



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

December 16, 2025

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-2021-02424 MFR 1-1.

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.<sup>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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<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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

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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. Wetland 1 (3,437 square feet); non-jurisdictional
  - ii. Wetland 2 (1,909 square feet); non-jurisdictional
  - iii. Wetland 3 (6,967 square feet); non-jurisdictional
  - iv. Wetland 4 (308 square feet); non-jurisdictional
  - v. Wetland 5 (703 square feet); non-jurisdictional
  - vi. Pond 1 (0.58 acres); non-jurisdictional
  - vii. Pond 2 (2,193 square feet); 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. 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): 15.51 acres
  - b. Location Description: The project/review area is located in Section 14, Township 026N, Range 002W, Clark County, Wisconsin.
  - c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.738080 Longitude: -90.581240
  - d. Nearest City or Town: Greenwood
  - e. County: Clark
  - f. State: Wisconsin
  - g. Other associated Jurisdictional Determinations (including outcomes): N/A
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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
  - c. Interstate Waters (a)(1)(iii): N/A
  - d. Impoundments (a)(2): N/A
  - e. Tributaries (a)(3): N/A

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<sup>5</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>6</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.

- 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>7</sup>

It was determined that Wetlands 1, 2, 3, 4, and 5 meet the definition of exclusion b(3) for ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry relatively permanent flow of water. These features, described as wetlands, were constructed in uplands to provide agricultural drainage for improved crop production across the property. No mapped wetlands (National Wetland Inventory or Wisconsin Wetland Inventory) were identified at the location of Wetlands 1, 2, 3, 4, or 5, providing further evidence the ditch features were constructed wholly in upland. Finally, additional evidence provided by the applicant (site photos and aerial imagery) confirms no relatively permanent flow of water was observed, and the features do not have a continuous surface connection to any relatively permanent jurisdictional water.

Pond 1 and Pond 2 are pre-existing stormwater ponds on the property (Pond 1 constructed prior to 2024 and Pond 2 constructed prior to 2020). Both ponds were created in areas with no mapped wetlands (National Wetland Inventory or Wisconsin Wetland Inventory) and were designed as sediment basins for the existing agricultural operation located onsite. Therefore, it was determined Pond 1 and Pond 2 meet the definition of exclusion b(5) for artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.

- 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

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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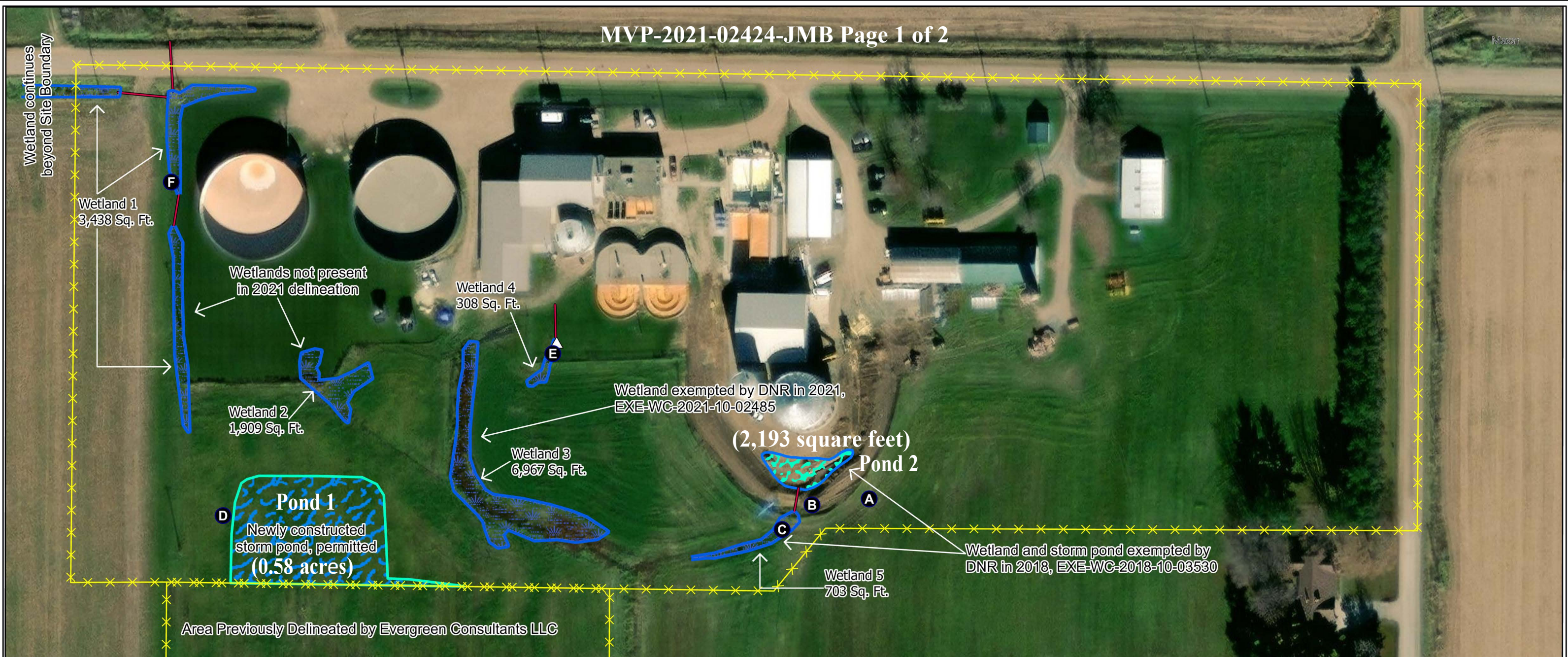
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-02424

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. Evergreen Consultants LLC Wetland Delineation Report (dated 20 June 2025)
- b. Google Earth Imagery dated 1938, 1951, 1960, 1980-2002, 2005, 2006, 2008, 2010, 2012, 2015, 2016, 2018, 2020, 2022-2024
- c. Wisconsin Wetland Inventory (accessed 15 December 2025)
- d. Site Photos (dated 20 June 2025)
- e. LiDAR (2' contours) for Clark County, WI - included with Delineation Report

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.



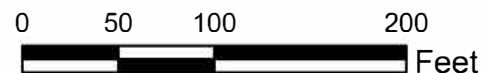
**Legend**

- Site Boundary
- Picture Location
- Wetland Line
- Wetland
- Drain Tile Outlet
- Culvert
- Stormwater Pond
- Stormwater Basin

**Grassland Dairy**  
**Wetland Delineation Map**  
**N8790 Fairground Avenue**  
**Town of Eaton**  
**Clark County, WI**

Wetland Delineation was conducted by  
 Chad Fradette, EP, Chem,  
 WDNR Professionally Assured Wetland Delineator  
 with assistance from  
 Shyann Banker, Environmental Scientist,  
 WDNR Professionally Assured Wetland Delineator

Project: CLK25-009-01



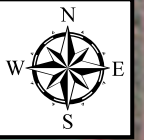
PO Box 680 Pulaski, WI 54162

Phone: 920.615.0019 • Website: [www.evergreenwis.com](http://www.evergreenwis.com)

Legend

# WIDINR CIR Imagery - Leaf On

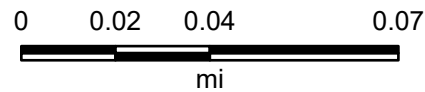
WI DNR Color Infrared Air Photos



Microsoft, Vantor, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA



**MVP-2021-02424-JMB**



Map Center: 90.580482°W 44.740844°N

Map Created by: Jonathan Bakken

Date: 12/15/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere