



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

CEMVP-RD

April 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),¹ MVP-2022-01652-TKO ([MFR 1 of 1](#))²

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

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.

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
W-1	Non-Jurisdictional	N/A
W-2	Non-Jurisdictional	N/A
W-3	Non-Jurisdictional	N/A
W-6	Non-Jurisdictional	N/A
W-7	Non-Jurisdictional	N/A
W-8	Non-Jurisdictional	N/A

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 Area Size (in acres): ~60-acre
- b. Location Description: The project/review area is located in Section 36, Township 23 N, Range 20 E, Brown County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.4161 Longitude: -88.0119
- d. Nearest City or Town: De Pere
- e. County: Brown
- 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](#)⁶
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. [N/A](#)
- a. Traditional Navigable Waters (TNWs) (a)(1)(i): [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.

- 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).⁹

Wetland 2 (W-2) is not a water of the U.S. W-2 is a linear drainage ditch which runs primarily north/south along the southern portion of Wayne Lane, at the southwest of the review area. This aquatic feature fits the definition of a b(3) water, from 33 CFR 328.3(b), as it was excavated wholly in and drains only dry land and does not carry a relatively permanent flow of water. Review of original land survey records show no wetlands in the location of W-2 prior to the development of Wayne Lane. W-2 is located in an area mapped as containing non-hydric Alluvial Land. Additionally, the national and Wisconsin wetland inventory shows no mapped wetlands within the location of W-1. Lastly, review of aerial imagery shows no standing water, or persistent wetness signature, indicating a lack of relatively permanent flow within W-2.

- 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).

⁹ 88 FR 3004 (January 18, 2023)

Review of a pair of 2022 Bay Environmental Strategies delineation reports, historic aerial images, Brown County GIS, WI Surface Water Data Viewer, and LiDAR (hillshade and DEM GIS layers from the Mississippi Valley Division Regulatory Viewer) indicate that Wetlands 1, 3, 6, 7, and 8 (W-1, W-3, W-6, W-7, and W-8) are depressional wetlands, surrounded by upland. Review of these resources indicates the assessed wetlands do not physically abut a jurisdictional water.

W-1 is a depressional wetland located in the southwest of the review area near Wayne Lane. This depressional wetland is surrounded by delineated upland in all directions except the southeast where it discharges to the excluded ditch (W-2) references in Section 8.a. above.

W-3 is located at the head of a drainage feature in the northeast of the review area. W-3 is surrounded by delineated upland at the south, east, and west. W-3 continues north where the discrete drainage feature continues approximately 1-mile before discharging to an unnamed tributary to Bower Creek and East River. No aquatic resources are identified between W-3 and the tributary. Review of aerial imagery shows no standing water, or persistent wetness signature within the feature, indicating a lack of relatively permanent flow downstream of W-3.

Wetlands W-6, W-7, and W-8 are located in an agriculture field in the north-central portion of the review area. These depressional wetlands are surrounded by delineated uplands in all directions.

Wetlands 1, 3, 6, 7, and 8 (W-1, W-3, W-6, W-7, and W-8) are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. Wetlands W-1, W-3, W-6, W-7, and W-8 do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetlands W-1, W-3, W-6, W-7, and W-8 are non-tidal wetlands that do not abut relatively permanent jurisdictional waters and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. Wetlands W-1, W-3, W-6, W-7, and W-8 are not intrastate 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, Wetlands W-1, W-3, W-6, W-7, and W-8 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.

