



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

CEMVS-OD-F

30 January 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-2024-66](#)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.

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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) [Wetland 1 \(WTL-1\): 0.321-acre, non-jurisdictional](#)
- 2) [Stream 1 \(STR-1\): 826-feet, jurisdictional \(Section 404\)](#)

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. [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."](#)
 - e. [Citing to the "Technical Support Document for the Final "Revised Definition of 'Waters of the United States'" Rule dated December 2022.](#)
3. REVIEW AREA. [The Review Area is approximately 6-acres proposed for an electrical substation in Belleville, St. Clair County, Illinois \(Latitude 38.5139°, Longitude -90.0161°\).](#)
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Kaskaskia River](#)

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [The unnamed tributary flows southeast into Richland Creek, a tributary to the Kaskaskia River. The Kaskaskia River is considered a TNW.](#)
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):

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.

- **Stream 1 (STR-1):** Stream 1 is a third order stream (per NHD) with a 1400-acre watershed at the downstream most extent within the Review Area. The perennial flow characteristics observed throughout the reach were determined to meet the relatively permanent standard and are supported by anticipated base flows from groundwater, prolonged low-flow conditions due to the presence of multiple impoundments upslope, as well as flow from precipitation events received through overland surface flow and other drainage features. The stream reach was observed flowing during the site evaluation. Per the results of the Antecedent Precipitation Tool, two-inches of precipitation fell within the preceding 30-days while climatically normal conditions were present with a moderate drought index. The evaluated stream reach, utilizing NHD, extends from 1-mile upslope of the Review Area, downslope to Richland Creek for a total length of 3-miles.

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).⁸
- 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 (WTL-1)** lies within a depressional area within a fallow field and appears to have been created incidental to past construction activities related to the adjacent, existing transmission line right-of-way. WTL-1 is separated from STR-1 by a natural berm. **WTL-1 lacks a continuous surface via a discrete feature to Stream 1, an RPW. Additionally, Stream 1 did not exhibit evidence of floodplain connectivity or subsurface connectivity to**

⁸ 88 FR 3004 (January 18, 2023)

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WTL-1. Review of historic aerials dating back to 2018 show temporary access road and laydown yard were within the location of the WTL-1 during transmission line construction activities, compacting soils, and leaving conditions suitable for wetland development. Hydraulic conductivity (Ksat) is the most easily manipulated soil physical property, primarily through compaction described above. The soils within the Review Area are comprised of Wakeland silt loam, which are naturally “very limited” when it comes to subsurface water management due to “slow water movement” and are rated as “severely limited” for the performance of shallow infiltration systems – designed for the lateral dispersion of water. As such, any disturbance that includes a road or other compacted fill material would yield less conductivity than would be expected through modeling and therefore effectively eliminate the potential for subsurface connection at the distance present between STL-1 and WTL-1.

