



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

CEMVS-RD

April 29, 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) ,¹ [MVS-2023-30](#)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).

Tributaries

- 1) Pond Creek (3,600 feet), jurisdictional (Section 404)
- 2) RT of Pond Creek (842 feet), jurisdictional (Section 404)
- 3) CH-1d (1,409 feet), non-jurisdictional
- 4) CH-1d1 (151 feet), non-jurisdictional
- 5) CH-2¹ (2,293 feet), jurisdictional (Section 404)
- 6) CH-2¹ (1,353 feet), non-jurisdictional
- 7) CH-2a (1,700 feet), non-jurisdictional
- 8) CH-2b (2,500 feet), non-jurisdictional
- 9) CH-2c (390 feet), non-jurisdictional
- 10) CH-3 (800 feet), non-jurisdictional
- 11) CH-3a (715 feet), non-jurisdictional
- 12) CH-5 (659 feet), non-jurisdictional
- 13) CH-6 (1,013 feet), non-jurisdictional
- 14) CH-7 (207 feet), jurisdictional (Section 404)

Wetlands

- 15) Wetland 1 (8.569-acres), non-jurisdictional
- 16) Wetland 2 (0.676-acre), non-jurisdictional
- 17) Wetland B (1.696-acres), non-jurisdictional
- 18) Wetland C (1.018-acres), non-jurisdictional
- 19) Wetland D (19.419-acres), jurisdictional (Section 404)
- 20) Wetland E (8.552-acres), jurisdictional (Section 404)
- 21) Wetland F (2.830-acres), non-jurisdictional
- 22) Wetland G (1.336-acres), non-jurisdictional
- 23) Wetland H (1.148-acres), non-jurisdictional
- 24) Wetland I (1.639-acres), jurisdictional (Section 404)
- 25) Wetland K (0.181-acres), non-jurisdictional
- 26) Wetland L (1.026-acres), non-jurisdictional
- 27) Wetland M (1.112-acres), non-jurisdictional

*See Tables 1 and 2 in Section 10 for more detailed information relating to each aquatic resource presented above. Only features that intersect the Review Area were included in the AJD.

¹ CH-2 is comprised of two Strahler stream orders, and therefore contains both RPW and non-RPW reaches. To maintain applicant stream naming conventions, both stream reaches were left as CH-2 for the purposes of this AJD.

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. "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. [The Review Area is approximately 525-acres in size near Corinth in Williamson and Franklin Counties, Illinois. Approximate coordinates for the center of the Review Area are Latitude 37.8623° and Longitude -88.8030°.](#)
 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. [Pond Creek and Tilly Creek are the receiving waters for all the surface drainage within the Review Area. Both Pond Creek and Tilley Creek eventually intersect the Big Muddy River, a TNW at its downstream extent.](#)
 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](#)

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.

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):** Four tributaries (**Pond Creek, RT of Pond Creek, CH-2¹, CH-7**) within the Review Area were determined to meet the Relatively Permanent Standard. Each of the tributaries was observed multiple times during varying climatic conditions and with different degrees of flowing and/or pooled waters during the site evaluations. Physical characteristics combined with the systems watershed conditions provide weight-of-evidence that the systems contain flow continuously for extended periods of time, which is necessary to meet the relatively permanent standard (RPS).
 - **Pond Creek** is a fourth-order tributary with a 3,840-acre watershed at its downstream most extent within the Review Area. The perennial flow characteristics observed throughout the reach were determined to meet the RPS; containing base flow from a groundwater connection as well as flow from precipitation events received through overland surface flow and other drainage features. At the time of the delineation field evaluation and associated USACE site visits, the stream reach was observed with both flowing and pooled water, even during a period with an identified drought index.
 - **RT of Pond Creek** is a secondary channel of Pond Creek that continues receiving flow. The channel contained pooled water during the delineation field evaluation. LiDAR indicates Pond Creek was historically relocated throughout this reach; however, flow events have created and/or maintained this secondary channel. Flow characteristics match those of Pond Creek, and therefore, were determined to meet the RPS.

