



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

CESAS – RDP

24 September 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 SAS-2024-00703²

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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 1 (Wetland Area)	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. Project Are Size (in acres): 0.094-acre
- B. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 33.511911 Longitude: -84.377831
- C. Nearest City or Town: Jonesboro
- D. County: Clayton
- E. State: Georgia

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

- A. Name of nearest downstream TNW, Territorial Sea or interstate water: Flint River which is a TNW. The wetland is approximately 231-meters away from the flint river, but the portion that is recognized as a Section 10 water is greater than or equal to 110-miles downstream.

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”).⁸ 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

⁸ 51 FR 41217, November 13, 1986.

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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).

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Wetland 1 (Wetland Area)	0.094	Wetland lacks a continuous surface connection to water of the US and was artificially created due to the slopes of road construction for the wastewater plant.

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): 09/18/2024 CESAS - RDP
2. Date(s) of Field Review (if applicable): 06/20/2024 – Hazen and Sawyer
- b. Data sources used to support this determination (included in the administrative record).
 - ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: “Phase II Demolition Civil Grid 3” – Hazen and Sawyer, dated May 2024
 - ☐ Aquatic Resources delineation prepared by the USACE:
 - ☐ Wetland field data sheets prepared by the Corps:
 - ☐ OHWM data sheets prepared by the USACE:
 - ☐ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: ORM Numbers and Dates
 - ☒ Photographs: “Test Hole and Photo log map” dated May 2024, prepared by applicant

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- ☐ Aerial Imagery:
- ☒ LIDAR: Sources, "Lidar for SAS-2024-00703" dated 9/18/2024 prepared by CESAS-RDP.
- ☒ USDA NRCS Soil Survey: "Web Soil Survey" dated 6/21/2024 prepared by applicant.
- ☒ USFWS NWI maps: "Wetlands" dated 6/18/2024 prepared by applicant.
- ☐ USGS topographic maps:
- ☐ USGS NHD data/maps:
- ☐ Section 10 resources used:
- ☐ NCDWR stream identification forms
- ☐ Antecedent Precipitation Tool Analysis: List Date(s)
- ☐ Other sources of Information:

10. OTHER SUPPORTING INFORMATION.

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.

MATCHLINE - SEE DWG 01-C-20



MATCHLINE - SEE DWG 01-C-23

MATCHLINE - SEE DWG 01-C-24

File: C:\USERS\KINSEY\Documents\HAZEN AND SAWYER\2579-000_WB CASEY WRRF BIOSOLIDS UPGRADE\PROJECT FILES\01_C-22 DEMO PLANS Saved by DEREL Save date: 7/28/2023 1:53 PM
Plot Date: 5/16/2024 5:16 PM BY: ANKINSEY

				PROJECT ENGINEER:	K. SMEBY
				DESIGNED BY:	D. EREL
				DRAWN BY:	D. EREL
				CHECKED BY:	W. HENNESSEY
1	CONSTRUCTION	05/2024	KLS	IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO FULL SCALE	
REV	ISSUED FOR	DATE	BY		

CONSTRUCTION SET

Hazen

HAZEN AND SAWYER
1300 ALTMORE AVE SUITE 520
ATLANTA, GEORGIA 30342
GBPE LIC #: PEF003685 EXP: 6/30/2024

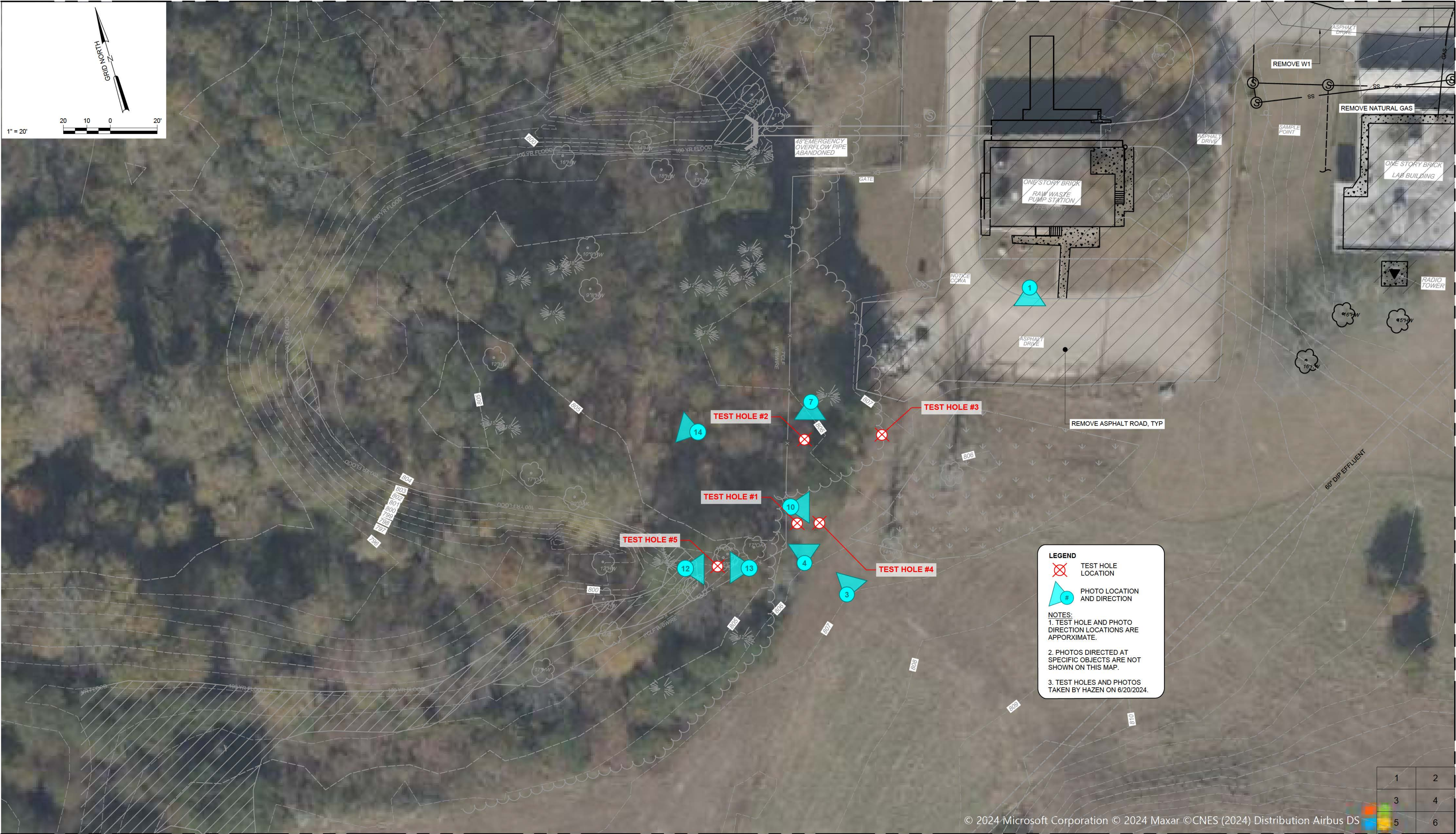
CLAYTON COUNTY WATER AUTHORITY
MORROW, GEORGIA

W.B. CASEY WATER RESOURCE RECOVERY
FACILITY
BIOSOLIDS FACILITIES UPGRADE

PHASE II DEMOLITION
CIVIL
GRID 3

DATE:	MAY 2024
HAZEN NO.:	32579-000
CONTRACT NO.:	2021-WR-23
DRAWING NUMBER:	01-C-22

MATCHLINE - SEE DWG 01-C-20



MATCHLINE - SEE DWG 01-C-24

FILE: C:\USERS\KINSEY\004\003\HAZEN AND SAWYER\2579-000_W.B CASEY WRRF BIOSOLIDS UPGRADE\PROJECT FILES\01_C-22 DEMO PLANS Saved by DEREL Save date: 7/28/2023 1:53 PM
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				PROJECT ENGINEER:	K. SMEBY
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CONSTRUCTION SET

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1300 ALTMORE AVE SUITE 520
ATLANTA, GEORGIA 30342
GBPE LIC #: PEF003685 EXP: 6/30/2024

CLAYTON COUNTY WATER AUTHORITY
MORROW, GEORGIA

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