



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. LOUIS DISTRICT
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103

CEMVS-RD

November 18, 2024

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 [MVS-2024-558](#)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).

- 1) S-3 (81 feet), non-jurisdictional
- 2) S-4 (20 feet), non-jurisdictional
- 3) W-1A (0.412-acre), 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) (2023 Rule, as amended)
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- d. Citing to the 27 September coordination memo, specifically to the language which reads, "Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the regulatory text that was not amended by the conforming rule, including the preamble relevant to the *Rapanos* plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended."

3. REVIEW AREA. The Review Area consists of approximately 30-acres proposed for solar development near Mount Vernon, Jefferson County, Illinois. The Review Area generally lies in Section 22, Township 2 South, and Range 2 East. Approximate coordinates for the Review Area are Latitude 38.3314° and Longitude -89.9774°.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Big Muddy River \(TNW\)](#)

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [Harper Creek is the receiving waters for all the surface drainage that leaves the Review Area. Harper Creek flows into the Big Muddy River, a TNW. The Big Muddy River is a Section 10 water from mile 0 to mile 51.9, near DeSoto, Illinois.](#)

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ **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**
 - e. Tributaries (a)(3): **N/A**
 - f. Adjacent Wetlands (a)(4): **N/A**
 - g. Additional Waters (a)(5): **N/A**

⁶ 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.

⁷ 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.

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).⁸
 - **W-1A** is a channelized drainage ditch that has developed wetland characteristics. The ditch runs along Sahara Road turning north between the adjacent industrial development and the ag field. The drainage ditch flows from south to north paralleling the eastern limits of the Review Area. Review of historic aerial photography dating back to 1941 illustrates the lack of a previously existing tributary or other natural drainage feature, including wetlands, prior to the development of the site’s eastern limits and the construction of the ditch. Additionally, wetland data forms were completed adjacent to the ditch. None of these data forms demonstrate the ditch currently drains adjacent wetlands within the Review Area. W-1A is excluded as a paragraph (b)(3) water as it is a constructed ditch that was excavated wholly in and draining only dry land and does not carry a relatively permanent flow of water.
- 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).
 - **S-3** (81 feet) and **S-4** (20 feet) are small, first order tributaries that drain east to west near the western limits of the Review Area along the edge of the active agricultural field. The tributaries begin within the Review Area and convey surface drainage from small watersheds within the ag field. Their watershed sizes do not provide enough overland flow to maintain continuous seasonal flow without the presence of an elevated groundwater connection during the wet season for extended periods. The lack of standing or flowing water for more than a short duration in direct response to precipitation best characterizes these features and therefore they would not meet the Relatively Permanent Standard.

⁸ 88 FR 3004 (January 18, 2023)

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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVS-2024-558](#)

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. [Wetland Delineation Report dated November 12, 2024](#)
- b. [USGS Topographic Maps, 1:24,000 Scale Mount Vernon, IL Quad](#)
- c. [USGS NHDPlus](#)
- d. [USGS Stream Stats](#)
- e. [Antecedent Precipitation Tool](#)
- f. [USDA-NRCS Soil Survey for Jefferson County, Illinois](#)
- g. [USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale](#)
- h. [Illinois Height Modernization \(ILHMP\) LiDAR Data](#)
- i. [Illinois Historic Aerial Photography – ISGS Geospatial Data Clearinghouse](#)
- j. [Google Earth Pro Aerial Imagery, Various Aerial Images](#)

10. OTHER SUPPORTING INFORMATION.

[Joint Policy Memorandums on NWK-2022-00809, NAP-2023-01223, & SWG-2023-00284](#)

Note: W-1B, W-2, S-1, S-2, and S-1B were excluded from this AJD to avoid review delays.

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.

Coordinate System: NAD 1983 StatePlane Illinois East FIPS 1201 Feet; Map Rotation: 0
 -- Saved By: MOPEL on 11/12/2024, 15:08:09 PM; File Path: T:\1-PROJECTS\Solar_Generation\562612_0002_MountVernon\5-APPROX\WDR.aprx; Layout Name: EXHA_Delineation



- STUDY AREA
- CULVERT
- INTERMITTENT STREAM
- EPHEMERAL STREAM
- STREAM PLOT
- DRAINAGE
- PEM WETLAND
- PFO WETLAND
- WETLAND SAMPLE LOCATION
- UPLAND SAMPLE LOCATION

NOTES:
 1. BASE MAP IMAGERY FROM GOOGLE, OCTOBER 2021.
 2. WETLAND DELINEATION COMPLETED APRIL 15 & 16, 2024.



1:2,400
 1" = 200'



PROJECT:		MOUNT VERNON SOLAR JEFFERSON COUNTY, IL	
TITLE:		WETLAND AND WATERWAY DELINEATION MAP	
DRAWN BY:	M. OPEL	PROJ. NO.:	562612.0002
CHECKED BY:	L. GIESE	EXHIBIT A	
APPROVED BY:	N. YUKNIS		
DATE:	NOVEMBER 2024		
		6737 W WASHINGTON ST. SUITE 3460 WEST ALLIS, WI 53214 PHONE: 262.879.1212	
FILE:			WDR.aprx