

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 SWT-2025-00133 (4) (5)

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 Oklahoma 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).

There are two review areas being assessed in this Jurisdictional Determination – Review Areas No. 4 and 5.

RPW = Relatively Permanent Water

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.

Review Area No. 4:

Resource ID	Waters Type	Jurisdictional – Section 404 CWA	Linear Feet	Acre(s)
S-3a	Intermittent Stream – RPW	Yes	1,439	
S-3b	Intermittent Stream - RPW	Yes	597	
S-1a	Ephemeral Stream – Non-RPW	No	503	
S-1b	Ephemeral Stream – Non-RPW	No	156	
S-1c	Ephemeral Stream – Non-RPW	No	261	
S-1d	Ephemeral Stream – Non-RPW	No	52.9	
S-1e	Ephemeral Stream – Non-RPW	No	78.7	
S-2a	Ephemeral Stream – Non-RPW	No	101	
S-2b	Ephemeral Stream – Non-RPW	No	628	
S-4a	Intermittent Stream - RPW	Yes	553	
S-4b	Ephemeral Stream – Non-RPW	No	371	
S-5a	Ephemeral Stream – Non-RPW	No	329	
S-5b	Ephemeral Stream – Non-RPW	No	274	
W-1	Emergent Wetland	No	--	0.12
W-2	Emergent Wetland	No	--	0.03
W-3	Emergent Wetland	No	--	0.05
OW-1	Open Water	No	--	0.03
OW-2	Open Water	No	--	0.12
OW-3	Open Water	No	--	0.43
OW-4	Open Water	No	--	0.32
OW-5	Open Water	No	--	0.07
OW-6	Open Water	No	--	0.48
OW-7	Open Water	No	--	0.26
OW-8	Open Water	No	--	0.22
OW-9	Open Water	No	--	2.41
OW-10	Open Water	No	--	0.03
NJD-1	Drainage Feature	No	116	--
NJD-2	Drainage Feature	No	75.6	--

Review Area No. 5:

Resource ID	Waters Type	Jurisdictional – Section 404 CWA	Linear Feet	Acre(s)
S-1	Intermittent Stream - RPW	Yes	1,827	
S-2	Intermittent Stream - RPW	Yes	3,368	
S-3	Ephemeral Stream – Non- RPW	No	1,575	
S-4	Ephemeral Stream – Non- RPW	No	175	
S-5	Ephemeral Stream – Non- RPW	No	587	
S-6	Ephemeral Stream – Non- RPW	No	265	
S-7	Ephemeral Stream – Non- RPW	No	608	
S-8	Ephemeral Stream – Non- RPW	No	478	
S-9	Intermittent Stream - RPW	Yes	1,336	
S-10	Ephemeral Stream – Non- RPW	No	128	
W-1	Emergent Wetland	No	--	1.01
W-2	Emergent Wetland	Yes	--	13.77
W-3	Emergent Wetland	No	--	0.02
OW-1	Open Water	Yes	--	4.77
OW-2	Open Water	No	--	0.23
OW-3	Open Water	No	--	0.44
OW-4	Open Water	No	--	0.22
OW-5	Open Water	No	--	0.09

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

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- 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. The review area is approximately 400 acres (Review Area No. 4) and 181 acres (Review Area No. 5) at Latitude 34.698566, Longitude -95.894553, (center of the review area) in Pittsburg County, Oklahoma.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Red River, Interstate Water of Texas and Oklahoma
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The unnamed tributary of Fivemile Creek and unnamed tributaries of Buck Creek flow to North Boggy Creek, then to Muddy Boggy Creek, then to the Red River.
 6. SECTION 10 JURISDICTIONAL WATERS⁵: 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, 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

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.

