

**ADMINISTRATIVE APPEAL DECISION  
APPROVED JURISDICTIONAL DETERMINATION  
Rebecca and Caleb Linck  
Walla Walla District  
NWW-2024-00527**

**Division Engineer:** Brigadier General William C. Hannan, Jr., Northwestern Division<sup>1</sup>

**Review Officer (RO):** Melinda Larsen, Northwestern Division (NWD)

**Appellants:** Ms. Rebecca Linck and Mr. Caleb Linck

**Regulatory Authority:** Section 404 of the Clean Water Act (CWA) (33 USC § 1344)

**Date Acceptable Request for Appeal Received:** July 8, 2025

**Date of Appeal Meeting:** September 23, 2025

**Summary of Appeal Decision:** Ms. Rebecca and Mr. Caleb Linck are appealing the Approved Jurisdictional Determination (AJD) completed by the Walla Walla District (District), dated May 14, 2025. The review area is located at 1050 Kootenai Road, Kootenai, Bonner County, Idaho. The Appellants assert that the AJD is “arbitrary, capricious, an abuse of discretion, not supported by substantial evidence in the administrative record, [and] plainly contrary to a requirement of law . . . or officially promulgated Corps policy guidance.”<sup>2</sup> As detailed below, I find that reasons for appeal 1.A. and 1.B. have merit. Reasons for appeal 1.C., and 2, 3, and 4 do not have merit. Therefore, the AJD decision is being remanded to the Walla Walla District Engineer for further analysis and documentation in accordance with 33 C.F.R. § 331.10(b).

**Background Information:** The review area, totaling 4.7 acres, is located southwest of the intersection of Kootenai and Porath Roads, at approximately latitude 48.327653° and longitude -116.515365°. The District received a request for an AJD on November 4, 2024,<sup>3</sup> from the Appellants’ environmental consultant, Mr. Tom Duebendorfer. The District visited the site on November 13, 2024. After the site visit, the District requested additional information from Mr. Duebendorfer, and received an updated AJD request with a revised wetland boundary on April 24, 2025.<sup>4</sup> The District finalized the AJD on

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<sup>1</sup> Pursuant to 33 CFR § 331.3(a)(1), the division engineer has the authority and responsibility for administering the administrative appeal process. The division engineer may delegate the authority and responsibility of the administrative appeal process for approved JDs, including the final appeal decision. Consistent with the NWD “Delegation of Authority for the Regulatory Program Administrative Appeals Process” memorandum dated September 10, 2024, the authorities for the final appeal decision for this appeal has been delegated to the chief of operations and regulatory. Regardless of this delegation, the division engineer retains overall responsibility for the administrative appeal process. The district engineer retains the final Corps decision-making authority for the approved JD.

<sup>2</sup> RFA at 42-43.

<sup>3</sup> AR 000038-56.

<sup>4</sup> AR 000075-84.

May 14, 2025, concluding that the U.S. Army Corps of Engineers (Corps) has CWA jurisdiction over a 1.27-acre wetland within the 4.7 acre review area.<sup>5</sup> The District determined that wetland 1 (comprised of wetlands A and B as delineated by the Appellants' environmental consultant), combined with a larger offsite wetland extending north of Porath Road, are functioning as a single wetland, and are adjacent to an unnamed tributary of Boyer Slough, a Traditional Navigable Water (TNW). On July 8, 2025, Mr. Charles Yates of Pacific Legal Foundation submitted a request for appeal (RFA) on behalf of the Appellants. The RFA contains four reasons for appeal, as described below. NWD determined the RFA complete and accepted it on July 22, 2025.

**Information Received and its Disposition During the Appeal:** The Administrative Record (AR) is limited to information contained in the record as of the date of the Notification of Administrative Appeal Options and Process form, which is May 14, 2025. No new information may be submitted on appeal; however, to assist the Division Engineer in making a decision on the appeal, the RO may allow the parties to interpret, clarify, or explain issues and information already contained in the AR. Such interpretation, clarification, or explanation does not become part of the AR because the District Engineer did not consider it in making the AJD decision. Consistent with Corps regulations, the Division Engineer may use such interpretation, clarification, or explanation in determining whether the AR provides an adequate and reasonable basis to support the District Engineer's decision. The information received during this appeal review, and its disposition, is as follows:

1. RFA sent by the Appellants' counsel, Mr. Charles Yates, received by NWD on July 8, 2025.
2. Notice from NWD to the Appellants accepting the RFA and stating that the request met the required criteria for an administrative appeal, sent by letter dated July 22, 2025.
3. The AR, a copy of which the District provided to NWD and the Appellants on August 4, 2025.
4. An informal appeal meeting, in accordance with 33 C.F.R. § 331.7 on September 23, 2025. The goal of the appeal meeting was to summarize and clarify the Appellants' and the District's positions as they relate to the appeal. Topics discussed at the appeal meeting are summarized in the document titled "Final MFR Appeal meeting NWW-2024-00527" (Appeal MFR). A draft of this document was circulated to the appeal meeting attendees on October 14, 2025, and it was finalized on October 24, 2025.

**Waters of the United States:** Waters of the United States (WOTUS) are those waters that are subject to Corps jurisdiction under Section 404 of the CWA. The final "Revised Definition of 'Waters of the United States'" rule was published in the Federal Register on January 18, 2023, and took effect on March 20, 2023 (2023 rule). In light of the May 25, 2023, Supreme Court decision in *Sackett v. Environmental Protection Agency*, 598 U.S.

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<sup>5</sup> The District's AJD indicates the portion of the wetland within the review area is 1.13 acres. AR 000013. During the appeal meeting, Mr. Duebendorfer clarified that the updated delineation of the wetland within the review area is 1.27 acre.

651 (2023), the 2023 rule was amended by the conforming rule, which took effect on September 8, 2023 (2023 rule, as amended). Due to litigation, some states are not currently implementing the 2023 rule, as amended. The subject Approved Jurisdictional Determination appeal is located in Idaho, which, as of the date of the District's decision, is one of the states where the pre-2015 regulatory regime is in effect.<sup>6</sup>

The pre-2015 regulatory regime refers to the agencies' pre-2015 definition of "waters of the United States," implemented consistent with relevant case law and longstanding practice, as informed by applicable guidance, training, and experience. Where the January 2023 Rule, as amended, is not currently operative, the agencies are interpreting "waters of the United States" consistent with the pre-2015 regulatory regime until further notice. Additionally, the agencies are interpreting the phrase "waters of the United States" consistent with the Supreme Court's decision in *Sackett*.

District Engineers, and by extension, regulatory staff, apply regulation, guidance, and policy that is generated by the agencies in response to such decisions or actions by Congress and the courts. The sufficiency of regulation, guidance, and policy available to a district is beyond the scope of the appeal process, because an appeal is associated with a specific Corps action and reasons for appeal are limited to, for example, a district's application of regulation, guidance, or policy specific to that action. Therefore, discussions in this document will focus on available regulation, guidance, and policy rather than interpretation of court decisions.

### **Evaluation of the Appellants' Reasons for Appeal, Findings, and Instructions to the District Engineer**

**REASON FOR APPEAL 1:** Appellants' property is not subject to federal authority under *Sackett's* test.

**FINDING:** Reasons for appeal 1.A. and 1.B. have merit. Reason for appeal 1.C. does not have merit.

**ACTION:** The AJD is remanded to the Walla Walla District Engineer for reconsideration, additional evaluation, and documentation sufficient to support the decision. Specifically, the District should reevaluate its jurisdictional rationale in accordance with the One Wetland Memo<sup>7</sup> and reassess whether the conditions for treating a divided wetland as "one wetland" are met. The District should provide complete and detailed rationale supporting its conclusions, in accordance with the current regulatory regime and applicable agency guidance. The District should ensure that its conclusions are supported by substantial evidence in the AR. More information is provided in the discussion below.

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<sup>6</sup>*Operative Definition of "Waters of the United States";* Environmental Protection Agency <https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update>.

<sup>7</sup> December 19, 2023, Memorandum to Re-Evaluate Jurisdiction for NWO-2003-60436, available at [https://www.epa.gov/system/files/documents/2024-01/nwo-2003-60436-joint-decision-memo\\_final\\_12-18-23\\_508c.pdf](https://www.epa.gov/system/files/documents/2024-01/nwo-2003-60436-joint-decision-memo_final_12-18-23_508c.pdf) (hereinafter One Wetland Memo).

**DISCUSSION:** In this reason for appeal, Appellants provide three reasons in support of the assertion that the subject property is not regulable due to *Sackett*.

