DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT
167 N MAIN STREET ROOM B-202
MEMPHIS, TN 38103

CEMVM-R 8 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*, 143 S. Ct. 1322 (2023) ,[1] MVM-2023-173 (MFR 1 of 1)

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.[2] 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.[3] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[4] 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 Tennessee due to litigation.

1. SUMMARY OF CONCLUSIONS.

[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] 33 CFR 331.2.
[3] Regulatory Guidance Letter 05-02.
[4] 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.

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. EPH-2, (36.170137, -88.996486), non-jurisdictional

ii. EPH-3, (36.154491, -89.001038), non-jurisdictional

iii. EPH-4, (36.169362, -89.019813), non-jurisdictional

iv. EPH-5, (36.156799, -89.051478), non-jurisdictional

v. EPH-7, (36.132609, -89.022502), non-jurisdictional

vi. EPH-9, (36.138969, -89.037342), non-jurisdictional

vii. ES-1, (36.165733, -88.994369), non-jurisdictional

viii. ES-2, (36.167747, -88.994190), non-jurisdictional

ix. ES-3, (36.168877, -88.993850), non-jurisdictional

x. ES-4, (36.172843, -88.997635), non-jurisdictional

xi. ES-5, (36.170463, -88.996992), non-jurisdictional

xii. ES-6, (36.170006, -88.998899), non-jurisdictional

xiii. ES-7, (36.156800, -89.004415), non-jurisdictional

xiv. ES-8, (36.157222, -89.003761), non-jurisdictional

xv. ES-9, (36.157288, -89.003210), non-jurisdictional

xvi. ES-10, (36.156804, -89.001962), non-jurisdictional

xvii. ES-11, (36.157344, -89.001941), non-jurisdictional

xviii. ES-12, (36.166529, -89.004231), non-jurisdictional

xix. ES-13, (36.163806, -89.000258), non-jurisdictional

xx. ES-14, (36.165039, -89.007786), non-jurisdictional

xxi. ES-15, (36.161372, -89.041254), non-jurisdictional

xxii. ES-16, (36.161498, -89.040782), non-jurisdictional

xxiii. ES-17, (36.163001, -89.033938), non-jurisdictional

xxiv. ES-18, (36.163224, -89.039871), non-jurisdictional

xxv. ES-19, (36.154578, -89.048390), non-jurisdictional

xxvi. ES-20, (36.155005, -89.048032), non-jurisdictional

xxvii. ES-21, (36.158935, -89.039856), non-jurisdictional

xxviii. ES-22, (36.146201, -89.039598), non-jurisdictional

xxix. ES-23, (36.142443, -89.042000), non-jurisdictional

xxx. ES-24, (36.140715, -89.045399), non-jurisdictional

xxxi. WTL-4, (36.170210, -88.996161), non-jurisdictional

xxxii. WTL-7a, (36.174110, -89.002613), non-jurisdictional

xxxiii. WTL-7b, (36.174333, -89.002569), non-jurisdictional

xxxiv. WTL-7c, (36.174397, -89.000876), non-jurisdictional

xxxv. WTL-7d, (36.174288, -89.001772), non-jurisdictional

xxxvi. WTL-7e, (36.172902, -89.001111), non-jurisdictional

xxxvii. WTL-7f, (36.172961, -89.002499), non-jurisdictional

xxxviii. WTL-13, (36.167962, -89.011083), non-jurisdictional

xxxix. WTL-18, (36.165478, -89.010743), non-jurisdictional

xl. WTL-21, (36.158220, -89.051270), non-jurisdictional

xli. WTL-23, (36.159389, -89.047946), 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)

   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 covers approximately 1,467-acres located in Rutherford, Gibson County, Tennessee. The project area is separated into two portions which are located northeast and southwest of each other. The southwestern portion of the project area is located north and south of TN-105, west of Joe Lumpkin Road, east and west of Bob Craig Road, and south of Stringtown Road. The northeastern portion of the project area is located east and west of US 45 West, east and west of Old Rutherford-Kenton Road, and south of Turkey Lane. Approximate coordinates of the site are 36.165403°N, -89.004899°W.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The project area drains to the Obion River.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS The entire project area drains through multiple unnamed tributaries to the east and northeast into

