



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
401 EAST LOUTHER STREET, SUITE 205
CARLISLE PA 17013

NAB

January 16, 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) , **NAB-2025-00516 (Project Zion Phase 1, 2, and 3 - 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.¹ 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.²

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),³ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

The site is located north of U.S. Route 11 approximately 1.5 miles east of East Berwick in Salem Township, Luzerne County PA.

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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.

[NAB]

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2025-00516 (Project Zion Phase 1, 2, and 3 - AJD)]

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). The following **Table 1** presents the **236 aquatic resources** evaluated from an office review of supporting information or from a December 9, 2025, field investigation by this office. Due to the large number of aquatic resources evaluated, they are color coded to simplify review.

Jurisdictional Ponds = 6	Jurisdictional Wetlands = 97	Jurisdictional Tributaries = 44	Non- jurisdictional Ponds = 2	Non- jurisdictional Wetlands = 85	Non- jurisdictional Streams = 2
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CSC = continuous surface connection RPW = Relatively Permanent Water

Aquatic Resource	Acreage or Length (LF)	Rationale	Corps Jurisdiction
Pond 1.1	2.556	confirm CSC to RPW	Jurisdictional Section 404
Stream 1.1 (Walker Run)	4,520	RPW tributary	Jurisdictional Section 404
Wetland 1.1	0.684	confirm CSC to RPW	Jurisdictional Section 404
Pond 1.2	1.556	confirm CSC to RPW	Jurisdictional Section 404
Stream 1.2	69	RPW tributary	Jurisdictional Section 404
Wetland 1.2	1.402	confirm CSC to RPW	Jurisdictional Section 404
Stream 1.3	222	RPW tributary	Jurisdictional Section 404
Wetland 1.3	2.189	confirm CSC to RPW	Jurisdictional Section 404
Wetland 1.3A	0.009	no CSC	non-jurisdictional
Pond 1.4	0.116	confirm CSC to RPW	Jurisdictional Section 404
Stream 1.4	72	RPW tributary	Jurisdictional Section 404
Pond 1.5	0.108	no CSC	non-jurisdictional
Stream 1.5	446	RPW tributary	Jurisdictional Section 404
Pond 1.6	0.179	no CSC	non-jurisdictional
Wetland 1.13	0.880	no CSC	non-jurisdictional
Wetland 1.14	0.221	no CSC	non-jurisdictional
Wetland 1.17	9.432	confirm CSC to RPW	Jurisdictional Section 404
Wetland 1.18	0.018	confirm CSC to RPW	Jurisdictional Section 404
Wetland 1.19	0.347	no CSC	non-jurisdictional

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Wetland 1.23	0.355	no CSC	non-jurisdictional
Wetland 1.24	0.012	no CSC	non-jurisdictional
Wetland 1.25	0.035	confirm CSC to RPW	Jurisdictional Section 404
Wetland 1.26	1.319	confirm CSC to RPW	Jurisdictional Section 404
Wetland 1.30	0.060	no CSC	Exclusion (b)(7) for water filled depressions due to mining/construction
Wetland 1.31	0.210	no CSC	Exclusion (b)(7) for water filled depressions due to mining/construction
Wetland 1.32	0.566	no CSC	Exclusion (b)(7) for water filled depressions due to mining/construction
Wetland 1.33	0.041	no CSC	non-jurisdictional
Pond 2.1	1.354	RPW tributary	Jurisdictional Section 404
Stream 2.1	2,791	RPW tributary	Jurisdictional Section 404
Stream 2.2	180	RPW tributary	Jurisdictional Section 404
Stream 2.3	4,134	RPW tributary	Jurisdictional Section 404
Wetland 2.3	4.184	confirm CSC to RPW	Jurisdictional Section 404
Stream 2.4 (Walker Run)	1,574	RPW tributary	Jurisdictional Section 404
Wetland 2.4	0.012	confirm CSC to RPW	Jurisdictional Section 404
Stream 2.5	92	RPW tributary	Jurisdictional Section 404
Stream 2.6	2,068	RPW tributary	Jurisdictional Section 404
Stream 2.7	147	RPW tributary	Jurisdictional Section 404
Wetland 2.7	0.105	no CSC	non-jurisdictional
Wetland 2.9	0.587	no CSC	non-jurisdictional
Wetland 2.10	0.077	no CSC	non-jurisdictional
Wetland 2.12	0.016	no CSC	non-jurisdictional
Wetland 2.14	0.019	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.15	0.012	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.16	0.007	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.17	0.019	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.22	0.000	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.23	0.004	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.24	0.001	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.25	0.004	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.26	0.416	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.27	0.091	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.28	0.018	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.29	0.149	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.30	0.086	confirm CSC to RPW	Jurisdictional Section 404

