



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

MVP-2022-02196-MWM (SAP 063-650-011)

12 JUNE 2024

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) ,<sup>1</sup> 2022-02196-MWM. 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.<sup>2</sup> 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.<sup>3</sup>

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

1. SUMMARY OF CONCLUSIONS.

---

<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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), 2022-02196-MWM (SAP 063-650-011)

- 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. Wetland 1, 0.01 acre. Excluded water, not a Water of the US.
  - ii. Wetland 2, 0.05 acre. Excluded water, not a Water of the US.
  - iii. Wetland 3, 0.16 acre. Excluded water, not a Water of the US.
  - iv. Wetland 4a, 0.02 acre. Excluded water, not a Water of the US.
  - v. Wetland 4b, 0.36 acre. Excluded water, not a Water of the US.
  - vi. Wetland 5, 0.002 acre. Excluded water, not a Water of the US.
  - vii. Wetland 5a, 0.024 acre. Excluded water, not a Water of the US.
  - viii. Wetland 5b, 0.02 acre. Excluded water, not a Water of the US.
  - ix. Wetland 6, 0.04 acre. Excluded water, not a Water of the US.
  - x. Wetland 7, 0.07 acre. Excluded water, not a Water of the US.
  - xi. Wetland 8a, 0.02 acre. Excluded water, not a Water of the US.
  - xii. Wetland 8b, 0.03 acre. Excluded water, not a Water of the US.

## 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., 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is limited to the wetlands (wet ditches) as identified in Section 1.a and on the attached figures, labeled MVP-2022-02196-MWM. The review area is located in Sections 1, 2, 11, and 12, Township 150 North, Range 41 West in Red Lake County, Minnesota. The AJD review area is between Latitude: 47.8426, Longitude: -95.8587 on the north side of the review area and Latitude: 47.8190, Longitude -95.8587 on the south side of the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A <sup>5</sup>

---

<sup>5</sup> 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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2022-02196-MWM (SAP 063-650-011)

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup> 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

---

<sup>6</sup> 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.

<sup>7</sup> 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), 2022-02196-MWM (SAP 063-650-011)

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).<sup>8</sup>

The features within the review area include Wetland 1-3, 4a, 4b, 5a, 5b, 5-7, 8a, and 8b, as shown on the attached figures labeled 2022-02196-MWM: Figure 1 of 6, which are excluded waters. The features fit under the definition of a b(3) water as they were created by excavating dry land and the features drain only dry land and they don't carry relatively permanent flow, nor are they relocated tributaries.

The wetlands are all wet ditches located on fill placed for the construction of County State Aid (CSAH) 5. The wetland delineation completed by Moore Engineering, Inc. identifies shallow topsoil and disturbed soils. Additionally, the delineation notes that each feature was located within the excavated ditch bottom.

Although not a Minnesota Public Watercourse, the National Wetland Inventory (NWI) layer on the National Regulatory Viewer (NRV) identifies a linear ditch feature transecting the southern portion of the review area overlapping the area of Wetland 5a and 5b. No other aquatic resources are identified on the NWI layer nor are there any MN Public Waters within the review area. Wetland 5a and 5b are connected via culvert under CSAH 5. The oldest aerial photo available on Google Earth from 1991 shows signs of the ditch feature. However, a USGS topographic map from 1919 shows the road present without the ditch feature. Concluding that when the roadway and associated roadside ditch were constructed, and the area was dry land.

Other resources reviewed to support this determination include 3DEP Digital Elevation Model (DEM), MNDNR Hillshade from 2016, and 2-foot contours from MN accessed on the NRV.

- 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

---

<sup>8</sup> 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2022-02196-MWM (SAP 063-650-011)

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. Wetland Delineation Report prepared by Moore Engineering, Inc. (Greg Meyer).
- b. NWI, 3DEP Digital Elevation Model (DEM), MNDNR Hillshade from 2016, and 2-foot contours from MN accessed on the NRV.
- c. Google Earth Imagery from 1991.
- d. USGS Topographic Map from 1919.

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.



2022-02196-MWM  
Figure 1 of 6

Wetland 1  
Type 1  
PEM1Ax  
0.01 ac

Wetland 2  
Type 1  
PEM1Ax  
0.05 ac

Wetland 3  
Type 1  
PEM1Ax  
0.16 ac

Wetland 4a  
Type 1  
PEM1Ax  
0.02 ac

Wetland 5  
Type 1  
PEM1Ax  
0.01 ac

Wetland 4b  
Type 1  
PEM1Ax  
0.36 ac

Wetland 5a  
Type 1  
PEM1A  
0.02 ac

Wetland 5b  
Type 1  
PEM1A  
0.02 ac

Wetland 6  
Type 1  
PEM1Ax  
0.04 ac

Wetland 8a  
Type 1  
PEM1Ax  
0.02 ac

Wetland 7  
Type 1  
PEM1Ax  
0.07 ac

Wetland 8b  
Type 1  
PEM1Ax  
0.03 ac

Source: 2021 Aerial Imagery from MNGEO

0 500 1,000  
N Feet

Project Area  
Delineated Wetland

## Delineated Features - Overview

CSAH 5 Reconstruction

Figure 5a

Client: Red Lake County








2022-02196-MWM  
Figure 2 of 6

2 1  
Wetland 1

4 3  
Wetland 2

Wetland 2

-  Project Area
-  Delineated Wetland
-  Observation Point

Source: 2021 Aerial Imagery from MNGEO

0 100 200  
N Feet



2022-02196-MWM  
Figure 3 of 6



**Delineated Features - Wetland 3, 4a, 4b, and 5**  
CSAH 5 Reconstruction

**Figure 5c**  
Client: Red Lake County





2022-02196-MWM  
Figure 4 of 6

10 Wetland 4a  
9  
8 Wetland 5  
7  
11 12

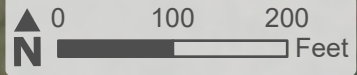
Wetland 4b

Project Area

Delineated Wetland

Observation Point

Source: 2021 Aerial Imagery from MNGEO



**Delineated Features - Wetland 4b**  
CSAH 5 Reconstruction

**Figure 5d**  
Client: Red Lake County



Created By: matt summers Date Exported: 10/28/2022 2:01 PM T:\Projects\22400\224510\_AcPro\Red Lake CSAH 5 Wetlands\Red Lake CSAH 5 Wetlands.aprx

2022-02196-MWM  
Figure 5 of 6

Wetland 5a  
13 15  
14 16  
Wetland 5b

17  
18  
Wetland 6

20 19  
Wetland 7  
Wetland 8a

- Project Area
- Delineated Wetland
- Observation Point

Source: 2021 Aerial Imagery from MNGEO

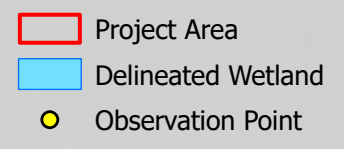
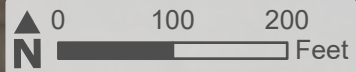
0 100 200  
N Feet



2022-02196-MWM  
Figure 6 of 6



Source: 2021 Aerial Imagery from MNGEO



**Delineated Features - Wetland 7, 8a, and 8b**  
CSAH 5 Reconstruction

**Figure 5f**  
Client: Red Lake County