Edmondson Creek, then into the Rutherford Fork Obion River, which then flows into the Obion River. Specifically, feature ES-3 drains to Edmundson Creek. Features EPH-2, ES-5, and ES-6 drain to STR-4, which drains to Edmundson Creek. EPH-3 drains towards STR-11 which drains towards Edmundson Creek. EPH-4 drains towards STR-9 which drains towards Edmundson Creek. ES-4 drains into Edmundson Creek. ES-7, ES-8, ES-9, ES-10 and ES-11 drain into STR-13, which drains into STR-12, which drains into Edmundson Creek. EPH-5, ES-19, and ES-20 drain into STR-23 which drains into Edmundson Creek. EPH-7 drains towards STR-29 which drains towards Edmundson Creek. EPH-9 drains north towards STR-33 which drains towards Edmundson Creek. ES-24 drains into EPH-6 which drains into STR-26 which drains into Edmundson Creek. ES-23 drains into STR-27 which drains into STR-26, which drains into Edmundson Creek. ES-22 drains into STR-26, which drains into Edmundson Creek. ES-2 and ES-3 flow offsite into sheet flow, ES-1 flows towards EPH-1 which then drains to Edmundson Creek. ES-12 flows into STR-12 which drains into Edmundson Creek. ES-13 flows into STR-16 which flows into STR-15, which drains into Edmundson Creek. ES-14 drains into Edmundson Creek. ES-15 ES-16 and ES-18 drains into STR-20a which drains offsite towards Edmundson Creek. ES-17 drains offsite into STR-21 then drains towards Edmundson Creek. ES-21 drains towards STR-20b which drains towards Edmundson Creek. WTL-4, WTL-7a, WTL-7b, WTL-7c, WTL-7d, WTL-7e, WTL-7f, WTL-13, WTL-18, WTL-21 and WTL-23 do not directly abut or have any continuous surface connections to a relatively permanent water.

6. SECTION 10 JURISDICTIONAL WATERS[5]: 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.[6] 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,

[5] 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.

[6] 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.

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): 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").[7] 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.

ES-1 (51 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from runoff and turns into upland sheet flow directed toward EPH-1 but is not connected.

[7] 51 FR 41217, November 13, 1986.

ES-2 (105 linear feet) and ES-3 (100 linear feet) are erosional swales that lack indicators of an ordinary high water mark. These channels originate from stormwater runoff, dissipating to overland sheet flow.
ES-4 (90 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from agricultural runoff.
ES-5 (115 linear feet) and ES-6 (167 linear feet) are erosional swales that lack indicators of an ordinary high water mark. These features originate from agricultural field runoff.
ES-7 (265 linear feet), ES-8 (92 linear feet), ES-9 (47 linear feet), ES-10 (149 linear feet), and ES-11 (36 linear feet) are erosional swales that lack indicators of an ordinary high water mark. These features originate from agricultural field runoff directed towards Stream 13 (indicated in a PJD)
ES-12 (138 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from agricultural field runoff directed toward STR-12 in the central region of the northeastern portion of the project study area. No hydric soils were detected.
ES-13 (339 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from agricultural field runoff directed to the west through a man-made drainage ditch in the central region of the northeastern portion of the project area.
ES-14 (422 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from agricultural field runoff. No hydric soils were detected.
ES-15 (93 linear feet) and ES-16 (134 linear feet) are erosional swales that lack indicators of an ordinary high water mark. These features originate from field runoff.
ES-17 (119 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from agricultural field runoff directed offsite to the east in the northeastern region of the southwestern portion of the project area.
ES-18 (428 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from agricultural field runoff and does not contain hydric soils.
ES-19 (112 linear feet) and ES-20 (292 linear feet) are erosional swales that lack indicators of an ordinary high water mark. These features originate from agricultural field runoff, and do not contain hydric soils.
ES-21 (358 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from agricultural field runoff.
ES-22 (93 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from an overflow pipe for P-1 (indicated in a PJD)

ES-23 (241 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from runoff within a fragmented woodland as well as adjacent agricultural fields.
ES-24 (138 linear feet) is an erosional swale that lacks indicators of an ordinary high water mark. It originates from offsite agricultural field runoff and does not contain hydric soils.

