



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT  
750 EXECUTIVE CENTER DR., SUITE 103  
GREENVILLE, SC 29615-4581

CESAC-RD

2 September 2025

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),<sup>1</sup> SAC-2025-00590 (MFR 1 of 2).<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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. Pond, non-jurisdictional, 0.45-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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- a. Project area size: 3.36-acres
- b. Center coordinates of the review area: Latitude: 34.91777°, Longitude: -81.77083°
- c. Nearest city: Pacolet
- d. County: Spartanburg
- e. State: South Carolina

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup> 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").<sup>6</sup> 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 approximate 3.36-acre review area contains one upland dug pond that was constructed in association with previous mining activities on the site. The pond

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<sup>6</sup> 51 FR 41217, November 13, 1986.

was created due to the excavation of stone material for commercial purposes and has now turned into a water-filled depression solely within uplands.

Preamble waters (51 FR 41217), reference page 16 of 59:

[https://archives.federalregister.gov/issue\\_slice/1986/11/13/41202-41260.pdf](https://archives.federalregister.gov/issue_slice/1986/11/13/41202-41260.pdf)

Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States are Preamble waters (51 FR 41217).

- 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). N/A

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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: Office (Desk) Determination, July 30, 2025  
Field site visit, August 8, 2025
  - 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 Sligh Environmental and dated May 22, 2025 and July 11, 2025.
  - c. Aerial imagery/drawings provided by the agent in 2 sheets titled, "Approved JD Exhibit, Pacolet Quarry", and dated July 11, 2025.
  - d. USDA NRCS Soil Survey provided by the agent titled, "NRCS Soil Survey, Pacolet Quarry", and dated April 29, 2025.
  - e. Lidar imagery provided by the agent titled, "Lidar Map, Pacolet Quarry", and dated April 29, 2025.
  - f. USFWS NWI map provided by the agent titled, "National Wetland Inventory". And dated April 29, 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.




Pond 2  
0.45 Ac.



AJD Project Limits

The approximate stream and pond boundaries depicted on this exhibit have been delineated and GPS located by SECI but are subject to change following U.S. Army Corps of Engineers (USACE) verification. The exhibit is an approximate representation of on-site aquatic resources and should be used for preliminary planning purposes only. SECI recommends no land disturbance activities take place until a final USACE Jurisdictional Determination is received.

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

 Pond: 0.45 Ac.

0 300 600  
Feet

**sligh environmental consultants, inc.**  
31 Park of Commerce Way, Suite 200B  
Savannah, Georgia 31405  
phone: (912) 232-0451  
fax: (912) 232-0453

Approved JD Exhibit  
Pacolet Quarry  
Spartanburg County, South Carolina  
Sheet 1 of 2

Exhibit Date: July 11, 2025

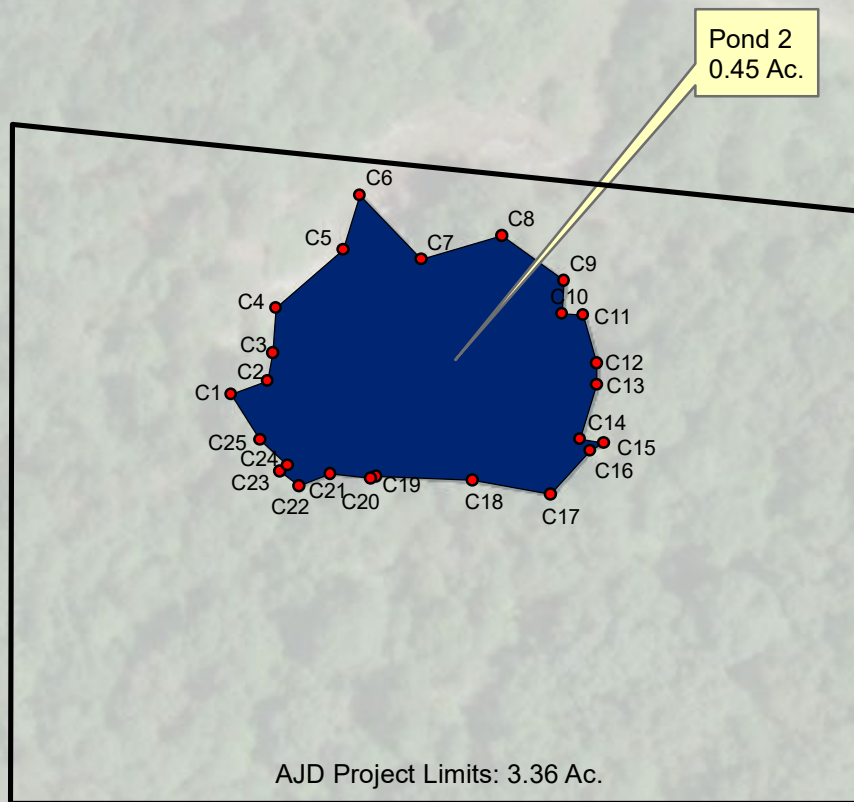
Drawn by: BWW

Reviewed by: TCT

Job Number: 01-22-131.1




C1	34.91780622	-81.77119403
C2	34.91782607	-81.77113086
C3	34.91786636	-81.77112148
C4	34.91793052	-81.7711117
C5	34.91801439	-81.77100136
C6	34.91809259	-81.77097249
C7	34.91800139	-81.7708653
C8	34.91803649	-81.77072547
C9	34.91797273	-81.77061672
C10	34.91792465	-81.77061957
C11	34.91792377	-81.7705828
C12	34.9178552	-81.77055924
C13	34.91782395	-81.7705593
C14	34.91774582	-81.77058706
C15	34.91774048	-81.77054657
C16	34.91772934	-81.77056968
C17	34.91766635	-81.77063803
C18	34.91768563	-81.77077296
C19	34.9176908	-81.77094018
C20	34.9176876	-81.77095019
C21	34.91769395	-81.77101987
C22	34.91767623	-81.77107438
C23	34.917697	-81.77110823
C24	34.91770504	-81.77109501
C25	34.91774146	-81.77114279



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 Pond: 0.45 Ac.

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Approved JD Exhibit  
Pacolet Quarry  
Spartanburg County, South Carolina  
Sheet 2 of 2

0 50 100  
Feet

Exhibit Date: July 11, 2025

Drawn by: BWW

Reviewed by: TCT

Job Number: 01-22-131.1