



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
UPSTATE REGULATORY FIELD OFFICE
1 BUFFINGTON ST., BUILDING 10, 3RD FL. NORTH
WATERVLIET, NEW YORK 12189-4000

CENAN-OP-RU

5 January 2026

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 NAN-2025-00960-USH

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. SUMMARY OF CONCLUSIONS.

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.

CENAN-OP-RU

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2025-00960-USH

- 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 1-A, non-jurisdictional.
 - ii. Wetland 1-C, non-jurisdictional.
 - iii. Wetland 1-D, non-jurisdictional.
 - iv. Wetland 1-E, non-jurisdictional.
 - v. Wetland 1-F, non-jurisdictional.
 - vi. Wetland 1-G, non-jurisdictional.
 - vii. Wetland 1-H, non-jurisdictional.
 - viii. Wetland 1-I, non-jurisdictional.
 - ix. Wetland 1-J, 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 U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. 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" (March 12, 2025)

CENAN-OP-RU

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2025-00960-USH

3. REVIEW AREA. Review area size is 27.6 acres, latitude 42.929354, longitude -73.660179, Town of Schaghticoke, Rensselaer County, New York.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁵
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
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

⁵ 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.

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.

- 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

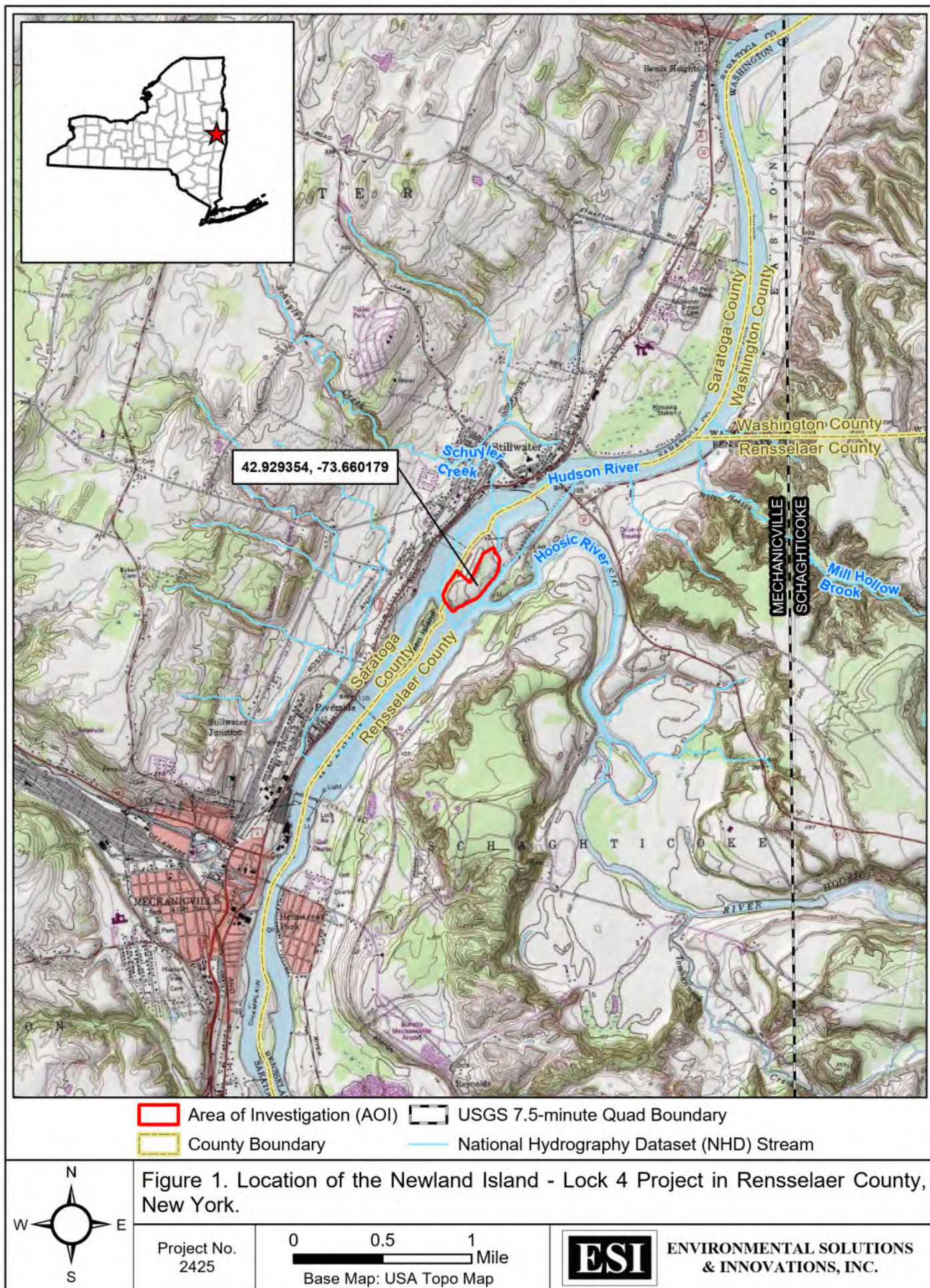
- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic 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). Wetlands 1-A, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, and 1-J are in low lying areas confined by topography and upland features comprised of woody and herbaceous vegetation and constructed berms. Wetlands 1-E and 1-F are located within settling basins that are used to dispose of dredge spoils, the overflow system is made up of a vertically placed corrugated PVC pipe, and an outfall that is placed landward of the Hudson River. The only time water flows through the overflow system is when water overtops the vertical PVC pipe when dredge spoils are pumped into the settling basins, which occurs infrequently and is not a continuous surface water connection. Since these nine wetlands do not have a continuous surface connection and lack a relatively permanent flow, they were determined to be non-jurisdictional.

⁸ 88 FR 3004 (January 18, 2023)

CENAN-OP-RU

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2025-00960-USH

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. Wetland Delineation Drawing entitled “Aquatic Resource Delineation Plan”, prepared by HRP Associates, and dated December 10, 2025.
 - b. Wetland delineation report which includes wetland data sheets and color photographs of aquatic resources on site entitled “Aquatic Resource Delineation Report for The Newland Island – Lock 4 Project”, prepared by ESI, Inc., and dated March 26, 2025.
 - c. USDA-NRCS Hydric Soils Map, prepared by ESI Inc., and dated March 25, 2025.
 - d. USGS 7.5-Minute Quad Boundary Map, prepared by ESI Inc., accessed 2025.
 - e. FEMA National Flood Hazard Map, prepared by USACE, and dated December 30, 2025.
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.



Path: S:\Data\NINNYDEC - NYSD\NEWLAND ISLAND\DEC1047\MCGIS\dredge.aprx

Name	Cow_Class	Acreage
1-A PFO	PFO	1.36
1-B PFO	PFO	0.87
1-C PEM	PEM	0.35
1-D PFO	PFO	0.11
1-E PEM	PEM	0.52
1-F PEM	PEM	0.65
1-G PEM	PEM	0.02
1-H PEM	PEM	0.11
1-I PEM	PEM	0.04
1-J PEM	PEM	0.06

Area Name	Acres
Jurisdictional Review Area	27.6
Newland Island Site Area	31.7



0 100 200
Feet
1 inch = 200 feet

Revisions	No.	Date
Designed By:	CMS	
Drawn By:	EY	
Reviewed By:	DRAFT	
Issue Date:	12/10/2025	
Project No:	DEC1047.MC	
Sheet Size:	11x17	

Aquatic Resource Delineation Plan

Newland Island
Rensselaer County, New York

Figure No.

1