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Wetland 2.31/2.32	0.190	no CSC	non-jurisdictional
Wetland 2.33	0.008	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.35	0.289	no CSC	non-jurisdictional
Wetland 2.37	6.013	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.39	0.008	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.40/2.41	0.275	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.50	0.756	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.51	0.057	no CSC	non-jurisdictional
Wetland 2.52	0.052	no CSC	non-jurisdictional
Wetland 2.53	1.249	no CSC	non-jurisdictional
Wetland 2.54	0.086	no CSC	non-jurisdictional
Wetland 2.55	1.217	no CSC	non-jurisdictional
Wetland 2.57	0.180	confirm CSC to RPW	Jurisdictional Section 404
Wetland 2.58/2.60	1.169	no CSC	non-jurisdictional
Wetland 2.59	0.012	no CSC	non-jurisdictional
Wetland 2.61	0.186	no CSC	non-jurisdictional
Wetland 2.64	0.001	no CSC	non-jurisdictional
Wetland 2.65	6.524	confirm CSC to RPW	Jurisdictional Section 404
Pond 3.1	0.363	RPW tributary	Jurisdictional Section 404
Stream 3.1	569	RPW tributary	Jurisdictional Section 404
Wetland 3.1	2.173	confirm CSC to RPW	Jurisdictional Section 404
Pond 3.2	0.192	RPW tributary	Jurisdictional Section 404
Wetland 3.2	0.532	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.3 (Walker Run)	3,296	RPW tributary	Jurisdictional Section 404
Wetland 3.3	0.032	no CSC	non-jurisdictional
Stream 3.4	730	RPW tributary	Jurisdictional Section 404
Stream 3.5	162	RPW tributary	Jurisdictional Section 404
Stream 3.6	90	RPW tributary	Jurisdictional Section 404
Wetland 3.6	0.005	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.7	343	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.8	1,967	RPW tributary	Jurisdictional Section 404
Wetland 3.8	0.065	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.9	22	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.9	0.112	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.10/3.11	0.666	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.12	185	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.12	0.052	confirm CSC to RPW	Jurisdictional Section 404

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Stream 3.13	2,425	RPW tributary	Jurisdictional Section 404
Wetland 3.13	0.219	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.14	242	RPW tributary	Jurisdictional Section 404
Wetland 3.14	0.034	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.15	334	non RPW	non-jurisdictional
Wetland 3.15	0.196	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.16	221	RPW tributary	Jurisdictional Section 404
Stream 3.17	1,579	RPW tributary	Jurisdictional Section 404
Stream 3.18	1,248	RPW tributary	Jurisdictional Section 404
Wetland 3.18	0.159	no CSC	non-jurisdictional
Stream 3.19	1,159	RPW tributary	Jurisdictional Section 404
Wetland 3.19	0.038	no CSC	non-jurisdictional
Stream 3.20	3,240	RPW tributary	Jurisdictional Section 404
Stream 3.21	58	RPW tributary	Jurisdictional Section 404
Wetland 3.21	0.009	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.22	105	RPW tributary	Jurisdictional Section 404
Wetland 3.22	0.046	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.23	196	RPW tributary	Jurisdictional Section 404
Wetland 3.23	0.786	confirm CSC to RPW	Jurisdictional Section 404
Stream 3.24	145	RPW tributary	Jurisdictional Section 404
Wetland 3.24	0.043	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.25	0.010	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.26	0.019	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.28	0.064	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.38	0.104	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.39	0.012	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.40	0.243	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.41	1.977	confirm CSC to RPW	Jurisdictional Section 404
Wetland 3.43	0.027	no CSC	non-jurisdictional
Wetland 3.45	0.005	confirm CSC to RPW	Jurisdictional Section 404
Stream 5.7	567	RPW tributary	Jurisdictional Section 404
Stream 5.8	185	RPW tributary	Jurisdictional Section 404
Wetland 5.9	0.030	no CSC	non-jurisdictional
Wetland 5.10	0.104	no CSC	non-jurisdictional
Stream 5.13	122	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.14	0.414	no CSC	non-jurisdictional
Wetland 5.15	0.348	no CSC	non-jurisdictional

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Wetland 5.16	0.047	no CSC	non-jurisdictional
Wetland 5.17	0.081	no CSC	non-jurisdictional
Wetland 5.18	0.290	no CSC	non-jurisdictional
Wetland 5.19	0.006	no CSC	non-jurisdictional
Wetland 5.20	0.047	no CSC	non-jurisdictional
Wetland 5.21	0.062	no CSC	non-jurisdictional
Wetland 5.22	0.001	no CSC	non-jurisdictional
Wetland 5.23	0.056	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.24	2.897	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.25	2.305	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.26	0.030	no CSC	non-jurisdictional
Stream 5.27	43	RPW tributary	Jurisdictional Section 404
Wetland 5.28	0.006	no CSC	non-jurisdictional
Wetland 5.29	0.008	no CSC	non-jurisdictional
Wetland 5.30	0.531	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.31	0.008	no CSC	non-jurisdictional
Wetland 5.32	0.292	no CSC	non-jurisdictional
Wetland 5.33	0.061	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.34	0.244	no CSC	non-jurisdictional
Wetland 5.36	0.052	no CSC	non-jurisdictional
Wetland 5.37	0.072	no CSC	non-jurisdictional
Wetland 5.38	0.126	no CSC	non-jurisdictional
Wetland 5.39	0.010	no CSC	non-jurisdictional
Wetland 5.40	1.428	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.41	0.482	no CSC	non-jurisdictional
Wetland 5.42	0.041	no CSC	non-jurisdictional
Wetland 5.43	1.054	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.44	0.027	no CSC	non-jurisdictional
Wetland 5.45	7.266	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.46	0.024	no CSC	non-jurisdictional
Wetland 5.47	0.019	no CSC	non-jurisdictional
Wetland 5.48	0.053	no CSC	non-jurisdictional
Wetland 5.50	3.422	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.51	0.017	no CSC	non-jurisdictional
Wetland 5.52	0.088	no CSC	non-jurisdictional
Wetland 5.53	0.055	confirm CSC to RPW	Jurisdictional Section 404
Stream 5.54	246	RPW tributary	Jurisdictional Section 404

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Stream 5.56	390	RPW tributary	Jurisdictional Section 404
Wetland 5.57	0.010	confirm CSC to RPW	Jurisdictional Section 404
Stream 5.59	41	RPW tributary	Jurisdictional Section 404
Wetland 5.60	0.435	no CSC	non-jurisdictional
Wetland 5.61	0.515	no CSC	non-jurisdictional
Wetland 5.62	0.003	no CSC	non-jurisdictional
Wetland 5.63	0.010	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.64	0.057	no CSC	non-jurisdictional
Wetland 5.65	0.099	no CSC	non-jurisdictional
Wetland 5.66	0.911	no CSC	non-jurisdictional
Wetland 5.67	0.047	no CSC	non-jurisdictional
Wetland 5.68	0.119	no CSC	non-jurisdictional
Wetland 5.69	0.007	no CSC	non-jurisdictional
Wetland 5.70	0.016	no CSC	non-jurisdictional
Wetland 5.71	0.032	no CSC	non-jurisdictional
Wetland 5.72	0.522	no CSC	non-jurisdictional
Wetland 5.73	0.036	no CSC	non-jurisdictional
Wetland 5.74	0.030	no CSC	non-jurisdictional
Wetland 5.75	0.176	no CSC	non-jurisdictional
Wetland 5.76	1.263	no CSC	non-jurisdictional
Stream 5.77	41	non RPW	non-jurisdictional
Wetland 5.79	1.755	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.80	0.440	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.81	0.051	no CSC	non-jurisdictional
Wetland 5.82	0.119	no CSC	non-jurisdictional
Wetland 5.83	0.014	confirm CSC to RPW	Jurisdictional Section 404
Stream 5.84	1,438	RPW tributary	Jurisdictional Section 404
Wetland 5.85	0.051	no CSC	non-jurisdictional
Stream 5.86	367	RPW tributary	Jurisdictional Section 404
Wetland 5.87	0.189	no CSC	non-jurisdictional
Wetland 5.88	0.042	no CSC	non-jurisdictional
Wetland 5.89	0.018	no CSC	non-jurisdictional
Stream 5.90	993	RPW tributary	Jurisdictional Section 404
Wetland 5.91	0.035	no CSC	non-jurisdictional
Wetland 5.92	0.007	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.93	0.141	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.95	0.216	confirm CSC to RPW	Jurisdictional Section 404

