



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

CEMVS-RD

June 8, 2026

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-2021-00335 \(MFR 1 of 1\)](#)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.

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. CH-1 (2,000 feet), jurisdictional (Section 404)
2. CH-1-1 (190 feet), non-jurisdictional
3. CH-1A (90 feet), non-jurisdictional
4. CH-1A1 (21 feet), non-jurisdictional
5. CH-1A-1 (900 feet), non-jurisdictional
6. CH-1A2 (930 feet), non-jurisdictional
7. CH-1B (375 feet), non-jurisdictional
8. CH-1C (47 feet), non-jurisdictional
9. CH-1C1 (34 feet), non-jurisdictional
10. CH-1D (25 feet), non-jurisdictional
11. CH-1E (59 feet), non-jurisdictional
12. CH-1F (60 feet), non-jurisdictional
13. CH-1H (30 feet), non-jurisdictional
14. CH-2 (620 feet), jurisdictional (Section 404)
15. CH-2-1 (1,109 feet), non-jurisdictional
16. CH-2A (270 feet), non-jurisdictional
17. CH-2B (160 feet), non-jurisdictional
18. CH-2C (65 feet), non-jurisdictional
19. CH-3 (380 feet), non-jurisdictional
20. CH-4 (478 feet), non-jurisdictional
21. CH-4-1 (22 feet), non-jurisdictional
22. CH-4A (20 feet), non-jurisdictional
23. OWR-1 (6.065-acre), non-jurisdictional
24. WL-1 (0.150-acre), non-jurisdictional
25. WL-2 (4.321-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)

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- 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 is two separate tracts of land totaling 190.02-acres near Sugar Camp Mine No. 1 located at Latitude 38.03537° and Longitude -88.72948°, and Latitude 38.02571° and Longitude -88.73702°, respectively. The tracts are generally located south of Highway 14 and north of the mines rail access north of Thompsonville, Franklin County, Illinois. The Review Area is illustrated on the attached “Stream and Wetland Delineation Map” as the “Project Area”.](#)
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. [Akin Creek is the receiving water for all the surface drainage that leaves the Review Area to south. Akin Creek is a tributary to the Middle Fork Big Muddy River, 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

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.

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): [Two \(2\) aquatic resources, CH-1 and CH-2, were determined to satisfy the definition of \(a\)\(3\) tributaries as they are natural, man-altered, or man-made water bodies that flow directly or indirectly into \(a\)\(1\) waters or \(a\)\(2\) impoundments and meet the relatively permanent standard. Slopes within the stream reaches fall between 1 and 3 percent and the watersheds are approximately 103-acres and 665-acres in size, respectively. The reaches lie within a narrowly mapped Belknap soil series, surrounded by Ava and Blair soil series, which primarily have hydrologic group ratings of C and D \(moderate to high run-off potential when wetted\) and 1-to-3-foot depths to saturated zones in the soil \(water table\) during the wet season. Both stream reaches contained consistent low-flow channels, demonstrating consistent flow volumes and/or velocities for a long enough duration to maintain a consistent bed elevation through the reach. Three site visits conducted over the course of 4 months within the same wet season provided opportunity to evaluate the stream reach in varying weather and climatic conditions \(see APT Results in Section 10 below\). During each of the visits, surface and/or interstitial flows were observed. The flow characteristics were observed to be similar throughout the entire evaluated reaches. Observed tributary conditions in various climatic conditions, desktop analyses, combined with the systems physical characteristics provide weight-of-evidence that the these features have at least seasonal groundwater connections and/or large enough watershed that a concentrated period of back-to-back precipitation events leads to sustained flow through a combination of runoff and upstream contributions of flow and therefore, have flowing or standing water year-round or continuously during certain times of the year, 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

(b)(3) Ditches excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water (Excluded): One (1) aquatic resource, CH-1A2, was determined to be non-jurisdictional because it satisfies the definition of the paragraph (b)(3) exclusion.

- 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).

Wetlands that do not have a continuous surface connection to a paragraph (a)(1) water or to a relatively permanent paragraph (a)(2) impoundment or paragraph (a)(3) tributary:

WL-1 is a linear depressional wetland surrounded by uplands at the top of the localized watershed between CH-3 and CH-2-1, non-relative permanent tributaries. Prior to mine subsidence, drainage exited the wetland south through the agricultural field into CH-2-1 (1,109 feet) before draining into CH-2 (requisite water – RPW) at Latitude 38.0334° and Longitude -88.7292°.

