



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

CEMVK-RD

11 August 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),<sup>1</sup> **MVK-2025-468**

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.<sup>2</sup> 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.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> 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 **Louisiana** due to litigation.

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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).

- i. Upland 1 MVK-2025-468, Non-Jurisdictional
- ii. Upland 2 MVK-2025-468, Non-Jurisdictional
- iii. Upland 3 MVK-2025-468, Non-Jurisdictional
- iv. Upland 4 MVK-2025-468, Non-Jurisdictional
- v. Upland 5 MVK-2025-468, Non-Jurisdictional
- vi. Upland 6 MVK-2025-468, Non-Jurisdictional
- vii. Upland 7 MVK-2025-468, Non-Jurisdictional
- viii. Upland 8 MVK-2025-468, Non-Jurisdictional
- ix. Upland 9 MVK-2025-468, Non-Jurisdictional
- x. Upland 10 MVK-2025-468, Non-Jurisdictional
- xi. Upland 11 MVK-2025-468, Non-Jurisdictional
- xii. Upland 12 MVK-2025-468, Non-Jurisdictional
- xiii. Upland 13 MVK-2025-468, Non-Jurisdictional
- xiv. Upland 14 MVK-2025-468, Non-Jurisdictional
- xv. Upland 15 MVK-2025-468, Non-Jurisdictional
- xvi. Upland 16 MVK-2025-468, Non-Jurisdictional
- xvii. Upland 17 MVK-2025-468, Non-Jurisdictional
- xviii. Upland 18 MVK-2025-468, Non-Jurisdictional
- xix. Upland 19 MVK-2025-468, Non-Jurisdictional
- xx. Upland 20 MVK-2025-468, Non-Jurisdictional
- xxi. Upland 21 MVK-2025-468, Non-Jurisdictional
- xxii. Upland 22 MVK-2025-468, Non-Jurisdictional
- xxiii. Upland 23 MVK-2025-468, Non-Jurisdictional
- xxiv. Upland 24 MVK-2025-468, Non-Jurisdictional
- xxv. Upland 25 MVK-2025-468, Non-Jurisdictional
- xxvi. Upland 26 MVK-2025-468, Non-Jurisdictional
- xxvii. Upland 27 MVK-2025-468, Non-Jurisdictional
- xxviii. Upland 28 MVK-2025-468, Non-Jurisdictional
- xxix. Upland 29 MVK-2025-468, Non-Jurisdictional
- xxx. Upland 30 MVK-2025-468, Non-Jurisdictional
- xxxi. Upland 31 MVK-2025-468, Non-Jurisdictional
- xxxii. Upland 32 MVK-2025-468, Non-Jurisdictional
- xxxiii. Upland 33 MVK-2025-468, Non-Jurisdictional
- xxxiv. Upland 34 MVK-2025-468, Non-Jurisdictional
- xxxv. Upland 35 MVK-2025-468, Non-Jurisdictional
- xxxvi. Upland 36 MVK-2025-468, Non-Jurisdictional
- xxxvii. Upland 37 MVK-2025-468, Non-Jurisdictional
- xxxviii. Upland 38 MVK-2025-468, Non-Jurisdictional

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## 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. \_\_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. **Review area is comprised of 38 electric power pole locations located in Bossier Parish, Louisiana. (32.361913, -93.50317). It is located east of the town of Elm Grove and is located off Louisiana Highways 154 and 71. The floristic composition of the property is primarily pastureland vegetation and adjacent forests. Surrounding properties are primarily pastureland, as well, with a few residences nearby.**

**The applicant has requested permit requirements for this project.**

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. **N/A None of the aquatic resources referenced in this AJD MFR have a connection to a TNW .**
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS **N/A-None of the aquatic resources referenced in this AJD MFR have a flowpath to a TNW, territorial seas, or interstate water.**
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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

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<sup>5</sup> 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.

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resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>6</sup> **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**

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").<sup>7</sup> 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**

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<sup>6</sup> 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.

<sup>7</sup> 51 FR 41217, November 13, 1986.

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- 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).
- **The proposed work will take place strictly in uplands. The review area is comprised of pasture and forested land that is surrounded by uplands.**
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. **ArcGIS Pro – Accessed on 8-7-2025**
  - b. **NHD Data – Added to Regulatory Viewer on 12-06-2021**

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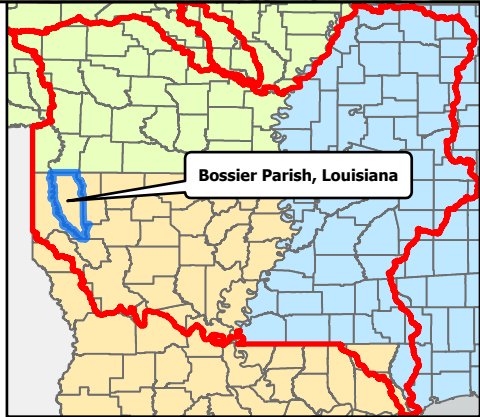
- c. NWI Data – Added to Regulatory Viewer on 3-29-2021**
- d. Web Soils Survey – Survey Area Data 9-05-2024**
- e. LiDAR Data – Added to Regulatory Viewer on 3-29-2021**
- f. Google Earth Pro – Accessed on 8-7-2025**

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.



**Legend**  
 Pole Construction and Removal Locations - Non-Jurisdictional



**11 August 2025**  
**MVK-2025-468**  
 Southwestern Electric Power Company  
 Proposed Electric Power Line and Pole  
 Relocation Project  
**Approved  
 Jurisdictional Determination**  
 Prepared by  
 William McFarland




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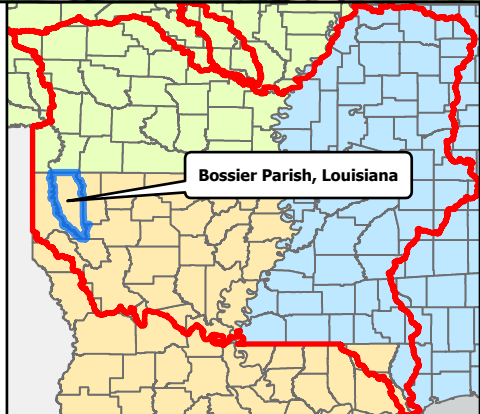
**Regulatory Division**  
Arkansas/Louisiana  
Branch





**Legend**

- Pole Construction and Removal Locations - Non-Jurisdictional



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Southwestern Electric Power Company  
Proposed Electric Power Line and Pole  
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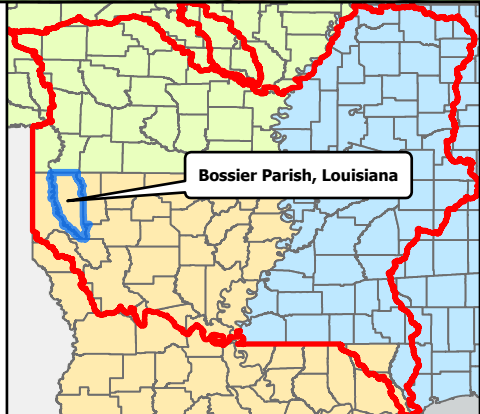


**Regulatory Division  
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**Legend**  
 Pole Construction and Removal Locations - Non-Jurisdictional



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