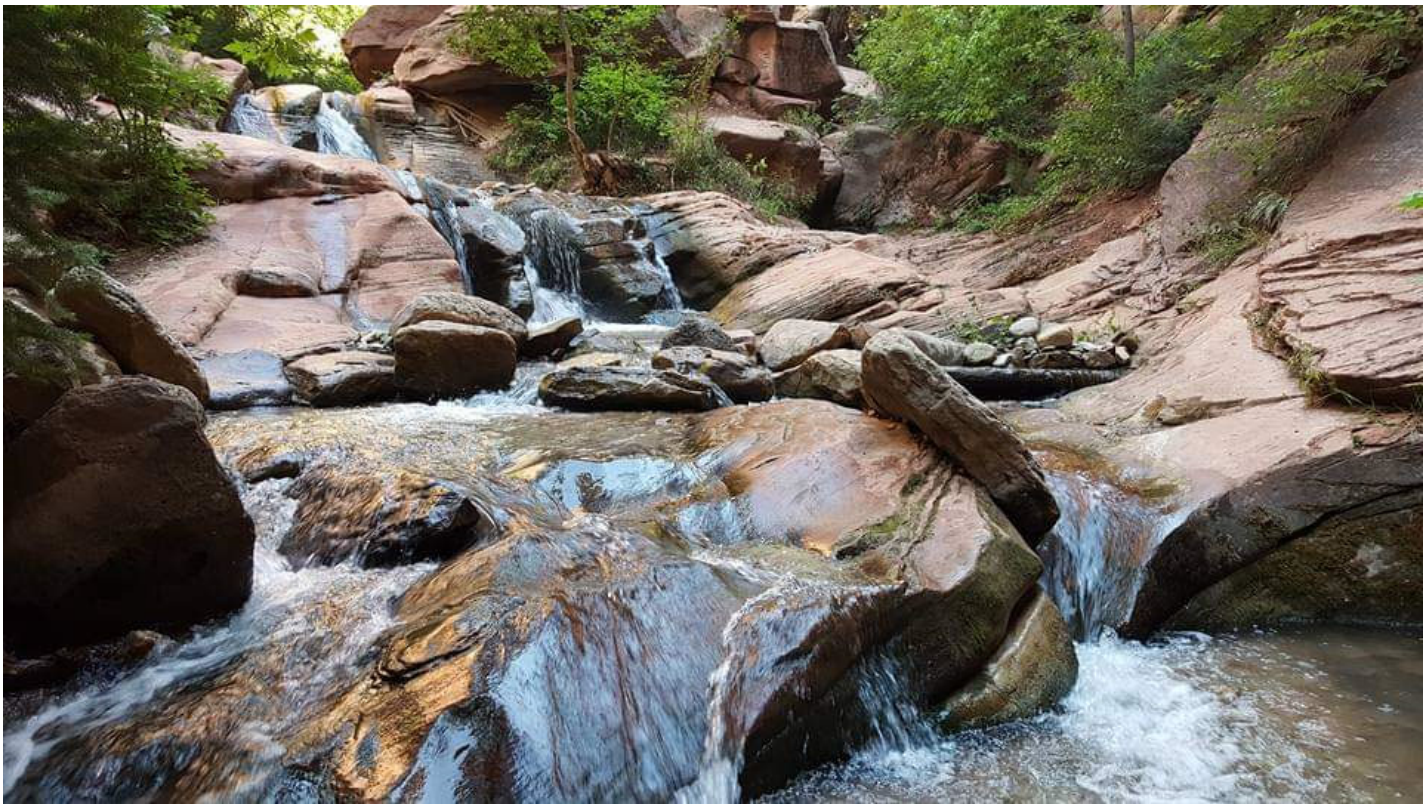
UNITED STATES ARMY CORPS OF ENGINEERS (USACE)
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM USER MANUAL (INTERIM)
2023 RULE[1]

This user manual provides detailed instructions to USACE field staff for purposes of completing the interim Approved Jurisdictional Determination Form for the 2023 "Revised Definition of 'Waters of the United States". This document is intended to be used as the U.S. Army Corps of Engineers Regulatory National Standard Operating Procedures for conducting an approved jurisdictional determination (JD) and documenting practices to support an approved JD until this document is further revised and reissued.



Perennial Tributary - Iron County, Utah

This document was prepared by the U.S. Army Corps of Engineers, Headquarters.

[1] The final rule "Revised Definition of "Waters of the United States" (2023 Rule) was published in the *Federal Register* on 18 January 2023 and the effective date is 20 March 2023. See https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states.

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A. INTRODUCTION

This user manual provides detailed instructions to USACE field staff for purposes of completing the interim Approved Jurisdictional Determination (AJD) Form (hereinafter "the AJD Form") for the 2023 "Revised Definition of 'Waters of the United States'" (hereinafter "the 2023 Rule"). The AJD Form and this user manual do not provide any new guidance or policy regarding the 2023 Rule, nor do they establish which aquatic resources are subject to Clean Water Act (CWA) or Rivers and Harbors Act of 1899 (RHA) jurisdiction as that is accomplished by the 2023 Rule itself and by 33 CFR 329. The AJD Form and this user manual do not raise any novel legal or policy issues arising out of legal mandates or the President's priorities as neither document changes Regulatory program policies. Rather, the AJD Form and this user manual together comprise an administrative tool typically used by USACE to provide a means to document the jurisdictional status of waters[2] within a review area[3] as part of completing an AJD. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide instructions to USACE field staff regarding existing requirements under the law or agency policies.

The AJD Form should be used to document the jurisdictional status of all waters within a review area under Section 10 of the RHA of 1899 (Section 10) and/or the CWA (Section 404).[4] The AJD Form should include, as an attachment, at least one map/figure of the review area, or should contain a written description of the boundary of the review area. The map/figure should also include the location, name, jurisdictional status, and extent (where relevant) of each water evaluated for jurisdiction in the review area, where necessary to meet the definition of an AJD in 33 CFR 331.2. This map should also include the OMBIL Regulatory Module (ORM)[5] project name[6] and ORM number.

The ORM project name and the information specific to each water (such as name, size, and jurisdictional status) should be identical across the AJD letter, AJD form, appendices, maps/figures, and ORM entry. Where a water does not have a given geographic name, use either the name provided in the request for AJD, or assign names such as "unnamed tributary 1", "unnamed tributary 2", etc.

The AJD Form does not currently communicate or interact with ORM. USACE is exploring options for integration of the AJD Form with ORM to promote efficiency and to support analyses to ensure program consistency. The ORM aquatic resources upload spreadsheet remains available for uploading large numbers of waters to ORM. Refer to the ORM Homepage

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[2] For purposes of this user manual, the term "water(s)" refers to water features like rivers, streams, lakes, ponds, impoundments, wetlands, and features such as ditches, swales, areas being assessed for wetland presence, or other landscape elements that may be evaluated in a determination of jurisdiction.

[3] The term "review area" refers to the geographic boundary under review for determination of federal Section 10 RHA and/or CWA jurisdiction. The review area for an AJD may consist of a portion of, or the entirety of one or more parcels.

[4] The USACE interim AJD Form and this manual are for USACE's implementation within its authorities and therefore make reference to CWA jurisdiction in the context of Section 404. It should be recognized that "waters of the United States" are subject to all applicable provisions of the CWA.

[5] As of the initial publication of this interim User Manual, the current version of the Corps' internal regulatory management database, the Operation and Business Information Link Regulatory Module, is known as ORM2 Cloud. For simplicity all references in this document will simply refer to "ORM".

[6] "project name" refers to the concise descriptive label that the District assigns to the action in ORM.

(https://orm.ops.usace.army.mil/[7]) for the latest version of the upload spreadsheet and for instructions on how to enter data into ORM.

The AJD Form and this associated user manual are for interim use, applicable to the 2023 Rule. USACE may re-evaluate both and provide any necessary changes in a revised interim or final AJD Form and user manual.

