



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
5151 FLYNN PARKWAY, SUITE 306
CORPUS CHRISTI, TEXAS 78411-4318

CESWG-RDR

26 September 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-2025-00381²

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.

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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 (approximately 0.74 acres), jurisdictional, Section 10 and Section 404
 - ii. Wetlands (approximately 0.35 acres), jurisdictional, Section 404

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. Approximately 1.69-acre review area at 501 S Fulton Beach Road in Rockport, Aransas County, Texas. Two previous AJDs have been issued for this property under SWG-1996-02747 (issued 9 November 1999 and 5 January 2022). Both previous AJDs found aquatic resources on site to be jurisdictional.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. ⁶

⁶ 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

The pond is an extension of Canoe Lake and is subject to the ebb and flow of the tide. Therefore, the pond is a TNW. The fringing wetlands directly abut and flows continuously into the pond.

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

The pond is an extension of Canoe Lake, which flows continuously into Little Bay, which subsequently flows into Aransas Bay. The fringing wetlands directly abut and flow continuously into the pond.

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸

Pond (0.74 acres): Based on the data sources listed below, we have determined that the pond is jurisdictional because it is subject to the ebb and flow of the tide. In accordance with 33 CFR 329.4, navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. In accordance with 33 CFR 329.12(a)(2), regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean high water. Further, 33 CFR 329.12(b) states that regulatory jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. Jurisdiction thus extends to the edge (as determined by 33 CFR 329.12(a)(2)) of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are thus considered “navigable in law”, but only so far as the area is subject to inundation by the mean high water. In accordance with 33 CFR 328.3(a)(1), a water

(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.

⁷ 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.

⁸ 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.

is considered a WOTUS if it is currently used, was used in the past, or may be susceptible of use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. Furthermore, in the training: 2025 Continuous Surface Connection Guidance (29 April 2025) provided by EPA, which can be found at https://www.epa.gov/system/files/documents/2025-06/csc_memo_training_4-29-25_508.pdf, Examples 2 and 3 provide a scenario in which a culvert connects a relatively permanent water (RPW) to wetlands via a culvert that has an observable ordinary high water mark and thus is treated as part of the relatively permanent tributary; thus the RPW still provides a continuous surface connection to the TNW. In this case, the mean high water line of Canoe Lake extends into the culvert and the culvert provides a continuous surface connection to the tidally influenced pond. Therefore, the placement of structures and/or work performed in the pond is subject to Section 10 of the Rivers and Harbors Act, and the discharge of dredged and/or fill material into the pond is subject to Section 404 of the Clean Water Act and would require a DA permit.

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):

Pond (0.74 acres): Pond (0.74 acres): Based on the data sources listed below, we have determined that the pond is jurisdictional because it is subject to the ebb and flow of the tide. In accordance with 33 CFR 329.4, navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. In accordance with 33 CFR 329.12(a)(2), regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean high water. Further, 33 CFR 329.12(b) states that regulatory jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. Jurisdiction thus extends to the edge (as determined by 33 CFR 329.12(a)(2)) of all such waterbodies, even though

portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are thus considered “navigable in law”, but only so far as the area is subject to inundation by the mean high water. In accordance with 33 CFR 328.3(a)(1), a water is considered a WOTUS if it is currently used, was used in the past, or may be susceptible of use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. Furthermore, in the training: 2025 Continuous Surface Connection Guidance (29 April 2025) provided by EPA, which can be found at https://www.epa.gov/system/files/documents/2025-06/csc_memo_training_4-29-25_508.pdf, Examples 2 and 3 provide a scenario in which a culvert connects a relatively permanent water (RPW) to wetlands via a culvert that has an observable ordinary high water mark and thus is treated as part of the relatively permanent tributary; thus the RPW still provides a continuous surface connection to the TNW. In this case, the mean high water line of Canoe Lake extends into the culvert and the culvert provides a continuous surface connection to the tidally influenced pond. Therefore, the placement of structures and/or work performed in the pond is subject to Section 10 of the Rivers and Harbors Act, and the discharge of dredged and/or fill material into the pond is subject to Section 404 of the Clean Water Act and would require a DA permit.

- 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):

Fringing wetlands (0.35 acres): Based on the data sources listed below, we have determined that the fringing wetlands are jurisdictional because they physically abut and have a continuous surface connection to the pond, a TNW. In accordance with 33 CFR 328.3(a)(4), a wetland is considered a WOTUS when it is adjacent to waters identified in paragraph (a)(1)-(a)(3) of the federal regulations. In accordance with the pre-2015 regulatory regime in light of *Sackett v. EPA* 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, a wetland is considered adjacent if connected by a continuous surface connection, meaning that the wetland must physically abut or touch the paragraph (a)(1) water, a jurisdictional impoundment, or relatively permanent water. Therefore, the discharge of dredged and/or fill material into the fringing wetlands is subject to Section 404 of the Clean Water Act and would require a DA permit.

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”).⁹ 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. N/A
- 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

⁹ 51 FR 41217, November 13, 1986.

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- 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). N/A
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. Photos provided by applicant (received 7/16/25)
 - b. Aerials (1995, 2005, 2014, 2023; source: Google Earth)
 - c. USGS Topographic Maps (accessed on USGS TopoView 9/25/25):
 - o 1:62500 Rockport, TX (1954)
 - o 1:24000 Rockport, TX (1979)
 - o 1:24000 Rockport, TX (2022)
 - d. National Wetland Inventory (NWI) (USFWS website accessed 8/26/2025)
 - e. National Hydrologic Dataset (NHD) (accessed on National Map Viewer 9/19/25)
 - f. 3DEP Elevation Hillshade (accessed on National Map Viewer 9/19/25)
 - g. ORM2 Database:
 - (1) A jurisdictional determination (JD) was issued for this property under SWG-1996-02747 on 9 November 1999. Since this JD was issued over 5 years ago, it is no longer valid but was used to review previously identified aquatic features and jurisdiction. The administrative record for this AJD is not available. Data entry in ORM appears to have combined the pond and wetlands as one feature and lists them as lacustrine emergent wetlands subject to Section 10 and Section 404. Jurisdiction was determined based on adjacency to a Traditionally Navigable Water (TNW).
 - (2) A second JD was issued for this property on 5 Jan 2022. ORM data entry used the same combined wetland/pond aquatic feature as the previous AJD. Jurisdiction for this AJD was listed as Section 404 only, and jurisdiction was based on adjacency to a TNW. The AJD form in the administrative record shows

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the review area contains 0.35 acres of wetlands and 0.74 acres of RPW that flow directly or indirectly into a TNW. This AJD is still valid, however, the property has requested an updated AJD based on current regulations.

10. OTHER SUPPORTING INFORMATION. 2025 Continuous Surface Connection Guidance (29 April 2025) provided by EPA, which can be found at https://www.epa.gov/system/files/documents/2025-06/csc_memo_training_4-29-25_508.pdf

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:

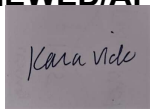
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Amanda Barker
Regulatory Specialist

Date: 9/26/2025

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Kara Vick
Team Lead/Technical Expert
Corpus Christi Regulatory Field Office
Regulatory Division, Galveston District

Date: 9/26/2025

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Approved Jurisdictional Determination

Review Area (1.69 acres) 28.053354 -97.034271

Approximate location and size of aquatic features:

Pond (0.74 acres): 28.053367 -97.034419

Fringing wetlands (0.35 acres): 28.053181 -97.034048

Disclaimer: The review area boundary, indicated in red, does not represent property boundaries or ownership.

