



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
STATE COLLEGE FIELD OFFICE
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STATE COLLEGE, PENNSYLVANIA 16801-6260

CENAB-OPR-R P 1100B

21 February 2025

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-2024-00100-P12(Milnor Road Land Development)

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.

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.

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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).
 - i. Wetland A – water of the United States (Section 404]
 - ii. Wetland B – not water of the United States
 - iii. Wetland C – water of the United States (Section 404)
 - iv. Wetland D – water of the United States (Section 404)
 - v. Wetland E – water of the United States (Section 404)
 - vi. Wetland F – water of the United States (Section 404)
 - vii. Channel – 01 - water of the United States (Section 404)
 - viii. Channel – 02 - water of the United States (Section 404)
 - ix. Channel - 03 - water of the United States (Section 404)
 - x. Channel - 04 - water of the United States (Section 404)
 - xi. Channel – 05 (Drainage Swale) – not water of the United States
 - xii. Drainage Swale – not water of the United States

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)

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- d. U.S. Army Corps of Engineers' (USACE) Wetland Delineation Manual, Technical Report Y-87-1 (1987) and Regional Supplement to the USACE's Wetland Delineation Manual: Eastern Mountains and Piedmont Region (2012).

3. REVIEW AREA. The 196 acre property is centered at approximately 39.745329° North latitude and -77.735525° West longitude, is located within a transitional suburban / agricultural section of southern Franklin County near the town of Greencastle, Antrim Township, Pennsylvania.

Existing land cover and land uses within the proposed project area are comprised primarily of agricultural cropland with minor patches of mature deciduous forest.

It is important to note that the site is also within Karst topography which plays a role in the classification of the on-site channels as flow goes subsurface in areas.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the mainstem of the Susquehanna River which was deemed navigable based on historic interstate commercial use and current commercial recreational use.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Unnamed Tributaries to the Conococheague Creek (Channel 1) flow to the Main branch of Conococheague Creek, to the mainstem of the Susquehanna River (a 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

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.

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): Channel – 02 (1,704 Linear feet) is a relatively permanent waters (RPWs). The channel is perennial. Surface water and benthic macroinvertebrates were observed within the channel. Channels – 03 (1,583 linear feet but extends offsite) is a relatively permanent water (RPW). The channel exhibits a defined Ordinary High Water Mark. No surface water seen during my site visit in channel - 03 between wetland A and D, but upstream of Wetland D flow was seen in Channel 04 all the way up through Wetland F to where the stream comes out of the SR 81 culvert pipe. There was water present in the channel, where the culvert discharges from under SR 81. Channel 04 (1,196 linear feet) is a relatively permanent waters (RPWs) intermittent channel from Wetland E downstream approximately 500 feet, where it is begins to have continued flow, and is considered perennial. At the intermittent/perennial intersection seeps were seen coming out of the banks of the channel and water was present in the channel during our visit as it then flowed downstream into Wetland A where the channel eventually joins Channel 3.
- f. Adjacent Wetlands (a)(4): Wetlands A (5.711 acres within the property boundaries) and C-F (Wetland C 0.5995 acre, Wetland D 1.2118 acres, Wetland E 0.247 acres on the property, and Wetland F 0.09 acre) having a continuous surface connection to waters that flow to a TNW (main stem of the Susquehanna River).
- g. Additional Waters (a)(5): N/A

3. 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).

Channel 5 (958 linear feet) is a drainage swale. There was no water in the swale at the time of our field view and lacked an ordinary high water mark. According to the consultant, no water was seen in this swale during any of his site visits. Wetland B (0.07 acre) did not have a continuous surface flow to jurisdictional waters. This was verified during my field view. Non-Jurisdictional Drainage Swale is a 1,300 linear feet that lacks an ordinary high water mark.

4. 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. Field View October 6, 2023
- b. The Pennsylvania Wetland Registry was used to gather the following map layers: NRCS Soil Mapping, Lidar, Wetness Indicator mapping, National Wetland Inventory, Stream and waterway mapping, Karst Layer, 1970 Black and White, 1993 and 1995 Black and White, recent aerials.
- c. “Milnor Road Land Development – Jurisdictional Wetland-Watercourse Identification and Delineation Report”, dated December 18, 2023, prepared by Skelly and Loy, Incorporated.

5. OTHER SUPPORTING INFORMATION.

⁷ 88 FR 3004 (January 18, 2023)

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6. 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.