



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

CEMVS-RD

September 11, 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-2025-517 \(MFR 1 of 1\)](#)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, 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.

CEMVS-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [[MVS-2025-517](#)]

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) Pond A (2.3-acre); non-jurisdictional
- 2) Pond B (1.77-acre); jurisdictional (Section 404)
- 3) Pond C (0.03-acre); non-jurisdictional
- 4) Panther Creek A (2,062-feet); jurisdictional (Section 404)
- 5) Panther Creek B (863-feet); jurisdictional (Section 404)
- 6) Channel A (157-feet); jurisdictional (Section 404)
- 7) Channel B (654-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. 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 consists of approximately 74-acres located within the Red Hawk Golf Course at 6204 IL-154 near Tamaroa, Perry County, Illinois. Approximate geographic coordinates for the site are Latitude 38.0789° and Longitude -89.3078°.](#)
 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. [Panther Creek is the receiving water for all the surface drainage that leaves the Review Area. Panther Creek is a](#)

tributary to Beaucoup Creek, which eventually intersects 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):

Panther Creek A and B is a 3rd-order stream segment identified as having perennial flow. At the limits of the Review Area, the tributary has an approximately 2,395-acre watershed. The channel was observed to possess an ordinary high-water mark (OHWM) of approximately 7 feet in width, a top-of-bank width of approximately

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.

9 feet, and a bank height of approximately 4 feet, on average. The stream was observed flowing (2-feet in depth) during the dry season with normal conditions (mild wetness). The flow characteristics observed at the reach's downstream limit within the Review Area are representative of the entire stream reach. Based on the channel's physical characteristics, watershed size, and presence of flowing water during the site visit, it was determined to meet the Relatively Permanent Standard.

Channel A is a 157-foot, 2nd-order stream segment that extends north outside of the Review Area. The reach is predominantly occupied by two perennially ponded sections off-site, which gather surface run-off from two 1st-order tributaries and the surrounding community prior to outfalling into Channel A. The channel was observed to possess an OHWM of approximately 4 feet in width, a top-of-bank width of approximately 5 feet, and a bank height of approximately 3 feet, on average. The channel was observed flowing (1-foot in depth) during the dry season with normal conditions (mild wetness). The flow characteristics observed at the reach's downstream limit within the Review Area are representative of the entire stream reach. Based on the channel's physical characteristics and presence of flowing water during the site visit, as well as the overall stream reach's two perennially ponded sections, it was determined to meet the Relatively Permanent Standard.

Channel B and **Pond B** combined are a first-order tributary to Panther Creek. Pond B receives hydrology from the surrounding golf course run-off and likely has groundwater influence. The pond outfalls into Channel B, which drains due west for approximately 654 feet before joining Panther Creek. The channel was observed flowing (1-foot in depth) during the dry season with normal conditions (mild wetness). Flows through the channel are likely sustained through the growing season by irrigation run-off from the golf course, which is collected by Pond B. The channel was observed to possess an OHWM of approximately 3 feet in width, a top-of-bank width of approximately 3 feet, and a bank height of approximately 2 feet, on average. Based on the channel's physical characteristics and presence of flowing water during the site visit, it was determined to meet the Relatively Permanent Standard.

- 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 [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).

[Ponds A and C](#) are generally greater than 6.6-feet in depth and collect surface run-off from direct precipitation. Pond A is a result of historic strip-mining activities while Pond C was a result of the construction of the golf course. No discrete features or tributaries were identified entering or exiting the ponds nor do the ponds abut or impound a relatively permanent water (RPW, a requisite water). These features have no connection to interstate or foreign commerce.

