



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
ATTN: REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201-2930

CENAB-OP-R

28 February 2024

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" (September 8, 2023),¹ NAB-2023-00242 (Damascus Pumping Station)².

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.³ 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.⁴

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

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

CENAB-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2023-00242 (Damascus Pumping Station)

Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).
- b. Based on a site visit conducted on November 14, 2023, it has been determined that there are no waters of the United States present within the approximately one (1) acre review area as identified on the enclosed drawing ES-06 dated June 2023. The ditch on the subject property at the time of the site visit did not exhibit a connection to Waters of the United States (WOTUS) and did not contain an ordinary high-water mark. In addition, no hydrophytic vegetation, hydric soil or wetland hydrology indicators were observed in accordance with the protocol contained within the 1) Eastern Mountains and Piedmont Regional Supplement (Version 2.0) and 2) 1987 Corps Delineation Manual.

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)

3. REVIEW AREA. The review area is an approximately one (1) acre parcel located near 9700 Highview Ave, in Damascus, Montgomery County, Maryland (Coordinates: Latitude 39.293838; Longitude -77.199030).
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Not Applicable (N/A).
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A.

⁵ 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-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2023-00242 (Damascus Pumping Station)

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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
 - 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

⁶ 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.

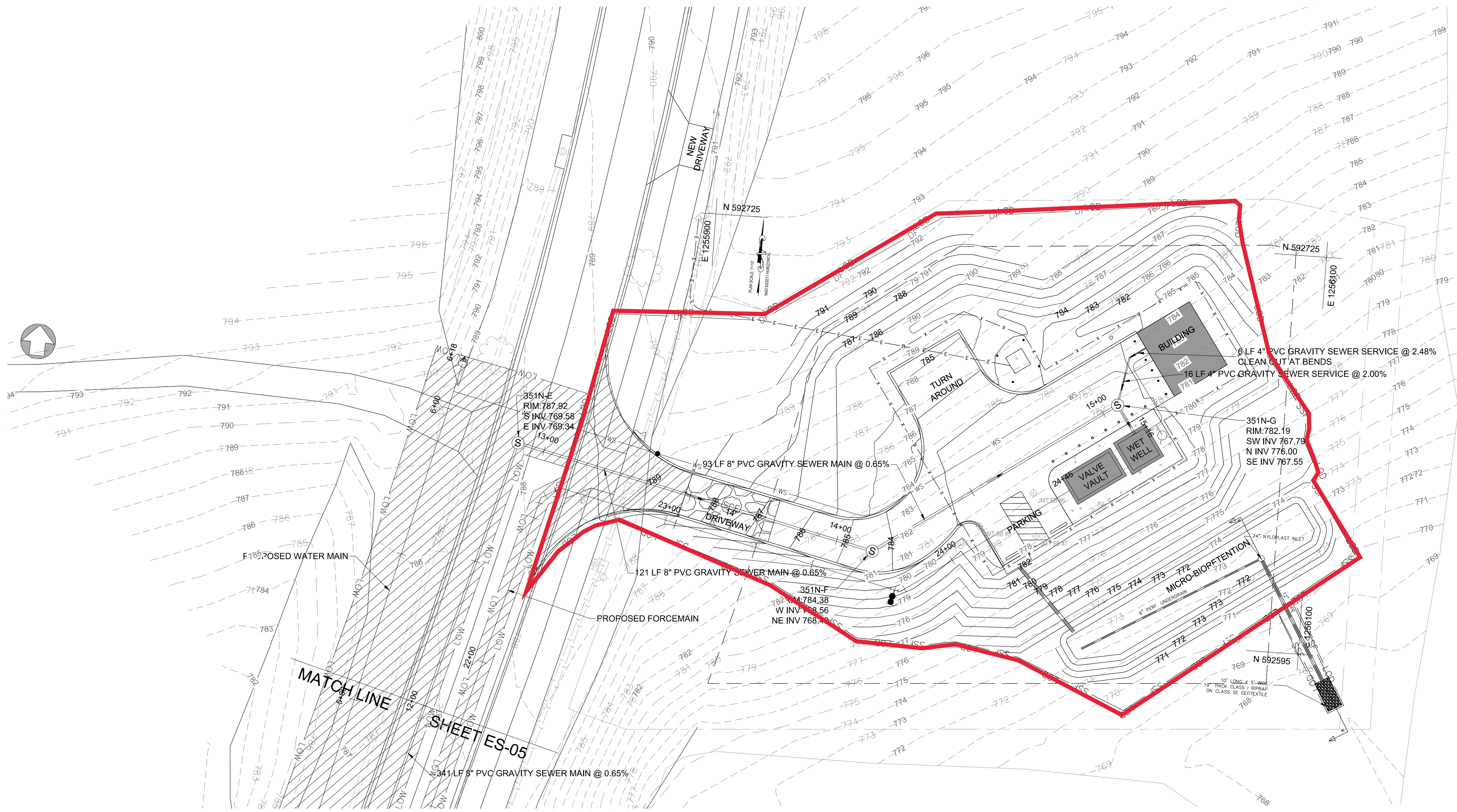
⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

CENAB-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2023-00242 (Damascus Pumping Station)

- 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).⁸ 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).
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. A site visit was conducted on November 14, 2023, with Mr. Robert Boyd from AB Consultants, Inc.
 - b. Wetland Delineation Report, Damascus Wastewater Pumping Station, Gravity Sewer and Force Main, May 25, 2023.
 - c. Erosion and Sediment Control Plan, WSSC Damascus Town Center Wastewater Pumping Station, June 2023

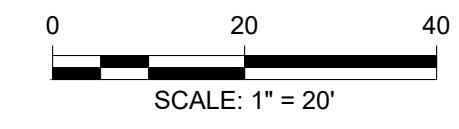
10. OTHER SUPPORTING INFORMATION. N/A



PLAN VIEW
SCALE: 1" = 20'

FOR STORM WATER MANAGEMENT, REFER TO SHEET SW-01

Corps Review Area = Approx 1-acre



NOTE TO CONTRACTOR: SEDIMENT CONTROL WILL BE STRICTLY ENFORCED.

2. WHERE NO SCE IS PROVIDED,
 - a. CONSTRUCTION EQUIPMENT SHALL REMAIN WITHIN THE LOD UNTIL ALL PROPOSED WORK IS COMPLETED. THEN HAVE THE TIRE / TREAD THOROUGHLY CLEANED OF MUD, SEDIMENT, ETC. PRIOR TO LEAVING THE LOD. ALSO, ALL MATERIAL REMOVAL / EQUIPMENT SHALL BE LIFTED OUT FROM THE LOD.
 - b. PRIOR TO VEHICLES LEAVING THE SITE, WHEELS SHALL BE CLEANED OR WASHED TO REMOVE SEDIMENT. ALL SEDIMENT SPILLED, DROPPED OR TRACKED ONTO ROAD MUST BE REMOVED IMMEDIATELY BY VACUUMING, SCRAPING OR SWEEPING. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH STONE THAT DRAINS TO AN APPROVED SEDIMENT CONTROL DEVICE.
3. NO AREAS SHALL BE LEFT UNSTABILIZED OVERNIGHT UNLESS THE RUNOFF IS DIRECTED TO AN MDE APPROVED SEDIMENT CONTROL DEVICE

PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.

LICENSE NO.: #####

EXP. DATE: #####

DATE	REVISIONS
#####	#####
#####	#####
#####	#####
#####	#####
#####	#####

CONTRACT: CP6494A18

ES-06 NO 8 OF 14

TEMPLATE LAYOUT CURRENT as of 05/14/2020



THESE DOCUMENTS CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION WHICH SHALL NOT BE REDISTRIBUTED WITHOUT PRIOR WSSC APPROVAL

ENGINEER:
NAME: AB CONSULTANTS, INC.
ADDRESS: 9450 ANNAPOLIS ROAD, LANHAM, MD 20706
PHONE: 301-306-3091
CONTACT: SANJAY PATEL
EMAIL: SANJAY.PATEL@ABCONSULTANTSINC.COM

DAMASCUS, MONTGOMERY COUNTY, MD
DAMASCUS TOWN CENTER WASTEWATER PUMPING STATION
EROSION AND SEDIMENT CONTROL PLAN