



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
STATE COLLEGE FIELD OFFICE
1631 SOUTH ATHERTON STREET, SUITE 101
STATE COLLEGE, PA 16801

CENAB-OPR-P

13 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 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),¹ NAB-2025-00301-P02 (S.R. 0030-040 Big Mount Road Intersection Improvement)

BACKGROUND. An Approved Jurisdictional Determination (JD) 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. Approved JDs are clearly designated appealable actions and will include a basis of JD with the document.² Approved JDs are case-specific and are typically made in response to a request. Approved JDs 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 Approved JD as defined in 33 CFR §331.2. For the purposes of this Approved JD, 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 United States Army Corps of Engineers 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. Stream S2, an unnamed intermittent tributary (UNT) to Little Conewago Creek, is non-jurisdictional.

ii. Stream S1, an intermittent reach of Little Conewago Creek, is 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 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)

e. National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams, ERDC/CRREL TR-25-1, Final Version January 2025, by The Wetlands Regulatory Assistance Program

f. Regulatory Guidance Letter No. 05-05, Subject: Ordinary High Water Mark Identification, Date: 7 December 2005

3. REVIEW AREA. The review area consists of 7.45 acres, located in Jackson Township, York County, Pennsylvania, 39.922322 N, -76.888624 W. The review area is located at the intersection of PA State Route (S.R.) 30 (Lincoln Highway) running east to west, Big Mount Road intersecting S.R. 30 from the north, and Labott Road, intersecting with S.R. 30 from the south.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

Streams S1 and S2 are not connected via a surface tributary connection to a downstream TNW, Section 10 Navigable Waters of the United States, Interstate Waters, or the territorial seas.

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

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. 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

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.

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- 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).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).

A field visit was conducted on 25 November 2025, by Michael Danko of the Pennsylvania Branch, accompanied by Chiara Orsini, Keith Lupfer, Jeremy Ackerman, and Peter Roman from the Pennsylvania Department of Transportation; Adam Melewsky from Pennoni Associates, Inc.; Elwood Kimmel from Gannett Fleming, Inc.; and Clayton Frey and Steve Baumgardner from NTM Engineering, Inc. Stream S2, an intermittent UNT to Little Conewago Creek, and Stream S1, an intermittent reach of Little Conewago Creek, both exhibited physical characteristics of an ordinary high water mark, including the following: a natural line impressed on the bank; shelving; destruction of terrestrial vegetation; presence of litter and debris forming a wrack line; vegetation matted down, bent or absent; leaf litter disturbed or washed away within the channel, scour; deposition; and change in plant community. Approximately 1,136-linear feet of Stream S2 and 43-linear feet of Stream S1 are located within the review area. The drainage area to the review area of the UNT to Little Conewago Creek is 59.77 acres, and the drainage area to the review area for Little Conewago Creek is 1.03 square miles. No surface flow was observed in Streams S1 and S2 on the date of the site visit. At the request of the Corps, the applicant through their consultant NTM Engineering, provided a list of field visit dates they conducted to the site. No surface water flow was observed by NTM for Stream S2 on 30 June 2022, 4 June 2024, 26 November 2024, 28 March 2025, and 9 October 2025. For Stream S1,

⁷ 88 FR 3004 (January 18, 2023)

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no surface flow was observed on 30 June 2022, 4 June 2024, and 26 November 2024 (although a small, ponded area downstream of the Labott Road Bridge was observed and photographed), and Stream S1 was not observed by NTM on 4 June 2024 and 26 November 2024. The review area is located in an area of York County underlain by limestone bedrock. Approximately 0.9 mile east of the review area a large limestone quarry exists called the “Pennsy Supply Inc., Thomasville Quarry” which further extends to 1.80 miles east of the review area. Aerial photography depicts a substantial number of sinkhole features that are likely located within the hydrologic zone of influence of the limestone quarry (a condition frequent in central Pennsylvania). Sinkhole features are located directly within the streambed of Little Conewago Creek, including two large sinkholes approximately 75 feet and 130 feet upstream of the Labott Road Bridge, and a large 20-foot deep (field measured) sinkhole located approximately 75 feet downstream of the Labott Road Bridge. Although these features were located outside of the review area (which included only 43-linear feet of Stream S1), Pennsylvania Department of Transportation had access rights to enter the properties as part of the proposed intersection improvement project. It is believed that much, if not all, of the surface flow in Stream S1 Little Conewago Creek is severed due to sinkhole infiltration, particularly to the 20-foot deep sinkhole located approximately 75-feet downstream of the Labott Road Bridge. Aerial photographs depict large reaches of Little Conewago Creek that have been concrete-lined as the channel gets closer to the quarry pits, further evidence that the quarry is exacerbating sinkhole formation within the stream channel. Review of aerial photographs does not conclusively depict any discreet discharge points of the stream channel surface water flow lost through the sinkhole features, although water-filled depressions within the Pennsy Supply Inc., Thomasville Quarry are visible on aerial photography. The Corps evaluation has determined that Stream S1 and S2 do not have a continuous surface connection to a jurisdictional water and, accordingly, are non-jurisdictional.

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. Corps field visit conducted on 25 November 2025, including ground level photographs and data collection.
- b. Pre-application meeting conducted on 5 June 2025.
- c. United States Geological Survey 7.5-minute quadrangle for Abbottstown, PA, dated 1953, photorevised 1968 and 1973, and photoinspected 1981.

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d. National Wetland Inventory Mapping, United States Fish and Wildlife Service, Abbottstown, PA, 1981.

e. Soil Survey of York County Pennsylvania, United States Department of Agriculture, Natural Resources Conservation Service, 2002.

f. National High-Altitude Photography program, color infrared aerial photographs dated 2 April 1981, 26 March 1984, and 26 September 1987.

g. Penn Pilot historic aerial imagery 1946, 1957, 1971.

h. Google Earth historical aerial imagery 1985-2025.

i. StreamStats, United States Geological Survey, Version 1.2.22.

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.