



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

MVP

February 3, 2026

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-2025-01312-RMH 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. SUMMARY OF CONCLUSIONS.

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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- 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).

Name of Aquatic Resource	Jurisdictional or Non-jurisdictional
Wetland A (0.29 acres)	Non-Jurisdictional
Wetland B (0.24 acres)	Non-Jurisdictional
Wetland C (0.25 acres)	Non-Jurisdictional
Ditch 34 (5,856 ln ft)	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. __, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. [The review area includes four aquatic resource areas identified as Wetlands A, B, C and Ditch 34 in the enclosed project figures. The nearest tributary is unnamed and is located just north of the review area on the other side of US Highway 12. There are no other JDs associated with this review area.](#)

- a. Location Description: The project/review area is located in Sections 3 and 4, Township 118 North, Range 25 West
- b. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.059588 Longitude: -93.825744
- c. Nearest City or Town: Delano
- d. County: Wright
- e. State: Minnesota
- f. Other associated Jurisdictional Determinations (including outcomes) NA

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 WATERS⁵: 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 10.⁶ 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

⁵ 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.

⁶ 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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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 within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁷ 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).

The aquatic resources within the review area identified as Wetlands A, B, and C are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. The aquatic resources are not adjacent to (a)(1) or (a)(2) waters nor physically abut a relatively permanent paragraph (a)(2) impoundment or a

⁷ 88 FR 3004 (January 18, 2023)

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jurisdictional (a)(3) tributary. They are not separated from jurisdictional waters by a natural berm, bank, dune, or similar natural landform. This determination is supported by the national wetland and hydrography datasets which do not identify any aquatic resources or other potential connections (either surface or subsurface) between the wetlands or any other waters. Topographic maps, maps, 3DEP 2-ft contours, 3DEP Digital Elevation Model, 3DEP Hillshade and Google Earth aerial imagery indicates that the wetlands are depressional wetlands, surrounded by upland.

The wetlands are non-tidal wetlands that do not have a continuous surface connection to 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.

Ditch 34 was evaluated as a potential (a)(3) water and was found to not meet this category because it does not meet the relatively permanent standard. A review of historic imagery did not support evidence of flowing, standing water or a continuous flow of water. It does not carry flow directly or indirectly into a TNW, territorial sea, or an interstate water. Aerial imagery was reviewed from several sources spanning multiple years. In many of the aerial images, there is full canopy cover and all portions of the ditch may not be visible. However, portions of the ditch are still visible in most of the available images and as such were included in the aerial image review. None of these images indicated either standing or flowing water in the ditch channel.

Additionally, USGS StreamStats report was also generated for the site. The drainage area from the report was 0.12 square miles and the flow-duration statistics flow reported a value of 0.0000784 ft³/s for the 99 percent duration, these readings can be indicators of systems that flow only in response to precipitation events. These findings are consistent with a stream flowing only in direct response to precipitation and therefore does not meet the relatively permanent standard. Based on the information discussed above, Ditch 34 was evaluated under (a)(3) and determined to not be a relatively permanent water with a continuous surface connection to a paragraph (a)(1) or (a)(3) water; therefore, these non-relatively permanent features are not jurisdictional under the 2023 "Revised Definition of 'Water of the United States'; Conforming" 88 FR 61964 Final Rule.

Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the

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regulatory text that was not amended by the conforming rule, including the preamble relevant to the Rapanos plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended.

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. Joint Application Form (packet) for Activities Affecting Water Resources in prepared by Stantec Consulting Services, dated November 17, 2025.
 - b. USGS NHD Map Service. Accessed February 3, 2026.
 - c. United States Fish and Wildlife Service, National Wetland Inventory Map Service. Accessed February 3, 2026
 - d. United States Geological Survey GS 3D Elevation Program DEM. Accessed February 3, 2026.
 - e. United States Geological Survey, National Hydrography Dataset, accessed on February 3, 2026.
 - f. Minnesota Historical Aerial Photographs Online (1940, 1951 and 1963) <https://apps.lib.umn.edu/mhapo/> Accessed February 3, 2026.
 - g. Google Earth imagery dated 1991, 2003, 2004, 2006, 2008, 2009, 2011, 2012, 2016-2018, 2020, 2022, 2023 and 2024.
10. OTHER SUPPORTING INFORMATION. None.
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.

