



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
69 HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403

CESAC-RD

MAY 30, 2024

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 SAC-2022-01403, [MFR 1 of 1]²

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.

- 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. Stream S1, jurisdictional non-wetlands waters tributary, 2,287 LF, Section 404
 - ii. Stream S2, jurisdictional non-wetlands waters tributary, 329 LF, Section 404
 - iii. Stream S3, jurisdictional non-wetlands waters tributary, 61 LF, Section 404
 - iv. Stream S4, jurisdictional non-wetlands waters tributary, 1,463 LF, Section 404
 - v. Stream S5, jurisdictional non-wetlands waters tributary, 92 LF, Section 404
 - vi. Stream S6, jurisdictional non-wetlands waters tributary, 154 LF, Section 404
 - vii. Stream S7, jurisdictional non-wetlands waters tributary, 394 LF, Section 404
 - viii. Stream S8, jurisdictional non-wetlands waters tributary, 54 LF, Section 404
 - ix. Stream S9, jurisdictional non-wetlands waters tributary, 375 LF, Section 404
 - x. Stream S10, jurisdictional non-wetlands waters tributary, 203 LF, Section 404
 - xi. Wetland W1-A, jurisdictional wetland, 0.03 acre, Section 404
 - xii. Wetland W1-B, jurisdictional wetland, 0.05 acre, Section 404
 - xiii. Wetland W1-C, jurisdictional wetland, 0.01 acre, Section 404
 - xiv. Wetland W2, jurisdictional wetland, 0.02 acre, Section 404
 - xv. Wetland W3-A, jurisdictional wetland, 0.01 acre, Section 404
 - xvi. Wetland W3-B, jurisdictional wetland, 0.001 acre, Section 404

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- xvii. Wetland W3-C, jurisdictional wetland, 0.05 acre, Section 404
- xviii. Wetland W3-D, jurisdictional wetland, 0.22 acre, Section 404
- xix. Wetland W3-E, jurisdictional wetland, 0.01 acre, Section 404
- xx. Wetland W4-A, jurisdictional wetland, 0.07 acre, Section 404
- xxi. Wetland W4-B, jurisdictional wetland, 0.5 acre, Section 404
- xxii. Wetland W5-A, jurisdictional wetland, 0.04 acre, Section 404
- xxiii. Wetland W5-B, jurisdictional wetland, 0.06 acre, Section 404
- xxiv. Wetland W4-B, jurisdictional wetland, 0.5 acre, Section 404
- xxv. Pond P1, non-jurisdictional, 0.25 acre

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. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- a. Project Area Size: 124.3 acres
- b. Center Coordinates of the Review Area:
Latitude: 34.7952°, Longitude: -82.1306°
- c. Nearest City: Woodruff
- d. County: Spartanburg
- e. State: South Carolina

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Enoree River ⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. All jurisdictional wetlands within the project area are adjacent to jurisdictional tributaries. Stream S1 flows south, exits the project area, and continues south for approximately 1.5 miles to its confluence with the Enoree River (TNW).
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 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

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.

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b. Interstate Waters (a)(2): N/A

c. Other Waters (a)(3): N/A

d. Impoundments (a)(4): N/A

e. Tributaries (a)(5):

Stream S1, perennial tributary, 2,287 linear feet. Stream S1 flows south, exits the project area, and continues approximately 1.5 miles to its confluence with the Enoree River.

Stream S2, perennial tributary, 329 linear feet. Stream S2 flows southeast to its confluence with Stream S1.

Stream S3, perennial tributary, 61 linear feet. Stream S3 flows east to its confluence with Stream S4. Stream S4 flows south to its confluence with Stream S1.

Stream S4, perennial tributary, 1,463 linear feet. Stream S4 flows south to its confluence with Stream S1.

Stream S5, perennial tributary, 92 linear feet. Stream S5 flows southwest to its confluence with Stream S4.

Stream S6, perennial tributary, 154 linear feet. Stream S6 flows southwest and enters Wetland W3-C.

Stream S7, perennial tributary, 394 linear feet. Stream S7 flows southwest, exits the project area, and enters Stream S1.

Stream S8, perennial tributary, 54 linear feet. Stream S8 flows southwest and enters Wetland W4-A.

Stream S9, perennial tributary, 375 linear feet. Stream S9 flows southwest, exits the project area, and enters Stream S1.

Stream S10, perennial tributary, 203 linear feet. Stream S10 flows west to its confluence with Stream S1.

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7):

- i. Wetland W1-A, 0.03 acre, adjacent to jurisdictional tributary.
- ii. Wetland W1-B, 0.05 acre, adjacent to jurisdictional tributary.
- iii. Wetland W1-C, 0.01 acre, adjacent to jurisdictional tributary.
- iv. Wetland W2, 0.02 acre, adjacent to jurisdictional tributary.
- v. Wetland W3-A, 0.01 acre, adjacent to jurisdictional tributary.
- vi. Wetland W3-B, 0.001 acre, adjacent to jurisdictional tributary.
- vii. Wetland W3-C, 0.05 acre, adjacent to jurisdictional tributary.
- viii. Wetland W3-D, 0.22 acre, adjacent to jurisdictional tributary.
- ix. Wetland W3-E, 0.01 acre, adjacent to jurisdictional tributary.
- x. Wetland W4-A, 0.07 acre, adjacent to jurisdictional tributary.
- xi. Wetland W4-B, 0.5 acre, adjacent to jurisdictional tributary.
- xii. Wetland W5-A, 0.04 acre, adjacent to jurisdictional tributary.
- xiii. Wetland W5-B, 0.06 acre, adjacent to jurisdictional tributary.

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

⁹ 51 FR 41217, November 13, 1986.

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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).

Pond P1, 0.25 acre. Pond P1 is located in an upland area, at the terrace of diverging hillslopes. No continuous surface connection was observed from Pond P1 to Stream S10 or to any other jurisdictional aquatic resource.

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. Review performed for site evaluation: Field Visit Determination. Date: February 26, 2024.
- b. Aquatic resources delineation submitted by, or on behalf of, the requestor: Wetland delineation package including data sheets and map of onsite waters provided by ECS Southeast, LLP and dated May 26, 2023.

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- c. Aerial imagery provided by agent titled "Waters of the U.S. Delineation Map – Workman Site" and dated May 12, 2023.
- d. USDA NRCS soil survey map provided by agent titled "USDA-NRCS Soil Survey Map – Workman Site" and dated April 24, 2023.
- e. USGS topographic map: Pelham, SC Quadrangle 1983, map provided by agent titled "USGS Topographic Map – Workman Site" and dated April 24, 2023.

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.

Legend

- Project Study Area
- Jurisdictional Stream
- Jurisdictional Wetland
- Non-jurisdictional Pond P1
- Data Point



Client:



Project:

WORKMAN SITE
TRAMMEL ROAD,
WOODRUFF,
SPARTANBURG COUNTY,
SOUTH CAROLINA

Title:

WATERS OF THE U.S. DELINEATION MAP

PROJECT STUDY AREA

1. POTENTIALLY JURISDICTIONAL WATERS OF THE US WERE DELINEATED BY ECS ON MAY 3, 2023.
2. FINDINGS HAVE BEEN FIELD VERIFIED BY THE USACE ON FEBRUARY 26, 2024. FINDINGS DEPICTED ON THIS MAP HAVE NOT BEEN FORMALLY VERIFIED BY THE USACE AND/OR SCDHEC AND ARE SUBJECT TO CHANGE.
3. LENGTH(S) & ACREAGE(S) DEPICTED ON THIS MAP ARE APPROXIMATE. THIS MAP SHOULD BE USED FOR PRELIMINARY PLANNING PURPOSES.

Drawn By:

TSH

Scale:

1" = 300'

Approved By:

PMS

Date:

05/12/2023

ECS Project No.

49: 20107-B

FIGURE 8