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).

EPH -2 (174 linear feet) is a non-relatively permanent water channel that primarily drains a wooded area and agricultural field and dissipates to sheet flow.
EPH-3 (681 LF) is a non-relatively permanent water channel that only contains water in direct response to precipitation that primarily drains an upland agricultural field.
EPH-4 (1324 LF) is a non-relatively permanent water channel that only contains water in direct response to precipitation that primarily drains an upland agricultural field.

EPH-5 (204 LF) is a non-relatively permanent water channel that only contains water in direct response to precipitation that primarily drains an upland agricultural field.
EPH-7 (932 LF) is a non-relatively permanent water channel that only contains water in direct response to precipitation that primarily drains an upland agricultural field.
EPH-9 (194) is a non-relatively permanent water channel that only contains water in direct response to precipitation that primarily drains an upland agricultural field.
WTL-4 (0.05 acre) was likely a relic farm pond that had breached the berm wall, draining the pond and transforming it into a linear wetland. WTL-4 is surrounded by uplands and does not have a continuous surface connection to any relatively permanent waters.
WTL-7a (0.10 acre), 7b (0.06 acre), 7c (0.21 acre), 7d (0.10 acre), 7e (0.09 acre), and 7f (0.07 acre) was observed as six depressional wetlands within an agricultural field. Five of these depressional features (7a, 7b, 7d, 7e, and 7f) are surrounded by uplands and have no connections to other waters. The sixth (7c) has a connection to a swale. However, none of the features directly abut a relatively permanent water. Therefore, these features lack a continuous surface connection to downstream relatively permanent waters.
WTL-13 (0.04 acre) is a depressional wetland in the northwestern region of the northeastern portion of the project area. WTL-13 is surrounded by uplands and does not directly abut or have a continuous surface connection to a relatively permanent water.
WTL-18 (0.18 acre) is a depressional wetland in the central region of the northeastern portion of the project study area. WTL-18 has no observable connections to other waters and does not directly abut or have a continuous surface connection to a relatively permanent water.
WTL-21 (0.17 acre) is a depressional wetland parallel to an agricultural field in the northern region of the southwestern portion of the project area. The wetland does not directly abut or have a continuous surface connection to a relatively permanent water.
WTL-23 (3.78 acres) is located within an agricultural field in the northern region of the southwestern portion of the project area. WTL-23 has no continuous surface connections to other waters and does not directly abut a relatively permanent 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 Evaluations January 11-March 25, 2025

b. Maps, plans, and photos submitted by or on behalf of the AJD requestor: Barge Design

c. U.S. Geological Survey Map: 1:24,000 Rutherford, Gibson County, TN

d. National Hydrography Dataset (accessed through National Regulatory Viewer)

10. OTHER SUPPORTING INFORMATION. Wetland features (WTL-1, WTL-2, WTL-3, WTL-5, WTL-6, WTL-8, WTL-9a, WTL-9b, WTL-10, WTL-11, WTL-12, WTL-14, WTL-15, WTL-16, WTL-17, WTL-19, WTL-20, WTL-22, WTL-24, WTL-25, WTL-26, WTL-27, and WTL-28), pond (P-1), and streams (STR-1, STR-2, STR-3, STR-4, STR-5, STR-6, STR-7, STR-8, STR-9a, STR-9b, STR-10, STR-11, STR-13, STR-14, STR-15, STR-16, STR-17, STR-18, STR-19, STR-20a, STR-20b, STR-21, STR-22, STR-23, STR-24, STR-25, STR-26, STR-27, STR-28, STR-29, STR-30, STR-31, STR-32, STR-33, STR-34, ECa, ECb, EPH-1, EPH-6, and EPH-8) are addressed through a Preliminary Jurisdictional Determination.

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.