



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT  
4751 BEST ROAD, SUITE 140  
COLLEGE PARK, GEORGIA 30337-5600

SAS-RDP

15 January 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 (2023),<sup>1</sup>  
SAS-2023-00031<sup>2</sup>

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>3</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>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</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

---

<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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.

SAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023), SAS-2023-00031

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 this state due to litigation.

## 1. SUMMARY OF CONCLUSIONS.

- a. 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
OW 1	Non-JD	Section 404
OW 2	Non-JD	Section 404
Wet 3	JD	Section 404
Wet 4	JD	Section 404
Wet 5	Non-JD	Section 404
Wet 6	JD	Section 404
OW 7	JD	Section 404
Wet 8	Non-JD	Section 404
OW 9	JD	Section 404
Wet 10	JD	Section 404
OW 11	JD	Section 404
Wet 12	JD	Section 404
OW 13	JD	Section 404
OW 14	JD	Section 404
Wet 15	JD	Section 404
P1	JD	Section 404
I1	JD	Section 404
I2	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)

SAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023), SAS-2023-00031

- e. United States Army Corps of Engineers. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0), ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. ERDC/EL TR-10-20. Vicksburg, MS: U.S. Army Engineer Research and Development Center.
  - f. Memorandum on Evaluating Jurisdiction For LRL-2023-00466, issued by the U.S. EPA and OASACW (February 7, 2024).
  - g. Memorandum on Evaluating Jurisdiction for NAP-2023-01223, issued by the U.S. EPA and OASACW (June 25, 2024).
  - h. Memorandum on Evaluating Jurisdiction for NWK-2022-00809, issued by the U.S. EPA and OASACW (June 25, 2024).
  - i. Memorandum on Evaluating Jurisdiction for SWG-2023-00284, issued by the U.S. EPA and OASACW (June 25, 2024).
  - j. Memorandum on Evaluating Jurisdiction for LRB-2023-00451, issued by the U.S. EPA and OASACW (September 3, 2024).
  - k. Memorandum on Evaluating Jurisdiction for POH-2023-00187, issued by the U.S. EPA and OASACW (November 20, 2024).
  - l. Memorandum on Evaluating Jurisdiction for NWK-2024-00392, issued by the U.S. EPA and OASACW (November 21, 2024).
  - m. 88 FR 3084 and 3086 (January 18, 2023).
3. REVIEW AREA. The 104-acre site is accessed via a dirt road off the west side of Stone Creek Church Road, approximately 0.6 miles southwest of the intersection of Stone Creek Church Road and Riggins Mill Road in Twiggs County, Georgia. Lat/Long coordinates for the center of the site are 32.768017, -83.536231.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. A. Perennial Stream 1 (P1) flows through the review area and offsite and into Dry Branch Creek (a RPW) which eventually flows into Denson Marsh, then out of Denson Marsh and into Stone Creek (a RPW) and then into the Ocmulgee River (TNW). B. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum.

SAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023), SAS-2023-00031

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. All aquatic resources on site drain to I1, I2, or P1. I1 and I2 are relatively permanent waters (RPW) and are an unnamed tributary to P1. P1 is an unnamed tributary to Dry Branch Creek, an RPW. Dry Branch Creek flows to Denson Marsh, then Stone Creek, and then the Ocmulgee River, a traditionally navigable water (TNW). The Ordinary High Water Mark (OHWM) of the unnamed tributary was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks. The wetlands meet the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic and Gulf Coast Regional Supplement and are contiguous with the unnamed tributary.
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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>7</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

---

<sup>6</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>7</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.

## SAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023), SAS-2023-00031

b. Interstate Waters (a)(2): N/A

c. Other Waters (a)(3):

d. Impoundments (a)(4): N/A

e. Tributaries (a)(5):

