



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

CEMVS-RD

January 8, 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-2024-628](#)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).

- 1) Site 1 (0.34-acre), non-jurisdictional
- 2) Site 2 (0.13-acre), non-jurisdictional
- 3) Site 3 (2.76-acre), non-jurisdictional
- 4) Site 4 (0.15-acre), non-jurisdictional
- 5) Site 5 (0.21-acre), non-jurisdictional
- 6) Site 6 (0.25-acre), non-jurisdictional
- 7) Site 7 (0.77-acre), non-jurisdictional
- 8) Site 8 (0.03-acre), non-jurisdictional
- 9) Site 9 (0.15-acre), non-jurisdictional
- 10) Site 10 (1.20-acre), non-jurisdictional
- 11) Site 11 (0.75-acre), non-jurisdictional
- 12) Site 12 (0.77-acre), non-jurisdictional
- 13) Site 13 (0.59-acre), non-jurisdictional
- 14) Site 14 (3.18-acre), non-jurisdictional
- 15) Site 15 (0.29-acre), non-jurisdictional
- 16) Site 16 (0.37-acre), non-jurisdictional
- 17) Site 17 (0.30-acre), non-jurisdictional
- 18) Site 18 (0.02-acre), non-jurisdictional
- 19) Site 19 (0.49-acre), non-jurisdictional
- 20) Site 20 (1.04-acre), non-jurisdictional
- 21) Site 21 (0.23-acre), 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) (2023 Rule, as amended)
- c. *Sackett v. EPA*, 598 U.S. 651, 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.”

3. REVIEW AREA. The Review Area consists of approximately 344-acres located southeast of Illinois Route 111 and Berry Brook Road in North Palmyra Township, Macoupin County, Illinois. The Review Area generally lies in Section 28, Township 12 North, and Range 8 West. Approximate coordinates for the Review Area are Latitude 39.4549° and Longitude -89.9836°.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Illinois River \(TNW\)](#)
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [Surface drainage exits the Review Area through agricultural waterways and unnamed tributaries to the east, which all enter Palmyra Modesto City Lake. Flows exit the lake into an unnamed tributary to Nassa Creek. Hydrology continues through Nassa Creek, Otter Creek, Hodges Creek, and ultimately Macoupin Creek, a tributary to the Illinois River, a TNW. The Illinois River is a Section 10 water from mile 0, Grafton, Illinois to mile 80.0, L&D at LaGrange, Illinois within the St. Louis District.](#)
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

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.

“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): **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).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).

Site 1, Site 7, Site 8, Site 9, Site 11, Site 13, Site 14, Site 20 are depressional wetlands within an active agricultural field that collect surface run-off. No discrete features or non-RPW tributaries were identified exiting the wetland features downslope. Flow Path(s): None

Site 18, Site 19, and Site 21 are depressional wetlands, within an active agricultural field, that collect surface run-off and abut roadside drainage ditches. Each of these features abut non-RPW and/or upland drainage ditches that convey water greater than 2,500 feet before intersecting another aquatic resource. As such, the wetlands and the requisite covered waters are not physically close enough to meet the continuous surface connection requirement and, consistent with *Sackett*, are not “adjacent.”

⁸ 88 FR 3004 (January 18, 2023)

Site 10 and **Site 16** are emergent wetlands that lie within the limits of agricultural waterways, that do not replace previously existing aquatic resources within the respective agricultural setting, but do drain **Site 15**, an emergent farmed wetland. **Site 17** also enters Site 16 within the Review Area. Sites 10, 15, 16, and 17 abut one another prior to exiting the eastern limits of the Review Area into an actively farmed swale (420 feet). The swale intersects a constructed agricultural waterway (2,482 feet), which carries surface drainage south and east prior to entering a non-RPW tributary (630 feet), where flows coincide with precipitation events and cease shortly after the termination of tile drainage and overland runoff. The non-RPW tributary gathers hydrology from a series of waterways and a relocated tributary within a manipulated watershed (200-acre), before ultimately an RPW tributary, just upslope of the Palmyra Modesto City Lake at Latitude 39.4452° and Longitude -89.9718°.

- Flow Path: Site 10 -> Site 15 -> Site 17-> Site 16 -> farmed swale (420 feet) -> agricultural waterway (2,482 feet) -> non-RPW tributary (730 feet) -> RPW tributary (RPW - Requisite Water).

