



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

MVP

28 MAR 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) , MVP-2025-00149-SPK.

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.¹ 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.²

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),³ the 2023 Rule as amended, 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).

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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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- i. Wetland A, 0.155 acre, non-jurisdictional – excluded feature
- ii. Wetland B, 0.034 acre, non-jurisdictional – excluded feature
- iii. Wetland C, 0.031 acre, non-jurisdictional – excluded feature
- iv. Wetland D, 0.058 acre, non-jurisdictional – excluded feature
- v. Wetland I, 0.002 acre, non-jurisdictional – excluded feature
- vi. Wetland J, 0.004 acre, non-jurisdictional – excluded feature
- vii. Wetland K, 0.008 acre, non-jurisdictional – excluded feature
- viii. Wetland L, 0.013 acre, non-jurisdictional – excluded feature
- ix. Wetland M, 0.013 acre, non-jurisdictional – excluded feature
- x. Wetland N, 0.006 acre, non-jurisdictional – excluded feature
- xi. Wetland O, 0.004 acre, non-jurisdictional – excluded feature
- xii. Wetland P, 0.005 acre, non-jurisdictional – excluded feature
- xiii. Wetland R, 0.007 acre, non-jurisdictional – excluded feature
- xiv. Wetland S, 0.004 acre, non-jurisdictional – excluded feature
- xv. Wetland T, 0.003 acre, non-jurisdictional – excluded feature
- xvi. Wetland U, 0.038 acre, non-jurisdictional – excluded feature
- xvii. Wetland V, 0.001 acre, non-jurisdictional – excluded feature

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)

3. REVIEW AREA. The review area for this determination includes 17 roadside ditches, labeled as Wetlands A, B, C, D, I, J, K, L, M, N, O, P, R, S, T, U, and V on the enclosed figures titled MVP-2025-00149-SPK Figures 1 of 9 through 9 of 9.

- a. Location Description: Sections 1-4, Township 28 North, Range 16 West and Sections 4-6, Township 28 North, Range 15 West
- b. Center Coordinates of the Project Site (in decimal degrees):
Latitude 44.935307, Longitude -92.26655
- c. Nearest City or Town: Woodville
- d. County: St. Croix
- e. State: Wisconsin
- f. Other associated Jurisdictional Determinations (including outcomes): N/A

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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
6. SECTION 10 JURISDICTIONAL WATERS⁴: 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 10.⁵ 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

⁴ 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.

⁵ 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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- 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).⁶

The features identified in the review area are Wetlands A, B, C, D, I, J, K, L, M, N, O, P, R, S, T, U, and V. These features were constructed in upland, drain only upland, do not carry relatively permanent flow, and are not relocated tributaries. These features are roadside ditches that were constructed in uplands to convey runoff along I-94. This was confirmed by reviewing desktop resources, including Google Earth aerial imagery, US Geological Service 3DEP Hillshade and DEM maps, NWI maps, NHD data, NRCS hydric soil data, WDNR Surface Water Data Viewer, and the WisDOT wetland delineation report.

Considering the information above, the Corps has determined that these features are Paragraph (b)(3) excluded ditches and are not subject to Section 404 of the Clean Water Act (CWA).

- 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

- 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.

⁶ 88 FR 3004 (January 18, 2023)

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- a. WisDOT Wetland Delineation Report. Dated November 7, 2023, and submitted with project application on February 6, 2025.
- b. Google Earth Aerial Imagery dated 1992, 2005, 2006, 2008, 2010, 2012, 2016, 2018, and 2020.
- c. USGS 3DEP Elevation. Accessed March 24, 2025.
- d. USDA NRCS Soil Survey SSURGO and STATGO. Accessed March 24, 2025.
- e. USFWS National Wetland Inventory (MapServer). Accessed March 24, 2025.
- f. USGS TNM – National Hydrography Dataset. Accessed March 24, 2025.
- g. WDNR Surface Water Data Viewer. Accessed March 24, 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.

Attachment 1











