



DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS,
STATE COLLEGE FIELD OFFICE
1631 SOUTH ATHERTON STREET, SUITE 101
STATE COLLEGE, PENNSYLVANIA 16801-6260

CENAB-OPR-P

21 January 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 NAB-2025-00606-P33 (280/400 Crestwood Drive/JD).

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-2025-00393-TREC

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 January 14, 2026, the wetlands and waters are non-jurisdictional isolated features with no surface connection to regulated waters. The site contains approximately 0.29 acres of wetlands. These features are spread across areas impacted by a warehouse removal. The wetlands are isolated depressional features formed as a result of heavy equipment and earth moving from a warehouse removal project. As a result, the wetlands are hydrologically disconnected from downstream systems.

Waters Name	Cowardin Code	Amount of Aquatic Resource	Status
Wetland A	PEM	820 SF	Non-jurisdictional
Wetland B	PEM	9119 SF	Non-jurisdictional
Wetland C	PEM	2623 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): 65.6 acres

Location Description: located along Crestwood Drive in Wright Township, Luzerne County, Pennsylvania.

Center Coordinates of the Project Site (in decimal degrees)

Latitude: 41.139810 Longitude: -75.891110

Nearest City or Town: Mountain Top

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

County: Luzerne

State: Pennsylvania

Other associated Jurisdictional Determinations (including outcomes):

N/ANEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Bow Creek, 1 mile away, which is a TNW.

4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The wetland are hydrologically disconnected from downstream systems.
5. 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
6. 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

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

- 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

7. 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).

The wetlands listed in the Area of Review do not have a continuous surface connection to a jurisdictional water. The site contains approximately 0.29 acres of wetlands. These features are spread across areas impacted by a warehouse removal. The wetlands are isolated depressional features formed as a result of heavy equipment and earth moving from a warehouse removal project. As a result, the wetlands are hydrologically disconnected from downstream systems.

- 8. 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.

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

Office (Desk) Determination: 1/13/2026

Date(s) of Field Determination (if applicable): 1/14/2026

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 Data Sheets, Crestwood Drive, September 2023 prepared by Ecological Solutions, Inc.

9. OTHER SUPPORTING INFORMATION. N/A

10. 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.