- **CH-2** (2,293 feet) is an unnamed tributary to Pond Creek that has a 363-acre watershed that gathers diffuse surface flow and accumulates hydrology from CH-2, CH-2a, CH-2b, and CH-2c as well as their abutting forested wetlands. CH-2 exhibits a discontinuity in OHWM through Wetland E before reconsolidating flows south along the limits of the Review Area. The tributary becomes more incised as it continues through the Pond Creek floodplain where it gains an identifiable groundwater connection. The flow characteristics at the downstream limit are representative of the entire reach of the tributary. Based on the channel's physical characteristics, watershed size, and presence of pooled water during the site visit, it was determined to meet the RPS.
- **CH-7** (207 feet) is a third-order tributary to Pond Creek that has a 1,249-acre watershed that gathers diffuse surface flow and accumulates hydrology from numerous headwater tributaries south of the existing refuse disposal area. Based on the channel's physical characteristics, watershed size, and presence of flowing water during the site visit, it was determined to meet the RPS.

f. Adjacent Wetlands (a)(4):

- **Wetland D** is a 19.419-acre forest floodplain wetland that abuts CH-2 and Pond Creek, both of which are RPW's and (a)(3) waters.
- **Wetland E** is a forested wetland that abuts CH-2 and Pond Creek outside of the Review Area, both of which are RPW's and (a)(3) waters. Wetland E is part of the larger wetland complex that is present within the Pond Creek floodplain (see Wetland D).
- **Wetland I** is a forested wetland that exits the Review Area into the Pond Creek floodplain where it abuts the USACE-approved wetland mitigation area. The wetland mitigation area abuts Pond Creek, an RPW and (a)(3) water, and the greater wetland complex associated with Wetland D and Wetland E.

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).

Non-jurisdictional Tributaries

[CH-1d](#) / [CH-1d1](#) / [CH-2¹](#) / [CH-2a](#) / [CH-2b](#) / [CH-2c](#) / [CH-3](#) / [CH-3a](#) / [CH-5](#) / [CH-6](#)

Each of these 10 non-RPW features are first- or second-order tributaries that lie within the upper extents of small watersheds (generally <200-acres in size). The onset of streamflow coincides with precipitation events and cease shortly after the termination of overland run-off. Even with presumed back-to-back or multiple storm events throughout their watersheds, these systems do not sustain baseflows for extended periods of time, but rather maintain a repeated sequence of streamflow, flow cessation, and channel drying throughout the year. 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. Secondly, many of these features bisect and disperse flows into abutting forested wetlands, which collect and retain water for longer durations of time, reducing the flow within the tributaries themselves. These abutting wetlands are present within low gradient depressional areas, where flow velocities through the areas are reduced by the wetlands, decreasing the downcutting within the tributaries, which we see in more degraded systems. Based on their location within their respective local watershed and lack of physical characteristics indicating the presence of a groundwater connection, these features would not meet the Relatively Permanent Standard.

- **[CH-1d](#)** and **[CH-1d1](#)** are first- and second-order headwater non-RPW tributaries that flows north to south before dispersing into Wetland 1.
- **[CH-2c](#)** and **[CH-2](#)**, combined, are a headwater non-RPW tributary that flows north to south for 1,743 linear feet before intersecting **[CH-2b](#)** and changing stream order, becoming **[CH-2](#)** (RPW-reach).
- **[CH-2a](#)** and **[CH-2b](#)** are first-order headwater non-RPW tributaries that flow east to west before intersecting **[CH-2](#)** (RPW-reach).

⁸ 88 FR 3004 (January 18, 2023)

- **CH-3** and **CH-3a** are first- and second-order headwater non-RPW tributaries that flow east to west before intersecting Pond Creek.
- **CH-5** is a first-order non-RPW that flows into Wetland K, before dispersing as overland flow through the actively cultivated farm field.
- **CH-6** is first-order headwater drainage that is not identified by NHD. CH-6 flows north 0.25-mile before converging into a singular second-order tributary in a confined landscape position near Latitude 37.8670°, Longitude -88.7905°.

