



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

CESPK-RDI-U

17 JULY 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 [SPK-2004-50019-UO]²

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

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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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 Utah due to litigation.

1. SUMMARY OF CONCLUSIONS.

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).

(1) W01, jurisdictional, Section 404 of the Clean Water Act

(2) W02, non-jurisdictional

(3) OHWM01, jurisdictional, Section 404 of the Clean Water Act

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. The approximately 25.23 acre review area is located on the east side of the Salt Lake City International Airport tarmac and west of the Boeing facility at approximately 2200 West and 1120 North, Latitude 40.7961185°, Longitude -111.9564664°, Salt Lake City, Salt Lake County, Utah (AJD MFR Enclosure 1)

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

The nearest TNW is the Great Salt Lake (GSL). The GSL is a “navigable water” for purposes of the Clean Water Act (CWA) and is considered a TNW and therefore jurisdictional under 33 C.F.R. §328.3(a)(1) and 40 C.F.R. §230.3(s)(1). Waters are TNWs if they meet one of the following criteria:

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- a. Are subject to section 9 or 10 of the Rivers and Harbors Appropriations Act of 1899;
- b. Have been determined by a Federal court to be navigable-in-fact under Federal law;
- c. Are waters currently being used for commercial navigation, including commercial waterborne recreation (for example, boat rentals, guided fishing trips, or water ski tournaments);
- d. Have historically been used for commercial navigation, including commercial waterborne recreation; or
- e. Are susceptible to being used in the future for commercial navigation, including commercial waterborne recreation.

The GSL meets Criteria b, above, having been found navigable-in-fact under Federal law in *Utah v. United States*, 403 U.S. 9 (1971). Thus, the GSL is a TNW and is regulated by the Corps under Section 404 of the CWA.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Based on information provided by the environmental consultant, the primary source of hydrology within the study area is a high-water table and topographic changes that direct surface and shallow subsurface flow. Additionally, runoff from adjacent developed areas likely also contribute to increased surface water accumulation in the lower-lying portions of the study area.

Surface water flows north within the study area. Once the feature crosses the northern study area boundary, it transitions into a vegetated corridor that drains in a northeast direction and historically connected directly to the City Drain, across what is now a developed commercial and industrial area. Under current conditions, the drainage is routed through underground piping beneath the development, reemerging as an open channel that flows into a vegetated swale west of I-15. Flow then continues east reaching the City Drain via a culvert beneath I-15. Surface flow then continues downstream within the City Drain, ultimately discharging into the Great Salt Lake, the nearest TNW, located approximately 8 river miles downstream of the study area, as shown on the enclosed flow map (AJD MFR Enclosure 2)

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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: The following aquatic resources within the review area (AJD MFR Enclosure 3) 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*.

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): OHWM01 is a relatively permanent seasonal drainage that meets the (a)(5) category of "waters of the United States" under the pre-2015 regulatory regime due to a continuous surface connection to the GSL. Within the study area, OHWM01 is approximately 274 linear feet long and encompasses a total area of 0.03 acre. OHWM01 was surveyed by SWCA Environmental Consultants, who observed that water was present at the time of the survey. Indicators of the OHWM included a defined bed and bank, a break in slope, and a change in vegetation. A review of the Antecedent Precipitation Tool, aligned temporally with aerial imagery, suggests that flow is at least seasonal and typically results in inundation in most years.

OHWM01 flows into the City Drain, which runs along I-15 on the northeast side of the study area. The City Drain flows northward and meanders through the landscape, then enters a broader expanse of wetlands and marshes in the southern portion of Farmington Bay, eventually discharging into the Great Salt Lake.

f. The territorial seas (a)(6): 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.

g. Adjacent wetlands (a)(7): Wetland W01 is a 0.52-acre palustrine emergent wetland directly abutting OHWM01. This wetland meets the (a)(7) category “waters of the United States” in the pre-2015 regulatory regime since it has a continuous surface connection (directly abutting) OHWM01, an (a)(5) water. W1 was determined to be jurisdictional under Section 404 of the Clean Water Act.

