



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

SAS-RD-C

03 February 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),¹ SAS-2024-00444 (MFR 6 of 6)²

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
WL-1	JD	Section 404
WL-2	Non-JD	N/A
D-3	Non-JD	N/A
WL-4	JD	Section 404
WL-5	JD	Section 404

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 (2023)

3. REVIEW AREA.

- A. Project Are Size (in acres): 90
- B. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 32.344472 Longitude: -81.280446
- C. Nearest City or Town: Springfield
- D. County: Effingham
- E. State: Georgia
- F. Other associated Jurisdictional Determinations (including outcomes): N/A

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

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A. Name of nearest downstream TNW, Territorial Sea or interstate water: Ebenezer Creek, which is a traditionally navigable water (TNW), is approximately 1.6 miles from on-site wetlands.

B. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum, a field visit conducted on July 11, 2024, 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)).

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

The onsite wetlands continue through culverts to wetlands south of Ralph Rahn Road (Ralph Rahn Road is the southern boundary of the project area). There are two flow paths for the wetlands within the project area to reach the nearest RPWs. This includes 1) a pond, RPW-Requisite water, that was excavated in a wetland just south of Ralph Rahn Road on the western portion of the property and 2) continuous wetlands flowing for approximately 2,000 feet off property to Little Ebenezer Creek, RPW-Requisite water, on the eastern portion of the property (see Section 7 of this MFR for more details). The unnamed pond was determined to be a RPW based on aerial imagery that shows water within the pond in all aerial images since 1972 and a riverine line on NHD. Little Ebenezer Creek was determined to be a RPW based on visible water on aerial imagery and the feature being listed as riverine on NHD and Web Soil Survey. Little Ebenezer Creek flows into Ebenezer Creek, which is a TNW.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ N/A

⁶ 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.

⁷ 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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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):

Name of Aquatic Resource	Size (in acres)	Fact Pattern of Flowpath	Describe continuous surface connection
WL-1	9.154	WL-1 continues into an unnamed RPW pond via a 75-ft culvert.	The wetland continues outside of the review area to the south through an approximately 75-ft culvert under Ralph Rahn Road where the flow continues into a 1,000-ft long unnamed pond, RPW-Requisite. The culvert under the road is an unimpaired, non-RPW that acts as a continuous surface connection that flows only in direct response to precipitation events. According to HistoricAerials.com, WL-1 was part of a larger wetland that spanned from the review area to Little Ebenezer Creek, RPW-Requisite. Between 1951 and 1972, the pond was excavated within WL-1 south of the review area. The presumed jurisdictional status of the pond is a relatively permanent water under (a)(5) Tributary that flows into Little Ebenezer Creek, RPW-Requisite. This determination was based on aerial imagery that shows water within the pond in all aerial images since 1972 and a riverine line on NHD. Thus, WL-1 has a

