



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

MVP-RD

[10 June 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-2025-00559-TMS MFR 1 of 1](#)]

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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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).
 - i. [Ditch 1 (0.03 acre), non-jurisdictional]

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 is approximately 0.03 acre in size and is located at Lat. 46.854260, Long. -92.090255 in Rice Lake, St. Louis County, Minnesota. The review area is surrounded by East Calvary Road to the north, Kolstad Avenue to the east, uplands to the west, and an undeveloped forested wetland area to the south.]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Lake Superior]⁵

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [Ditch 1 appears to drain via culvert to the east under Kolstad Avenue to a roadside ditch, then drains via culvert

⁵ 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.

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to the north under East Calvary Road to another roadside ditch, which drains to the east then north into Amity Creek, which drains into Lester River, which then drains into Lake Superior.]

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.
 - 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]

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.

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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 [Ditch 1 is a manmade ditch excavated in dry land and does not carry relatively permanent flow, therefore meeting the (b)(3) exclusion under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule. A review of topographical maps, digital elevation modeling, and photographs of the ditch included in the delineation report indicate Ditch 1 was excavated and graded out of uplands during construction of Karlstad Avenue to direct runoff away from the road. Ditch 1’s bottom elevation is lined with grassy and herbaceous vegetation, which indicates that the ditch does not appear to experience relatively permanent flow.]

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. [AJD Request, Kramer, Leas, DeLeo, signed November 11, 2024, and received May 21, 2025]

b. [Wetland Delineation Report, Kramer, Leas, DeLeo, dated August 4, 2024]

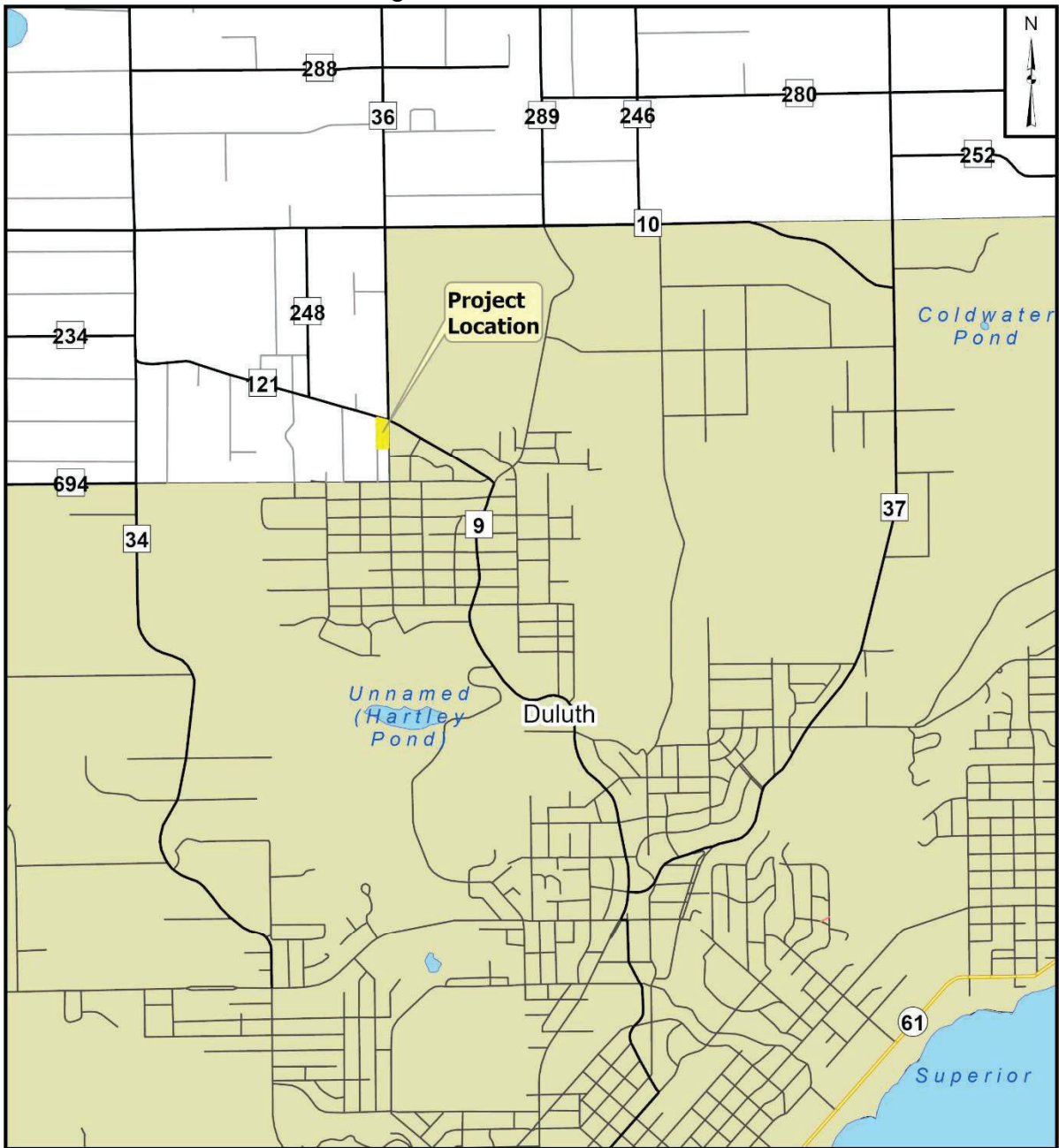
c. [National Regulatory Viewer, 2023 data sources]