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 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

⁸ 51 FR 41217, November 13, 1986.

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waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

W02 is a 0.06-acre palustrine emergent wetland that is isolated with no potential flow path to downstream waters as support by remote sensing data (aerial imagery and topographic data) (AJD MFR Enclosure 3). W2 transitions to dryland due to a change in elevation. Therefore, W2 lacks a continuous surface connection to a jurisdictional waters and was determined to be non-jurisdictional under Section 404 of the Clean Water Act

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. Aquatic resources delineation report titled [REDACTED] prepared by [REDACTED] Environmental Consultants, dated June 2024. The consultant prepared the delineation report in accordance with the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and the USACE Regional Supplement for the Arid West Region.
- b. The requestor's June 2024 Aquatic Resources Delineation Report was relied upon, except for the following:
 - The suggested federal jurisdictional status of W01 and OHWM01. The report indicates that W01 and OHWM01 may not be considered jurisdictional since they "do not appear to have surface connectivity to any waters of the U.S." USACE did not agree with the determination of no connection to waters of the U.S. for these aquatic resources. Evaluation of a connection of waters of the U.S. is included in the evaluation of these aquatic resources in Sections 7.e. and 7.g. of this MFR.
 - The report identified OHWM01 as a man-made feature that lacked a connection to waters of the U.S. Section 5 of this MFR documents a confined surface connection with a flow path to the GSL. While the southern end of OHWM01 appears man-made, the feature has existed in its current form since at least 1994 and now represents the normal condition of the system. Under USACE regulations, the man-made origin of a feature does not preclude it from jurisdiction. Jurisdiction is based on current characteristics and connectivity, not historical origin. Therefore, OHWM01 has been evaluated based on its present, persistent condition and its surface connection to downstream waters of the US.

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- c. GoogleEarth 7.3.3.7692. (14 August 1994, 3 May 2022, 24 August 2004, 31 December 2005, 17 June 2010, and 19 October 2024). Salt Lake City, Utah, Latitude 40.7961185°N, Longitude -111.9564664°W. Retrieved 15 July 2025, from <http://earth.google.com>
- c. Historic Aerial Imagery, 1950. Retrieved 15 July 2025 from the Utah Geological Survey Database (<https://imagery.geology.utah.gov/pages/home.php?login=true>)
- d. LiDAR - National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved 15 July 2025.
- e. National Hydrography Dataset Flowlines – Large Scale from National Layers in the National Regulatory Viewer for the South Pacific Division. Retrieved 16 July 2025.
- f. Topographic Map - National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved 16 July 2025.

10. OTHER SUPPORTING INFORMATION.

Both W1 and OHWM01 were verified under a Preliminary Jurisdictional Determination to Boeing Company under SPK-2012-00480 on 5 June 2012 potential waters of the United States.

On 12 August 2012, a Nationwide Permit 39 (Commercial and Institutional Developments) was verified to Boeing Company for the discharge of fill material into approximately 0.5 acre of wetlands for the construction of the Boeing Parcel 2200 West 1215 North Composite Manufacturing Facility under SPK-2012-00480. The waters of the United States authorized for fill under this permit included areas now identified as W01 and OHWM01 in this AJD MFR which were part of a larger aquatic resource complex extending beyond the current study area into the adjacent parcel to the north. The project was never constructed and the Nationwide Permit 39 expired on 18 March 2017.

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.

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3 Enclosures

Encl 1 Location Map

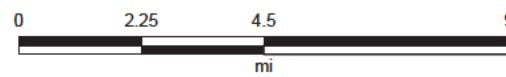
Encl 2 Flow Map

Encl 3 Aquatic Resources Map





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Map Center: 112.064509°W 40.861894°N

Date: 7/16/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

SPK-2004-50019 - Flow Map (1950 Historic Aerial Imagery)

Retrieved July 15, 2025, from the Utah Geological Survey Database
(<https://imagery.geology.utah.gov/pages/home.php?login=true>)



