



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

CESWF-RDE

October 30, 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-2024-00474](#), MFR 1 of 1²

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)

Water Feature	TNW	Size	Status	Rationale	Authorities
Wetland 1	No	3.23 AC	Jurisdictional	Adjacent	Section 404
Wetland 2	No	0.22 AC	Not Jurisdictional	Not adjacent	N/A
Wetland 3	No	0.38 AC	Not Jurisdictional	Not adjacent	N/A
Wetland 4	No	0.06 AC	Not Jurisdictional	Not adjacent	N/A
Wetland 5	No	0.01 AC	Jurisdictional	Adjacent	Section 404
Wetland 6	No	0.41 AC	Jurisdictional	Adjacent	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)

3. REVIEW AREA. [The review area is an approximate 41-acres tract of land bordering Lake Palestine, located in the City of Chandler, Henderson County, Texas, at approximate coordinates (32.31151, -95.46215) (Exhibits 1 and 2). There are no other relevant site-specific data or previous JDs associated with the proposed review area.]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Hydrology associated with Wetlands 1, 5, and 6 flow south and east into Lake Palestine, an on-channel impoundment of the Neches River. Hydrology of the Neches River at this location flows south to USACE lands associated with B.A.]

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[Steinhagen Lake in Jasper and Tyler counties, Texas, where the river becomes a Section 10 TNW.\]⁶](#)

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [[See Item #4 above.](#)]
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.](#)]

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.

- f. The territorial seas (a)(6): [\[Not applicable.\]](#)
- g. Adjacent wetlands (a)(7):
 - [Wetland 1 \(3.23-acres\) is an emergent wetland, contiguous with offsite wetlands, which are adjacent to Lake Palestine, an RPW.](#)
 - [Wetland 5 \(0.01-acres\) is a forested wetland, contiguous with offsite wetlands which are adjacent to Lake Palestine, an RPW.](#)
 - [Wetland 6 \(0.41-acres\) is an emergent wetland, contiguous with offsite wetlands, which are adjacent to Lake Palestine, an RPW.](#)

[The described wetlands have a continuous surface connection to a downstream RPW. Therefore, the above wetlands are waters of the United States subject to Section 404 of the Clean Water Act. Reference Exhibits 1 and 2, and the aquatic resource delineation report \(ARDR\) synthesized by Integrated Environmental Solutions, LLC, dated February 22, 2024, and an addendum to the ARDR, dated July 30, 2025.](#)

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. [\[Not applicable.\]](#)
- 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

⁹ 51 FR 41217, November 13, 1986.

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.](#)]
- 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).

Data sources listed in Section 9 indicate the following: Wetlands 2-4 are depressions on the landscape without any continuous surface connection (CSC) to an (a)(5) tributary. Any hydrology flowing from wetlands 2-4 to other relatively permanent wetlands or an (a)(5) tributary would occur through overland sheet flow and not a CSC. Lake Palestine, an on-channel impoundment of the Neches River, is the nearest tributary with relatively permanent flow.

- Wetland 2 is approximately 190 linear feet (LF) from Wetland 1 (an RPW), and approximately 1,400 LF from Lake Palestine, an RPW.
- Wetland 3 is approximately 160 LF from Wetland 6 (an RPW), and approximately 1,200 LF from Lake Palestine, an RPW.
- Wetland 4 is approximately 636 LF from Wetland 5 (an RPW), and approximately 1580 LF from Lake Palestine, an RPW.

