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

CESWG-RD-C 2 July 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-2025-00280[2]

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.

amended on September 8, 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).

Name	Size (acres)	Location	Jurisdictional Status
Halls Bayou	158.19 LF	29.851450 -95.288917	Yes, RPW
Wet 1	0.73	29.847014 -95.287605	No, no continuous surface connection to WOTUS
Wet 2	0.31	29.846230 -95.287827	No, no continuous surface connection to WOTUS
Wet 3	0.03	29.847368 -95.285272	No, no continuous surface connection to WOTUS
Wet 4	0.02	29.846638 -95.285661	No, no continuous surface connection to WOTUS
Wet 5	1.11	29.845174 -95.287549	No, no continuous surface connection to WOTUS
Wet 6	0.03	29.848962 -95.291435	No, no continuous surface connection to WOTUS
Wet 7	0.07	29.851174 -95.289120	No, no continuous surface connection to WOTUS
Wet 8	0.07	29.846480 -95.290413	No, no continuous surface connection to WOTUS
Wet 9	0.02	29.847341 -95.292065	No, no continuous surface connection to WOTUS
Wet 10	0.12	29.848306 -95.291188	No, no continuous surface connection to WOTUS
D1	47.38	29.840891 -95.299906	No, non-RPW
D2	114.36	29.841122 -95.299444	No, non-RPW
D3	81.42	29.841109 -95.298130	No, non-RPW
D4	90.74	29.841125 -95.2980225	No, non-RPW

Name	Size (acres)	Location	Jurisdictional Status
D5	47.73	29.840890 -95.298119	No, non-RPW
D6	54.01	29.840900 -95.298003	No, non-RPW
D7	63.73	29.841160 -95.293900	No, non-RPW
D8	64.57	29.840925 -95.293891	No, non-RPW
D9	74.84	29.840923 -95.293755	No, non-RPW
D10	67.68	29.841156 -95.293785	No, non-RPW
D11	61.52	29.840793 -95.288935	No, non-RPW
D12	77.41	29.841044 -95.288949	No, non-RPW
D13	74.92	29.841034 -95.28880	No, non-RPW
D14	70.76	29.840794 -95.288798	No, non-RPW
D15	64.67	29.840787 -95.288740	No, non-RPW
D16	46.39	29.849899 -95.290445	No, non-RPW
D17	2,714.37	29.837206 -95.287025	No, non-RPW
D18	73.15	29.840794 -95.288163	No, non-RPW
D19	125.80	29.846075 -95.288768	No, non-RPW
D20	176.52	29.846082 -95.288918	No, non-RPW
D21	536.49	29.848184 -95.290384	No, non-RPW
D22	6,652.96 LF	29.841042 -95.292912	No, non-RPW
D23	71.62	29.847183 -95.287280	No, non-RPW

Name	Size (acres)	Location	Jurisdictional Status
D24	73.26	29.847468 -95.284965	No, non-RPW
D25	1,408.82 LF	29.849818 -95.290592	No, non-RPW

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. An approximately 78.25-acre the tract is located near the intersection of Parkhurst Drive and Snowden Street and south to the intersection of Parkhurst Drive and Green River Drive, 29.84345 N, -95.28931 W, Harris County, Texas

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Greens Bayou

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Halls Bayou to Greens Bayou

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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.[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):158.19 LF of Halls Bayou. Halls Bayou is a tributary to Buffalo Bayou approximately 10 aerial miles downstream from the project site. Buffalo Bayou flows into Galveston Bay.

    f. The territorial seas (a)(6): N/A

    g. Adjacent wetlands (a)(7): N/A

[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.

[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.

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").[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.

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.

