands and does not abut a requisite water; therefore. PFO-7 is non-jurisdictional.

PFO-8 is a 0.34-acre forested wetland that is situated in a depression. It is completely surrounded by uplands and does not abut a requisite water; therefore. PFO-8 is non-jurisdictional.

PFO-9 is a 0.21-acre forested wetland that is situated in a depression. It is completely surrounded by uplands and does not abut a requisite water; therefore. PFO-9 is non-jurisdictional.

PFO-10 is a 0.19-acre forested wetland that is situated in a depression. It is completely surrounded by uplands and does not abut a requisite water; therefore. PFO-10 is non-jurisdictional.

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.

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- a. MMC Materials report “Wetlands and Other Waters of the U.S. Delineation” report, December 2023, revised June 2024.
- b. Google Earth Pro, accessed March 26, 2025
- c. National Regulatory viewer, USGS topo, Lidar
- d. Site visit June 20, 2024

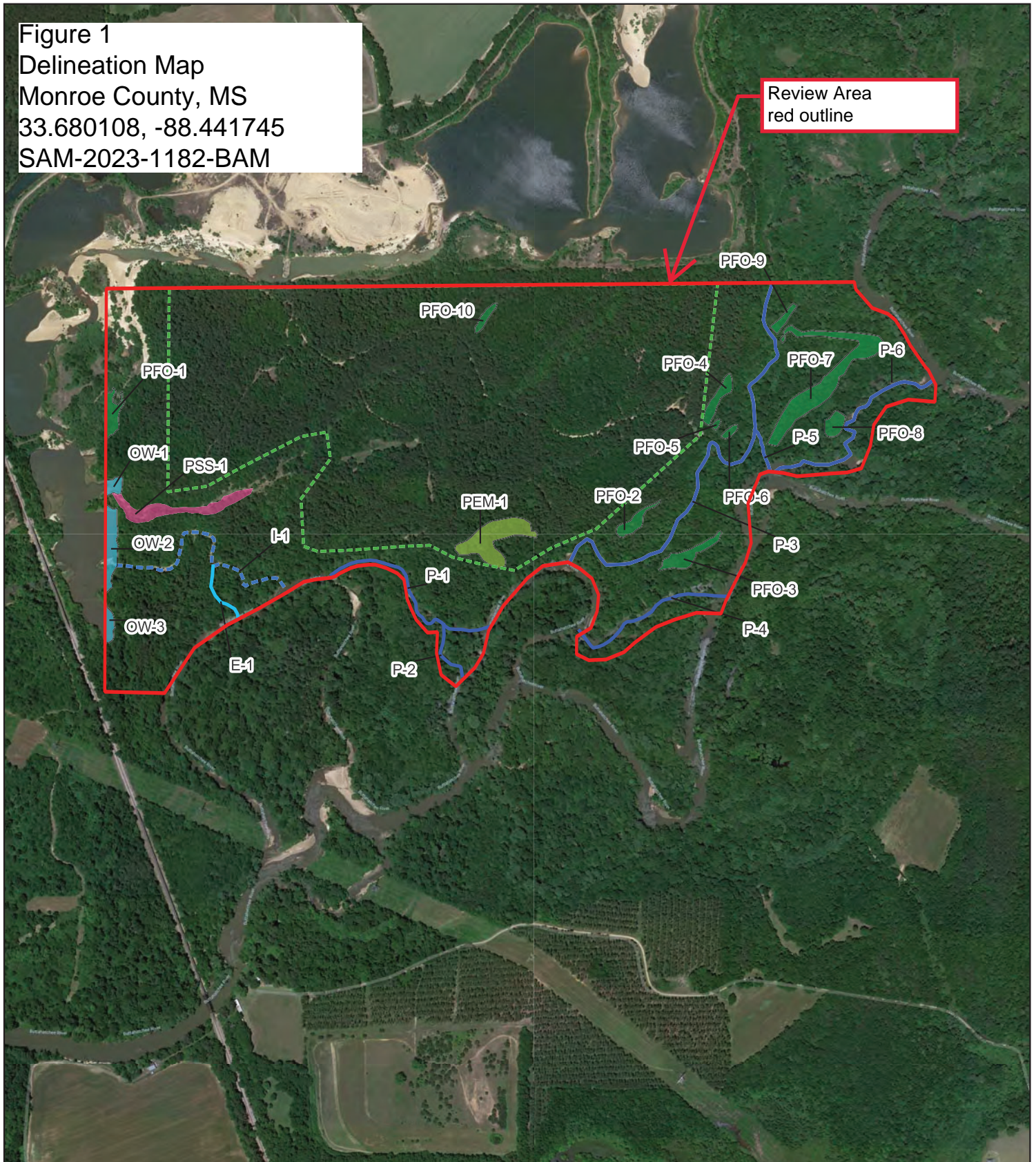
10. OTHER SUPPORTING INFORMATION.

- a. *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.

In accordance with this memorandum, “the Supreme Court in *Sackett* provided a clear two-part test for determining CWA jurisdiction over adjacent wetlands. First, the adjacent body of water must be a “water of the United States,” which generally means traditional navigable waters, or a relatively permanent body of water connected to a traditional navigable water. Second, the wetland, assuming it satisfies the agencies’ longstanding regulatory definition of “wetlands” at 33 C.F.R. 328.3 and 40 C.F.R. 120.2, must have a continuous surface connection to a requisite covered water making it difficult to determine where the water ends and wetland begins.” This was used to support the determination for the wetlands in the review area.

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
Delineation Map
Monroe County, MS
33.680108, -88.441745
SAM-2023-1182-BAM



Review Area
red outline

Disclaimer:

The information contained in this map was generated from GIS data maintained by different sources and agencies. Some limitations may apply based upon restrictions imposed by other sources or agencies providing data directly to Allen Engineering and Science, Inc. (AllenES) or making data available to download via internet. Areas depicted by these products are approximate, and are not necessarily accurate to mapping, surveying, or engineering standards. These digital products are for illustration purposes only, are not suitable for site-specific decision making, are subject to constant changes, and may not be complete, accurate or current. Any specific coordinates may be in error by several hundred feet or more. A data layer may have registration errors and not overlay with other data layers correctly.

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LEGEND

- Approximate Review Area Boundary (208.60 Ac. +/-)
- Approximate Clear Cut Boundary (107.43 Acres +/-)
- Approximate Ephemeral Channel (E) (386.39 ft. +/-)
- Approximate Intermittent Channel (I) (1,517.71 ft. +/-)
- Approximate Perennial Channel (P) (7,405.09 ft. +/-)
- Approximate Emergent Wetlands (PEM) (1.57 Ac. +/-)
- Approximate Abandoned sand and gravel pits (OW) (1.22 Ac. +/-)
- Approximate Forested Wetlands (PFO) (5.27 Ac. +/-)
- Approximate Scrub/Shrub Wetlands (PSS) (1.19 Ac. +/-)

MMC MATERIALS INC
ABERDEEN, MONROE COUNTY, MISSISSIPPI

ALLEN ENGINEERING AND SCIENCE

Scale: 1" = 550'	DRAWN BY: OB	DATE: 06/20/24
	CHKD BY: BY	DATE: 06/21/24

PROJECT NO. 23183	CAD FILE: 23183 FIG04 ESC 121823
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EXISTING SITE CONDITIONS MAP	FIGURE 4
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Source: Google Satellites 2022