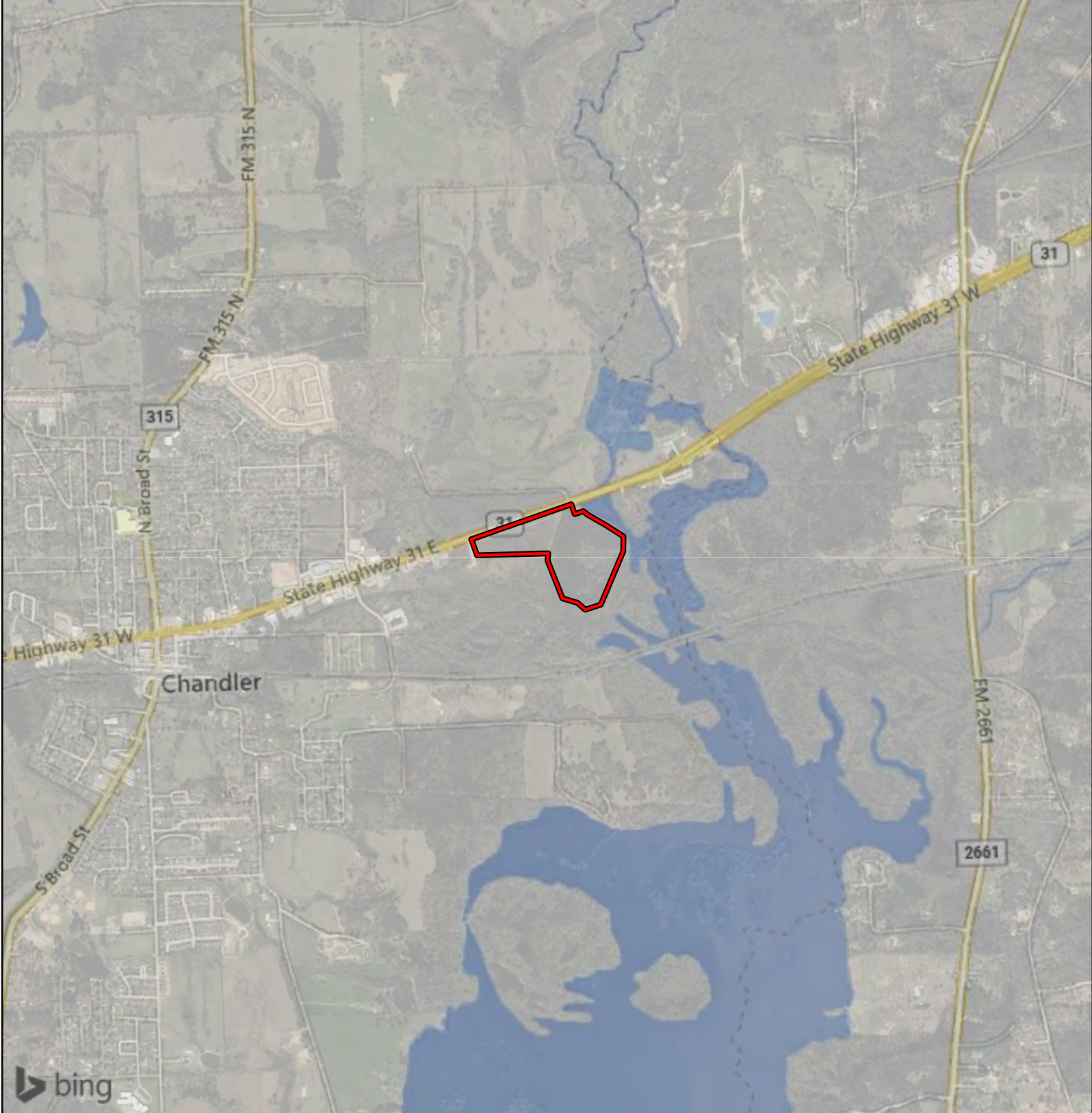
In summary, Wetlands 2-4 are not paragraph (a)(7) adjacent wetlands because they are not adjacent to a relatively permanent water (i.e., (a)(1) TNW, (a)(2) interstate water, (a)(3) water, (a)(4) impoundment, (a)(5) tributary, (a)(6) territorial sea). The wetlands are depressional features, lacking a CSC to a requisite water. In accordance with 33 CFR 328.3, a wetland is considered a WOUS when it is adjacent to waters identified in paragraph (a)(1)-(a)(3) of the federal regulations. In accordance with pre-2015 regulatory regime in light of *Sackett v. EPA* and the 12 March 2025, Memorandum to the Field Between the U.S. Department of 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

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Clean Water Act, a wetland is considered adjacent if connected by a continuous surface connection, meaning that the wetland must physically abut or touch the paragraph (a)(1), a jurisdictional impoundment, or relatively permanent water.

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. A Corps site visit was determined unnecessary. A desk-top review of all available information listed herein was used for this determination, multiple dates of review.
 - b. Maps, LiDAR, 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 and Slope, USGS Topo Map, Soils Maps, National Regulatory Viewer-SWD-Texas, multiple assessment dates.
 - d. 1987 Wetland Delineation Manual and Atlantic and Gulf Coastal Plains Supplement were referenced to identify potential jurisdiction.
 - e. Aerial imagery provided by online resources to include Digital Globe, 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.



General Location Map


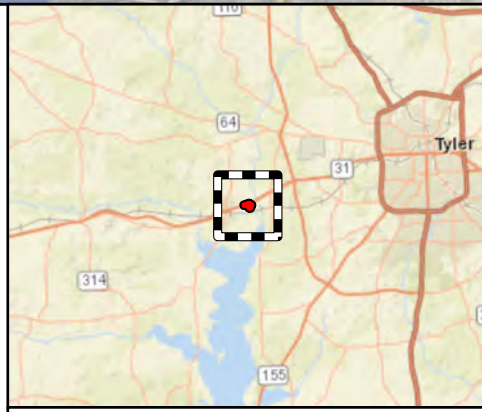
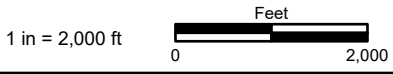
 Survey Area

Exhibit 1
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Area of Detail Scale: 1 inch equals 10 miles



File Ref. 03.060.001
 Date: 1/3/2025



Aquatic Features Identified within the Survey Area

City of Chandler
Henderson County, Texas

 Survey Area

Aquatic Features

 Wetland

 Wetland, Isolated

Exhibit 2
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File Ref. 04.354.125
Date: 1/7/2025