



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

MVP-2025-00354-MMP

November 26, 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> 2025-00354-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. Wetland 1, 0.01 acre.
  - ii. Wetland 2, 0.02 acre.
  - iii. Wetland 18, 0.02 acre.
  - iv. Wetland 19, 0.04 acre.
  - v. Wetland 25, 0.58 acre.
  - vi. Wetland 28, 0.09 acre.
  - vii. Wetland 29, 0.04 acre.
  - viii. Wetland 30, 0.07 acre.

## 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 for this determination includes 10 wetlands, as identified on the enclosed figures labeled MVP-2025-00354-MMP. The review area is located in Sections 22, 23, 27, 28, and 33, Township 148 North, Range 32 North. The western terminus of the review area is at Latitude 47.5992 and Longitude -94.8851 and the eastern terminus of the review area is at Latitude: 47.5970 and Longitude: -97.7692; in Turtle Lake and Port Hope Townships, Beltrami County, Minnesota.

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

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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 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

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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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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>7</sup>

The excluded waters within the review include Wetlands 18, 19, 25, and 29, as shown on the attached figures. These features are being evaluated as excluded ditches because they meet the definition of excluded waters under paragraph b(3) as the ditch features were constructed in upland, drain only upland, do not carry a relatively permanent flow of water, and are not relocated tributaries.

Wetlands 18, 19, 25, and 29 are linear roadside ditches associated with County State Aid Highway (CSAH) 22. Based on the wetland delineation completed by Northern Engineering & Consulting, on behalf of the applicant, and desktop resources, hydric soil does not surround these wetlands. Wetlands 18, 19, 25, and 29 are surrounded by upland, were constructed in upland, and do not carry relatively permanent flow. In a review of aerial photos, CSAH 22 was constructed within this footprint since at least 1972.

Considering the information above, Wetlands 18, 19, 25, and 29 have been determined to be excluded waters 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).

Wetlands 1, 2, 28, and 30 are not traditionally navigable waters (TNW), territorial seas, or interstate waters and therefore are not (a)(1) waters.

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

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Wetlands 1 and 2 are connected via culvert under CSAH 22, both are depressional wetlands that continue beyond the review area. The National Wetland Inventory, aerial photos, contour maps, and LiDAR data show a transition to upland surrounding the wetlands. Wetlands 1 and 2 are approximately 8-10 feet lower in elevation than the surrounding elevation. These wetlands are located approximately 0.2 miles from the nearest requisite jurisdictional water, Movil Lake. Therefore, Wetlands 1 and 2 do not physically abut a relatively permanent paragraph (a)(2) impoundment or jurisdictional (a)(3) tributary.

Wetland 28 is a depressional wetland; the southern boundary continues beyond the review area. The NWI, aerial photos, contour maps, and LiDAR data show a transition to upland surrounding the wetlands. No culverts are identified on the wetland delineation, visible on desktop resources, and were not observed by Corps staff during a site visit. Wetland 28 is approximately 2-3 feet lower in elevation than the surrounding elevation. This wetland is located approximately 0.2 miles from the nearest requisite jurisdictional water, Turtle River. Therefore, Wetland 28 does not physically abut a relatively permanent paragraph (a)(2) impoundment or jurisdictional (a)(3) tributary.

Wetland 30 is a depressional wetland; the southern boundary continues beyond the review area. Aerial photos, contour maps, and LiDAR data show a transition to upland surrounding the wetlands. The NWI nor USA Hydric Soils Class show hydric soil within or surrounding the wetland. No culverts are identified on the wetland delineation or visible on desktop resources. Wetland 30 is approximately 3-4 feet lower in elevation than the surrounding elevation. This wetland is located approximately 250 feet from the nearest requisite jurisdictional water, Turtle River. Therefore, Wetland 30 does not physically abut a relatively permanent paragraph (a)(2) impoundment or jurisdictional (a)(3) tributary.

Wetlands 1, 2, 28, and 30 are non-tidal wetlands that do not abut a relatively permanent jurisdictional water and, as such, do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands 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 conducted by Northern Engineering & Consulting in October of 2021.
- b. National Wetland Inventory, 3DEP 2-ft, 5-ft, 10-ft, and 25-ft Contour maps and MNDNR Hillshade – 2016 accessed on the National Regulatory Viewer.
- c. Aerial photos from 1972, 1981, 1991, 2008, 2015, and 2021 access on Historic Aerials by Netronline
- d. Google Earth Images from 1991, 2003, 2009, 2011, 2015, 2020, and 2023.
- e. Site visit conducted by Corps staff on July 24, 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.



# SAP 004-622-027 PART OF BELTRAMI COUNTY LOCATION MAP

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## SCALE

INDEX MAP ..... (1" = 0.5MI.)





































































