



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

CEMVK-RD

29 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-2025-769](#)

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 [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).
 - I. [MVK-2025-729 CA1, 193 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - II. [MVK-2025-769 CA2, 228 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - III. [MVK-2025-769 CA6, 342 Linear Feet, Non-RPW, Non-Jurisdictional](#)
 - IV. [MVK-2025-769 CA8, 102 Linear Feet, Non-RPW, Non-Jurisdictional](#)
 - V. [MVK-2025-769 CA9, 821 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - VI. [MVK-2025-769 CA10, 345 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - VII. [MVK-2025-769 CA11, 190 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - VIII. [MVK-2025-769 CA13, 451 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - IX. [MVK-2025-769 CA14, 300 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - X. [MVK-2025-769 CA15, 364 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - XI. [MVK-2025-769 CA16, 117 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - XII. [MVK-2025-769 CA17, 365 Linear Feet, Non-RPW, Non-jurisdictional](#)
 - XIII. [MVK-2025-769 CA19, 148 Linear Feet, Non-RPW, 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).
- 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)

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- d. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)
- e. “Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of ‘Continuous Surface Connection’ Under The Definition Of “Waters Of The United States” Under The Clean Water Act” (March 12, 2025)

3. REVIEW AREA.

- **The Mississippi Department of Transportation (MDOT) is proposing to construct a new interchange on US 72 in Byhalia, Marshall County, Mississippi. The center-point of the study corridor lies approximately 4.3 miles east of Interstate 269 in the northeast quadrant of Section 25, Township 1S, Range 4W. The project extends into Sections 23 and 24, Township 1S, Range 4W and Sections 19 and 30, Township 1S, Range 3W. (34.973787°N, -89.566945°W). The property is found directly to the south of Interstate 20 and to the east of Rankin Road. Historical review of the subject property revealed that the project area has mostly been used for agricultural purposes such as grazing or feeding livestock. Some Trees appear in the project are but mostly along the stream corridors. US 72 and SR 302 have been established roadways for quite some time. The property appears to be relatively the same since at least the 1980s.**

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

- **Nearest TNW is Cold Water River at the intersection of Yazoo Pass (34.408455, -90.388469).**

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

- **Flow path is mostly southwest off the property via overland sheet flow to ephemerals CA 1, CA 2, CA 6, CA 8, CA 9, CA 10, CA 11, CA 13, CA 14, CA 15, CA 16, CA 17, and CA 19 before running into Lee’ Creek. Lee’s Creek flows mostly Southwest for roughly 5.9 miles until merging with Coldwater River. Coldwater River flows southwest for roughly 77 miles until the Yazoo Pass runs into Coldwater River. This intersection of the Yazoo pass running into the Cold Water River marks the starting point for the Coldwater River becoming a traditionally navigable water.**

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

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](#)
- 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).

⁷ 51 FR 41217, November 13, 1986.

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- **Ephemerals CA 1, CA 2, CA 6, CA 8, CA 9, CA 10, CA 11, CA 13, CA 14, CA 15, CA 16, CA 17, and CA 19 do not meet the relatively permanent standard to be considered an RPW and is therefore non-jurisdictional.**

