



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

CEMVS-RD

8 September 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), [MVS-2025-431](#)

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.¹ 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.² For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),³ 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 Missouri](#) due to litigation.

1. SUMMARY OF CONCLUSIONS.

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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.

CEMVS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVS-2025-431](#)

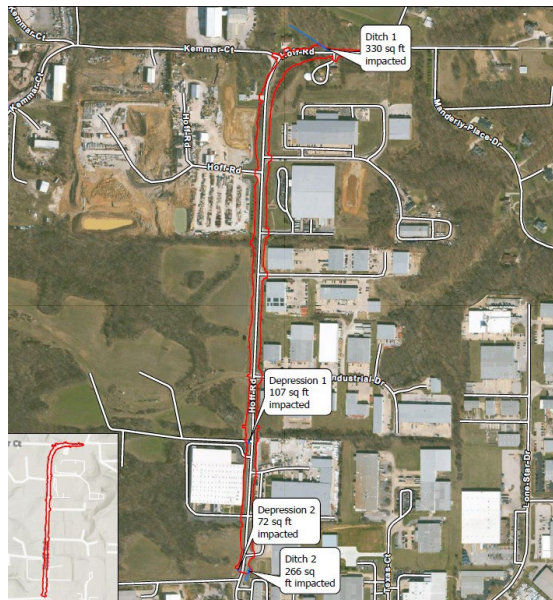
- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

- i. [Ditch 1 – \(0.008-acre\). Non-jurisdictional](#)
- ii. [Ditch 2 – \(0.006-acre\). Non-jurisdictional](#)
- iii. [Depression 1 \(0.002-acre\). Non-jurisdictional](#)
- iv. [Depression 2 \(0.002-acre\). 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. __, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. [The Review Area is the approximately 7.56-acre area located at 1036 Liberty Industrial Dr. in O'Fallon, St. Charles County, Missouri with approximate geographic coordinates 38.8128453°, -90.7534652°.](#)



CEMVS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVS-2025-431](#)

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A](#)
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [The site would generally drain towards Peruque Creek and ultimately to the Mississippi River, a TNW.](#)
6. SECTION 10 JURISDICTIONAL WATERS⁴: 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 10.⁵ [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](#)
 - c. Other Waters (a)(3): [N/A](#)
 - d. Impoundments (a)(4): [N/A](#)
 - e. Tributaries (a)(5): [N/A](#)

⁴ 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.

⁵ 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.

- 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”).⁶ 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.

Ditch 1 (0.008-acre) is a rock-bottom drainage feature (ditch) likely constructed in uplands, draining only uplands, and does not carry a relatively permanent flow of water. Ditch 1 is a constructed feature that appears to serve as a drainage outlet for a roadside ditch south of Hoff Rd. Ditch 1 would be considered a “generally non-jurisdictional” preamble water.

Ditch 2 (0.006-acre) is a rock-bottom drainage feature (roadside ditch) likely constructed in uplands, draining only uplands, and does not carry a relatively permanent flow of water. Ditch 2 is a constructed feature that serves as above-ground stormwater infrastructure adjacent to Hoff Rd. Ditch 2 would be considered a “generally non-jurisdictional” preamble 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.
- 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](#)

⁶ 51 FR 41217, November 13, 1986.

- 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).

Depression 1 (0.002-acre) is a wetland within a depression at the outlet of a culvert with visible hydrophytic vegetation observed during a field visit by the consultant and on google earth imagery. Depression 1 is connected to stormwater infrastructure and likely the result of perched saturated sediment within the stormwater infrastructure. Depression 1 is an isolated, closed depression lacking a continuous surface connection (CSC) to a requisite water. Because Depression 1 is a non-adjacent wetland, the Corps has determined this feature would not fall under Corps jurisdiction.

Depression 2 (0.002-acre) is a wetland within a depression at the outlet of a culvert with visible hydrophytic vegetation observed during a field visit by the consultant and on google earth imagery. Depression 2 is connected to stormwater infrastructure and likely the result of perched saturated sediment within the stormwater infrastructure. Depression 2 appears to primarily be an isolated depression with a potential outlet via an upland drainage/erosional feature. However, Depression 2 lacks a CSC to a requisite water. Because Depression 2 is a non-adjacent wetland, the Corps has determined this feature would not fall under Corps jurisdiction.

- 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. [HR Green \(HRG\) Hoff Road Wetland Review, Dated March 5, 2025](#)
 - b. [Historic USGS Quadrangles \(HRG Report\), Dated March 5, 2025](#)
 - c. [USDA-NRCS Soil Survey \(HRG Report\), Dated March 5, 2025](#)

CEMVS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVS-2025-431](#)

- d. [USFWS National Wetland Inventory \(HRG Report\), Dated March 5, 2025](#)
- e. [National Hydrography Dataset \(HRG Report\), Dated March 5, 2025](#)
- f. [LiDAR, Accessed September 3, 2025](#)
- g. [Google Earth Pro Aerial Imagery, Accessed September 3, 2025](#)

10. OTHER SUPPORTING INFORMATION.

[The National Wetland Inventory \(NWI\) and the National Hydrography Dataset \(NHD\) did not indicate any aquatic resources within the review area. The FEMA flood map identifies the review area outside of the 500-year floodplain.](#)

[Hoff Road runs along the top of a shallow ridge. While minor drainage features are apparent in places carrying road runoff, no larger wetlands, streams, or any potential waters of the United States are apparent within or adjacent to the project area.](#)

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.