



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

CESWG-RD-C

5 March 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> SWG-2004-00465, 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.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in 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).
  - i. WA001, 512.98 acres, jurisdictional, 29.755557, -93.855654
  - ii. WA002, 0.09 acre, non-jurisdictional, non-adjacent, 29.745732, -93.861746
  - iii. WA003, 0.10 acre, non-jurisdictional, non-adjacent, 29.749110, -93.862002
  - iv. WA004, 0.32 acre, non-jurisdictional, non-adjacent, 29.748818, -93.857314
  - v. SA001, 3,411 linear feet, jurisdictional, 29.761416, -93.859882
  - vi. SA002, 1,262 linear feet, non-jurisdictional, 29.747344, -93.862956
  - vii. SA003, 2,524 linear feet, non-jurisdictional, 29.748932, -93.861279
  - viii. SA004, 1,177 linear feet, non-jurisdictional, 29.747911, -93.861097
  - ix. SA005, 1,183 linear feet, non-jurisdictional, 29.747717, -93.859115
  - x. SA006, 1,278 linear feet, non-jurisdictional, 29.747008, -93.864931
  - xi. SA007, 1,284 linear feet, non-jurisdictional, 29.747030, -93.865460
  - xii. PA001, 0.06 acre, jurisdictional, 29.759612, -93.850693
  - xiii. PA002, 0.35 acre, jurisdictional, 29.751366, -93.852004
  - xiv. PA003, 0.08 acre, jurisdictional, 29.750568, -93.853539
  - xv. PA004, 3.02 acres, jurisdictional, 29.751576, -93.854991
  - xvi. PA005, 0.12 acre, jurisdictional, 29.752373, -93.863066
  - xvii. PA006, 1.54 acres, jurisdictional, 29.753605, -93.860453

xviii. PA008, 0.37 acre, jurisdictional, 29.752867, -93.861300

## 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 (25 August 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)

3. REVIEW AREA. The review area is an approximate 609-acre tract located adjacent to the Sabine Pass LNG facility on State Highway 82 in Cameron Parish, Louisiana. 29.755557, -93.855654

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Sabine Pass<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. WA001 is part of a wetland complex which abuts Lighthouse Bayou. Lighthouse Bayou flows into Sabine Pass, a Traditional Navigable Water.

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

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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.

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>8</sup>

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): SA001 is a roadside ditch with permanent flow which connects with a series of canals flowing south to Lighthouse Bayou. Lighthouse Bayou flows into Sabine Pass, a Traditional Navigable Water; therefore, SA001 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): WA001, PA001, PA002, PA003, PA004, PA005, PA006, and PA008 are part of a single wetland complex that abuts Lighthouse Bayou which flows into Sabine Pass, a Traditional Navigable Water; therefore, these aquatic resources meet the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and are waters of the United States.

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<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.

## 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.

Ditches SA002, SA003, SA004, SA005, SA006, and SA007 are in the project area. SA002, SA003, SA004, SA005, and SA006 do not carry a permanent flow as evident via GoogleEarth photos and do not flow into a Traditional Navigable Water (TNW); therefore, these ditches do not meet the definition of a tributary as defined in the pre-2015 regime post *Sackett* guidance and are not waters of the United States. SA007 does carry a permanent flow as per GoogleEarth photos; however, it does not flow into a TNW; therefore, it does not meet the definition of a tributary as defined in the pre-2015 regime post *Sackett* guidance and is not a water of the United States. This area that these ditches exist in has been previously heavily permitted and the ditches were created in the past to remove water from the site and do not flow off of the bermed area.

- 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>9</sup> 51 FR 41217, November 13, 1986.

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).

WA002, WA003, and WA004 are not connected to the large wetland complex as they are separated from the wetland complex by a berm; therefore, these wetlands do not have any known continuous surface connection to any water of the United States. The berm appears in GoogleEarth aerials from December 1985. Therefore, WA002, WA003, and WA004 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.

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. Google Earth 2018 and 2023
  - b. United States Geological Survey (USGS) Quadrangles, West of Johnson Bayou, Louisiana 1993 and Texas Point, Louisiana 1993
  - c. Wetland Delineation Report dated 03 October 2023, submitted by applicant.
  - d. USGS Light Detection and Ranging (LiDAR) elevation data dated 2017.

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.







