

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2017-04094

CEMVP-RD

May 8, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the “Revised Definition of ‘Waters of the United States’”; (88 FR 3004 (January 18, 2023) as amended by the “Revised Definition of ‘Waters of the United States’; Conforming” (8 September 2023) ,¹ MVP-2017-04094-JMK²

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

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army (“the agencies”) published the “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”). On September 8, 2023, the agencies published the “Revised Definition of ‘Waters of the United States’; Conforming”, which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) (“*Sackett*”).

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended,

¹ While the Revised Definition of “Waters of the United States”; Conforming 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, the territorial seas, or interstate water 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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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 1	Non-Jurisdictional	None, Excluded Water

2. REFERENCES.

- a. “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”)
- b. “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- d. “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 review area for this determination consists of Wetland 1 as shown on the attached figures labeled MVP-2017-04094-JMK Figures 1-21 of 21.

- a. Project Area Size (in acres): 654 square feet
- b. Location Description: The project/review area is located in Section 01, Township 107N, Range 041W, Murray County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.107570 Longitude: -95.720650
- d. Nearest City or Town: Slayton
- e. County: Murray
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. 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 2023 Rule as amended, 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 2023 Rule as amended. 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. N/A.
 - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
 - b. The Territorial Seas (a)(1)(ii): N/A
 - c. Interstate Waters (a)(1)(iii): N/A
 - d. Impoundments (a)(2): 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.

- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁸

Wetland 1 (654 sq.ft.) is a roadside ditch constructed in upland and drains only upland based on a review of the delineation report submitted as part of the PCN including, LiDAR mapping, historical imagery and NRCS hydric soil data. Recent aerial photos do not show relatively permanent flow in the aforementioned aquatic resource. Based on the delineation report, Wetland 1 is a roadside ditch constructed in upland, drains only upland, and does not carry a relatively permanent flow of water. Therefore, Wetland 1 has been determined to be Paragraph (b)(3) excluded ditch and not subject to Section 404 of the Clean Water Act (CWA).

- b. 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 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).
N/A.

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. Field Aquatic Resources Delineation Report; CSAH 13 (Valhalla Road) Improvement Project dated, September 9, 2024.

10. OTHER SUPPORTING INFORMATION. N/A.

⁸ 88 FR 3004 (January 18, 2023)

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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.

MINNESOTA DEPARTMENT OF TRANSPORTATION

MURRAY COUNTY

BITUMINOUS TRAIL, GRADING, AGGREGATE BASE, BITUMINOUS CONSTRUCTION PLAN FOR PAVING, AND RANDOM RIPRAP

LOCATED ON CSAH 13 BETWEEN TH 59 AND COUNTY ROAD 102

(GEOGRAPHIC DESCRIPTION)

FROM 34.19' E. OF NW COR. SEC. 2 T-107-N, R-41-W

(LEGAL DESCRIPTION)

