



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. LOUIS DISTRICT
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103

CEMVS-RD

[16 May 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 [MVS-2024-78] [(MFR 1 of 1)]²

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.

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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable [in Missouri] 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).

Four wetlands were delineated within the study area:

Wetland 1 C:

Approximately 0.19 acres of emergent wetland were delineated, with roughly 0.12 acres located within the study area. - **Non-Jurisdictional**

Wetland 2 C:

Approximately 0.41 acres of emergent wetland were delineated in the study area, with only a small portion of the wetland extending beyond the western boundary of the study area.– **Non-Jurisdictional**

Wetland 3 C:

Wetland 3 C is made up of emergent wetland (0.66 acres), shrub/scrub wetland (0.18 acres), and forested wetland (2.17 acres); approximately 3.01 acres in total.– **Non-Jurisdictional**

Wetland 4 C:

Approximately 0.05 acres of emergent wetland was delineated within the study area.– **Non-Jurisdictional**

Seven streams/channels were delineated within or immediately adjacent to the study area:

Stream 1 C:

Stream 1 C is a small, poorly defined channel approximately 66 feet in length, 46 of which are in the study area. - **Non-Jurisdictional**

Stream 2 C:

Stream 2 C is a relatively permanent water (RPW) that flows into Dardenne Creek. - **Jurisdictional**

Stream 3 C: Stream 3 C is Dardenne Creek, an RPW, and a tributary of the Mississippi River – **Jurisdictional**

Stream 4 C:

Stream 4 C is a defined channel that flows north into Dardenne Creek. Approximately 109 feet of channel was delineated, however it lies entirely outside of the study area.– **Non-Jurisdictional**

Stream 5 C:

Stream 5 C is a small, poorly defined channel with a two- to three-foot-wide channel. It flows roughly west to east from Wetland 2 C for 88 feet, 23 feet of which are in the study area.– **Non-Jurisdictional**

Stream 6 C:

Stream 6 C is a defined channel that flows northeast toward Wetland 2 C and on into Dardenne Creek.– **Non-Jurisdictional**

Stream 7 C:

Stream 7 C is a small, poorly defined channel that generally flows northeast through the study area for approximately 883 feet.– **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. Citing to the 27 September coordination memo, specifically to the language which reads, "Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the regulatory text that was not amended by the conforming rule, including the preamble relevant to the *Rapanos* plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended."

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- f. [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 study area corridor is approximately 1 mile in length and seventy feet wide and runs generally north to south from the intersection of Weiss Road and Lohmar Lane to the intersection of St. Charles Street and 5th Street in Cottleville. The purpose of this wetland and waterway delineation was to determine the current location and extent of wetlands and waterways located within the designated study area. More specifically, the project is located in Section 26, Township 47 North, Range 3 E, and coordinates of 38.7998, -90.6429.



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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Mississippi River (TNW)].⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [Surface drainage flow enters nearby Dardenne Creek. The Mississippi River is the nearest TNW to the Review Area. The Mississippi River is a Section 10 water within the St. Louis District from mile 0, Cairo Illinois to mile 300, Saverton, Missouri]
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]
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]

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.

- c. Other Waters (a)(3): [N/A]
- d. Impoundments (a)(4): [N/A]
- e. Tributaries (a)(5): [The consultant delineated two stream features (Stream 2 C & 3 C) which were described as relatively permanent water features within the Project Area. Stream 2 C flows from northwest to southeast and lies just outside the study area. This stream does have continuous flow to Dardenne Creek throughout the growing season. Stream 3 C is Dardenne Creek, a perennial stream, and is a tributary of the Mississippi River.]
- 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”).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. [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]

⁹ 51 FR 41217, November 13, 1986.

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- 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 or enter rationale/discussion here.]
- 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).

Based on the wetland delineation completed by the consultant, four wetlands and seven streams were delineated within or immediately adjacent to the study area. The wetlands mostly drain into Dardenne creek but lack a relatively permanent continuous flow to a RPW (non-abutting/adjacent).

-Wetland 1 C likely drains to Dardenne Creek, a tributary of the Mississippi River which is considered a navigable water. Wetland 1 C would not have a continuous surface flow to a relatively permanent water (RPW) (non-abutting/adjacent) for extended parts of the growing season.

-Wetland 2 C drains via Stream 5 C to Stream 4 C and into Dardenne Creek, a tributary of the Mississippi River which is a navigable water. Wetland 2 C would not have a continuous surface flow to a RPW (non-abutting/adjacent) for extended parts of the growing season

-Wetland 3 C drains to Dardenne Creek, a tributary of the Mississippi River which is considered a navigable water. Wetland 3 C would not have a continuous surface flow to a RPW (non-abutting/adjacent) for extended parts of the growing season

- Wetland 4 C drains to Dardenne Creek, a tributary of the Mississippi River which is considered a navigable water. Wetland 4 C would not have a continuous surface flow to a RPW (non-abutting/adjacent) for extended parts of the growing season

Of the streams, Stream 1 C, Stream 4 C, Stream 5 C, Stream 6 C, and Stream 7 C are channels that drain towards Dardenne Creek but would not be considered

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a RPW. They are 1st order streams and were examined at their furthest downstream extent.

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. Waters of the U.S. Summary Report dated March 2025
- b. USGS Topographic Maps, 1:24,000 Scale, Wentzville, MO Quad
- c. USGS NHDPlus
- d. USGS Stream Stats
- e. Antecedent Precipitation Tool
- f. USDA-NRCS Soil Survey for St. Charles County, Missouri
- g. USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale
- h. Missouri Hillshade LiDAR Data
- i. Missouri Historic Aerial Photography
- j. Google Earth Pro Aerial Imagery, Various Aerial Images

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.

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