**A. The alleged wetlands are separated from any covered water by a road**

The Appellants assert that the presence of Porath Road, a 35-foot wide gravel road with no culverts, prevents the wetlands in the review area from being subject to CWA jurisdiction. The Appellants cite several court decisions that they claim support that Porath road would sever jurisdiction.

The Appellants' revised delineation includes two wetland areas, "wetland A" and "wetland B."<sup>8</sup> The District agreed with the wetland boundary but determined that although separated by approximately 65 feet, the two delineated wetlands within the review area are functioning as one wetland, referring to it as "wetland 1". The District further determined that "[wetland]1 is hydrologically connected to a large wetland complex (essentially one wetland) to the north of the review area through subsurface hydrology that is divided by Porath Road."<sup>9</sup>

Under the pre-2015 regulatory regime consistent with the *Rapanos*<sup>10</sup> plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. In this case, the District determined that the "wetland 1" complex is adjacent to an unnamed relatively permanent tributary that flows to Boyer Slough, a TNW.

Because the District is asserting that the "wetland 1" complex is functioning as one wetland, the presence of Porath Road does not necessarily disrupt jurisdiction. A single wetland may be divided by, for example, ditches, berms, and road crossings.<sup>11</sup> However, the AR does not support that either Porath Road or the driveway was constructed through a preexisting wetland. Historic aerial images and construction history were not adequately addressed [AR 19-25]. Therefore, the road's effect on jurisdiction warrants further analysis and supporting documentation. Therefore, reason for appeal 1.A. has merit.

**B. The District Engineer's "wetlands complex" theory is unlawful under *Sackett***

In this portion of reason for appeal 1, the Appellants advance three arguments for why the District's determination that the wetland areas are functioning as one wetland is not consistent with *Sackett*:

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<sup>8</sup> AR 000077.

<sup>9</sup> AR 000011.

<sup>10</sup> The U.S. Supreme Court issued a decision in the cases of *Rapanos v. United States*, 547 U.S. 715 (2006) and *Carabell v. United States*, 126 U.S. 2208 (2006) referred to as "Rapanos".

<sup>11</sup> *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States*, December 2, 2008, p. 6.

- 1. The district engineer’s “wetlands complex” theory ignores Sackett’s central indistinguishability requirement**
- 2. The district engineer’s “wetlands complex” theory is inconsistent with Sackett’s requirement that any surface connection between water and wetland must be aquatic**
- 3. The district engineer’s “wetlands complex” theory is inconsistent with the facts of Sackett, and the judgment entered against EPA in that Case**

In its support for these three arguments, the Appellants assert that the District’s determination that “wetland 1” is functioning as a single wetland is contrary to the requirement that wetlands be indistinguishable from the waters to which they are adjacent. The Appellants state that it is unreasonable to consider wetlands on the subject property “indistinguishable” from the unnamed tributary. Additionally, the Appellants assert that any connection between a wetland and a water to which it is adjacent must be aquatic, stating that the District’s conclusion is contrary to that requirement due to Porath Road being a physical separation. The Appellants state that the District cannot rely on subsurface connection and similar vegetation because it is contrary to the surface connection requirement. The Appellants further object to the “wetlands complex” determination by the District, comparing the physical features of the Appellants’ property to that of the Sackett’s site which was the subject of the 2023 SCOTUS decision.

Under certain circumstances, a wetland can be evaluated and determined to be functioning as a single wetland despite certain physical barriers. This is outlined by the agency guidance memos cited by the District in its AJD.<sup>12</sup> The One Wetland Memo refers to the *Rapanos* guidance, stating that a single wetland may be divided by features, including roads, and directs districts to evaluate whether the divided portions of the wetland are functioning as a single unit, or are in fact distinct, separate wetlands. The memo further lists types of evidence that may be evaluated in the analysis. For example, it indicates that aerial photography can help districts determine whether the wetland was one wetland prior to construction of the physical barrier and lists multiple lines of evidence which support when two portions of a divided wetland are exhibiting a hydrologic connection such that they are functioning as one. These lines of evidence include, but are not limited to:

[D]iscrete features like pipes or culverts or through a shallow subsurface connection, similarities in plant communities between the divided portions of the wetland, slope and topography (for example, the slope and topography would direct shallow subsurface movement of water from one wetland area to another), soils (for example, the soils exhibit indicators of high transmissivity over an impermeable surface, allowing for a shallow subsurface connection), and

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<sup>12</sup> February 26, 2008, Memorandum to Re-Evaluate Jurisdiction for NWP-2007-428, available at <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll5/id/1435>; One Wetland Memo, *supra* note 7.

hydrologic indicators (for example, seepage on the downhill side of the artificial barrier artificially separating the wetland areas which demonstrates movement of water through or beneath the barrier from one part of the divided wetland to the other).<sup>13</sup>

The memo goes on to say that once portions of a divided wetland are determined to be one wetland, that wetland would then be assessed for CWA jurisdiction.