Non-jurisdictional Wetlands

- **Wetland 1** and **Wetland B** abut non-RPW tributaries within the eastern half of the Review Area. Flow continues thru Wetland 1 before dissipating into the ag field south of the Review Area. Although aerial imagery indicates flows exit the wetland and continue downslope to the south and west, they do so as overland surface flow as exhibited by various drainage patterns through the vegetation and lack of channel as illustrated by lidar. These drainage patterns and the associated hydrologic disconnect can be observed in historic aerial imagery dating back to 1951. Thus, Wetland 1 and Wetland B, do not have a continuous surface connection to a RPW and, consistent with *Sackett*, are not “adjacent.”
- **Wetland C** and **Wetland K** are depressional wetlands along the southern and western boundaries of the Review Area, respectively. No discrete features were identified exiting the wetland features downslope.
- **Wetland 2, Wetland F, Wetland G, and Wetland H** abut non-RPW tributaries. Thus, Wetland 2, Wetland F, Wetland G, Wetland H, and Wetland J do not have a continuous surface connection to a RPW and, consistent with *Sackett*, are not “adjacent.”
- **Wetland M** and **Wetland L** lie in similar landscape positions, abutting first-order headwater drainages. Wetland M abuts and is bisected by CH-6, a non-RPW tributary whereas Wetland L lies within a secondary first-order drainage, comprised of a non-RPW tributary like CH-6. None of the drainageways are identified by NHD. Water from the wetlands and associated non-RPW tributaries flow north 0.25-mile before converging into a singular second-order tributary in a confined landscape position near Latitude 37.8670°, Longitude -88.7905°. Thus, Wetland M and Wetland L do not have a continuous surface connection to a RPW and, consistent with *Sackett*, are not “adjacent.”

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 and Stream Delineation Report dated December 2023](#)
- b. [USACE Site Visit: 10/25/23](#)
- c. [USGS TopoView Topographic Maps, 1:24,000 Scale, Pittsburg, IL Quad](#)
- d. [USGS NHDPlus, Accessed February 9, 2024](#)
- e. [USGS Stream Stats](#)
- f. [Hydrologic Modeling System \(HEC-HMS\)](#)
- g. [Antecedent Precipitation Tool](#)
- h. [USDA-NRCS Soil Survey for Franklin and Williamson Counties, Illinois](#)
- i. [USGS Illinois Geologic Maps](#)
- j. [USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale](#)
- k. [Illinois Height Modernization \(ILHMP\) LiDAR Data](#)
- l. [Google Earth Pro Aerial Imagery, Various Aerial Images](#)

10. OTHER SUPPORTING INFORMATION.

Antecedent Precipitation Tool Results

Delineation Field Evaluation Dates:

[Feb 23, 2022: Wet Season / Wetter than Normal / Mod. Wetness \(Drought Index\)](#)
[Mar 24, 2022: Wet Season / Wetter than Normal / Mild Wetness \(Drought Index\)](#)
[Apr 19, 2022: Wet Season / Wetter than Normal / Normal \(Drought Index\)](#)

USACE Site Visit / Delineation Verification:

[Site visit was conducted to field verify limits of water features, associated connections downslope, and confirm negative wetland determinations in between aquatic resources where data was not demonstrated to be collected with the Review Area.](#)

[Oct 25, 2023: Wet Season / Normal Conditions / Mild Drought \(Drought Index\)](#)

Table 1. Tributaries Identified within the Review Area

Feature ID ³	Latitude	Longitude	Length	Watershed Size (acres)	Flow Characteristics	WOTUS
Pond Creek	37.8531	-88.8067	3,600	3,840	RPW	Yes
RT of Pond Creek	37.8543	-88.8096	842	----	RPW	Yes
CH-1d	37.8574	-88.7933	1,409		NRPW	No
CH-1d1	37.8590	-88.7938	151	<10	NRPW	No
CH-2	37.8548	-88.8079	2,293	363	RPW	Yes
CH-2	37.8576	-88.8031	1,353	168	NRPW	No
CH-2a	37.8581	-88.8002	1,700	30	NRPW	No
CH-2b	37.8604	-88.7988	2,500	40	NRPW	No
CH-2c	37.8611	-88.8018	390	78	NRPW	No
CH-3	37.8529	-88.8111	800	130	NRPW	No
CH-3a	37.8531	-88.8107	715	45	NRPW	No
CH-5	37.8597	-88.8087	659	32	NRPW	No
CH-6	37.8645	-88.7926	1,013	25	NRPW	No
CH-7	37.8484	-88.8117	207	1,249	RPW	Yes