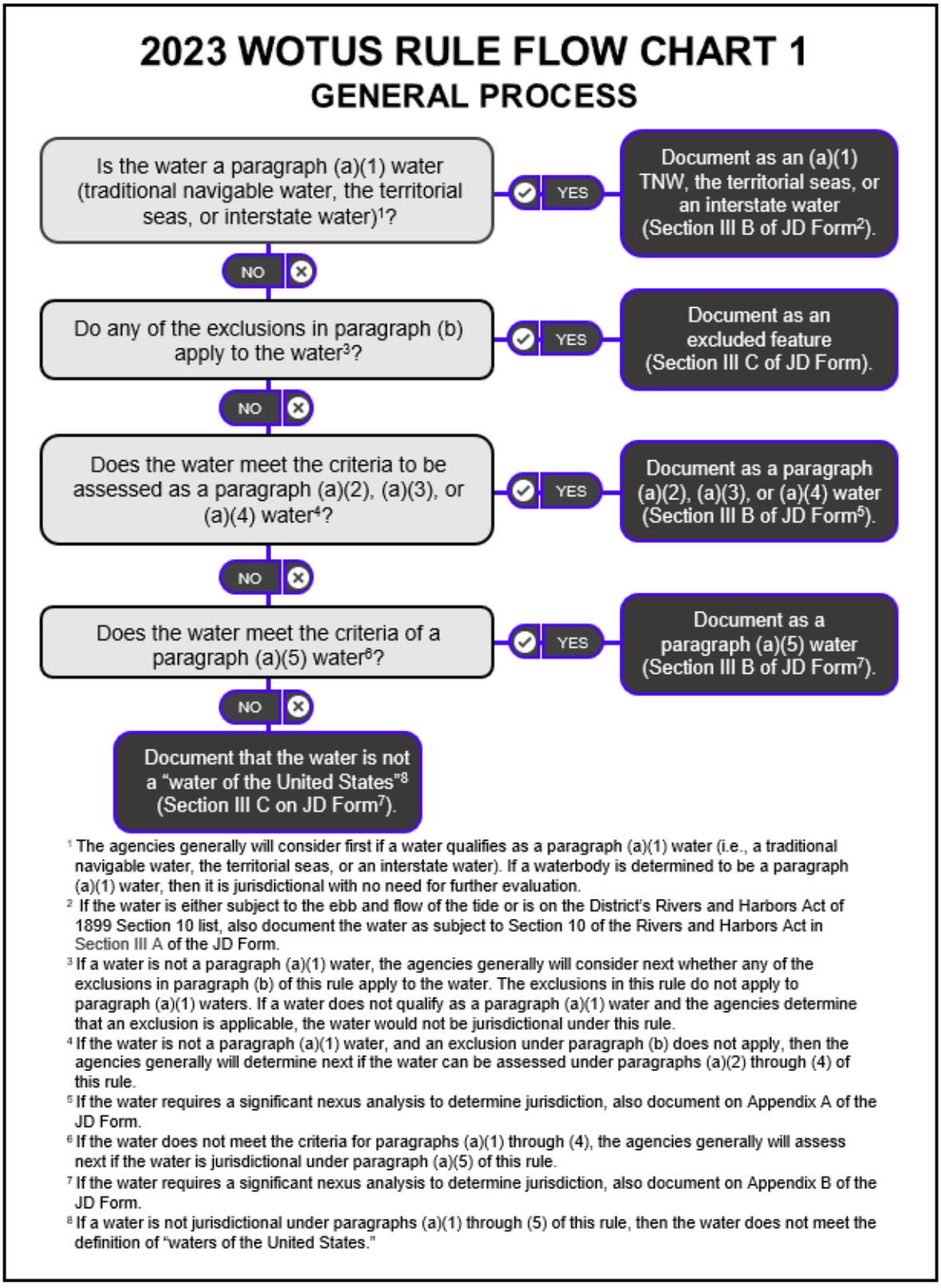
B. GENERAL PROCEDURAL NOTES:

B.1. General procedures for assessing jurisdiction

In implementing the 2023 Rule, generally consider first if a water qualifies as a paragraph (a)(1) water (i.e., a traditional navigable water (TNW), the territorial seas, or an interstate water). If a waterbody is determined to be a paragraph (a)(1) water, then it is jurisdictional with no need for further evaluation. If a water is not a paragraph (a)(1) water, generally consider next whether any of the exclusions in paragraph (b) of the 2023 Rule apply to the water. The exclusions in the 2023 Rule do not apply to paragraph (a)(1) waters, and therefore, a traditional navigable water, the territorial seas, or an interstate water is not excluded under the 2023 Rule, even if the water would otherwise meet the criteria for an exclusion. If a water does not qualify as a paragraph (a)(1) water and an exclusion is applicable (e.g., waters that meet the waste treatment system exclusion, wetlands that qualify as prior converted cropland, etc.), the water would not be jurisdictional under the 2023 Rule. If the water is not a paragraph (a)(1) water, and an exclusion under paragraph (b) does not apply, then generally determine next if the water can be assessed under paragraphs (a)(2) through (4) of the 2023 Rule. If the water does not meet the criteria for paragraphs (a)(1) through (4), assess next if the water is jurisdictional under paragraph (a)(5) of the 2023 Rule. If a water is not jurisdictional under paragraphs (a)(1) through (a)(5) of the 2023 Rule, then the water does not meet the definition of “Waters of the United States” (WOTUS) under the 2023 Rule. (See Figure 1 below.)

[7] Access to ORM is limited to USACE Regulatory staff.

FIGURE 1. GENERAL ORDER IN WHICH JURISDICTION WILL BE CONSIDERED



B.2. General procedures for completing the AJD Form

All fillable sections in the AJD Form and its appendices are designed to automatically expand to accommodate the information selected or entered. Locations that allow text entry or selection from a drop-down list are displayed with blue text. When entering data, click directly on the blue text to reveal the dropdown box or to begin entering text. Where a field is not used, leave the blue “N/A” text in place. NOTE: When copying text from one table cell to another, select only the text, not the entire cell, as selecting the entire cell will cause formatting problems.

Support the conclusion that a water does or does not meet the criteria to be jurisdictional under the 2023 Rule’s definition of WOTUS through a discussion of all appropriate data sources, using a reasoned basis based on the record, and document the assessment in the rationale section in Section III.B. or Section III.C. as applicable. An assessment that a water does or does not meet the definition of "waters of the United States” under the 2023 Rule may require the use of multiple data sources, some of which may be time-dependent data sources. Time-dependent data sources may be point-in-time data sources (i.e., data sources that represent the conditions at a specific location on a specific date, such as historic aerial photographs, maps, geospatial datasets, or data collected during a site visit), or data sources that represent conditions at a specific location over a period of time (i.e., such as river gage data). For instance, statements asserting the presence of an ordinary high water mark (OHWM) or characteristics of stream flow would be supported by appropriate information such as a description of field observations, gage data, a series of dated aerial photographs, and/or other observations that were used to make such a determination.

Where documentation of jurisdiction for waters located within the review area is dependent on observations for waters that are located outside of the review area (e.g., if a wetland is adjacent to a tributary located outside the review area), the information to characterize waters outside the review area will be based on reasonably available information and best professional judgement. Field visits outside the review area are not required.

For each water or feature listed in Section III of the AJD Form, the administrative record (AR) should contain supporting information (e.g., data sheets, aquatic resources delineations, site visit summaries) that documents the physical characteristics or data that were used to establish the location and extent (where relevant) of the waters present in the review area. Depending on the water type, the extent of the waters may be indicated by the OHWM,[8] high tide line (HTL),[9] mean high water (MHW),[10] an upper limit of navigation (e.g., for purposes of documenting the upstream extent of a navigable water of the United States and/or a traditional navigable water), baseline, three-mile limit, and/or wetland boundaries. Section IV of the AJD Form must list this supporting documentation.

In coastal regions, a tributary may flow perpendicularly into tidal waters such that a reach extends

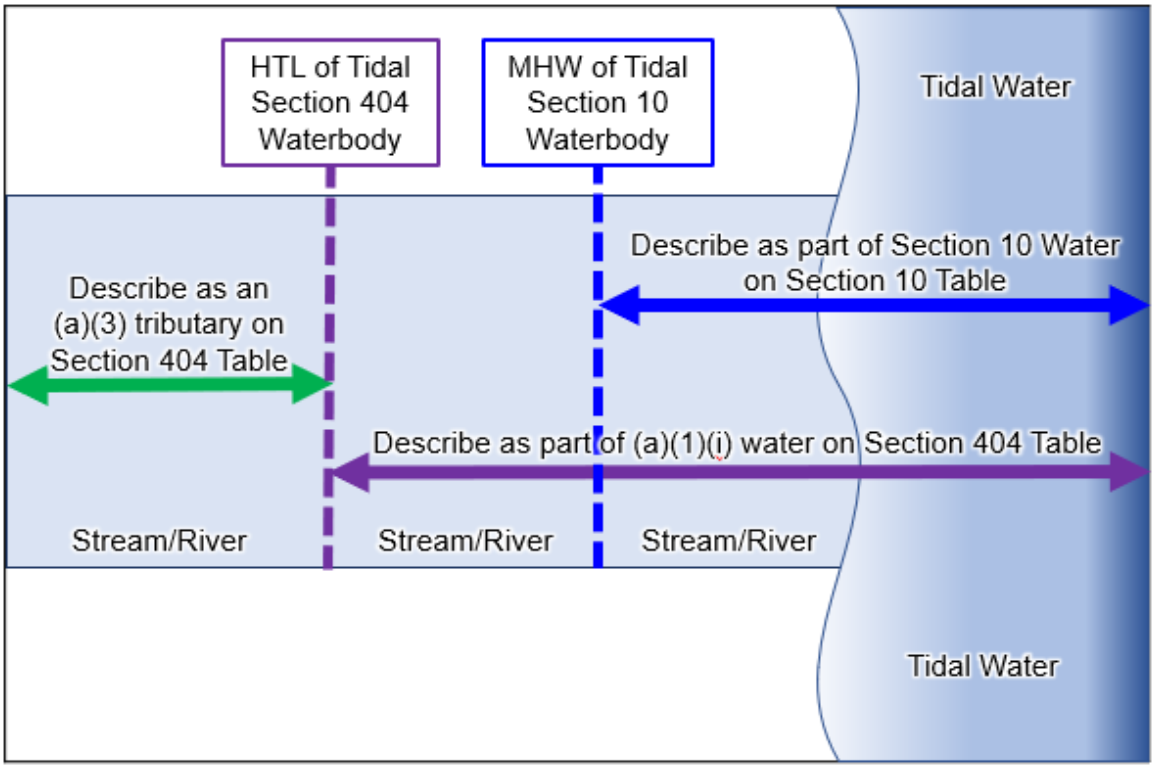
[8] Ordinary high water mark (OHWM) is defined in the Corps’ regulations in the 2023 Rule at 33 CFR 328.3(c)(4) and should be documented in accordance with Regulatory Guidance Letter (RGL) 05-05. OHWM manuals and their associated forms may also be used to document the presence of OHWM and incorporated by reference into the AJD Form.

[9] High tide line (HLT) is defined in the Corps’ regulation in the 2023 Rule at 33 CFR 328.3(c)(3).

[10] Regulatory jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (See 33 CFR 329.12).

both above and below the MHW of a Section 10[11] water. A single tributary reach would normally be documented as a single water; however, in this circumstance and for documentation purposes of Section 10 waters, describe the portion of the tributary reach below the MHW as part of that Section 10 water on the Section 10 table (Section III.A. of the AJD Form). For CWA purposes, describe the portion of the same tributary reach below the HTL, including that portion of the tributary that lies below the MHW as part of the paragraph (a)(1) water on the (a)(1) table (Section III.B. of the AJD Form). Any portion of the tributary that is located above the HTL and has been determined to be a Section 10 water will also be documented on the (a)(1) table. For CWA purposes, the portion of the same tributary reach above the HTL, which has not been determined to be a Section 10 water, will be documented as a separate water on the (a)(3) table of the AJD Form (Section III.B. of the AJD Form). (See Figure 2 below.)

