



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

CESWG - RDN

2 June 2026

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-2025-00539

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 this state due to litigation.

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 - RDN

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00539

1. SUMMARY OF CONCLUSIONS.

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).

Aquatic Resource Name	Aquatic Resource Type	Latitude	Longitude	Acreage	Linear Feet	Jurisdictional Status
WA001a	PEM	29.930283	-94.319258	40.57		Non-jurisdictional
WA001b	PFO	29.933455	-94.317389	0.7		Non-jurisdictional
WA002a	PEM	29.928262	-94.321603	0.246		Non-jurisdictional
WA002b	PFO	29.923303	-94.325798	53.29		Non-jurisdictional
WA003a	PEM	29.922623	-94.320346	1.193		Non-jurisdictional
WA003b	PFO	29.923675	-94.319427	11.89		Non-jurisdictional
PA001	Man-made Pond	29.929829	-94.321256	4.13		Non-jurisdictional
SA001	Non-RPW stream	29.930094	-94.321667		4.54	Non-jurisdictional
SA002	Non-RPW stream	29.930248	-94.320526		119.69	Non-jurisdictional
SA003	Non-RPW stream	29.929038	-94.320649		230.72	Non-jurisdictional
SA004	Non-RPW stream	29.93373	-94.318018		362.01	Non-jurisdictional
SA005a	Non-RPW stream	29.927936	-94.319235		193.77	Non-jurisdictional
SA005b	Non-RPW stream	29.924443	-94.325997		4786.82	Non-jurisdictional
SA006	Non-RPW stream	29.92837	-94.320719		969.77	Non-jurisdictional
SA007	Non-RPW stream	29.927538	-94.323557		190.77	Non-jurisdictional
SA008	Non-RPW stream	29.921767	-94.328789		161.41	Non-jurisdictional
SA009	Non-RPW stream	29.919687	-94.330443		441.4	Non-jurisdictional
SA010	Non-RPW stream	29.919807	-94.330694		110.27	Non-jurisdictional

PFO = Palustrine Forested Wetland
PEM = Palustrine Emergent Wetland
RPW = Relatively Permanent Water

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. The review area is located on an approximately 200-acre tract of land south of Farm-to-Market Road (FM) 365 and north of North Fork Taylor Bayou, approximately 4.0 miles west of Fannett, in Jefferson County, Texas; 29.9256664, -94.322513.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A.⁵
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
 6. SECTION 10 JURISDICTIONAL WATERS⁶: 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

⁵ 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.

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.

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): 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").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.

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 51 FR 41217, November 13, 1986.

Based on a desktop review of historical Google Earth Imagery from 2019, 2022, 2023, and 2025, and USGS 7.5-minute topographic maps from the Fannett West quadrat in 1962, 1993, 2016, and 2022, Manmade Pond PA001 (4.13 acres) is an artificial pond that was created by excavating uplands between December 2023 and October 2025. It is not currently connected to a relatively permanent water (RPW) and is therefore determined to be generally non-jurisdictional 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. 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
- 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 a desktop review and a site visit conducted on 24 February 2026, as well as the Strahler stream order for relevant reaches, SA001 (4.54 linear feet), SA002 (119.69 linear feet), SA003 (230.72 linear feet), SA004 (362.01 linear

CESWG - RDN

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00539

feet), SA007 (190.77 linear feet), SA008 (161.41 linear feet), and SA0010 (110.27 linear feet) are 1st order streams that do not exhibit relatively permanent flow. Therefore, SA001, SA002, SA003, SA004, SA007, SA008, and SA0010 are non-jurisdictional features.

The relevant reaches of SA005a (193.77 linear feet), SA005b (4,786.82 linear feet, and SA006 (969.77 linear feet) are 2nd order streams with distinct bed and bank, ordinary high water mark (OHWM), standing water in over 50% of the relevant reach, and eroded cut banks. The Antecedent Precipitation Tool run on 21 February 2026 indicated that conditions at the time of the site visit were in the wet season and normal, but within a long-term period of severe drought. The relevant reach of SA009 (441.4 linear feet) is a dry, excavated ditch extending from SA005b at a slightly higher elevation to a culvert at the levee along the north bank of North Fork Taylor Bayou. The culvert passes through the levee and exits at a point just above the OHWM of the bayou. North Fork Taylor Bayou is a relatively permanent water (RPW) located outside of the review boundary. Based on these observations, SA005a, SA005b, and SA006 had indicators of relatively permanent flow; however, these features flow to SA009, which was determined to be a 3rd order stream that did not carry relatively permanent flow to another RPW and/or TNW. Therefore, SA005a, SA005b, SA006, and SA009 are non-jurisdictional features.

Based on a desktop review and a site visit conducted on 24 February 2026, it was determined that wetlands WA001a (39.947 acres), WA001b (0.794 acre), WA002a (0.249 acre), and WA002b (51.678 acres), are all abutting various streams within the review area. However, none of these streams are jurisdictional due to lack of relatively permanent flow to a TNW. Therefore, wetlands WA001a, WA001b, WA002a, and WA002b are non-jurisdictional. Wetlands WA003a (1.168 acres) and WA003b (11.814 acres) are not abutting an RPW or TNW, therefore these wetlands are also non-jurisdictional.

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. WETLAND DELINEATION REPORT FOR THE HWY 365 SPORTS COMPLEX PROJECT, JEFFERSON COUNTY, TEXAS. Prepared by: SWCA Environmental Consultants in October 2024.
 - b. Site visit conducted on 24 February 2026.

CESWG - RDN

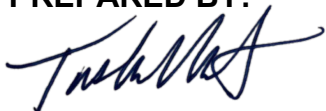
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00539

- c. Google Earth Aerial Imagery of the review area from 2019, 2022, 2023, and 2025.
- d. USGS Topographic Maps: 7.5-minute Quadrangle – Fannett West, Texas 1962, 1993, 2016, and 2022.
- e. USGS Map 3D Elevation Program (3DEP) Digital Elevation Model (DEM) on the Corps National Regulatory Viewer, Accessed on 4 November 2025.
- f. National Wetlands Inventory map on the Corps National Regulatory Viewer, Accessed on 2 February 2026.
- g. Antecedent Precipitation Tool, Accessed on 21 February 2026.

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:



Tasha L. Metz, Ph.D.
Regulatory Project Manager

Date: 2 June 2026

REVIEWED/APPROVED BY:



Andria Davis
Chief, North Branch
Regulatory Division, Galveston District

Date: 2 June 2026