In this case, there are two features the District determined are dividing “wetland 1” — a driveway within the review area, and Porath Road, adjacent to the review area. The District asserts that the entirety of “wetland 1” within the Appellants’ review area and the “wetland swale” located north of Porath Road are “essentially one wetland.”<sup>14</sup> In order to support this assertion, the District must document its findings with sufficient evidence to support that the divided portions of the wetland are functioning as one. As described by the 2023 memo, there are two primary considerations: whether the wetland was previously one wetland and whether that wetland has a hydrologic connection such that it is functioning as one.

First, relative to the question of whether “wetland 1” was previously a single wetland, the District states that a review of aerial photography indicates the driveway was constructed between August 2019 and July 2022 but provides no explanation or evidence for its implied conclusion that the driveway was constructed in a water of the United States. Relative to Porath Road, the District states, “It is unclear how long the road has been in place,” and again provides no explanation or evidence for its implied conclusion that the road was constructed in a water of the United States.<sup>15</sup>

The District states that it is unknown when Porath Road was built and acknowledges that there is no culvert connection through the road. There is no rationale or evidence in the AR supporting the conclusion that Porath Road was built through an existing, jurisdictional wetland area at the time of construction, nor is there rationale supporting the conclusion that the delineated “wetland A” and “wetland B” were a single feature prior to construction of the driveway. This could be supported by historic aerial photography or similar evidence from prior to construction of the road features, but the District did not include or discuss such potential information. As stated above, the District has made no assertion that either the road or the driveway was constructed in a jurisdictional wetland. Establishing that a divided wetland was previously a single jurisdictional wetland before construction of the dividing feature is fundamental to applying the guidance contained in the One Wetland Memo. The District states that “subsurface hydrology” is divided by Porath Road and points to elevation, vegetation, and soil evidence to support its claim that the onsite wetlands and the “wetland swale” to the north are functioning as one wetland. The District also makes a statement that ponded water was observed on either side of the driveway between the delineated “wetland A” and “wetland B,” but makes no similar statement regarding actual

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<sup>13</sup> *Ibid.*

<sup>14</sup> AR 000011.

<sup>15</sup> AR 000014.

hydrologic observations on either side of Porath Road. The District does point to the fact that both sides of Porath Road exhibit depressional areas in an otherwise upland landscape. However, by not providing evidence which demonstrates that the area was a single jurisdictional wetland prior to construction of the road, the District's one wetland conclusion is not adequately supported.

For these reasons, reason for appeal 1.B. has merit.

**C. Even assuming the District Engineer's "wetlands complex" theory is lawful, Appellants' property is still not subject to federal authority under *Sackett***

In this portion of reason for appeal 1, the Appellants state that even if the area could be treated as a single functioning wetland, there are two additional reasons why it would not be jurisdictional. First, the Appellants argue that the District did not support that the larger wetland area north of Porath Road is indistinguishable from the unnamed tributary, and second, that the District did not identify a surface water connection between the "wetland swale" and the unnamed tributary, "instead concluding the swale merely abuts the unnamed tributary."<sup>16</sup>

The Appellants claim that because the District determined that the unnamed tributary has a clearly discernable bank and Ordinary High Water Mark (OHWM), that it is clearly discernable from the "wetland swale." The Appellants further state that the lack of a surface water connection negates jurisdiction under *Sackett* and other court decisions.

As noted above, Districts rely on regulations, policy and guidance supplied by the agencies in response to decisions by the courts. Regarding wetland adjacency, such guidance can be found in the March 12, 2025 memorandum titled *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.*<sup>17</sup> This memorandum describes the agencies' interpretation of continuous surface connection (CSC), and includes the following:

Under either the amended 2023 regulatory definition of "waters of the United States" or the pre-2015 regulatory regime consistent with *Sackett*, the agencies are interpreting "waters of the United States" to include "only those adjacent wetlands that *have a continuous surface connection because they directly abut* the [requisite jurisdictional water] (e.g., they are not separated by uplands, a berm, dike, or similar feature)." 2008 Rapanos Guidance at 7, footnote 29; see also 88 FR 3090 (Jan. 18, 2023) ("wetlands meet the continuous surface connection requirement if they physically abut, or touch, a [requisite jurisdictional water]").<sup>18</sup>

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<sup>16</sup> RFA at 31.

