



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, VICKSBURG DISTRICT
4155 EAST CLAY STREET
VICKSBURG, MISSISSIPPI 39183

CEMVK-RD

25 June 2024

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 MVK-2022-656

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 Mississippi due to litigation.

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.

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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).

Name	Length (ft)	Lat	Long	Jurisdictional Status
EPH-9	76.58678	32.35814	90.5426	Non-Jurisdictional
EPH-11	106.7499	32.35947	90.5205	Non-Jurisdictional
EPH-12	126.2152	32.36117	90.5089	Non-Jurisdictional
EPH-13	80.37959	32.36152	-90.493	Non-Jurisdictional
EPH-14	81.52168	32.36266	90.4763	Non-Jurisdictional
EPH-29	137.6513	32.36116	90.5095	Non-Jurisdictional
EPH-30	81.0506	32.36013	90.5375	Non-Jurisdictional
EPH-31	125.8533	32.36065	90.5347	Non-Jurisdictional
EPH-32	82.88922	32.36069	90.5337	Non-Jurisdictional
EPH-33	82.89443	32.35811	90.5429	Non-Jurisdictional
EPH-36	73.29585	32.36255	90.4757	Non-Jurisdictional
EPH-37	99.69022	32.36108	90.5135	Non-Jurisdictional
EPH-38	131.5023	32.36106	90.5162	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).

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- 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 project area includes approximately 6.3 miles along I-20 near the town of Bolton, in Hinds County, Mississippi spanning from GPS location 32.356672, -90.547346 to GPS location 32.362394, -90.4724278. This is only includes the area for phase 1 of a multi-phase linear project.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Big Black River
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS
- EPH-9 is an unnamed tributary that flows south for 1 mile until it meets Bakers Creek.
- EPH-11 is an unnamed tributary that flows south for 0.03 mile until it meets an unnamed perennial that runs for 1.02 miles to Bakers Creek.
- EPH-12 is an unnamed tributary that flows south for 0.07 miles until it reaches EPH-29, then flows south for 0.39 miles to Bakers Creek.
- EPH-13 is an unnamed tributary that flows south for 0.75 mile where it meets Bakers Creek.
- EPH-14 is an unnamed tributary that flows south until it meets Fleetwood Creek. Fleetwood Creek flows south for 0.95 mile until it meets Bakers Creek.
- EPH-29 is an unnamed tributary that flows south for 0.43 miles until it meets Bakers Creek.
- EPH-30 is an unnamed tributary that flows south for 1.43 mile until it meets Bakers Creek.
- EPH-31 is an unnamed tributary that flows south for 1.9 mile until it meets Bakers Creek.
- EPH-32 is an unnamed tributary that flows south for 1.8 mile until it meets Bakers Creek.
- EPH-33 is an unnamed tributary that flows south for 0.29 miles until it meets Bakers Creek.
- EPH-36 is an unnamed tributary that flows east for 0.02 mile until it reaches EPH-14 following the same route of EPH-14 to Fleetwood Creek.
- EPH-37 is an unnamed tributary that flows south for 1.55 mile until it meets Bakers Creek.

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EPH-38 is an unnamed tributary that flows south for 1.69 mile until it meets Bakers Creek.

The perennial RPW Bakers Creek runs east for approximately 17.2 miles until it meets perennial RPW Fourteenmile Creek. Fourteenmile Creek flows southeast for approximately 10.55 miles until it reaches the Big Black 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 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

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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- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

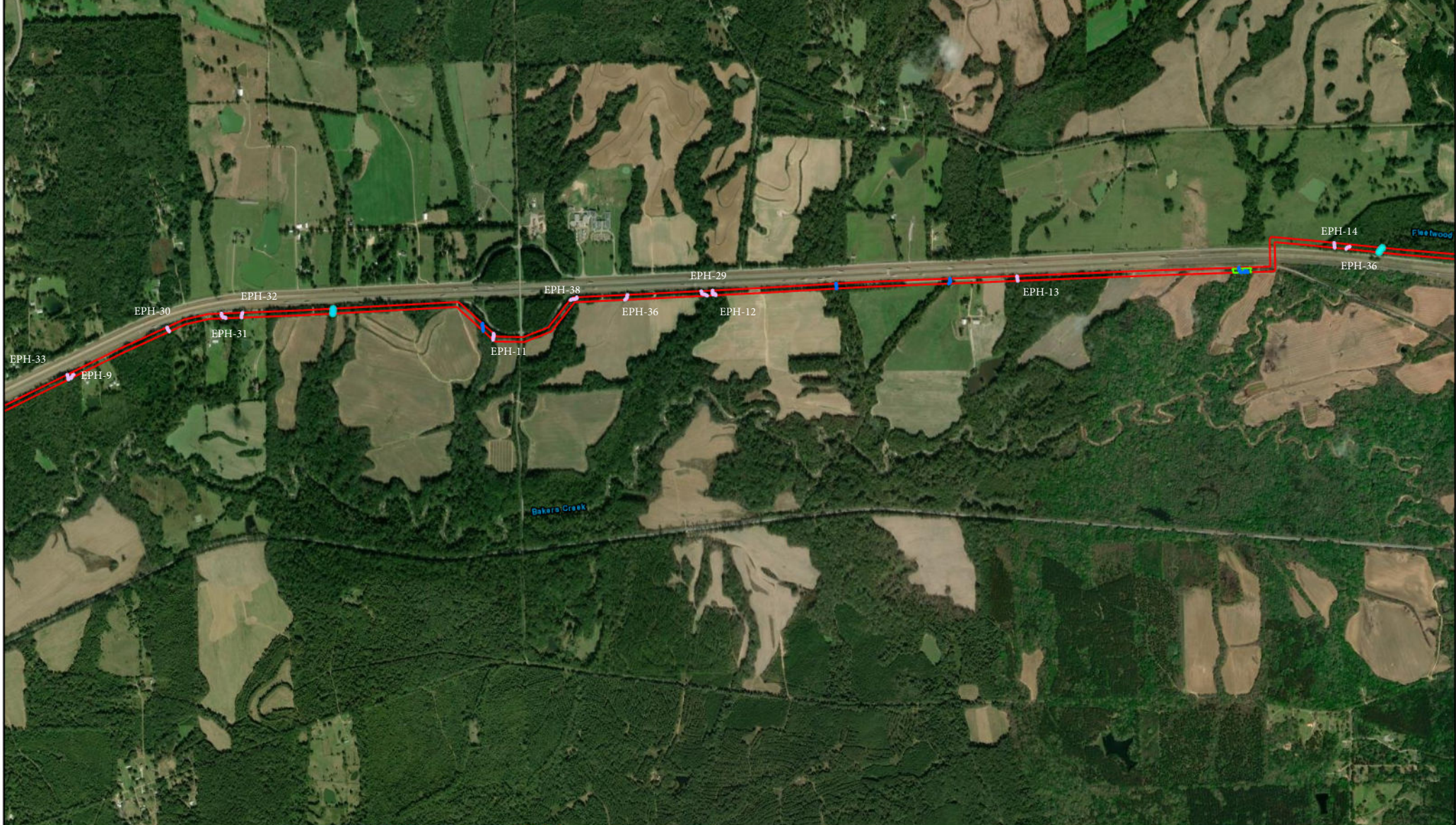
- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁷ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. 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

⁷ 51 FR 41217, November 13, 1986.

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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).
All aquatic resources listed in 1A are ephemeral non-RPW's that do not satisfy the relatively permanent standard and as such are 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. Office determination based on previously conducted PJD
 - b. GIS
 - c. Aerial photos
 - d. NHD (National Hydrography Dataset)
 - e. NWI (National Wetland Inventory)
 - f. LiDAR
 - g. Google Earth Pro
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.



- Legend**
- Jurisdictional : Perennial Streams PJD
 - Jurisdictional : Intermittent Streams PJD
 - ▨ Jurisdictional : PFO Wetlands PJD
 - Non Jurisdictional : Ephemeral Streams AJD
 - Project Boundary



25 June 2024

MVK-2022-656
 City of Clinton
 Proposed Wastewater System
 Improvements Project

**Approved Jurisdictional
 Determination**

Prepared by
 Emily Sullivan



US Army Corps
 of Engineers®



Regulatory Division
 Enforcement and
 Compliance Branch

