



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

March 18, 2026

North Branch

SUBJECT: **SWG-2025-00104**: Orange County Drainage District; Approved Jurisdictional Determination, Approximate 502.22-Acre Tract, intersection of Texla Road and Dixie Drive, near Pine Forest, Orange County, Texas

Neal Ford  
Orange County Drainage District (OCDD)  
8081 Old Highway 90  
Orange, Texas 77630  
Sent Via Email to: [nford@ocddtx.com](mailto:nford@ocddtx.com)

Dear Mr. Ford:

This is in reference to your request, dated August 13, 2025, submitted on your behalf by Hydrex Environmental, for an Approved Jurisdictional Determination for an approximate 502.22-acre tract. approximately 2.25 miles southwest of the intersection of Texla Road and Dixie Drive, near Pine Forest, Orange County, Texas (map enclosed). Specifically, the project site is located at Latitude: 30.205200°, Longitude: -95.993552°.

The Corps of Engineers has the regulatory responsibility over two primarily federal laws, Section 10 of the Rivers and Harbors Act (Section 10) which regulates work and/or structures in/or affecting navigable waters of the United States (U.S.) and Section 404 of the Clean Water Act (Section 404) which regulates the discharge of dredged and/or fill material into waters of the U.S., including adjacent wetlands. If activities involved trigger either of these aforementioned federal regulations, a Department of the Army (DA) permit is required prior to those activities occurring.

Based on our desk review and site visits conducted on September 16, 2025 and March 4, 2025, we have determined that the approximate 502.22-acre tract contains 9,427 linear feet of jurisdictional tributaries, specifically Tiger Creek (5,730 linear feet) and Cole Road Ditch (3,697 linear feet), as well as the 0.6-acre jurisdictional Wetland Z. As described in the enclosed Memorandum for Record, these aquatic resources meet the definition of adjacent wetlands/ relatively permanent waters as defined in the pre-2015 regime post Sackett guidance, and as such, are a water of the U.S. subject to Section 404. Therefore, a DA permit is required prior to the discharge of dredged and/or fill material within these waters of the U.S.

Based on our desk review and site visits conducted on September 16, 2025 and March 4, 2025, we have determined that the site contains Unnamed Tributary 1 (UT-1), Ditches 1 through 8), and Wetlands A through Y and Wetlands AA-AI. However, as described in the enclosed Memorandum for Record, these aquatic resources do not meet the definition of adjacent/ relatively permanent waters as defined in the pre-2015 regime post Sackett guidance, and as such, are not a waters of the U.S. subject to Section 404, nor are they subject to Section 10. Therefore, a DA permit is not required for the discharge of dredged and/or fill material or work and/or structures within these aquatic resources in review area.

This letter does not obviate the need to obtain Federal, state or local authorization(s) required by law, nor does it grant property rights and/or exclusive privileges, nor authorize any injury to property or rights of others. It is recommended that you visit <https://www.swg.usace.army.mil/Missions/Operations-Division/Land-Use/> and coordinate with the appropriate offices.

The delineation and jurisdictional determination included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

This letter contains an AJD for the subject site. For the purposes of this AJD, we have relied on 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 (USACE), 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 to determine jurisdiction. If you object to the AJD portion determination, you may request an administrative appeal under USACE regulations at 33 CFR Part 331. You will find an enclosed Notification of Appeals Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Southwest Division Office at the following address:

Administrative Appeals Review Officer  
Southwestern Division U.S. Army Corps of Engineers (CESWD-PD-O)  
1100 Commerce Street, Suite 831  
Dallas, Texas 75242-1317  
Contact email: [swdregulatoryappeals@usace.army.mil](mailto:swdregulatoryappeals@usace.army.mil)

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within **60 days** of the date of the NAP; noting the

letter date is considered day 1. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

The AJD is valid for 5 years from the date of this letter unless new information warrants a revision prior to the expiration date. If you have questions concerning this matter, please reference file number **SWG-2025-00104** and contact Dr. Tasha Metz at the letterhead address, by e-mail at [Tasha.L.Metz@USACE.ARMY.MIL](mailto:Tasha.L.Metz@USACE.ARMY.MIL) or by telephone at 409-766-6384. To assist us in improving our service to you, please complete the survey found at <https://regulatory.ops.usace.army.mil/customer-service-survey/> and/or if you would prefer a hard copy of the survey form, please let us know, and one will be mailed to you.

