CESWT-RO 22-Sep-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] SWT-2025-00281

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).

[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.

Name of Aquatic Resource	Linear Feet (lf)/Acre (ac)	Jurisdiction	Authority
OW-1	0.32 ac	None	None
OW-2	2.22 ac	None	None
OW-3	2.33 ac	None	None
OW-4	0.53 ac	None	None
OW-5	1.78 ac	None	None
OW-6	0.29 ac	None	None
OW-7	0.55 ac	None	None
OW-8	0.41 ac	None	None
EW-01	0.85 ac	None	None
S1-A	1,707 lf	None	None
S1-B	286 lf	None	None
S1-C	1,139 lf	None	None
S1-D	795 lf	Jurisdictional	Section 404
S3	444 lf	None	None
S4	1,917 lf	None	None
S5	1,148 lf	None	None
S6	2,764 lf	None	None
S7	3,665 lf	None	None
S8	211 lf	None	None
S9	1,707 lf	None	None
ES-01	833 lf	None	None
ES-02	406 lf	None	None
ES-03	1,340 lf	None	None
DR-01	115 lf	None	None
DR-02	71 lf	None	None
DR-03	612 lf	None	None
DR-04	241 lf	None	None

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. The review area is approximately 1,169 acres at Latitude 35.486088, Longitude -97.828636, at the center of the review area in Canadian County, Oklahoma.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. North Canadian River, navigable water subject to Section 10 of the Rivers and Harbors Act of 1899.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The unnamed tributary of Shell Creek flows to Shell Creek, then to the North Canadian River.

6. SECTION 10 JURISDICTIONAL WATERS[5]: 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 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

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[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.

e. Tributaries (a)(5): The unnamed tributary of Shell Creek (denoted as S1-D) is a relatively permanent tributary occurring for 795 lf within the review area. This tributary is indicated as an intermittent, second order stream on the USGS Topographic Map and USGS NHD. This stream feature begins at the confluence of S1-C and ES-03.

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").[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.

OW-1	0.32	Feature is an isolated upland stock pond with no obvious surface water connection to downstream waters.
OW-2	2.22	Feature is an isolated upland stock pond with no obvious surface water connection to downstream waters.
OW-3	2.33	Feature is a retention basin on-channel of a first order non-relatively permanent drainage feature S-5. S-5 is a drainage feature resulting from construction taking place between 2017 and 2018. Retention basin has been enlarged due to construction within the area. No obvious surface water connection to downstream waters.
OW-4	0.53	Feature is an isolated retention basin constructed in 2023. Feature has no obvious surface water connection to downstream waters.
OW-5	1.78	Feature is an upland stock pond constructed within the headwaters of a first order non-relatively permanent channel with no obvious surface water connection to downstream waters.
OW-6	0.29	Feature is an isolated upland stock pond with no obvious surface water connection to downstream waters.
OW-7	0.55	Feature is an isolated upland stock pond with no obvious surface water connection to downstream waters.

[7] 51 FR 41217, November 13, 1986.

OW-8	0.41	Feature is an isolated upland stock pond with no obvious surface water connection to downstream waters.

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.

DR-01	Drainage	115	Feature is an erosional swale associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. The feature is the result of out of bank flow events from ES-01. Feature does not have continuous bed and banks or consistent OHWM to downstream features.
DR-02	Drainage	71	Feature is an erosional swale associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. The feature begins at a historic road crossing as an erosional scour and does not maintain continuous bed and banks and/or consistent OHWM to downstream features.

DR-03	Drainage	612	Feature is an erosional swale associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. The feature begins as an erosional scour and conveys flow as a grass-lined swale with a discontinuous OHWM before flowing into emergent wetland EW-01.
DR-04	Drainage	241	Feature is an erosional swale associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. The feature begins at a historic road crossing as an erosional scour and does not maintain continuous bed and banks and/or consistent OHWM to downstream features.

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).

EW-01	Emergent Wetland	0.85	Feature is an emergent wetland within the headwaters of an unnamed USGS intermittent stream, indicated by a dashed blueline. EW-01 is an historic pond that has since had its embankment cut resulting in an emergent wetland. Through the cut in embankment, EW-01 flows into a plunge pool that is approximately 6 feet below the emergent wetland before ES-03. This wetland is non-adjacent to S1-D (unnamed tributary of Shell Creek)
S1-A	Non-relatively permanent Stream	1,707	Feature is a non-relatively permanent, first order stream associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. The feature is a continuation of S9. S1-A contains a mixture of silt deposited bed and bank and grass-lined substrate.

S1-B	Non-relatively permanent Stream	286	Feature is a non-relatively permanent first order stream associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. It is a continuation of S1-A and ends at a historic stock pond. No obvious surface water connection to downstream waters.
S1-C	Non-relatively permanent Stream	1,139	Feature is a non-relatively permanent first order stream associated with an unnamed USGS intermittent stream, indicated by a dashed blueline beginning below a pond embankment. Feature has a substrate of silt/gravel with defined bed and banks before the confluence with ES-03 and a change in hydrology becoming S1-D, a second order stream.
S3	Non-relatively permanent Stream	444	Feature is an erosional drainage commencing from OW-3. Feature has a discontinuous OHWM and loses bed and bank.
S4	Non-relatively permanent Stream	1,917	Feature is an agricultural grass-lined swale associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. Feature continues off site to a pond feature north of the Project area.
S5	Non-relatively permanent Stream	1,148	Feature is a non-relatively permanent first order stream beginning from the county road to the south before flowing into retention basin OW-3. Feature is an agricultural grass-lined swale within the project area.
S6	Non-relatively permanent Stream	2,764	Feature is a non-relatively permanent first order stream beginning from the county road to the east. Feature is an agricultural grass-lined swale within the project area.

S7	Non-relatively permanent Stream	3,665	Feature is a non-relatively permanent first order stream associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. Feature conveys flow from a county road to the east. Begins as an agricultural swale before consolidating into a moderately sinuous channel with defined bed and banks before flowing into pond OW-5. Feature does not have an obvious surface water connection to downstream waters.
S8	Non-relatively permanent Stream	211	Feature is a drainage swale associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. The feature receives stormwater runoff from county road to the south. Feature pools water after rain events with no discernible OHWM to downstream waters.
S9	Non-relatively permanent Stream	1707	Feature is a non-relatively permanent first order stream associated with an unnamed USGS intermittent stream, indicated by a dashed blueline, The feature begins at the edge of an agricultural field before connecting to S1-A.
ES-01	Non-relatively permanent Stream	833	Feature is a non-relatively permanent first order stream beginning as stormwater runoff from the CE Page Airport with defined bed and banks. Feature continues with an average 3-ft OHWM before losing bed and banks at a debris pile and continuing as out of bank and/or overland sheet flow.
ES-02	Non-relatively permanent Stream	406	Feature is a non-relatively permanent stream associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. The feature begins as an erosional scour within the riparian corridor. Feature has a discontinuous OHWM and loses bed and bank at a debris pile within the corridor.

ES-03	Non-relatively permanent Stream	1,340	Feature is a non-relatively permanent stream associated with an unnamed USGS intermittent stream, indicated by a dashed blueline. The feature begins at a plunge pool below an emergent wetland, EW-01. Feature has defined bed and banks with an average 5-ft OHWM and a substrate of silt and gravel. Feature confluences with S1-C becoming S1-D, a second order stream.

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 delineation request dated June 20, 2025.

   b. USGS Topographic Map, dated October 2, 2025.

   c. USGS NHD, dated October 2, 2025.

   d. USFWS NWI, dated October 2, 2025.

   e. Antecedent Precipitation Tool, dated 6 Dec 2023; 31 Jan 2024, 20 Mar 2025.

