



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

CESAS-RD-P

16 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-2001-00660

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. SUMMARY OF CONCLUSIONS.

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.

CESAS-RDP

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-2001-00660

- 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	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).
- e. Memorandum to the field between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency concerning the proper implementation of "continuous surface connection" under the definition of "waters of the United States" under the Clean Water Act (March 12, 2025).

3. REVIEW AREA

- A. 23.85 acres
- B. Latitude: 33.6688, Longitude: -84.9272
- C. Villa Rica
- D. Carroll County
- E. Georgia

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

- A. The Chattahoochee River, located approximately 82,000 linear feet (25 linear kilometers) southeast of the subject review area, is the nearest TNW.
- B. Determination based on: This determination was made based on a review of

CESAS-RDP

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-2001-00660

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

SBB is a non-relatively permanent ephemeral feature that flows south within the review area. The SBB feature terminates at the review area boundary. Overland sheet flow continues south beyond the project review area boundary to the nearest relatively permanent water of Crawfish Creek located 2000 feet to the south. Crawfish Creek flows east approximately 20,000 feet into Dog River, then southeast approximately 60,000 feet into the Chattahoochee River (nearest TNW).

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

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.

CESAS-RDP

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-2001-00660

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”).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
- 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

⁶ 51 FR 41217, November 13, 1986.

CESAS-RDP

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-2001-00660

- 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 Aquatic Resource	Size	Type of resource generally not jurisdictional
SBB	654 linear feet	Tributary that is non-relatively permanent

SSB: The ephemeral stream on the project site is a non-relatively permanent tributary waterthat discontinues at the southern border of the project review area. Overland sheet flow continues to Crawfish Creek (a RPW) that is located approximately 2,000 feet south of the review area.

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 by CESAS-RDP
 - c. Data sources used to support this determination (included in the administrative record).

CESAS-RDP

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-2001-00660

- ☒ **Aquatic Resources delineation submitted by, or on behalf of, the requestor:** “Figure 6 – Delineation Map, Villa Rica Quarry, Vulcan Materials Company, Carroll County, GA”, prepared by the Agent and dated December 5, 2024.
- ☒ **Aerial Imagery maps:** maps from years 2024, 2005, and 1999, prepared by PM in March 2025.
- ☒ **Antecedent Precipitation graph:** prepared by the Agent and based on observation date of July 18, 2024.
- ☒ **Photographs:** Site photographs (Photos 1-32), prepared by the Agent, and dated July 2024; Site visit supplemental photographs (Photos 33-37), taken by PM in March 2025.
- ☒ **NC DWQ Stream Identification Form:** prepared by the Agent and dated July 17, 2024.
- ☒ **LIDAR:** LiDAR (3DEP DEM and Hillshade), retrieved from the Georgia Regulatory Viewer (NRV) by PM in March 2025.
- ☒ **USDA NRCS Soil Survey:** “Figure 3 – Soil Map”, prepared by the Agent and dated October 22, 2024.
- ☒ **USFWS NWI maps:** “Figure 4 - National Wetland Inventory Map”, prepared by the agent and October 22, 2024.
- ☒ **USGS topographic map:** “Figure 2 – Topographic Map”, prepared by the Agent and dated October 22, 2024.
- ☒ **USGS NHD map:** Retrieved by the PM in March 2025.
- ☒ **StreamStats:** Map and reports retrieved by PM in April 2025
- ☒ **FEMA Flood Zone:** “Figure 5 - Floodplain Map”, prepared by the Agent and dated October 22, 2024.

10. OTHER SUPPORTING INFORMATION. N/A

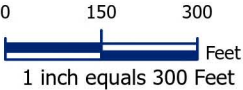
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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



Notes:
1. Imagery obtained from ESRI World Basemap. Source: Vivid, Maxar Date: August 2019.
2. Aquatic resource delineation performed by HHNT scientists on July 18, 2024
3. AJD - Approved Jurisdictional Determination

Figure 6 - Delineation Map

Villa Rica Quarry
Vulcan Materials Company
Carroll County, GA
12/5/2024



DISCLAIMER:
DEPICTED WATERS OF THE U.S. DELINEATION REMAINS AN OPINION
OF HHNT UNTIL IT IS FORMALLY VERIFIED IN WRITING BY THE U.S. ARMY
CORPS OF ENGINEERS VIA A FORMAL DETERMINATION LETTER.
**DELINEATED WETLANDS AND STREAMS
HAVE NOT BEEN APPROVED BY ACOE.**

Legend

- Property Boundary (~325.79 Ac.)
- AJD Review Area (~23.85 Ac.)
- Ephemeral Channel (~653.55 Lf)

