



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

MVP

January 2, 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> 2024-01267-TKO [[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,

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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> 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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-01267-TKO

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).

- [Wetland 1, 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)
- 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): 22.41
- b. Location Description: The project/review area is located in Section 09, Township 19N, Range 24E, Manitowoc County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.1262 Longitude: -87.6223
- d. Nearest City or Town: Manitowoc
- e. County: Manitowoc
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2024-01267-RJH (04-FEB-2025)	AJD	Wetlands 2-9 (outside review area) were determined to be non-jurisdictional under the AJD

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-01267-TKO

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [NA](#)
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [NA](#)
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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>7</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](#)

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<sup>6</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>7</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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-01267-TKO

- 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>8</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).

[Review of a 2024 GEI Consultants wetland delineation report and supplemental supporting data, ground level and historic aerial images, County GIS mapping, WI Surface Water Data Viewer, and LiDAR resources \(hillshade and DEM GIS layers from the Mississippi Valley Division Regulatory Viewer\) indicate that Wetland 1 \(W-1\) is a non-jurisdictional aquatic resource. Review of the above resources indicate W-1 is a depressional wetland, surrounded by uplands. W-1 is not, and does not physically abut, a jurisdictional water. W-1 is not a TNW, territorial sea, or interstate water and therefore is not an \(a\)\(1\) water. W-1 is not, and does not physically abut, a relatively permanent paragraph \(a\)\(2\) impoundment or a jurisdictional \(a\)\(3\) tributary, and as such does not meet the definition of adjacent and cannot be evaluated as an \(a\)\(4\) adjacent water. W-1 is not an intrastate lake or pond that meets the relatively permanent standard and cannot be evaluated as an \(a\)\(5\) water: lakes and ponds not identified in \(a\)\(1\) - \(a\)\(4\). Therefore, Wetlands W-1 is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.](#)

[Wetland 1 is an irregularly shaped depressional wetland complex spanning across much of the 22-acre project site. The project site is currently fallow, and](#)

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<sup>8</sup> 88 FR 3004 (January 18, 2023)W-1)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-01267-TKO

natural colonization has occurred since farming and grading activities ceased in the year 2000. Fallow fields with depressional wetlands are present throughout the site. Additional, non-abutting, wetlands (W-2 thru W-9, outside review area) were determined to be non-jurisdictional under a previous AJD under the same file number, mentioned in Section 3.G., above. The delineation report states wetland boundaries followed a well-defined topographic break and change in hydric soil indicators. The majority of W-1 transitions to delineated upland within the wetland delineation study area, although portions extend beyond the study area boundary at the north, south, east, and west. At the east, W-1 extends to a roadside ditch along Woodland Drive. At the north the wetland extends to a linear ditch along what appears to be a previous railroad line. These ditches are non-RPWs as they lack a defined bed and bank (LiDAR), OHWM, and show no evidence of standing water or prolonged saturation (veg stress/darkened soils). At the west, a portion of W-1 extends towards a residential development outside the review area. Topography slopes down into the wetland, which is bound by fill from the development. Elevation data shows W-1 sitting at a topographic low point of the parcel and immediate surrounding, while aerial imagery shows a lack of persistent wetness signature or any other indication of wetland presence (standing water, repeated vegetation stress, distinct variation of vegetation) outside the delineated wetland boundary. To the south, W-1 extends outside the review area through a pair of culverts toward WIS 42. This area is mapped as wetland in the WI Wetland Inventory (WWI). The wetland area continues approximately 570 linear feet south where it terminates at a third culvert, passing beneath WIS 42. No evidence of an OHWM is present indicating no relative permanence of flow extending through the third culvert. Review of aerial imagery shows no indication of flowing or standing water beyond (south) of the third culvert beneath WIS 42. Wetland 1 does not abut a jurisdictional RPW.

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. No field visits were conducted. Desktop review evaluation was conducted on 12/17/2025.
  - b. AJD Application "2024-01267\_20251103 APP.pdf" in the administrative record.
  - c. Mississippi Valley Division Regulatory Viewer, 12/17/2025.
  - d. Wisconsin DNR Surface Water Data Viewer, 12/17/2025.
  - e. Manitowoc County GIS Interactive Mapping, 12/17/2025.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-01267-TKO

