



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

CEMVK-RD

17 October 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 MVK-2025-433

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. SUMMARY OF CONCLUSIONS.

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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- 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).

Waters_Name	State	Cowardin_Code	Meas_Type	Amount	Units	Waters_Type	Latitude	Longitude
MVK-2025-433 Other Waters 2	MISSISSIPPI	R6	Linear	3249.128495	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	34.88500000	89.87110000
MVK-2025-433 Other Waters 3	MISSISSIPPI	R6	Linear	209.787146	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	34.88430000	89.87570000
MVK-2025-433 Other Waters 4	MISSISSIPPI	R6	Linear	158.800498	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	34.88400000	89.87620000
MVK-2025-433 Other Waters 5	MISSISSIPPI	R6	Linear	77.44419	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	34.88530000	89.86570000
MVK-2025-433 Wetland 1	MISSISSIPPI	PFO	Area	0.516754	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88509000	89.87446500
MVK-2025-433 Wetland 2	MISSISSIPPI	PFO	Area	0.123234	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88428900	89.87402700
MVK-2025-433 Wetland 3	MISSISSIPPI	PFO	Area	0.06217	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88384100	89.87503700
MVK-2025-433 Wetland 4	MISSISSIPPI	PSS	Area	0.023976	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88536700	89.87499000
MVK-2025-433 Wetland 5	MISSISSIPPI	PFO	Area	0.552832	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88591000	89.87434400

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 23.67 acres located in Desoto County, Mississippi (34.88586, -89.87107).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Coldwater River

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The site flows south via Camp Creek for 11.3 KM before converging with the Coldwater River, where it then flows for 119.1 KM (Through Arkabutla Lake) before reaching the upper limit for the Section 10 authority of the Coldwater River.
6. SECTION 10 JURISDICTIONAL WATERS⁵: 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):
 - 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

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.

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- 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”).⁶ 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.
- 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 following resources were determined non-jurisdictional by aerial photos, Google Earth Pro, and discussions with the applicant.

⁶ 51 FR 41217, November 13, 1986.

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The following AR's do not satisfy the Relatively Permanent Standard and are non-jurisdictional

Waters_Name	State	Cowardin_Code	Meas_Type	Amount	Units	Waters_Type	Latitude	Longitude
MVK-2025-433 Other Waters 2	MISSISSIPPI	R6	Linear	3249.128495	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	34.88500000	89.87110000
MVK-2025-433 Other Waters 3	MISSISSIPPI	R6	Linear	209.787146	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	34.88430000	89.87570000
MVK-2025-433 Other Waters 4	MISSISSIPPI	R6	Linear	158.800498	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	34.88400000	89.87620000
MVK-2025-433 Other Waters 5	MISSISSIPPI	R6	Linear	77.44419	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	34.88530000	89.86570000

The following AR's do not directly abut a requisite water and as such are non-jurisdictional

Waters_Name	State	Cowardin_Code	Meas_Type	Amount	Units	Waters_Type	Latitude	Longitude
MVK-2025-433 Wetland 1	MISSISSIPPI	PFO	Area	0.516754	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88509000	89.87446500
MVK-2025-433 Wetland 2	MISSISSIPPI	PFO	Area	0.123234	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88428900	89.87402700
MVK-2025-433 Wetland 3	MISSISSIPPI	PFO	Area	0.06217	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88384100	89.87503700
MVK-2025-433 Wetland 4	MISSISSIPPI	PSS	Area	0.023976	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88536700	89.87499000
MVK-2025-433 Wetland 5	MISSISSIPPI	PFO	Area	0.552832	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.88591000	89.87434400

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. GIS,
- b. Aerial Photos,
- c. NHD, LiDAR,
- d. National Regulatory Viewer,
- e. Google Earth Pro etc.
- f. Consultant Delineation (Headwaters Inc)

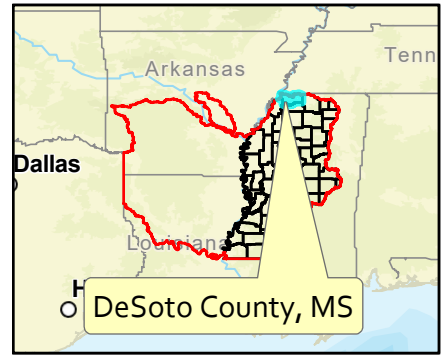
10. OTHER SUPPORTING INFORMATION. N/A

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

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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

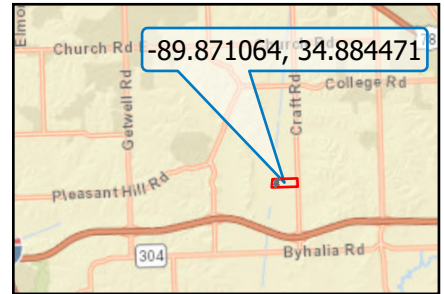


17 OCTOBER 2025
MVK-2025-433

Headwaters Inc
 Craft Road - Williams Property
 Project
 DeSoto County, Mississippi



**Approved/Preliminary
 Jurisdictional Determination**

W I L L B A H A M




Legend

- Non-Jurisdictional NRPW (3,695.16')(AJD)
- Potentially Jurisdictional RPW (1,005.3')(PJD)
- Non-Jurisdictional Forested Wetlands (1.25 Acres)(AJD)
- Non-Jurisdictional Scrub-Shrub Wetland (0.02 Acre)(AJD)
- Boundary

**US Army Corps
of Engineers®**

REGULATORY DIVISION
MISSISSIPPI BRANCH

0 330 660
 Feet

Scale: 1:5,200