There are twenty-five (25) drainage ditches located within the review area, totaling approximately 6,282.16-linear feet (LF). Ditch 1 (D1) = 47.38 LF, Ditch 2 (D2) = 114.36 LF, Ditch 3 (D3) = 81.42 LF, Ditch 4 (D4) = 90.74 LF, Ditch 5 (D5) 47.73 LF, Ditch 6 (D6) = 54.01 LF, Ditch 7 (D7) = 63.73 LF, Ditch 8 (D8) = 65.57 LF, Ditch 9 (D9) = 78.84, Ditch 10 (D10) = 67.88 LF, Ditch 11 (D11) = 61.52 LF, Ditch 12 (D 12) = 77.41 LF, Ditch 13 (D 13) = 74.92 LF, Ditch 14 (D 14) = 70.76 LF, Ditch 15 (D 15) = 64.67 LF, Ditch 16 (D 16) = 46.39 LF Ditch 17 (D 17) = 2,714.37 LF, Ditch 18 (D 18) = 73.15 LF, Ditch 19 (D 19) = 125.80 LF, Ditch 20 (D 20) = 176.52 LF, Ditch 21 (D 21) = 536.49 LF, Ditch 22 (D22) = 6,652.96 LF, Ditch 23 (D23) = 71.62 LF, Ditch 24 (D24) = 73.26 LF; and Ditch 25 (D25) = 1,408.82 LF. The ditches do not carry a relatively permanent flow, do not have an ordinary high-water mark and/or a bed and bank. Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are generally not waters of the United States because they are not tributaries. The ditches are a non-relatively permanent water and do not flow into a traditional navigable water; therefore, the ditches do not meet the definition of a tributary as defined in the pre-2015 regime post-Sackett guidance and are 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

[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).

The review area contains ten (10) wetlands totaling 2.51-acres. Wetland 1 (Wet 1) = 0.73-acres, Wetland 2 (Wet 2) = 0.31-acres, Wetland 3 (Wet 3) = 0.03-acres, Wetland 4 (Wet 4) = 0.02-acres, Wetland 5 (Wet 5) = 1.11-acres, Wetland 6 (Wet 6) = 0.03-acres, Wetland 7 (Wet 7) = 0.07-acres, Wetland 8 (Wet 8) = 0.07-acres, Wetland 9 (Wet 9) = 0.02-acres, Wetland 10 (Wet 10) = 0.12-acres. Based on data sources listed in #9, our 23 June 2025 desk review, we have determined these wetlands reside in small depressional areas within the review area, that collects rainwater, and they are completely enclosed by elevated uplands. Based on our review, the wetlands do 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, Wetlands 1-10 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 Wetlands 1-10 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. Desk Review: 16 June 2025

b. Maps, plans, plots, and data submitted by or on behalf of the applicant consultant: Wetland delineation report received 2 June 2025.

c. Aerial Photos: Google Earth Aerial Imagery (1938 - 2020)

