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

CEMVS-RD 1 October 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-2025-547.

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.[2] 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.[3]

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),[4] the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

[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] 33 CFR 331.2.
[3] Regulatory Guidance Letter 05-02.
[4] 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.

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).

i. MVS-2025-547 Stream 1 (Feature 1) – Non-Jurisdictional, Section 404, (37 Linear Feet)

ii. MVS-2025-547 Stream 2 (Feature 2) - Non-Jurisdictional, Section 404, (230 Linear Feet)

iii. MVS-2025-547 Wetland 1 (Feature 3) - Non-Jurisdictional, Section 404, (0.15 Acres)

iv. MVS-2025-547 Wetland 2 (Feature 4) - Non-Jurisdictional, Section 404, (0.75 Acres)

v. MVS-2025-547 Wetland 3 (Feature 5) - Non-Jurisdictional, Section 404, (0.07 Acres)

vi. MVS-2025-547 Wetland 4 (Feature 6) - Non-Jurisdictional, Section 404, (0.33 Acres)

vii. MVS-2025-547 Wetland 5 (Feature 7) - Non-Jurisdictional, Section 404, (0.53 Acres)

viii. MVS-2025-547 Wetland 6 (Feature 8) - Non-Jurisdictional, Section 404, (1.07 Acres)

ix. MVS-2025-547 Wetland 7 (Feature 9) - Non-Jurisdictional, Section 404, (0.12 Acres)

x. MVS-2025-547 Open Water 1 (Feature 10) - Non-Jurisdictional, Section 404, (0.02 Acres)

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)

3. REVIEW AREA. The Review Area is an approximately 11-acre area located in Greenville, Bond County, Illinois. The geographic coordinates for the project are 38.884748, -89.387491.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Kaskaskia River is the nearest TNW. The Kaskaskia River has a navigation channel maintained by the Army Corps of Engineers.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. All waters on-site flow south off-site into a ditch adjacent to the railroad tracks. This ditch is Feature 1 identified in the Wetland Delineation Report. Feature 1 flows off-site through a series of unnamed ditches into Beaver Creek. Beaver Creek flows into Shoal Creek. Shoal Creek flows into the Kaskaskia River.

6. SECTION 10 JURISDICTIONAL WATERS[5]: 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.[6] 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.

[5] 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.
[6] 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.

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

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).[7] 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).

Feature 1 – Feature 1 is a non-Relatively Permanent Water (RPW) feature which flows for a short duration following precipitation events, but ceases to convey water following the termination of overland flow. Feature 1 is a non-jurisdictional feature.

Feature 2 – Feature 2 is a non-Relatively Permanent Water (RPW) feature which flows for a short duration following precipitation events, but ceases to convey

[7] 88 FR 3004 (January 18, 2023)

water following the termination of overland flow. Feature 2 is an upland erosional feature. Feature 2 is a non-jurisdictional feature.

Feature 3 - Feature 3 is a wetland feature which is neither adjacent nor abutting, an RPW feature. Feature 3 connects to downstream waters via a series of non-RPW swales and ditches. Feature 3 does not have a Continuous Surface Connection (CSC) to an RPW feature and therefore Feature 3 is a non-jurisdictional wetland feature.

Feature 4 – Feature 4 is a wetland feature which is neither adjacent nor abutting, an RPW feature. Feature 4 connects to downstream waters via a series of non-RPW swales and ditches. Feature 4 does not have a CSC to an RPW feature and therefore Feature 4 is a non-jurisdictional wetland feature.

Feature 5 – Feature 5 is a wetland feature which is neither adjacent nor abutting, an RPW feature. Feature 5 connects to downstream waters via a series of non-RPW swales and ditches. Feature 5 does not have a CSC to an RPW feature and therefore Feature 5 is a non-jurisdictional wetland feature.

Feature 6 – Feature 6 is a wetland feature which is neither adjacent nor abutting, an RPW feature. Feature 6 connects to downstream waters via a series of non-RPW swales and ditches. Feature 6 does not have a CSC to an RPW feature and therefore Feature 6 is a non-jurisdictional wetland feature.

Feature 7 – Feature 7 is a wetland feature which is neither adjacent nor abutting, an RPW feature. Feature 7 connects to downstream waters via a series of non-RPW swales and ditches. Feature 7 does not have a CSC to an RPW feature and therefore Feature 7 is a non-jurisdictional wetland feature.

Feature 8 – Feature 8 is a wetland feature which is neither adjacent nor abutting, an RPW feature. Feature 8 connects to downstream waters via a series of non-RPW swales and ditches. Feature 58 does not have a CSC to an RPW feature and therefore Feature 8 is a non-jurisdictional wetland feature.

Feature 9 – Feature 9 is a wetland feature which is neither adjacent nor abutting, an RPW feature. Feature 9 connects to downstream waters via a series of non-RPW swales and ditches. Feature 9 does not have a CSC to an RPW feature and therefore Feature is a non-jurisdictional wetland feature.

Feature 10 – Feature 10 is an open water feature which does not have a CSC to an RPW feature. Feature 10 is a non-jurisdictional water feature.

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, received 10 September 2025

    b. Site visit, conducted 26 September 2025

    c. IL Statewide LiDAR DEM WGS Hillshade, accessed 29 September 2025

    d. USFWS National Wetlands Inventory, accessed 29 September 2025

    e. National Hydrographic Dataset, accessed 29 September 2025

    f. Google Earth Pro aerial imagery, accessed 29 September 2025

    g. Greenville, IL 2024 (US Topo) Scale 1:24000, accessed 1 October 2025

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.

MVS-2025-547 Review Area

0 0.05 0.1 0.2

mi

Map Center: 89.386711°W 38.884848°N

Map Created by: Henry R. Heyer

Date: 10/1/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere