



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
BROOKFIELD FIELD OFFICE
250 NORTH SUNNYSLOPEROAD SUITE # 296
BROOKFIELD WISCONSIN 53005

CE MVP-RD

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-2025-01279-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,

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.

CE MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01279-TKO

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

- 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-2	Non-Jurisdictional	N/A
W-3	Non-Jurisdictional	N/A

1. 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)

2. REVIEW AREA.

- a. Project Are Size (in acres): 2.8-acre
- b. Location Description: The project/review area is located in Section 08, Township 01N, Range 22E, Kenosha County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 42.5646 Longitude: -87.9156
- d. Nearest City or Town: Pleasant Prairie
- e. County: Kenosha
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2012-00272-HSR (28-NOV-2023)	AJD	W-2 was determined to be non-jurisdictional (excluded waters) under the AJD.

CE MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01279-TKO

3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]⁶
4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A]
5. 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
6. 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

7. 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 associated with an artificial pond excavated in dry land for the exclusive purpose of (storm)water collection and retention. W-2 consists of degraded shrub-scrub/ruderal wet meadow surrounding the pond within a closed depression which continues outside the wetland delineation study area to the south. W-2 was determined to be an excluded aquatic resource under an earlier AJD (MVP-2012-00272-HSR) as noted in Section 2.g. above. This aquatic feature fits under the definition of a b(5) water, from 33 CFR 328.3(b), as it is an artificial basin excavated in dry land to collect and retain water and is used exclusively as a settling basin.

- 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 2025 GRAEF wetland delineation report, 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

⁹ 88 FR 3004 (January 18, 2023)

Viewer) indicate that Wetland 3 (W-3), is a depressional wetland, surrounded by uplands. Review of these resources indicate the assessed wetland is not, and does not physically abut, a jurisdictional water. W-3 is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. W-3 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 wetland. W-3 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, Wetland 3 is not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

Wetland 3 (W-3) is located within the eastern half of the review area approximately 150 feet east, and downslope, of W-2, extending outside the delineation study area to the south. W-3 sits in a larger depressional area which appears to have been excavated/constructed as a settling basin within a drainage feature of an agricultural field at some point between 1995-2000. The area containing W-3 is not mapped (WWI/NWI) as wetland, though it sits in an area mapped as containing predominantly hydric soils, while aerial imagery shows repeated wetness signature in its location prior to construction. Ground level imagery and LiDAR data shows W-3 entirely bound by a berm of fill material aside from two small swales at along the western boundary. Topography gradually slopes down from the west towards the berm surrounding W-3. These swales appear to be eroded inlets to the settling basin. Drainage patterns observed in aerial imagery along with reviewed LiDAR indicate the presence of a piped outlet at the southeast of the settling basin (outside review area). Ground level imagery shows the pipe entering the berm where it likely discharges to the southern portion of W-4 (outside review area). However, this area is outside the delineation study area and the location of the outlet is not known. W-3 does not abut any jurisdictional downstream waters. Review of elevation data show the area identified as wetland sitting lower than the surrounding uplands. Wetland boundaries are consistent with aerial imagery showing a lack of wetness signature or any other indication of wetland presence (standing water, repeated vegetation stress, distinct variation of vegetation) outside of the delineated wetland boundaries.

8. 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 01/06/2026.

CE MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01279-TKO

- b. [AJD Application "2025-01279 20251203 APP.pdf"](#) in the administrative record.
- c. [Prior AJD titled "MVP-2012-00272-HSR"](#) in the administrative record.
- d. [Mississippi Valley Division Regulatory Viewer](#), 01/06/2026.
- e. [Wisconsin DNR Surface Water Data Viewer](#), 01/06/2026.
- f. [Kenosha County GIS Interactive Mapping](#), 01/06/2026.

9. OTHER SUPPORTING INFORMATION. [[N/A](#)]

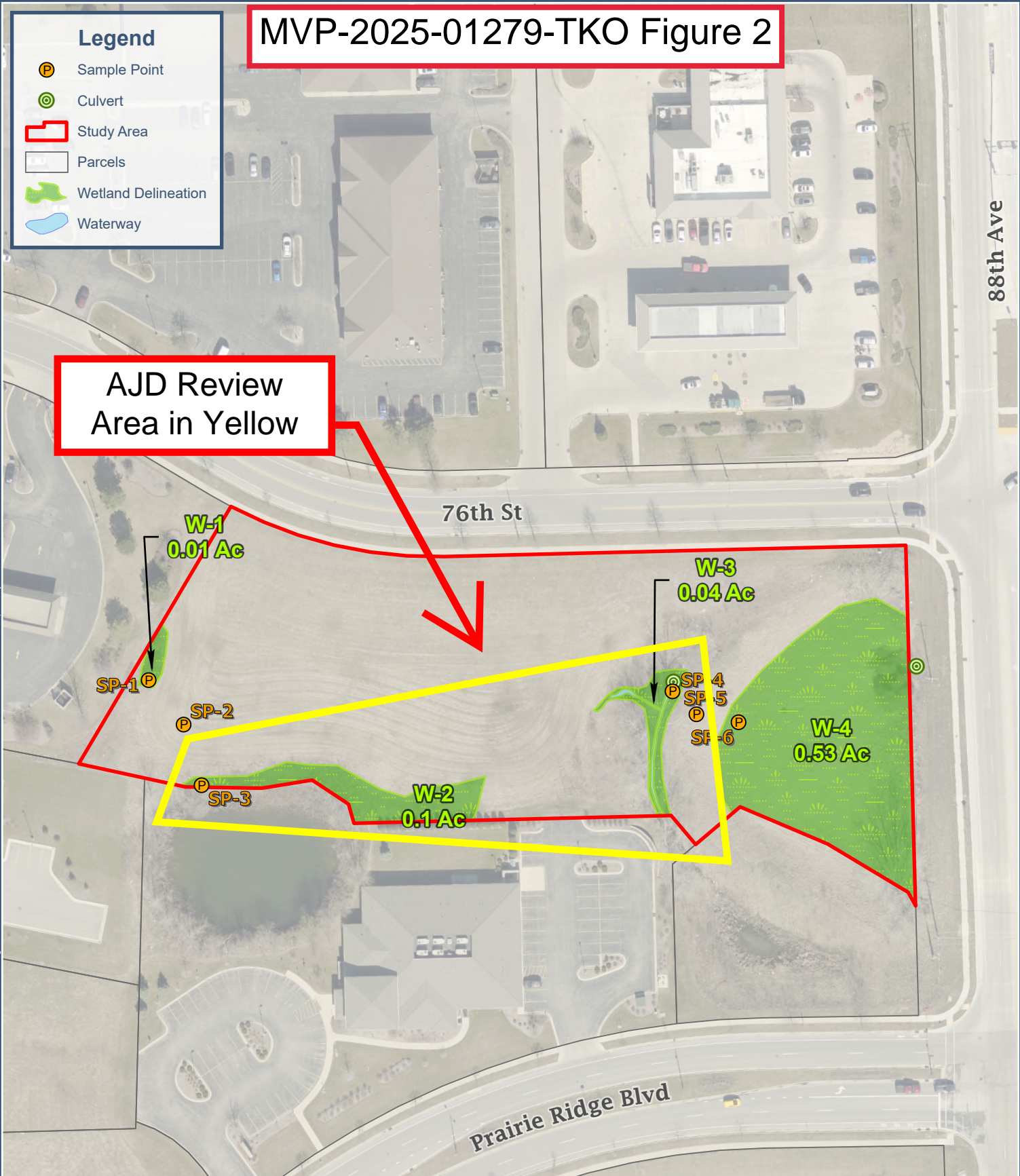
10. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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

MVP-2025-01279-TKO Figure 2

Legend

- Sample Point
- Culvert
- Study Area
- Parcels
- Wetland Delineation
- Waterway

AJD Review Area in Yellow



Path: X:\M\2025\20250333\Design\GIS\CostcoPleasantPrairieGasRelocation\CostcoPleasantPrairieGasRelocation.aprx Layout: Wetland Delineation
Date Saved: 11/4/2025 1:32 PM
User: 1956

0 50 100
Feet
1 in = 100 ft

WETLAND DELINEATION

COSTCO PLEASANT PRAIRIE GAS RELOCATION

VILLAGE OF PLEASANT PRAIRIE
KENOSHA COUNTY, WISCONSIN

FIGURE 2