DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
100 CANAL STREET
MOBILE, AL 36602-1901

CESAM-RD-A August 29, 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-2025-00279-JEB (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 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.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Alabama 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 (acres)	Type Of Aquatic Resource	geographic Authority
Wetlands 1	31.281090	-85.414210	11.35	A7-AJD.WETL-404	Section 404
Wetlands 2	31.281444	-85.424014	8.55	A7-AJD.WETL-404	Section 404
NJD 1 Isolated wetlands 1	31.287997	-85.413057	0.75	PREAMBLE WATER – STOCK POND	None
NJD 2 Isolated wetlands 2	31.282054	-85.415517	1.43	NON-WOTUS-WETL.NEGATIVE-A7	None
NJD 3 Isolated wetlands 3	31.274573	-85.412512	6.74	NON-WOTUS-WETL.NEGATIVE-A7	None
Stream (Little Choctawhatchee River) Relatively permanent (year-round)	31.281214	-85.424511	2050 Linear Feet	A5-TRIB.-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)

e. 2008 Rapanos Guidance

f. 1980s preamble language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR20765 (June 6, 1988)

3. REVIEW AREA. The review area encompasses 446.53-acres of undeveloped land and is centered at latitude 31.275745, longitude -85.418416 in Dothan, Houston County, Alabama. The site is located within the Little Choctawhatchee River 10-digit hydrologic unit code (0314020105). The site has historically been maintained as active agricultural fields with large areas of native upland forest and hardwood wetlands around the margins. Little Choctawhatchee River crosses the Northwestern corner of the site.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Choctawhatchee River which is on the Mobile District's Section 10 Waters List. Section 10 waters are a subset of TNWs.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.
RPW Little Choctawhatchee River (First order) flows from the review area southwest for 22-miles (115,104 feet) off-site, where it enters TNW Choctawhatchee River (Second order). (Figure 1).

Wetlands 1 abuts an unnamed tributary to RPW Little Choctawhatchee River, which eventually flows off-site and meanders approximately 18 miles to the confluence with TNW Choctawhatchee River.

Wetlands 2 abuts Little Choctawhatchee River, which eventually flows off-site and meanders approximately 18 miles to the confluence with TNW Choctawhatchee River.

NJD 1 (Isolated Wetlands 1) is completely surrounded by uplands, has no outlet and does not drain to a TNW, territorial seas, or interstate water.

NJD 2 (Isolated Wetlands 2) is completely surrounded by uplands, has no outlet and does not drain to a TNW, territorial seas, or interstate water.

NJD 3 (Isolated Wetlands 3) is completely surrounded by uplands, has no outlet and does not drain to a TNW, territorial seas, or interstate water.

Stream (Little Choctawhatchee River) flows off-site approximately 18 miles into TNW Choctawhatchee River.

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

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

[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.

e. Tributaries (a)(5):

Stream (Little Choctawhatchee River) is a second order relatively permanent perennial tributary, 2050 linear feet in length in the review area, with an average width at the ordinary high-water mark of 10 feet. Little Choctawhatchee River is indicated as a perennial stream (continuous flow and well-defined bed and bank observed via site visit) on the associated USGS topographic map and National Hydrography Dataset.

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

g. Adjacent wetlands (a)(7):

Wetlands 1 is an 11.35-acre wetland that has a continuous surface connection to Little Choctawhatchee River, an RPW tributary to TNW Choctawhatchee River. Wetlands 1 abuts an RPW tributary to Little Choctawatchee River.

Factors to Consider (*NWP-2007-428, NWO-2003-60436, technical support document*):

-Proximity (*NWP-2007-428, page 1*)
The wetlands (Wetlands 1) are separated by a railroad track field verified by Corps staff on July 31, 2025. The railroad tracks and fill slopes are approximately 40 feet wide.

-Landscape position (*NWP-2007-428, pages 1 &2*)
These two wetland features (Wetlands 1) occupy the same general topographic position and soil mapping unit (Troup-Bonifay Complex per NRCS Soil Survey). Soil profiles in both wetlands are identical. Historic imagery from the 1966 paper Houston County NRCS Soil Survey show these wetlands as a single feature bisected by the railroad tracks. LiDAR-based topographic data/ Digital Terrain Model Map) implies that hydrology would move downgradient from the southern wetland segment north to the northern wetland segment through the field observed metal culvert.

-Similarities in plant community (*NWP-2007-428, pages 1&2*)
Both wetland areas (Wetlands 1) are dominated by facultative to facultative wet vegetation, sharing the same tree stratum dominant species such as Sweetbay magnolia (Magnolia virginiana), loblolly pine (*Pinus taeda*), and Water oak (Quercus nigra).

-Similarity in soils (*NWP-2007-428, page 2*)
These two wetland features (wetlands 1) occupy the same general topographic position and soil mapping unit (Troup-Bonifay Complex per NRCS Soil Survey). Soil profiles in both wetlands are identical. Historic imagery from the 1966 paper Houston County NRCS Soil Survey shows these wetlands as a single feature bisected by the railroad tracks.

- Indicators of shallow subsurface connection (*NWO-2003-60436, page 2 and NWP-2007-428, page 2*)
The railroad bed between the two wetland features (Wetlands 1) appears to have been constructed using impervious fill material composed primarily of soil fill with crushed rock ballast supporting the rail tracks. No evidence of seepage was observed on the downgradient side of the fill during the site visit. Although the land slopes generally S to N, the gradient is very slight, and it does not appear that shallow subsurface hydrologic connection occurs either under or through the railroad base materials.

-Indicators of a hydrological connection (*NWO-2003-60436, page 2*)
A 12” corrugated metal culvert pipe, ~50-feet long, was installed through the railroad bed between the two wetlands (Wetlands 1). The culvert is partially filled with sediment but evidence of hydrology from the up-gradient (south) wetland segment to the down-gradient wetland segment provides proof for the likelihood of surface flow of hydrology at least occasionally. Indicators of water flow in the form of scouring, water-stained leaves and rafted debris were observed within or on the down-gradient side of the culvert during the site visit.

- Slope and Topography (*NWO-2003-60436, page 2*)
Slope and topography do imply that if a subsurface connection existed it would flow downgradient from the South wetland to North wetland. Additionally, the slope and topography imply that if a large enough precipitation event occurred in the South wetland, any resulting surface water would flow North through the culvert and into the North wetland.

After Factors Have Been Considered (*LRB-2021-01386*)

Wetlands 1 is bisected by a Northwest/Southeast oriented railroad track. The Southwest 4.78-acre wetland feature and the Northeast 6.57-acre wetland feature are hydrologically connected by a partially filled but serviceable 12-inch culvert. These wetlands appear to have historically been part of the same contiguous wetland unit. No indicators of shallow subsurface connection were observed between these wetland segments. However, given the proximity and shared landscape position of the wetland segments, similarity in plant communities and soils between the wetland segments, and the existence of a culvert in the railroad fill between the wetland segments, there appears to be a hydrologic connection between the two. After reviewing EPA and ASA memoranda regarding evaluating when two or more wetland areas are functioning as one wetland, and as such would be identified as a single wetland (LRB-2021-01386, NWO-2003-60436 and NWP-2007-428), we have determined that these two features should be evaluated as one wetland.

Wetlands 2 is an 8.55-acre wetland that has a continuous surface connection to Little Choctawhatchee River, an RPW tributary to TNW Choctawhatchee River. Wetlands 2 abuts RPW Little Choctawhatchee River.

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.

NJD 1 (Isolated wetlands 1) is a 0.75-acre non-tidal pond excavated in uplands for purposes of stock watering. In accordance with the preamble to the 1986 regulations, these types of waters are generally not waters of the U.S.: “Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.” Therefore, NJD 1 is not jurisdictional.

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

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).

   NJD 2 (Isolated wetlands 2) is a 1.43-acre non-tidal wetland that does not have a continuous surface connection to a TNW, territorial seas, interstate water, RPW or jurisdictional impoundment. This wetland is surrounded entirely by uplands and is therefore non-jurisdictional.

   NJD 3 (Isolated wetlands 3) is a 6.74-acre non-tidal wetland that does not have a continuous surface connection to a TNW, territorial seas, interstate water, RPW or jurisdictional impoundment. This wetland is surrounded entirely by uplands and is therefore 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.

    a. Corps personnel site visit 7/31/25.

    b. Hillshade, Site Location and Aerial, NRCS Hydric Soil Rating, NWI, HUC map, NHD, and Aquatic Resources Delineation Map, Google Earth.

    c. National Regulatory Viewer, FEMA Flood map, accessed August 15, 2025.

10. OTHER SUPPORTING INFORMATION.

    a. U.S EPA and OASACW's *Memorandum on MVS-2023-00288*, February 26, 2024.

    b. "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.

    c. U.S. EPA and OASACW's memorandums on NWP-2007-428 and NWO-2003-60436, technical support document.

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.