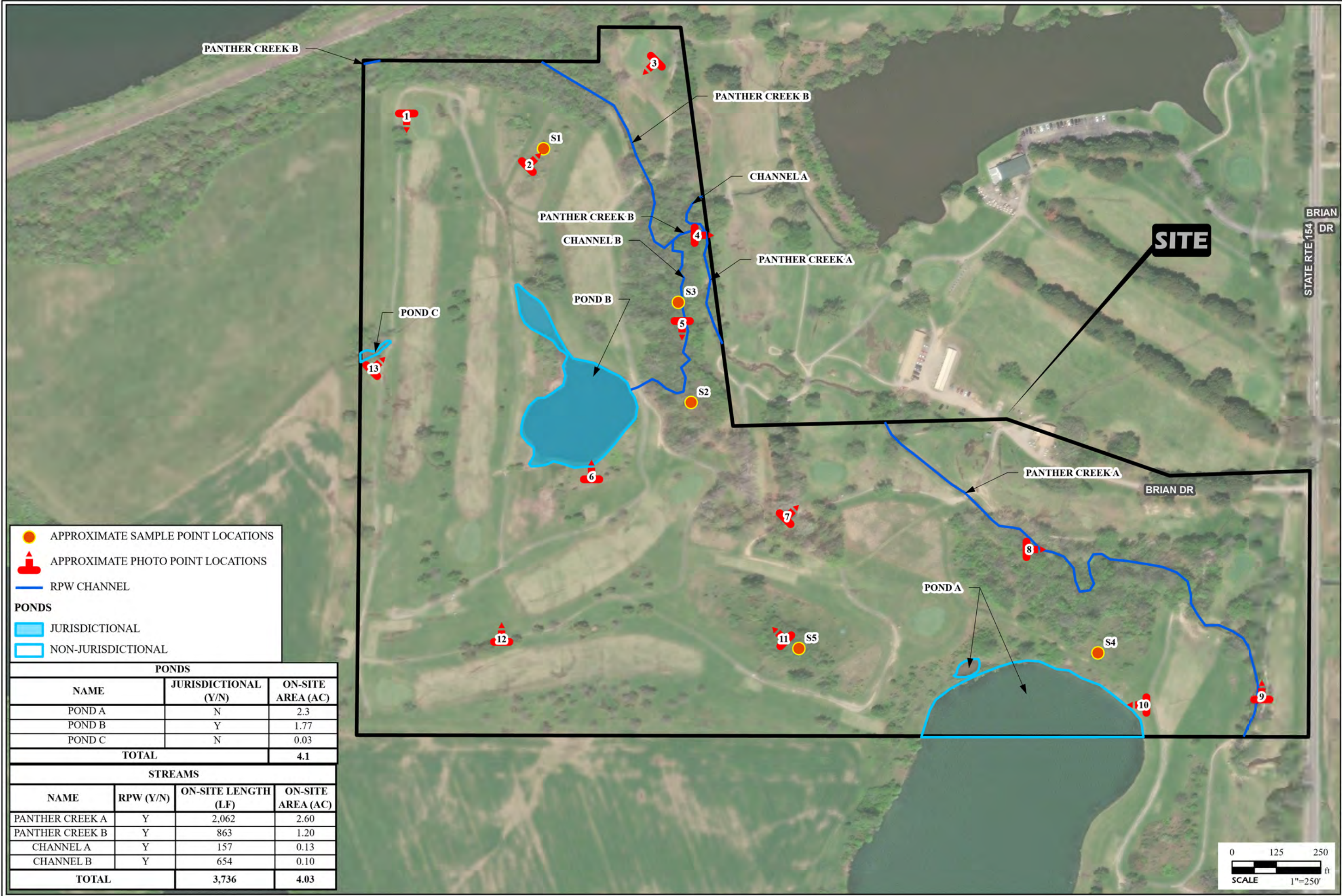
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. [Tamaroa Solar Wetland and Waterbody Delineation Report – SCI \(7/30/25\)](#)
- b. [USGS Topographic Maps, 1:24,000 Scale, Pyatts, IL Quad](#)
- c. [USGS NHDPlus](#)
- d. [Antecedent Precipitation Tool](#)
- e. [USDA-NRCS Soil Survey for Perry County, Illinois](#)
- f. [USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale](#)
- g. [Illinois Height Modernization \(ILHMP\) LiDAR Data](#)
- h. [Illinois Historic Aerial Photography – ISGS Geospatial Data Clearinghouse](#)
- i. [Google Earth Pro Aerial Imagery, Various Aerial Images](#)

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.

⁸ 88 FR 3004 (January 18, 2023)



- APPROXIMATE SAMPLE POINT LOCATIONS
- APPROXIMATE PHOTO POINT LOCATIONS
- RPW CHANNEL
- PONDS**
- JURISDICTIONAL
- NON-JURISDICTIONAL

PONDS				
NAME		JURISDICTIONAL (Y/N)	ON-SITE AREA (AC)	
POND A		N	2.3	
POND B		Y	1.77	
POND C		N	0.03	
TOTAL			4.1	
STREAMS				
NAME		RPW (Y/N)	ON-SITE LENGTH (LF)	ON-SITE AREA (AC)
PANTHER CREEK A		Y	2,062	2.60
PANTHER CREEK B		Y	863	1.20
CHANNEL A		Y	157	0.13
CHANNEL B		Y	654	0.10
TOTAL			3,736	4.03

GENERAL NOTES/LEGEND

AERIAL PHOTOGRAPH OBTAINED FROM ARCGIS ONLINE, WORLD IMAGERY.
DIMENSIONS AND LOCATIONS ARE APPROXIMATE; ACTUAL MAY VARY. DRAWING SHALL NOT BE USED OUTSIDE THE CONTEXT OF THE REPORT FOR WHICH IT WAS GENERATED.

PROJECT NAME

TAMAROA SOLAR
TAMAROA, ILLINOIS

WETLAND DELINEATION &
AERIAL PHOTOGRAPH

JOB NUMBER

2025-0967.30

FIGURE DATE

07/28/2025

DRAWN BY

ACV

CHECKED BY

MSH

FIGURE

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