



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
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MOBILE, AL 36628-0001

South Mississippi Branch
Regulatory Division

28 MAY 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-2024-00495-SMP, Groveland Road Lot, Ocean Springs, Mississippi
(MFR 1 of 1)²

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

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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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 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).

Aquatic Resource Name	Location	Water Size	Type of Aquatic Resource	Geographic Authority
W-1	30.4149°N, -88.7654°W	8.38 acres	A7. NON-WOTUS WETLAND. NEGATIVE-A7.	None

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)
 - e. 2008 Rapanos Guidance
3. REVIEW AREA. The approximately 9.55-acre site is located on the north side of Groveland Road; within Section 23, Township 7 South, Range 8 West; Latitude 30.4149° North and Longitude 88.7654° West; Ocean Springs, Jackson County, Mississippi. Immediately to the east and west of the site consists of residential developments. To the north of the site is a sports complex and to the south of the site is a mix of residential and commercial developments. The review area is mostly forested wetlands with only 1.17 acres of upland located at the perimeter of the site in areas previously filled and/or disturbed for utility easements and access.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Old Fort Bayou, which is a TNW approximately 0.8 mile north of the site boundary. Old Fort Bayou is on the Mobile District's Section 10 Waters list and is therefore a TNW.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. W-1 is a forested wetland that abuts a storm drain within Ditch 1 on the eastern boundary of the review area, which then flows northward for approximately 60 feet before entering a culvert on the northeast corner of the review area. This culvert empties into a large ditch (Ditch 2), which is outside the northern boundary of the review area and continues for approximately 0.95 mile to the north/northwest before reaching Old Fort Bayou, a TNW.
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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.
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.

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.

- 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. 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.

⁸ 51 FR 41217, November 13, 1986.

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- 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).

W-1 is an approximately 8.38-acre forested wetland located north of Groveland Road in Ocean Springs, Mississippi. W-1 is bordered by transmission line easements (uplands – see Supplemental Data Sheets 1 - 4) to the north and west, which separate it from the apparent RPW (Ditch 2) located just outside the northern boundary of the review area.

A site visit was conducted on March 11, 2025. During the site visit it was observed that surface flow from W-1 enters into a storm drain within non-RPW Ditch 1 at position (30.4154, -88.7639), then flows approximately 60 feet in the drain before entering into a large culvert located at the northeast corner of the property, just outside the review area. This culvert empties into a large ditch (Ditch 2) which runs east to west along the north boundary just outside the review area. This ditch appears to be relatively permanent (RPW) based on observations of aquatic flora and fauna (crayfish and crayfish burrows, algal mats, duckweed, and bladderwort), the presence of hydric soil indicators, and observations of standing water documented through several site visits; however, uplands separate W-1 and Ditch 2. There is an additional concrete swale running south to north, outside the western review area boundary. This feature also appears to be relatively permanent (RPW), based on observations of aquatic flora and fauna (tadpoles, crayfish, algal mats, and duckweed) and observations of standing water in different seasons, however, uplands separate W-1 from the swale. Although water from W-1 drains to the nearby northern ditch (Ditch 2) through non-jurisdictional features, it does not abut a TNW, territorial sea, interstate water, relatively permanent tributary, or jurisdictional impoundment; therefore, it does not have a continuous surface connection to a requisite water and is not jurisdictional.

Consideration was given to joint-decision memos NWO-2003-60436 and LRB-2021-01386, which reference a divided wetland functioning as a single wetland. Based on elevation, soil, and vegetation types, there are potential offsite wetlands to the north and northwest of the review area. However, these areas appear to be separated from W-1

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by utility roads, development, and higher elevation areas. The north side of the review area is bordered by a utility easement/road measuring approximately 40-ft wide as well as a previously developed public sports complex, separating W-1 and the potential wetland areas further to the north. Likewise, the northwest corner of the review area is bordered by a utility easement/road and wooded areas and powerline easements directly northwest of the review area are at higher elevations than the review area, which likely separates W-1 and any potential wetland areas to the northwest. The areas outside the review area were not accessed during any USACE site visits and therefore no hydrologic data was obtained to assess potential shallow sub-surface connection. There are no direct hydrologic connections (such as a culverts) between W-1 and any potential offsite wetlands to the north/northwest, and the presence of any shallow sub-surface connection is unlikely due to the presence of the utility road, previous development, and apparent uplands. Prior to construction in these areas, W-1 and the wetlands to the north and northwest may have abutted one another and functioned as one wetland system. Given the extent of uplands physically separating W-1 from the north and northwest, and the absence of a direct hydrologic connection or shallow subsurface connection, the two wetland areas are not considered to be a divided wetland functioning as one.

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. Site visits, October 4, 2024, February 11, 2025, and March 11, 2025.
- b. Office evaluations, November 26, 2024, and March 13, 2025.
- c. USACE National Regulatory Viewer (NRV) LiDAR Elevations and Hillshade, NHD Maps and DEM data from the NRV, and Soil Maps from the USDA Web Soil Survey.
- d. Wetland delineation report and associated data sheets prepared by Brown, Mitchell, & Alexander, Inc. on October 17, 2022.
- e. Antecedent Precipitation Tool (APT) Data from site visits on October 4, 2024, February 11, 2025, and March 11, 2025.
- f. Supplemental Data Sheets dated 3/25/2025, provided by agent on April 17, 2025.

10. OTHER SUPPORTING INFORMATION.

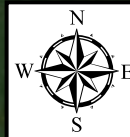
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- a. "Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of 'Continuous Surface Connection' Under the Definition of 'Waters of the United States' Under the Clean Water Act", March 12, 2025.
 - b. "Memorandum to Re-Evaluate Jurisdiction for NWO-2003-60436", December 19, 2023.
 - c. "Memorandum on LRB-2021-01386", February 16, 2024.
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.

Legend

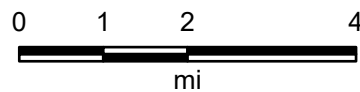
— Review Area



MARIS, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



SAM-2024-00495-SMP Vivinity Map



Map Center: 88.75125°W 30.416575°N

Map Created by: Sarah M. Piesco

Date: 4/22/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

Sauceda Review Area

9.55 Acres Total
8.38 Acres Wetlands

Review Area Map SAM-2024-00495-SMP
Submitted on 2025 April 17

Legend

- Concrete Swale
- Ditch 2
- ditch1
- Sauceda
- Supplemental Data Point
- Wetlands W-1

