



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

CE-MVP-RD

10 MAY 2024

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-2018-03171-SJW Page 1 of 2 through 2 of 2²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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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).
 - i. W-1, (0.07 acre), non-jurisdictional
 - ii. W-3, (0.29 acre), non-jurisdictional
 - iii. W-4, (0.01 acre), non-jurisdictional
 - iv. W-5, (0.08 acre), non-jurisdictional
 - v. W-6, (0.28 acre), non-jurisdictional
 - vi. W-7, (1.19 acres), non-jurisdictional
 - vii. W-8, (2.88 acres), non-jurisdictional
 - viii. W-9, (1.69 acres), 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 is approximately 242.02 acres in size and is identified by the yellow polygon on the figure labeled MVP-2018-03171-SJW: Page 2 of 2. The center of the review area is located in Sections 32 and 33, Township 03 North, Range 22 East, Racine County, Wisconsin. Lat: 42.676169, Lon: -87.909712, in the Village of Mount Pleasant. An additional approved jurisdictional determination was completed under the same file number on April 15, 2019 for a 280-acre parcel located immediately east of the review area. However, none of the resources which are being reviewed under the current AJD (listed above in Sec. 1) were evaluated at that time.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁶ 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.

⁷ 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.

⁸ 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).⁹

W-5 is described as a 0.08-acre stormwater pond with fringe wetlands which was created in uplands. This pond is located immediately north of County Road KR in the southwestern portion of the review area. A review of historic aerial imagery (Google Earth) indicates the pond was created between October of 2019 and April of 2021. The WWI mapping does not show any mapped wetlands within or in close proximity to W-5, and a review of multiple years of aerial imagery review do not indicate there were any wetness signatures within the 0.08-acre footprint of W-5 which would further suggest this feature was created in uplands. Further review of aerial imagery indicates W-5 has water control structure in the southwest corner of the feature which allows water to flow out of the W-5 to the south via a culvert pipe under County Road KR into an open agricultural field. Once water exits the culvert pipe to the south, it flows into a discrete ditch like feature in a south/southwesterly direction until it eventually fans out and is no longer a discrete conveyance, transitioning into overland sheet flow. Based on this information, W-5 is a (b)(5) non-jurisdictional excluded feature (stormwater pond).

- 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.,

⁹ 88 FR 3004 (January 18, 2023)

tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

The review area contains 8 wetlands identified as W-1, W-3, W-4, W-5 (discussed above), W-6, W-7, W-8, and W-9 on the attached figure labeled MVP-2018-03171-SJW: Page 2 of 2. Based on a review of the wetland delineation report, Google Earth and National Regulatory Viewer aerial imagery, the Digital Elevation Model (DEM) in the National Regulatory Viewer, and the Wisconsin DNR Hillshade Layer, the review area generally slopes toward an unnamed tributary to the North Branch of the Pike River which bisects the review area from east to west. However, there are no discrete features or other conveyances which would provide these wetlands with a continuous surface connection to a downstream water.

W-1 is described as a 0.07 acre seasonally flooded isolated depressional basin situated in the middle of an agricultural field in the central portion of the review area. W-1 is surrounded entirely by uplands and there are no discrete features or other connections which would provide a continuous surface connection to the nearest tributary (unnamed tributary to North Branch of the Pike River), which is located approximately 815 feet directly south of W-1. The delineated limits of W-1 are consistent with what is observed in multiple years of aerial imagery, further supporting the determination that W-1 is an isolated depressional wetland basin.

W-3 is described as a 0.29 acre seasonally flooded isolated depressional basin located in an agricultural field in the western portion of the review area just northeast of the Prairie View Drive/CTH H intersection. A review of multiple years of aerial imagery shows a consistent signature which extends out of W-3 to the northeast and fans out prior to reaching the unnamed tributary in the center of the site. However, this signature does not represent a discrete feature or surface hydrologic connection and is best described as overland sheet flow, which does not constitute a discrete surface conveyance. W-3 has delineated limits which transition into uplands, and there are no discrete features or other connections which would provide a continuous surface water connection to the nearest tributary (unnamed tributary to North Branch of the Pike River), which is located approximately 664 feet to the northeast of W-3.

W-4 is described as a 0.01-acre isolated wetland depression situated in the southwestern portion of the review area. W-4 is situated in a vegetated area with a mix of large trees and grasses which has not been actively farmed unlike the majority of the review area. W-4 has delineated limits which transition sharply to uplands and there are no discrete water conveyance features which would provide a surface hydrologic connection to the nearest tributary (unnamed

tributary to North Branch of the Pike River), which his located approximately 1,860 linear feet to the northeast of W-4.