d. [Desktop Evaluation, June 6, 2025]

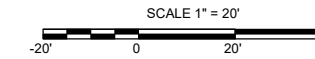
10. OTHER SUPPORTING INFORMATION. [N/A]

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.

⁸ 88 FR 3004 (January 18, 2023)



<p>0 0.5 1 Miles</p>	<p>Legend</p> <ul style="list-style-type: none"> — Interstate Trunk Highway — U.S. Trunk Highway — MN Trunk Highway — Municipal Road — Township or Other Road — Ramp City Lakes Boundary 	<div style="text-align: center;">  <p>KLD KRAMER LEAS DELEO SURVEYING • ENGINEERING • PLANNING</p> </div> <p>Map is for visual Purposes only. Data sources: MN DNR/LMIC</p> <p>Date: 8/1/2024</p>
<p>Client/Job Number: Overland Engineering</p> <p>Prepared By: Kyle Cherne</p>		



**EAST CALVARY ROAD
(CSAH 121)**

ARNO

UKEE AVE

KOLSTAD AVE

**PROPOSED
DOLLAR GENERAL
STORE**

FFE=1316.5'

WETLAND ENCROACHMENT = 27 SF

**AJD Review Area
Ditch 1**

WETLAND ENCROACHMENT = 1424 SF

GRADING WITHIN THE
WETLAND AREA SHALL BE
LIMITED TO THE DE-MINIMUS
ALLOWANCE OF 1/4 ACRE
AS SHOWN ON THE
APPROVED PERMIT.

I hereby certify that this plan, specification, or report 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.
Print Name: RODNEY PARROTT
Signature: [Signature]
Date: 9-17-25 License #: 49682

LEGEND

- EXISTING DELINEATED WETLAND LIMITS
- PROPOSED WETLAND DISTURBANCE = 1,500 SF (1,451 ROUNDED UP TO THE NEAREST 100 SF)

NO GRADING
WITHIN
WETLAND

P:\Projects\11-1001 Overland Properties\11-1001 Duluth MN Rice Lake\Drawings\DG Rice Lake MN Site Plans\5-30-25.dwg 05/30/2025 01:37 PM



NO.	DATE	DESCRIPTION	BY

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**DOLLAR GENERAL
RICE LAKE, MN
WETLAND EXHIBIT**

Figure 8: Wetland Location Map
 Background: 2021 Color Aerial Photo (FSA)