FOR THE DISTRICT COMMANDER:

A handwritten signature in blue ink, appearing to read "Tasha Metz", is positioned above the typed name and title.

Tasha L. Metz, Ph.D.  
Regulatory Project Manager

cc w/Encl.

Christina Keim, Hydrex Environmental; Sent via Email to: [ckeim@hydrex-inc.com](mailto:ckeim@hydrex-inc.com)

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant:	File Number:	Date:
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL WITHOUT PREJUDICE	C
	PERMIT DENIAL WITH PREJUDICE	D
	APPROVED JURISDICTIONAL DETERMINATION	E
	PRELIMINARY JURISDICTIONAL DETERMINATION	F

### SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable**

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

**D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial**

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration**

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

**F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable**

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision you may contact:

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Administrative Appeals Review Officer  
Southwestern Division U.S. Army Corps  
of Engineers (CESWD-PD-O)  
1100 Commerce Street, Suite 831  
Dallas, Texas 75242-1317  
Contact email:  
swdregulatoryappeals@usace.army.mil

**SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

<hr/> <p>Signature of appellant or agent.</p>	Date:
Email address of appellant and/or agent:	Telephone number:



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

CESWG - RDN

18 March 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),<sup>1</sup> SWG-2025-00104

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>2</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>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</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 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.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00104

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 Resource	Type	Jurisdictional Determination*	Applicable Authority	Length (LF) within Project Boundaries	Area (ac) Within Project Boundaries	Geographic Coordinates (NAD83)
Tiger Creek	RPW Tributary	Jurisdictional	Section 404	5,730	--	30.204658, -94.001190
Cole Road Ditch	RPW Tributary	Jurisdictional	Section 404	3,697	--	30.201452, -93.991640
Wetland Z	Forested Wetland	Jurisdictional	Section 404	--	0.6	30.202055, -94.001362
Unnamed Tributary 1 (UT-1)	Non-RPW Tributary	Non-Jurisdictional	--	462	--	30.204926, -93.999394
Ditch-1	Ditch/Non-RPW	Non-Jurisdictional	--	472	--	30.209283, -93.997999
Ditch-2	Ditch/Non-RPW	Non-Jurisdictional	--	68	--	30.210975, -93.999364
Ditch-3	Ditch/Non-RPW	Non-Jurisdictional	--	49	---	30.211791, -93.999781
Ditch-4	Ditch/Non-RPW	Non-Jurisdictional	--	38	-	30.209958, -93.998817
Ditch-5	Ditch/Non-RPW	Non-Jurisdictional	--	52	--	30.201018, -93.996295
Ditch-6	Ditch/Non-RPW	Non-Jurisdictional	--	23	--	30.201063, -93.996026
Ditch-7	Ditch/Non-RPW	Non-Jurisdictional	--	33	--	30.200914, -93.990620
Ditch-8	Ditch/Non-RPW	Non-Jurisdictional	--	228	--	30.202369, -93.982638
Wetland A	Forested Wetland	Non-Jurisdictional	--	--	31.8	30.210006, -93.992766
Wetland B	Forested Wetland	Non-Jurisdictional	--	--	4.7	30.211602, -93.988912
Wetland C	Forested Wetland Mosaic	Non-Jurisdictional	--	--	4.5*	30.209431, -93.991595
Wetland D	Forested Wetland	Non-Jurisdictional	--	--	2.8	30.209709, -93.989539
Wetland E	Forested Wetland	Non-Jurisdictional	--	--	1.0	30.209474, -93.987944
Wetland F	Scrub-Shrub Wetland	Non-Jurisdictional	--	--	1.2	30.208266, -93.989455
Wetland G	Forested Wetland	Non-Jurisdictional	--	--	5.1	30.208491, -93.985818
Wetland H	Forested Wetland Mosaic	Non-Jurisdictional	--	--	7.2*	30.206402, -93.993901
Wetland I	Forested Wetland	Non-Jurisdictional	--	--	5.1	30.202715, -93.996506

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Wetland J	Forested Wetland	Non-Jurisdictional	--	--	4.0	30.202789, -93.991811
Wetland K	Forested Wetland Mosaic	Non-Jurisdictional	--	--	5.7*	30.202784, -93.994207
Wetland L	Forested Wetland Mosaic	Non-Jurisdictional	--	--	2.0*	30.202720, -93.997826
Wetland M	Forested Wetland Mosaic	Non-Jurisdictional	--	--	5.0*	30.199894, -93.997056
Wetland N	Forested Wetland	Non-Jurisdictional	--	--	2.2	30.200341, -93.996056
Wetland O	Forested Wetland Mosaic	Non-Jurisdictional	--	--	0.5*	30.200026, -93.995526
Wetland P	Forested Wetland	Non-Jurisdictional	--	--	2.8	30.211193, -93.998955
Wetland Q	Forested Wetland	Non-Jurisdictional	--	--	1.1	30.211884, -94.001473
Wetland R	Forested Wetland	Non-Jurisdictional	--	--	5.7	30.206620, -93.989131
Wetland S	Forested Wetland	Non-Jurisdictional	--	--	0.3	30.211103, -93.999835
Wetland T	Forested Wetland	Non-Jurisdictional	--	--	0.3	30.211105, -93.998003
Wetland V	Forested Wetland	Non-Jurisdictional	--	--	2.0	30.208450, -93.999643
Wetland W	Forested Wetland	Non-Jurisdictional	--	--	0.05	30.208371, -93.998698
Wetland X	Forested Wetland	Non-Jurisdictional	--	--	0.1	30.207781, -93.998867
Wetland Y	Forested Wetland	Non-Jurisdictional	--	--	1.4	30.204403, -94.000551
Wetland AA	Scrub-Shrub Wetland	Non-Jurisdictional	--	--	0.3	30.202577, -93.989983
Wetland AB	Scrub-Shrub Wetland	Non-Jurisdictional	--	--	0.2	30.200238, -93.991892
Wetland AC	Scrub-Shrub Wetland	Non-Jurisdictional	--	--	0.1	30.204673, -93.998453
Wetland AD	Forested Wetland	Non-Jurisdictional	--	--	1.5	30.211135, -93.987919
Wetland AE	Forested Wetland	Non-Jurisdictional	--	--	0.6	30.210511, -93.990775
Wetland AF	Forested Wetland	Non-Jurisdictional	--	--	0.9	30.205466, -93.987109
Wetland AG	Forested Wetland	Non-Jurisdictional	--	--	1.7	30.206016, -93.985850
Wetland AH	Forested Wetland	Non-Jurisdictional	--	--	4.4	30.203762, -93.990735
Wetland AI	Forested Wetland	Non-Jurisdictional	--	--	0.8	30.201643, -93.990883

\* This value is the specific acreage of wetlands within the larger forested wetland mosaic area.

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).

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00104

- 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. The review area is a 502.22-acre tract of land approximately 2.25 miles southwest of the intersection of Texla Road and Dixie Drive, near Pine Forest, Orange County, Texas (30.205200°, -95.993552°)
  4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW to the review area is the Neches River, which is approximately 9.5 miles to the southwest of the review area. This TNW designation for the Neches River is based on being subject to the ebb and flow of the tide and/or being used for past, present, and future interstate commerce.<sup>5</sup>
  5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Approximately 3,697 linear feet of Cole Road Ditch within the review area flows west to Tiger Creek, which flows approximately 5.3 miles southwest to the Big Thicket National Preserve, and continues to flow through unnamed channels within the wetland complex of the Big Thicket Nation Preserve for 4.2 miles until it reaches the Neches River, a TNW.
  6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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

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<sup>5</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>6</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.

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resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>7</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 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): Approximately 5,730 linear feet of Tiger Creek and 3,697 linear feet of Cole Road Ditch within the review area were determined to be relatively permanent waters (RPW). This determination was based on observations made during two site visits, one during the dry season and one during the wet season, as well as a review of historical United States Geologic Survey (USGS) 7.5-minute Topographic maps, Antecedent Precipitation Tool (APT), and the aquatic resources report provided by the applicant.

The Lakeview 1926, Pine Forest 1960, and Texla 1926 and 1957 USGS topographic maps show that the portion of Tiger Creek within the review area is situated at the headwaters of the creek and has been identified as a named, intermittent stream, for at least a century. More recent USGS topographic maps still depict Tiger Creek as an intermittent stream, but it was rerouted and channelized in the 1980s and now has maintained utility ROWs on top of both

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<sup>7</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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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00104

banks of the creek. The applicant's aquatic resources report identified Tiger Creek as an RPW tributary due to the flow regime and presence of a bed and bank with an ordinary high water mark (OHWM). During the site visits conducted on 16 September 2025 (dry season) and 4 March 2026 (wet season), with drier than normal conditions on both dates, standing water was observed in Tiger Creek and an OHWM was observed at a height of approximately 3 feet above the stream bed. Therefore, Tiger Creek is an RPW and a jurisdictional tributary subject to Section 404 of the CWA.

Cole Road Ditch is a man-made ditch with a utility right-of-way (ROW) present on either side of the ditch. Approximately 3,697 linear feet of Cole Road Ditch is in the review area, starting approximately 2,000 feet west of Dixie Drive and extending west to where it connects with Tiger Creek. The ditch has a bed and bank and OHWM at a height approximately 1-2 feet above the bed of the ditch. The Texla USGS historical topographic map from 1926 and 1943 do not show Cole Road, but the 1957 map does show an unimproved road in the location of the present Cole Road Ditch. More recent Texla USGS topographic maps from 2016 and 2022 show the location of Cole Road but do not show the presence of the ditch in the review area. The applicant's aquatic resources report indicates that Cole Road Ditch was excavated from uplands around 1989 and drains only uplands, but the Texla USGS topographic maps from 2016 and 2022 show Cole Road surrounded by wetlands. During the site visits conducted on 16 September 2025 (dry season) and 4 March 2026 (wet season), with drier than normal conditions on both dates, standing water was observed within Cole Road ditch. Although the presence of water in the ditch was more variable on 16 September 2025, approximately 3-4 inches of standing water was observed throughout the majority of the ditch during the 4 March 2026 site visit, with laid over vegetation at various segments indicating recent water flow. The portion of Cole Road Ditch between the westernmost crossover/culvert and Tiger Creek also had visibly flowing water. Therefore, based on these observations, it was determined that Cole Road Ditch is an RPW and a jurisdictional tributary subject to Section 404 of the CWA.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): Wetland Z in the southwest corner of the review area is a 0.6-acre palustrine forested (PFO) wetland that extends through a depression on the bank of Tiger Creek to the OHWM of the creek. Tiger Creek is an RPW and Wetland Z has a continuous surface connection and is abutting this RPW. Therefore, Wetland Z is jurisdictional wetland subject to Section 404 of the CWA.

## 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>8</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.

Ditches 1 through 8 are generally not jurisdictional because these features do not carry relatively permanent flow. The National Wetlands Inventory (NWI) categorizes Ditches 1 and 2 as an excavated lower perennial stream with unconsolidated bottom, but Ditches 3-8 were not clearly identified on the NWI. On a site visit conducted 16 September 2025, Ditch 1 was investigated, and no standing water was observed within the ditch. Ditch 1 also did not have characteristics of a tributary throughout the relevant reach (472 linear feet) because its bed and bank became less defined as it extended into the forested areas to the east of Tiger Creek. The observations made for Ditch 1 were also characteristic of Ditches 2 through 8 within the review area based on information provided in the applicant’s aquatic resources report. Therefore, Ditches 1 through 8 are non-jurisdictional.

- 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

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<sup>8</sup> 51 FR 41217, November 13, 1986.

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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).

Unnamed Tributary 1 (UT-1) is an approximately 462-linear foot stream between Tiger Creek and Wetland AC. The National Wetlands Inventory (NWI) categorizes this tributary as an excavated lower perennial stream with unconsolidated bottom. However, on site visits conducted on 16 September 2025 (dry season) and 4 March 2026 (wet season), with drier than normal conditions on both dates, no standing water was observed within UT-1, and no indicators of water flow were observed during the wet season. UT-1 does not directly flow to Tiger Creek due to the higher elevation of the utility ROW along Tiger Creek. Therefore, UT-1 was determined to be non-RPW and is non-jurisdictional.

Wetlands A through Y and AA through AI consist of 107.05 acres of palustrine forested, forested mosaic, and scrub shrub wetlands. The applicant’s aquatic resources report indicated that there are upland points between these wetlands and the RPWs, Tiger Creek or Cole Road Ditch, and/or these wetlands do not have a continuous surface connection to a RPW, TNW, or any other aquatic resource. Therefore, Wetlands A through Y and AA through AI are not adjacent to waters of the US and are 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. Site visits conducted on 16 September 2025 and 4 March 2026.
  - b. USGS Topographic Maps: 7.5-minute Quadrangle – Lakeview 1926, Pine Forest 1960, and Texla 1926, 1957, 2016, and 2022.
  - c. USGS Map 3D Elevation Program (3DEP) Digital Elevation Model (DEM) on the Corps National Regulatory Viewer, Accessed on 15 September 2025.

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- d. National Wetlands Inventory map on the Corps National Regulatory Viewer, Accessed on 16 September 2025.
- e. Antecedent Precipitation Tool, Accessed on 15 September 2025 and 4 March 2026 November 2025.
- f. Delineation of Waters of the US - Tiger Creek Detention Pond, Orange County Drainage District, CDBG-MIT GLO Contract No. 24-065-061-E571, Report dated 21 July 2025 and Addendums dated 3 September 2025, 26 September 2025, and 2 February 2026; prepared by Hydrex Environmental.

