



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

CEMVS-RD

3 November 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-2024-263](#)

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.

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- 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).

Streams:

1. UNT 1 (324 linear feet) – non-jurisdictional
2. UNT 2 (252 linear feet) – non-jurisdictional
3. UNT 3 (92 linear feet) – non-jurisdictional
4. UNT 4 (181 linear feet) – non-jurisdictional
5. UNT 6 (163 linear feet) – non-jurisdictional
6. UNT 9 (135 linear feet) – non-jurisdictional
7. UNT 10 (307 linear feet) – non-jurisdictional
8. UNT 11 (345 linear feet) – non-jurisdictional
9. UNT 12 (171 linear feet) – non-jurisdictional
10. UNT 13 (402 linear feet) – non-jurisdictional
11. UNT 16 (306 linear feet) – non-jurisdictional
12. UNT 17 (285 linear feet) – non-jurisdictional
13. UNT 18 (119 linear feet) – non-jurisdictional
14. UNT 19 (256 linear feet) – non-jurisdictional

Wetlands:

15. Wetland A (0.07-acre) – non-jurisdictional
16. Wetland B (0.05-acre) – non-jurisdictional
17. Wetland C (0.09-acre) – non-jurisdictional

Open Water Features:

18. Pond 1 (0.34-acre) – non-jurisdictional

Upland Drainage/Erosional Features:

19. UNT 7 (434 linear feet) – non-jurisdictional
20. UNT 14 (223 linear feet) – non-jurisdictional
21. UNT 15 (461 linear 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. *Rapanos v. United States*, 547 U.S. 715 (2006)
- 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’

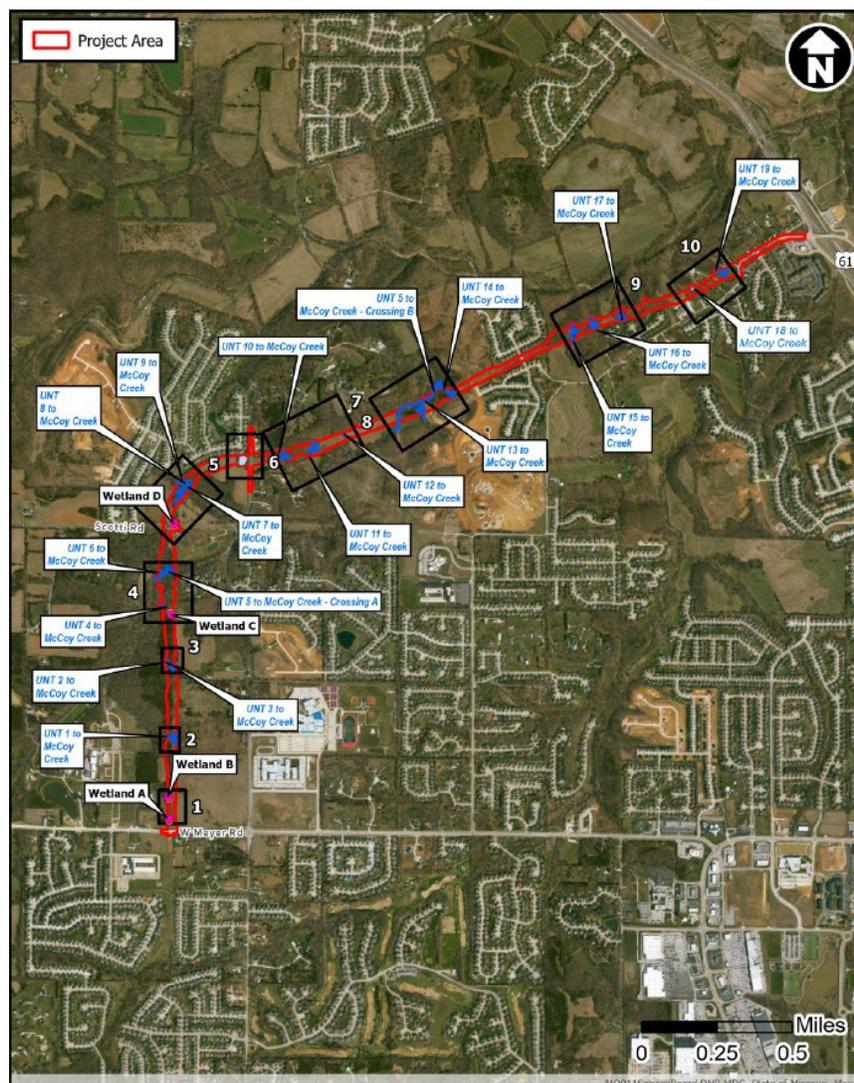
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Under The Definition Of “Waters Of The United States” Under The Clean Water Act” (March 12, 2025).