10. OTHER SUPPORTING INFORMATION. [N/A]

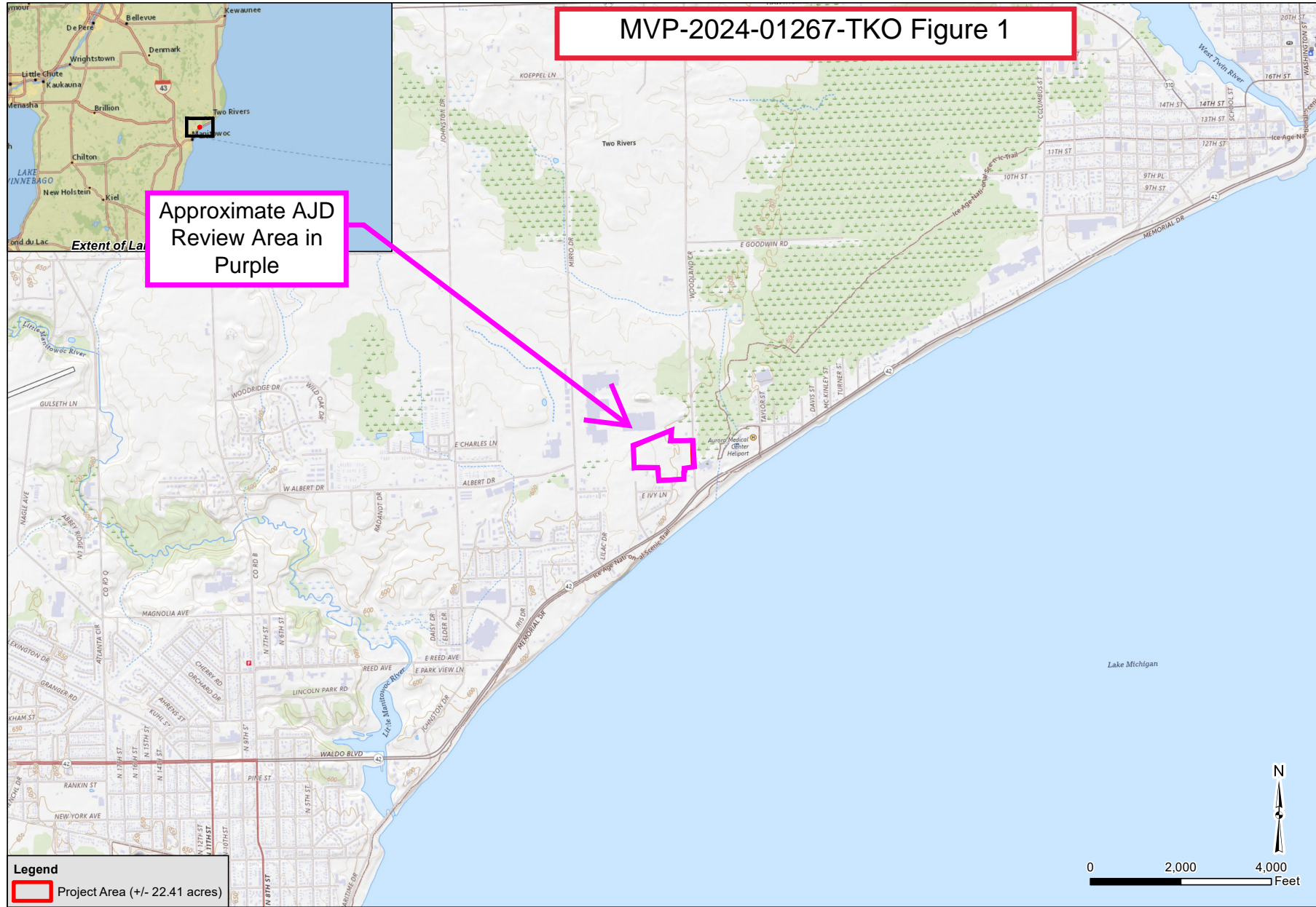
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

# MVP-2024-01267-TKO Figure 1



3159 Voyager Drive  
Green Bay, WI 54311  
www.geiconsultants.com

Approximate AJD  
Review Area in  
Purple



**FIGURE 1**  
**SITE LOCATION MAP**  
MIKW HOWE BUILDERS  
WOODLAND DRIVE DEVELOPMENT  
CITY OF MANITOWOC  
MANITOWOC COUNTY, WISCONSIN

Located in parts of:  
Section 9, T19N, R24E,  
Manitowoc County, Wisconsin

Drawn: RLS 8/5/2024  
Approved: KTB 8/5/2024  
Scale: As Shown  
Project Number: 2400127  
Figure Number: 1

**Legend**  
Project Area (+/- 22.41 acres)

# MVP-2024-01267-TKO Figure 2