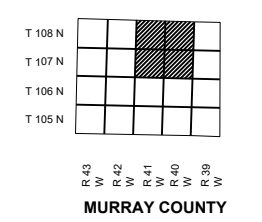
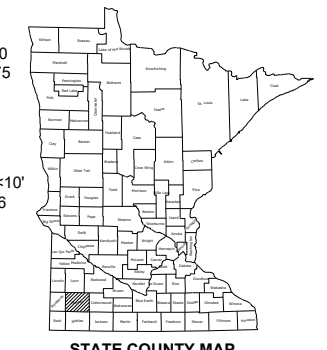
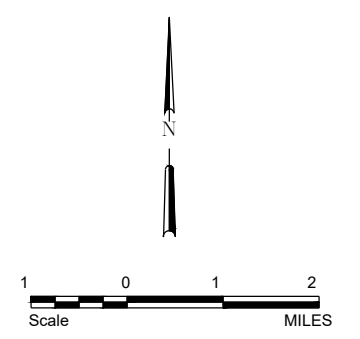
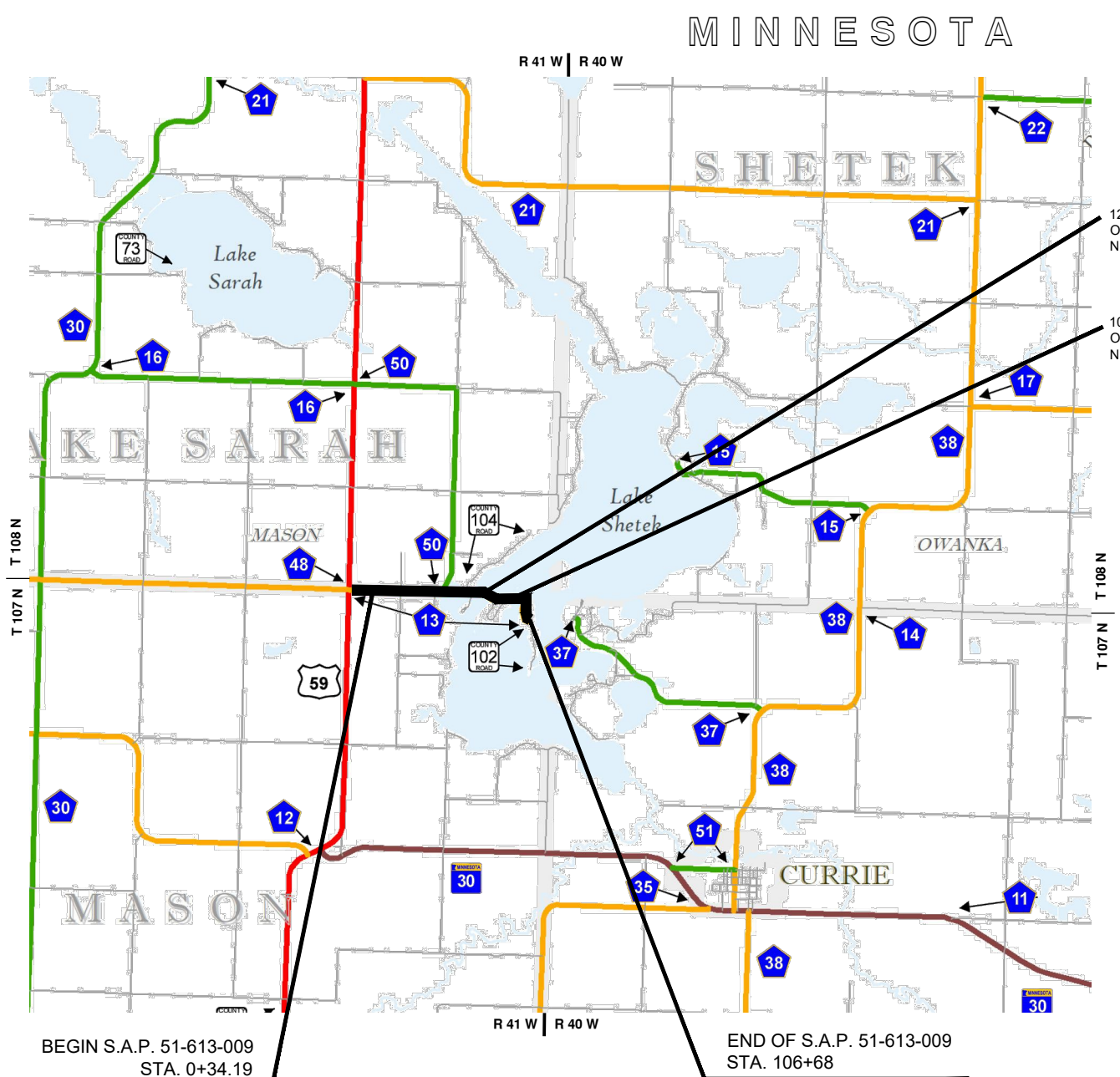
TO 5,260' SE. OF THE NW. COR. SEC. 1 T-107-N, R-41-W

