



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT
167 NORTH MAIN STREET
MEMPHIS, TENNESSEE 38103

CEMVM-R

8 June 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ MVM-2026-024 MFR 1 of 1²

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

¹ 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.

² 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

CEMVM-R

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVM-2026-024

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. 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).
 - i. Wetland-1 (WA-1), jurisdictional
 - ii. Wetland-2 (WA-2), jurisdictional
 - iii. Wetland-3 (WA-3), non-jurisdictional
 - iv. Wetland-4 (WA-4), non-jurisdictional
 - v. Wetland-5 (WA-5), non-jurisdictional
 - vi. Drain-1, Sandy Bayou (uppermost reach), non-jurisdictional
 - vii. Drain-1, Sandy Bayou, (Int. Stream), jurisdictional
 - viii. Drain-2 (Eph. Stream), non-jurisdictional
 - ix. Drain-3 (man-made), non-jurisdictional
 - x. Drain-4 (man-made), non-jurisdictional
 - xi. Drain-5 (Eph. Stream), non-jurisdictional

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)

CEMVM-R

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVM-2026-024

- 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. The review area is an approximately 4.1-mile corridor which consists of areas inside and outside the Mississippi River levee. The entire review area is located southeast of Osceola, Mississippi County, Arkansas.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW for the area inside the Mississippi River levee is the Mississippi River. The nearest TNW for the area outside the Mississippi River levee is the Tyronza River.⁶
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The subject resource inside the Mississippi River levee does not have a physical connection to the Mississippi River. The subject resources outside the Mississippi River levee flow into Sandy Bayou (Ditch No. 9), then into Ditch No. 50, then into Ditch No. 40, then into the Tyronza River.
 6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ N/A

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 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.

⁸ 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.

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):

Drain-1 (Sandy Bayou), (35.629472, -89.944714), is a relatively permanent (seasonally intermittent) stream that is divided into two separate reaches based on Strahler stream order. Below its connection with Drain 5, Drain-1/Sandy Bayou is a second-order tributary that is approximately 7,500 feet in length on the project site. The mapped soil unit is Steele silty clay loam, which is characterized by moderate to rapid water movement in the upper three feet but slow movement of water below this depth. The seasonal high water table of these soils is listed as from 1-2 feet below the surface. This tributary continues offsite as a second-order stream approximately 2.5 miles before joining another second-order channel (Ditch 14). Throughout this reach the channel appears to be a relatively permanent water with seasonal to perennial flow.

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

WA-1, (35.631855, -89.943564), is approximately 31.95 acres. WA-1 directly abuts and therefore has a continuous surface connection with Drain-1 (see Section 7.e.). Elevation profiles generated within the National Regulatory Viewer

indicate that the channel and wetlands are located within the same broad depression; there is a lack of berms, high banks, or other features that could separate Drain-1 and WA-1.

WA-2, (35.638818, -89.936341), is approximately 26.16 acres. Similar to WA-1, WA-2 directly abuts and flows directly into Drain-1 (see Section 7.e.). The channel and wetlands are located within the same broad depression and there is a lack of berms or other features that could separate WA-2 from Drain-1.

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”).⁹ 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.

Drain-3, (35.637406, -89.941431), is an approximately 10,551 linear foot man-made stormwater drainage ditch that terminates at a stormwater retention pond. This feature flows only in direct response to precipitation and is not a relatively permanent water.

Drain-4, (35.67720, -89.97686), is an approximately 3,116 linear foot man-made stormwater drainage ditch that flows into Drain-3, which terminates at a stormwater retention pond. This feature flows only in direct response to precipitation and is not a relatively permanent water.

- 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

⁹ 51 FR 41217, November 13, 1986.

- 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).

Drain-1 (Sandy Bayou), (35.642664, -89.926895), is divided into two separate reaches based on Strahler stream order. The upstream reach (above its confluence with Drain 5) is a first-order tributary that is approximately 1,400 feet in length. This area collects runoff from the levee to the east and developed portions of the property to the west. The mapped soils within this reach (Sharkey silty clay at the upper end of the reach and Bowdre silty clay loam below this point) are characterized by slow permeability (when not desiccated/cracked), and seasonal high water tables that vary from the existing surface to 5 feet below the surface. The existing channel is approximately 1 foot deep, indicating that the majority of this reach is located above the water table and only carries non-relatively permanent flow in direct response to precipitation. Therefore, the uppermost reach of Drain-1/Sandy Bayou is not considered a water of the United States.

Drain 2, Eph. Stream, (35.636786, -89.939954), is an approximately 158 linear foot non-relatively permanent (ephemeral) channel that contains water only in direct response to precipitation.

Drain 5, Eph. Stream, (35.643910, -89.931303), is an approximately 1,894 linear foot non-relatively permanent (ephemeral) channel that contains water only in direct response to precipitation.

CEMVM-R

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVM-2026-024

WA-3, (35.641975, -89.928240), is approximately 2.84 acres. WA-3 directly abuts and flows directly into the first-order reach of Drain-1 (see above). Elevation profiles generated within the National Regulatory Viewer indicate little difference in elevation between WA-3 and Drain-1 and there are no ridges, berms, or other features that separate the two resources. However, Drain-1 is a first-order, non-relatively permanent channel throughout this reach; accordingly, WA-3 is not jurisdictional because it lacks a continuous surface connection with a relatively permanent water.

WA-4, (35.644490, -89.923076), is approximately 48.87 acres and is located at the base of the Mississippi River levee. WA-4 is surrounded by uplands and does not directly abut a Relatively Permanent Water (RPW). Consistent with the EPA memo dated 12 March 2025, the wetland does not have a continuous surface connection to a RPW and is therefore not adjacent.

WA-5, (35.642858, -89.930791), is approximately 4.36 acres. WA-5 directly abuts Drain-5. Drain-5 is not a Relatively Permanent Water (RPW) (see Drain-5 above.). Consistent with the EPA memo dated 12 March 2025, the wetland does not have a continuous surface connection to a RPW and is therefore not adjacent.

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. Maps, plans, plots or plat submitted by or on behalf of the AJD requestor: Harbor Environmental
 - b. Photos submitted by or on behalf of the AJD requestor: Harbor Environmental
 - c. Aerial photographs including Google Earth (various dates)
 - d. U.S. Geological Survey map: 1:24,000 Osceola, AR
 - e. Mississippi County Web Soil Survey
 - f. National Regulatory Viewer, 3DEP Hillshade and 3DEP Digital Elevation Model

10. OTHER SUPPORTING INFORMATION. N/A

CEMVM-R

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVM-2026-024

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.