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Wetland 5.96	0.401	confirm CSC to RPW	Jurisdictional Section 404
Stream 5.99	5.994	RPW tributary	Jurisdictional Section 404
Stream 5.100 (Walker Run)	3,587	RPW tributary	Jurisdictional Section 404
Wetland 5.101	0.012	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.102	0.049	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.103	0.018	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.104	0.111	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.105	0.011	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.106	0.118	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.107	0.018	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.108	0.040	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.109	0.057	no CSC	non-jurisdictional
Stream 5.111	221	RPW tributary	Jurisdictional Section 404
Wetland 5.113	0.015	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.114	0.050	confirm CSC to RPW	Jurisdictional Section 404
Stream 5.115	924	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.115	0.085	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.117	0.041	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.118	0.044	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.119	0.009	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.120	0.026	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.121	0.035	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.122	0.311	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.123/3.17	0.277	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.124	0.169	confirm CSC to RPW	Jurisdictional Section 404
Stream 5.129	298	RPW tributary	Jurisdictional Section 404
Wetland 5.131	0.593	no CSC	non-jurisdictional
Wetland 5.132	0.008	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.133	0.059	confirm CSC to RPW	Jurisdictional Section 404
Wetland 5.134	0.825	no CSC	non-jurisdictional
Wetland 5.135	0.018	no CSC	non-jurisdictional
Stream 5.136	170	RPW tributary	Jurisdictional Section 404
Wetland 5.139	0.258	confirm CSC to RPW	Jurisdictional Section 404
Stream 5.150	20	RPW tributary	Jurisdictional Section 404

2. REFERENCES.

[NAB]

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- 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 XXXX (September 8, 2023))
 - c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)
 - d. "Memorandum To the Field Between the United States Department of the Corps and The United States 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 Area of Review (AOR) is located north of U.S. Route 11 approximately 1.5 miles east of East Berwick in Salem Township, Luzerne County PA. The approximate center point of the AOR is (41.092933, - 76.176144). See Figure 1 below.

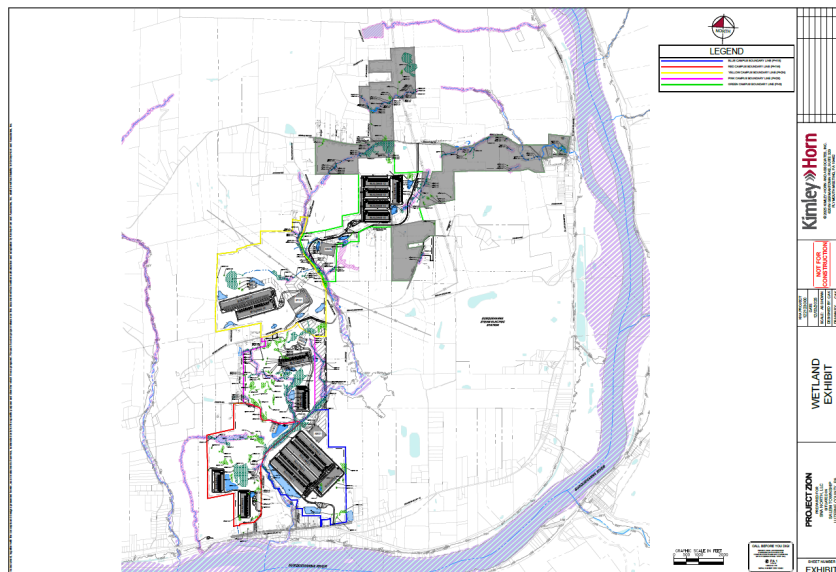


Figure 1. Area of review consists of the 5 colored polygons which correspond to Phases 1-3 as shown in the map legend. Approximately **236 aquatic resources** were evaluated within these polygons. The gray shaded areas are not part of this AOR. Additionally, approximately 70 additional aquatic resources were mapped by the requester but are located outside the AOR. These aquatic resources were not evaluated or considered for this AJD.

[NAB]

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Susquehanna River which is historically commercially navigable.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. All surface waters within the AOR drain primarily through Walker Run or its tributaries, and to a much lesser extent to Salem Creek. Both are tributaries directly to the Susquehanna River, a TNW.
6. SECTION 10 JURISDICTIONAL WATERS⁴: 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. This AOR does not include the Susquehanna River, a TNW, which is adjacent to the south of the AOR.
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]

⁴ 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.

