



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

CESWG-RD-E

October 28, 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 SWG-2021-00321

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 in Texas due to litigation.

1. SUMMARY OF CONCLUSIONS.

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.

CESWG-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2021-00321

- 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).

Name	Size (acres)	Location		Jurisdictional Status
Wetlands				
Wet 1B	0.69	29.346097°	-95.366248°	non-adjacent, non-jurisdictional
Wet 11	1.83	29.339655°	-95.381403°	non-adjacent, non-jurisdictional
Wet 23	0.51	29.337910°	-95.381069°	non-adjacent, non-jurisdictional
Wet 47	1.41	29.337692°	-95.37945 °	non-adjacent, non-jurisdictional
Wet 100	2.87	29.338131°	-95.383114°	non-adjacent, non-jurisdictional
Wet 112	1.90	29.340111°	-95.383383°	non-adjacent, non-jurisdictional
Ditches				
	(linear feet)			
Ditch 46 (Bell Lateral)	6,310	29.345219°	-95.362462°	Non-RPW, Non-jurisdictional
Ditch 69 (South Texas Water Company Canal)	1,629	29.336013°	-95.371513°	RPW, Non-jurisdictional

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

CESWG-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2021-00321

Concerning the Proper Implementation of “Continuous Surface Connection” Under the Definition of “Waters of the United States” Under the Clean Water Act.

- f. 24 July 2020 Memo, “Joint Memorandum to the Field Between the U.S. Department of the Army, Corps of Engineers and the U.S. Environmental Protection Agency Concerning Exempt Construction or Maintenance of Irrigation Ditches and Exempt Maintenance of Drainage Ditches Under Section 404 of the Clean Water Act”
3. REVIEW AREA. Approximate 2,992-acre property with the northeast corner of the property at the intersection of Farm to Market 1462 and Farm to Market 511, in Rosharon, Brazoria County, Texas.

LATITUDE/LONGITUDE (Decimal Degrees):

Latitude: 29.341858; Longitude: -95.369284

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
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

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.

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): N/A
- 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.

Ditch 69 (South Texas Water Company Canal) – 1,629 linear feet:

Ditch 69 (South Texas Water Company Canal) was excavated from uplands in the early 1930’s primarily for rice irrigation. This canal receives water from the Brazos River through a pump station. The Corps traced the canal via

⁷ 51 FR 41217, November 13, 1986.

GoogleEarth aeriels where it eventually flows into a TNW (Chocolate Bayou). The Corps conducted a site visit for a separate AJD SWG-2023-00042 on 7 March 2025 at County Road (CR) 203 and/or Liverpool-Hoskins Road (Latitude 29.188827N and Longitude -95.248144 W). This site visit revealed that the Juliff Canal (Ditch 69) on the West side of CR 203 is not connected via a culvert to the Brazoria County Drainage Ditch #6 which is on the East side of CR 203. Therefore, the Corps has determined that Ditch 69 is not extended to a traditional navigable water (TNW). Ditch 69 has permanent flow; however, it does not connect to a downstream TNW. Under the pre-2015 regulatory regime, a tributary includes natural, man-altered, or man-made water bodies that flows directly or indirectly into a TNW. Ditch 69 is a long system and ends at County Road 203 in Brazoria County. Therefore, the Ditch 69 does not meet the definition of a tributary as defined in the pre-2015 regime post Sackett guidance. Therefore, the Ditch 69 is not a water of the United States.

Ditch 46 (Bell Lateral) – 6,310 linear feet:

Ditch 46 (Bell Lateral) is owned and operated by the GCWA and terminates within the review area at Latitude 29.339985 North, Longitude -95.355394 West. The applicant conducted a wetland delineation and confirmed Ditch 46 terminates at the location indicated by GCWA. The Corps traced Ditch 46 north of the review area via GoogleEarth aeriels where it eventually connects to Ditch 69 at Latitude 29.386858 North, Longitude -95.409840 West. Therefore, the Ditch 69 does not meet the definition of a tributary as defined in the pre-2015 regime post Sackett guidance. Therefore, the Ditch 69 is not a water of the United States.

- 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 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-1B, WET 11, WET 23, WET 47, WET 100, and WET 112, totaling 9.21 acres:

Based on the data sources listed below in Section 9, the Corps determined the wetlands listed above are small, depressional features located entirely within the review area and fed via rainwater from the surrounding countryside. Based on our review, none of these wetlands have a known continuous surface connection to any water of the U.S. No swales, erosional features, ditches, tributaries, or culverts are present which could serve as continuous surface connections. Although overland sheet flow may exist between these wetlands, the LiDAR Digital Elevation Model (DEM), the Regulatory Viewer LiDAR DEM, and Google Earth aerial photos do not show any continuous surface connection between these wetlands and any Relatively Permanent Water (RPW) or TNW.

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 provided by SWCA.
 - b. Aerial photos: Google Earth Aerial Imagery, 20 August 2025.
 - c. U.S. Army Corps of Engineers (USACE). 2024. Galveston District SWG-2023-00321; Cascade Solar Energy Project: Preliminary/Approved Jurisdictional Determination, Approximate 2,2992-acre Tract, 2.75 miles east of the intersection of State Highway 288 and East Farm to Market 1462, in Rosharon, Brazoria County, Texas.
 - d. U.S. Army Corps of Engineers (USACE). 2025. Galveston District SWG-2023-00042; Texas Department of Transportation (TxDOT) Reconsideration: Approved Jurisdictional Determination, 175 linear feet of Juliff Canal, Farm-to-Market (FM) 521 from CR 56 to SH 6, in Arcola, Fort Bend County, Texas.