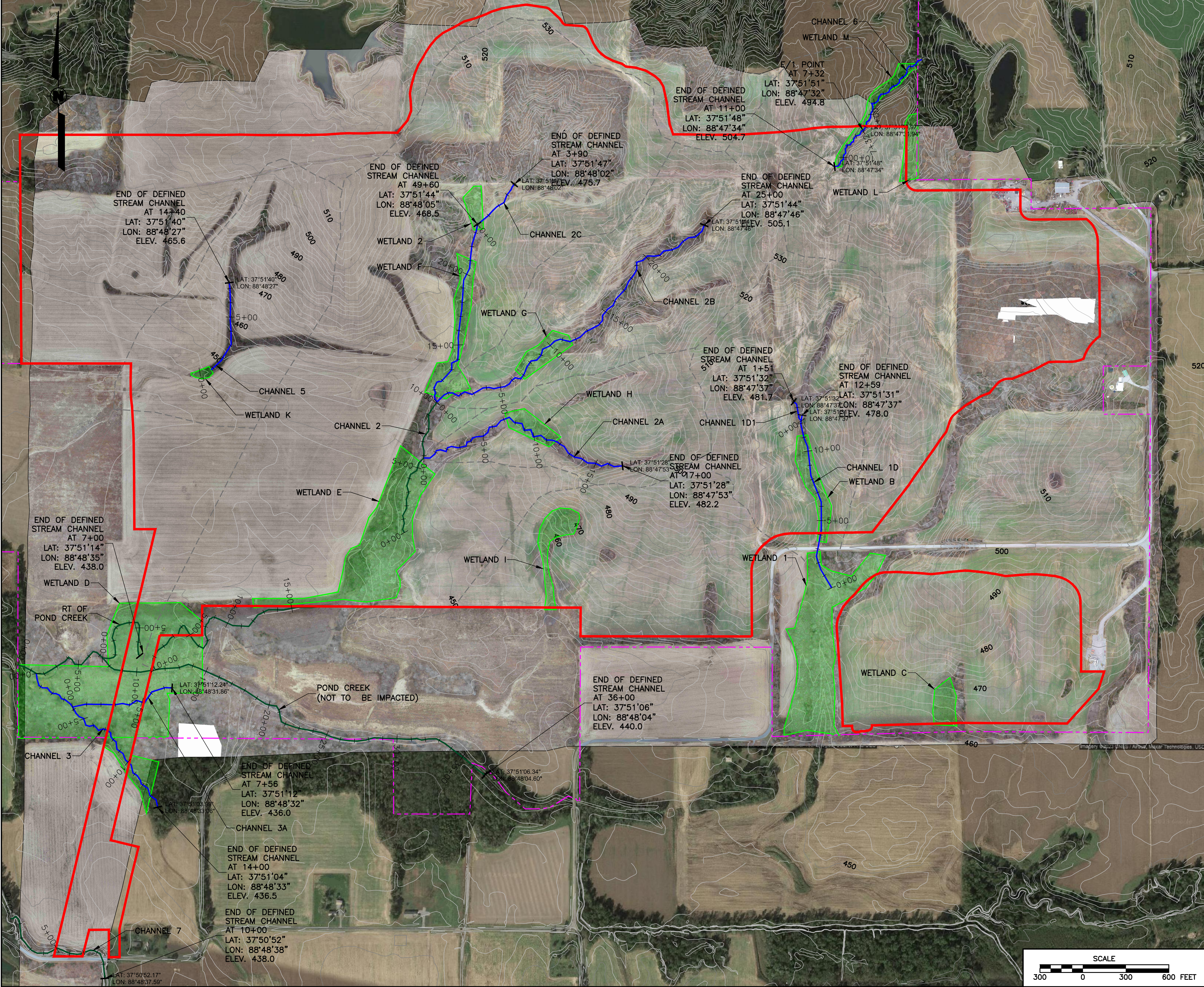
Table 2. Wetlands Identified within the Review Area

Wetland ID	Latitude	Longitude	Area (Acres)	Wetland Type	CSC	WOTUS
Wetland 1	37.8539	-88.7935	8.569	PFO	No	No
Wetland 2	37.8627	-88.8016	0.676	PFO	No	No
Wetland B	37.8577	-88.7935	1.696	PFO	No	No
Wetland C	37.8533	-88.7902	1.018	PFO	No	No
Wetland D	37.8534	-88.8099	19.419	PFO	Yes	Yes
Wetland E	37.8564	-88.8037	8.552	PFO	Yes	Yes
Wetland F	37.8606	-88.8018	2.830	PFO	No	No
Wetland G	37.8601	-88.7998	1.336	PFO	No	No
Wetland H	37.8585	-88.8002	1.148	PEM	No	No
Wetland I	37.8568	-88.7996	1.639	PFO	Yes	Yes
Wetland K	37.8597	-88.8081	0.181	PFO	No	No
Wetland L	37.8640	-88.7910	1.026	PEM	No	No
Wetland M	37.8650	-88.7920	1.112	PFO	No	No

CEMVS-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVS-2023-30](#)

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.



STREAM TABLE						
Channel ID	Stream Class	E/I Point	IMPACT LENGTH	LAT .	LON.	EL.
CH-1D	NRPW	-	846	37°51'31"	88°47'37"	478.0
CH-1D1	NRPW	-	151	37°51'32"	88°47'37"	481.7
CH-2	RPW	-	1176	37°51'23"	88°48'12"	448.0
CH-2	NRPW	-	1353	37°51'32"	88°48'09"	454.0
CH-2A	NRPW	-	1700	37°51'28"	88°47'53"	482.2
CH-2B	NRPW	-	2500	37°51'36"	88°47'57"	469.0
CH-2C	NRPW	-	390	37°51'44"	88°48'05"	469.0
CH-5	NRPW	-	659	37°51'34"	88°48'28"	448.0
CH-6	NRPW	732	407	37°51'48"	88°47'34"	504.7
CH-7	RPW	-	207	37°50'52"	88°48'38"	438.0
Pond Creek	RPW	-	209	37°51'06"	88°48'04"	440.0
RT of Pond Creek	RPW	-	272	37°51'40"	88°48'27"	438.0
CH-3	NRPW	-	270	37°51'08"	88°48'36"	438.0
CH-3A	NRPW	-	210	37°51'11"	88°48'55"	438.0

WATERSHED TABLE	
Channel ID	Watershed areas
CH-1D	48.06
CH-1D1	
CH-2	165.45
CH-2C	
CH-2A	26.36
CH-2B	46.78
CH-6	25.67
TOTAL	312.32 (Acres)

WETLAND TABLE	
Wetland ID	Impact Area (Acres)
1	0.004850
2	0.675765
B	1.311293
C	0.878422
D	0.432692
E	8.293123
F	2.830732
G	1.336340
H	1.148415
I	1.547046
K	0.181496
L	0.005131
M	0.224596
Total	18.869901

- LEGEND:**
- WETLAND
 - RPW STREAMS
 - NRPW STREAMS
 - PROPERTY LINES
 - APPROXIMATE LIMITS OF (RDA NO. 3)
 - END OF CHANNEL
 - WATERSHED BOUNDARY

- DEFINITIONS:**
- "Ephemeral stream" means: a stream that meets both of the following requirements: it flows only indirect response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice; and it has a channel bottom that is always above the local water table.
 - "Intermittent stream" means: a stream or reach of a stream that drains a watershed of at least one square mile; or a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.
 - "Perennial stream" means: a stream that flows continuously during all of the calendar year or part of a stream that flows continuously during all of the calendar year. The stream or part of a stream flows continuously as a result of groundwater discharge or surface runoff the term does not include intermittent streams or ephemeral streams.

NOTE:
STREAM CHANNELS HAVE BEEN MAPPED IN ACCORDANCE WITH OPERATOR MEMORANDUM 2017-06

04/17/25	REVISED PER ACOE	RLF
03/03/25	REVISED LIMITS	RLF
08-21-24	REVISIONS PER USACE COMMENTS	RLF
08-14-24	REVISED LAYOUT	RLF
04-25-24	REVISIONS PER IDNR-STREAM DEFINITIONS	RLF
12-01-23	REVISIONS PER IDNR-STREAM DEFINITIONS	RLF
REV.	DATE	DESCRIPTION

Alliance Consulting, Inc.
Engineers • Constructors • Scientists
BECKLEY, WV (304) 256-0491
CANONSBURG, PA (724) 745-3650

IDNR PERMIT NO. 466
STREAM AND WETLAND IMPACT MAP
MACH REFUSE DISPOSAL AREA NO. 3
Prepared For
WILLIAMSON ENERGY, LLC
P.O. BOX 99, JOHNSTON CITY, ILLINOIS 62951

CAD BY	DJS	03/16/23	PROJECT NO.	B22-102-1413
CHECKED BY			DRAWING NO. B22-102-E18	
APPROVED BY				

