



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

CEMVS-RD

October 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-2025-577 \(MFR 1 of 1\)](#)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.

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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) Watercourse A1 (Judy's Branch) (748-feet); jurisdictional ([Section 404](#))
- 2) Watercourse A2 (309-feet); non-jurisdictional
- 3) Watercourse A3 (Judy's Branch) (425-feet); jurisdictional ([Section 404](#))
- 4) Watercourse A4 (1,096-feet); jurisdictional ([Section 404](#))
- 5) Watercourse A5 (120-feet); non-jurisdictional
- 6) Watercourse A6 (102-feet); non-jurisdictional
- 7) Watercourse A7 (410-feet); jurisdictional ([Section 404](#))
- 8) Watercourse A8 (938-feet); jurisdictional ([Section 404](#))
- 9) Watercourse A9 (144-feet); 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)
- 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 75-acres located west of Old Troy Road in Glen Carbon, Madison County, Illinois. The Review Area generally lies in Section 25, Township 4 North, and Range 8 West. Approximate geographic coordinates for the site are Latitude 38.7621° and Longitude -89.9385°.](#)

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [Judy's Branch is the receiving water for all the surface drainage that leaves the Review Area. Judy's Branch is a tributary to Cahokia Creek, which eventually turns into the Cahokia Canal. The Cahokia Canal is a tributary to the Mississippi River, a TNW. The Mississippi River is a Section 10 water throughout the St. Louis District Area of Review.](#)
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.

Judy's Branch (Watercourse A1 and A3) is a perennial stream flowing northwest to west near the southern and western limits of the Review Area. The watercourses are portions of 1st and 3rd-order stream segments, respectively identified with the same flow regime. Each of the watercourses identified within the Review Area flow into Judy's Branch contributing to the tributary's 189-acre watershed at the downstream limits of the Review Area. The stream was observed flowing (1 to 2-feet in depth) during the wet season with normal conditions (no drought index). The flow characteristics observed at the reach's downstream limit within the Review Area were 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.

Three (3) watercourses within the Review Area were identified as having an intermittent flow regime: **A4**, **A7**, and **A8**. Each of these streams exist as 1st or 2nd order streams systems that begin along the side slopes leading down to Judy's Branch and where they drain watersheds between 40 and 100-acres in size comprised of the adjacent agricultural fields. At the time of the delineation (wet season (normal conditions), each stream reach was observed with flowing water. Three inches of precipitation had fallen in the 30-days preceding the field evaluation on March 24-25, 2025. All three reaches have an Ordinary High-Water Mark (OHWM) ranging from 2 to 3 feet, with A8 widening to a width of 8 feet as it approaches its confluence with A3 (Judy's Branch). Each reach is comprised of a silt substrate with small, patches of gravel and or cobble at irregular intervals. A7 flows south into A4, which continues to flow south into A3. A8 flows west along the southern boundary of the site where it widens and flows into A3 which then flows off site to the south. Observed physical characteristics observed by the Applicant combined with the presence of flowing water during the site visit and each systems watershed conditions provide weight-of-evidence that the tributaries have continuous flow at least seasonally or flowing water continuously during certain times of the year (i.e. wet season), which is necessary 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).

Four (4) watercourses ([A2 / A5 / A6 / A9](#)) were determined to be non-jurisdictional because they do not meet the definition of (a)(3) waters. Each of these headwater tributaries lie within the upper extents of small agricultural watersheds ranging from 5-acre to 15-acres in size. These features have OHWM's ranging from 1 to 3 feet in width and are fed by erosional features and constructed drainages within agricultural fields. 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 would not sustain baseflows for extended periods of time, but rather maintain a repeated sequence of streamflow, flow cessation, and channel drying throughout the year. Each of these tributaries do not flow for more than a short duration in direct response to precipitation and therefore would not meet the Relatively Permanent Standard.

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. [Trentino Solar Wetland Determination/Delineation – Atwell \(4/14/25\)](#)
- b. [USGS Topographic Maps, 1:24,000 Scale, Edwardsville, IL Quad](#)
- c. [USGS NHDPlus](#)
- d. [Antecedent Precipitation Tool](#)
- e. [USDA-NRCS Soil Survey for Madison 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](#)

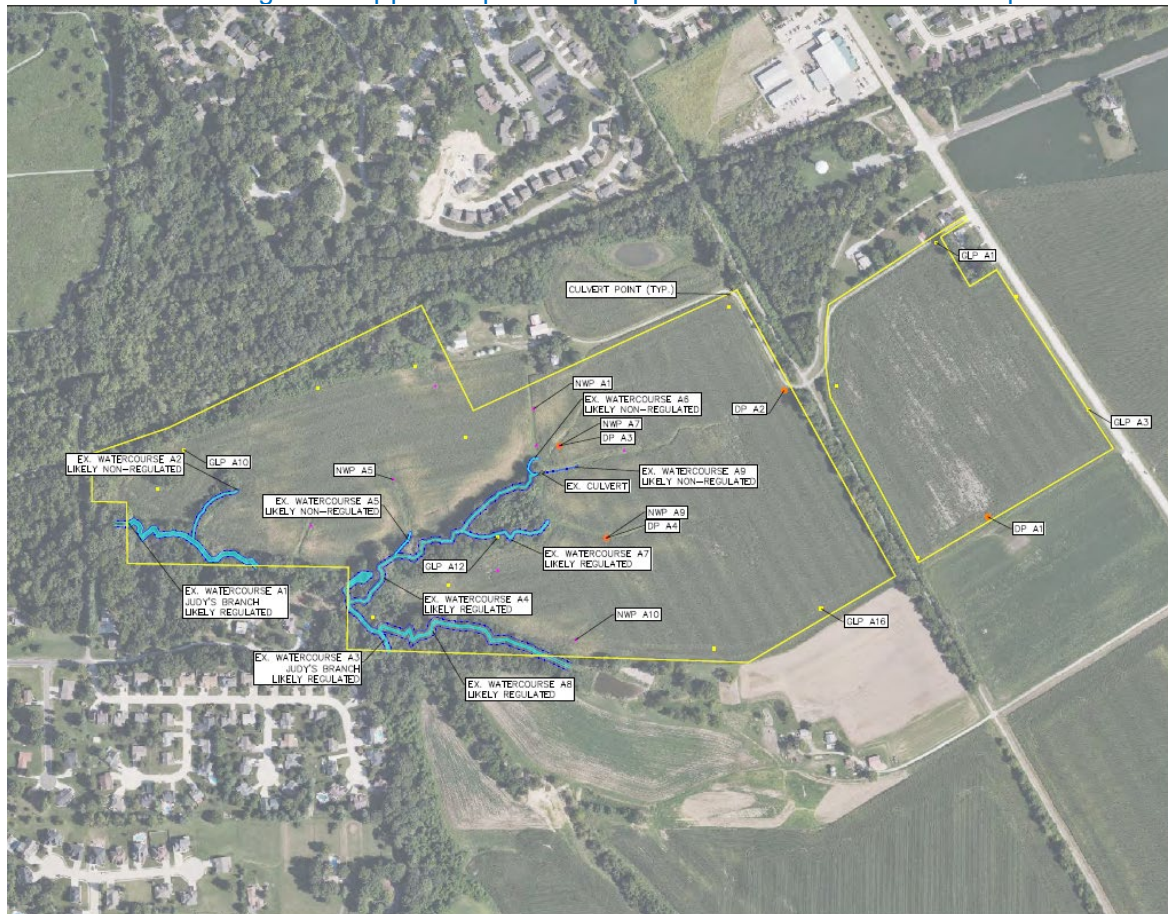
⁸ 88 FR 3004 (January 18, 2023)

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10. OTHER SUPPORTING INFORMATION.

Figure 1. Applicant provided Aquatic Resources Location Map



LEGEND

	APPROXIMATE SITE AREA (± 94.41 ACRES)		CULVERT POINT
	EXISTING WATERCOURSE (OHWM)		DATA POINT (UDP)
	TOP OF BANK		GENERAL LANDSCAPE POINT (GLP)
	CULVERT		NON-WATER POINT (NWP)

NOTE: THIS ILLUSTRATION IS AN APPROXIMATE DEPICTION OF THE WETLANDS THAT APPEAR TO BE LOCATED ON THE SUBJECT PROPERTY AS DELINEATED BY ATWELL ON MARCH 24TH-25TH, 2025. USACE HAS THE FINAL AUTHORITY ON THE EXTENT OF REGULATED WETLANDS, LAKES, AND STREAMS IN THE STATE OF ILLINOIS.

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.