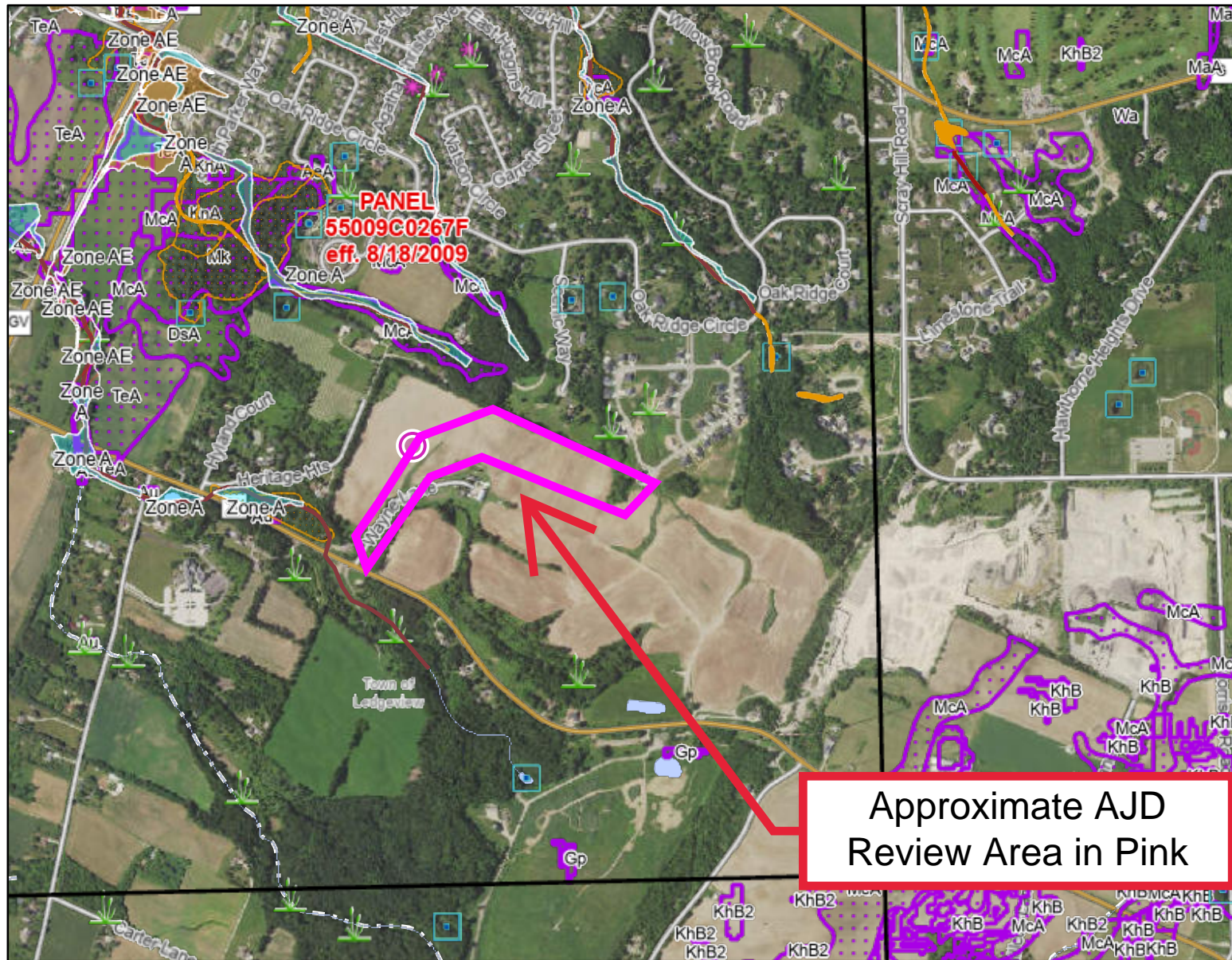
CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2022-01652-TKO

- a. [Field visit was conducted on 04/10/2025. Desktop review evaluation was conducted on 04/07/2025.](#)
- b. [Permit Application "2022-01652-TKO 20250324 APP.pdf" in the administrative record.](#)
- c. [Mississippi Valley Division Regulatory Viewer, 04/07/2025.](#)
- d. [Wisconsin DNR Surface Water Data Viewer, 04/07/2025.](#)
- e. [Waukesha County GIS Interactive Mapping, 04/07/2025.](#)

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.



Legend: (some map layers may not be displayed)

- FIRM Panels
- Flood Hazard Boundaries
- Limit Lines
- SFHA / Flood Zone Boundary
- Flood Hazard Zones**
- 1% Annual Chance Flood Hazard
- 1% Annual Chance Flood Hazard
- Regulatory Floodway
- 0.2% Annual Chance Flood Hazard
- Floodplain Analysis Lines**
- Case by Case Analysis for Development in Floodplain
- Floodplain Study (Locally Funded)
- Floodplain Analysis Points**
- Case by Case Analysis for Development in Floodplain
- PNW-ASNRI Special Wetlands Inventory Study (SWIS) Streams
- PNW-ASNRI Special Wetlands Inventory Study (SWIS) Areas

Notes:

Approximate AJD
Review Area in Pink



Map: 0 1,000 2,000 Feet
0 350 700 Meters

This map is a product generated by a DNR web mapping application.

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Wisconsin Wetland Inventory NWI (cached); Wetland Indicators & Soils: Surface Water Data Viewer Team, Latest Leaf On; Priority Navigable Waterways: Waterway Protection, WDNR, Fisheries Management: WI Dept. of Natural Resources, Water Division, Paper FIRMS: Federal Emergency Management Agency, Wisconsin Department of Natural Resources, Cities, Roads & Boundaries; Digital FEMA Floodplains (National Flood Hazard Layer); Surface Water (Cached): WIDNR, USGS, and other data

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- Legend**
- Wetland Boundary
 - Project Area 3 Boundary
 - Project Area 1 & 2 Boundary

AJD
Review
Area in
Pink

