



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

CESWF-RDE

10 June 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-2025-00121](#).

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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 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 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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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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).

Aquatic Resources				
Aquatic Resource	Type	Coordinates	Jurisdiction	Authority
P2 - Prairie Creek	Perennial Tributary	33.054583, -96.81408	Yes - RPW	404
ET-1	Ephemeral Tributary	33.037609 -96.969484	No – Non-RPW	NA
P1 – Elm Fork Trinity River	Perennial Tributary	33.038181, -96.9627638	Yes - RPW	404
FW-1	Forested Wetland	33.039447 -96.958655	No – not WOUS, no CSC and mitigated under a different project.	NA
P3 - Midway Branch	Perennial Tributary	33.041236, -96.936161	Yes - RPW	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 site is located in the area from Holfords Prairie Road, Huffines Boulevard, East Valley Ridge Boulevard and Treatment Plant Road in the City of Lewisville, Denton County, Texas. The study area consists of urbanized areas, nearby roads and sidewalks, streams, forested wetlands and open grassland areas. The area between Elm Fork Trinity River to Holfords Prairie Rd was completely disturbed where the centerline would be placed from ongoing construction of the Corporate Drive Project. Therefore, NWI and aquatic features noted on aerials and topographic maps were not present within the boundaries of the Corporate Drive Project right-of-way that this sanitary sewer project uses for a portion of its route.

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- [FEMA Panel 48113C0015K effective 7/6/2014; Panel 48121C0565G effective 4/18/2011 and Panel 48121C0555G effective 4/18/2011](#)
 - [HUC 12-12-301031001](#)
 - [Center Coordinates: 33.038990, -96.960351](#)
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Trinity River
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [Midway Branch and Prairie Branch merge into Elm Fork Trinity River which drains Lewisville Lake flows southward and eventually flows into the Trinity River \(TNW\) in the city of Dallas, Texas.](#)
 6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ [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 references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

⁵ 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.

⁶ 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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- 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):

Aquatic Resources					
Aquatic Resource	Type	Coordinates	Width (LF)	Length (LF)	Area (AC)
P2 - Prairie Creek	Perennial Tributary	33.054583, -96.81408	6	87	0.012
P1 – Elm Fork Trinity River	Perennial Tributary	33.038181, -96.9627638	80	83	0.163
P3 - Midway Branch	Perennial Tributary	33.041236, -96.936161	15	99	0.034

P2 – Prairie Creek is a first order perennial tributary northeast of the city of Lewisville. The stream flows toward the northeast and merges with an unnamed tributary (flowing from the northwest) to become a secondary stream, which continues flowing northeastward to merge with the Elm Creek Trinity River (third order) on the northern portion of the project area. Upstream areas have been relocated and the channel has been modified to drain roads and urban developments. On site investigations as well as review of digital data sources were used to determine stream type. The OHWM width was 6 LF with a length of 87 LF crossing the project area. This stream contains water and is a relatively permanent water, and is a jurisdictional water of the U.S.

P1 – Elm Fork Trinity River is a perennial tributary connected to Lewisville Lake Dam upstream of its junction with Prairie Creek. It becomes a third order stream at the point where it merges with Prairie Creek. The Elm Fork Trinity River flows in a southward direction and eventually joins with the Trinity River in the City of Dallas, Texas. On site investigations as well as review of digital data sources were used to determine stream type. This is a relatively permanent water, and is a jurisdictional water of the U.S.

P3 – Midway Branch (Coordinates 33.041236, -96.936161) was determined to be a first order perennial stream that flows southwestwardly into the Elm Fork Trinity River. The stream has been modified over the past decade with the upper

portion appearing as a channel used to drain extensive industrial areas, which has most likely changed this stream's flow regime from an ephemeral-intermittent to a predominantly permanent flow, particularly at the lower half of the channel. On site investigations as well as review of digital data sources were used to determine stream type. This entire stream is now defined as a relatively permanent water, and is a jurisdictional water of the U.S.

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”).⁷ 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

⁷ 51 FR 41217, November 13, 1986.

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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).

Aquatic Resources					
Aquatic Resource	Type	Coordinates	Width (LF)	Length (LF)	Area (AC)
FW-1	Forested wetland	33.039447, -96.958655	NA	NA	0.10
ET-1	Ephemeral	33.037609, -96.969484	3	264	0.018

FW-1 is a freshwater forested/shrub wetland and is seasonally flooded and is approximately 0.1 acres in size. With the on-going road construction, not related to this project, the wetland is no-longer connected directly to an RPW stream. It is in the floodplain. It is along a shallow drainage running parallel to the Elm Fork Trinity River. A section 404 permit was issued for the construction of Corporate Drive that included permitted impacts to FW-1 and will result in complete severance of any historic connection to a RPW. This feature is now considered a non-water of the U.S.

