



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

CEMVP-RD

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-2026-00425 [MFR 1 of 1]<sup>2</sup>

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>3</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>4</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>5</sup> the 2023 Rule as amended,

---

<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> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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.

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2026-00425

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

### 1. SUMMARY OF CONCLUSIONS.

- 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	JD or Non-JD	Section 404/Section 10
Incidental Wetland	Non-Jurisdictional	None

### 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.

- a. Project Are Size (in acres): 4.8 acres
- b. Location Description: The project/review area is located in Section 20, Township 108N, Range 026W, Blue Earth County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.138340 Longitude: -93.973930
- d. Nearest City or Town: Mankato
- e. County: Blue Earth
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes):

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2026-00425

Action ID	Type	Outcome
MVP-2026-00425	AJD	All waters were determined to be non-jurisdictional (excluded waters) under the AJD.

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>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

---

<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.

- 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 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>

Incidental Wetland 1 (IW1) is identified in the Pohl Townhouse No Loss Application dated 23 March 2026 as an excavated stormwater pond that was created after 1992. The pond was constructed in uplands between September 2009 and April 2011, as seen utilizing Google Earth historical imagery. A 20 May 2026 desktop review using NRV data (DEM and Hillshade), topographic maps, historic and current aerial imagery, and LIDAR provides evidence that this feature is a constructed stormwater pond that was created to manage stormwater runoff for future development opportunities. IW1 does not have a continuous surface connection to any other wetlands or waterways near the site. Accordingly, the Corps has determined that IW1 is excluded from Section 404 jurisdiction under (b)(5) of the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule as Artificial lakes or ponds created in dry land, used exclusively for specific purposes.

- 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). N/A

---

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

CEMVP-RD

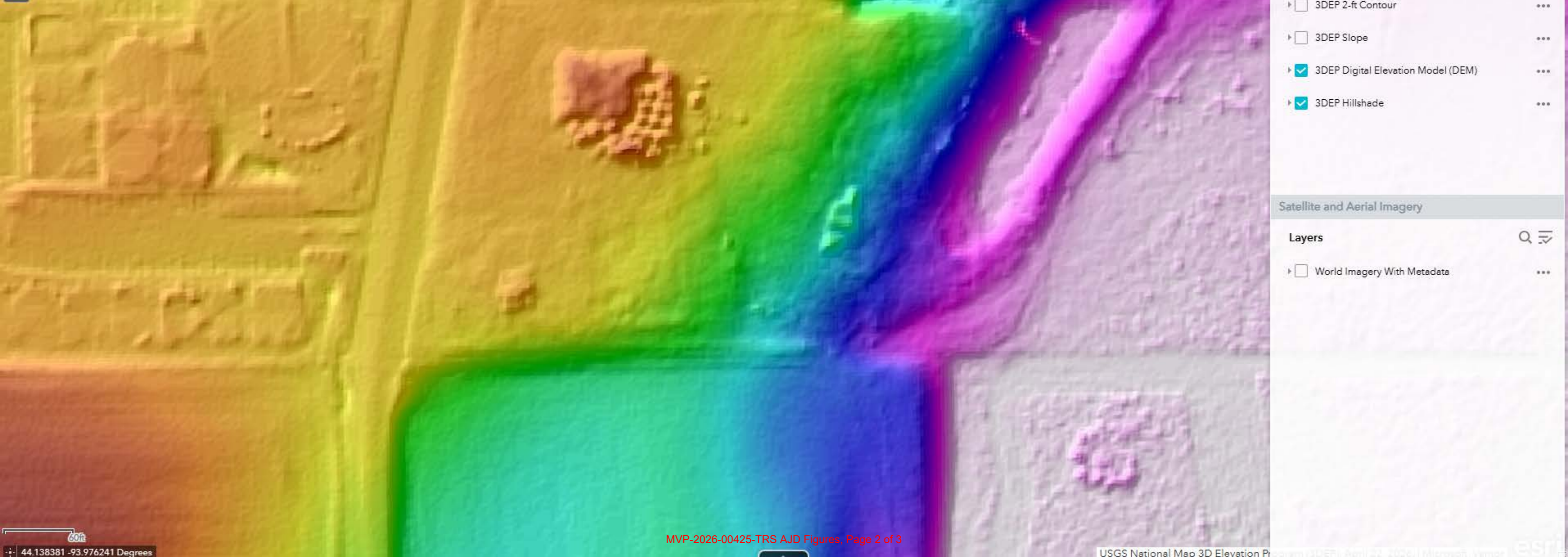
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2026-00425

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. USACE Office Evaluation conducted on May 20, 2026.
  - b. Pohl Townhouse No Loss Application dated 23 March 2026.
  - c. Google Earth Accessed: May 20, 2026. Imagery from: April 1991, Sep 2003, Nov 2023, Dec 2004, Sept 2006, Sept 2008, May 209, Sept 2009, April 2011, July 2011, Sept 2011, April 2015, Nov 2020, May 2021, June 2021, June 2023, July 2023, Sept 2024, and May 2025.
  - d. USACE National Regulatory Viewer (NRV) Accessed: May 20, 2026.
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.

Map Document: H:\APX\CONST\_PRJ\26X141475\GIS\Natural Resources\Pro141475\_NoLoss\_Permitting.aprx | Figure 3: Proposed Aquatic Resource Impacts | Username: Adeline.Thais | Date Saved: 3/24/2026 8:28 AM



Search: pohl road mankato, mn  
Show search results for pohl road ma...



### Imagery

Lidar

Layers

- 3DEP 25-ft Contour
- 3DEP 10-ft Contour
- 3DEP 5-ft Contour
- 3DEP 2-ft Contour
- 3DEP Slope
- 3DEP Digital Elevation Model (DEM)
- 3DEP Hillshade

### Satellite and Aerial Imagery

Layers

- World Imagery With Metadata

Search: pohl road mankato, mn  
Show search results for pohl road ma...



- Reference Layers**
- National Layers**
- Upper Mississippi River Pool Boundaries
  - USFWS National Wildlife Refuge System Boundaries
  - Topo Quad Index (7.5 Minute)
  - National Wetland Inventory (NWI)
  - NHD Plus HR
  - EPA Clean Water Act Sections 303(d) and 305(b) Assessments
  - FEMA Flood Hazard Layer
- USACE Regulatory**
- Layers**
- TSB Bank Site Visits 2026
  - Wetland Regions
  - MVP LPM By County
  - TSB Bank Site Visits List 2025
  - Regulatory File Management
  - Finalized Beach Creation and Nourishment
  - RGP - Finalized Beach Creation and
- State Layers**
- Layers**
- State Funded Conservation Easements
  - Wetland Banking Easements
  - MN Ramsar Wetlands
  - MN DNR Wild Rice Lakes - wild rice lakes identified by dnr wildlife
  - MN NHIS Calcareous fens - calcareous fens
  - MN Public Waters - Public Watercourses