



DEPARTMENT OF THE ARMY  
U. S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT  
CARLISLE FIELD OFFICE  
401 EAST LOUTHER STREET, SUITE 205  
CARLISLE, PENNSYLVANIA 17013-2657

CENAB-OPR-R P 1100B

September 11, 2024

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 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),<sup>1</sup> NAB-2023-00352-P29 (Wysox Transloading Storage Yard Expansion).

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

---

<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.

CENAB-OPR-R P 1100B

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2023-00352-P29 - JD request Wysox Transloading Storage Yard Expansion]

1. SUMMARY OF CONCLUSIONS.

- a. Wetland A (0.13 acres) – non jurisdictional
- b. Wetland AA (0.29 acres) – 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 XXXX (September 8, 2023))
- c. *Sackett v. EPA*, 598 United States, 143 S. Ct. 1322 (2023)
- d. July 15, 2024 AJD request and Wetland Delineation by Tract Engineering
- e. 1987 Corps of Engineers Wetland Delineation Manual
- f. Northeast and Northcentral Regional Supplement
- g. Field Indicators of Hydric Soils of the United States
- h. 2020 National Wetland Plant List

3. REVIEW AREA. The review area is ~47 acres in size and located in the village of Wysox, Wysox Township, Bradford County, Pennsylvania.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.<sup>5</sup> The nearest TNW is the North Branch of the Susquehanna River located just south of the AOR. The North Branch of the Susquehanna has documented historic commercial navigation and current and historic commercial recreational use.

---

<sup>5</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

CENAB-OPR-R P 1100B

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2023-00352-P29 - JD request Wysox Transloading Storage Yard Expansion]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Wetlands A and AA do not exhibit a discrete surface flow path to the North Branch. There was no evidence of surface flow or discrete features present within the AOR that would constitute a continuous surface connection. The AOR is described as the “limit of study” illustrated on page 14 of the attached AJD request and Wetland Delineation document (see Figure 1 below).

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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>7</sup>

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]

---

<sup>6</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>7</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.

CENAB-OPR-R P 1100B

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2023-00352-P29 - JD request Wysox Transloading Storage Yard Expansion]

- 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>8</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).
  - I. Two wetlands (A and AA) were determined to be present in active cropland. Due to the proposed change in use expressed by the project proponent, these wetlands do not meet the exclusion criteria for prior converted cropland (b)(2) as described in the Amended 2023 Rule. Therefore, wetland determinations were completed using the Chapter 5 procedures in the Northeast and Northcentral Regional Supplement to the 1987 Corps of Engineers Wetland Delineation Manual.
    - i. Wetland A (~ 0.13 acres) is a depressional wetland located along the northern perimeter of the AOR. This wetland does not have a discrete surface connection to any jurisdictional waters and was determined to be non-jurisdictional (see Figure 2 below).
    - ii. Wetland AA (~ 0.29 acres) is a depressional wetland located in the central area of the AOR. The wetland has been incorporated into a stormwater feature and has been continuously cropped. This

---

<sup>8</sup> 88 FR 3004 (January 18, 2023)

CENAB-OPR-R P 1100B

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2023-00352-P29 - JD request Wysox Transloading Storage Yard Expansion]

wetland does not have a discrete surface connection to any jurisdictional waters and was determined to be non-jurisdictional (see Figure 3 below).

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. Google Earth Pro – full range of aerial photography
- b. Maryland Watershed Resource Registry – aerial photos, LiDAR, and numerous supporting layers (e.g., NWI, MD DNR wetland maps, Soil mapping, NHD, MARF precipitation departures, etc.).
- c. Digital Globe aerial photography
- d. Regulatory Reviewer – LiDAR, DEM
- e. Corps site inspection May 30, 2024.

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.

CENAB-OPR-R P 1100B

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2023-00352-P29 - JD request Wysox Transloading Storage Yard Expansion]

Figure 1: Area of review (AOR) illustrated as the red polygon and labelled as “limit of study” by Tract Engineering



Figure 2: Wetland 1 located along the northern perimeter of the AOR.





CENAB-OPR-R P 1100B

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2023-00352-P29 - JD request Wysox Transloading Storage Yard Expansion]

Figure 3: Wetland AA is a depressional wetland located in the central portion of the AOR. The stormwater feature is located just left of the viewing area.



Figure 4: Left photo shows the existence of an outlet pipe from the stormwater feature located in Wetland AA. The right photo shows the discharge area from the stormwater outlet. While a concave area is present, the Corps determined the feature to be indiscrete primarily due to the lack of evidence of flow particularly since the area experienced recent heavy rains.

