



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

CEWSWG-RD-C

25 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-2023-00160.<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.

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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 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. Pond OW-01; 0.183 acre, (29.964941, -95.299547), non- jurisdictional
  - ii. Wet-01; 7.56 acres, (29.965425, -95.298165), non-jurisdictional
  - iii. Wet-02; 1.02 acres, (29.964194, -95.300755), non-jurisdictional
  - iv. Wet-03; .084 acres, (29.967645, -95.299881), non- jurisdictional
  - v. Wet-04; 2.32 acres, (29.968385, -95.296532), non-adjacent, non-jurisdictional
  - vi. Wet-05; 1.58 acres, (29.971547, -95.299519), non-adjacent, non-jurisdictional
  - vii. Stream ST-01; 2040 linear feet, (29.967179, -95.299665), non-jurisdictional
  - viii. Stream ST-02; 325 linear feet, (29.965132, -95.298499), 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. 1980s preamble language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988))
- f. 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.

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3. REVIEW AREA. The project area is approximately 87-acre tract located west of dead end on Rankin Road, Humble, Harris County, Texas. The center coordinates of the site are Latitude 29.967945 N, Longitude -95.29810 W.
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 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 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

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<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.

<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.

- 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”).<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.

Pond OW-1 (0.18 acre) does not appear in USGS TOPO 1946 and 1954. The pond first appears in the USGS TOPO in 1967. Google Earth Aerial Photos dated in 1946 and 1954 has evidence of livestock trails on the property. Pond (OW-01) was dug from uplands for livestock watering. 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 lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, setline basins, or rice growing. Therefore, Pond OW-1 is not a water of the United States and is 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.

Features ST-01 (2040 linear feet) and ST-02 (325 linear feet) are non-relatively permanent waters based on 12 April 2024 site visit in which ST-01 and ST-02 are not holding water. It was evident that terrestrial plants growing in the non-relatively permanent waters leaf litter and woody debris are laying in the features. No presence of aquatic life was in the features. The APT data indicated that the site visit was conducted within the Wet season and Normal Conditions existed.

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

Therefore, the features do not carry a relatively permanent flow and are considered swales. ST-01 and ST-02 are not waters of the United States and are not subject to Section 4040 of the Clean Water Act.

- 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 or enter rationale/discussion here.]
- 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).

