



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ALASKA DISTRICT
1046 MARKS ROAD
FAIRBANKS, AK 99703

POA-RDN-C

16 April 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 POA-1988-00892, MFR 1 of 1²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state 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).
 - i. Pond 1 (0.2 acre), non-jurisdictional.
 - ii. Pond 2 (0.2 acre), non-jurisdictional.
 - iii. Pond 3 (0.2 acre); non-jurisdictional
 - iv. Pond 4 (0.7 acre); non-jurisdictional
 - v. Pond 5 (0.6 acre); 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)
- 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 approximately 44-acre review area is located within Section 6, T. 1 S., R. 2 W., Fairbanks Meridian; Latitude 64.8546, Longitude -148.0369; near Fairbanks,

Alaska. The review area has been heavily disturbed by mining that began several decades ago and continues today. The area supports no permanent structures but has a network of gravel roads that lead to largely unvegetated, graveled areas where mining activity has occurred. United States Department of Agriculture (USDA) soil data indicates the review area contains a mixture of Fairbanks silt loam, 12 to 20 percent slopes (118) and Dumps, mine (110). Fairbanks silt loam is not rated as hydric; it is described as well-drained, with no flooding or ponding, and having a depth to the water table of more than 80 inches. The vegetated portions of the review area are largely forested with mature Alaska paper birch (*Betula neoalaskana*) and quaking aspen (*Populus tremuloides*), which are both commonly found in uplands. Vegetation is sparse to absent in disturbed areas from mining.

Pond 1, Pond 2, and Pond 3, situated in the northern part of the review area, are predominately surrounded by mixed upland forest on all sides and recent aerial imagery displays no inlet or outlet channel to the ponds. The ponds do not directly abut a wetland or tributary and therefore lack a continuous surface connection to a requisite water of the U.S. Hence, Pond 1, Pond 2, and Pond 3 are considered non-jurisdictional.

Pond 4 and Pond 5, situated in the southern part of the review area, are each surrounded by uplands and currently used as settling ponds to treat wastewater during placer mining operations. Review of Fairbanks North Star (FNSB) Pictometry and Google Earth aerial imagery shows remnants of Ready Bullion Creek inside the review area just northwest of Pond 4. The ponds appear present in a more topographically depressed region of the landscape indicating a part of these areas were once likely stream, wetland or both. A runoff channel is visible leading south from Pond 5 to a pond outside the review area. However, the channel then disappears, and no outlet channel is observed exiting the pond outside the review area. These fragmented segments of the remnant stream are not serving as tributaries and no surface flow occurs connecting the fragmented segments. Thus, they do not constitute a continuous surface connection for the on-site aquatic resources or other aquatic resources in the vicinity. Pond 4 and Pond 5 do not directly abut a wetland or tributary and therefore lack a continuous surface connection to a requisite water of the U.S. Therefore, Pond 4 and Pond 5 are considered non-jurisdictional.

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

N/A

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

N/A.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷

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

⁶ 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.

⁷ 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”).⁸ 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

⁸ 51 FR 41217, November 13, 1986.

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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*.

The five ponds within the review area are non-navigable intrastate waters that do not have a nexus to interstate or foreign commerce. No aquatic resource within the review area is currently being used for commercial navigation, has historically been used for commercial navigation, or is susceptible to being used in the future for commercial navigation, including commercial water-borne recreation. The ponds in the review area do not possess a continuous surface connection to a jurisdictional water given that each of these features is completely surrounded by uplands with no nearby or connected channels.

The on-site remnant stream channel is fragmented into non-flowing segments due to historical discharge of fill from mining. Due to the lack of a nexus to interstate or foreign commerce and the lack of continuous surface connections, the aquatic resources within the review area are considered isolated waters. These ponds would only have been jurisdictional based solely on the Migratory Bird Rule.

- 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).

No aquatic resources within the review area are TNWs or tributaries to a TNW. All aquatic resources within the review area were determined to be non-jurisdictional because they do not have a continuous surface connection to a jurisdictional water as discussed in Section 3 and 8(e) above.

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. National Wetland Inventory (NWI) accessed 16 April 2025.
 - b. Fairbanks North Star Borough (FNSB) Pictometry 2012, 2017, 2020, 2023 accessed 16 April 2025.

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- c. USDA Web Soil Survey, accessed 16 April 2025
- d. U.S. Geological Survey National Hydrography Dataset (NHD), accessed 16 April 2025
- e. Google Earth accessed 16 April 2025
- f. USACE Alaska Regulatory Viewer, accessed 16 April 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.

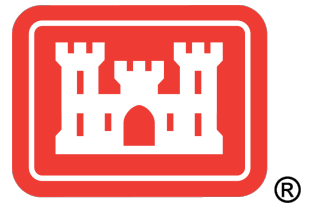
Legend

 Review Area

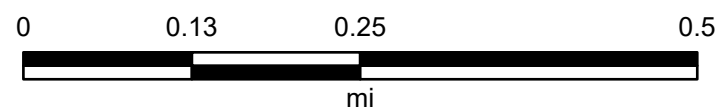


Review Area: 44 Acres

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community, Esri, HERE, Garmin, USGS, EPA, USDA



POA-1988-00892
Ready Bullion Creek



Map Center: 148.029111°W 64.851081°N

Map Created by: Rebecca Manbeck
Date: 4/16/2025
Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere