



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

CESAS-RD-P

10 March 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651, 143
S.Ct. 1322 (2023), SAS-2024-00750

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.¹ 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.² For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),³ 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 in Georgia due to litigation.

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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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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
Stream S1	JD	Section 404
Stream S2	JD	Section 404
Stream S3	JD	Section 404
Stream S4	JD	Section 404
Wetland W1	JD	Section 404
Wetland W2	JD	Section 404
Open Water Pond OWP1	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, 143 S. Ct. 1322 (2023)

3. REVIEW AREA

- A. 20.24 acres
B. Latitude: 34.1576, Longitude: -84.2659
C. Alpharetta
D. Fulton County
E. Georgia

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

- A. The Coosa River, located approximately 460,000 linear feet (140 linear kilometers) west of the subject review area, is the nearest TNW.

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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 February 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)), and documented occurrences of boating traffic on the identified water.

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

Stream S1 is a relatively permanent water (RPW) and is an unnamed tributary to Chicken Creek, a RPW. Wetland W1 drains into Stream S1 at the southern portion of the project area. Stream S1 flows north to first enter and exit Open Water Pond OWP1, then continues northwest out of the review area. Wetland W2 and Stream S3 are located north of OWP1 and east of Stream S1. Based on the information available, Wetland W2 was formed through and continues at the present to have a continuous seepage connection through the earthen dam located on the northeastern section of OWP1. Stream S3 begins northwest of Wetland W2 and flows north into Stream 1. Stream S4 begins at a spillway located on the northwestern corner of OWP1 and flows north into Stream S1. Stream S2 flows into the review area from the east and into Stream S1. Stream S1 flows northwest out of the review area, continues west for ~1,800 feet into Chicken Creek, ~8,500 feet into Little River, and ~70,000 feet into Allatoona Lake. Flow continues west out of Allatoona Lake into the Etowah River, which flows an additional ~255,000 feet into the Coosa River (nearest TNW).

The Ordinary High Water Marks (OHWM) of the unnamed tributaries were indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks. Wetlands meet the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Eastern Mountains and Piedmont Regional Supplement and are contiguous with the unnamed tributary.

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6. SECTION 10 JURISDICTIONAL WATERS⁴: 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 10.⁵ [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):

Name of Aquatic Resource	Size (in acres)	Rationale, including written Description of Lateral Limits or reference to an attached map showing the lateral limits	Method for determining lateral limits
OWP1	2.5	See attached delineation map entitled "Potential Waters of the U.S. Map". This pond is connected to Stream S1, Stream S2, Stream S3, Stream S4, Wetland W1, and Wetland W2 via a series of linear aquatic and/or discrete features.	OHWM indicators and observed flow during site visit

⁴ 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.

⁵ 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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e. Tributaries (a)(5):

Name of Aquatic Resource	Size (in acres)	Flow Regime and additional description of the tributary	Method for determining flow regime
Stream S1	0.199	Stream S1 is a relatively permanent water (RPW) and is an unnamed tributary to Chicken Creek, also a RPW. It flows from the south into the review area, through OWP1, and then northwest out of the review area.	observed flow during site visit during normal precipitation conditions
Stream S2	0.036	Stream S2 is a RPW and flows into the review area from the east and into Stream S1.	observed flow during site visit during normal precipitation conditions
Stream S3	0.006	Stream S3 is a RPW with headwater beginning northwest of Wetland W2 and flows north into Stream S1.	observed flow during site visit during normal precipitation conditions
Stream S4	0.104	Stream S4 is a RPW beginning at a spillway located on the northwestern corner of OWP1 and flows north into Stream S1.	observed flow during site visit during normal precipitation conditions

f. The territorial seas (a)(6): [N/A]

g. Adjacent wetlands (a)(7):

Name of Aquatic Resource	Size (in acres)	Contiguous with or abutting? If so, list water	Describe continuous surface connection
Wetland W1	1.67	Stream S1, OWP1	The wetland boundary is connecting and contiguous with Stream S1, an RPW, and abuts OWP1
Wetland W2	0.146	OWP1, Stream S3	The wetland is connected through an earthen dam discrete feature to OWP1 and abuts Stream S3

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- 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”).⁶ 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]
- 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]

⁶ 51 FR 41217, November 13, 1986.

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- 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). [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. Office (desktop) determination: February 2025
 - b. Field Review: February 11, 2025
 - c. Data sources used to support this determination (included in the administrative record).
 - ☒ **Aquatic Resources delineation submitted by, or on behalf of, the requestor:** “Potential Waters of the U.S. Map”, prepared by the Agent and dated August 2, 2024.
 - ☒ **Wetland Determination Data Sheets:** prepared by the Agent and dated August 1, 2024.

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- ☒ **Photographs:** Site photographs (Photos 1-26), prepared by the Agent, and dated August 1, 2024; Site visit supplemental photographs (Photos 27-33), taken by PM and dated February 11, 2025.
- ☒ **Aerial Imagery:** “Parcel Information”, prepared by Agent
- ☒ **LIDAR:** LiDAR (3DEP DEM and Hillshade), retrieved from the Georgia Regulatory Viewer (NRV) by PM in February 2025.
- ☒ **USDA NRCS Soil Survey:** “USDA-NRCS Web Soil Survey Map”, prepared by the Agent and dated July 30, 2024.
- ☒ **USFWS NWI maps:** “USFWS National Wetlands Inventory Map”, prepared by the agent and dated July 30, 2024.
- ☒ **USGS topographic maps:** “USGS Topographic Map”, prepared by the Agent and dated July 30, 2024.
- ☒ **USGS NHD and Hydric soils maps and data:** Retrieved by the PM in February 2025
- ☒ **StreamStats:** Map and reports retrieved by PM in February 2025
- ☒ **FEMA Flood Zone:** “FEMA Firm National Flood Hazard Zone Map”, prepared by the Agent and dated July 30, 2024.

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

- Project Study Area
- Stream
- Wetland Area
- Open Water Pond
- 25ft Surface Water Buffer
- Spillway
- Culvert
- Data Point

Stream S2:
~ 0.036 AC
~ 171 LF

Stream S1:
~ 0.199 AC
~ 985 LF

Stream S3:
~ 0.006 AC
~ 104 LF

Wetland W2:
~ 0.146 AC

Open Water Pond OWP1:
~ 2.5 AC

Stream S4:
~ 0.104 AC
~ 260 LF

DP-2

Stream S1:
~ 0.199 AC
~ 985 LF

DP-1

Wetland W1:
~ 1.67 AC

0 100 200 400
Feet



Client:



Project:

HAMBY ROAD
SITE

3260 HAMBY ROAD
ALPHARETTA,
FULTON COUNTY,
GEORGIA

Title:

**POTENTIAL WATERS
OF THE U.S.
MAP**

1. POTENTIALLY JURISDICTIONAL WATERS
OF THE U.S. WERE OBSERVED BY
ECS ON AUGUST 1, 2024.

2. FINDINGS DEPICTED ON THIS
MAP HAVE NOT BEEN VERIFIED BY
THE USACE AND DELINEATION
FINDINGS ARE SUBJECT TO
CHANGE BASED ON AGENCY
VERIFICATION.

3. THIS MAP SHOULD BE USED
FOR PRELIMINARY PLANNING
PURPOSES.

Drawn By:

AMC

Scale:

1" = 200'

Approved By:

PMS

Date:

08/02/2024

ECS Project No.

49: 23703

FIGURE 7