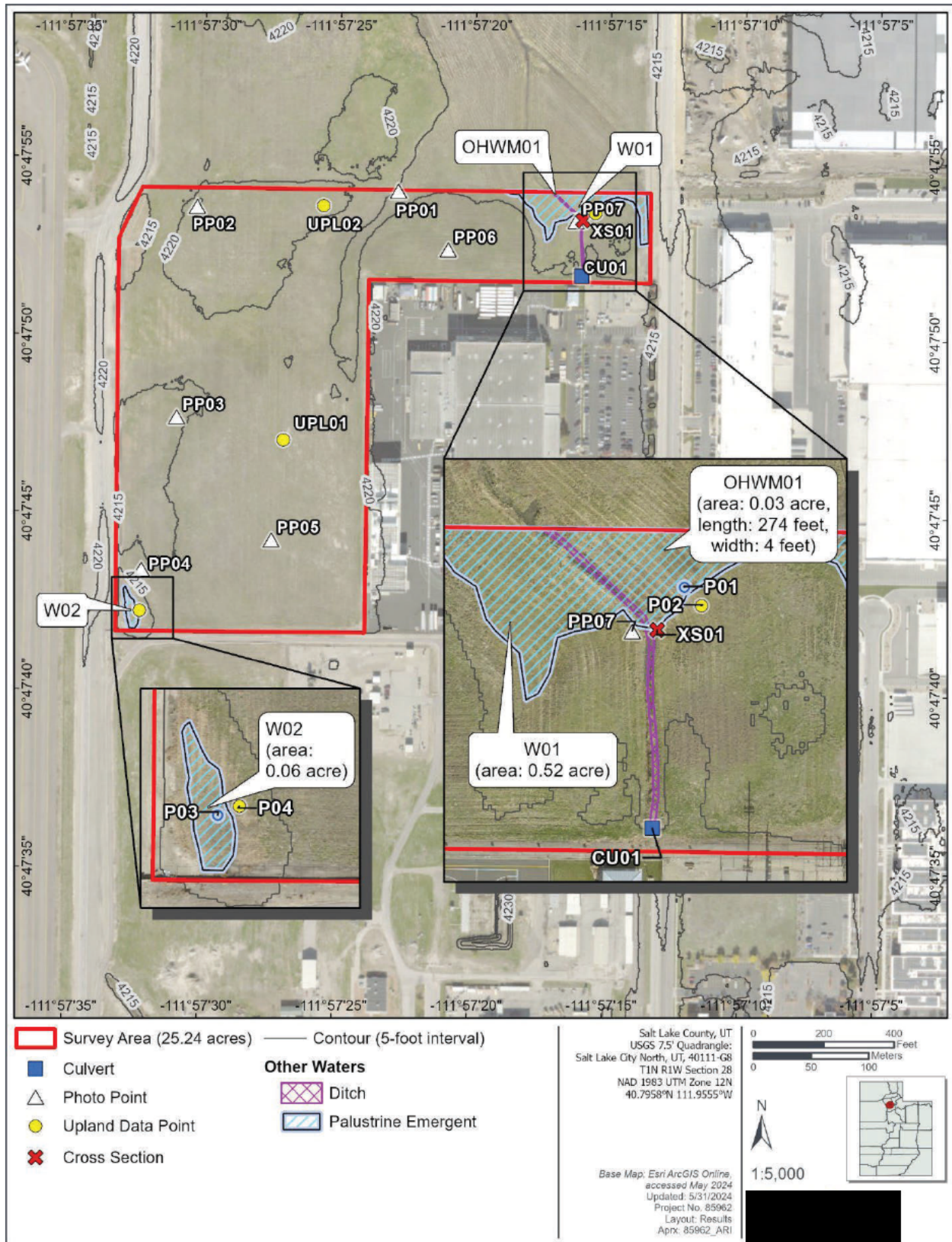


Figure A-5. Aquatic resources delineation results overview for the survey area.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: [REDACTED]	File No.: SPK-2004-50019	Date: July 17, 2025
Attn: [REDACTED]		
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

[Redacted contact information]

If you only have questions regarding the appeal process you may also contact:

[Redacted contact information]

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: