



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

April 10, 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) ,<sup>1</sup> MVP-2025-01289-JST 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-2025-01289-JST

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
Wetland FM 1 (2.92 acre)	Non-Jurisdictional	Does not meet (a)(4)
Wetland FM 2 (1.37 acre)	Non-Jurisdictional	Does not meet (a)(4)
Wetland EV 3 (0.32 acre)	Non-Jurisdictional	Does not meet (a)(4)

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 three (3) non-jurisdictional wetlands. These features are identified in Section 1 (a) of this MFR above and by the blue polygon on the attached figures labeled MVP-2025-01289-JST AJD Figures – Pages 1-3 of 3.

- a. Project Area Size (in acres): 62.88
- b. Location Description: The project/review area is located in Section 09, Township 055N, Range 026W, Itasca County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 47.267448 Longitude: -93.646183
- d. Nearest City or Town: Cohasset

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01289-JST

e. County: Itasca

f. State: Minnesota

g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2024-00891-JST	AJD	The offsite portion of the aquatic resource subject to this AJD identified as FM 1 was determined to be non-jurisdictional under MVP-2024-00891-JST dated June 25, 2025.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</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>8</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

---

<sup>6</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

<sup>7</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>8</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.

“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. N/A

- 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 within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>9</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).

Wetlands FM 1 and FM 2: are depressional fresh wet meadow wetlands located within the project area. Wetland FM 1 extends offsite to the west; however, both wetlands FM 1 and FM 2 are confined between the Boswell Energy Center rail line loop and the substation. There are no culverts located along the rail line

---

<sup>9</sup> 88 FR 3004 (January 18, 2023)

connecting these wetlands to the aquatic resources delineated in the northern portion of the site. Wetland FM 1 was previously connected to Wetland FM 2 prior to the development of the substation. An access road currently separates these two wetlands. Wetlands FM 1 and FM 2 are surrounded entirely by uplands associated with the Boswell Energy Center infrastructure and facilities. Portions of Wetland FM1 overlap with an approved jurisdictional determination issued under MVP-2024-00891-JST dated June 25, 2025, and determined it to be non-jurisdictional.

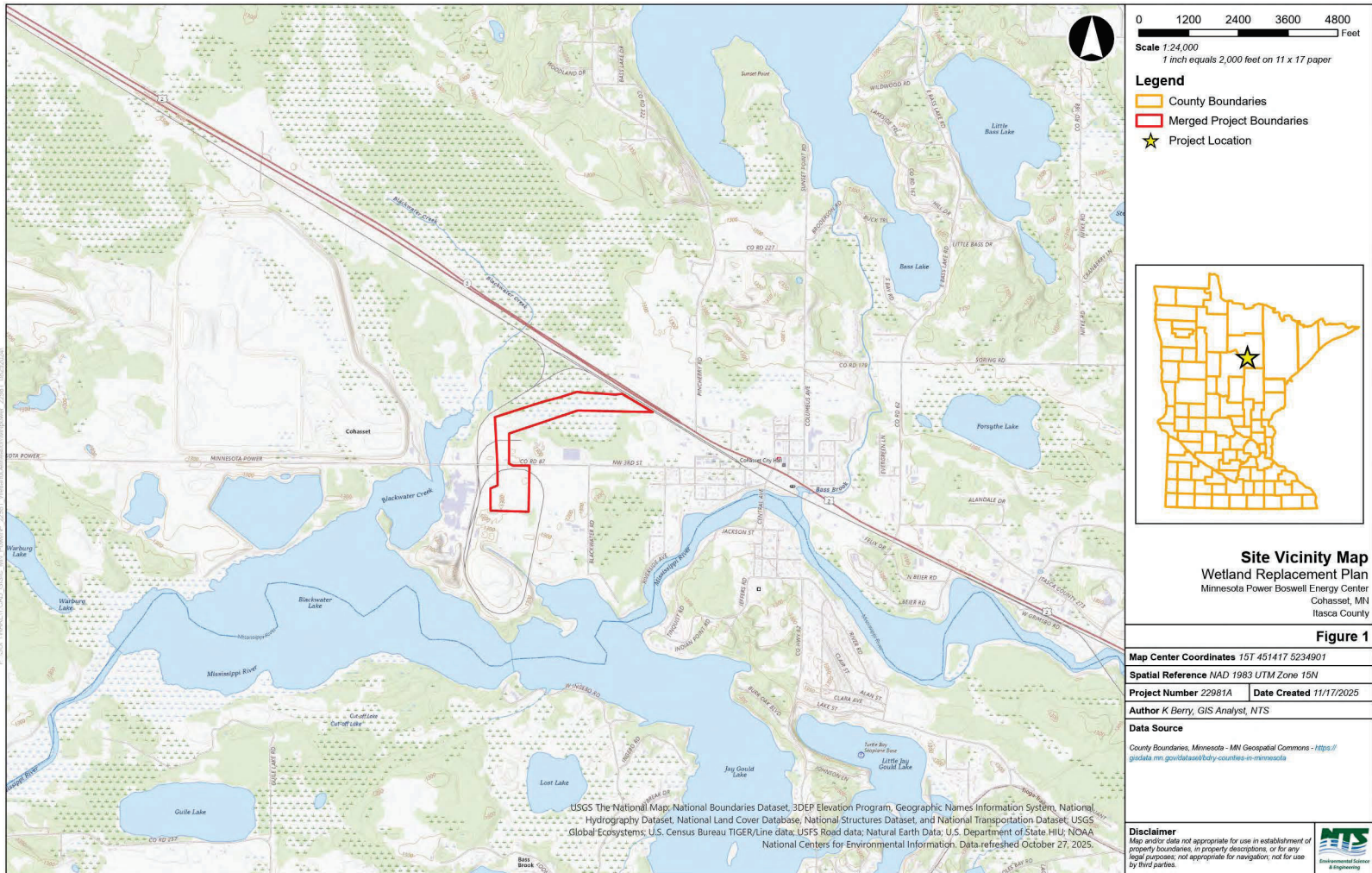
Wetland EV 3: is a depressional shallow marsh wetland located in project area. Wetland EV 3 is confined between the Boswell Energy Center substation facilities and an access roadway for the facility. Wetland EV3 is surrounded entirely by uplands associated with the Boswell Energy Center infrastructure and facilities.

