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

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-2025-01334-ALH [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,

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[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.

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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 1	Non-Jurisdictional	N/A
Wetland 2	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 Are Size (in acres): 0.5 acre
   b. Location Description: The project/review area is located in Section 07, Township 18N, Range 15E, Winnebago County, Wisconsin.
   c. Center Coordinates of the Project Site (in decimal degrees)
      Latitude: 44.043020 Longitude: -88.748220
   d. Nearest City or Town: Omro
   e. County: Winnebago
   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 WATERS[7]: 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

   b. The Territorial Seas (a)(1)(ii): N/A

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[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.

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] [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).
[Wetland 1 is a depressional wetland and it is surrounded by delineated uplands except to the southeast which is outside of the delineated area. There is a paved parking lot to the southeast which limits its ability to continue to the southeast. The National Wetland Inventory layer on the National Regulatory Viewer does not indicate a presence of wetlands where Wetland 1 is located. Multiple years of aerial imagery do not show many changes in the last decade and 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. The Hillshade, Digital Elevation Model (DEM) layer and 2-ft Contours layers roughly confirm the size and shape of the wetland and where it transitions to uplands. Therefore, Wetland 1 does not abut a relatively permanent jurisdictional water.

Wetland 2 continues outside of the delineated area to the south and west where it drains into a roadside ditch along West River Drive. The Hillshade, Digital Elevation Model (DEM) layer and 2-ft Contours layers roughly confirm the size

[9] 88 FR 3004 (January 18, 2023)

and shape of the wetland and where it transitions to uplands to the east and north. To the west, it is confined by an active agricultural field. To the south, it is confined by West River Drive. In recent aerial imagery and the Google Earth Street view, there is no indication of relatively permanent flow in the linear ditches that run parallel to West River Drive on the north side as they lack any wetness signatures which would indicate water. The USA Soils Hydric Class layer on the National Regulatory Viewer indicates a partially hydric soil in this location at only 6%. Furthermore, there is also no indication of an Ordinary High-Water Mark going through any culverts that are parallel to West River Drive or underneath West River Drive. West River Drive creates a significant separation between Wetland 2 and any wetland feature that may be on the south side of West River Drive. Aerial photos and elevation changes indicate these wetlands are functioning independent of each other. Wetland 2 does not abut a jurisdictional water.

The wetlands are not TNWs, territorial seas, or interstate waters and therefore not (a)(1) waters. The wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. The wetlands are nontidal wetlands that do not abut a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, the wetlands 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.

    a. Office evaluation was conducted on January 5, 2026.

    b. W. River Drive Development Site Professionally Assured Wetland Delineation Report by Evergreen Consultants LLC. dated October 3, 2025.

    c. National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, 2-ft Contours, Hillshade layer, DEM layer and WDNR Imagery 2022, 2020 and 2015 accessed on January 5, 2026.

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-2025-01334-ALH FIGURE 1 OF 2

W. River Drive Development Site
Site Location Map
W. River Drive
City of Omro
Winnebago County, WI

N
W E
S

Legend

Site Boundary

Project: WIN25-090-01

0 100 200 400 Feet

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Legend

- Site Boundary
- Sample Point
- Picture Location
- Wetland Line
- Wetland
- Culvert

W. River Drive Development Site
Wetland Delineation Map
W. River Drive
City of Omro
Winnebago County, WI

N
W E
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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: WIN25-090-01

0 40 80 160 Feet

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