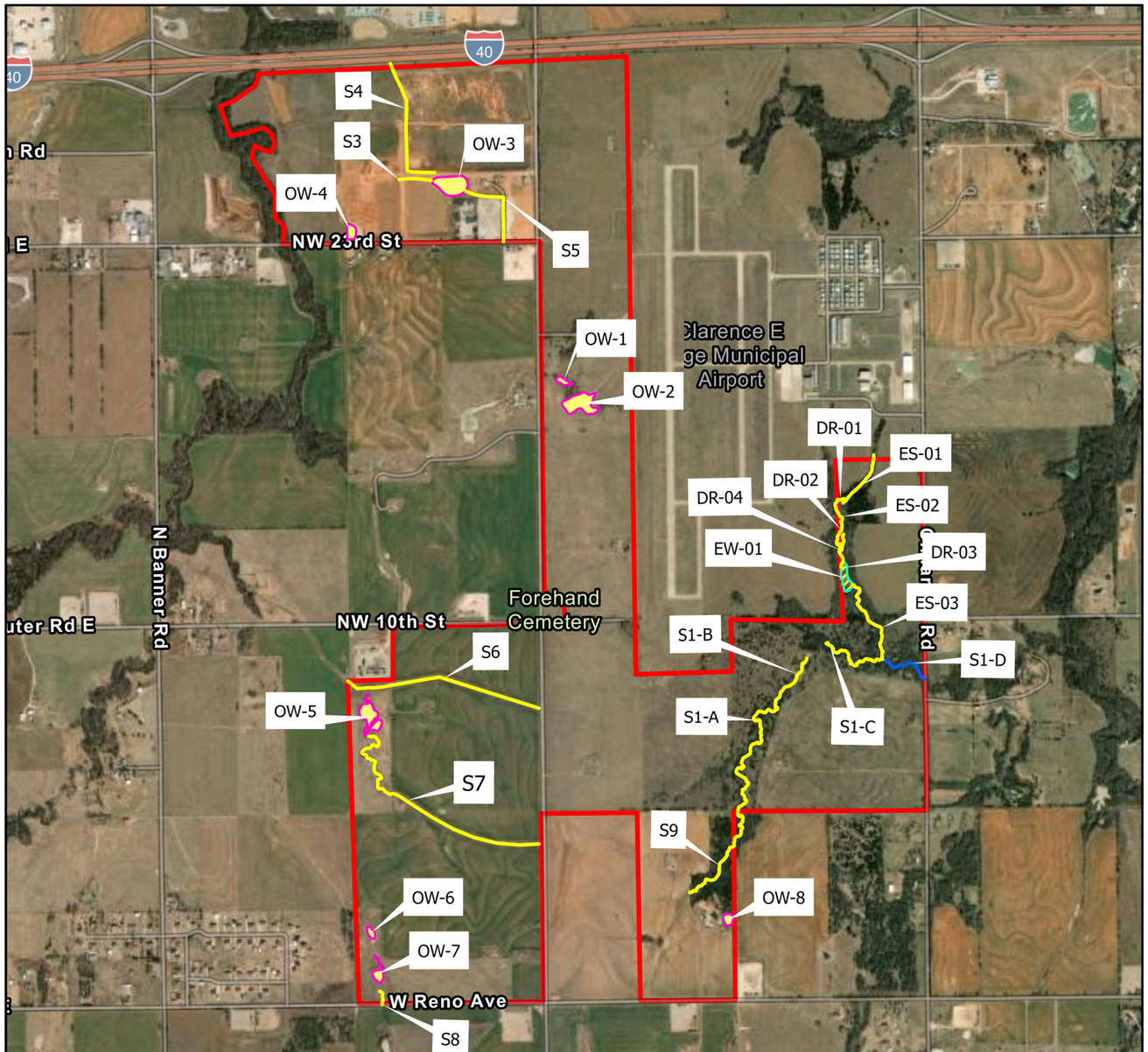
10. OTHER SUPPORTING INFORMATION. N/A

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.

US Army Corps of Engineers®
Tulsa District

Approved Jurisdictional Determination

SWT-2025-00281



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Legend

- Review Area
- Relatively Permanent Water - Jurisdictional
- Non-Relatively Permanent Water - Non Jurisdictional
- Upland Pond - Non-Jurisdictional
- Non-Adjacent Wetland - Non-Jurisdictional