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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):

Review Area No. 5

OW-1	Open Water	An impoundment of the upper most extent the RPW, unnamed tributary of Fivemile Creek (S2) according to the requestor's delineation and aerial imagery.
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- e. Tributaries (a)(5):

Review Area No. 4

S-3a	Intermittent Stream	This feature is part of an unnamed tributary of Buck Creek and is a RPW according to the USGS NHD and USGS Topographic Map and requestor's delineation. There is additional reach of this tributary downstream in between the delineated features S-3a and S-3b (outside of review area no. 4).
S-3b	Intermittent Stream	This feature is part of an unnamed tributary of Buck Creek and is a RPW according to the USGS NHD and USGS Topographic Map and requestor's delineation. There is additional reach of this tributary occurring both upstream (includes S-3a) and downstream outside of review area no. 4.
S-4a	Intermittent Stream	This feature is associated with the uppermost extent of an unnamed tributary of Fivemile Creek (associated with the delineated RPW, S1 in Review Area No. 5). It is indicated as part of the overall reach of the RPW on the USGS NHD and USGS Topographic Map and has a continuous connection inbetween Review Areas 4 and 5 according to aerial imagery.

Review Area No. 5

S-1	Intermittent Stream	This feature is associated with an unnamed tributary of Fivemile Creek
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		(associated with S-4a in Review Area No. 4). It is part of a RPW on the USGS NHD and USGS Topographic Map and has a continuous connection in between review areas 4 and 5 and downstream to Fivemile Creek according to aerial imagery.
S-2	Intermittent Stream	This feature is associated with an unnamed tributary of Fivemile Creek and is an RPW according to the USGS NHD and USGS Topographic Map requestor's delineation.
S-9	Intermittent Stream	This feature is associated with an unnamed tributary of Buck Creek and is part of an RPW according to the USGS NHD and USGS Topographic Map requestor's delineation.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A or describe wetlands within the review area that were determined to be adjacent (i.e., having a continuous surface connection to a TNW, interstate water, jurisdictional impoundment, jurisdictional tributary, or the territorial seas

Review Area No. 5

W-2	Emergent Wetland	This wetland has a continuous surface connection with OW-1 and to S-2 through a berm culvert.
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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.

The following features are upland farm/stock ponds excavated in uplands according to the requestor's delineation and review of available referenced data sources.

Review Area No. 4

OW-1	Open Water
OW-2	Open Water

⁷ 51 FR 41217, November 13, 1986.

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OW-3	Open Water
OW-4	Open Water
OW-5	Open Water
OW-6	Open Water
OW-7	Open Water
OW-8	Open Water
OW-9	Open Water
OW-10	Open Water

Review Area No. 5

OW-2	Open Water
OW-3	Open Water
OW-4	Open Water
OW-5	Open 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.

The following features are swale and/or erosional feature drainages according to the requestor’s delineation and review of available referenced data sources.

Review Area No. 4

NJD-1	Drainage Feature
NJD-2	Drainage Feature

- 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*

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- 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).

The following non-relatively permanent waters (ephemeral streams) are not indicated on the USGS Topographic Map or USGS NHD and are non-relatively permanent waters according to the requestor's delineation and review of available referenced data sources.

The wetland features are non-adjacent wetlands without a continuous surface connection to a (a)(1) through (6) water according to the requestor's delineation and review of available referenced data sources.

Review Area No. 4

S-1a	Ephemeral Stream
S-1b	Ephemeral Stream
S-1c	Ephemeral Stream
S-1d	Ephemeral Stream
S-1e	Ephemeral Stream
S-2a	Ephemeral Stream
S-2b	Ephemeral Stream
S-4b	Ephemeral Stream
S-5a	Ephemeral Stream
S-5b	Ephemeral Stream
W-1	Emergent Wetland
W-2	Emergent Wetland
W-3	Emergent Wetland

Review Area No. 5

S-3	Ephemeral Stream
S-4	Ephemeral Stream
S-5	Ephemeral Stream
S-6	Ephemeral Stream
S-7	Ephemeral Stream
S-8	Ephemeral Stream
S-10	Ephemeral Stream
W-1	Emergent Wetland
W-3	Emergent Wetland

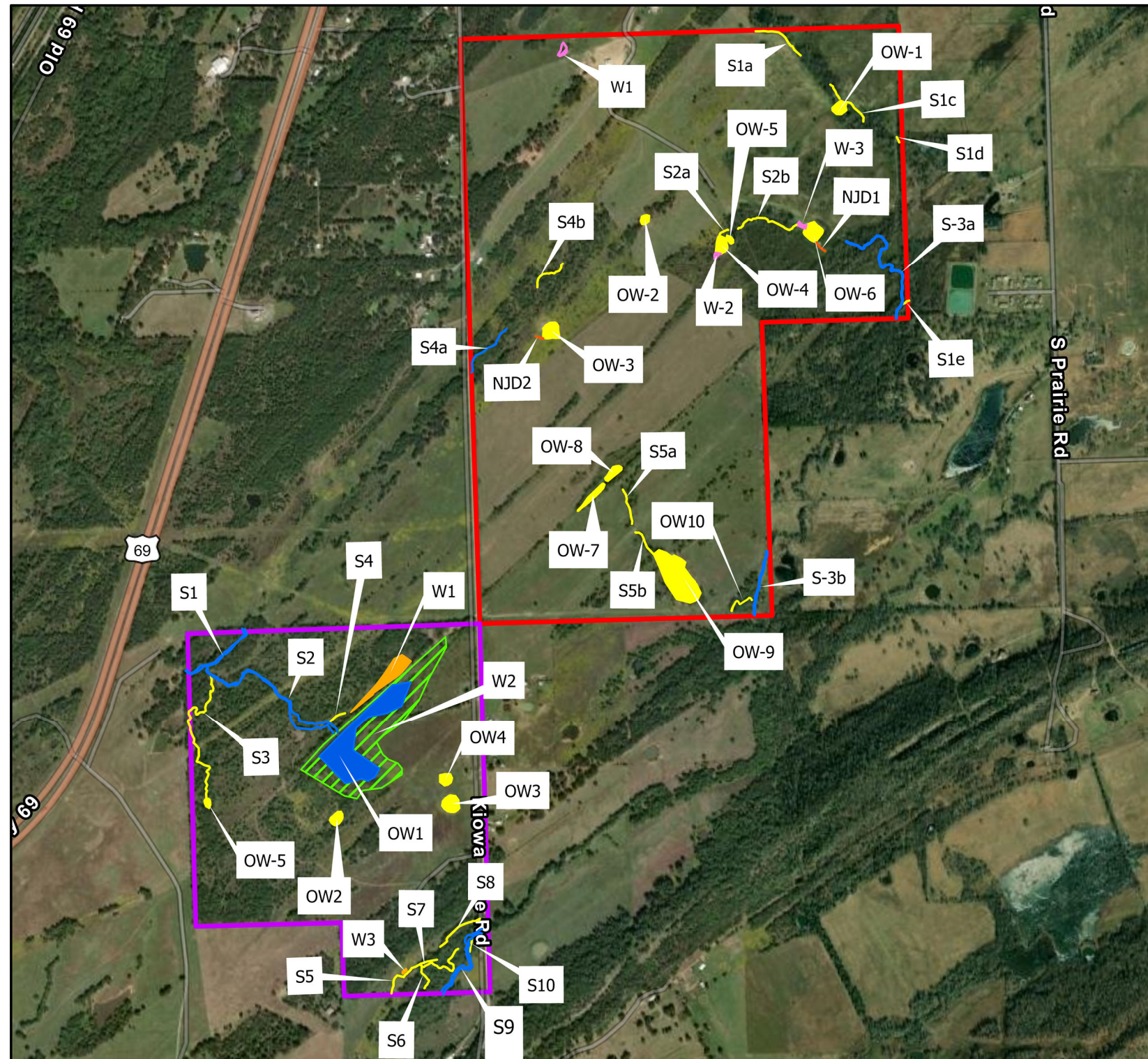
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9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. The requestor's Aquatic Resources Delineation dated August 2025.
 - b. USGS Topographic Map, provided with the requestor's delineation.
 - c. USGS NHD, provided with the requestor's delineation.
 - d. USFWS NWI, provided with the requestor's delineation.
 - e. Antecedent Precipitation Tool, provided with the requestor's delineation.
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.

Approved Jurisdictional Determination

SWT-2025-00133



Legend

- SWT-2025-00133 (4)
- SWT-2025-00133 (5)
- Relatively Permanent Water - Intermittent Stream
- Jurisdictional - Adjacent Wetland
- Jurisdictional - On-channel Pond
- Non-Jurisdictional - Artificial Pond
- Non Relatively Permanent Water - Ephemeral Stream
- Non-Jurisdictional Drainage Feature
- Non-Relatively Permanent Water - Ephemeral Stream
- Non-Jurisdictional - Non-adjacent Wetland



0 0.17 0.35 0.7 Miles

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