



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
2000 FORT POINT ROAD
GALVESTON, TEXAS 77550

CESWG - RDN

3 February 2026

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 SWG-2024-00304²

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 this state due to litigation.

1. SUMMARY OF CONCLUSIONS.

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).

Name	Feature Type	Size (acres)	Location (latitude) (longitude)		Jurisdictional Status
OW 1	pond	3.41	29.827152	-95.636006	non-adjacent, non-jurisdictional
OW 2	pond	0.64	29.830154	-95.632593	non-adjacent, non-jurisdictional
OW 3	pond	0.87	29.834814	-95.631447	non-adjacent, non-jurisdictional
OW 4	pond	1.15	29.832839	-95.635350	non-adjacent, non-jurisdictional
OW 5	pond	0.89	29.835252	-95.636292	non-adjacent, non-jurisdictional
Wet 1	wetland	0.76	29.822813	-95.638467	non-adjacent, non-jurisdictional
Wet 4	wetland	0.49	29.823396	-95.637231	non-adjacent, non-jurisdictional
Wet 5	wetland	0.72	29.824046	-95.637320	non-adjacent, non-jurisdictional
Wet 6	wetland	0.95	29.824316	-95.636209	non-adjacent, non-jurisdictional
Wet 7	wetland	0.05	29.825102	-95.636137	non-adjacent, non-jurisdictional
Wet 8	wetland	1.51	29.827340	-95.634093	non-adjacent, non-jurisdictional
Wet 9	wetland	0.06	29.832762	-95.632991	non-adjacent, non-jurisdictional
Wet 10	wetland	0.14	29.823532	-95.638391	non-adjacent, non-jurisdictional
Wet 11	wetland	0.04	29.823245	-95.638690	non-adjacent, non-jurisdictional

Name	Feature Type	Size (Linear feet)	Location (latitude) (longitude)		Jurisdictional Status
Trib 1	Ditch	158	29.823116	-95.638420	non-RPW, non-jurisdictional
Trib 2	Ditch	566	29.824812	-95.635953	non-RPW, non-jurisdictional
Trib 3	Ditch	100	29.828272	-95.635863	non-RPW, non-jurisdictional
Trib 4	Ditch	99	29.828232	-95.636434	non-RPW, non-jurisdictional
Trib 5	Ditch	233	29.824237	-95.638326	non-RPW, non-jurisdictional
Trib 6 ("Wet 2-3, OW 6")	Non-RPW Stream	695	29.826412	-95.638668	non-RPW, non-jurisdictional
Bear Creek	RPW Stream	1,433	29.824237	-95.638326	RPW, jurisdictional

RPW= Relatively Permanent Water

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)
 - e. 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 Clean Water Act.
3. REVIEW AREA. Approximate 201-acre property located approximately .48-miles east of the intersection at Highway 6 and Clay Road; located at Latitude 29.829811°, Longitude -95.634778°, Houston, Harris County, Texas.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Buffalo Bayou
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Bear Creek flows south connecting to South Mayde Creek, which then flows southeast approximately 22.5 river miles to Buffalo Bayou, a TNW.
 6. SECTION 10 JURISDICTIONAL WATERS⁶: 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

⁶ 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.

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ 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.

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): Bear Creek, is a tributary with permanent flow which connects with South Mayde flowing southeast to Buffalo Bayou, a TNW; therefore, Bear Creek meets the definition of a tributary as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

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

⁷ 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.

as “preamble waters”).⁸ 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.

Ponds, OW 1-5 (6.96-acres):

There are 5 ponds within the review area (OW 1-5). OW 1-5 are not an impoundment of a water of the United States. They are contained wholly within and do not extend beyond the project area boundary. OW 1-5 do not have a continuous surface connection to a relatively permanent water. The 1986 preamble to 33 CFR 320-330 regulations states that for clarification it should be noted that we generally do not consider the following waters to be “waters of the United States...(C) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking dry land to retain water for primarily aesthetic reasons”. Therefore, OW 1-5 are not a water of the United States and are not subject to Section 404 of the Clean Water Act.

- 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.

Ditches, Trib 1-5 (1,156 Linear Feet):

There are 5 ditches (Trib1-5) on the tract totaling approximately 1,156 linear feet. The ditches were constructed in uplands and used to drain uplands. The ditches only flow in response to precipitation events and do not have relatively permanent flow as evident in Google Earth aerial images. The ditches do not have a defined bed or bank and/or ordinary high-water mark. Therefore, Trib 1-5 are not a water of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredged and/or fill material into Trib 1-6 does not require a Department of the Army permit.

- 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

⁸ 51 FR 41217, November 13, 1986.

- 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).

Wetlands, Wet 1, Wet 4-11 (4.72 acres total), Non-RPW, Trib 6 (695-linear feet):

Based on data sources listed in #9 below, our 29 January 2026 desk review, we have determined these wetlands reside in small depressional areas within the review area, that collects rainwater and is completely enclosed by elevated uplands. Based on our review, the wetland does not have any known continuous surface connection to any RPW, TNW, or impoundments of either. Therefore, in accordance with the pre-2015 regime post-Sackett 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 Clean Water Act, Wet 1, & Wet 4-11 do not meet the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and are not waters of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredged and/or fill material into Wet 1, & Wet 4-11 does not require a Department of the Army permit.

Trib 6 is a tributary to Bear Creek that does not carry relatively permanent flow. Trib 6 was originally identified as Wet 2-3 and OW 6, however according to aerial imagery and LIDAR images, it appears to be one continuous linear aquatic feature that is a non-relatively permanent water. Therefore, Trib 6 is not a water of

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the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into the tributary, totaling 695 linear feet, does not require a Department of the Army permit.

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. Delineation, maps, and data sheets prepared by Compass Environmental Solutions, LLC.
- b. Desk Review: 29 January 2026
- c. Aerial Photos: Google Earth Aerial Imagery 26 November 2023, 17 February 2024
- d. United States Department of Interior (DOI), Fish and Wildlife Service (FWS), National Wetland Inventory (NWI); Accessed 29 January 2026
- e. United States Geological Survey (USGS) Topographic (Topo) map Addicks Texas 1915 1:24,000
- f. USACE Texas Regulatory Viewer 3 DEP Digital Elevation Model (DEM) Accessed: 29 January 2026

10. OTHER SUPPORTING INFORMATION. N/A

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.

PREPARED BY:

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Jared Bogard
Regulatory Specialist

Date: 3 February 2026

REVIEWED/APPROVED BY:



Andria Davis
Leader, North Evaluation Unit
Regulatory Division, Galveston District

Date: 3 February 2026