Based on the length of the flow path (3,632 feet) through three (3) features, the Corps has determined that the approximately 0.69-mile physical connection between the wetlands and the relatively permanent water is long, and the connection is via non-RPW tributaries and other non-relatively permanent waters that have varying physical indicators of flow. After consideration of flow, the number, the types, and the length of connection between this wetland and the requisite covered water is not physically close enough to meet the continuous surface connection requirement. Thus, Site 10, Site 15, Site 17, and Site 16 do not have a continuous surface connection to the downstream relatively permanent tributary and, consistent with *Sackett*, is not “adjacent.”

Site 12 is an emergent wetland that lies within the limits of an agricultural waterway and exits the eastern limits of the Review Area through the same waterway (470 feet). The waterway intersects another constructed agricultural waterway (1,264 feet), which carries surface drainage east and south prior to entering a non-RPW tributary (630 feet), where flows coincide with precipitation events and cease shortly after the termination of tile drainage and overland runoff. The non-RPW tributary gathers hydrology from a series of waterways and a relocated tributary within a manipulated watershed (200-acre), before ultimately an RPW tributary, just upslope of the Palmyra Modesto City Lake at Latitude 39.4452° and Longitude -89.9718°.

- Flow Path: Site 12 -> agricultural waterway (1,734 feet) -> non-RPW tributary (730 feet) -> RPW tributary (RPW - Requisite Water).

Based on the length of the flow path (2,464 feet) through two (2) features, the Corps has determined that the approximately 0.47-mile physical connection between the wetlands and the relatively permanent water is long, and the connection is via non-RPW tributaries and other non-relatively permanent waters that have varying physical indicators of flow. After consideration of flow, the number, the types, and the length of connection between this wetland and the requisite covered water is not physically close enough to meet the continuous surface connection requirement. Thus, Site 12 does not have a continuous surface connection to the downstream relatively permanent tributary and, consistent with *Sackett*, is not “adjacent.”

Site 2, Site 3, Site 4, Site 5, and Site 6 are emergent wetlands that lie within the limits of agricultural waterways. Each of the wetlands ultimately intersects Site 3 before entering a non-RPW tributary (2,150 feet) at the eastern limits of the Review Area. Flows within the non-RPW tributary coincide with precipitation events and cease shortly after the termination of tile drainage and overland runoff. The non-RPW tributary ultimately intersects an RPW tributary, just upslope of the Palmyra Modesto City Lake at Latitude 39.4452° and Longitude -89.9718°.

- Flow Path: Site 2 -> Site 3 -> non-RPW tributary (2,150 feet) -> RPW tributary (RPW - Requisite Water).
- Flow Path: Site 6 -> Site 3 -> non-RPW tributary (2,150 feet) -> RPW tributary (RPW - Requisite Water).
- Flow Path: Site 4 -> Site 5 -> agricultural waterway (326 feet) -> Site 3 -> non-RPW tributary (2,150 feet) -> RPW tributary (RPW - Requisite Water).

Based on the length of the flow path (2,150 feet) from Site 3 to an RPW through a non-RPW tributary, the Corps has determined that the approximately 0.40-mile physical connection between the wetlands and the relatively permanent water is long, and the connection is via a non-RPW tributary. After consideration of flow, the number, the types, and the length of connection between the wetlands and the requisite covered water is not physically close enough to meet the continuous surface connection requirement. Thus, Site 2, Site 3, Site 4, Site 5, and Site 6 do not have a continuous surface connection to the downstream relatively permanent tributary and, consistent with *Sackett*, is 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 Delineation Report dated December 2023](#)
- b. [USGS Topographic Maps, 1:24,000 Scale, Palmyra, IL Quad](#)
- c. [USGS NHDPlus](#)
- d. [USGS Stream Stats](#)
- e. [Antecedent Precipitation Tool](#)
- f. [USDA-NRCS Soil Survey for Macoupin County, Illinois](#)
- g. [USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale](#)
- h. [Illinois Height Modernization \(ILHMP\) LiDAR Data](#)
- i. [Illinois Historic Aerial Photography – ISGS Geospatial Data Clearinghouse](#)
- j. [Google Earth Pro Aerial Imagery, Various Aerial Images](#)