<sup>17</sup> <https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf>

<sup>18</sup> *Id.* at 5 (emphasis added).

Thus, the guidance requires that a wetland abut the requisite water, not that there be water continuously present between the two features. Additionally, wetlands are defined as “[t]hose areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.”<sup>19</sup> This definition has been in place since 1980 and has not been altered following subsequent waters of the United States-related court decisions. The phrase “inundated or saturated” acknowledges that wetlands do not always exhibit surface water.

Regarding the boundary of the unnamed tributary being clearly discernable from the “wetland swale”, the March 12 memo cited above clearly states that adjacent wetlands have a continuous surface connection because they abut the requisite water (e.g., they are not separated by uplands, a berm, dike, or similar feature). The OHWM of a tributary represents the boundary of the tributary, not a separation similar to a berm or a dike.

The District identifies only abutment and recognizes that the swale is only saturated, not consistently inundated.<sup>20</sup> The AR adequately supports the conclusion that the swale abuts the tributary. Therefore, reason for appeal 1.C. does not have merit.

**REASON FOR APPEAL 2: The unnamed tributary never has been, and never could be, used as a highway of interstate or foreign commerce, and therefore cannot be regulated under the Clean Water Act.**

In this reason for appeal, the Appellants argue that even if the onsite wetlands are functioning with the offsite wetlands as a single wetland, and that wetland has a CSC with the unnamed tributary, the wetlands in the review area still cannot be jurisdictional because the relatively permanent tributary is not and cannot be a highway of interstate or foreign commerce. The Appellants point to the Commerce Clause in the Constitution, and cite several court decisions (most notably, *SWANCC*, *Rapanos*, and *Sackett*) to support an argument that because the District did not provide evidence that the unnamed tributary itself could serve as a highway of interstate foreign commerce, “the district engineer presses the Corps’ authority to the outer limits of Congress’ power to regulate the channels of interstate commerce and raises serious constitutional federalism questions.”<sup>21</sup>

**FINDING:** This reason for appeal does not have merit.

**ACTION:** No action.

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<sup>19</sup> Environmental Laboratory, U.S. Army Corps of Engineers Waterways Experiment Station, Technical Report Y-87-1 at 9 (1987) [hereinafter 1987 Manual]

<https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4532/>.

<sup>20</sup> AR000015.

<sup>21</sup> RFA at 36.

**DISCUSSION:** As discussed above, District Engineers, and by extension, regulatory staff, apply regulation, guidance, and policy that is generated by the agencies in response to decisions or actions by Congress and the courts. It is not within the scope of an AJD action by the District, or an appeal review by Division to evaluate the sufficiency of such guidance, regulation or policy. Administrative appeal reviews determine if District decisions were finalized in accordance with law, regulations, and officially promulgated policy guidance that was in place at the time that the District's decision was finalized. This reason for appeal does not have merit.

**REASON FOR APPEAL 3: The AJD is arbitrary and capricious and is unsupported by substantial evidence**

In this reason for appeal, the Appellants state that because the District and the Appellants' consultant were not able to ground truth the offsite wetland north of Porath Road that exists on private property, relying instead on remote tools and what was visible from the road, the District's conclusion that the offsite area contains wetlands vegetation and hydric soils is speculative. The Appellants also assert that this analysis is further flawed by the fact that the offsite parcel is an "altered landscape used for agricultural purposes,"<sup>22</sup> and raises "serious doubt that wetlands vegetation exists throughout the extent of the alleged wetland swale,"<sup>23</sup> stating that the conclusion is vague, unreliable and unsupported by substantial evidence in the AR.

**FINDING:** This reason for appeal does not have merit.

**ACTION:** No action.

**DISCUSSION:** The Appellants' assertions here rely on an incorrect assumption that information always needs to be verified on the ground. To the contrary, USACE regulatory staff are routinely required to evaluate resources without direct access to offsite, or even sometimes onsite, features, and frequently use remote data sources to do so. The 1987 Manual and current policy direct that decisions must rely on the best available scientific and technical data.<sup>24</sup> Remote assessments are explicitly permitted when access is limited and sufficient remote information is available.

In this case, the District acknowledges that it did not have access to the offsite area north of Porath Road, but describes its analysis of remote resources such as aerial imagery, soil mapping, topography, and wetland mapping, which adequately represent best available resources.<sup>25</sup> For example, multiple instances of aerial photography in the record<sup>26</sup> reflect a wet signature in the area north of Porath Road where the "wetland swale" was identified. The District's use of aerial images, NRCS soil maps, field observations, and topography constitute best available evidence per policy [AR 14-33].

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<sup>22</sup> AR 000014.

<sup>23</sup> RFA at 38.

<sup>24</sup> 1987 Manual, Sec. D, Subsec. 1, at 45-49.

<sup>25</sup> AR 000014-15.

<sup>26</sup> See, e.g., AR 000028, 000036-37.

Record photographs and data logs demonstrate surface ponding, soil saturation, and representative vegetation in accessible areas [AR 15, 28-30]. Despite agricultural modification, historic imagery supports the persistence of wetland conditions since at least 1998.

The District's actions in evaluating the offsite resources using remote tools were not arbitrary and capricious, rather they reflect the District's use of best available data when actual onsite sampling was not available to them. Therefore, Reason for appeal 3 does not have merit.

**REASON FOR APPEAL 4: Appellants' property is not regulable under the agencies' 2025 guidance.**

In this reason for appeal, the Appellants state that the District's AJD is inconsistent with the agencies' CSC guidance.<sup>27</sup>

**FINDING:** This reason for appeal does not have merit.

**ACTION:** No action.

**DISCUSSION:** The Appellants point out that the March 12 memo limits CWA jurisdiction over wetlands to those that abut covered waters, removing previous guidance that allows for discrete features such as culverts to establish a CSC. The Appellants also state that "the agencies' "abutment" theory is unlawful under *Sackett*."<sup>28</sup> The Appellants further state that even if the March 12 guidance is correct, it explicitly states that "an interpretation of "continuous surface connection" which allows for wetlands far removed from and not directly abutting covered waters to be jurisdictional as adjacent wetlands has the potential to violate the direct abutment requirement."<sup>29</sup>

CSC refers to the relationship between the wetland and the requisite water. When wetlands (including a divided wetland determined to be functioning as one) extend outside of a particular parcel or review area, the offsite portions of the wetland need to be considered in determining CWA jurisdiction, which includes adjacency considerations. Per longstanding practice and guidance: "The agencies consider the entire wetland to be 'adjacent' if any part of the wetland is 'adjacent.' If two or more wetland areas are found to not be one wetland, then they would be individually assessed for jurisdiction."<sup>30</sup> In this case, the District's determination, in the context of the subject AJD,<sup>31</sup> that the larger offsite wetland that extends north of Porath Road is adjacent to the unnamed relatively permanent tributary was in accordance with the applicable guidance, including the March 12, 2025 CSC guidance. However, as explained above, the District's determination that "wetland 1" within the review area is

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<sup>27</sup> [Id.](#)

<sup>28</sup> RFA at 40.

<sup>29</sup> [Id.](#) at 5.

<sup>30</sup> One Wetland Memo, *supra* note 7 at 3.

<sup>31</sup> See 33 CFR 331.7(g).

functioning as one wetland with the larger offsite wetland was not supported by the record and the AJD is being remanded. Therefore, reason for appeal 4 is moot as applied to wetland 1 and does not have merit.

**CONCLUSION:** After reviewing and evaluating the Appellants' reasons for appeal, the District's AR, and recommendation of the RO, and for the reasons stated above, I find that this appeal has merit, as detailed in reason for appeal 1. Therefore, the AJD decision is being remanded to the Walla Walla District Engineer for further analysis and documentation in accordance with 33 C.F.R. § 331.10(b). The remanded decision shall rely on the regulatory regime in place at the time of the decision, and in accordance with relevant policy and guidance. Pursuant to 33 CFR § 331.7(g), this decision "is applicable only to the instant appeal, and has no other precedential effect." Furthermore, this decision "may not be cited in any other administrative appeal, and may not be used as precedent for the evaluation of any other jurisdictional determination or permit application." The District Engineer's decision made pursuant to this remand becomes the final Corps permit decision. This concludes the Administrative Appeals Process.

December 2, 2025  
[DATE OF APPEAL DECISION]

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Joyce M. McDonald  
Chief, Operations and Regulatory  
Northwestern Division