



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, PITTSBURGH DISTRICT  
WILLIAM S. MOORHEAD FEDERAL BUILDING  
1000 LIBERTY AVENUE  
PITTSBURGH, PA 15222-4186

CELRP-RG

October 8, 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) ,<sup>1</sup> [LRP-2025-00168]

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 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.

1. SUMMARY OF CONCLUSIONS.

---

<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.

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

- 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. S-08a(1), Jurisdictional, Section 404
  - ii. S-08a(2), Jurisdictional, Section 404
  - iii. S-08a(3), Jurisdictional, Section 404
  - iv. S-08a1, Non-jurisdictional
  - v. S-08a2(1), Non-jurisdictional
  - vi. S-08a2(2), Non-jurisdictional
  - vii. S-08a2a, Non-jurisdictional
  - viii. W-15, Non-jurisdictional
  - ix. W-16, Non-jurisdictional
  - x. W-17, Non-jurisdictional
  - xi. W-18, Non-jurisdictional
  - xii. W-19, Non-jurisdictional
  - xiii. W-20, Non-jurisdictional
  - xiv. W-21, Non-jurisdictional
  - xv. W-22, Non-jurisdictional
  - xvi. W-23, Non-jurisdictional
  - xvii. W-30, Non-jurisdictional
  - xviii. S-02(1), Jurisdictional, Section 404
  - xix. S-02(2), Jurisdictional, Section 404
  - xx. S-02a, Non-jurisdictional

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

- xxi. S-02b, Jurisdictional, Section 404
- xxii. W-42, Jurisdictional, Section 404
- xxiii. W-43, Non-jurisdictional
- xxiv. W-27, Non-jurisdictional
- xxv. W-28, Non-jurisdictional
- xxvi. W-29, Non-jurisdictional
- xxvii. S-20(1), Jurisdictional, Section 404
- xxviii. S-20(2), Jurisdictional, Section 404
- xxix. W-26a, Non-jurisdictional
- xxx. W-26b, Non-jurisdictional
- xxxi. S-20a, Non-jurisdictional
- xxxii. Emergency Spillway 1, Non-jurisdictional
- xxxiii. S-08, Jurisdictional, Section 404
- xxxiv. W-40, Jurisdictional, Section 404
- xxxv. W-41, Non-jurisdictional
- xxxvi. Stormwater Ditch 1, Non-jurisdictional
- xxxvii. Stormwater Ditch 2, Non-jurisdictional
- xxxviii. Stormwater Ditch 3, Non-jurisdictional
- xxxix. TR-04, Non-jurisdictional
- xl. TR-05, Non-jurisdictional
- xli. W-47, Non-jurisdictional

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

- xlii. Stormwater Ditch 4, Non-jurisdictional
- xlili. W-44, Non-jurisdictional
- xliv. S-06(1), Jurisdictional, Section 404
- xlv. S-06(2), Jurisdictional, Section 404
- xlvi. TR-03, Jurisdictional, Section 404
- xlvii. S-06a, Jurisdictional, Section 404
- xlviii. W-61, Jurisdictional, Section 404
- xlix. Stormwater Ditch 5, Non-jurisdictional
  - I. Stormwater Ditch 6, Non-jurisdictional
  - II. Stormwater Ditch 7, Non-jurisdictional
  - III. STW-11, Non-jurisdictional
  - IIII. STW-12, Non-jurisdictional
  - IV. STW-13, Non-jurisdictional
  - IV. STW-14, Non-jurisdictional
  - VI. STW-15, Non-jurisdictional
  - IVII. W-34, Non-jurisdictional
  - IVIII. W-36, Non-jurisdictional
  - lix. W-37, Non-jurisdictional
  - IX. W-38a, Jurisdictional, Section 404
  - IXI. TR-01, Non-jurisdictional
  - IXII. TR-02, Non-jurisdictional
  - IXIII. Emergency Spillway 2, Non-jurisdictional

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

lxiv. S-01, Jurisdictional, Section 404

lxv. W-39, 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. 651 (2023), 143 S. Ct. 1322 (2023)
  - d. Power Generation Site Wetland Delineation and Watercourse Identification Report, Revised: September 2025 (see 2025-09-18 Power Generation Site WDWIR).
  - e. Pittsburgh District Public Notice No. 12-2, Dated January 11, 2012.
3. REVIEW AREA. Approximately 465 acre study area located in Homer City, Indiana County, Pennsylvania (40.518800, -79.207457) (see AJD Study Area LRP-2025-00168).
  4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Kiskiminetas River (Pittsburgh District Public Notice No. 12-2, Dated January 11, 2012).
  5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Subject waters drain offsite into Blacklick Creek which flows into the Conemaugh River which flows into the Kiskiminetas River, which is a Traditional Navigable Water
  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

---

<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.

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

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.
  - 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):

S-08a(1) is a 65 linear foot relatively permanent tributary. It was determined that S-08a(1) is a first-order tributary, and the relevant reach begins at the headwaters until the point where it flows into a second-order tributary, S-08a(2), a UNT to the Kiskiminetas River. S-08a(1) was determined to be a relatively permanent water based on the presence of observable flow during site visits on July 9, 2025, and September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

S-08a(2) is a 60 linear foot relatively permanent tributary. It was determined that S-08a(2) is a second-order tributary, and the relevant reach begins at the confluence of streams S-08a(1) and S-08a1 until the point where it flows into a third-order tributary,

---

<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.

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

S-08a(3), a UNT to the Kiskiminetas River. S-08a(2) was determined to be a relatively permanent water based on the presence of observable flow during site visits on July 9, 2025, and September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

S-08a(3) is a 594 linear foot relatively permanent tributary. It was determined that S-08a(3) is a third-order tributary, and the relevant reach begins at the confluence of streams S-08a(2) and S-08a2(2) until the point where it flows into a downstream tributary located outside of the AJD study area, a UNT to the Kiskiminetas River. S-08a(3) was determined to be a relatively permanent water based on the presence of observable flow during site visits on July 9, 2025, and September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

S-02(1) is a 384 linear foot relatively permanent tributary. It was determined that S-02(1) is a first-order tributary, and the relevant reach begins at the headwaters until the point where it flows into a second-order tributary, S-02(2), a UNT to the Kiskiminetas River. S-02(1) was determined to be a relatively permanent water based on the presence of observable flow during a site visit on July 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness.

S-02(2) is a 322 linear foot relatively permanent tributary. It was determined that S-02(2) is a second-order tributary, and the relevant reach begins at the confluence of streams S-02(1) and S-02b until the point where it flows into a downstream tributary located outside of the AJD study area, a UNT to the Kiskiminetas River. S-2(2) was determined to be a relatively permanent water based on the presence of observable flow during a site visit on July 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the site visit. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness.

S-02b is an 87 linear foot relatively permanent tributary. It was determined that S-02b is a first-order tributary, and the relevant reach begins at the headwaters until the point where it flows into a second-order tributary, S-02(2), a UNT to the Kiskiminetas River. While observable flow was not present during the July 9, 2025, site visit, S-02b was determined to be relatively permanent based on pictures and description of the resource provided by Michael Baker International in the Wetland Determination and Watercourse Identification Report Revised: September 2025, and well-defined channel morphology.

## CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

S-20(1) is a 301 linear foot relatively permanent tributary. It was determined that S-20(1) is a first-order tributary, and the relevant reach begins at the headwaters until the point where it flows into a second-order tributary, S-20(2), a UNT to the Kiskiminetas River. S-20(1) was determined to be a relatively permanent water based on the presence of observable flow during a site visit on July 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the site visit. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness.

S-20(2) is a 2,282 linear foot relatively permanent tributary. It was determined that S-20(2) is a second-order tributary, and the relevant reach begins at the confluence of streams S-20(1) and S-20a until the point where it flows into a downstream tributary located outside of the AJD study area, Two Lick Creek, a tributary to the Kiskiminetas River. S-20(2) was determined to be a relatively permanent water based on the presence of observable flow during a site visit on July 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the site visit. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness.

S-08 is a 1,093 linear foot relatively permanent tributary. It was determined that S-08 is a first order tributary, and the relevant reach begins at its headwaters within wetland W-40 until the point where it flows into a downstream third-order tributary outside of the AJD study area, S-08a(3), a UNT to the Kiskiminetas River. S-08 was determined to be a relatively permanent water based on the presence of observable flow during site visits on July 9, 2025, and September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

S-06(1) is a 78 linear foot relatively permanent tributary. It was determined that S-06(1) is a first-order tributary, and the relevant reach begin at the headwaters at the culvert outlet draining wetland W-61 until the point where its flows into S-06(2), a UNT to the Kiskiminetas River. S-06(1) was determined to be relatively permanent based on the presence channel morphology and weak flow during a site visit on September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the day of the site visit. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

S-06(2) is a 510 linear foot relatively permanent tributary. It was determined that S-06(2) is a second-order tributary, and the relevant reach begins at the confluences of streams S-06(1) and S-06a until the point where it flows into a downstream tributary located outside of the AJD study area, Blacklick Creek, a tributary to the Kiskiminetas River.

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

While in the study area, S-06 flows into TR-03, a settling basin and impoundment in-line with S-06, for approximately 220 linear feet and then outlets and continues normal flow path. S-06(2) was determined to be relatively permanent based on the presence of observable flow during site visits on July 9, 2025, and September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

TR-03 is a 0.327 acre settling basin and impoundment located in-line with stream S-06(2), measuring approximately 220 linear feet. It was determined that TR-03 is a relatively permanent tributary, and the relevant reach begins at the inlet of the basin until the point where the basin outlets to stream S-06, an (a)(3) tributary and UNT to the Kiskiminetas River. S-06(2) inlets into TR-03 and provides hydrology to the resource.

S-06a is 153 linear foot relatively permanent stream. It was determined that S-20a is a first-order stream, and the relevant reach begins at the headwaters abutting Stormwater Ditch 7, until the point where it flows into a second-order tributary, S-06(2) a UNT to the Kiskiminetas River. While observable flow was not present during the September 9, 2025, site visit, S-06a was determined to be relatively permanent based on strong channel morphology, absence of rooted vegetation and leaf litter in the stream channel, and dampness in the stream channel. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

S-01 is a 347 linear foot relatively permanent tributary. It was determined that S-01 is a first-order tributary, and the relevant reach begins at the headwaters until the point where it flows into a downstream tributary located outside the AJD study area, a UNT to the Kiskiminetas River. S-01 was determined to be relatively permanent based on the presence channel morphology and weak flow during a site visit on September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the day of the site visit. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

f. Adjacent Wetlands (a)(4):

W-42 is a 0.117 acre PEM wetland which abuts streams S-02(1), S-02(2), S-02b, (a)(3) waters, such that the wetland can be delineated to the bank of the stream; therefore, the wetland has a continuous surface connection to jurisdictional waters. Hydrology is received from streams S-02(1), S-02a, and S-02b, surface runoff, and groundwater.

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

W-40 is a 0.066 acre PEM wetland which abuts Stormwater Ditch 2 and stream S-08, an (a)(3) water, such that the wetland can be delineated to the bank of the stream; therefore, the wetland has a continuous surface connection to jurisdictional waters. Hydrology is received from surface runoff and groundwater.

W-38a is an approximate 1.572 acre PEM wetland component of wetland complex W-38. W-38 extends beyond the AJD study area, and only 0.605 acre of W-38a is located within the AJD study area. Outside of the AJD study, W-38a abuts S-01a, a perennial stream, such that the wetland can be delineated to the banks of the stream. S-01a originates from the outlet of PEM portion of wetland complex W-38 (W-38a) then flows briefly into the PUB portion of the wetland complex (W-38b). During a site visit on September 9, 2025, it was determined that S-01a maintains relatively permanent flow. Therefore, wetland W-38a has a continuous surface connection to jurisdictional waters. Hydrology is received from Emergency Spillway 2, surface runoff, and groundwater.

W-61 is a 0.028 acre PEM wetland located in a depression area. A culvert located in wetland W-61 drains hydrology downstream to S-06(1), an (a)(3) water. It was determined on a site visit on September 9, 2025, that the culvert outlet to S-06(1) maintains relatively permanent flow based on the presence of observable flow during site visit. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the dated of the site visit. The Drought Index (PDSI) on September 9, 2025, is Mild Drought. Therefore, the wetland has a continuous surfaces connection to jurisdictional waters. Hydrology is received from Stormwater Ditch 6, surface runoff, and groundwater.

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>

Stormwater Ditch 1 is a 131 linear foot non-relatively permanent ditch excavated from uplands. The relevant reach for Stormwater Ditch 1 begins at its headwaters directly abutting wetland W-41 until the point where it flows into S-08, a UNT to the Kiskiminetas River. Stormwater Ditch 1 was determined to be a non-relatively permanent water due to lack of observable flow on July 9, 2025, and September 9, 2025, and weak channel

---

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

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

morphology. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

Stormwater Ditch 2 is a 65 linear foot non-relatively permanent ditch excavated from uplands. The relevant reach for Stormwater Ditch 2 begins at the upstream culvert outlet until the point where it flows into S-08, a UNT to the Kiskiminetas River. Stormwater Ditch 2 was determined to be a non-relatively permanent water due to lack of observable flow on July 9, 2025, and September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

Stormwater Ditch 3 is a 765 linear foot non-relatively permanent roadside ditch excavated from and draining only uplands. A culvert located near the center of Stormwater Ditch 3 drains hydrology underneath the abutting road and downstream into Stormwater Ditch 2.

Stormwater Ditch 4 is a 400 linear foot non-relatively permanent roadside ditch excavated from and draining only uplands. A desktop review on September 3, 2025, determined that Stormwater Ditch 4 is excavated wholly from uplands.

Stormwater Ditch 5 is a 935 linear foot non-relatively permanent roadside ditch excavated from and draining only uplands. Stormwater Ditch 5 was determined to be a non-relatively water due to lack of observable flow on September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the day of the site visit. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

Stormwater Ditch 6 is a 680 linear foot non-relatively permanent roadside ditch excavated from and draining only uplands. The relevant reach for Stormwater Ditch 6 begins at the headwaters until the point where it flows into wetland W-61. Stormwater Ditch 6 was determined to be a non-relatively water due to lack of observable flow on September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the day of the site visit. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

Stormwater Ditch 7 is a 325 linear foot non-relatively permanent roadside ditch excavated from and draining only uplands. The relevant reach for Stormwater Ditch 7 begins at the headwaters until the point where it flows into S-06a. Stormwater Ditch 7

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

was determined to be a non-relatively water due to lack of observable flow on September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the day of the site visit. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

Emergency Spillway 1 is a 199 linear foot non-relatively permanent concrete lined feature excavated from and draining only uplands based on a site visit on September 9, 2025, in which flow was not observed, and a desktop review on September 3, 2025.

STW-11 is a 0.085 acre detention basin functioning as a passive water treatment system created from uplands and located in a depressional area surrounded on all sides by uplands. It was determined during a site visit on September 9, 2025, that the feature does not maintain a relatively permanent connection to any downstream resources.

STW-12 is a 0.57 acre impoundment and basin functioning as a passive water treatment system and artificial lake created from uplands and located in a depressional area surrounded on all sides by uplands. It was determined during a desktop review on September 4, 2025, that the feature does not maintain a relatively permanent connection to any downstream resources.

STW-13 is 0.78 acre impoundment and basin functioning as a passive water treatment system and artificial lake created from uplands and located in a depressional area surrounded on all sides by uplands. It was determined during a desktop review on September 4, 2025, that the feature does not maintain a relatively permanent connection to any downstream resources.

STW-14 is a 0.36 acre impoundment and basin functioning as a passive water treatment system and artificial lake created from uplands and located in a depressional area surrounded on all sides by uplands. It was determined during a desktop review on September 4, 2025, that the feature does not maintain a relatively permanent connection to any downstream resources.

STW-15 is a 0.12 acre impoundment and basin functioning as a passive water treatment system and artificial lake created from upland and located in a depressional area.

TR-01 is a 1.19 acre settling basin functioning as a passive water treatment system and artificial lake created from uplands. It was determined during a site visit on September 9, 2025, that the feature does not maintain a relatively permanent connection to any downstream resources.

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

TR-02 is a 0.31 acre settling basin functioning as a passive water treatment system and artificial lake created from uplands. It was determined during a desktop review on September 4, 2025, and site visit on September 9, 2025, that the feature does not maintain a relatively permanent connection to any downstream resources.

TR-04 is a 0.42 acre settling basin functioning as a passive water treatment system and artificial lake created from uplands. It was determined during a desktop review on September 4, 2025, that the feature does not maintain a relatively permanent connection to any downstream resources.

TR-05 is a 0.15 acre settling basin functioning as a passive water treatment system and artificial lake created from uplands. It was determined during a desktop review on September 4, 2025, that the feature does not maintain a relatively permanent connection to any downstream resources.

- 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).

S-08a1 is a 23 linear foot non-relatively permanent stream. It was determined that S-08a1 is a first-order stream, and the relevant reach begins at the headwaters until the point where it flows into a second-order tributary, S-08a(2), a UNT to the Kiskiminetas River. S-08a1 was determined to be a non-relatively permanent water due to lack of observable flow on July 9, 2025, and September 9, 2025, and lack of presence of macroinvertebrate species present within the stream channel. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

S-08a2a is a 312 linear foot non-relatively permanent stream. It was determined that S-08a2a is a first-order stream, and the relevant reach begins at the headwaters until the point where it flows into a second-order tributary, S-08a2(2), a UNT to the Kiskiminetas River. S-08a2a was determined to be a non-relatively permanent water due to lack of observable flow during site visits on July 9, 2025, and September 9, 2025, weak channel morphology and significant presence of rooted vegetation and leaf litter within the stream channel. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

## CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

S-08a2(1) is an 84 linear foot non-relatively permanent stream. S-08a2(1) is a first-order tributary, and the relevant reach begins at the headwaters within wetland W-15 until the point where it flows into a second-order tributary, S-08a2(2), a UNT to the Kiskiminetas River. S-08a2(1) was determined to be a non-relatively permanent water due to lack of observable flow during site visits on July 9, 2025, and September 9, 2025, weak channel morphology, and significant presence of rooted vegetation and leaf within the stream channel. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

S-08a2(2) is a 140 linear foot non-relatively permanent stream. S-08a2(2) is a second-order tributary, and the relevant reach begins at the confluence of streams S-08a2(1) and S-08a2s until the point where it flows into a third-order tributary, S-08a(3), a UNT to the Kiskiminetas River. S-08a2(2) was determined to be non-relatively permanent due to lack of observable flow during site visits on July 9, 2025, and September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

W-15 is a 0.389 acre PEM wetland which abuts streams S-08a2(1) and S-08a2a such that the wetland can be delineated to the bank of the stream. However, it has been determined that these streams are non-relatively permanent waters; therefore, the wetland does not have a continuous surface connection to a jurisdictional water. Hydrology is received from stream S-08a2a, surface runoff, and groundwater.

W-16 is a 0.056 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 2, 2025, that wetland W-16 does not have a continuous surface connection to jurisdictional waters.

W-17 is a 0.139 acre PEM wetland surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a desktop review on September 2, 2025, that wetland W-17 does not have a continuous surface connection to jurisdictional waters.

W-18 is a 0.069 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 2, 2025, that wetland W-18 does not have a continuous surface connection to jurisdictional waters.

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

W-19 is a 0.042 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 2, 2025, that wetland W-19 does not have a continuous surface connection to jurisdictional waters.

W-20 is a 0.705 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 2, 2025, that wetland W-20 does not have a continuous surface connection to jurisdictional waters.

W-21 is a 0.143 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 2, 2025, that wetland W-21 does not have a continuous surface connection to jurisdictional waters.

W-22 is a 0.017 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 2, 2025, that wetland W-22 does not have a continuous surface connection to jurisdictional waters.

W-23 is a 0.078 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 2, 2025, that wetland W-23 does not have a continuous surface connection to jurisdictional waters.

W-30 is a 0.060 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 2, 2025, that wetland W-30 does not have a continuous surface connection to jurisdictional waters.

S-02a is a 25 linear foot non-relatively permanent stream. It was determined that S-02a is a first-order stream, and the relevant reach begins at the headwaters until the point where it flows into wetland W-42, an (a)(4) water. S-02a was determined to be non-relatively permanent due to lack of observable flow during the site visit on July 9, 2025, and pictures of the resource provided by Michael Baker International in the Wetland Determination and Watercourse Identification Report Revised: September 2025. Per the

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the July 9, 2025, site visit. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness.

W-43 is a 0.396 acre PEM wetland surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 2, 2025, that wetland W-43 does not have a continuous surface connection to jurisdictional waters.

W-27 is a 0.022 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a desktop review on September 2, 2025, that wetland W-27 does not have a continuous surface connection to jurisdictional waters.

W-28 is a 0.028 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a desktop review on September 2, 2025, that wetland W-28 does not have a continuous surface connection to jurisdictional waters.

W-29 is a 0.008 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a desktop review on September 2, 2025, that wetland W-29 does not have a continuous surface connection to jurisdictional waters.

W-26 is a 0.359 acre wetland complex comprised of PEM and PFO components. W-26a, PEM, is 0.280 acre, and W-26b, PFO, is 0.079 acre. Hydrology is received from surface runoff and groundwater. A standpipe culvert is located in W-26b which connects downstream to stream S-20a. The standpipe drains hydrology from W-26 to S-20a. It was determined during a site visit on July 9, 2025, and September 9, 2025, that the connection between W-26b and S-20a is non-relatively permanent; therefore, wetland W-26 does not have a continuous surface connection to a jurisdictional water.

S-20a is a 72 linear foot non-relatively permanent stream. It was determined that S-20a is a first-order stream, and the relevant reach begins at the headwaters at the outlet of the culvert which drains wetland W-26 until the point where it flows into a second-order tributary, S-20(2), a UNT to the Kiskiminetas River. S-20a was determined to be non-relatively permanent due to lack of observable flow during site visits on July 9, 2025, and September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

during both site visits. The Drought Index (PDSI) on July 9, 2025, is Mild Wetness. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

W-47 is a 0.088 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 3, 2025, that wetland W-47 does not have a continuous surface connection to jurisdictional waters.

W-44 0.783 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a site visit on July 9, 2025, and desktop review on September 3, 2025, that wetland W-44 does not have a continuous surface connection to jurisdictional waters.

W-41 is a 0.063 acre PEM wetland which abuts Stormwater Ditch 1, a (b)(3) ditch excavated from uplands that does not carry relatively permanent flow of water. Otherwise, wetland W-41 is surrounded by uplands; therefore, the wetland does not have a continuous surface connection to a jurisdictional water. Hydrology is received from surface runoff and groundwater.

W-39 is a 0.107 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a desktop review on September 2, 2025, that wetland W-39 does not have a continuous surface connection to jurisdictional waters.

W-34 is a 0.007 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a desktop review on September 2, 2025, that wetland W-34 does not have a continuous surface connection to jurisdictional waters.

W-36 is a 0.045 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from stormwater feature STW-10, surface runoff, and groundwater. It was determined during a desktop review on September 2, 2025, that wetland W-36 does not have a continuous surface connection to jurisdictional waters.

W-37 is a 0.048 acre PEM wetland located in a depressional area surrounded on all sides by uplands with no continuous surface connection. Hydrology is received from surface runoff and groundwater. It was determined during a desktop review on

CELRP-RG

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRP-2025-00168]

September 2, 2025, that wetland W-37 does not have a continuous surface connection to jurisdictional waters.

Emergency Spillway 2 is a 924 linear foot non-relatively permanent feature that drains TR-01. Emergency Spillway 2 is a concrete lined featured excavated from uplands for approximately the first 60 feet and then ties into an incised stream channel or erosional feature for the remainder of the feature's length. Emergency Spillway 2 was determined to be a non-relatively permanent water due to lack of observable flow and dense growth of rooted vegetation in the feature's channel on September 9, 2025. Per the Antecedent Precipitation Tool (APT), based on recent precipitation compared to the 30-year normal range, normal conditions were exhibited during the day of the site visit. The Drought Index (PDSI) on September 9, 2025, is Mild Drought.

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. Site visits on July 9, 2025, and September 9, 2025.
  - b. Desktop review on September 2-4, 2025, using Google Earth Pro and the Pennsylvania Regulatory Viewer to access the 3DEP Hillshade, 3DEP Digital Elevation Model, 3DEP Slope imagery, and the National Wetland Inventory.
  - c. Antecedent Precipitation Tool (see 2025-09-09 APT and 2025-09-09 APT).

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.