(LEGAL DESCRIPTION)

GROSS LENGTH	10633.81	FEET	2.01	MILES
BRIDGES-LENGTH		FEET		MILES
EXCEPTIONS-LENGTH	N/A	FEET	N/A	MILES
NET LENGTH	10633.81	FEET	2.01	MILES

LEGEND

ROAD AND ROADWAY FEATURES	
PROJECTED ROAD	.....
PRIMITIVE ROAD	.....
UNIMPROVED ROAD	.....
GRADED AND DRAINED ROAD	.....
SOIL SURFACE ROAD	.....
GRAVEL OR STONE ROAD	.....
BITUMINOUS ROAD	.....
PAVED ROAD	.....
DIVIDED ROAD	.....
TRUNK HIGHWAY UNDER CONSTRUCTION	.....
ROAD SYSTEM DESIGNATIONS	
INTERSTATE TRUNK HIGHWAY	..... (35)
U.S. NUMBERED TRUNK HIGHWAY	..... (65)
STATE NUMBERED TRUNK HIGHWAY	..... (18)
COUNTY STATE AID HIGHWAY	..... (5)
COUNTY ROAD	..... (101)
COUNTY STATE AID IN ADJOINING COUNTY	..... (24)
RAILROADS	
RAILROAD (ANY NUMBER OF TRACKS) USED BY A SINGLE OPERATING COMPANY OR BY TRAINS OF ANOTHER CARRIER UNDER TRACKAGE RIGHTS	.....
OF SEPARATELY OPERATED COMPANIES ON ADJACENT RIGHTS OF WAY	.....
RAILROAD STATION	.....
GRADE CROSSING	.....
UNDERPASS (HIGHWAY BELOW)	.....
OVERPASS (HIGHWAY ABOVE)	.....
STRUCTURES	
General Symbols (over 20' span)	
HIGHWAY BRIDGE	.....
SMALL BRIDGES CLOSELY SPACED	.....
DRAWBRIDGE	.....
General Symbols (300' span and over)	
GENERAL	.....
DRAWBRIDGE	.....
ARCH	.....
TRUSS	.....
Other Structures	
PEDESTRIAN BRIDGE	.....
DAM WITH ROAD (LARGE SCALE)	.....
DAM WITH ROAD (SMALL SCALE)	.....
DAM WITHOUT ROAD (LARGE SCALE)	.....
DAM WITHOUT ROAD (SMALL SCALE)	.....
LEVEE OR DIKE	.....
LEVEE OR DIKE (WITH ROAD)	.....
MINOR STRUCTURES (5' TO 20' SPAN)	.....
CONCRETE FORD OR DIP	.....
FORD - ROAD ESTABLISHED	.....
BOUNDARIES	
NATIONAL OR STATE	.....
COUNTY	.....
CIVIL TOWNSHIP	.....
CONGRESSIONAL TOWNSHIP (U.S. LAND)	.....
CORPORATE LINE	.....
SECTION LINE	.....
DRAINAGE	
INTERMITTENT STREAM	.....
NARROW STREAM	.....
WIDE STREAMS	.....
MARSH OR SWAMP LAND	.....
DRAINAGE DITCH	.....
LAKE OR POND	.....



UTILITIES:
GOPHER STATE ONE CALL
800-252-1166

THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D. THIS UTILITY QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF C/ASCE 38-22, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA".

	HEI 6150-0002
	Fargo
	P: 701.237.5065 F: 701.237.5101

MINN. PROJ. NO. _____

GOVERNING SPECIFICATIONS

THE 2020 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION", SHALL GOVERN

ALL TRAFFIC CONTROL DEVICES SHALL CONFORM TO THE LATEST MMUTCD, INCLUDING THE LATEST FIELD MANUAL FOR TEMPORARY TRAFFIC CONTROL LAYOUTS.

