



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, FORT FORTH DISTRICT
819 TAYLOR STREET
FORT WORTH, TEXAS 76102

CESWF-RDE

March 12, 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-2024-00087](#), (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 Texas 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).
[Reference Enclosures 1 and 2, for project area map showing water features and the list of water features identified within the review area boundary.](#)
- i. [See Enclosure 2 for list of water features evaluated. None of these water features are a TNW and they are not 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. [The review area is approximately 2,650 acres located in Travis County, Texas \(30.251511°, -97.649249°\). Previous AJDs completed for the property include SWF-2021-00111 and SWF-2022-00065. Reference Enclosure 1 for map of the review area.](#)

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [The ponds do not have a hydrologic connection to a TNW, interstate water, or territorial sea.](#)⁶

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.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [Not Applicable](#)
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 [Not Applicable](#)
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): [Not Applicable](#)
 - b. Interstate Waters (a)(2): [Not Applicable](#)
 - c. Other Waters (a)(3): [Not Applicable](#)
 - d. Impoundments (a)(4): [Not Applicable](#)
 - e. Tributaries (a)(5): [Not Applicable](#)
 - f. The territorial seas (a)(6): [Not Applicable](#)
 - g. Adjacent wetlands (a)(7): [Not Applicable](#)

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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.

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.

- a. Information referenced in Section 9 indicates that the ponds listed in Enclosure 2 were excavated by humans (i.e., artificially created) within dry land (i.e., upland). Flows received to and conveyed from the ponds are a result of stormwater runoff from within uplands. Review of aerial imagery and desktop tools indicates that the ponds were not constructed by impounding a stream.

The ponds meet the description of water features that generally are not considered waters of the United States as detailed in the 1986 preamble of the regulations—33 CFR, part 328.3.

- 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. [Not Applicable](#)
- 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. [Not Applicable](#)
- 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. [Not Applicable](#)
- 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*. [Not Applicable](#)

⁹ 51 FR 41217, November 13, 1986.

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- 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). [Not Applicable](#)
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. [USACE site visit was performed on March 6, 2024, and a conference call with the consultant in addition to desk-top review of all available information listed herein was used for this determination, multiple dates of review.](#)
 - b. [Maps, delineation of aquatic resources, and other information submitted on behalf of the applicant by the consultant, multiple submittal dates.](#)
 - c. [National Wetlands Inventory, National Hydrography Dataset, 3DEP Hillshade, USGS Topo Map, Soils Maps, National Regulatory Viewer-SWD-Texas, multiple assessment dates.](#)
 - d. [1987 Wetland Delineation Manual and Great Plains Supplement were referenced to identify potential jurisdiction.](#)
 - e. [Regulatory Guidance Letter 05-05 was used to identify the boundaries of non-wetland water features.](#)
 - f. [Aerial imagery provided by online resources, Google Earth Pro and Historicaerials.com, all available years, multiple assessment dates.](#)
10. OTHER SUPPORTING INFORMATION. [Not Applicable](#)
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.



BASEMAP SOURCE: 2024 AERIAL PHOTOGRAPH PROVIDED BY SAM, 2022 AERIAL PHTOTGRAPH PROVIDED BY NAIP

WATER ID	TYPE	AREA (ACRES)
AMA 1	Active Mining Area	25.71
AMA 2	Active Mining Area	22.72
AMA 3	Active Mining Area	147.84
AMA 4	Active Mining Area	150.42
AMA 5	Active Mining Area	0.88
AMA 6	Active Mining Area	16.77
AMA 7	Active Mining Area	6.34
AMA 8	Active Mining Area	4.00
OW 1	Open Water	20.94
OW 2	Open Water	70.26
OW 3	Open Water	21.83
OW 4	Open Water	58.27
OW 5	Open Water	52.10
OW 6	Open Water	20.26
OW 7	Open Water	2.46
OW 8	Open Water	12.72
OW 9	Open Water	3.64
OW 10	Open Water	4.05
OW 11	Open Water	5.91
OW 12	Open Water	10.31
OW 13	Open Water	6.99
OW 14	Open Water	32.10
OW 15	Open Water	0.68
OW 16	Open Water	2.12

Delineated OHWM of Colorado River

Road

Carson Creek (RPW)

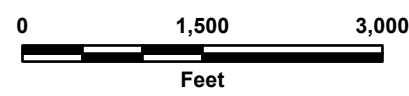
Carson Creek 40 ft Buffer

Open Water (OW)

Active Mining Area (AMA)

SWF-2024-00087 AJD Boundary

Enclosure 1



APPROVED JURISDICTIONAL DETERMINATION MAP

FIGURE 1

Dogs Head Property +/- 2,650 acres
Travis County, Texas
USACE Project No. SWF-2024-00087

Map Revised: 06/21/2024
Project Number: A-12-1730
GIS Analyst: DS



Enclosure 2

SUMMARY TABLE OF DELINEATED WATERS INCLUDED IN AJD

WATER ID	TYPE	AREA (ACRES)	LATITUDE	LONGITUDE
AMA 1	Active Mining Area	25.71	30.241305	-97.648837
AMA 2	Active Mining Area	22.72	30.246813	-97.643847
AMA 3	Active Mining Area	147.84	30.250669	-97.636174
AMA 4	Active Mining Area	150.42	30.244749	-97.638084
AMA 5	Active Mining Area	0.88	30.237527	-97.659271
AMA 6	Active Mining Area	16.77	30.237371	-97.657399
AMA 7	Active Mining Area	6.34	30.242888	-97.655535
AMA 8	Active Mining Area	4.00	30.246079	-97.64775
OW 1	Open Water	20.94	30.248294	-97.670915
OW 2	Open Water	70.26	30.254036	-97.664212
OW 3	Open Water	21.83	30.260487	-97.651967
OW 4	Open Water	58.27	30.258011	-97.652616
OW 5	Open Water	52.10	30.253499	-97.657067
OW 6	Open Water	20.26	30.244444	-97.666018
OW 7	Open Water	2.46	30.243312	-97.657198
OW 8	Open Water	12.72	30.239198	-97.644777
OW 9	Open Water	3.64	30.242834	-97.653842
OW 10	Open Water	4.05	30.255765	-97.645699
OW 11	Open Water	5.91	30.251511	-97.649249
OW 12	Open Water	10.31	30.253071	-97.643093
OW 13	Open Water	6.99	30.254164	-97.638601
OW 14	Open Water	32.10	30.250343	-97.643027
OW 15	Open Water	0.68	30.241161	-97.643906
OW 16	Open Water	2.12	30.257306	-97.645116