



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

CESWG - RDN

24 April 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 2026-00165²

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 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	Acres/Linear Feet	Jurisdictional Status
Pond 1	Pond	0.28	Non-Jurisdictional
Pond 2	Pond	0.51	Non-Jurisdictional
Pond 3	Pond	0.01	Non-Jurisdictional
Wetland 1	PEM	0.04	Non-Jurisdictional
Wetland 2	PEM	0.11	Non-Jurisdictional
Wetland 3	PEM	0.80	Non-Jurisdictional
Wetland 4	PEM	0.03	Non-Jurisdictional
Wetland 5	PEM	1.61	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.

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3. REVIEW AREA. The review area consists of a 117-acre tract of land located on the northeastern corner of Kickapoo Road and U.S. Highway 290, in Waller, Harris County, Texas

LATITUDE/LONGITUDE (Decimal Degrees): Center,
Latitude: 30.057581° North; Longitude: 095.868048° West

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
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.

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.

Wetland 1: Wetland 1 is a 0.04-acre depression excavated as part of a roadside ditch to drain precipitation and runoff from the immediately northwards gravel roadway. This feature was cut from upland and drains only uplands. This feature does not have regular inundation/flow and is not considered relatively permanent. Due to these reasons, Wetland 1 does not hold a continuous surface connection with a relatively permanent waterway and is therefore considered non-jurisdictional under Section 404 of the Clean Water Act.

⁹ 51 FR 41217, November 13, 1986.

Wetland 4: Wetland 4 is a 0.03-acre depression excavated as part of a roadside ditch to drain precipitation and runoff from the immediately northwards gravel roadway and southwards Pond 2. Wetland 4 is separated from Pond 2 and an off-site open-water feature by a gravel road and does not connect to any aquatic feature. The existing culvert in the road does not extend into any aquatic resource. Wetland 4 does not have regular inundation/flow and is not considered relatively permanent. Due to these reasons, Wetland 4 does not hold continuous surface connection with a relatively permanent waterway and is therefore considered non-jurisdictional under Section 404 of the Clean Water Act.

- 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).

Pond 1: Pond 1 is a 0.28-acre inundated open-water feature located entirely within an established agricultural field. Immediately north of Pond 1 is an upland gravel road which separates the overall review area from a larger off-site open-water feature. Pond 1 shows continuous inundation through current and past aerial images. However, Pond 1 does not directly abut a relatively permanent waterway and is therefore considered non-adjacent. Due to these reasons, Pond 1 does not

hold a continuous surface connection with a relatively permanent waterway and is therefore considered non-jurisdictional under Section 404 of the Clean Water Act.

Pond 2: Pond 2 is a 0.51-acre inundated open-water feature located entirely within an established agricultural field. Immediately north of Pond 2 is an upland gravel road which separates the overall review area from a larger off-site open-water feature. Pond 2 shows continuous inundation through current and past aerial images. However, Pond 2 does not directly abut a relatively permanent waterway and is therefore considered non-adjacent. Due to these reasons, Pond 2 does not hold a continuous surface connection with a relatively permanent waterway and is therefore considered non-jurisdictional under Section 404 of the Clean Water Act.

Pond 3: Pond 3 is a 0.01-acre inundated open-water feature located entirely within an established agricultural field. Pond 3 is likely an extension of Pond 2. Immediately north of Pond 3 is an upland gravel road which separates the overall review area from a larger off-site open-water feature. Pond 3 shows continuous inundation through current and past aerial images. However, Pond 3 does not directly abut a relatively permanent waterway and is therefore considered non-adjacent. Due to these reasons, Pond 3 does not hold a continuous surface connection with a relatively permanent waterway and is therefore considered non-jurisdictional under Section 404 of the Clean Water Act.

Wetland 2: Wetland 2 is a 0.11-acre palustrine emergent wetland located immediately southwards of Pond 1. This feature is a depression within the existing agricultural field that is likely fed by overland sheet flow during precipitation events and overflow from Pond 1. Wetland 2 directly abuts Pond 1; however Pond 1 is considered non-jurisdictional. Wetland 2 does not have a continuous surface connection with a relatively permanent waterway and is therefore considered non-jurisdictional under Section 404 of the Clean Water Act.

Wetland 3: Wetland 3 is a 0.80-acre palustrine emergent wetland located immediately southwards of Pond 2 and extends further south within the review area. This feature is comprised of depression land located entirely within the existing agricultural field. This wetland is likely fed by overland sheet flow and overflow from Pond 2. Wetland 3 does not have a continuous surface connection with a relatively permanent waterway and is therefore considered non-jurisdictional under Section 404 of the Clean Water Act.

Wetland 5: Wetland 5 is a 1.61-acre palustrine emergent wetland located within the southern portion of the review area. Wetland 5 does not directly abut any other feature within the footprint of this review. Wetland 5 does not have a continuous

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surface connection with a relatively permanent waterway and is therefore considered non-jurisdictional under Section 404 of 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. Office evaluation was conducted on 8 April 2026
 - b. Wetland Delineation Report: Prepared by Integrated Environmental Solutions, for KDW dated 15 May 2025.
 - c. USACE Texas Southwestern Division Regulatory Viewer. World Imagery with Metadata accessed April 2026.
 - d. USACE Texas Southwestern Division Regulatory Viewer. National Hydrography Dataset accessed April 2026.
 - e. USACE Texas Southwestern Division Regulatory Viewer. Digital Elevation Model & Hillshade accessed April 2026.
 - f. USFWS National Wetlands Inventory Mapper access April 2026.
 - g. U.S. Army Corps of Engineers. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0), ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. RDC/EL TR-10-20. Vicksburg, MS: U.S. Army Engineer Research and Development Center.
10. OTHER SUPPORTING INFORMATION. N/A

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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:

Sean Dillard

Sean Dillard
Regulatory Project Manager

Date: 24 April 2026

REVIEWED/APPROVED BY:

Andria Davis

Andria Davis
Leader, North Branch
Regulatory Division, Galveston District

Date: 24 April 2026

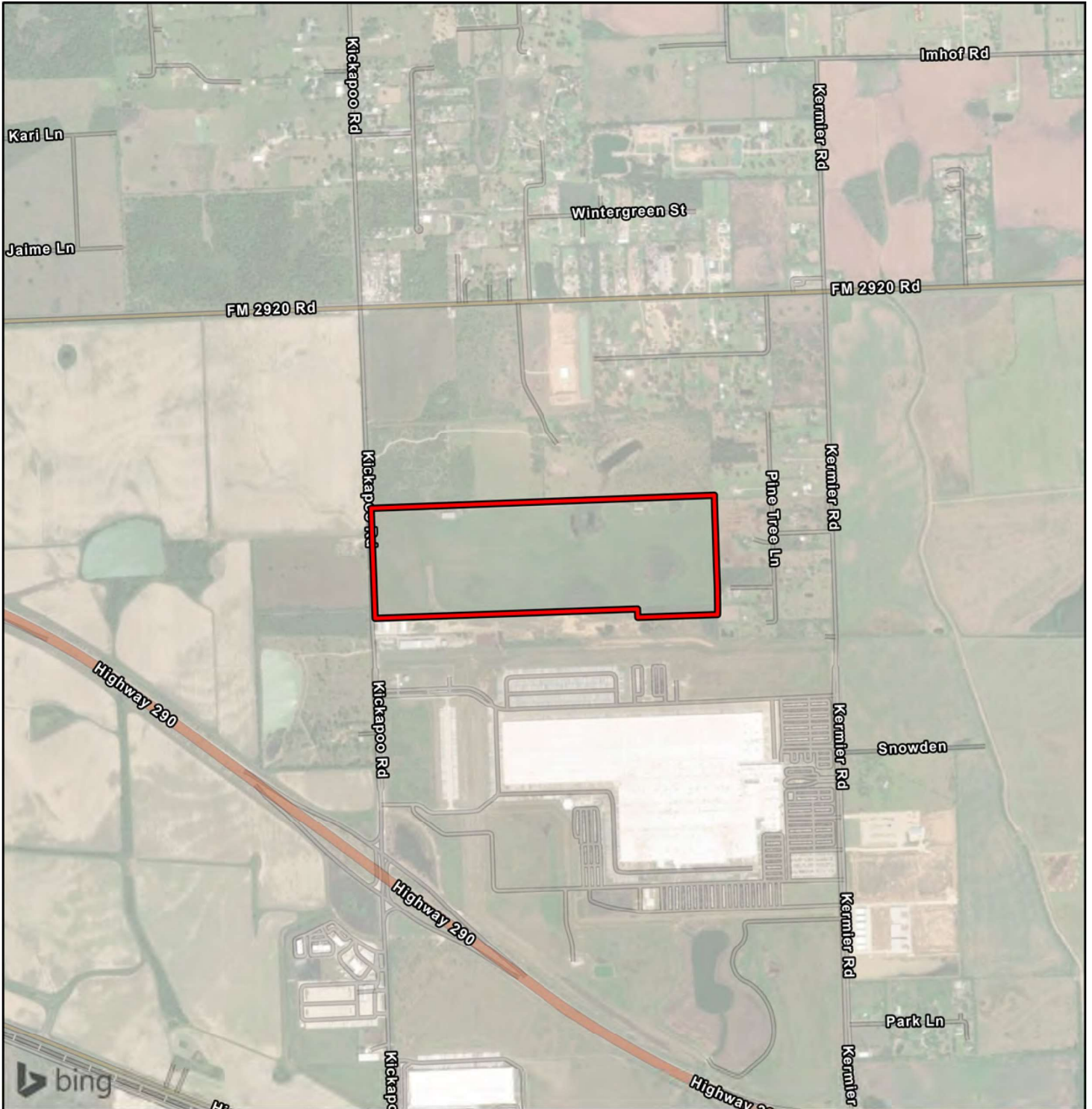


Figure 1.
General Location Map


Kickapoo Waller
City of Waller
Harris County, Texas

1 in = 1,500 ft

Feet
0 1,500



File Ref. 04.354.194
Date: 3/9/2026

 Survey Area



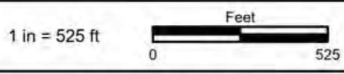
Area of Detail Scale: 1 inch equals 10 miles



Figure 5.
Aquatic Features Identified
within the Survey Area

Kickapoo Waller
City of Waller
Harris County, Texas

-  Survey Area
-  Wetland Determination Data Form
- Aquatic Features**
-  Pond
-  Wetland
-  Culvert



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