Flow Path: WL-1 -> uplands (~178 feet) -> CH-2-1 (1,109 feet) -> CH-2 (RPW).

Based on the length of the flow path (1,287 feet) through uplands and a non-RPW tributary to a CH-2, a RPW - the Corps has determined that the wetland does not possess CSC to a requisite water and therefore does not meet the definition of an (a)(4) water.

⁸ 88 FR 3004 (January 18, 2023)

OWR-1 and WL-2 exist as excavated open water and emergent wetlands, respectively with an earthen embankment on three sides. The earthen embankments were constructed to capture diffuse surface flow, direct precipitation, and out of bank flows from CH-1, an RPW tributary. Neither feature was observed with a tributary entering or exiting the limits of the OHWM nor was either feature constructed on an aquatic resource that would have previously met or currently meets the definition of a water of the United States. As such, the features were evaluated as (a)(4) waters. The features lie in the location of a previously cultivated agricultural field and appear to have been excavated for borrow material to construct the adjacent railroad. Outflow through and/or around the embankment is limited as evidenced by the presence of upland areas and lack of discrete features immediately downslope (south) or west near CH-1.

Flow Path: OWR-1 / WL-2 -> uplands (~121 feet) -> CH-1 (Requisite RPW).

Any flow that could exit these aquatic resources via diffuse flow would be across upland areas with limited indicators of flow frequency or duration. As such, neither OWR-1 nor WL-2 contains a continuous surface connection to a downslope requisite water.

Tributaries evaluated under (a)(3) and determined to not be relatively permanent waters with a continuous surface connection to paragraph (a)(1) or (a)(3) water: Nineteen (19) tributaries (CH1-1, CH-1A, CH-1A1, CH-1A-1, CH-1B, CH-1C, CH-1C1, CH-1D, CH-1E, CH-1F, CH-1H, CH-2-1, CH-2A, CH-2B, CH-2C, CH-3, CH-4, Ch-4-1, and CH-4A) were determined to be non-jurisdictional because they do not satisfy the definition of (a)(3) waters as they are non-relatively permanent waters. Each of these headwater tributaries lie within the upper extents of small watersheds and lack groundwater connections. 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. Based on their location within the local watershed and the lack of standing or flowing water for more than a short duration in direct response to precipitation, these features would not meet the Relatively Permanent Standard.

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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. Wetland and Stream Delineation Report – Alliance Consulting, Inc. (April 2026)
- b. USACE Site Visit; March 12, 2026
- c. Prior AJD completed for MVS-2021-335 dated 21 February 2025
- d. USGS Topographic Maps, 1:24,000 Scale, Macedonia, IL Quad
- e. USGS NHDPlus, Accessed May 18, 2026
- f. USGS StreamStats, Accessed May 18, 2026
- g. Antecedent Precipitation Tool
- h. USDA-NRCS Soil Survey for Franklin County, Illinois, Accessed May 18, 2026
- i. USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale
- j. Illinois Height Modernization (ILHMP) LiDAR Data
- k. Illinois Historic Aerial Photography – ISGS Geospatial Data Clearinghouse
- l. Google Earth Pro Aerial Imagery, Various Aerial Images

10. OTHER SUPPORTING INFORMATION.

Antecedent Precipitation Tool Results – Delineation & USACE Site Visit Dates:

Date of Visit (Company): WebWIMP Balance / Condition / PDSI (PPT in last 2 wks.)

October 25, 2023 (USACE): Wet Season / Normal Cond. / Mild Drought (0.34-in)

- Isolated pools present in CH-2 / CH-1 not observed

December 3, 2025 (Alliance): Wet Season / Normal Cond. / Mild Drought (1.97-in)

- Flow observed in CH-1 and CH-2

January 28, 2026 (Alliance): Wet Season / Drier than Normal / Mod. Drought (0.58-in)

- Flow observed in CH-1 and CH-2

March 12, 2026 (USACE): Wet Season / Normal Cond. / Severe Drought (4.22-in)

- Flow observed in CH-1 and CH-2

SDAM NESE Results:

- CH-1: At Least Intermittent (Reach - Southern Tract ~200m)
- CH-2: Intermittent (Reach - Northern Tract CH-2 (~185 m))

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.