[NAB]

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d. Impoundments (a)(2):

- i. **Ponds 1.1, 1.2, and 1.4** are impoundments of an unnamed tributary to Salem Creek, an (a)(3) tributary to the Susquehanna River. These 3 ponds meet the definition of (a)(2) impoundments and are jurisdictional.
- ii. **Ponds 2.1, 3.1, and 3.2** are impoundments of Walker Run or its tributaries [(a)(3) tributaries] to the Susquehanna River. These 3 ponds also meet the definition of (a)(2) impoundments and are jurisdictional.

e. Tributaries (a)(3):

- i. The Corps has determined that there are **44 streams** that meet the definition of (a)(3) tributaries. They are highlighted in light green in Table 1 above. Because they are so numerous, we are addressing them as a group. Each tributary was determined to have an OHWM and defined bed and banks in the majority or throughout the length of stream inspected.

It is noted that this is glacial terrain where portions of some streams are flowing through glacial till and therefore often the flows are concealed for short distances as the channels have been filled with rock. This phenomenon is quite common in northeastern Pennsylvania. We have determined that the flows are continuous and connect to receiving tributaries which ultimately discharge directly into the Susquehanna River, a TNW.

f. Adjacent Wetlands (a)(4):

- i. The Corps has determined that there are **97 wetlands** in the AOR that are subject to Section 404 jurisdiction as they meet the definition of (a)(4) adjacent wetlands. The wetlands are highlighted in blue in Table 1 above and all have a continuous surface connection as they directly abut (a)(2) impoundments and or (a)(3) tributaries as required. Wetland determinations were made per the 1987 Corps of Engineers Wetland Delineation Manual and the Northeast and Northcentral Regional Supplement. The Corps did not inspect all wetlands listed in Table 1 but performed an office review of them in conjunction with pertinent supporting information.

g. Additional Waters (a)(5): [NA]

[NAB]

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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).⁵
 - i. The Corps has determined that **wetlands 1.30, 1.31 and 1.32** exist as man induced wetlands resulting from construction activities from shale mining on the site. These aquatic resources meet the definition of an exclusion, (b)(7) water filled depressions (wetlands) created in dry land. Despite meeting the criteria outlined in the 1987 Corps of Engineers Wetland Delineation Manual and the Northeast and Northcentral Regional Supplement, these 3 wetlands are geographically isolated and do not have a continuous surface connection (CSC) to a jurisdictional water.
- 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). [N/A or enter rationale/discussion here.]
 - i. The Corps has determined that **85 wetlands** in the AOR do not meet the definition of (a)(4) adjacent wetlands as they are geographically isolated and do not have a continuous surface connection (CSC) to a jurisdictional water. Most of these wetlands were closed depressions or have drainage that is lost to groundwater (losing waters). All 86 wetlands meet the definition of wetlands per the 1987 Corps of Engineers Wetland Delineation Manual and the Northeast and Northcentral Regional Supplement but are non-jurisdictional as indicated above.
 - ii. **Streams 3.15 and 5.77** which are highlighted in purple in Table 1, were evaluated and determined to have ephemeral flow regimes. These 2 streams are non-jurisdictional as they do not meet the definition of relatively permanent tributaries.

⁵ 88 FR 3004 (January 18, 2023)

[NAB]

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- iii. Lastly, four **Ponds 1.5 and 1.6** were determined to be non-jurisdiction as they lack a continuous surface connection to a jurisdictional water (a)(1-4).

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. The Corps conducted an onsite inspection on December 9, 2025.
- b. Desktop review of all submittals and office resources as listed below.
- c. Request for Jurisdictional Determination by DLA Piper LLP (US) and a Wetland & Stream Delineation by Davy Resource Group, September 24, 2025.
- d. Subsequent revised mapping and plans submitted by Davy Resource Group, dated December 2, 2025.
- e. Desktop Review of all pertinent supporting information supplied by Davy Resource Group in their report as well as resources available to the Corps including but not limited to:
 - a. Online geographic information systems tools
 - b. Historic aerial imagery (Google Earth Pro 1995 to present and PASDA 1930s through 1970s)
 - c. United States Fish and Wildlife Service National Wetland Inventory Maps
 - d. Web Soil Survey
 - e. Regulatory Reviewer tools
 - f. Pennsylvania Watershed Resource Registry tools
 - g. Digital Globe aerial photography
 - h. Historic Topographic maps
 - i. United States Geological Survey Stream Stats

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

[NAB]

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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.