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

CESWF-RD 8 October 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-2024-00426, 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 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).

        i. Pond 1, non-jurisdictional

        ii. Pond 2, non-jurisdictional

        iii. Wetland 1, non-jurisdictional

        iv. Wetland 2, non-jurisdictional

        v. Wetland 3, non-jurisdictional

        vi. Wetland 4, non-jurisdictional

        vii. Stream 1 (Chacon Creek; Perennial), non-jurisdictional

        viii. Erosional Gully 1, 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. The review area is an approximately 258.74-acre site located north of US Highway 90 and south of County Road 4516 in an unincorporated portion of Medina County, Texas 78009, herein referred to as the "study area" or "review area." The study area is identified by the Medina County, Texas Auditor's Office as parcels

12985, 12986, 59675, 59676, 12956, 71836, and 12957. The approximate central latitude/longitude coordinates of the study area location are 29.356377 -98.934576.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Nueces River, a Section 10 TNW within the Galeveston District.[6]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Chacon Creek (Intermittent) is connected is the Nueces River. The Nueces River is a Section 10 TNW within the Galeveston District.

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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

[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.
[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.

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 (see PJD)

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").[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 be non-jurisdictional under the CWA based on the criteria listed in the guidance.

Erosional Gully 1 is an approximately 144-foot-long drainage pattern located in the southwest corner of the study area. The gully is within an area mapped as an intermittent stream by both NWI and NHD; however, it did not possess the characteristics of a stream or wetland. The vegetative community within the feature does not meet the definition of hydrophytic vegetation. Additionally, no hydric soil indicators were found in the soil sample taken within the deepest reach of the gully. Based on the lack of wetland characteristics, as well as the lack of continuous streambed, the feature was classified as an isolated erosional gully. Erosional features are not considered jurisdictional in the Rapanos guidance.

[9] 51 FR 41217, November 13, 1986.

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).

Pond 1 is an approximately 1.94-acre open water feature that was created by the impounding of Stream 1 (Chacon Creek) via earthen dam in the northwestern portion of the study area. According to a review of aerial imagery, Pond 1 has existed since at least the mid-1960s. The earthen berm that was created to impound Chacon Creek interrupts the movement of water to downstream reaches of the stream. As such, Pond 1 does not share a continuous surface water connection with the downstream reach of Chacon Creek, or other jurisdictional waters.

Pond 2 is an approximately 0.96-acre excavated open water feature in the northeastern portion of the study area. According to a review of aerial imagery, Pond 2 was excavated between October of 2011 and February of 2013 and appears to be used as a cattle stock pond. No inlets, outlets, culverts or drainage connections were identified connecting Pond 2 to other jurisdictional waters. Therefore, Pond 2 is hydrologically isolated.

Wetland 1 is a 1.81-acre palustrine emergent (PEM) wetland identified in the northwest portion of the site and is best described as the northwest wetland fringe of Pond 1. Hydrology for the wetland appears to be primarily overflow and saturation from Pond 1, input from Chacon Creek, and precipitation. The earthen berm that was created to impound Chacon Creek interrupts the movement of water from Wetland 1 to downstream waterways. As such, Wetland 1 does not share a continuous surface water connection with the downstream reach of Chacon Creek, or other jurisdictional waters.

Wetland 2 is a 0.04-acre PEM wetland identified in the northwest portion of the site along the eastern bank of Chacon Creek. Hydrology for the wetland is primarily from Chacon Creek and precipitation. The earthen berm that was created to impound Chacon Creek interrupts the movement of water from Wetland 2 to downstream waterways. As such, Wetland 2 does not share a continuous surface water connection with the downstream reach of Chacon Creek, or other jurisdictional waters.

Wetland 3 is a 1.16-acre PEM wetland identified in the northwest portion of the site and is best described as the southeast wetland fringe of Pond 1. Hydrology for the wetland appears to be primarily overflow from Pond 1, input from Chacon Creek, and precipitation. The earthen berm that was created to impound Chacon Creek interrupts the movement of water from Wetland 3 to downstream waterways. As such, Wetland 3 does not share a continuous surface water connection with the downstream reach of Chacon Creek, or other jurisdictional waters.

Wetland 4 is a 0.01-acre isolated PEM wetland identified in the central portion of the site in a pastureland depression. Hydrology for the wetland appears to be primarily from precipitation. Wetland 4 is isolated; it does not share a surface water connection to other aquatic resources, jurisdictional or otherwise.

Stream 1 (Chacon Creek; Perennial) is a 514 linear foot segment upstream of pond 1; effectively impounded by earthen berm of pond 1, lacks a continuous surface water connection to downstream waters due to the earthen berm.

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 assessment / inspection completed by Kimley-Horn & Associates, Inc. on June 10-12, 2024.

b. Aquatic Resources Delineation Report Materials for SWF-2024-00426.

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.National Wetlands Inventory (NWI). https://www.fws.gov/wetlands/.

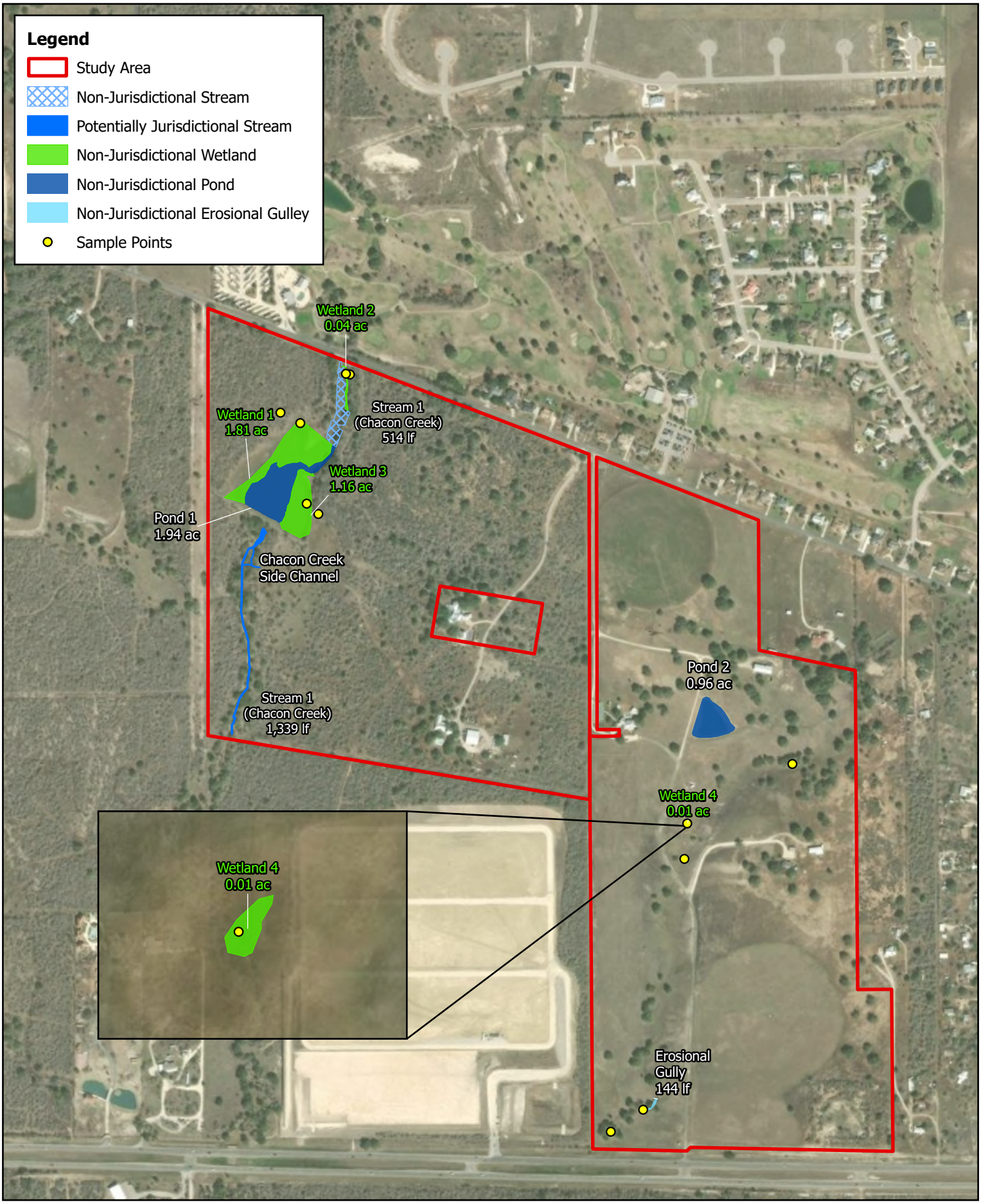
i. USGS. Topographic Maps.

j. USGS. 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.



Kimley»Horn

Figure 7a. Delineated Resources Map - Full Site
Tract Binford-Rodgers
Medina County, TX