W-6 is described as a 0.28-acre isolated/seasonally flooded basin located in the southeast portion of the review area in an agricultural field. W-6 is surrounded entirely by uplands with no discrete features such as a ditch or pipe which would serve as a continuous surface connection to the nearest tributary (unnamed tributary to the North Branch of the Pike River). Multiple years of aerial imagery indicate wetness signatures extending to the west and northeast of the delineated limits of W-6. However, these signatures did not meet wetland criteria and therefore were not included within the delineated limits of W-6. Further, these features do not represent discrete conveyances and are better described as sheet flow patterns which likely occur during precipitation events.

W-7 is described as a 1.19-acre isolated hardwood swamp/seasonally flooded basin which is located in the southeasternmost portion of the review area. W-7 is located on the edge of an agricultural field and immediately west of the railroad tracks which serve as the eastern border of the review area. Surface water within the surrounding area generally flows into W-7, where it settles into this basin and extends to the north towards W-8. A review of aerial imagery indicates a repeatable wetness signature in this area, suggesting that this area remains saturated for most of the year. A review of aerial imagery shows a linear signature extending north from W-7 towards W-8 along the aforementioned railroad tracks. However, site photographs indicate there is an increase in elevation to the north of W-8 on the west side of the railroad tracks which converts to uplands and ultimately eliminates any hydrologic surface connection to the nearest tributary (unnamed tributary to the North Branch of the Pike River. Further, there are no other discrete conveyances such as a culvert or other ditch which would provide a continued hydrologic surface connection to this tributary. Based on this information, W-7 is an isolated depressional wetland basin.

W-8 is described as a 2.88-acre isolated wet meadow/seasonally flooded basin located in the southeastern portion of the review area. W-8 is situated on the edge of an agricultural field and immediately west of the railroad tracks which serve as the eastern border of the review area. Topography in the immediate vicinity of W-8 generally slopes towards W-8, where water ponds up within the delineated limits of W-8. A review of aerial imagery and other resources in the national regulatory viewer indicate there is a ditch feature which spans between W-7 and W-8 and appears to run to the north towards an unnamed tributary to the North Branch of the Pike River. However, site photos indicate that this feature transitions to uplands to the north of W-8 for for approximately 150 feet, thus eliminating the potential for a hydrologic surface connection to a downstream

tributary. There are no other culverts or surface conveyance features which extend to or from W-8 which could potentially serve as a hydrologic surface connection to a downstream tributary. Based on this information, W-8 is a seasonally flooded isolated basin.

W-9 is described as a 1.69 acre seasonally flooded isolated wetland basin which is located in the central portion of the review area in the middle of an agricultural field. Surface water in this area generally flows to the north towards an unnamed tributary to the North Branch of the Pike River which is located approximately 660 directly north of this feature. A review of aerial imagery shows a linear ditch feature extending towards the unnamed tributary to the north. However, there is no discrete feature between W-9 and this ditch feature which would provide a continuous surface connection between W-9 and this unnamed tributary. Further, W-9 is surrounded entirely by uplands as supported by the data provided within the wetland delineation.

Based on the above information, W-1, W-3, W-4, W-5, W-6, W-7, W-8, and W-9 are isolated wetland features which do not maintain a hydrologic surface connection to a downstream tributary. These features are not TNWs, territorial seas, or interstate waters; therefore these features are not category (a)(1) waters. These features are not tributaries and were not created by impounding a water of the U.S.; therefore, these features are not category (a)(2) or (a)(3) waters. As described above, these features 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, and are not connected to a paragraph (a)(1) or relatively permanent water by a discrete feature. These features are non-tidal wetlands that do not maintain 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. These features are not interstate lakes or ponds that meet the relatively permanent standard and cannot be evaluated as (a)(5) waters: lakes and ponds not identified in (a)(1) – (a)(4). Therefore, these features 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.
 - a. Office Evaluation, April 24, 2024
 - b. Site photos provided by requestor, dated 05/01/24.