Rationale: The aquatic resources identified as Wetland FM 1, Wetland FM 2, and Wetland EV 3 are not traditionally navigable waters (TNW), territorial seas, or interstate waters and therefore are not (a)(1) waters. The wetland delineation and desktop resources including topographic maps, LiDAR imagery, and Google Earth aerial imagery indicate that these wetlands are not tributaries and were not created by impounding a water of the U.S.; therefore, these wetlands are not category (a)(2) or (a)(3) waters. These wetlands do not directly abut a jurisdictional water identified in paragraph (a)(1), (a)(2), or (a)(3), of the conforming rule and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The closest potential relatively permanent water is Blackwater Creek located approximately 0.26 miles West of the Corps' review area. There are no ditches, swales, pipes, or culverts that provide a surface connection from these wetlands to Blackwater Creek. Wetlands FM 1, FM 2, and EV 3 are surrounded entirely by upland associated with the Boswell Energy Center facility. These wetlands are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, Wetlands FM 1, FM 2, and EV 3 are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

CEMVP-RD

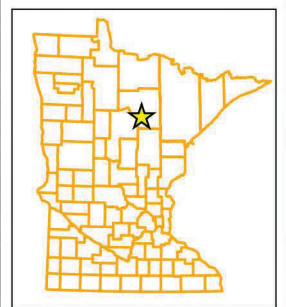
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01289-JST

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. Minnesota Regulatory Viewer – 3DEP Hillshade Layers, US Geological Service 3DEP Digital Elevation Model (DEM), 3DEP 2ft Contours, NHD Layers, USFWS NWI Layers, and NRCS Hydric Soil Layers.
  - b. Google Earth aerial imagery dated 2011, 2020, 2025.
  - c. Wetland Delineation Report – Boswell Energy Center prepared by Northeast Technical Services, Inc. dated October 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.



0 1200 2400 3600 4800 Feet  
 Scale 1:24,000  
 1 inch equals 2,000 feet on 11 x 17 paper

**Legend**  
 County Boundaries  
 Merged Project Boundaries  
 Project Location



**Site Vicinity Map**  
 Wetland Replacement Energy Center  
 Minnesota Power Boswell Energy Center  
 Cohasset, MN  
 Itasca County