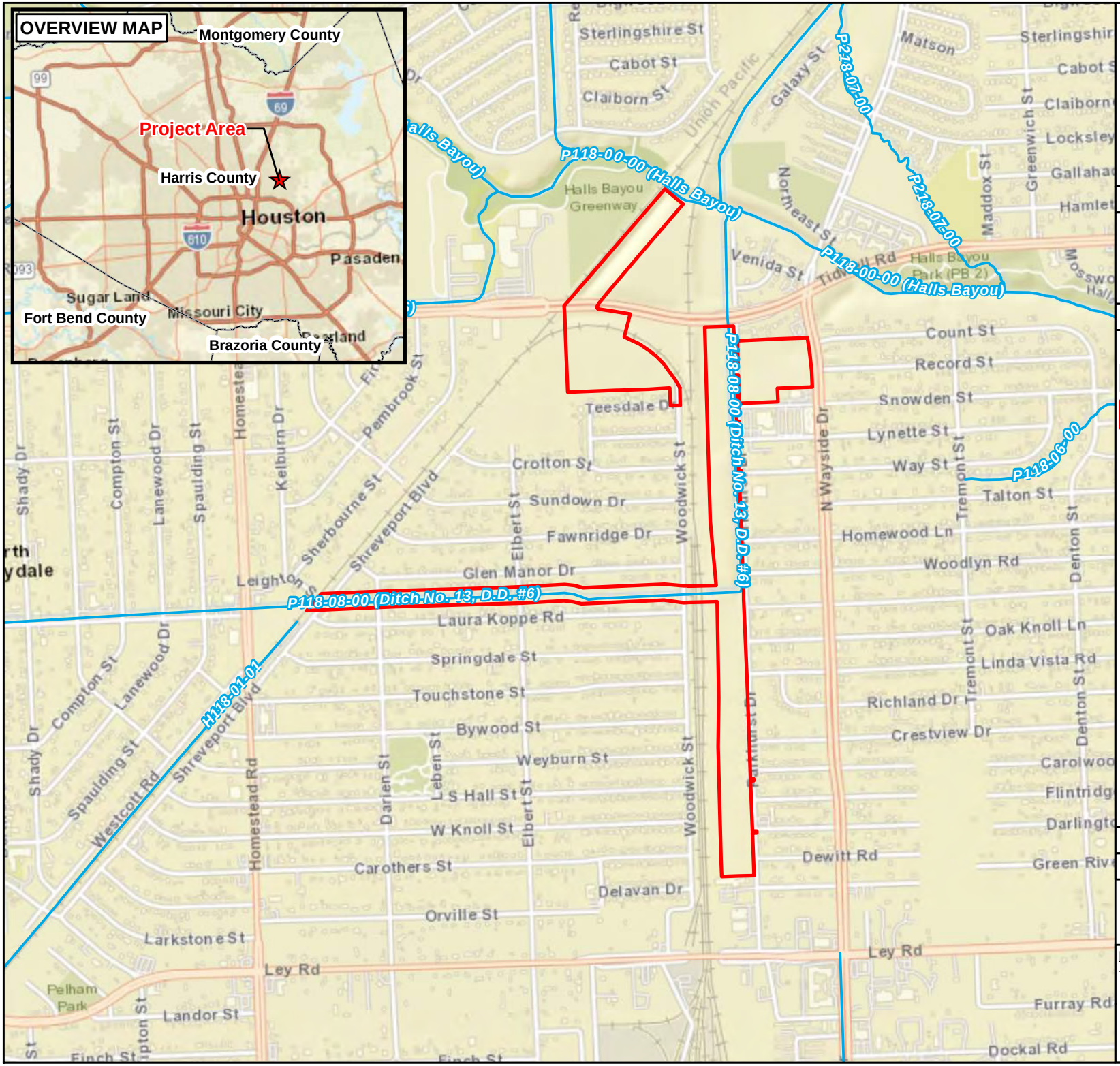
d. United States Department of Interior (DOI), Fish and Wildlife Service (FWS), National Wetland Inventory (NWI); FWS NWI ESRI Layer.

e. United State Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Soil Survey Geographic Database (SSURGO) Esri Layer

f. United States Geological Survey Topographic Maps: Settegast, Texas Quadrangle 1916-2022

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.



HOLLAWAY
ENVIRONMENTAL + COMMUNICATIONS

WOTUS Report

Halls Bayou Bond Project Implementation

Harris County, Texas

P518-08-02-E001

LEGEND

- County Boundaries
- Project Area (78.25 ac)

Exhibit 1

Vicinity Map

N

0 0.15 0.3 Miles

NOTES

- Centroid Coordinates: 29.84345, -95.28931

HOLLAWAY
ENVIRONMENTAL + COMMUNICATIONS

WOTUS Report

Halls Bayou Bond Project Implementation

Harris County, Texas

P518-08-02-E001

LEGEND

- Project Area (78.25 ac)
- HCFCD Drainage

Exhibit 2

2024 Aerial Map

N

0 625 1,250 Feet

NOTES
- Centroid Coordinates: 29.84345, -95.28931
- NearMap Aerial Date: 01/04/2024