



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 2 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

---

<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.

CESAC-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2025-00590

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, 1.167-acres

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: 2.177-acres
- b. Center coordinates of the review area: Latitude: 34.91660°, Longitude: -81.77991°
- 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. N/A

---

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

CESAC-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2025-00590

- 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.

The approximate 2.177-acre review area contains one settling pond constructed for treatment of process water from the plant for ongoing mining operations authorized under NPDES Permit SCG#730293.

- 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
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

CESAC-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2025-00590

- 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 August 18, 2025.
- c. Aerial imagery/drawings provided by the agent in 2 sheets titled, "Approved JD Exhibit, Pacolet Quarry", and dated August 18, 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.



The pond boundary depicted on this exhibit has been delineated and GPS located by SECI but is 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



AJD Project Limits: 2.177 Ac.



Pond: 1.167 Ac.

**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

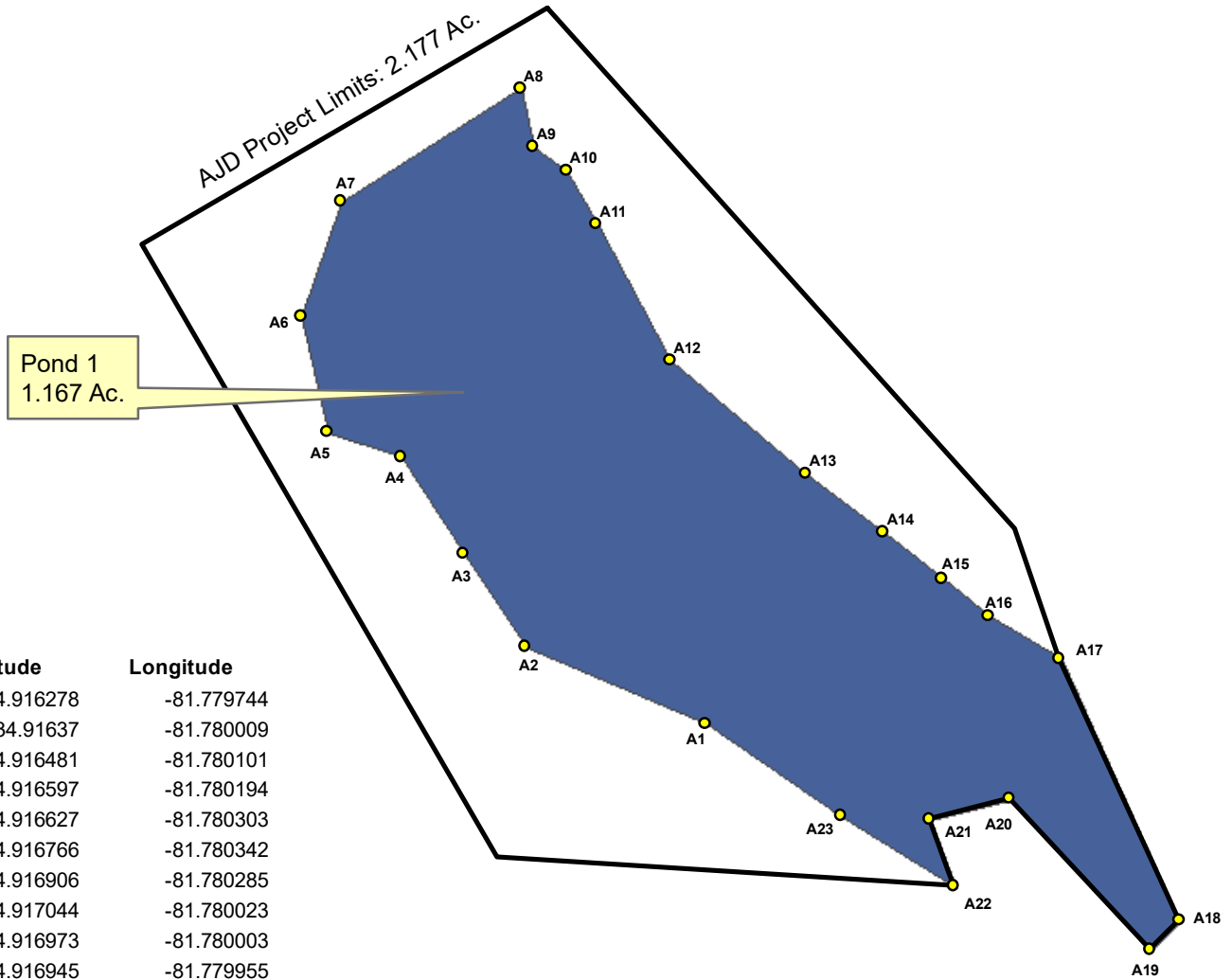
0 150 300  
Feet

Exhibit Date: August 18, 2025

Drawn by: BWW

Reviewed by: TCT

Job Number: 01-22-131.1



Name	Latitude	Longitude
A1	34.916278	-81.779744
A2	34.91637	-81.780009
A3	34.916481	-81.780101
A4	34.916597	-81.780194
A5	34.916627	-81.780303
A6	34.916766	-81.780342
A7	34.916906	-81.780285
A8	34.917044	-81.780023
A9	34.916973	-81.780003
A10	34.916945	-81.779955
A11	34.916881	-81.77991
A12	34.916716	-81.779801
A13	34.916581	-81.7796
A14	34.916511	-81.779486
A15	34.916455	-81.7794
A16	34.91641	-81.779331
A17	34.91636	-81.779226
A18	34.916044	-81.779047
A19	34.916009	-81.77909
A20	34.91619	-81.779298
A21	34.916164	-81.779415
A22	34.916084	-81.779378
A23	34.916168	-81.779545

The pond boundary depicted on this exhibit has been delineated and GPS located by SECI but is 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.

 AJD Project Limits: 2.177 Ac.       Pond: 1.167 Ac.

**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 2 of 2



Exhibit Date: August 18, 2025

Drawn by: BWW

Reviewed by: TCT

Job Number: 01-22-131.1