



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

CESWG - RDE

16 January 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-2025-00617]

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 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.

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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).

Table 1: Features and type within Review Area

Feature Name	Latitude/ Longitude	Wetland Size	Feature Type	Jurisdiction
W-1	29.749169, -94.890195	0.3- acre	Excavated Pond	Non-Adjacent / Non-Jurisdictional
W-2	29.74867, -94.891217	5.3-acre	Emergent Wetland	Non-Adjacent / Non-Jurisdictional
W-3	29.748852, -94.889037	0.6-acre	Emergent Wetland	Non-Adjacent / Non-Jurisdictional
W-4	29.74622, -94.888054	0.4-acre	Emergent Wetland	Non-Adjacent / Non-Jurisdictional
W-5	29.748267, -94.890062	0.6-acre	Emergent Wetland	Non-Adjacent / Non-Jurisdictional
W-6	29.746088, -94.891466	0.2-acre	Emergent Wetland	Non-Adjacent / Non-Jurisdictional
W-7	29.746084, -94.890642	0.2-acre	Emergent Wetland	Non-Adjacent / Non-Jurisdictional
W-8	29.747437, -94.889509	0.2-acre	Emergent Wetland	Non-Adjacent / Non-Jurisdictional
W-9	29.74576, -94.889174	1.4-acre	Excavated Pond	Non-Adjacent / Non-Jurisdictional
W-10	29.745864, -94.886384	3.3-acre	Excavated Pond	Non-Adjacent / Non-Jurisdictional
DD-1	29.747762, -94.890778	70 linear feet	Swale	No Features / Non-Jurisdictional
DD-2	29.747654, -94.890146	140 linear feet	Swale	No Features / Non-Jurisdictional

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DD-3	29.747456, -94.888948	153 linear feet	Swale	No Features/ Non-Jurisdictional
DD-4	29.746663, -94.890239	360 linear feet	Swale	No Features / Non-Jurisdictional
DD-5	29.746475, -94.888783	421 linear feet	Swale	No Features/ Non-Jurisdictional
DD-6	29.745787, -94.890208	228 linear feet	Swale	No Features / Non-Jurisdictional
DD-7	29.744921, -94.889032	425-linear feet	Swale	No Features / 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 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 59.6-acre Project area is located approximately 2 miles northeast of the intersection between Grand Parkway and Farm-to-Market (FM) 1405 in western Chambers County, Texas. The Project area is bound by H.L. and P. Canal to the north; undeveloped forestland, a water treatment pond, and Barbers Hill Canal (aka, Cedar Point Lateral) to the east; an access road and undeveloped herbaceous habitat to the south; and by undeveloped herbaceous habitat and a railroad line to the west.

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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 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

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.

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.

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- 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.

The project review area contains three excavated PUBx ponds totaling 10 acres. The PUBx ponds appear to be man-made and utilized for water treatment or other operations associated with the BAWA East Surface Water Treatment Plant. Hydrology indicators observed within the PUBX ponds include *surface water* (A1) and *geomorphic position* (D2).

The PUBx ponds mapped within the Project area do not possess a continuous surface connect to an RPW or TNW and would therefore be considered non-adjacent. As such, these features are non-jurisdictional and would not be regulated by the USACE under Section 404 of the CWA.

- 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.

Seven swales totaling 1,814 linear feet were mapped within the Project area. These features consist of roadside drainage ditches and surface drainage associated with the BAWA East Surface Water Treatment Plant property.

The seven (7) swales (DD-1, DD-2, DD-3, DD-4, DD-5, DD-6, DD-7) identified within the review area do not carry a relatively permanent flow of water, do not

⁸ 51 FR 41217, November 13, 1986.

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have an ordinary high-water mark (OHWM) or bed and bank. Therefore, these features are not jurisdictional based on the 2008 Rapanos guidance.

- 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).

There are seven PEM wetlands totaling 2.5 acres within the Project area. The PEM wetlands were dominated by seaside American-aster (*Symphotrichum subulatum*, obligate [OBL]), Mexican primrose-willow (*Ludwigia octovalvis*, OBL), and broad-leaf cat-tail (*Typha latifolia*, OBL) in the herbaceous stratum. Soils in the PEM wetlands varied in hue and chroma and typically met hydric soil indicators *redox dark surface* (F6), *umbric surface* (F13), or *depleted matrix* (F3). Hydrology indicators observed within the PEM wetlands included *surface water* (A1), *water-stained leaves* (B9), *saturation* (A3), and *algal mat or crust* (B4).

