



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
ST. PAUL DISTRICT OFFICE
332 MINNESOTA STREET SUITE E1500
ST. PAUL MINNESOTA 55101

CEMVP-RD

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-2021-02136 [MFR 1 of 1]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

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.

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 1/1a	Non-Jurisdictional	Non-WOTUS
Wetland 6	Non-Jurisdictional	Non-WOTUS
Wetland 7	Non-Jurisdictional	Non-WOTUS
Wetland 9	Non-Jurisdictional	Non-WOTUS
Wetland 11	Non-Jurisdictional	Non-WOTUS
Detention/Irrigation Pond 1	Non-Jurisdictional	Non-WOTUS
Detention/Irrigation Pond 2	Non-Jurisdictional	Non-WOTUS
Detention/Irrigation Pond 3	Non-Jurisdictional	Non-WOTUS
Detention/Irrigation Pond 4	Non-Jurisdictional	Non-WOTUS
Detention/Irrigation Pond 5	Non-Jurisdictional	Non-WOTUS
Detention/Irrigation Pond 6	Non-Jurisdictional	Non-WOTUS
Detention/Irrigation Pond 7	Non-Jurisdictional	Non-WOTUS
Detention/Irrigation Pond 8	Non-Jurisdictional	Non-WOTUS
Detention/Irrigation Pond 9	Non-Jurisdictional	Non-WOTUS
Ditch 1	Non-Jurisdictional	Non-WOTUS
Ephemeral Gully 1	Non-Jurisdictional	Non-WOTUS

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))

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-02136

- 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.

- a. Project Area Size (in acres): 309.6 acres
- b. Location Description: The project/review area is located in Section 19, Township 028N, Range 021W, Washington County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.895720 Longitude: -92.981160
- d. Nearest City or Town: Saint Paul
- e. County: Washington
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]⁶

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

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 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.

⁸ 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

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.

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

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).⁹

329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

⁹ 88 FR 3004 (January 18, 2023)

Detention/Irrigation Ponds 1-9 were identified in the Bailey Nursery Site Wetland Delineation Report as certain artificial lakes and ponds designed to capture stormwater for irrigation purposes. Detention/Irrigation Ponds 1,2, and 9 were constructed in uplands between April 1991 and July 2022. Detention/Irrigation Ponds 3,4,5,6, and 7 were constructed in uplands between December 1985 and April 1991. Detention/Irrigation Pond 8 was constructed in uplands between April 2012 and September 2013. They consisted of graded basins containing inlet culverts and large water pumps for irrigation. On the 30 April 2026 desktop review using NRV data, topographic maps, historic and current aerial imagery, and LIDAR provides evidence that these features were used or created to provide and hold water for the Bailey Nursery. Accordingly, the Corps has determined that Detention/Irrigation ponds 1-9 are excluded from Section 404 jurisdiction under (b)(5) of the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule as Artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.

Ditch 1 was identified in the Bailey Nursery Site Wetland Delineation Report as Shallow excavated ditch located in the east central portion of the site. Ditch 1 was constructed in uplands as a result of grading activities between April 1991 and July 2022. On the 30 April 2026 desktop review using NRV data, topographic maps, historic and current aerial imagery, and LIDAR concurs with the delineation description. Ditch 1 is excluded from Section 404 jurisdiction under (b)(3) of the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule as Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water

Ephemeral Gully 1 was identified in the Bailey Nursery Site Wetland Delineation Report as a wide erosional feature on sloping topography flowing into Wetland 9. Ephemeral Gully 1 was constructed in uplands as a result of grading activities between September 2009 and September 2010 to convey water from the agricultural fields into Wetland 9. On the 30 April 2026 desktop review using NRV data, topographic maps, historic and current aerial imagery, and LIDAR concurs with the delineation description. Ephemeral Gully 1 is excluded from Section 404 jurisdiction under (b)(8) of the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule as Swales and erosional features (e.g., gullies, small washes) characterized by low volume, infrequent, or short duration flow.

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-02136

- 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).

Wetlands 1/1a, 6, 7, 9, and 11 are not TNWs, territorial seas, or interstate waters and are therefore not (a)(1) waters. A 30 April 2026 desktop review using NRV data including topographic maps, aerial imagery and LIDAR indicates that these features are depressional areas surrounded entirely by uplands. The wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. These features are nontidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

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. Desktop Office Evaluation completed 30 April 2026.
 - b. National Regulatory Viewer (NRV) Minnesota data layers including: 3DEP Slope, DEM, 2-ft contours and Hillshade, USFWS NWI, NHD, USDA-NRCS Soils Survey.
 - c. Bailey Nursery Site Wetland Delineation Report dated 13 October 2021, submitted on behalf of Bailey Nurseries, Inc.
 - d. Google Earth Areal Imagery Accessed 13 May 2026.

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.

