



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

CEMVS-RD

March 5, 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-2025-104 \(MFR 1 of 1\)](#)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).

- i. [Borrow Pit 1, 58-acres \(non-jurisdictional\)](#)
- ii. [Borrow Pit 2, 5-acre \(non-jurisdictional\)](#)
- iii. [Borrow Pit 3, 18-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)
- 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 111-acres of undeveloped, vacant land located at the northwest corner of Interstate 270 and Illinois Route 3 in Granite City, Madison County Illinois. Approximate geographic coordinates for the site are Latitude 38.7737° and Longitude -90.1238°.](#)

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. [N/A](#)

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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): [N/A](#)
 - f. Adjacent Wetlands (a)(4): [N/A](#)
 - g. Additional Waters (a)(5): [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.

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).

[Borrow Pits 1, 2, and 3](#) exist as wetlands, as surface water within the features seasonally fluctuate and are generally less than 6.6-feet in depth. Each feature was constructed to obtain borrow material for the adjacent Interstate 270. None of the features were observed with any aquatic resources entering or exiting the limits of the OHWM nor were the features constructed on an aquatic resource that would have previously met or currently meets the definition of a water of the United States. Input into the borrow pits is limited to direct precipitation, groundwater discharge, and overflow of the borrow pit embankment from the MESD ditch along the south side of the levee, which borders the northern limits of the Review Area. When interior flooding occurs, the MESD ditch receives flows from a culvert and associated flap gate. After reaching capacity, the ditch can overflow into the borrow pits; however, no outlet structure or aquatic resources exists to offset inputs when interior flooding occurs. As no outlets exist, [Borrow Pits 1, 2, and 3](#) do not have a continuous surface connection to the downstream relatively permanent tributary and, consistent with *Sackett*, are not “adjacent.”

- [Flow Path\(s\): None](#)

⁸ 88 FR 3004 (January 18, 2023)

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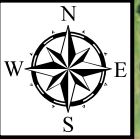
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Submitted Documentation – EnviroAnalytics Group (February 11, 2025)
- b. USACE Visit: 2-27-2025
- c. USGS Topographic Maps, 1:24,000 Scale, Columbia Bottom, IL Quad
- d. USGS NHDPlus
- e. Antecedent Precipitation Tool
- f. USDA-NRCS Soil Survey for Madison 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

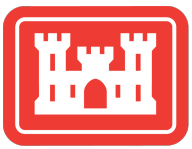
10. OTHER SUPPORTING INFORMATION.

N/A

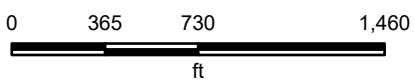
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



County of St. Louis, Missouri Dept. of Conservation, MSDIS, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, State of Missouri, STL Imagery Consortium, Maxar, Microsoft



MVS-2025-104 Waters Exhibit



Map Center: 90.121465°W 38.771751°N

Map Created by: K. Metzger
Date: 3/5/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere