



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT
2488 E 81ST STREET
TULSA, OK 74137-4290

CESWT-RO

July 14, 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) (SWT-2023-00030)

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 Oklahoma 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.

- 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. Intermittent Stream 1 (IS-1), approximately 2,975 linear feet, jurisdictional, authority under Section 404.
 - ii. Emergent Wetland (W-1), approximately 1.192 acres, jurisdictional, authority under Section 404.
 - iii. Ephemeral Stream (ES-1), approximately 414 linear feet, non-jurisdictional, no authority under Sections 404/10.
 - iv. Stock Pond (P-1), approximately 1.394 acres, non-jurisdictional, no authority under Sections 404/10.

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)
3. REVIEW AREA. [Southeast $\frac{1}{4}$ of Section 24, Township 13 North, Range 5 West, Canadian County, Oklahoma. N 35.58597, W 97.67720. The study area is the proposed location of a residential development and includes approximately 50 acres.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED: The Cimmaron River (Interstate water).
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: Unnamed Tributary (IS-1) flows north for approximately 3.9 miles before reaching the confluence of Deer Creek. Deer creek flows mostly North/Northeast for approximately 16.7 miles into

the confluence of Cottonwood Creek. Cottonwood Creek flows mostly north/northeast for approximately 20 miles before joining the Cimmaron River.

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: 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): The Intermittent Tributary (IS-1) is an unnamed tributary of Deer Creek. Within the study area, the tributary consists of approximately 2,975 linear feet. Outside of the study area, the tributary flows mostly north for approximately 3.9 miles before reaching the confluence of Deer Creek. Within the study area, IS-1 is dominated by silt and clay substrates. No significant silt accumulation was observed within the channel, and the feature is dominated by a mature forested riparian corridor. Within the study area, the northern reach of the stream is slightly wider and contains pooled and slightly flowing water. Flow

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.

regime was determined using Google Earth Pro with a USGS Topographic Map Layer. IS-1 flows into and out of the on-site wetland (W-1) and continues to flow South through the review area. IS-1 is a relatively permanent water, thus is jurisdictional.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): The emergent wetland within the study area (W-1) was a former agricultural pond that was fed by IS-1 but has now been delineated as an emergent wetland. No standing or flowing water was observed within the feature during the site delineation; however, this feature does have a continuous surface connection to the unnamed tributary. This feature is a jurisdictional wetland.

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”).⁵ 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:

Stock Pond 1 (SP-1) was delineated as an excavation within in the upland created to provide water for livestock. It is an excavated pond for the purposes of stock/agriculture, this feature also lacks a direct connection with the unnamed tributary. This feature is non-jurisdictional.

- 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

⁵ 51 FR 41217, November 13, 1986.

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).:

Ephemeral Stream 1 (ES-1) is a non-mapped drainage feature that is 414 linear feet, 3 feet wide and 0.5 Feet deep when there is flowage. The feature consists of silt and clay soils within a mixed grass pasture. The feature does not exhibit characteristics of a relatively permanent waterbody, based on the flow regime. This feature is non-jurisdictional

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. Aquatic Resource Delineation Report dated February 2025.
- b. 51 FR 41217, November 13, 1986 – accessed March 6, 2025
- c. USGS Topographic Maps March 6, 2025
- d. Google Earth Imagery 1985-2024

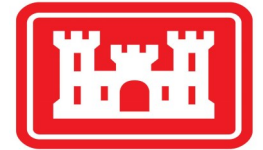
10. OTHER SUPPORTING INFORMATION: N/A

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.



SWT-2023-0030

Approved Jurisdictional Determination



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AJD Map
Red boundary is review area
Blue and green features are jurisdictional
Yellow features are non-jurisdictional

ES-1

Pond

IS-1

W-1

Google Earth

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Google Earth

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lat 35.585972 lon -97.679665 elev 500 ft eye alt 2059 ft