



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

22 April 2026

## MEMORANDUM FOR RECORD

SUBJECT: United States 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),<sup>1</sup> NAB-2025-00578-P33 (Dominano 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.<sup>2</sup> 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.<sup>3</sup>

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),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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. The review area is comprised entirely of isolated, non-jurisdictional aquatic features. Based on a review of desktop data resources listed in Section 8 of this memorandum and a field visit conducted on 3 April 2026, the wetlands and waters are non-jurisdictional isolated features with no surface connection to regulated waters. The site contains 37 wetlands and 4 streams. The wetlands are isolated depressional features formed as a result of prior mining activities. As a result, the wetlands are hydrologically disconnected from downstream systems. The streams lose conveyance into underground mine voids.

Waters Name	Cowardin Code	Amount of Aquatic Resource (acres)	Status
Wetland 1029250750	PUB	0.01	Non-jurisdictional
Wetland 1029250825	PEM	7.68	Non-jurisdictional
Wetland 1029250835	PEM	3.02	Non-jurisdictional
Wetland 1029250947	PEM	0.37	Non-jurisdictional
Wetland 1029251011	PEM	0.02	Non-jurisdictional
Wetland 1029251015	PEM	0.02	Non-jurisdictional
Wetland 1029251016	PEM	0.05	Non-jurisdictional
Wetland 1029251033	PEM	0.01	Non-jurisdictional
Wetland 1029251040	PFO	6.65	Non-jurisdictional
Wetland 1029251148	PEM	0.09	Non-jurisdictional
Wetland 1029251150	PFO	0.14	Non-jurisdictional
Wetland 1029251216	PEM	0.03	Non-jurisdictional
Wetland 1029251228	PEM	0.02	Non-jurisdictional
Wetland 1029251250	PFO	0.43	Non-jurisdictional
Wetland 1029251306	PEM	0.02	Non-jurisdictional
Wetland 1029251337	PEM	0.03	Non-jurisdictional
Wetland 1029251343	PEM	0.06	Non-jurisdictional
Wetland 1029251358	PEM	0.06	Non-jurisdictional
Wetland 1029251418	PEM	0.27	Non-jurisdictional
Wetland 1029251420	PEM	0.08	Non-jurisdictional
Wetland 1029251501	PEM	0.06	Non-jurisdictional
Wetland 1029251509	PSS	0.03	Non-jurisdictional
Wetland 1029251527	PFO	0.12	Non-jurisdictional
Wetland 1029251605	PUB	1.55	Non-jurisdictional
Wetland 1031250816	PEM	0.15	Non-jurisdictional

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Wetland 1031250826	PFO	0.07	Non-jurisdictional
Wetland 1031250902	PSS	0.21	Non-jurisdictional
Wetland 1031251124	PEM	0.17	Non-jurisdictional
Wetland 1031251130	PEM	0.06	Non-jurisdictional
Wetland 1031251218	PEM	0.04	Non-jurisdictional
Wetland 1031251231	PSS	0.29	Non-jurisdictional
Wetland 1031251620	PFO	0.03	Non-jurisdictional
Wetland 1031251656	PFO	0.01	Non-jurisdictional
Wetland 1031251702	PEM	0.24	Non-jurisdictional
Wetland 1031251721	PFO	0.14	Non-jurisdictional
Wetland 1031251735	PFO	0.07	Non-jurisdictional
Wetland 1031251746	PEM	0.01	Non-jurisdictional
Trib 28570	R4	289 linear feet	Non-jurisdictional
UNT 1 Wildcat Creek	R4	783 linear feet	Non-jurisdictional
UNT 2 Wildcat Creek	R4	210 linear feet	Non-jurisdictional
UNT 3 Wildcat Creek	R4	66 linear feet	Non-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 United States Department Of The Army, United States Army Corps Of Engineers 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" (12 March 2025)

## 3. REVIEW AREA.

Project Area Size (in acres): 403 acres

Location Description: located along Old Carbondale Turnpike, in Borough of Archbald, Lackawanna County, Pennsylvania.

Center Coordinates of the Project Site (in decimal degrees)

Latitude: 41.517363 Longitude: -75.565177

Nearest City or Town: Jermyn, PA

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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 which is a TNW.

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

The wetlands and streams are hydrologically disconnected from downstream systems.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>.

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.<sup>6</sup> 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.

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<sup>5</sup> 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.

<sup>6</sup> 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.

- 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

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).<sup>7</sup> 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 37 wetlands and 4 streams. The wetlands are isolated depressional features formed as a result of prior mining activities. As a result, the wetlands are hydrologically disconnected from downstream systems (Exhibit 1). The streams loose conveyance into underground mine voids (Exhibit 2).

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<sup>7</sup> 88 FR 3004 (18 January 2023)

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Exhibit 1-Photo from site visit on 3 April 2026 of isolated wetland.



Exhibit 2- Photo from site visit on 3 April 2026 of Trib 28570 disappearing into an underground mine.

## 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.

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- a. Office (Desk) Determination: 1 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, Aquatic Resource Investigation Domiano Data Center Project, 2 December 2025, prepared by ARM Group LLC.

#### 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.