FIGURE 2. DOCUMENTING JURISDICTION OF A TRIBUTARY REACH THAT SPANS THE MHW OF A TIDAL WATERBODY

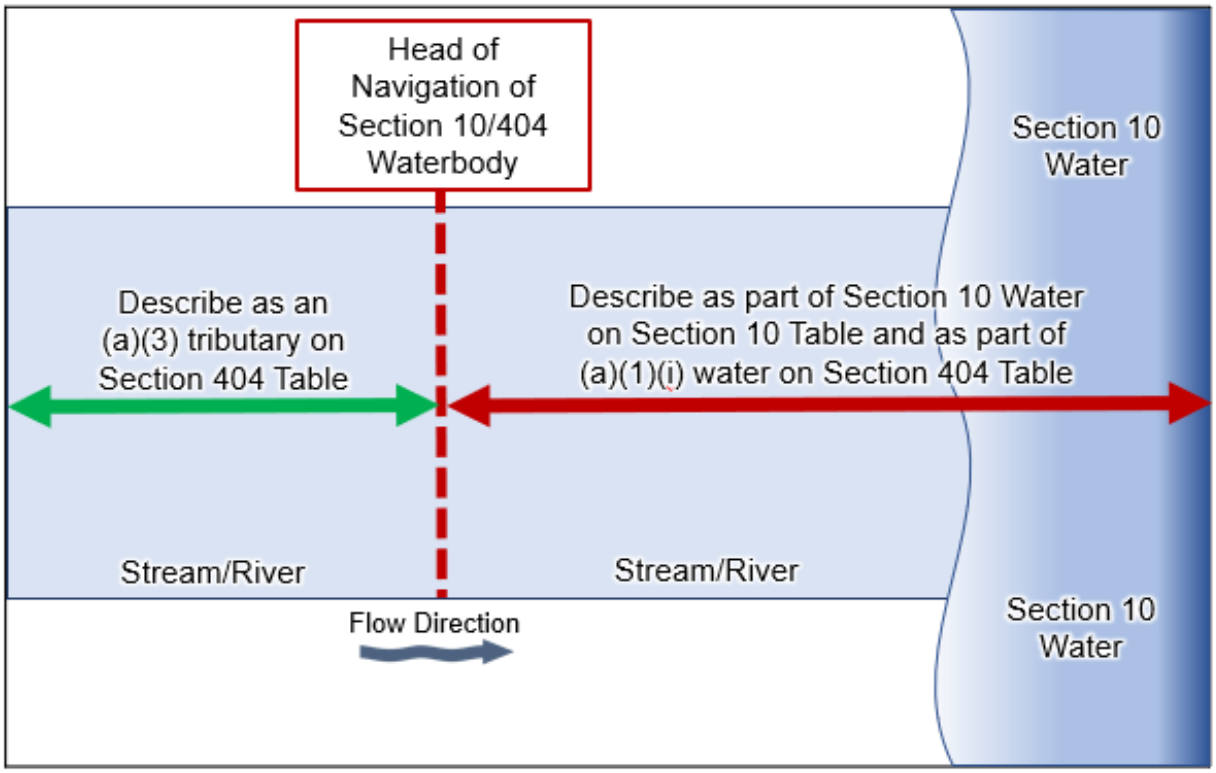


The upstream limit (i.e., the head of navigation) of a non-tidal Section 10 water may also lie along a tributary reach. When this occurs within the review area, for documentation purposes of Section 10 waters, describe the portion of the tributary reach below the head of navigation as part of that Section 10 water on the Section 10 table (Section III.A. of the AJD Form). For CWA purposes, describe the portion of the same tributary reach below the head of navigation as a separate water on the (a)(1) table (Section III.B. of the AJD Form) and any portion of the same tributary reach

[11] USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 (RHA) for convenience, in this guidebook and the AJD Form jurisdiction under RHA will be referred to as Section 10.

above the head of navigation that is determined to be jurisdictional under the CWA as a separate water on the (a)(3) table of the AJD Form (Section III.B. of the AJD Form). (See Figure 3 below.)

