



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
STATE COLLEGE AHERTON STREET, SUITE 101
STATE COLLEGE, PENNSYLVANIA 16801-6260

CENAB-OP-R

May 15, 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-2025-00545-P12.

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.

The site is located within a 118.8-acre "Review Area" located on the off Tomhicken Road, in Sugarloaf Township, Luzerne County, Pennsylvania.

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.

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 38 aquatic resources evaluated from an office review of supporting information or from a December 9, 2025, field investigation by this office.

CSC = Continues surface Connection

RPW= Relatively Permanent Water

Aquatic Resource	Square Feet (SF) or Length (LF)	Rationale	Corps Jurisdiction
Wetland 0	61,338 SF	No CSC	non-Jurisdictional
Wetland 1	5,043 SF	No CSC	non-Jurisdictional
Wetland 2	2,580 SF	No CSC	non-Jurisdictional
Wetland 3	1,549 SF	No CSC	non-Jurisdictional
Wetland 4	3,167 SF	No CSC	non-Jurisdictional
Wetland 5	2,519 SF	No CSC	non-Jurisdictional
Wetland 6	2,313 SF	No CSC	non-Jurisdictional
Wetland 7	1,122 SF	No CSC	non-Jurisdictional
Wetland 8	2,823 SF	No CSC	non-Jurisdictional
Wetland 9	4,043 SF	No CSC	non-Jurisdictional
Wetland 10	61,121 SF	No CSC	non-Jurisdictional
Wetland 11	21,188 SF	No CSC	non-Jurisdictional
Wetland 12	11,515 SF	No CSC	non-Jurisdictional
Wetland 13	701 SF	No CSC	non-Jurisdictional
Wetland 14	1,943 SF	No CSC	non-Jurisdictional
Wetland 15	1,739 SF	No CSC	non-Jurisdictional
Wetland 16	925 SF	Confirm CSC to RPW	Jurisdictional Section 404
Wetland 17	6,477 SF	No CSC	non-Jurisdictional
Wetland 18	5,128 SF	No CSC	non-Jurisdictional
Wetland 19	8,140 SF	No CSC	non-Jurisdictional
Wetland 20	4,747 SF	No CSC	Non-Jurisdictional
Wetland 21	33,462 SF	No CSC	Non-Jurisdictional
Wetland 22	1,658 SF	No CSC	non-Jurisdictional
Wetland 23	6,332 SF	No CSC	non-Jurisdictional
Wetland 24	3,756 SF	No CSC	non-Jurisdictional

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Waterbody A1	48 LF	non RPW	non-Jurisdictional
Waterway A2	54 LF	non RPW	non-Jurisdictional
Waterbody B	327 LF	non RPW	non-Jurisdictional
Waterbody C	2,939 LF	RPW Tributary	Jurisdictional Section 404
Waterbody D	101 LF	No CSC	non-Jurisdictional
Waterbody E	56 LF	No CSC	non-Jurisdictional
Waterbody F	31 LF	No CSC	non-Jurisdictional
Waterbody G1	125 LF	No CSC	non-Jurisdictional
Waterbody G2	72 LF	No CSC	non-Jurisdictional
Waterbody H	180 LF	No CSC	non-Jurisdictional
Waterbody I	57,140 SF	No CSC	non-Jurisdictional
Waterbody K	180 LF	No CSC	non-Jurisdictional
Waterbody L	105 LF	No CSC	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 - a 118.8-acre "Review Area" located off Tomhicken Road, in Sugarloaf Township, Luzerne County, Pennsylvania. The approximate center point of the AOR is Latitude 40.96836 Longitude -76.08214. See Figure (Attachment 1).

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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. Unnamed Tributary to Black Creek flows Black Creek to Nescopeck Creek, which flows to the North Branch of the Susquehanna River (TNW).
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.
 - 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

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.

- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): Black Creek (Waterbody C) is a perennial waterway that was determined to have an OHWM and defined bed and banks throughout the action area.
- f. Adjacent Wetlands (a)(4): Wetland 16 directly abuts Black Creek (Waterbody C).
- 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).

The Corps has determined that 24 out of 25 wetlands (Wetland 16 is jurisdictional as it abuts an RPW) 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 24 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.

Waterbodies A1, A2, B, D-G1, G2, H, I, K, and L were determined to be non-jurisdictional as they lack a continuous surface connection to a jurisdictional water (a)(1-4).

⁷ 88 FR 3004 (January 18, 2023)

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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. The Corps conducted a field view on January 15, 2026.
 - b. Desktop review of all submittals and office resources as listed below.
 - c. Request for Jurisdictional Determination by GEO-Technology Associates, Incorporated dated November 4, 2025.
 - d. Subsequent revised mapping and plans submitted by GEO-Technology Associates, Incorporated dated April 6, 2026.
 - 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: Historic aerial imagery (Google Earth Pro 1995 to present and PASDA 1930s through 1970s), United States Fish and Wildlife Service National Wetland Inventory Maps, Web Soil Survey, Pennsylvania Watershed Resource Registry tools, and Historic Topographic maps.
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.