



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

MVP

25 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) ,<sup>1</sup> MVP-2023-00693-MJG, 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.

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<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.

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- 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 12A, 0.03-acre, non-jurisdictional
  - ii. Wetland 12B, 0.70-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 limited to Wetland 12A and Wetland 12B and is identified by the red polygon on the enclosed figures labeled MVP-2017-01826-MJG AJD Figures Page 1 of 1. Wetland 12A and Wetland 12B are centrally located at latitude 44.457050, longitude -93.592126. The review area is located in Section 4, Township 111 North, Range 23 West, Le Sueur County, Minnesota. The review areas consist of wetlands, utility right of way, and agricultural land, and the surrounding areas consist of uplands, roadways, agricultural land, utility lines, residential and development. There are no other JDs associated with the review area.
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

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6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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
  - g. Additional Waters (a)(5): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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<sup>5</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>6</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.

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- 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>7</sup> 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 12A and Wetland 12B are not TNWs, territorial seas, or intrastate waters, and therefore, are not (a)(1) waters. Wetland 12A and Wetland 12B do not physically abut a paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. The National Wetlands Inventory (NWI) does not display wetlands within the review area. The National Hydrography Dataset (NHD), USGS topographic maps, and aerial maps do not show any tributaries that abut Wetland 12A and Wetland 12B. Based on topographic, hillshade, and elevation modeling mapping, these wetlands are depressional, surrounded by upland, and do not abut a tributary. The closest tributary is County Ditch 22 (intermittent) located approximately 0.12 miles east of Wetland 12A. Wetland 12A and Wetland 12B do not abut a relatively permanent water, and as such, cannot be evaluated as (a)(4) adjacent wetlands. Therefore, Wetland 12A and Wetland 12B 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. Office evaluation and virtual field visit completed on June 25, 2025.
  - b. “Wetland Delineation Report, Prepared For: Northern Natural Gas” dated December 20, 2024.
  - c. National Regulatory Viewer accessed June 25, 2025.

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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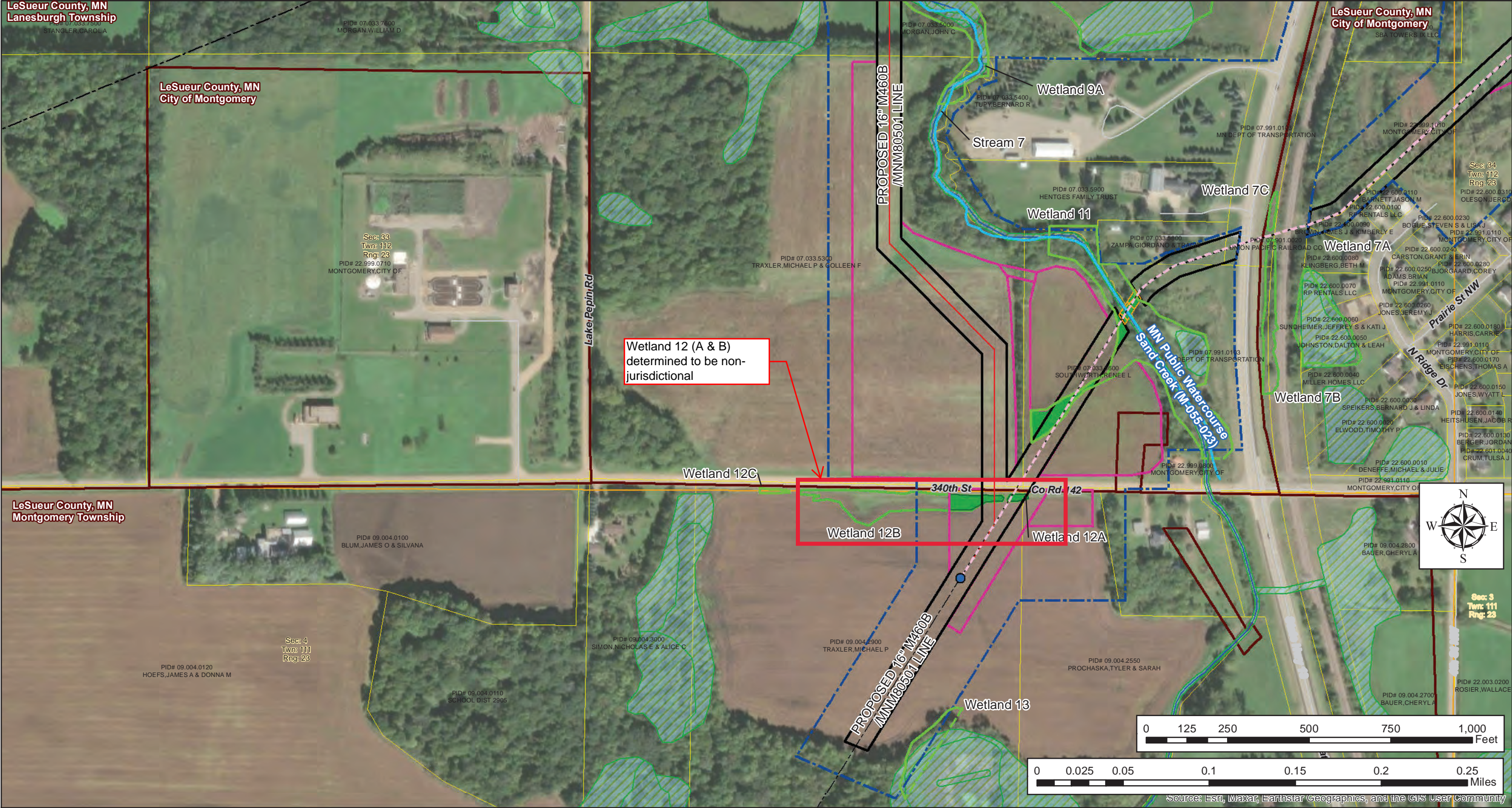
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- d. USGS 3D Elevation Program (3DEP) Bare Earth DEM Dynamic service, Hillshade, DEM and 2-ft Contours, accessed June 25, 2025.
- e. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. (<http://www.fws.gov/wetlands/>) accessed June 25, 2025.
- f. USDA NRCS Soil Survey USDA-NCSS SSURGO and STATGO accessed June 25, 2025.
- g. Google Earth Aerial Imagery, year 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.





**Legend**

- Environmental Clearance Boundary
- NNG Existing Gas Pipeline
- NNG Proposed Gas Pipeline
- NNG Pipeline to be Removed
- Temporary Workspace
- Extra Temporary Workspace
- Access Road
- PLSS Section Lines
- Parcels
- Proposed Line Stop
- HDD Drill Location

- Municipal Boundary
- MN Public Watercourse
- NWI Wetlands
- Stream
- Delineated Wetland Boundary
- Wetland Extends Beyond ECB
- Impacted Wetland Area



**Northern  
Natural Gas**

A BERKSHIRE HATHAWAY ENERGY COMPANY

Northern Natural Gas  
M460B-20-Repl-MP 79.6-79.9 Welcome  
Work Order# 01144951  
Figure 5d – Reduced Wetland & Stream Impacts AR-04  
Le Sueur County, Minnesota  
04/17/2025