**Figure 1**

Map Center Coordinates 15T 451417 5234901

Spatial Reference NAD 1983 UTM Zone 15N

Project Number 22981A Date Created 11/17/2025

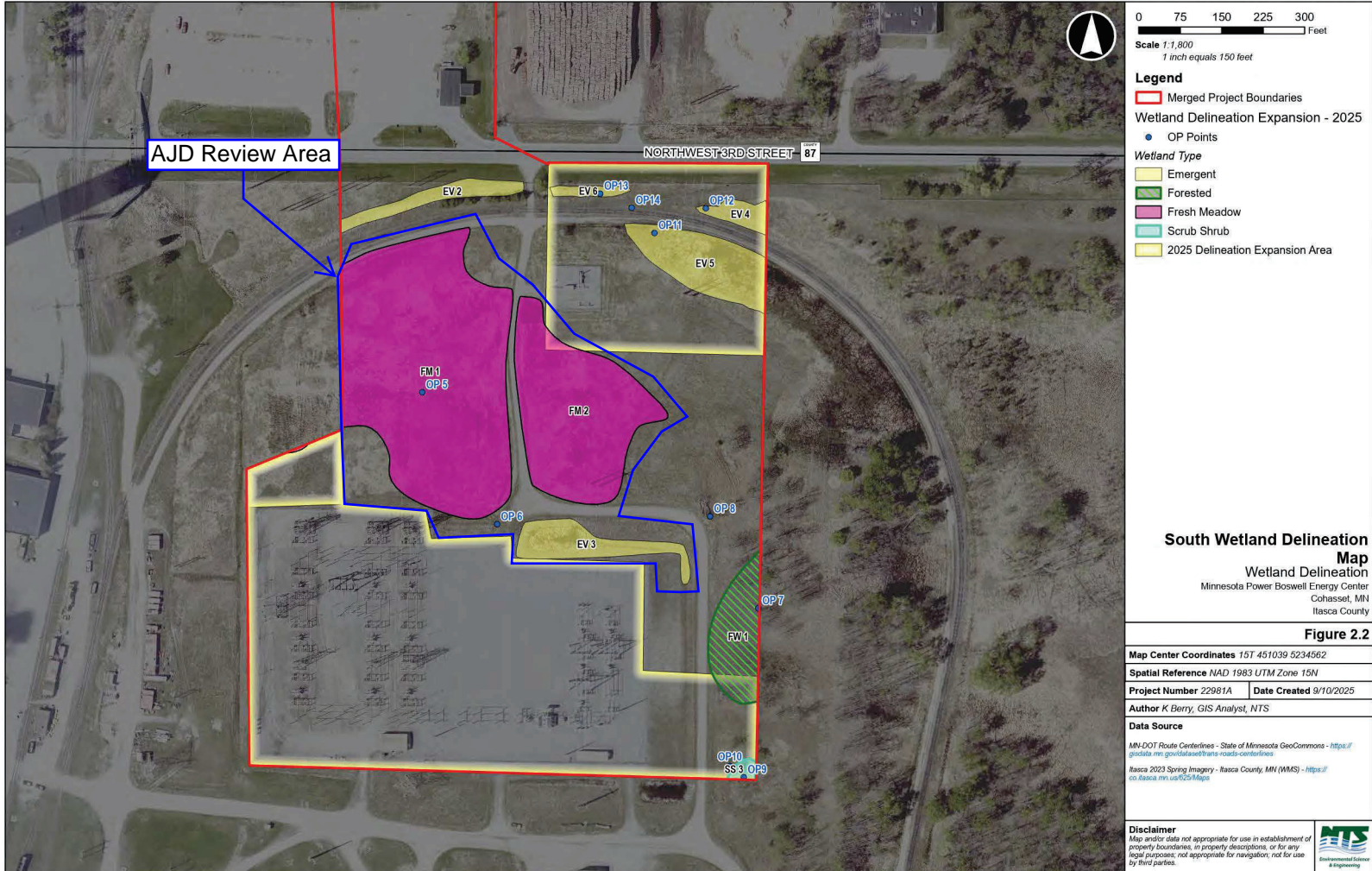
Author K Berry, GIS Analyst, NTS

**Data Source**

County Boundaries, Minnesota - MN Geospatial Commons - <https://gisdata.mn.gov/dataset/bary-counties-in-minnesota>

**Disclaimer**  
 Map and/or data not appropriate for use in establishment of property boundaries, in property descriptions, or for any legal purposes; not appropriate for navigation; not for use by third parties.





**South Wetland Delineation Map**  
 Wetland Delineation  
 Minnesota Power Boswell Energy Center  
 Cohasset, MN  
 Itasca County

**Figure 2.2**

