



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

CESWF-RD

12 September 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 [SWF-2021-00540](#), [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.

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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 this state](#) 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).

[Ephemeral stream SBF – non-jurisdictional](#)

[Ephemeral stream SRA – non-jurisdictional](#)

[Ephemeral stream SRB – non-jurisdictional](#)

[Ephemeral stream SRC – non-jurisdictional](#)

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. Overall review area is 242.49 acres and made up primarily of upland cedar shrub/scrub habitat. Topography throughout the area is relatively hilly, ranging from 1,040 feet to 1,260 feet. Soils are loamy throughout the review area, with no hydric soils identified via desktop or consultant's site visit.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Ephemeral streams on-site eventually drain to the Medina River, which flows southeast to the San Antonio River and then the Guadalupe River before entering the Gulf of Mexico. The San Antonio River is a Section 10 TNW within the Galveston District.](#)

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. [Ephemeral streams on-site eventually drain to the Medina River, which flows southeast to the San Antonio River and then the Guadalupe River before entering the Gulf of Mexico. The San Antonio River is a Section 10 TNW within the Galveston District.](#)
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.
 - 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](#)

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.

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- 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](#)
- 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

⁸ 51 FR 41217, November 13, 1986.

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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). The features delineated within the Review Area are almost all first-order streams. Stream SRA is a second order stream downstream of the confluence of SBF and SRB. The features are entirely ephemeral in nature, lacking any instance of connection with the groundwater table. Ordinary high water marks are limited, but observable along the reach in the form of wrack lines, limited sorting, and some instances of scour. Each stream mapped is 100% non-relatively permanent waterway (non-RPW).

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. Consultant site assessments / inspections June 11, 2021 and October 11 and 12, 2021. USACE site visit conducted February 1, 2023.
 - b. Updated Aquatic Resources Delineation Report Materials for SWF-2021-00540, dated July 22, 2025.
 - c. Cowardin, L. M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish and Wildlife Service (USFWS) Report No. FWS/OBS/-79/31. Washington, D.C.
 - d. Google Earth. Aerial Imagery. Accessed 2025.
 - e. Soil Survey Staff, Natural Resources Conservation Service (NRCS), USDA. Soil Geographic (SSURGO) Database.
 - f. U.S. Army Corps of Engineers (USACE). 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y 87 1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi.
 - g. USACE. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region (Version 2.0), ed. Wakeley, J.S., R.W. Lichvar, and C.V. Noble. ERDC/EL TR-10-1. Vicksburg, Mississippi., U.S. Army Engineer Research and Development Center.
 - h. USFWS. 2024. National Wetlands Inventory (NWI) Version 2. NWI website. U.S. Department of Interior, Fish and Wildlife Service, Washington, D.C. <https://www.fws.gov/wetlands/>.

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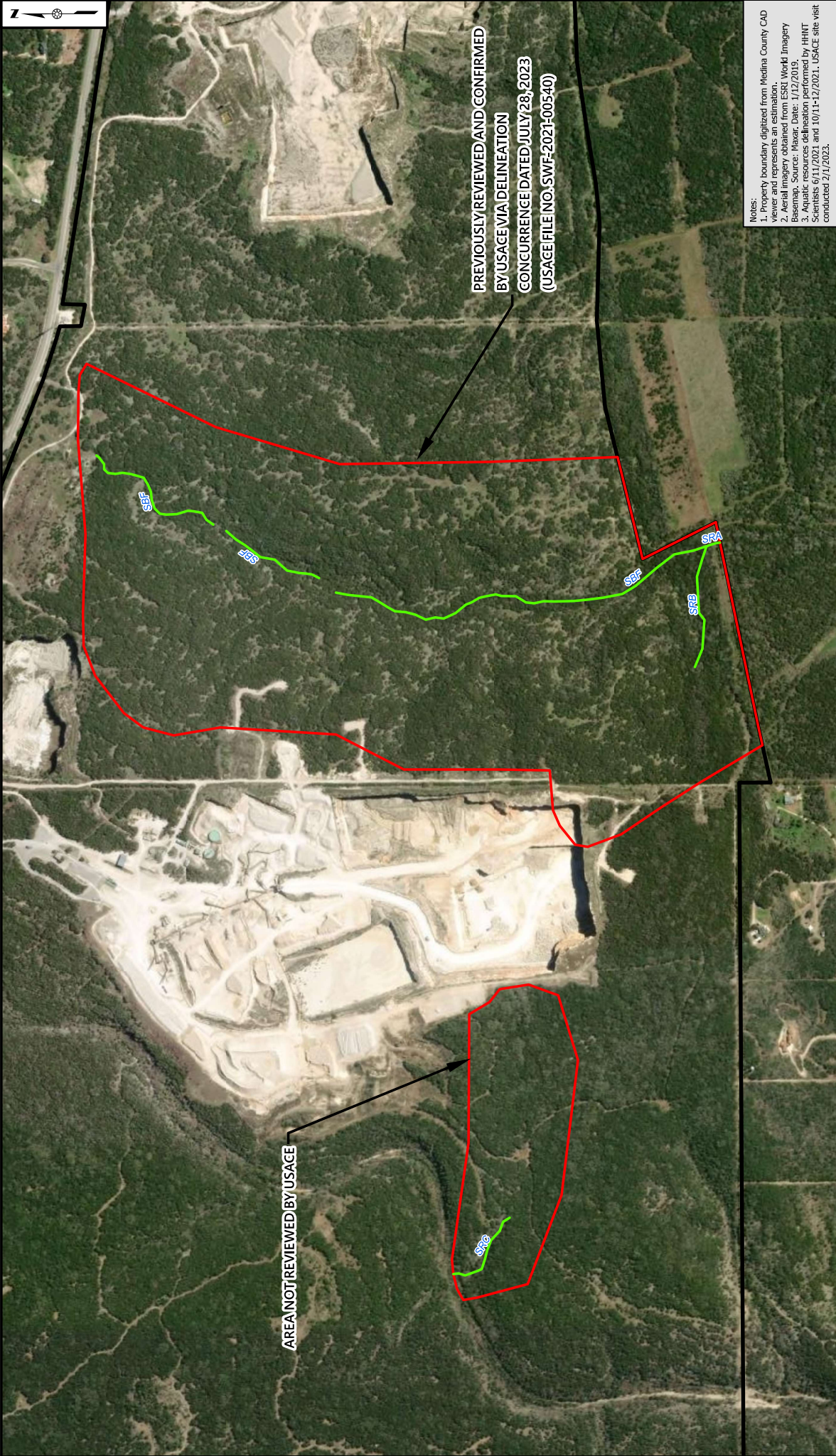
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- i. USGS. 2019. 7.5-minute digital topographic quadrangle; 1:24,000.
- j. USGS. 2025. National Hydrography Dataset (NHD).

10. OTHER SUPPORTING INFORMATION.

- a. U.S. Department of the Army, U.S. Army Corps Of Engineers, & U.S. Environmental Protection Agency. (2025). 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 [Memorandum].
<https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf>

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.



Notes:
 1. Property boundary digitized from Medina County CAD viewer and represents an estimation.
 2. Aerial imagery obtained from ESRI World Imagery (Source: 6/11/2021 and 10/11/2021).
 3. Aquatic resource delineation performed by HHNT Scientists 6/11/2021 and 10/11/2021. USACE site visit conducted 2/1/2023.

HHNT
 HODGES, HARBIN,
 NEWBERRY & TRIBBLE, INC.
 Consulting Engineers

Legend
 Review Area (~242.49 Ac.)
 Ephemeral Stream (~6,093 Linear Ft.)
 Estimated Quarry Boundary (~1,726 Ac.)

DISCLAIMER: THE U.S. DELINEATION REMAINS AN OPINION OF HHNT UNTIL IT IS FORMALLY VERIFIED IN WRITING BY THE U.S. ARMY CORPS OF ENGINEERS VIA A FORMAL DETERMINATION LETTER.
DELINEATED STREAMS HAVE NOT BEEN APPROVED BY ACOE.

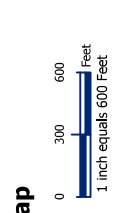


Figure 6 - Delineation Map

Mico Quarry
 Vulcan Materials Company
 Medina County, TX
 7/8/2025

AREA NOT REVIEWED BY USAGE

PREVIOUSLY REVIEWED AND CONFIRMED BY USAGE VIA DELINEATION CONCURRENTLY DATED JULY 28, 2023 (USAGE FILE NO. SWF-2021-00540)

MINE EXPANSION AREA
EJD 9/12/25



AREA NOT REVIEWED BY USAGE



PREVIOUSLY REVIEWED AND
BY USAGE VIA DELINEATION
CONCURRENCE DATED JULY 25
(USAGE FILE NO. SWF-2021-00)

- Notes:
1. Property boundary digitized from aerial imagery and represents an estimate.
 2. Aerial imagery obtained from BaseMap. Source: Maxar. Date: 6/11/2021.
 3. Aquatic resources delineation conducted 2/1/2023.

DISCLAIMER: THE U.S. DELINEATION REMAINS AN OPINION OF THE U.S. ARMY CORPUS OF ENGINEERS VIA A FORMAL DETERMINATION LETTER. **DELINEATED STREAMS HAVE NOT BEEN APPROVED BY ACOE.**

Delineation Map



Company
TX

- Legend
- Review Area (~242.49 Ac.)
 - Estimated Quarry Boundary (~1,726 Ac.)
 - Ephemeral Stream (~6,093 Linear Ft.)