ET-1 is an ephemeral stream that runs east to west offsite that drains toward a isolated stock pond built in uplands. The pond is not a WOUS; the ephemeral stream is not a RPW; therefore ET-1 is not a regulated water of the U. S.

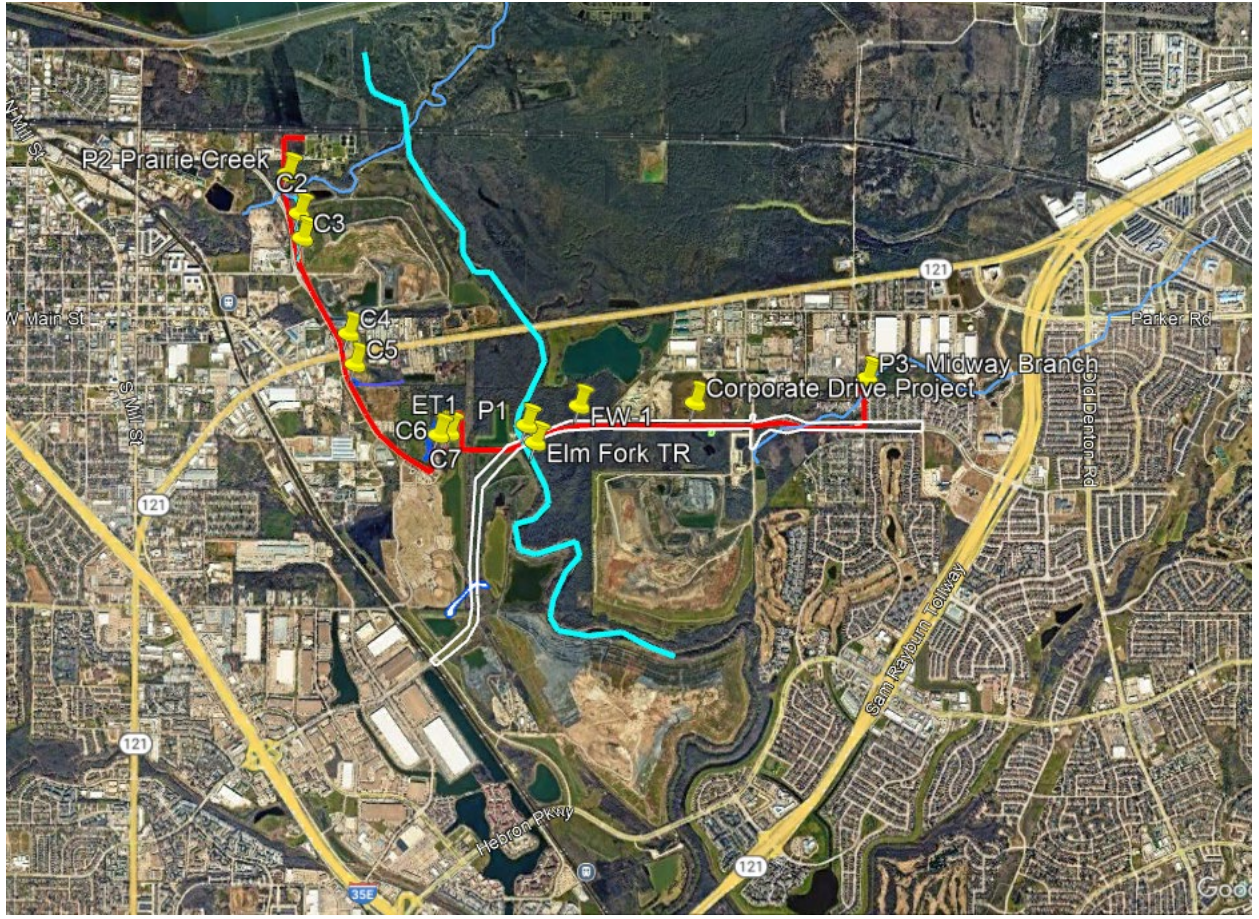
- 9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Contractor’s field visits occurred on December 9 and 10, 2024. In-office evaluation was conducted on June 9, 2025.
 - b. Google Earth database for historical aerials and topography
 - c. National Regulatory Viewer, layers for NWI, NHD, FEMA,

