



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

CESWG - RDS

22 May 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-2025-00629²

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.

CESWG - RDS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00629

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. 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).

Feature Name	Feature Type	Latitude	Longitude	Acres/Linear Feet	Jurisdictional Status
W101	Pond	27.9194680	-97.1762329	2.55	None
Ditch 1	Ditch	27.91914	-97.175343	0.08	None
Ditch 2a	Ditch	27.91815	-97.176183	0.40	None
Ditch 2b	Ditch	27.917297	-07.177401	0.15	None

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
- f. 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))

CESWG - RDS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00629

3. REVIEW AREA. The review area is an approximately 15.29-acre tract located at 2441 Demory Lane in Aransas Pass, San Patricio County, Texas.

LATITUDE/LONGITUDE (Decimal Degrees):

Latitude: 27.918324 N; Longitude: 97.177152 W

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. ⁶ N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS N/A
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 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

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 (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.

CESWG - RDS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00629

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”).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.

Ditch 1, Ditch 2a, and Ditch 2b: Based on the data sources listed above, we have determined that the linear features are not jurisdictional because they are ditches excavated from uplands and hold ephemeral water after rain events. They do not contain relatively permanent water, are not under tidal influence, and do not act as a tributary to any TNW. The preamble of Section 328.3 (16 November 1986 Federal Register Vol. 51, No. 219) defines waters that are generally non-jurisdictional, including “non-tidal drainage ditches excavated on dry land... Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water (33 CFR

⁹ 51 FR 41217, November 13, 1986.

CESWG - RDS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00629

328.3(b)(3).". Therefore, the discharge of dredged and/or fill material within these features would not require a DA permit.

- 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*.

Pond 1: Based on the data sources listed above, we have determined that the pond is not jurisdictional because it is an isolated water within a depressional area that collects rainwater from the surrounding area. The pond is not navigable, is not an impoundment of a water of the US, is not a tributary of a water of the US, and is not connected to any water of the US by a continuous surface connection. The use, degradation, destruction of the pond could not affect interstate or foreign commerce including any such waters which are or could be used by interstate or foreign travelers for recreational or other purposes, or from which fish or shellfish are or could be taken and sold interstate or foreign commerce, or which are used or could be used for industrial purposes by industries in interstate commerce. The pond does not meet any definition of a water of the United States as described in 33 CFR 328.3. Therefore, the discharge of dredged and/or fill material within this feature would not require a DA permit.

- 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

CESWG - RDS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00629

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. Site Visit 13 February 2026
- b. Wetland Delineation report titled "15.29-acre Tract at 2441 Demory Lane, Aransas Pass, San Patricio County, Texas" (received 9 March 2026)
 - o NRCS Web Soil Survey for San Patricio and Aransas Counties
 - o USFWS National Wetland Inventory Map
 - o Lidar Map
 - o Antecedent Precipitation Tool (APT) Report
 - o Wetland Determination Forms
 - o Site photos
- c. Aerials (1995, 2003, 2009, 2011, 2014, 2017, 2025; source: Google Earth)
- d. USGS Topo Maps (1:24000 Aranas Pass, 1954, 2022)
- e. National Hydrographic Dataset (NHD, accessed on National Map Viewer 2/4/26)
- f. ORM2 Database:

(1) An AJD and no permit required letter was issued for a project within this review area under SWG-2014-00711 (Bay PSL Site 3). The previous project included the pond and ditch features present in the current delineation, in addition to two wetland features in the southern portion of the review area that do not appear in the current delineation. The proposed project avoided all aquatic resources, and therefore no determination of jurisdiction was made for the features. The rest of the property was determined to be upland.

10. OTHER SUPPORTING INFORMATION. N/A

CESWG - RDS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00629

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:



Amanda Barker
Regulatory Specialist

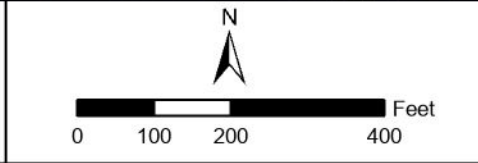
Date: 22 May 2026

REVIEWED/APPROVED BY:



Kara Vick Clark
Leader, South Branch
Regulatory Division, Galveston District

Date: 22 May 2026



Legend	
●	Wetland SP
●	Upland SP
	Project Boundary (15.81 Acres)
	Ditch (0.625 Acres)
	Pond (2.55 Acres)

**DEMORY LANE WETLAND DELINEATION
ARANSAS PASS, SAN PATRICIO COUNTY, TEXAS**

LOCATION: 2441 DEMORY LANE
 COUNTY: SAN PATRICIO COUNTY
 APPLICATION BY:
 MAP DATE: MAY 21, 2026

SOURCE: CEI WETLAND SURVEY SEPTEMBER 17, 2025
 BASE: ESRI WORLD IMAGERY
 DATUM: WGS 1984

SWG - Figure 2