



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

CESAS-RD-P

3 July 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-2025-00348

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
Stream S1	JD	Section 404
Wetland W1	JD	Section 404
Wetland W2	Non-JD	Section 404
Pond P1	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. 87.14 acres
- B. Latitude: 33.5991, Longitude: -83.8211
- C. Covington
- D. Newton County
- E. Georgia

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

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- A. The Ocmulgee River, located approximately 87,000 linear feet (26.5 linear kilometers) south 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 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) that flows east along the northern project boundary. Flows continues southeast outside of the review area for approximately 2,300 feet to the Jane Alexander Dam and into the Alcovy River, also a relatively permanent water. The Alcovy River flows south for approximately 84,700 feet into the Ocmulgee River (nearest TNW). Wetland W1 is a non-tidal wetland that directly abuts with a continuous surface connection to Stream S1.

Pond P1 is a RPW that terminates at the eastern project boundary and has no continuous surface connection with a TNW, as flows are conveyed subsurface through piping. Wetland W2 is a non-tidal wetland that abuts Pond P1 on the west and has no continuous surface connection with a TNW.

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 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

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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 "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.

<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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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):

Name of Aquatic Resource	Size	Flow Regime, description, and method for determination
Stream S1	843 linear feet (0.43-acres)	S1 is a relatively permanent water (RPW) and is an unnamed tributary to the Alcovy River, also a RPW and tributary of the Oconee River, a TNW. It flows east along the northern border of the project area.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7):

Name of Aquatic Resource	Size	Flow Regime, description, and method for determination
Wetland W1	1.12-acres	This non-tidal wetland has a continuous surface connection to Stream S1. The wetland boundary directly abuts with Stream S1, a RPW.

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## 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”).<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
- 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).

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

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Name of Aquatic Resource	Size	Type of resource generally not jurisdictional
Wetland W2	0.82-acres	This non-tidal wetland lacks a continuous surface connection to a downstream jurisdictional water.
Pond P1	1.92-acres	This relatively permanent open water feature lacks a continuous surface connection to a downstream TNW.

Pond P1 is a RPW located in the east central portion of the project area. The eastern border of Pond P1 is a natural berm dam which has no observable outlet or surface flow that extends beyond the review area. This is the point of continuous surface connection severance for the jurisdictional determination. Wetland W2 is a delineated wetland located in the center of the project area that abuts and drains east into Pond P1. The wetland meets 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 but is not considered adjacent to a downstream jurisdictional water.

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: June 2025
- b. Field Review: June 11, 2025 by CESAS-RDP
- 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 7 – Potential Waters of the U.S. Map”, prepared by the Agent and dated April 2, 2025.
- Aerial Imagery maps:** maps from years 2024, 2014, and 1988, prepared by Project Manager (PM) in June 2025.
- Antecedent Precipitation graph:** prepared by the PM and based on observation date of June 11, 2024 (wet conditions).
- Photographs:** Site photographs (Photos 1-12), prepared by the Agent, and dated March 2025; Site visit supplemental photographs (Photos 13-17), taken by PM in June 2025.
- NC DWQ Stream Identification Form:** prepared by the Agent and dated March 26, 2025.

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- ☒ **Wetland Determination Data Sheets:** prepared by the Agent and dated March 26, 2025.
- ☒ **LIDAR:** LiDAR (3DEP DEM and Hillshade), retrieved from the Georgia Regulatory Viewer (NRV) by PM in June 2025.
- ☒ **USDA NRCS Soil Survey:** “Figure 3 – USDA-NRCS Web Soil Survey Map”, prepared by the Agent and dated March 24, 2025.
- ☒ **USFWS NWI maps:** “Figure 4 – USFWS National Wetland Inventory Map”, prepared by the agent and dated March 24, 2025.
- ☒ **USGS topographic map:** “Figure 2 – USGS Topographic Map”, prepared by the Agent and dated March 24, 2025.
- ☒ **USGS NHD map:** Retrieved by the PM in June 2025.
- ☒ **FEMA Flood Zone:** “Figure 5 – Firm National Flood Hazard Zone Map”, prepared by the Agent and dated March 24, 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.

**Legend**

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



**Client:**  
  
SDP ACQUISITIONS, LLC

**Project:**  
  
FALCONWOOD FARMS  
SITE  
  
10385 HIGHWAY 278,  
COVINGTON,  
NEWTON COUNTY,  
GEORGIA

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

1. POTENTIALLY JURISDICTIONAL WATERS OF THE U.S. WERE OBSERVED BY ECS ON MARCH 26, 2025.  
  
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.

<b>Drawn By:</b> AMC	<b>Scale:</b> 1 in = 500 ft
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<b>Approved By:</b> WBF	<b>Date:</b> 04/02/2025
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ECS Project No.  
**49: 25532**

**FIGURE 7**