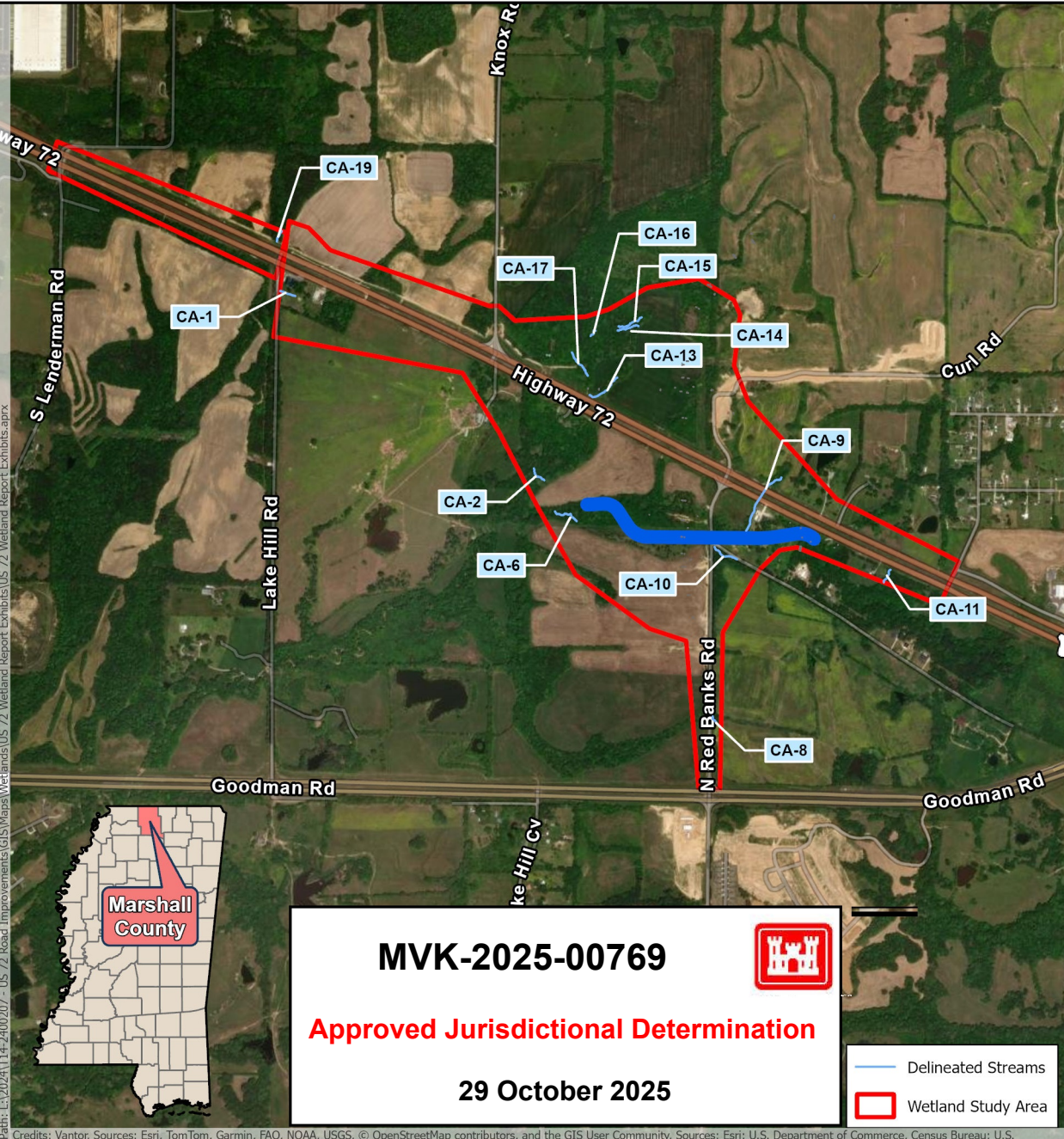
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. **Office determination based on consultant delineation. 10.29.2025**
- b. **GIS 10.29.2025**
- c. **Aerial Photos 10.29.2025**
- d. **NHD 10.29.2025**
- e. **NWI 10.29.2025**
- f. **LiDAR 10.29.2025**
- g. **Google Earth Pro 10.29.2025**
- h. **Digital Globe 10.29.2025**

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.

Approved Jurisdictional Determination for Non-Jurisdictional Non-RPW Ephemeral Streams (CA 1, CA 2, CA 6, CA 8, CA 9, CA 10, CA 11, CA 13, CA 14, CA 15, CA 16, CA17, and CA19)



MVK-2025-00769

Approved Jurisdictional Determination

29 October 2025

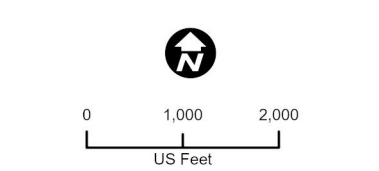


— Delineated Streams

— Wetland Study Area

MDOT
MISSISSIPPI DEPARTMENT OF TRANSPORTATION

Approximate Center
Lat: 34.9755140°N
Long: 89.5684223°W



US 72 Improvements
Potential Non-Jurisdictional Areas

MDOT P.E Numbers: SP-0007-01(102)/
109563-101000
Cayce, Mississippi, Marshall County

Path: E:\2025\114-2400\2017 - US 72 Road Improvements\GIS\Maps\Wetlands\US 72 Wetland Report Exhibits.aprx