



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

CESAS-RD-P

4 April 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-2025-00043

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 in Georgia due to litigation.

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<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.

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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
P1 - Upper	JD	Section 404
P2 - Lower	JD	Section 404
P2	JD	Section 404
I1	JD	Section 404
Wet A	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. 34.19 acres  
B. Latitude: 34.1049, Longitude: -84.6031  
C. Acworth  
D. Cherokee 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 307,000 linear feet (93.5 linear kilometers) west of the subject review area, is 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, a field visit conducted on March 28, 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

P2 is Kellogg Creek, a relatively permanent water (RPW) that flows northwest through the review area. I1 is a RPW and an unnamed tributary of Kellogg Creek. I1 flows west into the southeast portion of the review area and into Kellogg Creek. Wet A is a floodplain wetland that directly abuts and drains into Kellogg Creek in the northwest portion of the review area. P1 Upper is a RPW and is an unnamed tributary of Kellogg Creek. P1 Upper flows southwest into P1 Lower, a RPW and an unnamed tributary of Kellogg Creek. P1 Lower flows southwest into Kellogg Creek. Kellogg Creek (P2) flow northwest out of the review area for approximately 8,000 feet into Allatoona Lake. Flow continues west for approximately 20,000 feet through Allatoona Lake and into the Etowah River, which flows an additional approximately 287,000 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.

6. 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

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<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

use because of changed conditions or the presence of obstructions.

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resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>5</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 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):

e. Tributaries (a)(5):

Name of Aquatic Resource	Size (in linear feet)	Flow Regime and additional description of the tributary	Method for determining flow regime
P1 – Upper	361	P1-Upper is a perennial unnamed tributary to Kellogg Creek with relatively permanent flow. It flows into the review area from the north and into P1 – Lower.	NC DWQ Identification forms were used to assess stream flow. Flow was observed during site visit with normal precipitation conditions.
P1 - Lower	291	P1- Lower is a perennial unnamed tributary to Kellogg Creek with relatively permanent flow. It flows into Kellogg Creek in the northwest portion of the review area.	NC DWQ Identification forms were used to assess stream flow. Flow was observed during site visit with normal precipitation conditions.
P2	2619	P2 is Kellogg creek, a perennial tributary with relatively permanent flow. It flows	NC DWQ Identification forms were used to assess stream

<sup>5</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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		into the review area from the southeast and flows out of the review area in the northwest.	flow. Flow was observed during site visit with normal precipitation conditions.
I1	314	P1 is an intermittent unnamed tributary to Kellogg Creek with relatively permanent flow. It flows into the review area from the east and into Kellogg Creek in the southeast portion of the review area.	NC DWQ Identification forms were used to assess stream flow. Flow was observed during site visit with 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
Wet A	1.1	P2 – Kellogg Creek	The wetland boundary directly abuts P2 (a RPW)

## 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”).<sup>6</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
- 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
- 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
- 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

<sup>6</sup> 51 FR 41217, November 13, 1986.

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- 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: March 2025
  - b. Field Review: March 28, 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:** “Figure 6, Delineated Waters Map”, prepared by the Agent based on field survey conducted in December 2024
    - ☒ **Wetland Determination and NC DWQ Stream Identification Data Sheets:** prepared by the Agent and dated December 2024
    - ☒ **Photographs:** Site photographs (Photos 1-20), prepared by the Agent, and dated December 2024; Site visit supplemental photographs (Photos 21-25), taken by PM and dated March 2025
    - ☒ **Aerial Imagery:** “Aerial Map”, prepared by Agent
    - ☒ **LIDAR:** LiDAR (3DEP DEM and Hillshade), retrieved from the Georgia Regulatory Viewer (NRV) by PM in March 2025
    - ☒ **USDA NRCS Soil Survey:** “Figure 4, Soils Map”, prepared by the Agent
    - ☒ **USFWS NWI and FEMA maps:** “Figure 5, National Wetlands Inventory and FEMA Floodplain Map”, prepared by the Agent