Name of Aquatic Resource	Size (in acres)	Flow Regime and additional description of the tributary	Method for determining flow regime
P1	1,391 LF/0.12-acre	Perennial stream 1 (P1) was an unnamed perennial stream that entered the southeastern boundary of the site, flowed through the site and exited the southwestern boundary and eventually emptied into Dry Branch Creek. The upstream reach of P1 possessed a discreet well-defined channel as it entered the site and extended for approximately 283 feet into the site before it flattened and became part of Wetland 3 (Wet 3). Wet 3 extended downslope to a culvert under an internal dirt access road. At the lower end of the culvert P1 became channelized once again and extended through Wetland 6 (Wet 6) and off the southwestern property boundary. P1 became braided into a couple channels just before it exited the site. P1 had a well-defined bed and bank and a continuous ordinary high water mark (OHWM). Channel width at the OHWM and top of bank was 2 to 4 feet and depth ranged from 0.5 to 2 feet. A distinct line of wretched vegetation was present along both banks throughout the length of the channel, except in the upper reach where it flattened into Wet 3. Stream flow observed within the channel was moderate and the wetted width reached the base of both banks and even into the abutting wetlands. Channel substrates were primarily sediment, sand and clay.	observed flow during site visit during normal precipitation conditions, NCDWR stream identification form
I1	258 LF/0.012-acre	Intermittent stream 1 (I1) was a small intermittent stream located on the southeastern portion of the site. I1 originated at a seepage springhead along the hillslope at the lower end of Wetland 4 (Wet 4) and extended downslope until it entered Wet 3 and then the channel flattened out into the wetland. Channel width at the OHWM and top of bank was 1 to 2 feet and depth ranged from 0.5 to 1 foot. A distinct line of wretched vegetation was present along both banks throughout the length of the channel, except where it flattened into Wet 3. Stream flow observed within the channel was minor and significant leaf litter was present within the channel. Channel substrates were primarily mud and clay.	observed flow during site visit during normal precipitation conditions, NCDWR stream identification form

SAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023), SAS-2023-00031

I2	414 LF/ 0.019- acre	Intermittent stream 2 (I2) was a small intermittent stream located on the southwestern portion of the site. I2 originated at a seepage springhead along the hillslope at the lower end of Wetland 10 (Wet 10) and extended downslope until it entered Wet 6 and then the channel flattened out into the wetland. No strong bed and bank was observed, only the slope of the natural draw feature 1 which this stream was located. Channel width at the OHWM was 1 to 2 feet. A distinct line of wrested vegetation was present along both sides throughout the length of the channel, except where it flattened into Wet 6. Stream flow observed within the channel was minimal and significant leaf litter was present within the channel. Channel substrate was primarily soft mud underlain by clay.	observed flow during site visit during normal precipitation conditions, NCDWR stream identification form
OW 7	0.75 ac	This is a manmade pond, incidental to mining that has been abandoned. Based on Lidar and the agent's observation, the aquatic resource has a continuous surface connection to stream I2, a RPW. The pond does not have an inlet, but the outlet discharges to stream I2. As such, it is part of the tributary network of I2.	OHWM indicators (natural line impressed on the bank, shelving, absence of vegetation). The outlet of the pond discharges to stream I2 and is part of the tributary network.
OW 9	0.45 ac	This is a manmade pond, incidental to mining that has been abandoned. The pond has both an inlet and an outlet. The inlet of the pond receives flow from the contiguous Wetland 15. The downstream boundary (outlet) is connecting and contiguous with Wetland 10, which connects to stream I2, a RPW. The contiguous wetland 15 contributes downstream flow to OW 9 at its inlet and is part of the tributary network of stream I2, a RPW.	OHWM indicators (natural line impressed on the bank, shelving, absence of vegetation). The pond provides flow through the tributary network of stream I2.
OW 11	2.49 ac	This is a manmade pond, incidental to mining that has been abandoned. The boundary is connecting and contiguous with Wet 15, which connects to OW 9 that connects to Wet 10 that connects to stream I2, a RPW. As such the pond contributes flow to the tributary network of stream I2.	OHWM indicators (natural line impressed on the bank, shelving, absence of vegetation) The pond provides flow through the tributary network of stream I2.
OW 13	3.07 ac	This is a manmade pond, incidental to mining that has been abandoned. The spillway of OW 13 is a discrete feature that provides a continuous surface connection to Wet 12, and then OW11, which is connecting and contiguous with Wet 15, which connects to OW 9 that connects to Wet 10 that connects to stream I2, an RPW. The pond does not possess an inlet but the outlet does connect to the tributary network, since the pond contributes flow to Wet 12, continuing on to the RPW.	OHWM (natural line impressed on the bank, shelving, absence of vegetation) The pond provides flow through the tributary network of stream I2.
OW 14	0.85	This is a manmade pond, incidental to mining that has been abandoned. The boundary is connecting and contiguous with Wet 4, which connects to stream I1, a	OHWM indicators (natural line impressed on the bank, shelving,

SAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023), SAS-2023-00031

		RPW. Flow from the pond connects to the tributary network of stream I1, a RPW.	absence of vegetation) The pond provides flow through the tributary network of stream I2.
--	--	--	--

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 3	0.8	Yes, I1	The wetland boundary is connecting and contiguous with stream I1 and P1, both are RPWs
Wet 4	0.3	Yes, I1	The wetland boundary is connecting and contiguous with stream I1, an RPW.
Wet 6	1.21	Yes, P1	The wetland boundary is connecting and contiguous with stream P1, an RPW.
Wet 10	0.58	Yes, I2	The wetland boundary is connecting and contiguous with stream I2, an RPW.
Wet 12	0.09	Yes, OW 11	The wetland boundary abuts OW 11 which connects to Wetland 15 which connects to OW 9 which connects to Wetland 10 which connects to stream I2, an RPW. Because OW 11 is part of the tributary network of stream I2, it is a relatively permanent water.
Wet 15	0.08	Yes, OW 9	The wetland boundary abuts OW 9 which connects to Wetland 10 which connects to stream I2, an RPW. Because OW 9 is part of the tributary network of stream I2, it is a relatively permanent water.

## 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>8</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

<sup>8</sup> 51 FR 41217, November 13, 1986.

SAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023), SAS-2023-00031

- 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*. Open Water 1 and Open Water 2 are manmade open water ponds created in the uplands during previous mining activities and then subsequently abandoned, as evidenced by a review of historic imagery. These two ponds do not possess outlets or surface connections to any other aquatic resource and no continuous surface connection exists. The distance from OW1 to the nearest jurisdictional aquatic resource (Perennial stream P1) is approximately 400 linear feet. The distance from OW2 to the nearest jurisdictional aquatic resource (Perennial stream P1) is approximately 447 linear feet. OW 1 is approximately 0.96 acres in size. OW 2 is approximately 0.44 acres in size. Finally, the ponds are not subject to use for foreign or interstate commerce. Therefore, the ponds are not waters of the U.S.
- 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	Type of resource generally not jurisdictional
Wetland 5	0.64-acre	Wetland lacks a continuous surface connection (CSC) to a water of the US (WOTUS).
Wetland 8	0.07-acre	Wetland lacks a continuous surface connection (CSC) to a water of the US (WOTUS).

Wetland 5 is an emergent wetland located in the southeastern portion of the site. The wetland is likely the result of an abandoned mining pit or pond created in the



SAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023), SAS-2023-00031

uplands during previous mining activities conducted in the 1950s and earlier. The wetland does not have an inlet or an outlet or a surface connection to any downstream waters of the U.S. The distance from Wetland 5 to the nearest downstream jurisdictional aquatic resource (Perennial stream 1) is approximately 370 linear feet. Therefore, it does not meet the definition of an (a)(7) water.

Wetland 8 is a forested depressional wetland located within a topographic bowl near the western site boundary. The wetland is isolated from other jurisdictional waters and there is no inlet or outlet for surface water. It is possible that this feature was created as result of past mining practices. The distance from Wetland 8 to the nearest downstream jurisdictional aquatic resource (Perennial stream 1) is approximately 1,650 linear feet. Therefore, the wetland does not meet the definition of an (a)(7) 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. Field visit conducted by the Agent on October 4 and October 5, 2022.
  - b. Site Photographs submittal dated 11/16/2022.
  - c. "Figure 1 Location Map Williams Burgess Property Twiggs County, Georgia Prepared" as prepared by Corblu Ecology Group, LLC.
  - d. "Figure 2 Aerial Map Williams Burgess Property Twiggs County, Georgia" as prepared by Corblu Ecology Group, LLC.
  - e. "Figure 3 USGS Hydrologic Unit Code (HUC) Map Williams Burgess Property Twiggs County, Georgia" as prepared by Corblu Ecology Group, LLC.
  - f. "Figure 4 Topographic Map Williams Burgess Property Twiggs County, Georgia" as prepared by Corblu Ecology Group, LLC.
  - g. "Figure 5 Soils Map Williams Burgess Property Twiggs County, Georgia" as prepared by Corblu Ecology Group, LLC.
  - h. "Figure 6 National Wetlands Inventory and FEMA Floodplain Map Williams Burgess Property Twiggs County, Georgia" as prepared by Corblu Ecology Group, LLC.

SAS-RDP

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023), SAS-2023-00031

- i. "Figure 7 Delineated Waters Map Aerial Williams Burgess Property Twiggs County, Georgia" as prepared by Corblu Ecology Group, LLC.
- j. "Figure 8 Delineated Waters Map Topographic Williams Burgess Property Twiggs County, Georgia" as prepared by Corblu Ecology Group, LLC.
- k. "Figure 9 Wetland Datapoints Map Williams Burgess Property Twiggs County, Georgia" as prepared by Corblu Ecology Group, LLC.

#### 10. OTHER SUPPORTING INFORMATION.

Aquatic Resources delineation submitted by, or on behalf of, the requestor:  
Submittal from Corblu Ecology Group, LLC dated January 3, 2023.

LIDAR: Sources, National Regulatory Viewer, accessed November 16, 2023.

NC DWQ Stream Identification Forms Version 4.11, as submitted on behalf of the requestor, dated October 5, 2022.

Antecedent Precipitation Tool Analysis: October 5, 2022.

Historic Aerials and Topos Accessed November 16, 2023.

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.


January 15, 2025

**Legend**

 Site Boundary


Stream

 Perennial

 Intermittent

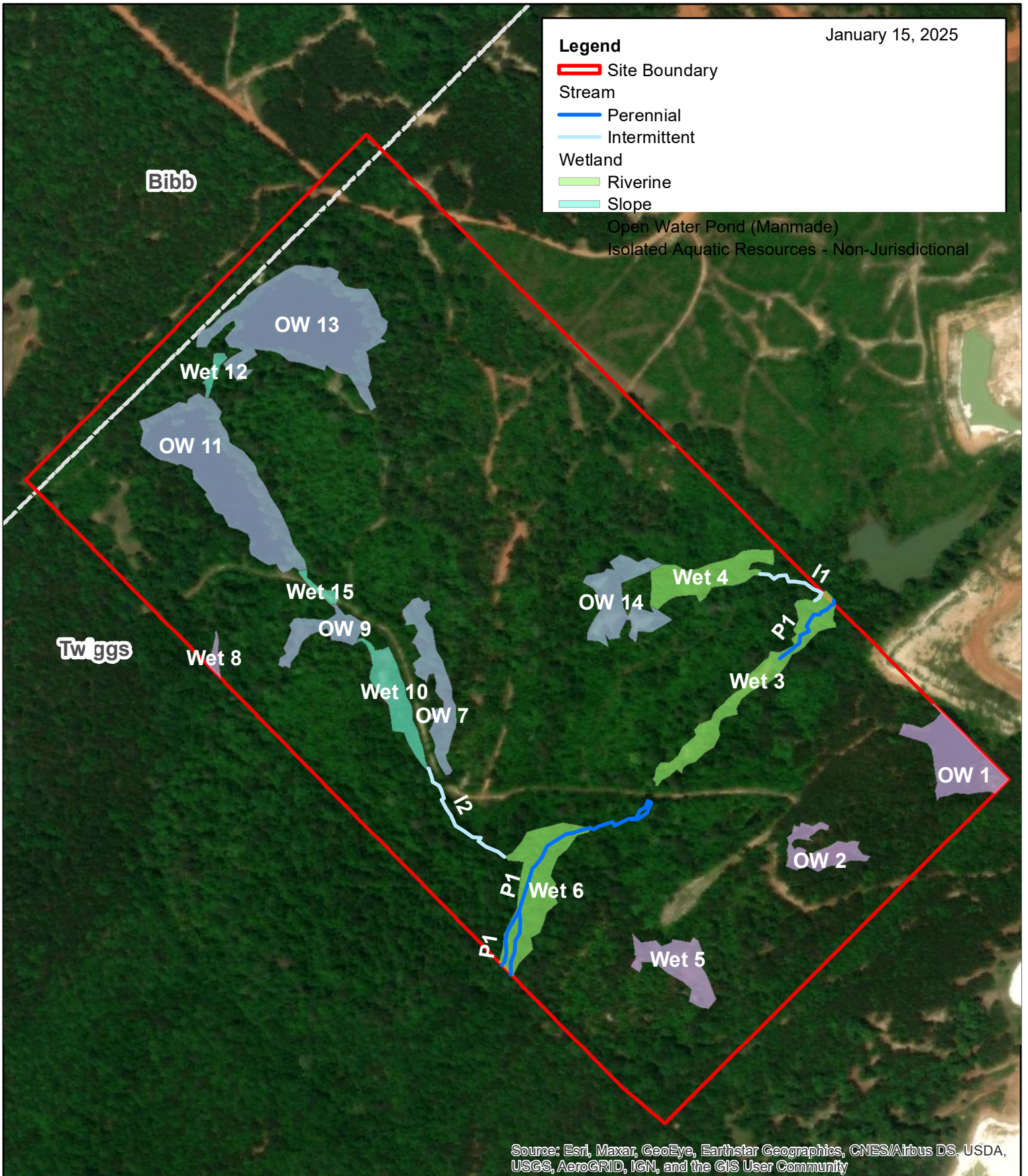
Wetland

 Riverine

 Slope

Open Water Pond (Manmade)

Isolated Aquatic Resources - Non-Jurisdictional



Williams Burgess Property  
Twiggs County, Georgia

0 200 400 800  
Feet  
1 inch = 400 feet



Figure 7  
Delineated Waters Map  
Aerial



CEG Job No.:  
04-00022