



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

MVP-2025-00064-MMP (SAP 070-678-005)

March 13, 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-2025-00064-MMP. 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. Offsite Wetland 1, 0.03 acre. Non-jurisdictional.
  - ii. Wetland 2A, 0.25 acre. Non-jurisdictional.
  - iii. Wetland 2B, 0.04 acre. Excluded feature
  - iv. Wetland 2C, 0.05 acre. Excluded feature.
  - v. Wetland 3A, 0.16 acre. Non-jurisdictional.
  - vi. Wetland 3B, 0.04 acre. Non-jurisdictional.
  - vii. Wetland 4, 0.24 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)

3. REVIEW AREA. The review area for this determination includes two roadside ditches labeled as Wetland 2B and Wetland 2C and five non-adjacent wetlands labeled as Offsite Wetland 1, Wetland 2A, Wetland 3A, Wetland 3B, and Wetland 4 as identified on the enclosed figures labeled MVP-2025-00064-MMP Figures 1-2 of 2. The review area is located in Sections 13, 18, 22, 24, Township 11 North, Range 23 West, Jackson Township, Scott County, Minnesota.

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 WATERS<sup>5</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

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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.

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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

- 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

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<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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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>

The excluded features identified in the review area include Wetland 2B and 2C. These features were constructed in upland, drain only upland, do not carry relatively permanent flow, and are not relocated tributaries.

Wetland 2B and 2C are roadside ditches that were constructed in uplands to convey runoff along County State Aid Highway (CSAH 78). This was confirmed by reviewing the wetland delineation report and desktop resources, including the USA Soils Hydric Class and the National Wetland Inventory (NWI), which do not identify wetlands or hydric soils in the area of Wetland 2B and 2C. Each of these features are surrounded by upland and were constructed in upland. Other resources reviewed to support this determination include 3DEP Hillshade, 3DEP Digital Elevation Model (DEM), 3DEP 2ft and 5ft Contour maps, and USGS Topographic Maps from 1905, 1958, 2013, and 2022.

Considering the information above, these features have been determined to be Paragraph (b)(3) excluded ditches and are not subject to Section 404 of the Clean Water Act (CWA).

- 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 1, 2A, 3A, 3B, and 4 are not TNWs, territorial seas, or interstate waters and are therefore not an (a)(1) waters. The nearest TNW to the review area (Minnesota River) is approximately 2.7 miles northwest.

The boundaries of Wetland 2A, 3A, and 4 were delineated in the October 2024 Wetland Delineation report completed by Bolton and Menk, Inc. These features are surrounded by upland. The National Wetland Inventory (NWI) has mapped these features as emergent wetlands but does not denote a continuous surface connection to another aquatic resource. Desktop resources like 3DEP 2ft and 5ft Contours and 3DEP Digital Elevation Model (DEM) support Wetland 2A, 3A, and 4 as depressional basins and support that Wetland 2A and 3A have with no continuous surface connection to a jurisdictional aquatic resource or a downstream TNW. In a review of LiDAR imagery, a channelized depression is

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<sup>7</sup> 88 FR 3004 (January 18, 2023)57

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near Wetland 4. This feature dissipates before it reaches a downstream TNW. A culvert is present in the northeast area of Wetland 2A connecting to Wetland 2B 2C, and 2D. Wetland 2D was identified on the wetland delineation but its jurisdictional status is not being considered. Wetland 2D continues past the review area. The NWI maps an emergent freshwater pond which is connected to the area of Wetland 2D. Aerial photos indicate this pond is associated with a golf course which has disturbed the landscape with multiple ponds connected via culvert. Desktop resources like the NWI, 3DEP Hillshade, and 3DEP 2-ft and 5-ft Contours supports the presence of these features, and the desktop resources indicate that beyond the golf course and pond system, a continuous surface connection to a downstream TNW does not occur. A culvert is present connecting Wetland 3A to 3B.

Wetland 1 and 3B continue outside of the review area, the extent of Wetland 3B was not denoted in the wetland delineation. NWI has mapped Wetland 3B as an emergent and forested feature but does not denote a continuous surface connection to another aquatic resource. Aerial photos from 1947, 1953, and 1957 show this feature in a similar footprint as it is existing. Desktop resources like 2DEP 2ft and 5ft Contours and 3DEP Digital Elevation Model (DEM) support Wetland 3B as depressional basins with no continuous surface connection to a jurisdictional aquatic resource or a downstream TNW. The NWI has mapped Wetland 1 as an emergent wetland but does not denote a continuous surface water connection to another aquatic resource. In a review of aerial photos from 1947, 1957, 1972, 1984, and 1991, wetness signatures are present, the setting appears to have been consistent since 1991. Desktop resources like 2DEP 2ft and 5ft Contours and 3DEP Digital Elevation Model (DEM) support Wetland 1 as depressional basins with no continuous surface connection to a jurisdictional aquatic resource or a downstream TNW.

The areas labeled Wetlands 1, 2A, 3A, 3B, and 4 were evaluated as a potential (a)(4) waters but they do not have a continuous surface connection to a jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, Wetlands 1, 2A, 3A, 3B, and 4 are non-tidal waters that 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.

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- a. Wetland Delineation Report completed by Bolton and Menk, Inc. (Addeline Theis Paradis) on October 7, 2024.
- b. USGS Topographic Maps from 1905, 1958, 2013, and 2022.
- c. Historic Aerials by Netronline from 1947, 1953, 1957, 1966, 1972, 1973, 1984, 1991, 2003, 2008, 2009, 2010, 2013, 2015, 2017, 2019, and 2021.
- d. 3DEP Hillshade, USA Soils Hydric Class, 3DEP Digital Elevation Model (DEM), NWI, MN Contours – 2ft, and 3DEP 2-ft and 5-ft Contours accessed on the National Regulatory Viewer (NRV).

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.