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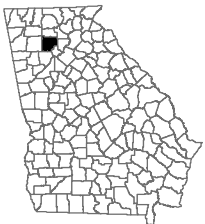
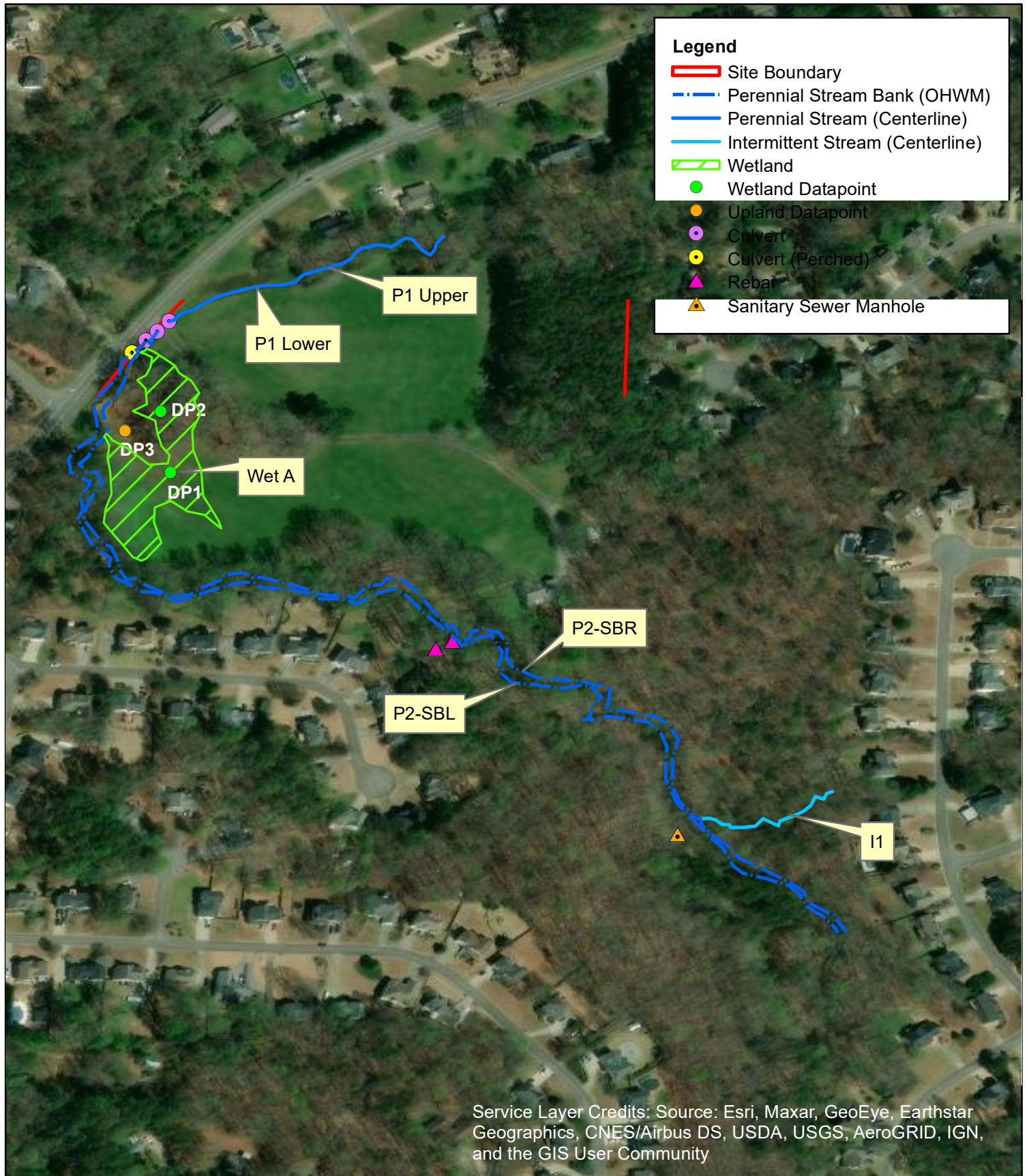
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- ☒ **USGS topographic maps:** “Figure 3, Topographic Map”, prepared by the Agent
- ☒ **USGS NHD map:** Retrieved by the PM in March 2025
- ☒ **StreamStats:** Map and reports retrieved by PM in March 2025

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.





Page Estates Property  
Cherokee County, Georgia

0 150 300 600  
Feet  
1 in = 300 ft



Figure 6  
Delineated Waters Map



CEG Job No.:  
04-111224