3. REVIEW AREA. The Review Area is the approximately 102-acre area (3.25-mile corridor) that connects West Meyer Road to US Route 61 in the City of Wentzville, St. Charles County Missouri with approximate geographic coordinates 38.825107°, -90.910758° (starting point) and 38.853974°, -90.870259° (ending point). This AJD evaluates only the twenty-one (21) aquatic resource features listed above in support of proposed permit actions for impacts to UNT 5 (Crossings A&B) and UNT 8. The USACE concurs with the consultant’s delineation of UNT 5 & UNT 8. See below:

**Note: Pond 1 is not depicted on the consultant-provided map figure below. The pond is located at approximate geographic coordinates: 38.843043°, -90.906433°.*



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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 \(TNW\)](#)
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [The subject site generally drains north to McCoy Creek, which flows to the Cuivre River, which flows 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](#)
 - f. The territorial seas (a)(6): [N/A](#)
 - g. Adjacent wetlands (a)(7): [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.

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. [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](#)
- 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).

⁶ 51 FR 41217, November 13, 1986.

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The following stream features exhibited characteristics typical of non-relatively permanent flow regimes. These features were evaluated in context of the overall site and drainage network with representative features being verified in the field during the site visit on 9/11/2025. These features could generally be described as headwater streams that would flow either to UNT 5 or UNT 8 (where permitted impacts are proposed to occur) during times when surface discharge is present. The streams generally lacked consistent low-flow channels or thalwegs, and channel characteristics likely developed by the repeated sequence of flashy streamflow, flow cessation, and channel drying throughout the year. Many of the stream channels had leaf wracking on the upstream side of rocks/debris as well as non-hydrophytic vegetation present within the channel, indicative of the lack of consistent flows. The Corps has determined these stream features to be non-relatively permanent waters. Therefore, the Corps has determined these features would not fall under Corps jurisdiction.

- UNT 1** (324 linear feet)
- UNT 2** (252 linear feet)
- UNT 3** (92 linear feet)
- UNT 4** (181 linear feet)
- UNT 6** (163 linear feet)
- UNT 9** (135 linear feet)
- UNT 10** (307 linear feet)
- UNT 11** (345 linear feet)
- UNT 12** (171 linear feet)
- UNT 13** (402 linear feet)
- UNT 16** (306 linear feet)
- UNT 17** (285 linear feet)
- UNT 18** (119 linear feet)
- UNT 19** (256 linear feet)

The following wetland features would be considered non-adjacent wetlands lacking a continuous surface connection (CSC) to a requisite water. Therefore, the Corps has determined these features would not fall under Corps jurisdiction.

- Wetland A** (forested, 0.07-acre)
- Wetland B** (forested, 0.05-acre)
- Wetland C** (emergent, 0.09-acre)

Pond 1 (0.34-acre) is an isolated open water feature that lacks a CSC to a requisite water. Therefore, the Corps has determined this feature would not fall under Corps jurisdiction.

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**Note: Pond 1 is not depicted on the consultant-provided map figure under section 3. The pond is located at approximate geographic coordinates: 38.843043°, -90.906433°.*

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. Crawford, Murphy, & Tilly (CMT); DHP Section 404/401 Permit Supporting Information, 6-2-2025
- b. CMT; DHP Eco Resource Mapping, 3-6-2025
- c. CMT; Eco Resources Map Key – USACE Visit, 8-11-2025
- d. CMT Site Visits: October 1-3, 2024
- e. USACE, CMT, MDNR, & City of Wentzville Site Visit, September 11, 2025
- f. USGS Topographic Maps, Accessed October 9, 2025
- g. Antecedent Precipitation Tool (APT), Accessed October 30, 2025
- h. USDA-NRCS Soil Survey, Accessed October 9, 2025
- i. USFWS National Wetland Inventory (NWI), Accessed October 9, 2025
- j. LiDAR, Accessed October 9, 2025
- k. Google Earth Pro Aerial Imagery, Accessed October 9, 2025

10. OTHER SUPPORTING INFORMATION.

A review of USGS topographic maps from 1973-2021 indicated a blue-line tributary in the general location of UNT 5 (permitted impacts proposed to occur at UNT 5 – Crossings A & B). No blue-line streams were indicated for any of the other stream features identified by the consultant within the project corridor. The NWI mapper identified UNT 5 as a riverine feature and does not indicate any of the other stream features identified by the consultant. Furthermore, the USGS topographic maps and NWI mapper identify open water/pond features in the general locations of Wetlands A, B, C and Pond 1.

UNT 7 (434 linear feet), UNT 14 (223 linear feet), and UNT 15 (461 linear feet) were identified as tributaries within the ecological resources report, however the Corps has determined these features lack a defined bed and bank and other characteristics indicative of a stream; therefore, these features were determined to be upland drainage/erosional features.

The APT on 9/11/2025 (USACE Site Visit) indicated normal conditions in the dry season with a drought index indicating incipient wetness.

“Wetland D” identified by the consultant was determined in the field to be upland. The area did not meet all three (3) wetland parameters required to be considered a wetland.

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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.