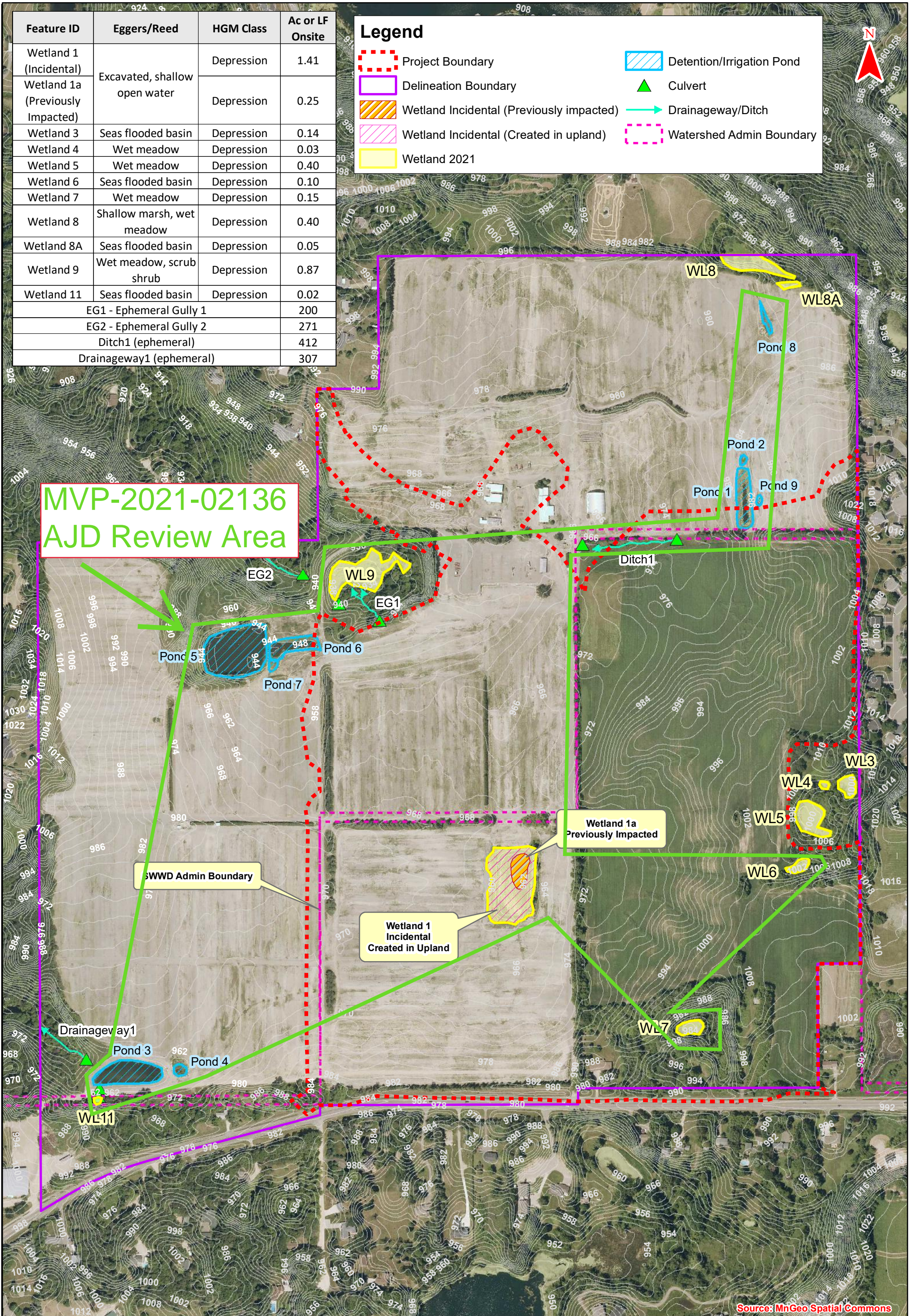
Feature ID	Eggers/Reed	HGM Class	Ac or LF Onsite
Wetland 1 (Incidental)	Excavated, shallow open water	Depression	1.41
Wetland 1a (Previously Impacted)		Depression	0.25
Wetland 3	Seas flooded basin	Depression	0.14
Wetland 4	Wet meadow	Depression	0.03
Wetland 5	Wet meadow	Depression	0.40
Wetland 6	Seas flooded basin	Depression	0.10
Wetland 7	Wet meadow	Depression	0.15
Wetland 8	Shallow marsh, wet meadow	Depression	0.40
Wetland 8A	Seas flooded basin	Depression	0.05
Wetland 9	Wet meadow, scrub shrub	Depression	0.87
Wetland 11	Seas flooded basin	Depression	0.02
EG1 - Ephemeral Gully 1			200
EG2 - Ephemeral Gully 2			271
Ditch1 (ephemeral)			412
Drainageway1 (ephemeral)			307

Legend

- Project Boundary
- Delineation Boundary
- Wetland Incidental (Previously impacted)
- Wetland Incidental (Created in upland)
- Wetland 2021
- Detention/Irrigation Pond
- ▲ Culvert
- Drainageway/Ditch
- Watershed Admin Boundary



MVP-2021-02136
AJD Review Area



Source: MnGeo Spatial Commons



Figure 2 - Existing Conditions (2023 FSA)

**Bailey West (KES 2025-025/026)
Newport and Woodbury, Minnesota**

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.