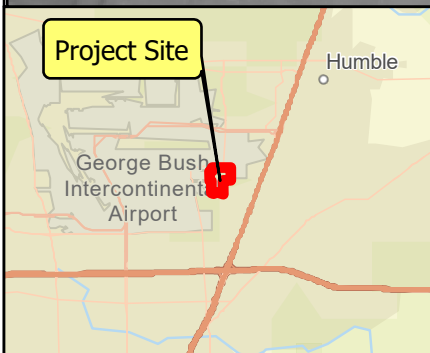
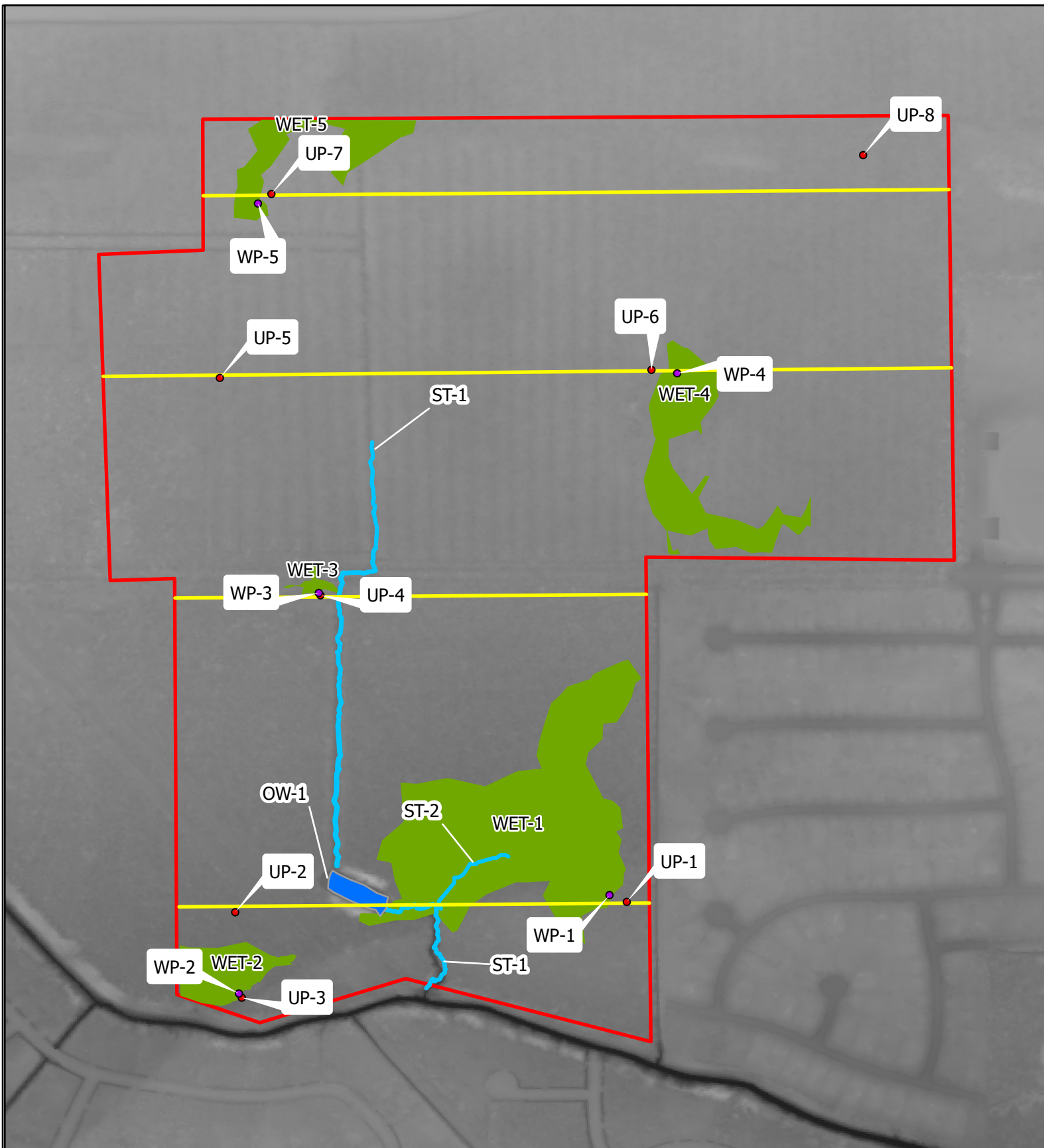
Based on the 8 April 2024 desk review and 12 April 2024 site visit, Wet-01, Wet-02, Wet-03, Wet-04 and Wet-05 do not have any known continuous surface connection to Reinhardt Bayou, a RPW located approximately 0.04 miles or 211 linear feet south of the project site, or any other water of the United States. Under the relatively permanent standard for adjacent wetlands, wetlands meet the continuous surface connection requirement if they physically abut, or touch, a relatively permanent paragraph (a)(2) impoundment or a jurisdictional tributary. No more than overland sheet flow would exit the wetlands due to upland areas surrounding the wetlands. The wetlands do not abut any jurisdictional aquatic resource or drainage ditches on the project site. 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

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the Proper Implementation of “Continuous Surface Connection” Under the Definition of “Waters of the United States” Under the Clean Water Act, Wet-01, Wet-02, Wet-03, Wet-04 and Wet-05 do not meet the definition of adjacent and do not have a continuous surface connection. These wetlands are not subject to Section 404 of the Clean Water Act.

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. Desk Review; 08 April 2024, Site Visits; 11 November 2022, 12 November 2022, 12 April 2024
  - b. Maps, plans, plots or plat submitted by; Bowman Consultants submitted on 2 March 2023
  - c. Bowman DEM with Wetland Delineation Map; 17 December 2024
  - d. Aerial Photos; Google Earth Aerial Photos (1944,1954,1982,2017, 2019,2023) U.S. Geological Survey map(s); 2022 Humble, Texas Quadrangle, 1946 Humble, Texas Quadrangle,1954 Humble, Texas Quadrangle, 1967 Humble, Texas
  - e. USDA Natural Resources Conservation Service Soil Survey; Accessed 8 April 2024
  - f. APT Antecedent precipitation vs Normal Range: 11 November 2022, 12 November 2022, 12 April 2022
10. OTHER SUPPORTING INFORMATION.
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.



Boundary	Wetland Point	DEM (Feet) Value 115.53 39.4
Transect	Wetland	
Stream	Open Water	
Upland Point		

0 250 500  
0 50 100  
Feet  
Meters

**Bowman**

**Rankin Road Development**

Coordinate System: WGS 84  
Date: 10/28/2024  
Author: Sara Weaver  
Data Source:  
City of Houston, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, SafeGraph, FAO, METI/NASA, USGS, EPA, NPS, USFWS