



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, USACE - BALTIMORE
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CENAB-OP-R

01 JUNE 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 (18 January 2023) as amended by the “Revised Definition of ‘Waters of the United States’; Conforming” (8 September 2023),¹ NAB-2026-00062-P33 (Quarry Road Data Center/AJD).

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 18 January 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 (18 January 2023) (“2023 Rule”). On 8 September 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 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.

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1. SUMMARY OF CONCLUSIONS.

a. The review area is comprised of both jurisdictional and non-jurisdictional aquatic features. Based on a review of desktop data resources listed in Section 9 of this memorandum and a field visit conducted on 3 April 2026, the Corps has determined 5 wetlands to be jurisdictional, 11 wetlands/pools to be non-jurisdictional, 4 watercourses to be jurisdictional, and 4 watercourses to be non-jurisdictional under Section 404 of the Clean Water Act. A list of the aquatic features is below and displayed on Enclosure 1a:

Waters Name	Cowardin Code	Amount of Aquatic Resource	Status
Wetland 0108260802	PEM	0.39-acre	Jurisdictional
Wetland 0108260821	PEM	0.02-acre	Non-jurisdictional
Wetland 0108260843	PEM	0.31-acre	Non-jurisdictional
Wetland 0108260910	PEM	0.05-acre	Non-jurisdictional
Wetland 0108260939	PEM	0.01-acre	Jurisdictional
Wetland 0108260958	PEM	0.01-acre	Jurisdictional
Wetland 0108261019	PEM	0.11-acre	Jurisdictional
Wetland 0108261059	PEM	0.29-acre	Jurisdictional
Wetland 0108261243	PEM	0.01-acre	Non-jurisdictional
Wetland 0108261311	PEM	1.42-acres	Non-jurisdictional
Wetland 0108261444	PEM	0.03-acre	Non-jurisdictional
Wetland 0108261527	PEM	0.42-acre	Non-jurisdictional
Wetland 0109260920	PEM	0.16-acre	Non-jurisdictional
Pool 1	Pool	0.31-acre	Non-jurisdictional
Pool 2	Pool	0.08-acre	Non-jurisdictional
Pool 3	Pool	0.03-acre	Non-jurisdictional
UNT 1 to White Oak	Ephemeral	77 linear feet	Non-jurisdictional
UNT 2 to White Oak	Perennial	637 linear feet	Non-jurisdictional
UNT 3 to	Intermittent	207 linear feet	Non-jurisdictional

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White Oak			
UNT 1 to Trib 28567 to Aylesworth Creek	Perennial	135 linear feet	Jurisdictional
UNT 2 to Trib 28567 to Aylesworth Creek	Ephemeral	105 linear feet	Non-jurisdictional
UNT 3 to Trib 28567 to Aylesworth Creek	Intermittent	300 linear feet	Jurisdictional
UNT 4 to Trib 28567 to Aylesworth Creek	Intermittent	90 linear feet	Jurisdictional
Trib 28567 to Aylesworth Creek	Perennial	869 linear feet	Jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (18 January 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (8 September 2023))
- c. *Sackett v. EPA*, 598 U.S., 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" (12 March 2025)

3. REVIEW AREA.

Project Area Size (in acres): 270 acres
Location Description: located along Quarry Road in Archbald Borough, Lackawanna County, Pennsylvania.
Center Coordinates of the Project Site (in decimal degrees)
Latitude: 41.515671 Longitude: -75.518167
Nearest City or Town: Archbald

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County: Lackawanna

State: Pennsylvania

Other associated Jurisdictional Determinations (including outcomes): N/A

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

Lackawanna River, 1 mile east of the project site is a perennial channel that flows directly into the Susquehanna River which is a TNW.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

The flow path from the site starts with the unnamed tributaries (UNT) to White Oak Run (perennial relatively permanent waterway) and Aylesworth Creek (perennial relatively permanent waterway). The UNT's to Aylesworth Creek directly connect to the perennial Aylesworth Creek and then the Lackawanna River which directly connects to the TNW Susquehanna River. The UNT's to White Oak Run drain into deep mine openings and are not connected to downstream surface waters. Within the Area of Investigation wetlands and watercourses were both hydrologically connected and disconnected from downstream systems. The wetlands and watercourses hydrologically disconnected are isolated and/or ephemeral features developed by deep mined and un-reclaimed strip-mined land.

6. SECTION 10 JURISDICTIONAL WATERS⁵.

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

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.

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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):

1. UNT 1 to Trib 28567 to Aylesworth Creek (RPW): An intermittent channel that displayed bed and bank features, sorting, debris and visible flow for 135 linear feet within the area of investigation it continues outside the area and connects to Aylesworth Creek.

2. UNT 3 to Trib 28567 to Aylesworth Creek (RPW): An intermittent channel that displayed bed and bank features, sorting, debris and visible flow for 300 linear feet within the area of investigation it continues outside the area and connects to Aylesworth Creek.

3. UNT 4 to Trib 28567 to Aylesworth Creek (RPW): An intermittent channel that displayed bed and bank features, sorting, debris and visible flow for 90 linear feet within the area of investigation it continues outside the area and connects to Aylesworth Creek.

4. Trib 28567 to Aylesworth Creek (RPW): A perennial channel that displayed bed and bank features, sorting, debris and visible flow for 869 linear feet within the area of investigation it continues outside the area and connects to Aylesworth Creek.

- f. Adjacent Wetlands (a)(4):

i. Wetland 0108260802: 0.39-acre palustrine forested wetland connected with a continuous surface connection to Trib 28567 to Aylesworth Creek which has direct surface connection to Aylesworth Creek which connects to the Lackawanna River.

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ii. Wetland 0108260939: 0.01-acre palustrine emergent wetland connected with a continuous surface connection to Trib 28567 to Aylesworth Creek which has direct surface connection to Aylesworth Creek which connects to the Lackawanna River.

iii. Wetland 0108260958: 0.01-palustrine emergent wetland abutting Trib 28567 to Aylesworth Creek which has direct surface connection to Aylesworth Creek which connects to the Lackawanna River.

iv. Wetland 0108261019: 0.11-palustrine emergent wetland abutting Trib 28567 to Aylesworth Creek which has direct surface connection to Aylesworth Creek which connects to the Lackawanna River.

v. Wetland 0108261059: 0.29-palustrine s wetland connected with a continuous surface connection to UNT 3 to Trib 28567 to Aylesworth Creek which has direct surface connection to Aylesworth Creek which connects to the Lackawanna River.

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

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).

1. UNT 2 to Trib 28567 to Aylesworth Creek- 105 linear feet, this watercourse is an ephemeral channel that connects to jurisdictional Wetland 0108260939.

2. UNT 1 to White Oak Run- 77 linear feet this watercourse is hydraulically disconnected from downstream systems due to Old Mining Road 2 and is connected to isolated aquatic features with no outflow or culverts.

⁷ 88 FR 3004 (18 January 2023)

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3. UNT 2 to White Oak Run-637 linear feet this watercourse is hydraulically disconnected from downstream systems due to Old Mining Road 2 and is connected to isolated aquatic features with no outflow or culverts.

4. UNT 3 to White Oak Run-207 linear feet this watercourse is hydraulically disconnected from downstream systems due to Old Mining Road 2 and is connected to isolated aquatic features with no outflow or culverts.

5. Wetland 0108260821: 0.02 acres, is hydraulically disconnected from downstream systems due to Old Mining Road 2 and is connected to isolated aquatic features with no outflow or culverts.

6. Wetland 0108260843: 0.31 acres, is an isolated depressional feature from prior mining activities.

7. Wetland 0108260910: 0.05 acres, is hydraulically disconnected from downstream systems due to Old Mining Road 2 and is connected to isolated aquatic features with no outflow or culverts.

8. Wetland 0108261243: 0.31 acres, is hydraulically disconnected from downstream systems due to Old Mining Road 2 and is connected to isolated aquatic features with no outflow or culverts.

9. Wetland 0108261311: 1.42 acres, is an isolated depressional feature from prior mining activities.

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Figure 1: Isolated Wetland 0108261311 April 3, 2026.



10. Wetland 0108261444: 0.03 acres, is an isolated depressional feature from prior mining activities.

11. Wetland 0108261527: 0.42 acres, is an isolated depressional feature from prior mining activities.

12. Wetland 0109260920: 0.16 acres, is an isolated depressional feature from prior mining activities.

13. Pool 1: 0.31 acres, is hydraulically disconnected via road.

14. Pool 2: 0.08 acres, is an isolated depressional feature from prior mining activities.

15. Pool 3: 0.03 acres, is an isolated depressional feature from prior mining activities.

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All wetlands and watercourses listed in the 8 (b) above do not have a continuous surface connection to a jurisdictional water. The wetlands are isolated depressional features formed as a result of prior mining activities. As a result, the wetlands and watercourses are hydrologically disconnected from downstream systems.

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. Office (Desk) Determination: 2 April 2026
- b. Date(s) of Field Determination (if applicable): 3 April 2026

10. OTHER SUPPORTING INFORMATION.

National Regulatory Viewer: Aerial imagery utilized 93-95 BW and 2010 Infrared; LIDAR, Abandoned Mines, Streams and Waterways, USDA NRCS Soil Survey, USFWS NWI and Wetness Indicator.

Wetland Delineation Report, ARM Group LLC, March 13, 2026.

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.