



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

CESWF-RD

18 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),<sup>1</sup> [SWF-2025-00118](#), [MFR 1 of 1](#)<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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).

[Unnamed Tributary 1 \(UT-1\): Non-Jurisdictional](#)

[Unnamed Tributary 2 \(UT-2\): Non-Jurisdictional](#)

[Unnamed Tributary 3 \(UT-3\): Jurisdictional, Section 404](#)

[Unnamed Tributary 4 \(UT-4\): Jurisdictional, Section 404](#)

[Unnamed Tributary 5 \(UT-5\): Jurisdictional, 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 project site consists of a 17-acre area of interest \(AOI\) situated within a larger 30-acre property located along the east side of US Highway 59, approximately 4 miles southwest of Lufkin \(Angelina County\), Texas. Lat/Lon: 31.268475 -94.738882. There is no other relevant site-specific information or previous JDs associated with the review area.](#)

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [The nearest TNW is the Neches River, which is located](#)

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approximately 37 miles southeast of the review area. The Neches River is a Section 10 TNW for a significant distance within the Fort Worth District.<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. UT-1, UT-2, UT-3, and UT-4 are a network of streams that all flow northward across the review area and converge with UT-5 in the northern portion of the review area. UT-5 continues flow north-northwestward under U.S. Highway 59 and off-site properties for approximately 7,000 LF (1.3 mi) before converging with Hurricane Creek. From Hurricane Creek, flow extends through numerous named streams before converging with the Neches River. The Neches River becomes a TNW within USACE lands associated with B. A. Steinhagen Lake in Jasper and Tyler Counties, Texas.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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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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):

[Unnamed Tributary 3 \(UT-3\)](#)

[Unnamed Tributary 4 \(UT-4\)](#)

[Unnamed Tributary 5 \(UT-5\)](#)

In order to determine jurisdictional status of tributaries, the Strahler system (i.e. stream order classification) is applied to determine stream reach. Each stream reach is evaluated in accordance with the relatively permanent standard. Perennial and intermittent streams are considered relatively permanent waters (RPWs), while ephemeral streams are considered non-relatively permanent waters (Non-RPWs). The classification of a stream reach, as defined by one continuous stream order, is based on the majority classification (>50% RPW or Non-RPW) of the entire stream reach. Based on this method, the jurisdiction of each stream reach is determined by its designation of RPW or Non-RPW.

The majority of the stream reaches for UT-3, UT-4, and UT-5 carry intermittent flow, which are considered to be RPWs. Due to the entire stream reaches being greater than 50% RPW, UT-3, UT-4, and UT-5 are considered RPWs, and therefore jurisdictional. The jurisdictional aquatic features are summarized in the table below.

| Aquatic Resource                             | Strahler Stream Order | Length of Reach (LF) | Length Within AOI (LF) | Type                | Length of RPW/Non-RPW (LF) & % of Reach | Reach Classification (> 50%) | Jurisdictional Status |
|--|-----------------------|----------------------|------------------------|---------------------|---|------------------------------|-----------------------|
| Unnamed Tributary 3 (UT-3)                   | 2                     | 478                  | 478                    | Intermittent (RPW)  | 430 (90%)                               | RPW                          | Jurisdictional        |
|  |                       |                      |                        | Ephemeral (Non-RPW) | 48 (10%)                                |                              |                       |
| Unnamed Tributary 4 (UT-4)                   | 2                     | 912                  | 462                    | Intermittent (RPW)  | 824 (90%)                               | RPW                          | Jurisdictional        |
|  |                       |                      |                        | Ephemeral (Non-RPW) | 88 (10%)                                |                              |                       |
| Unnamed Tributary 5 (UT-5)                   | 3                     | 687                  | 156                    | Intermittent (RPW)  | 687 (100%)                              | RPW                          | Jurisdictional        |
|  |                       |                      |                        | Ephemeral (Non-RPW) | --                                      |                              |                       |
| <b>TOTAL Length of RPW Stream Within AOI</b> |                       |                      |                        |                     |   |                              | <b>1,096 LF</b>       |

- 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”).<sup>9</sup> 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

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<sup>9</sup> 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).

Unnamed Tributary 1 (UT-1)

Unnamed Tributary 2 (UT-2)

In order to determine jurisdictional status of tributaries, the Strahler system (i.e. stream order classification) was applied to determine stream reach. Each stream reach was evaluated in accordance with the relatively permanent standard. Perennial and intermittent streams are considered relatively permanent waters (RPWs), while ephemeral streams are considered non-relatively permanent waters (Non-RPWs). The classification of a stream reach, as defined by one continuous stream order, is based on the majority classification (>50% RPW or Non-RPW) of the entire stream reach. Based on this method, the jurisdiction of each stream reach was determined by its designation of RPW or Non-RPW.

The majority of the stream reaches for UT-1 and UT-2 carry ephemeral flow, which are considered to be non-RPWs. Due to the entire stream reaches being greater than 50% non-RPW, UT-1 and UT-2 are considered non-RPWs, and therefore non-jurisdictional.

