

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2022-01036-SSC

MVP

May 15, 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-2022-01036-SSC, 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

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

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2022-01036-SSC

Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended, 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
WL4 (2025)	Non-Jurisdictional	N/A

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. January 2023 Rule preamble at 88 FR 3090
- 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)
- f. EPA Memorandum on LRB-2021-01386

3. REVIEW AREA.

- a. Project Area Size (in acres): 124 acres
- b. Location Description: The project/review area is located in Section 14, Township 031N, Range 022W, Anoka County, Minnesota.

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2022-01036-SSC

- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.179050 Longitude: -93.045540
- d. Nearest City or Town: Lino Lakes
- e. County: Anoka
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2022-01036-SSC	AJD	Wetlands 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, and 13 were determined to not be jurisdictional.

- 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.

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2022-01036-SSC

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).⁸ N/A
- 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).

Wetland 4 is not a TNW, territorial sea, or interstate water and is therefore not an (a)(1) water. Wetland 4 was evaluated as a potential (a)(4) water but does not have a continuous surface connection to a jurisdictional water.

Wetland 4 is located along the northern boundary of the project site. Wetland 4 flows outside of the project area to the north through a culvert underneath Rehbein Street to an off-site wetland. The off-site wetland is in a topographically low area (MnTOPO), is located within hydric soils (Web Soil Survey), and is

⁸ 88 FR 3004 (January 18, 2023)

MVP

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mapped on the National Wetland Inventory (NWI). Historic aerials (Minnesota Historical Aerial Photographs Online [MHAPO], 1938) appear to show that Wetland 4 was historically one wetland with the off-site wetland area north of Rehbein Street. For this reason, Wetland 4 and the off-site wetland north of Rehbein Street are being evaluated as a single unit for adjacency. The off-site wetland between Rehbein Street and 77th Street East is surrounded by uplands as shown on 2-foot LiDAR contours (MnTOPO). The NWI maps the off-site wetland but no other wetlands connections to the west, north, or east. The National Hydrography Dataset (NHD) was also reviewed and does not map the off-site wetland or any other surface connections in this area. The off-site wetland flows into a culvert, a discrete feature, to the north (under 77th Street East) which does not directly abut a covered water. For this reason, Wetland 4 does not have continuous surface connection to a relatively permanent jurisdictional water.

Wetland 4 does 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 an (a)(4) adjacent wetland; therefore, Wetland 4 is a non-tidal wetland that is 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. Leibel Property Wetland Delineation Report dated June 13, 2022
 - b. United States Geological Survey, National Hydrography Dataset, accessed on May 6, 2025
 - c. United States Fish and Wildlife Service, National Wetland Inventory, accessed May 6, 2025
 - d. Minnesota Department of Natural Resources, MnTOPO web application, accessed May 6, 2025
 - e. United States Department of Natural Resources, Natural Resources Conservation Service, Web Soil Survey, accessed May 6, 2025
 - f. University of Minnesota Libraries, Minnesota Historical Aerial Photographs Online, accessed May 6, 2025

10. OTHER SUPPORTING INFORMATION. N/A

MVP

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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.

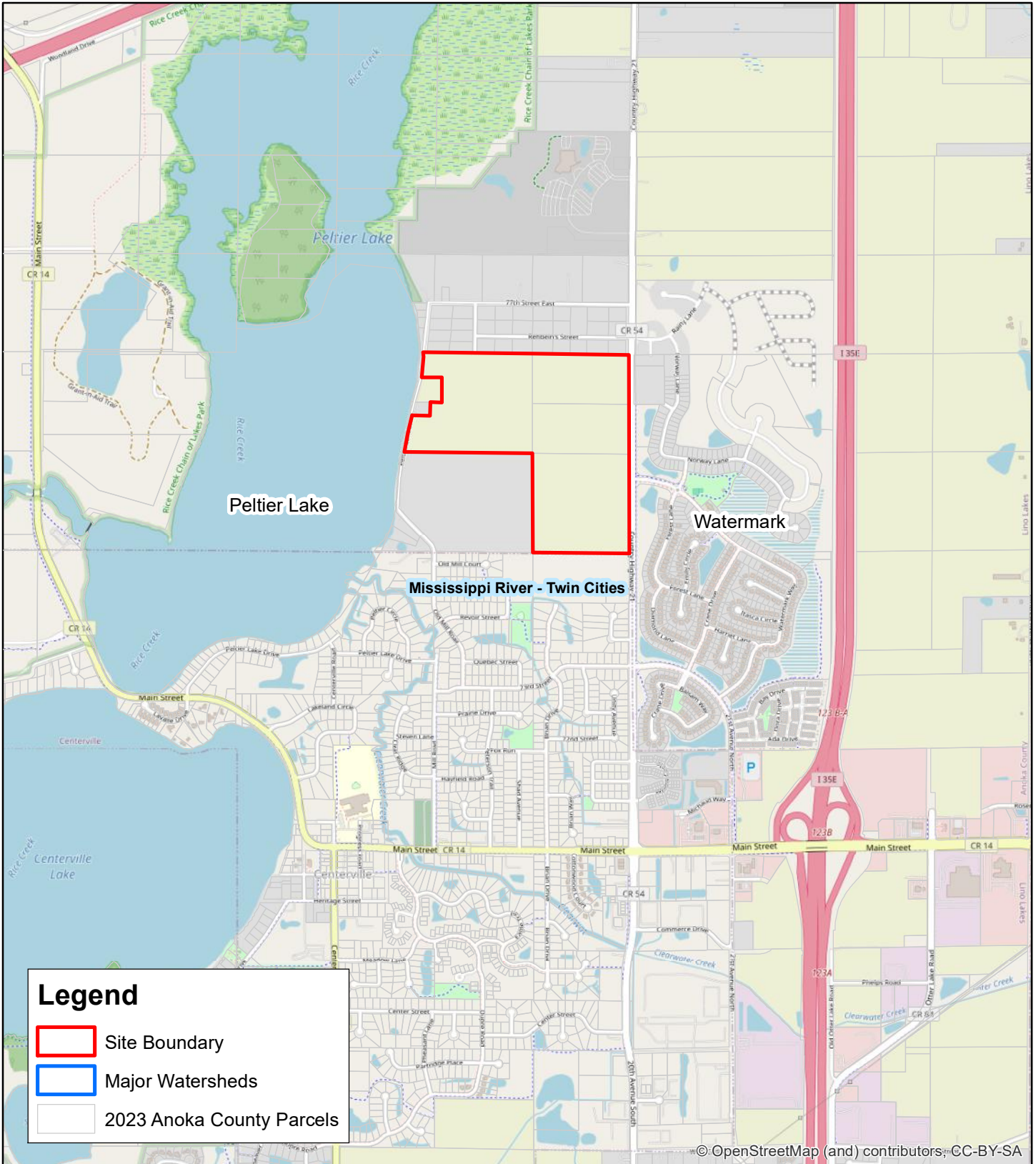




Figure 1 - Site Location & Major Watershed




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Source: ESRI Streets Basemap

N



0 2,500
Feet

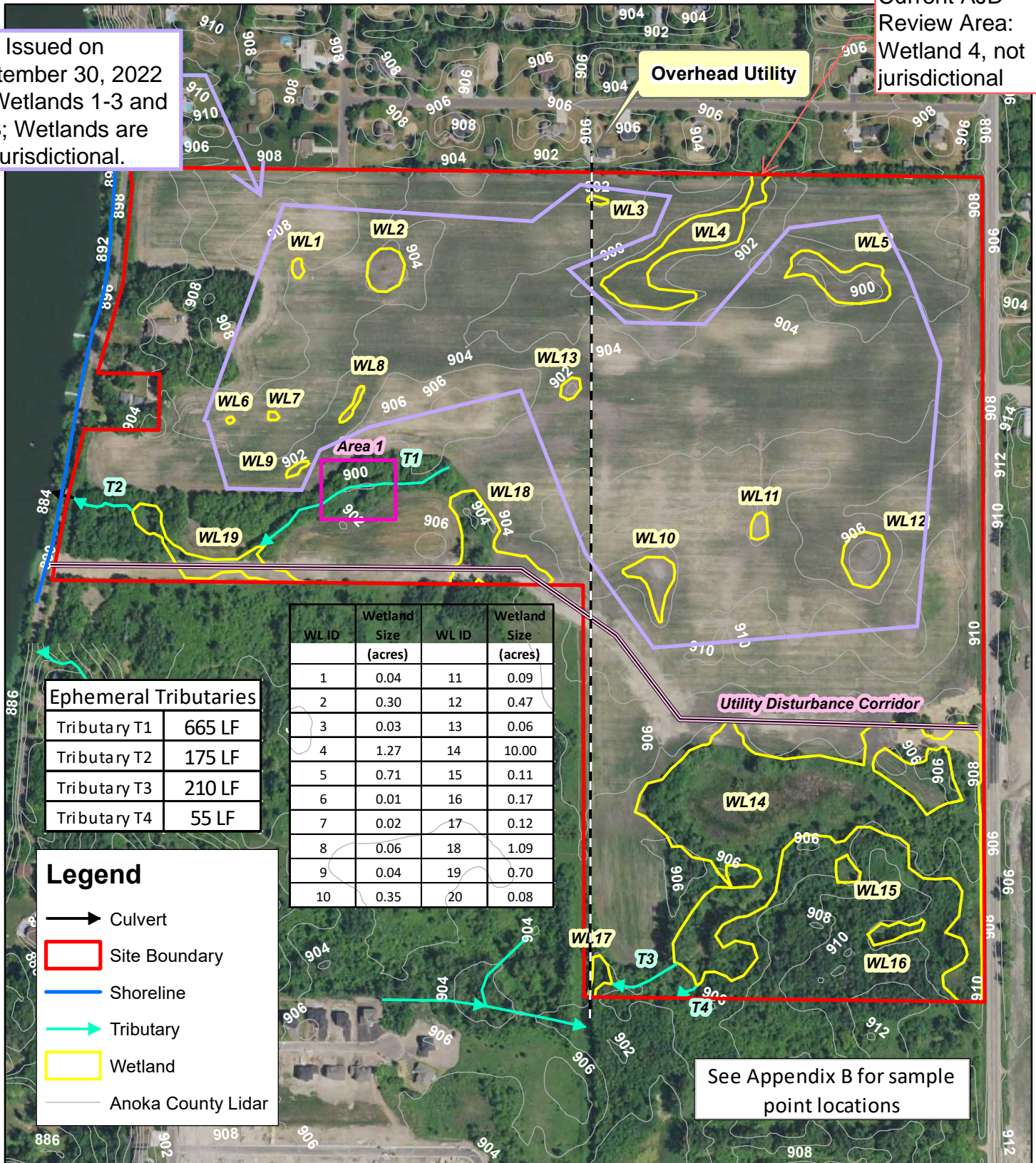


Peltier Ponds (KES 2021-242)
Lino Lakes, Minnesota

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

AJD Issued on September 30, 2022 for Wetlands 1-3 and 5-13; Wetlands are not jurisdictional.

Current AJD Review Area: Wetland 4, not jurisdictional



TEP Review Revised Figure 2 - Existing Conditions (2021 FSA Photo) 7-21-2022

Leibel Property (KES 2021-242)
Lino Lakes, Minnesota

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

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