



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

CENAB-OPR-P

1 October 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 NAB-2025-00393-TREC (Crossroads East Business Park Phase II).

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 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),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.

CENAB-OPR-P

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of Sackett v. EPA, 143 S. Ct. 1322 (2023), NAB-2025-00122-P12(CrossRoads East Business Park – Phase 1)

1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of isolated, 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 September 17, 2025, the wetlands and waters are non-jurisdictional isolated features with no surface connection to regulated waters. The site contains approximately 4.7 acres of ponds, 12.83 acres of wetlands, Cranberry Creek and various UNT to Cranberry Creek segments. These features are spread across areas impacted by historic mining, prior BAMR reclamation efforts, and the Cranberry Creek drainage corridor. Cranberry Creek terminates in an off-site mine pit, where surface flows are lost to underground mine voids. As a result, the wetlands and watercourses are hydrologically disconnected from downstream systems.

Waters Name	Cowardin Code	Amount of Aquatic Resource	Status
Cranberry Creek	R3	4,787 linear feet	Non-jurisdictional
UNT 1 to Cranberry Creek	R5	825 linear feet	Non-jurisdictional
UNT 2 to Cranberry Creek	R5	1,050 linear feet	Non-jurisdictional
UNT 3 to Cranberry Creek	R5	1,425 linear feet	Non-jurisdictional
A	PEM1	229,224 SF	Non-jurisdictional
1A	PFO1	26,124 SF	Non-jurisdictional
2A	PEM1	1,498 SF	Non-jurisdictional
3A	PFO1	2,104 SF	Non-jurisdictional
4A	PFO1	90,760 SF	Non-jurisdictional
5A	PFO1	2,650 SF	Non-jurisdictional
1-1	PEM1	19,522 SF	Non-jurisdictional
2-1	PEM1	789 SF	Non-jurisdictional
3-1	PEM1	1,246 SF	Non-jurisdictional
4-1	PEM1	4,904 SF	Non-jurisdictional
5-1	PEM1	70,363 SF	Non-jurisdictional
11	PEM1	1,050 SF	Non-jurisdictional
12	PEM1	613 SF	Non-jurisdictional
13	PEM1	23,205 SF	Non-jurisdictional
14	PEM1	7,696 SF	Non-jurisdictional
15	PFO1	1,702 SF	Non-jurisdictional
16	PEM1	1,784 SF	Non-jurisdictional
17	PEM1	1,236 SF	Non-jurisdictional
18	PEM1	19,298 SF	Non-jurisdictional
19	PFO1	43,505 SF	Non-jurisdictional
20	PFO1	24,281 SF	Non-jurisdictional
21	PSS1	1,988 SF	Non-jurisdictional
22	PFO1	8,035 SF	Non-jurisdictional
23	PFO1	546 SF	Non-jurisdictional

CENAB-OPR-P

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of Sackett v. EPA, 143 S. Ct. 1322 (2023), NAB-2025-00122-P12(CrossRoads East Business Park – Phase 1)

24	PFO1	7,313 SF	Non-jurisdictional
25	PEM1	5,357 SF	Non-jurisdictional
26	PEM1E	4,829 SF	Non-jurisdictional
27	PEM1	32,096 SF	Non-jurisdictional
28	PEM1	309 SF	Non-jurisdictional
29	PEM1	1,563 SF	Non-jurisdictional
Pond 1	L2UB1	5,532 SF	Non-jurisdictional
Pond 2	L2UB3	9,450 SF	Non-jurisdictional
Pond 3	L2UB3	349 SF	Non-jurisdictional
Pond 4	L2UB3	7,043 SF	Non-jurisdictional
Pond 5	L1UB3	566 SF	Non-jurisdictional
Pond 6	L2UB3	672 SF	Non-jurisdictional
Pond 7	L1UB3	1,180 SF	Non-jurisdictional
Pond 8	L1UB3	27,374 SF	Non-jurisdictional
Pond 9	L2UB3	8,511 SF	Non-jurisdictional
Pond 10	L2UB1	17,399 SF	Non-jurisdictional
Grape Run Reservoir	L2UB1	139,489 SF	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., 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.

Project Are Size (in acres): 669 acres

Location Description: located along State Route 424 in Hazle Township, Luzerne County, Pennsylvania.

Center Coordinates of the Project Site (in decimal degrees)

Latitude: 40.937778 Longitude: -76.003145

Nearest City or Town: Hazleton

County: Luzerne

State: Pennsylvania

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

CENAB-OPR-P

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of Sackett v. EPA, 143 S. Ct. 1322 (2023), NAB-2025-00393-TREC

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Susquehanna River 12 miles away, which is a TNW.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Cranberry Creek terminates in an off-site mine pit, where surface flows are lost to underground mine voids. As a result, the wetlands and watercourses are hydrologically disconnected from downstream systems.
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 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. N/A
 - 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

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.

CENAB-OPR-P

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of Sackett v. EPA, 143 S. Ct. 1322 (2023), NAB-2025-00393-TREC

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).⁷ 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).

Cranberry Creek, its tributaries and the wetlands listed in the Area of Review do not have a continuous surface connection to a jurisdictional water. All surface waters flow into a mine pit. The headwaters of Cranberry Creek originate from a spring, north of the railroad tracks, in the southern portion of the property. The site contains approximately 4.7 acres of ponds, 12.83 acres of wetlands, Cranberry Creek and various UNT to Cranberry Creek segments. These features are spread across areas impacted by historic mining, prior BAMR reclamation efforts, and the Cranberry Creek drainage corridor. Cranberry Creek terminates in an off-site mine pit, where surface flows are lost to underground mine voids. 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.

Office (Desk) Determination: 9/18/2025

Date(s) of Field Determination (if applicable): 9/17/2025

⁷ 88 FR 3004 (January 18, 2023)

CENAB-OPR-P

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of Sackett v. EPA, 143 S. Ct. 1322 (2023), NAB-2025-00393-TREC

Data sources used to support this determination (included in the administrative record).

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, Crossroads East Phase 2, May 2025 prepared by Ecological Solutions, Inc.

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.