The seven PEM wetlands mapped within the Project area do not possess a continuous surface connection to any RPW, TNW or impoundment. 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

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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,

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 dated June 2025, received 4 November 2025.
 - b. United States Department of Interior (DOI), Fish and Wildlife Service (FWS), National Wetland Inventory (NWI): FWS NWI Online Mapper (<http://www.fws.gov/wetlands/data/mapper.HTML>).
 - c. United States Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Soil Survey: NRCS National Cooperative Soil Survey (NCSS) Google Earth Layer (http://casoilresource.lawr.ucdavis.edu/soil_web/kml/mapunits.kml).
 - d. United States Geological Survey Topographic Maps
 - e. Project Description, Plans, and Site Photos submitted by BGE, Inc. on 4 November 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:

Michelle Puig
Regulatory Specialist

Date: _____

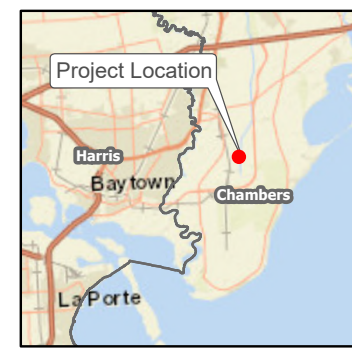
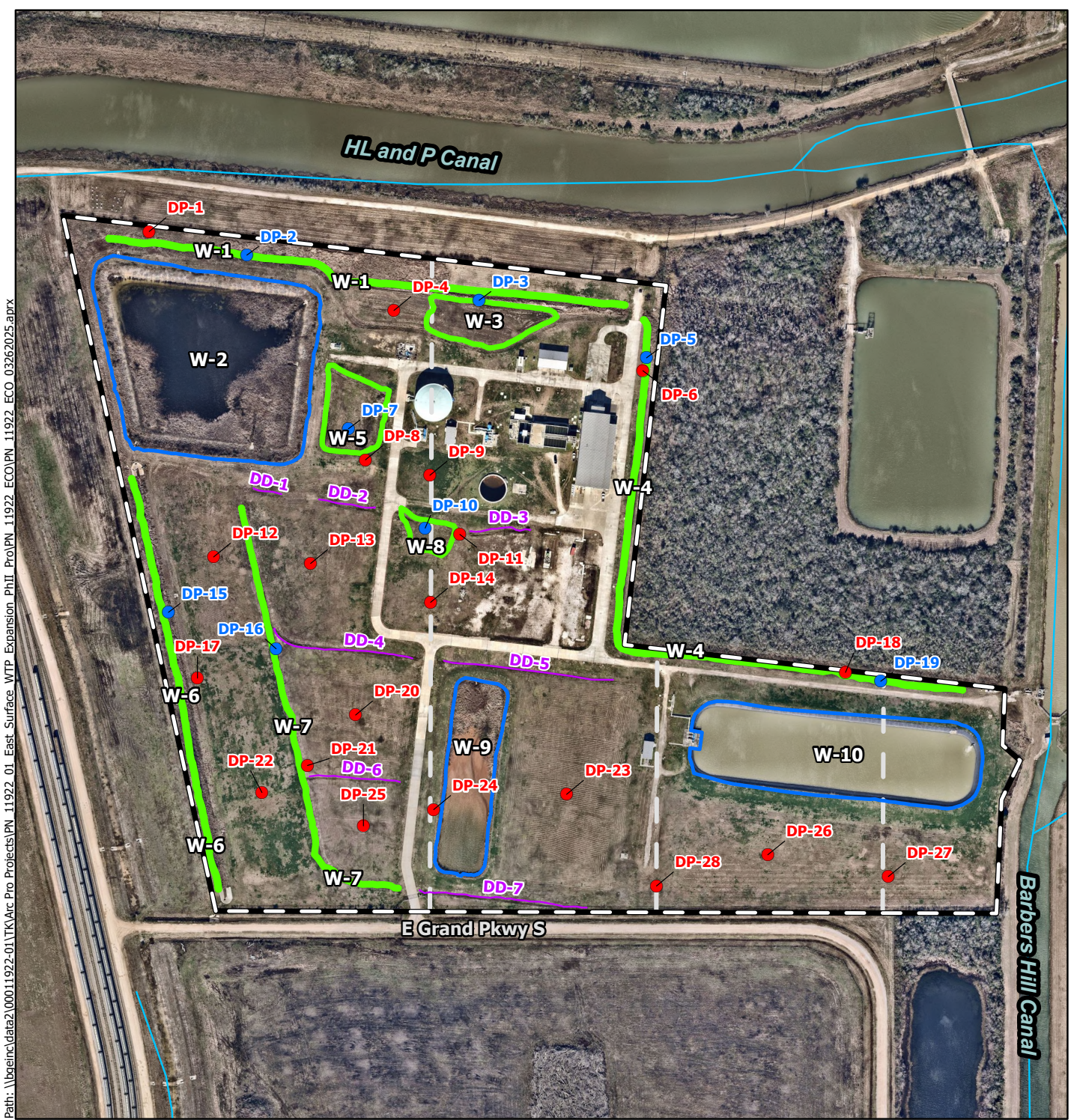
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REVIEWED/APPROVED BY:

K. Marie Taylor
Leader, Central Branch
Regulatory Division, Galveston District

Date:_____



Project Boundary
 Drainage Ditch
 Transects
 Streams (NHD)

Wetlands

PEM
 PUBx

Data Point

Wetland
 Upland

Datum: NAD 1983
 Projection: Texas State Plane
 Zone: South Central
 Units: Feet
 Basemap: Nearmap 2025 Imagery

0 325 Feet
 0 50 100 Meters

Figure 3: Aquatic Resources Map
 Aquatic Resources Delineation Report
 East Surface Water Treatment Plant Expansion
 Phase II Project
 Baytown Area Water Authority
 Chambers County, Texas

Job No: 11922-01	1 IN = 325 FT	Date: Mar 2025
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