10. OTHER SUPPORTING INFORMATION.

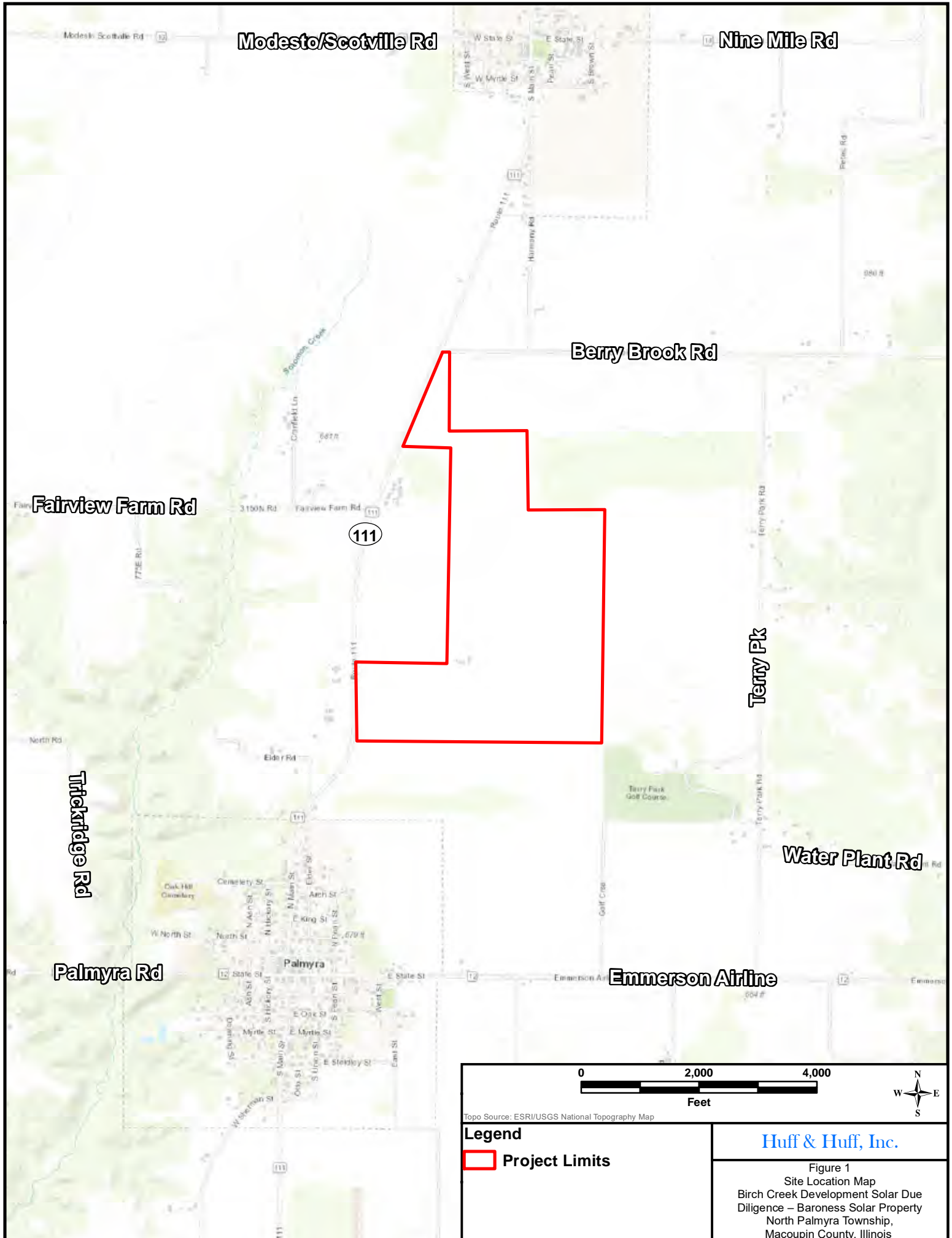
Antecedent Precipitation Tool Results

Delineation Field Evaluation Dates:

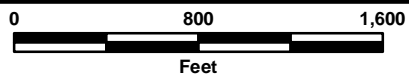
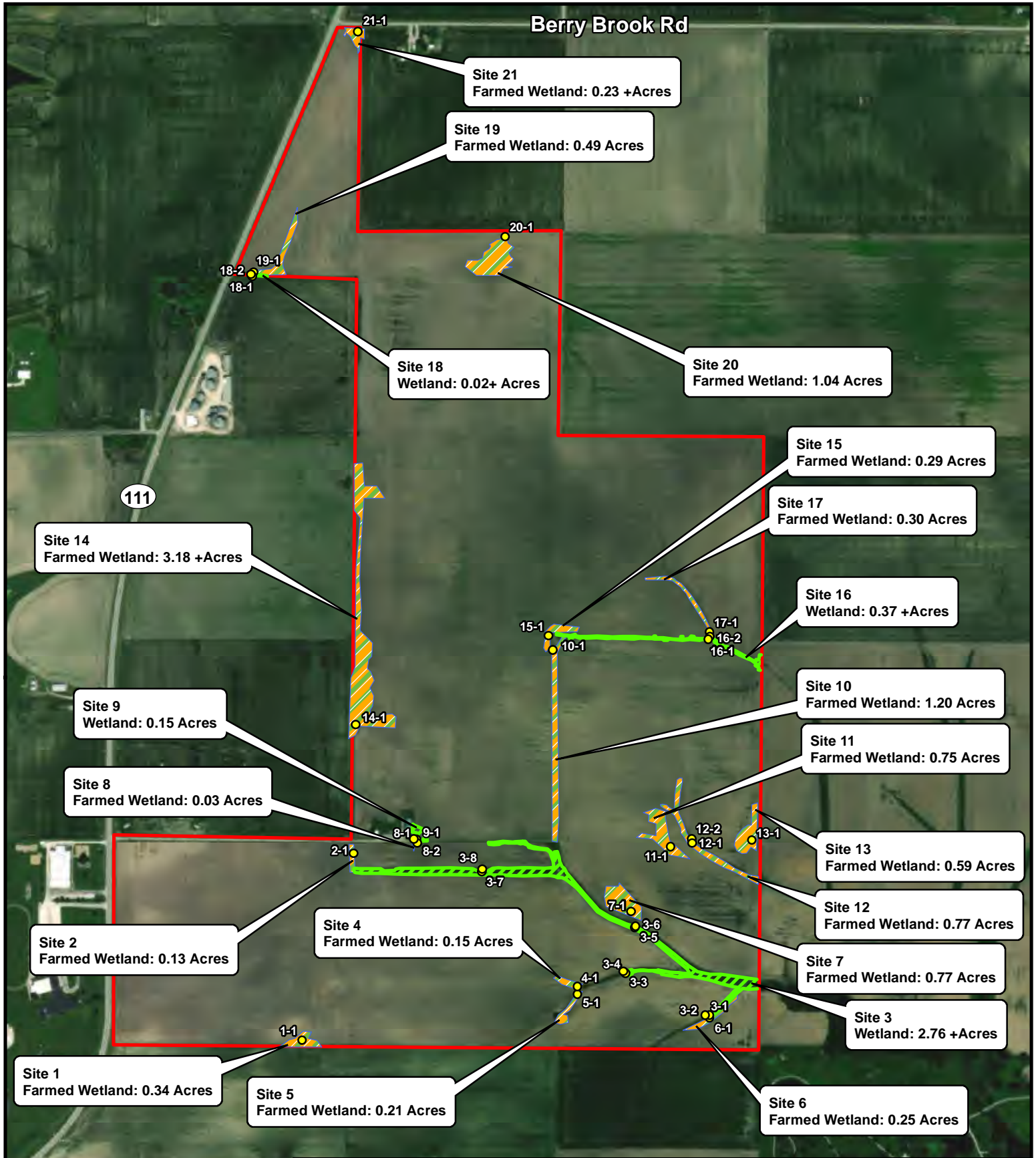
July 19, 2023: Dry Season / Drier than Normal / Mild Drought

Joint Policy Memorandums: [NWK-2024-00392](#), [POH-2023-187](#), [NWK-2022-00809](#),
[NAP-2023-01223](#), & [SWG-2023-00284](#)

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.



<p>0 2,000 4,000</p> <p>Feet</p> <p>Topo Source: ESRI/USGS National Topography Map</p>		
<p>Legend</p> <p> Project Limits</p>	<p>Huff & Huff, Inc.</p> <p>Figure 1 Site Location Map Birch Creek Development Solar Due Diligence – Baronsess Solar Property North Palmyra Township, Macoupin County, Illinois</p>	



Aerial Source: ESRI Online World Imagery

Legend	
	Project Limits
	Wetland
	Data Points
	Farmed Wetland

Huff & Huff, Inc.

Figure 5
Wetland Location Map
Birch Creek Development Solar Due
Diligence – Baroness Solar Property
North Palmyra Township,
Macoupin County, Illinois