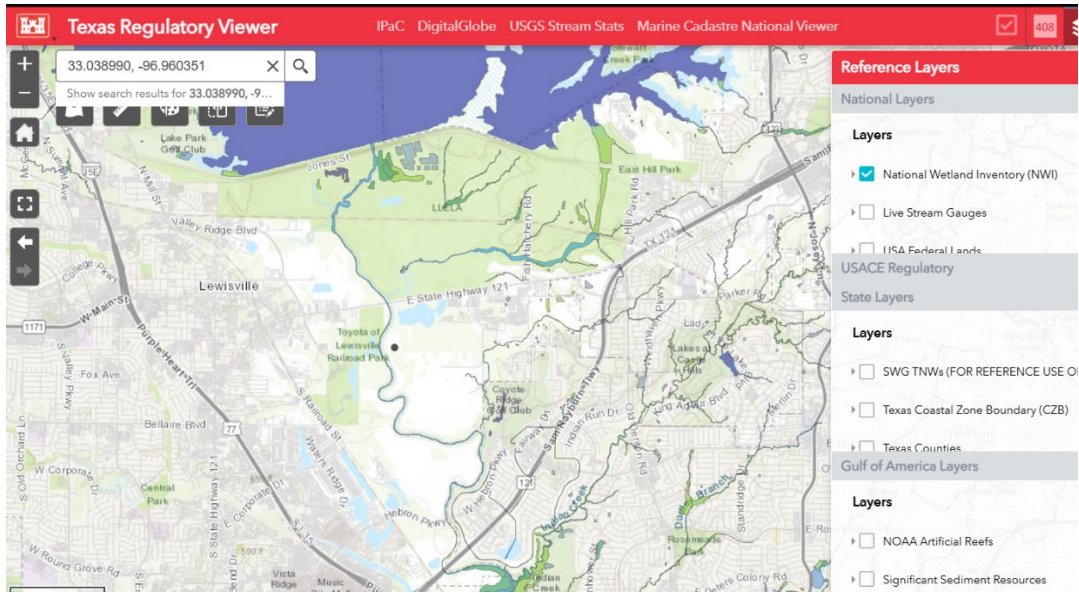
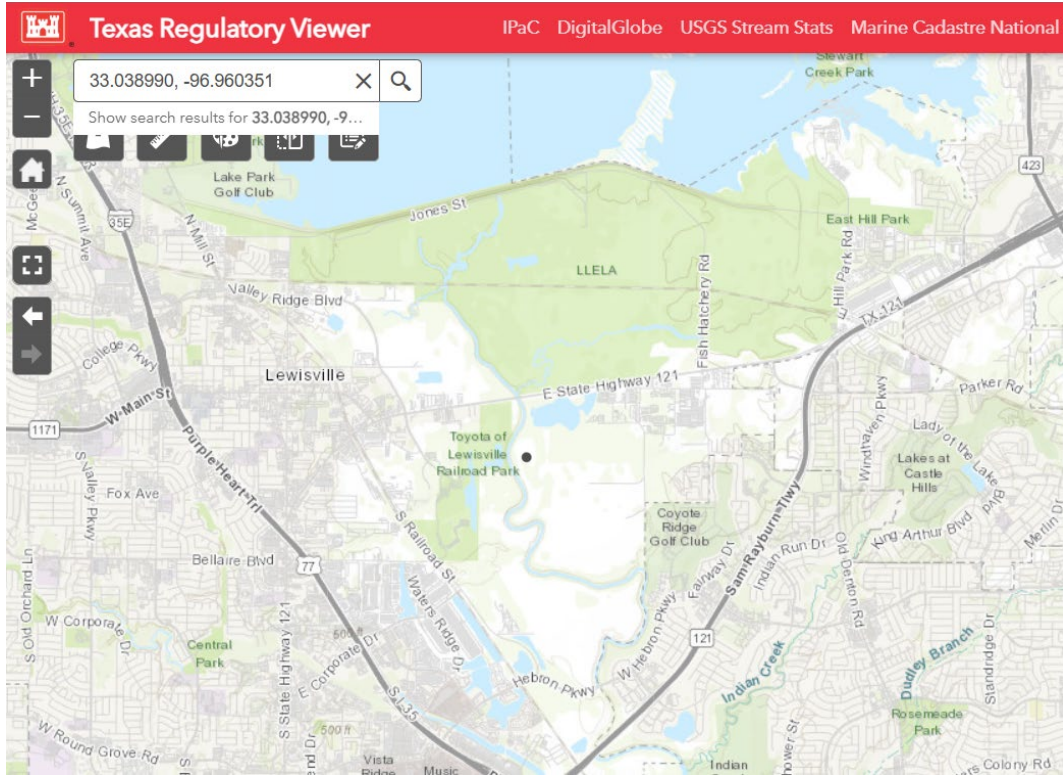
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10. OTHER SUPPORTING INFORMATION. [Waters of the U. S. Delineation, Lewisville Midway Branch Force Main and Lewisville, Denton County, Texas, dated December 21, 2024, prepared by Terracon,](#)

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.







33.038990, -96.960351



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