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			continuous surface connection to the unnamed pond, RPW, which flows into Little Ebenezer Creek, RPW, which flows into Ebenezer Creek, TNW.
WL-4	0.981	WL-4 abuts a non-RPW roadside ditch (675 feet including 35-ft culvert) > WL-5 (2,000 feet including a 75-ft culvert under Ralph Rahn Road) > Little Ebenezer Creek (RPW-Requisite). This results in a total distance of approximately 2,900 feet to an RPW with no impairments along the entire path.	Besides a roadside ditch, WL-4 is surrounded by uplands on all sides. WL-4 abuts the roadside ditch along its southern boundary. The roadside ditch is a vegetated non-RPW that is approximately 30-ft wide and continues east for 675 feet (including a 35-ft culvert) acting as a continuous surface connection (CSC) from WL-4 to WL-5. The roadside ditch has a gradual elevation decline of 53-ft adjacent to WL-4 and 48-ft adjacent to WL-5 with no impairments. Once water from the roadside ditch reaches WL-5, water would flow an additional 2,100 feet through WL-5 to Little Ebenezer Creek. The roadside ditch is acting as a non-RPW feature that flows only in response to precipitation. As indicated in HQ Memorandum SWG-2023-00284, roadside ditches “are often created alongside roads to prevent water from accumulating on the surface of the road and underneath the road, directing water to flow through the ditch”. Based on onsite elevation contours and the above memorandum, this ditch is acting as a non-RPW CSC transporting water from WL-4 to WL-5 as a direct response to precipitation events. Thus, WL-4 has a CSC through a roadside ditch (with a culvert) and WL-5 (with a culvert under Ralph Rahn Road) to Little Ebenezer Creek, RPW-Requisite. Little Ebenezer Creek flows into Ebenezer Creek, TNW.
WL-5	3.507	WL-5 is one continuous wetland (including a 75-ft culvert) that flows for 2,000 feet outside of the review area to abut Little Ebenezer Creek, RPW-Requisite.	The wetland flows south through an approximately 75-ft culvert under Ralph Rahn Road where the wetland continues south of the road. Based on aerial imagery, Web Soil Survey, and NWI, WL-5 within the review area was a continuous wetland south of Ralph Rahn Road prior to the construction of the road. Today, the wetland north and south of the road contain the same vegetation and soil assemblages and is functioning as one wetland. There is a defined channel with evidence of flow on the north side and south side of the culvert under Ralph Rahn Road. According to LIDAR, Web Soil Survey, and NWI the wetland continues offsite for approximately 2,000 feet to abut Little Ebenezer Creek, an RPW. Little Ebenezer Creek was determined to be a RPW based on visible water on aerial imagery and the feature being listed as riverine on NHD and Web Soil Survey. Thus WL-5 has a continuous surface connection to Little Ebenezer Creek, RPW, which flows into Ebenezer Creek, TNW.

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

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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 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 (acres/ linear feet)	Fact Pattern of Flowpath	Type of resource generally not jurisdictional
D-3	471.5 linear feet	D-3 abuts WL-1 (1,700 feet) > culvert under Ralph	D-3 is a 471.5-ft ditch the lies between WL-1 and WL-2. Based on desktop resources, this ditch was historically dug through uplands. During a site visit

⁸ 51 FR 41217, November 13, 1986.

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		Rahn Road (75 feet) > pond (RPW-requisite water). This results in a total distance of 1,775 feet to an RPW.	on July 11, 2024, it was noted that this ditch does not exhibit the three wetland characteristics, have an ordinary high water mark (OHWM), or have any evidence of water flow. The ditch had an accumulation of pine straw and tree samplings indicating that no flow has occurred in recent history. Additionally, D-3 had fluctuations in elevation throughout the length of the ditch that would impair any potential water flow. Due to the lack of an OHWM, DL-3 did not meet the requirements of a tributary. Due to the lack of the three wetland characteristics (hydrology, hydric soils, and vegetation), DL-3 did not meet the requirements of a wetland. Thus, DL-3 did not meet the requirements of an aquatic feature. As a result, D-3 is classified as a non-RPW upland dig ditch that lacks any evidence of flow.
WL-2	0.963 acres	WL-2 abuts D-3 (471.5 feet) > WL-1 (1,700 feet) > culvert under Ralph Rahn Road (75 feet) > pond (RPW-requisite water). This results in a total distance of 2,246.5 feet to an RPW.	WL-2 is abutting a non-jurisdictional ditch (D-3), which continues west for approximately 471.5-feet to abut WL-1. See D-3 above for further details on this feature. WL-1 has a continuous surface connection (CSC) to an unnamed RPW pond through a 75-ft culvert under Ralph Rahn Road. See WL-1 above for more details on this feature. Besides D-3, WL-2 is surrounded by uplands on all sides. Although WL-1 has a CSC to an RPW, the lack of evidence of flow and elevation impairments within D-3 prevent WL-2 from having a CSC to the downstream RPW pond. As a result, WL-2 is a non-jurisdictional wetland that lacks an unimpaired continuous physical connection to an RPW.

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. Date of Field Review: July 11, 2024

b. Data sources used to support this determination (included in the administrative record).

- ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: Titled "Aquatic Resources Map" and dated July 2024.
- ☒ Photographs: Source: Corps site visit and dated July 11, 2024.
- ☒ Aerial Imagery: Source: Google Earth and dated August 7, 2024.
- ☒ LIDAR: Source: NOAA, titled "NOAA LIDAR", and dated August 6, 2024.
- ☒ USDA NRCS Soil Survey: Titled "Custom Soil Resource Report" and dated August 7, 2024.
- ☒ USFWS NWI maps: Titled "NWI" and dated August 6, 2024.
- ☒ USGS NHD data/maps: Titled "NHD" and dated August 6, 2024.

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- ☒ Section 10 resources used: Titled “Savannah District – U.S. Army Corps of Engineers Regulatory Branch.”
- ☒ Antecedent Precipitation Tool Analysis: List Date(s) January 17, 2024, and July 11, 2024.

10. OTHER SUPPORTING INFORMATION.

- a. Headquarters Memorandum SWG-2023-00284
- b. Headquarters Memorandum NAP-2023-01223
- c. Headquarters Memorandum NWO-2003-60436
- d. Headquarters Memorandum LRB-2023-00451

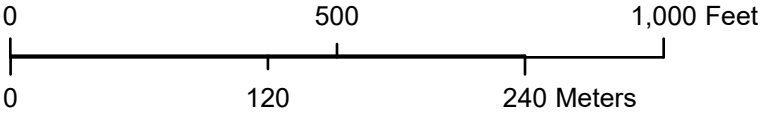
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Reach	Point ID	X	Y
A	A1	-81.284897	32.346199
A	A2	-81.284698	32.345901
A	A3	-81.284401	32.3456
A	A4	-81.283897	32.345402
A	A5	-81.2836	32.3447
A	A6	-81.282898	32.344002
A	A7	-81.281799	32.343498
A	A8	-81.281097	32.343399
A	A9	-81.2808	32.343601
A	A10	-81.281502	32.343201
A	A11	-81.281403	32.3423
A	A12	-81.2808	32.341702
A	A13	-81.280899	32.3414
B	B1	-81.282402	32.346001
B	B2	-81.281998	32.345699
B	B3	-81.281898	32.345402
B	B4	-81.282097	32.3451
B	B5	-81.282402	32.345501
C	C1	-81.278801	32.3433
C	C2	-81.278702	32.342899
C	C3	-81.278702	32.342602
C	C4	-81.278999	32.3424
C	C5	-81.279297	32.3428
C	C6	-81.278999	32.343201
D	D1	-81.277603	32.345699
D	D2	-81.277603	32.345402
D	D3	-81.277496	32.344898
D	D4	-81.277199	32.344299
D	D5	-81.277	32.343899
D	D6	-81.276802	32.343498
D	D7	-81.276001	32.343899
E	E1	-81.283501	32.3451
E	E2	-81.283501	32.345001
E	E3	-81.282303	32.3451
E	E4	-81.282303	32.345299
E	E5	-81.282303	32.345299
E	E6	-81.282303	32.3451
PB	PB1	-81.2855	32.346199
PB	PB2	-81.284103	32.346298
PB	PB3	-81.277702	32.345798
PB	PB4	-81.275902	32.343899
PB	PB5	-81.279198	32.342098
PB	PB6	-81.279701	32.342701
PB	PB7	-81.280296	32.3424
PB	PB8	-81.279999	32.341801
PB	PB9	-81.280899	32.3414



Service Layer Credits: World Imagery: Maxar
World Boundaries and Places: Esri, HERE, Garmin, iPC

Wetland Line Point Map



C.E. Morgan Recreational Complex
Effingham County
August 2024
Author: NM/TDG
Pond Project #: 1230874