LIST OF SHEETS

SHEET 1	TITLE SHEET
SHEET 2	STATEMENT OF ESTIMATED QUANTITIES
SHEET 3	CONSTRUCTION NOTES
SHEET 4-6	TABULATIONS
SHEET 7-8	EARTHWORK TABULATION
SHEET 9	SCOPE OF WORK
SHEET 10-15	TYPICAL SECTIONS
SHEET 16-19	SUPERELEVATION
SHEET 20	ADA PEDESTRIAN CROSSING
SHEET 21-40	MNDOT STANDARD DETAILS
SHEET 41-48	REMOVALS
SHEET 49-60	PLAN AND PROFILE
SHEET 61-68	EROSION CONTROL
SHEET 69-71	SWPPP
SHEET 72-75	TRAFFIC CONTROL
SHEET 76-94	SIGNING
SHEET 95-101	PAVEMENT MARKINGS
SHEET 102-113	BOX CULVERTS
SHEET 114-135	CROSS SECTIONS

THIS PLAN CONTAINS 135 SHEETS

DESIGN DESIGNATION

FUNC. CLASS =	RURAL MAJOR COLLECTOR
NO. OF TRAFFIC LANES	2
DRIVING LANE WIDTH	12 FT
SHOULDER WIDTH	VARIES 4 FT TO 8 FT
ADT (2024) =	835
PROJ. ADT (2044)	1,002
PROJ. HCADT (2044)	N/A
HL 93 - DESIGN VEHICLE	
DESIGN SPEED	40, 35, 30, 20 MPH
HEIGHT OF EYE =	3.5'
HEIGHT OF OBJECT =	2.0'
DESIGN SPEED NOT ACHIEVED AT	

DESIGN DESIGNATION FOR: MULTI USE TRAIL

NO. OF TRAFFIC LANES	2
DRIVING LANE WIDTH	5'
SHOULDER WIDTH	2'
DESIGN SPEED	20 MPH
BASED ON SIGHT DISTANCE	STOPPING SIGHT
DESIGN SPEED NOT ACHIEVED AT	N/A

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: _____ DATE: 10/16/2024
TYPED OR PRINTED NAME: ADAM M. RUUD REG. NO. 55094

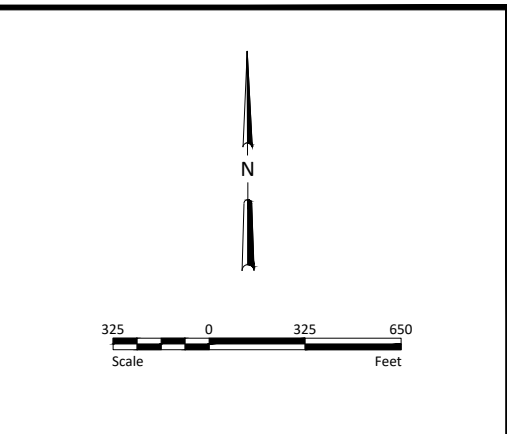
RECOMMENDED FOR APPROVAL:

RANDY GROVES, MURRAY COUNTY ENGINEER DATE _____

DISTRICT STATE AID ENGINEER: REVIEWED FOR COMPLIANCE WITH STATE-AID RULES/POLICY DATE _____

STATE AID ENGINEER: APPROVED FOR STATE AID FUNDING DATE _____

THIS PROJECT HAS BEEN GRANTED A VARIANCE FROM MINNESOTA RULE 8820.9920, DATED NOVEMBER 14, 2023, SO AS TO PERMIT 15 MPH HORIZONTAL CURVE DESIGN SPEED IN LIEU OF THE REQUIRED 40 MPH DESIGN SPEED. THE VARIANCE WAS SIGNED BY: _____ DATE _____



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No.	Revision	Date	By

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Not for Construction



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Date 10/16/2024
Checked by AMR
Scale AS SHOWN

S.A.P. 51-613-009
S.P.

SCOPE OF WORK
HEI 6150-0002

SHEET
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EROSION CONTROL PLAN
 HEI 6150-0002

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