CESWG-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2021-00321

- e. United States Geological Survey (USGS) Topographic (Topo) map: Liverpool Texas 1963 1:24,000; Rosharon Texas 1963 1:24,000; Accessed 30 September 2025.
- f. United States Department of Interior (DOI), Fish and Wildlife Service (FWS), National Wetland Inventory (NWI); Accessed 29 September 2025.
- g. USACE Texas Regulatory Viewer 3 DEP Digital Elevation Model (DEM) Accessed 30 September 2025.

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:

RUTH.JULIA.COLLEEN.1468241613
LEEN.1468241613

Digitally signed by
RUTH.JULIA.COLLEEN.1468241
613
Date: 2025.10.28 14:03:12 -05'00'

Julie Ruth
Regulatory Specialist

Date: 28 October 2025

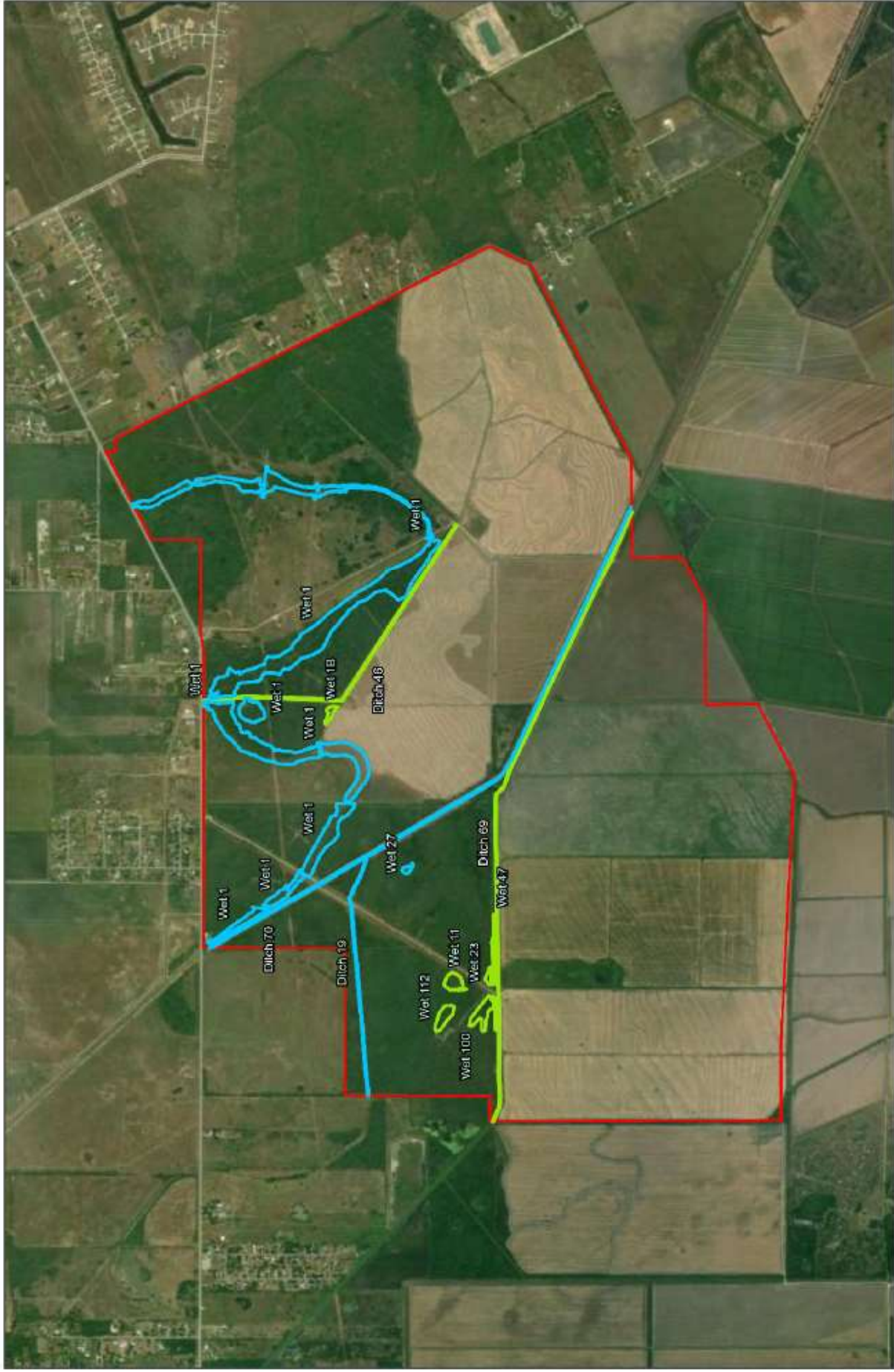
REVIEWED/APPROVED BY:

TAYLOR.KATHERINE.MARIE.1385279830
NE.MARIE.1385279830

Digitally signed by
TAYLOR.KATHERINE.MARIE.13
85279830
Date: 2025.10.28 13:56:46 -05'00'

K. Marie Taylor
Leader, Central Evaluation Unit
Regulatory Division, Galveston District

Date: 28 October 2025



CASCADE SOLAR
PROJECT
PJD Features
Overview

- Review Area
- PJD Features
- AJD Features

Review Area Center Coordinates: 29.341858, -95.369284

BRISBANE COUNTY, TX
USGS 7.5 Quadrangle:
Bosque, TX, 2006 C4
Scale: 1:250,000
Map Date: 08/01/2006
SW: 29.341858, -95.369284

SWCA
1:27,818

SWCA
1:27,818

