



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

MVP-2009-02054-MMP

January 29, 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 2009-02054-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.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).
 - i. Wet Ditch 2, 0.12 acre.
 - ii. Wetland 4, 0.13 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 1 excluded feature and 1 non-a(4) water, as identified on the enclosed figures, labeled MVP-2009-02054-MMP. The review area is located at Latitude: 43.0720 and Longitude: -88.2254, in Section 15, Township 7 North, Range 19 East in the City of Pewaukee, Waukesha County, Wisconsin.

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
 - 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

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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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

The excluded water within the review includes Wet Ditch 2, as shown on the attached figures. This feature is being evaluated as an excluded ditch because it meets the definition of excluded waters under paragraph b(3) as the ditch feature was constructed in upland, drains only upland, does not carry a relatively permanent flow of water, and is not a relocated tributary.

Wet Ditch 2 is a linear ditch positioned along the south side of Schuette Drive. Based on the wetland delineation report completed by Stantec, on behalf of the applicant, and desktop resources, the feature was constructed in upland and only drains upland. In a review of aerial photos, Schuette Drive has been constructed since 2000. In a review of topographic maps, it appears the roadway was constructed between 1954 and 1991. Topographic maps from 1892, 1906, 1957, 1959, and 1984 do not identify wetlands or a waterway within the area of Wet Ditch 2 prior to disturbance concluding that this feature was constructed in dryland. Additionally, aerial photos from recent years does not show standing water within Wet Ditch 2. This feature does not hold relatively permanent flow and is not a relocated tributary.

Considering the information above, Wet Ditch 2 has been determined to be excluded waters not subject to Section 404 of the Clean Water Act (CWA).

- a. 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 is not a traditionally navigable water (TNW), territorial sea, or interstate water and therefore is not an (a)(1) waters.

Based on the wetland delineation completed by Stantec, and desktop resources, including LiDAR data, contour maps, recent aerial photos, and the

⁷ 88 FR 3004 (January 18, 2023)

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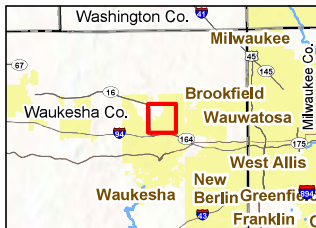
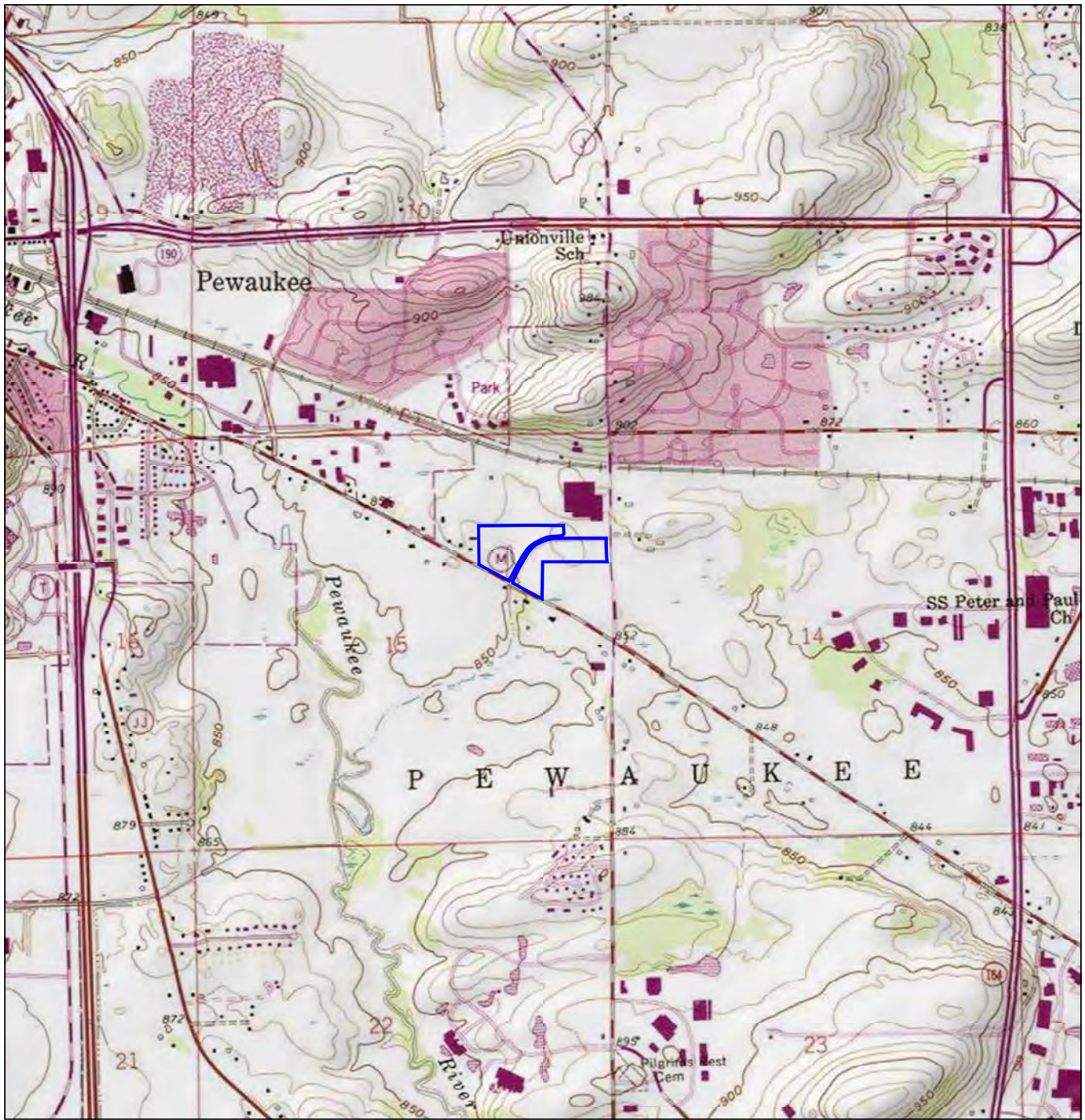
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National Wetland Inventory (NWI), Wetland 4 is a depressional basin. The boundary of Wetland 4 is contained to the review area, there are no culverts within or around Wetland 4. Therefore Wetland 1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or jurisdictional (a)(3) tributary. Wetland 4 is located approximately 0.8 mile from the nearest requisite jurisdictional water, an unnamed Tributary to the Pewaukee River, located southwest of the review area.

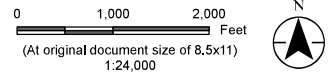
Wetland 4 is a non-tidal wetland that does not abut a relatively permanent jurisdictional water and, as such, does not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, this wetland is not jurisdictional under the 2023 Revised Definition of 'Waters of the 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.
 - a. Wetland Delineation Report prepared by Stantec, on behalf of the applicant, on August 15, 2025.
 - b. USGS Topographic Maps from 1892, 1906, 1957, 1959, 1984, and 1991.
 - c. Google Earth aerial photos from 2022, 2023, and 2025.
 - d. 3DEP 2-ft, 5-ft, 10-ft, and 25-ft Contour maps and Wisconsin DNR - Hillshade accessed on the National Regulatory Viewer.
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.

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Legend
[Blue L-shaped boundary] Approximate Project Boundary



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Figure 1 of 2



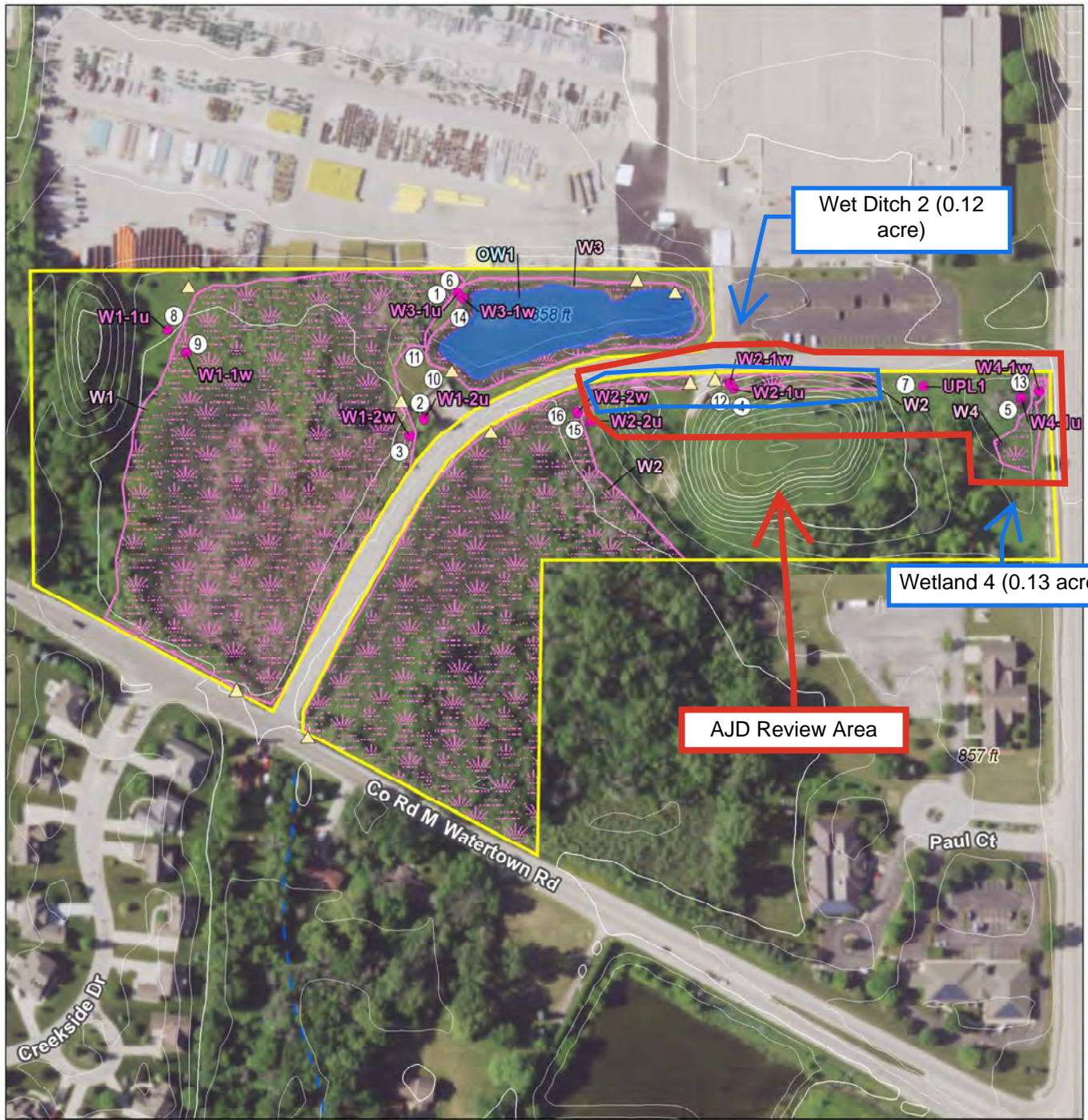
Project Location: T7N, R19E, S15 C. of Pewaukee, Waukesha Co., WI
Prepared by MEK on 2025-07-14
TR by JDS on 2025-07-22
IR by SM on 2025-08-15

Client/Project: WEC Energy Group
WEC: PEWIS Facility Delineation
Wetland Delineation
193711508

Figure No. 1
Title
Project Location and Topography

Notes
1. Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet
2. Data Sources: Stantec, Esri, WEC Energy Group, USCB, USGS
3. Background: USGS 7.5' Topographic Quadrangles

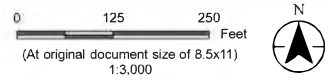
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Notes
 1. Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet
 2. Data Sources: Stantec, Esri, WEC Energy Group, USCB, USGS, WDNR
 3. Background: NAIP 2022

- Legend**
- Approximate Project Boundary
 - Sample Point
 - ▲ Culvert
 - Field Delineated Wetland
 - Field Delineated Open Water
 - 2ft Elevation Contour
 - WI DNR 24k Hydrography
 - ~ Perennial Stream*
 - - - Intermittent Stream
 - Waterbody*

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Figure 2 of 2



Project Location
 T7N, R19E, S15
 C. of Pewaukee, Waukesha Co., WI

Prepared by MEK on 2025-07-14
 TR by JDS on 2025-07-22
 IR by SM on 2025-08015

Client/Project
 WEC Energy Group
 WEC: PEWS Facility Delineation
 Wetland Delineation

193711508

Figure No.
4

Title
Field Collected Data

*No Features Within Data Frame

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