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:**



Tasha L. Metz, Ph.D.  
Regulatory Project Manager

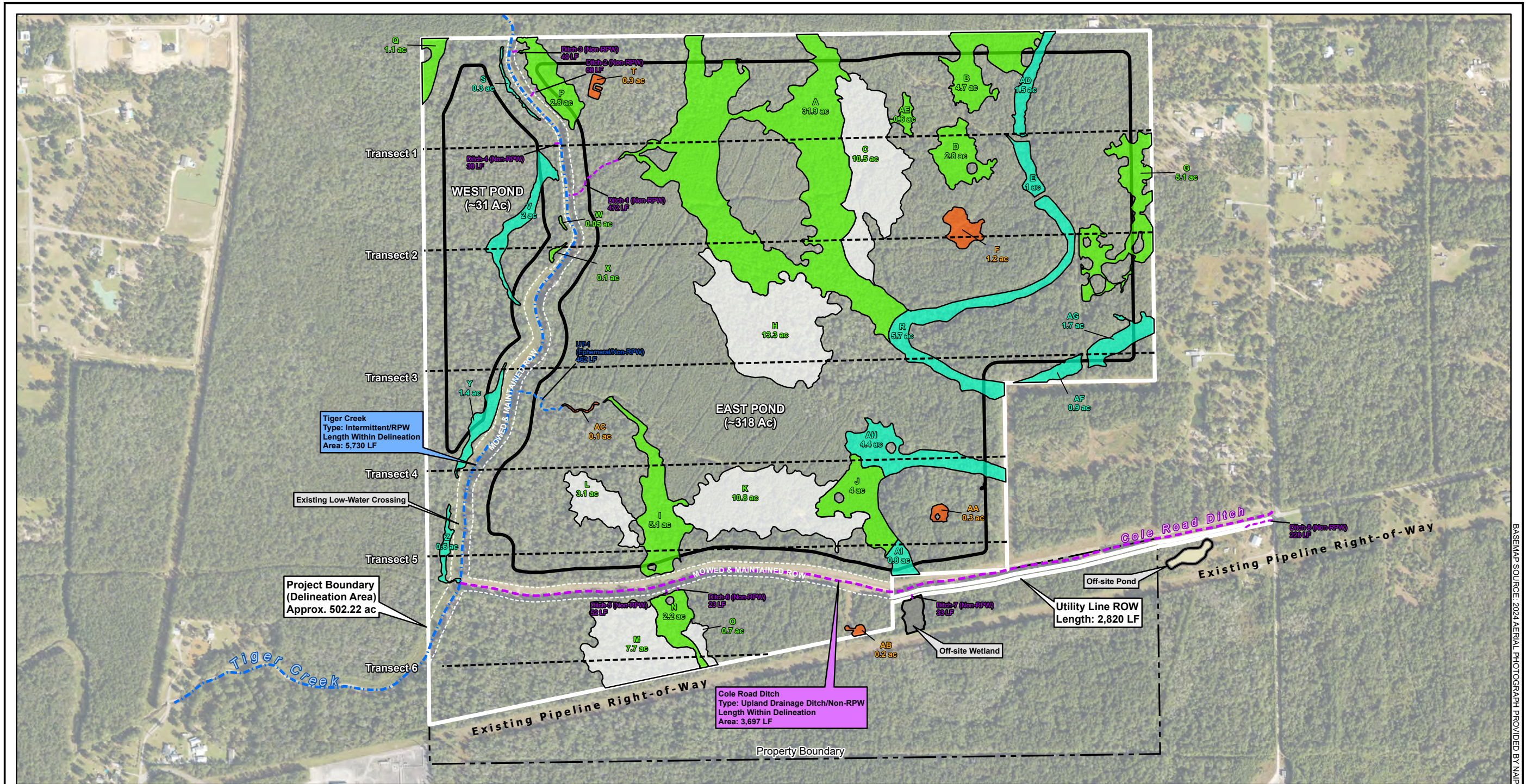
Date: 18 March 2026

**REVIEWED/APPROVED BY:**



Andria Davis  
Leader, North Branch  
Regulatory Division, Galveston District

Date: 18 March 2026



Tiger Creek  
Type: Intermittent/RPW  
Length Within Delineation  
Area: 5,730 LF

Project Boundary  
(Delineation Area)  
Approx. 502.22 ac

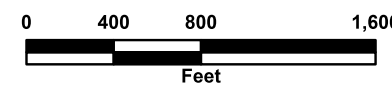
Cole Road Ditch  
Type: Upland Drainage Ditch/Non-RPW  
Length Within Delineation  
Area: 3,697 LF

Utility Line ROW  
Length: 2,820 LF

--- Delineation Transect	--- Drainage Easment ROW	--- Upland Man-Made Ditch (Non-RPW)	Scrub-Shrub Wetland
Proposed Detention Pond	--- Tiger Creek (RPW)	Forested Wetland	Off-site Pond
Property Boundary	--- Ephemeral Stream (Non-RPW)	Forested Wetland Slough	Off-site Wetland
Delineation Area	--- Cole Road Ditch (Non-RPW)	Forested Wetland Mosaic	



PLATE B-1  
DELINEATION MAP - 2024 AERIAL PHOTOGRAPH  
(REVISED)



**SWG-2025-00104**  
Tiger Creek Detention Pond  
Orange County, TX  
Orange County Drainage District  
CDBG-MIT GLO Contract No. 24-065-061-E571  
Map Revised: 02/02/2026 | Project Number: A-12-1791 | GIS Analyst: DS

BASEMAP SOURCE: 2024 AERIAL PHOTOGRAPH PROVIDED BY NAMP