



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SWF DISTRICT
819 TAYLOR STREET, ROOM 3A37
FORT WORTH, TEXAS 76102

CESWF-RDE

29 JANUARY 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-2025-00055](#), 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 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).

<u>Water Feature</u>	<u>TNW</u>	<u>Size</u>	<u>Status</u>	<u>Rationale</u>
Stream 1 - ES	No	0.052 AC	Not Jurisdictional	Non-RPW stream

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. __, 143 S. Ct. 1322 (2023)

REVIEW AREA. [Center Coordinates: \(33.285517, -96.59446.\)](#)

The review area is approximately 3.6 acres, located northwest of Melissa Road and U.S. Highway 75 near the City of Melissa, Collin County, Texas. The site contains one non-RPW stream (Stream -1) which begins off-property approximately 800 LF north of the Project boundary. Stream-1 traverses south-southwest across the central part of the property and flows into a recently constructed box culvert that directs flows under Melissa Road and into an Stream-2 to become a second order stream (RPW) flowing into the SCS Pond and eventually flowing into the 3rd order stream, East Fork Trinity River (RPW). Surrounding properties consist of rapidly growing urban development, Melissa Road and U.S. Highway 75. Per the USGS topographic map for Anna, Texas, the property slopes to the southwest from an approximate elevation of 610 feet above mean sea level (amsl), and Stream-1 is approximately at the 600 amsl. Stream-1 is not depicted on the topographic map; the stream is approximately 1,257.6 LF with approximately 345 LF (0.052 acre) within the project boundary.

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3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Trinity River, 64 miles to the southwest.](#)⁶
4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [Refer to the table below for flow path description.](#) (Measurements are estimated using Google Earth mapping.)

Stream	Stream reach	Trib	Miles
Stream 1	1a – Not in Project	Non-RPW, 1 st order stream	0.17 (897.6 LF)
	1b- in Project	Non-RPW, 1 st order stream	<0.1 mile (245 LF)
	1c- box culvert on Property		<0.1 (115 LF)
	1d-box culvert off site		<0.1
	Total Approx distance from Stream 1 to merge with Stream 2		1,257.6 LF (0.24 miles)
Stream 2	2a – head water to confluence with East Fork Trinity River (through SCS Dam/Pond)	RPW intermittent stream and pond	1.72 miles
Stream 3	East Fork Trinity River thru Lavon Lake, thru Lake Ray Hubbard to Trinity River (TNW)		5.89 + 9.41 +23.4 + 23.5 = 62.2 miles
Total approx. miles to TNW			64 miles

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.

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5. 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.](#)
6. 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.](#)

7. 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

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.

⁹ 51 FR 41217, November 13, 1986.

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 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).

[The on-site section of the first order Stream 1 was observed meandering south-southwest across the central part of the property from the northern to the southern property boundary a total of approximately 345 linear feet \(0.052-acre\) along an approximate average 6.5-foot-wide stream channel. The headwaters of the stream begin approximately 800 feet north of the subject property, along U.S. Highway 75, and enter the central part of the northern property boundary. Erosion of sediment over the decades has formed a channel surrounded by](#)

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forested riparian and containing debris. Erosion of sediment over the decades has formed a channel surrounded by forested riparian and containing woody debris. The lower end has been disturbed by construction of Melissa Road and now contains a box culvert that appears to be causing ponding of water at the entrance to the culvert. (See Google Earth Aerials 2022-2025). The site did not show Hydric soils or wetland hydrology. Vegetation along the stream consisted of mostly upland grasses, weeds, and riparian tree species. Delineation Report photos of the site show standing water from a rain event which occurred the day before survey was taken. The site did not show hydric soils or wetland hydrology.

In summary, Stream 1 is not an (a)(1) TNW, (a)(2) interstate water, (a)(3) water, (a)(4) impoundment, (a)(5) tributary, (a)(6) territorial sea) nor a wetland. It has a CSC to an (a)(5) tributary through a discrete hydrologic feature (i.e., swale, ditch, pipe, culvert, but is itself a first order, non-RPW stream.

8. 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 visits were conducted on November 19, 2024. USACE desktop evaluations were completed January 27-28, 2025.
 - b. Wetland Delineation Report: Routine Wetland Delineation, Proposed Quiktrip No. 1936, NWC of U.S. Highway 75 and Melissa Road, Melissa, Texas, January 16, 2025.
 - c. Historical Aerials 1951, 1972 (See Wetland Delineation Report) and Google Earth images dated November 2020, April 2022, July 2022, June 2023 and January 2025 .
 - d. National Regulatory Viewer (Texas and Louisiana) topography, NWI, FEMA, NHD, imagery and LIDAR layers, accessed on January 28, 2025.
9. OTHER SUPPORTING INFORMATION. [Not applicable.](#)
10. 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.



LEGEND

- EPHEMERAL STREAM
- SAMPLE POINT

Source: United States Department of Agriculture

**POTENTIAL AQUATIC
FEATURES MAP**

FIGURE 2

Routine Wetland Delineation

Proposed QuikTrip No. 1936
NWC of U.S. Hwy. 75 & Melissa Road
Melissa, Texas