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: July 11, 2024, July 22, 2024, January 8, 2025, and January 16, 2025.
  - b. Delineation of Waters of the US for SWF-2025-00118, dated February 11, 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

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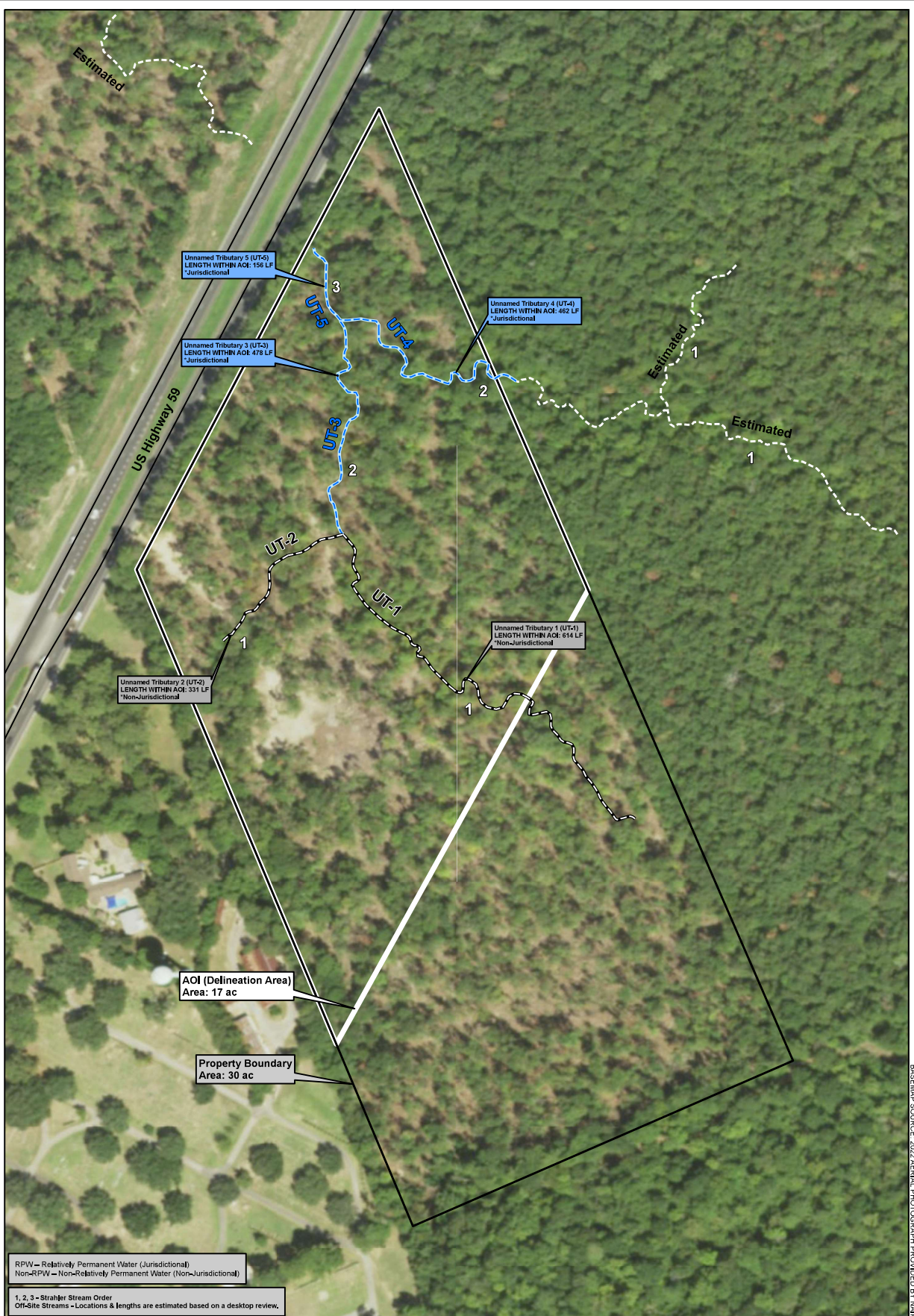
Experiment Station, Vicksburg, Mississippi.

- 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/>.
- i. USGS. 7.5-minute digital topographic quadrangle; 1:24,000.
- 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.



RPW – Relatively Permanent Water (Jurisdictional)  
 Non-RPW – Non-Relatively Permanent Water (Non-Jurisdictional)

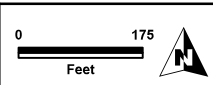
1, 2, 3 – Strahler Stream Order  
 Off-Site Streams – Locations & lengths are estimated based on a desktop review.

|  |                        |  |  |
|--|------------------------|--|--|
|  | Road                   |  | Delineated Stream (RPW/Jurisdictional)         |
|  | Area of Interest (AOI) |  | Delineated Stream (Non-RPW/Non-Jurisdictional) |
|  | Property Boundary      |  | Estimated Off-Site Stream                      |

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FINAL WOTUS MAP  
 FINAL WOTUS MAP SHOWING JURISDICTIONAL & NON-JURISDICTIONAL FEATURES



On The Road  
 Proposed Truck Stop  
 +/-17 Acres  
 Lufkin (Angelina County), TX  
 Map Revised: 06-26-2025 | Project Number: A-12-1779 | GIS Analyst: L.L.K.

BASEMAP SOURCE: 2022 AERIAL PHOTOGRAPH PROVIDED BY NHP