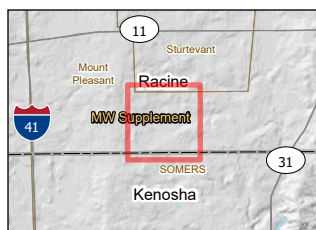
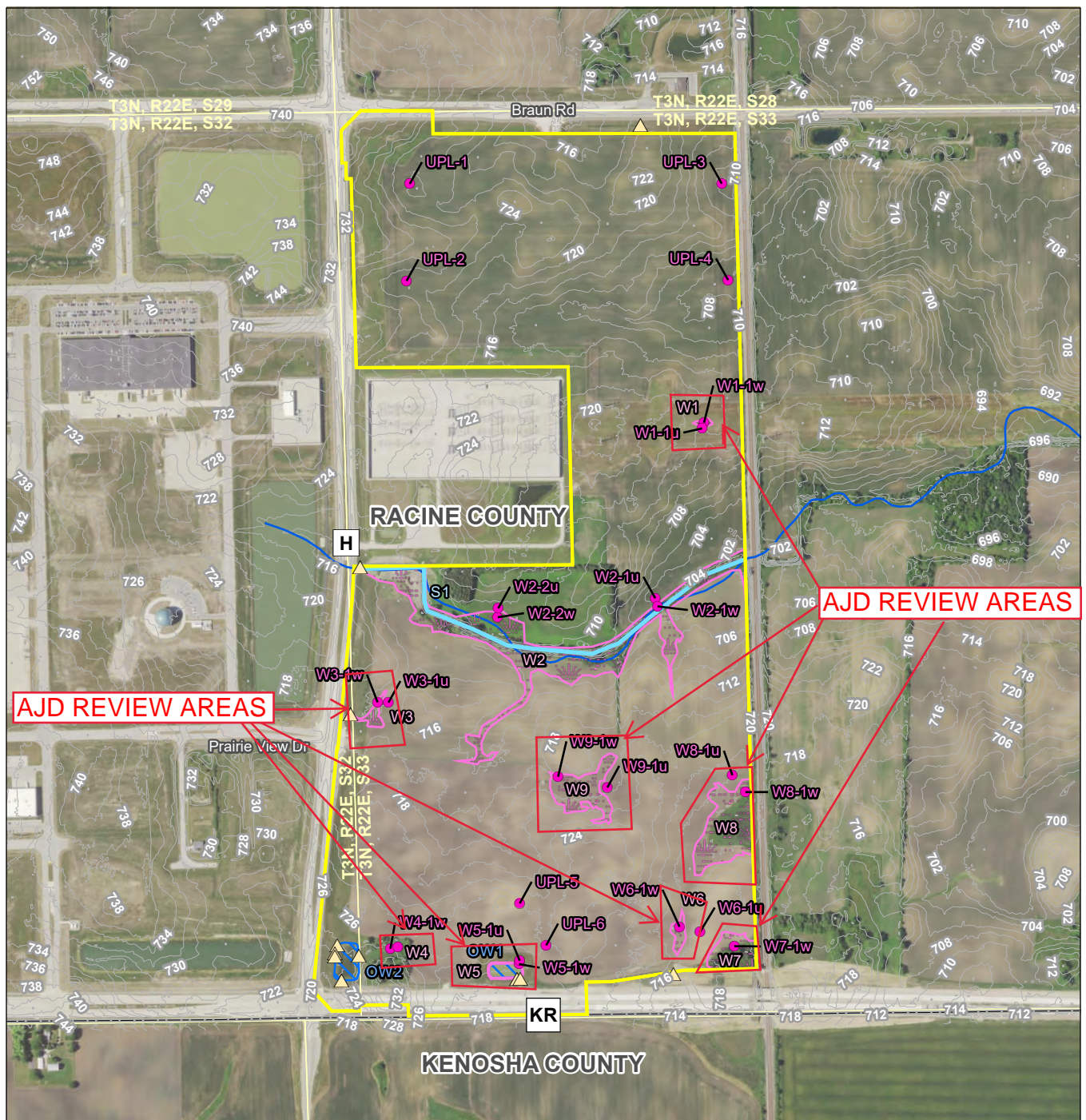
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- c. U.S. Army Corps of Engineers Natural Regulatory Viewer, Hillshade, DEM, and WI 24k Hydro Flowlines Stream Order layers, accessed on April 24, 2024.
- d. Google Earth Aerial Imagery
- e. Wisconsin Surface Water Data Viewer
- f. Wetland Delineation Report completed by Stantec Consulting Services, dated August 30, 2023.

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.



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

Legend

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

0 450 900 Feet
 (At original document size of 8.5x11)
 1:10,800



Project Location
 T. of Sturtevant,
 Racine Co., WI

Prepared by JD on 2023-07-12
 TR by CA on 2023-07-13
 IR by MK on 2023-08-16

Client/Project
 MKE -Area 3A
 Wetland Delineation

193709644

Figure No.
4

Title
Field Collected Data

*No Features Within Data Frame

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Disclaimer: This document has been prepared based on information provided by others as cited in the Notes section. Stantec has not verified the accuracy and/or completeness of this information and shall not be responsible for any errors or omissions which may be incorporated herein as a result. Stantec assumes no responsibility for data supplied in electronic format, and the recipient accepts full responsibility for verifying the accuracy and completeness of the data.