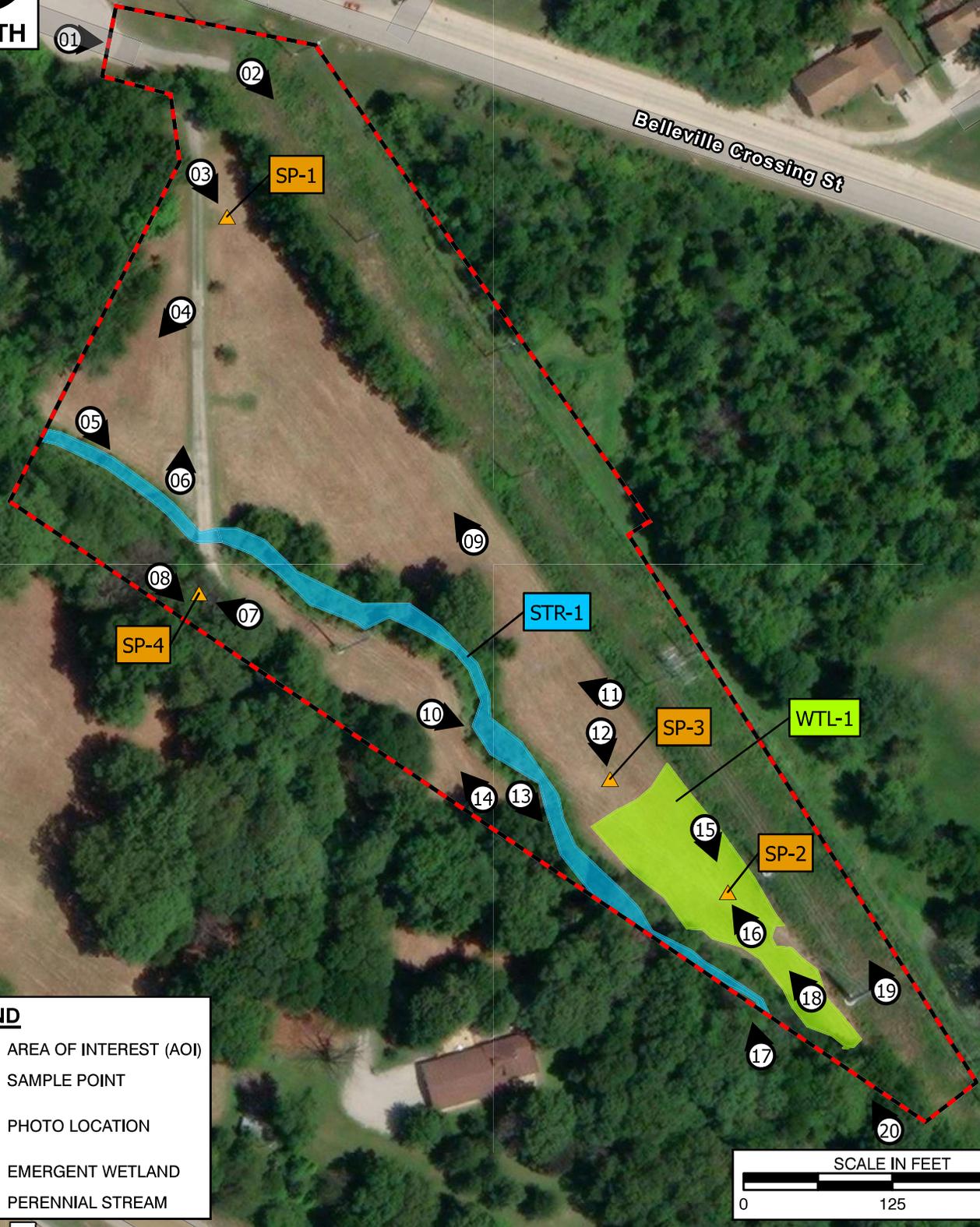
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. [Waters Delineation Report dated January 23, 2024](#)
- b. [USGS TopoView Topographic Maps, 1:24,000 Scale, French Village, IL Quad](#)
- c. [USGS NHDPlus, Accessed January 30, 2024](#)
- d. [USGS Stream Stats, Accessed January 30, 2024](#)
- e. [Antecedent Precipitation Tool](#)
- f. [USDA-NRCS Soil Survey for St. Clair County, Illinois & Web Soil Survey](#)
- g. [USGS Illinois Geologic Maps](#)
- h. [USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale](#)
- i. [Illinois Height Modernization \(ILHMP\) LiDAR Data](#)
- j. [Google Earth Pro Aerial Imagery, Various Aerial Images](#)

10. OTHER SUPPORTING INFORMATION.

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.

REFERENCES
 1. ESRI WORLD IMAGERY / ARCGIS MAP SERVICE:
 HTTP://GOTO.ARCGISONLINE.COM/MAPS/WORLD_IMAGERY,
 ACCESSED 1/12/2024



LEGEND

- AREA OF INTEREST (AOI)
- SAMPLE POINT
- PHOTO LOCATION
- EMERGENT WETLAND
- PERENNIAL STREAM



Civil & Environmental Consultants, Inc.

3000 Little Hills Expressway · Suite 102 · St. Charles, MO 63301
 (314) 656-4566 · (866) 250-3679 · fax: (314) 656-4595
 www.cecinc.com

AMEREN ILLINOIS COMPANY
 GOALBY SUBSTATION
 BELLEVILLE, ST. CLAIR COUNTY, ILLINOIS

WATERS DELINEATION MAP

DRAWN BY:	RRT	CHECKED BY:	LAV	APPROVED BY:	LAV*	FIGURE NO:	4
DATE:	12/13/2023	SCALE:	1"=125'	PROJECT NO:	336-585		

*Hand Signature on file

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