



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT  
4751 BEST ROAD, SUITE 140  
COLLEGE PARK, GEORGIA 30337

CESAS-RDP

February 26, 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),<sup>1</sup> SAS-2022-00621.<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. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area). Based on our review of information provided by the applicant, in addition to our review of available aerial photography, NWI maps, FEMA-FIRM maps, LiDAR imagery, Washington County Soils Survey, and USGS Topographic Maps, no aquatic resources are identified within the review area. No features exhibit OHWM indicators and/or wetland parameters necessary to suggest any potential jurisdiction of wetlands. The approximately 12-acre site consists entirely of dry land, and is bounded by other uplands along all boundaries of the review area.

## 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 Acreage: 12 acres
- B. Center Coordinates of the Project Site:  
Latitude: 32.9877 Longitude: -82.7338
- C. Nearest City or Town: Sandersville
- D. County: Washington
- E. State: Georgia
- F. Other Associated Jurisdictional Determinations (including outcomes): This AJD supplements a previous AJD request for a 600-acre review area, submitted by

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the same contact. The other site is located west of and adjacent to this 12-acre (additional) review area.

Regulatory File No.	Type	Outcome
SAS-2022-00621	AJD	Twenty-one aquatic resources (wetlands, streams, and open waters) were determined to be jurisdictional; two wetlands and one open water feature were determined to be non-jurisdictional under the AJD, as verified by letter, dated January 20, 2023.

G. Any additional, relevant site-specific information: Review of aerial imagery concludes that the site primarily consists of managed timber with wind rows. Review of USDA’s Custom Soil Resource Report also indicates that the entire site exhibits non-hydric soils criteria, and is comprised of Faceville sandy loam, Marlboro sandy loam, and Tifton loamy sand map units (with 2-to-5 percent slopes for each map unit). The nearest named waterway (from Topographic Maps) is North Fork Sun Hill Creek, located approximately 0.3-mile (1,900 feet) to the south of this review area.

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

<sup>6</sup> 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.

<sup>7</sup> 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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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>8</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
- 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

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<sup>8</sup> 51 FR 41217, November 13, 1986.

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- 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, that 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.
    - 1. Date of Office (desktop review): January 23, 2024
    - 2. Date(s) of Field Review (if applicable): August 28, 2023 (by Consultant)
  - b. Data sources used to support this determination (included in the administrative record):
    - Aquatic Resources delineation submitted by, or on behalf of, the requestor: Sandersville Solar Substation, Washington County, Georgia (Sept. 2023)
    - Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: SAS-2022-00621, Washington Solar (Jan. 20, 2023)
    - Photographs: Site Photographs, Sandersville Solar Substation, Washington County, Georgia (Aug. 28, 2023)
    - Aerial Imagery: Figure 2a: Sandersville Substation Aerial Map, via ESRI Community Maps (Sept. 2023)
    - LIDAR: Sources, Figure 6: Sandersville Substation USGS LiDAR Map, via Maxar, Microsoft (Sept. 2023)

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- ☒ USDA NRCS Soil Survey: Custom Soils Report for Washington and Wilkinson Counties, via NRCS Web Soil Survey (Sept. 11, 2023)
- ☒ USFWS NWI maps: Figure 4: Sandersville Substation NWI/NHD Map, via ESRI Community Maps (Sept. 2023)
- ☒ USGS topographic maps: Figure 3: Sandersville Substation Topographic Map, via ESRI Community Maps (Sept. 2023)
- ☒ USGS NHD data/maps: Figure 4: Sandersville Substation NWI/NHD Map, via ESRI Community Maps (Sept. 2023)
- ☒ Antecedent Precipitation Tool (APT) Analysis: APT results from the Consultant's August 28, 2023, site visit, provides a "normal conditions" response (precipitation within the normal range over a preceding 30-year period)
- ☒ Other sources of Information: Figure 1: Vicinity map (Sept 2023); Figure 2b: Overall Sandersville Aerial map (Sept 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

 Approximate Substation Boundary



Esri Community Maps Contributors, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, Maxar



**Figure 2a:**  
Sandersville  
Substation  
Aerial Map

**Sandersville Solar Substation**  
Washington County, Georgia  
September 2023

1 inch = 300 feet

