



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

SAS-2002-05330

March 1, 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), SAS-2002-05330

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>1</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>2</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>3</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 amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Georgia due to litigation.

---

<sup>1</sup> 33 CFR 331.2.

<sup>2</sup> Regulatory Guidance Letter 05-02.

<sup>3</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.

CESAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2002-05330

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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
SBB	Non-JD	N/A
SBC	Non-JD	N/A
SBD	Non-JD	N/A
SBE	Non-JD	N/A
SBF	Non-JD	N/A
SKB	Non-JD	N/A
SKC	Non-JD	N/A
SKJ	Non-JD	N/A
SKL	Non-JD	N/A
SRA	Non-JD	N/A
SSB	Non-JD	N/A
SSF	Non-JD	N/A
SSG	Non-JD	N/A
SSH	Non-JD	N/A
SSL	Non-JD	N/A
SSN	Non-JD	N/A
SSO	Non-JD	N/A
SSP	Non-JD	N/A
SSR	Non-JD	N/A
WSI	Non-JD	N/A
ES1	Non-JD	N/A
WSJ	Non-JD	N/A

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. 211 acres
- b. Latitude: 32.996411, Longitude -83.745523
- c. Juliette

CESAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2002-05330

- d. Monroe County
- e. Georgia

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

- a. The nearest TNW to the subject water is the Ocmulgee River. The navigable portion of this river originates in Macon which is located approximately 7.24 miles to the south. However, the subject wetlands are not hydrologically connected to the nearest TNW.
- b. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum and a review of the SAS Section 10 list (for a water body that is navigable-in-fact under federal law for any purpose (such as Section 10, RHA)), that water body categorically qualifies as a Section 404 "traditional navigable water" subject to CWA jurisdiction under 33 CFR 328.3(a)(1)), and documented occurrences of boating traffic on the identified water. Additionally, the determination is based on an onsite review by the Corps Project Manager conducted on September 21, 2023.
- c. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A

The subject aquatic resources do not have a continuous surface connection to a TNW or any other potentially jurisdictional water.

- 5. SECTION 10 JURISDICTIONAL WATERS<sup>4</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. N/A
- 6. 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

---

<sup>4</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.

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

## 7. 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>5</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 the review area and describe how it was determined to be a waste treatment system. N/A

---

<sup>5</sup> 51 FR 41217, November 13, 1986.

CESAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2002-05330

- 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).

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
WSI	0.11-acre	Wetland lacks a continuous surface connection to a water of the US.
WSJ	0.009-acre	Wetland lacks a continuous surface connection to a water of the US.
SBB	307 linear feet (lf	The tributary is not relatively permanent.
SBC	64 lf	The tributary is not relatively permanent.
SBD	108 lf	The tributary is not relatively permanent.
SBE	389 lf	The tributary is not relatively permanent.
SBF	84 lf	The tributary is not relatively permanent.
SKB	13r lf	The tributary is not relatively permanent.
SKC	109 lf	The tributary is not relatively permanent.
SKJ	161 lf	The tributary is not relatively permanent.
SKL	382 lf	The tributary is not relatively permanent.
SRA	190 lf	The tributary is not relatively permanent.
SSB	152 lf	The tributary is not relatively permanent.
SSF	136 lf	The tributary is not relatively permanent.
SSG	95 lf	The tributary is not relatively permanent.
SSH	109 lf	The tributary is not relatively permanent.
SSL	128 lf	The tributary is not relatively permanent.
SSN	180 lf	The tributary is not relatively permanent.
SSO	27 lf	The tributary is not relatively permanent.
SSP	29 lf	The tributary is not relatively permanent.
SSR	210 lf	The tributary is not relatively permanent.
ES1	404 lf	The tributary is not relatively permanent.

The review area is located just north of the existing Macon Quarry. The review area was cleared of trees in 2021. The tributaries listed in the table above do not have

CESAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2002-05330

relatively permanent flow as evidenced by personal observations on the site and documented conditions provided on the NCDEQ stream delineation forms as detailed in Section 9. During the site visit, it was observed that the tributaries in question did not exhibit flow. The NCDEQ forms support the determination of ephemeral flow for these tributaries. The site was visited during normal conditions, wetter than normal conditions, and normal conditions. APT data from July 7, 2022, July 8, 2022, and July 11, 2022, indicated normal conditions. Data from September 8, 2022, indicated wetter than normal conditions. Data from September 21, 2023, indicated normal conditions. Observations recorded during differing conditions support the conclusion that the tributaries do not relatively permanent flow.

The wetlands (WSI and WSJ) do not have a continuous surface connection to a water of the U.S. WSI does not connect to a downstream water of the U.S. WSJ connects to SSH, a non-relatively permanent tributary. The tributary loses bed and bank form and does not provide a connection to a downstream water of the U.S.

8. 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 (desktop) determination: The determination of the jurisdictional status of the subject waters was completed by CESAS-RDP on February 21, 2024.
  - b. Field determination: The determination of aquatic resource limits within the review area was completed by CESAS-RDP on September 21, 2023.
  - c. Data sources used to support this determination (included in the administrative record).
    - Aquatic Resources delineation submitted by, or on behalf of, the requestor: Delineation Review of Aquatic Resources, received by CESAS-RDP on November 22, 2022.
    - Aquatic Resources delineation prepared by the USACE:
    - Wetland field data sheets: Prepared by the agent and dated 2-27-2024.
    - OHWM data sheets prepared by the USACE: Title and Date
    - Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: ORM Numbers and Dates
    - Photographs: Site Photographs dated September 21, 2022 prepared by the agent and Site Photographs dated September 21, 2023 prepared by CESAS-RDP.
    - Aerial Imagery: Figure 2-Aerial Map dated 10/28/2022 prepared by the agent
    - LIDAR: 3DEP DEM and Hillshade imagery, accessed from the National Regulatory Viewer by CESAS-RDP on February 21, 2024
    - USDA NRCS Soil Survey: Imagery obtained from USDA NAIP, dated 2019. Depicted on the attached Figure 4.

CESAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2002-05330

- USFWS NWI maps: National Wetlands Inventory Map, provided as Figure 5 by the agent, dated 10/17/2022.
- USGS topographic maps: Provided as Figure 3 by the agent, dated 10/17/2022.
- USGS NHD data/maps: NHD data, accessed from the National Regulatory Viewer by CESAS-RDP on January 30, 2024
- Section 10 resources used: Title and Dates
- NCDWR stream identification forms
- Antecedent Precipitation Tool Analysis: List Date(s) APT data, July 7, 2022, July 8, 2022, and July 11, 2022: normal conditions; September 8, 2022: wetter than normal conditions; September 21, 2023, normal conditions.
- Other sources of Information: StreamStats data, accessed by CESAS-RDP on February 22, 2024

9. OTHER SUPPORTING INFORMATION. N/A

10. 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.