FIGURE 3. DOCUMENTING JURISDICTION OF A TRIBUTARY REACH THAT SPANS THE HEAD OF NAVIGATION OF A SECTION 10 WATERBODY



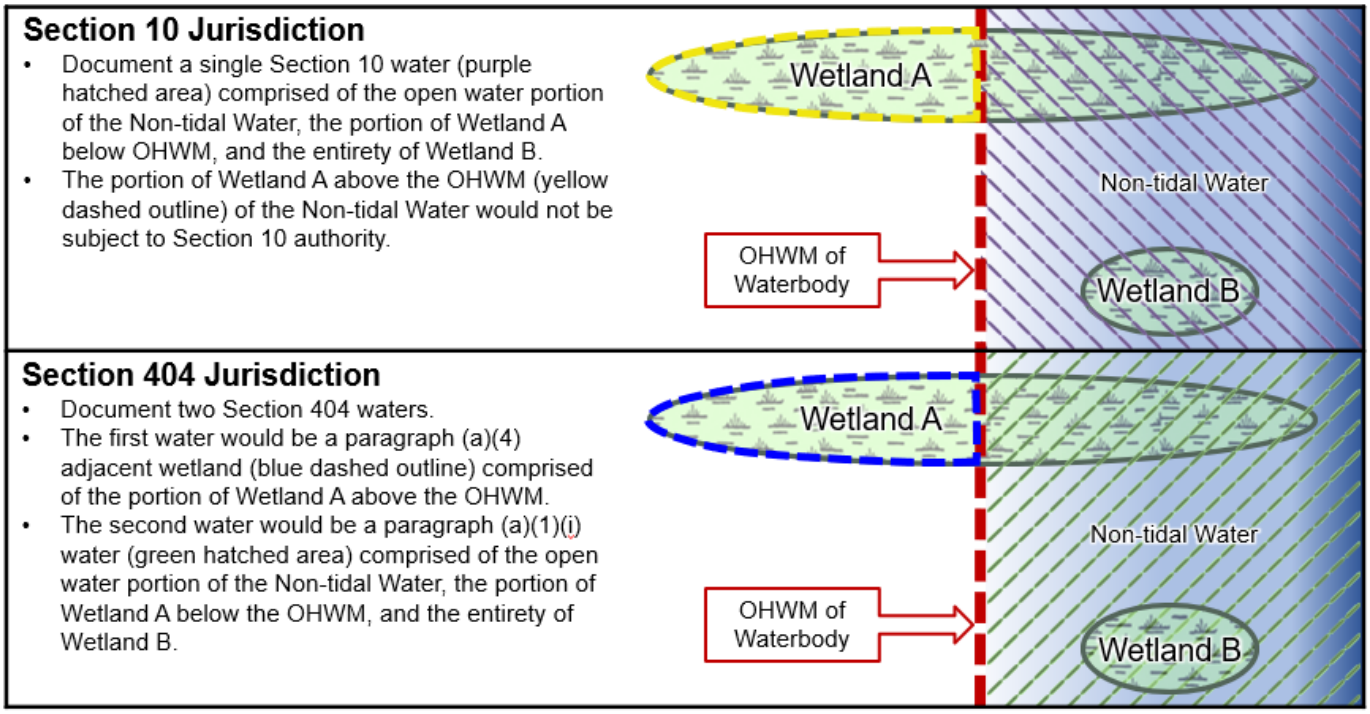
For the purposes of documenting jurisdiction under Section 10, when a wetland lies entirely below the OHWM of a non-tidal Section 10 water, the wetland should be considered part of that non-tidal Section 10 water on the Section 10 table (Section III.A. of the AJD Form).[12] For the purposes of documenting jurisdiction under Section 404, when a wetland lies entirely below the OHWM of a non-tidal Section 404 water, the wetland should be considered part of that non-tidal Section 404 water on the Section 404 table (Section III.B. of the AJD Form). (See Figure 4 below.)

Alternatively, a wetland may also be located both above and below the OHWM of a non-tidal Section 10 water or a non-tidal Section 404 paragraph (a)(1) water. While this is a single wetland, for documentation purposes of non-tidal Section 10 waters, describe the portion of the wetland below the OHWM of the non-tidal Section 10 water as part of that non-tidal Section 10 water on the Section 10 table (Section III.A. of the AJD Form) (See Figure 4 below). For the purposes of

[12] When a wetland, or a portion of a wetland, lies below the jurisdictional limits of a Section 10, or a CWA paragraph (a)(1), (a)(2), (a)(3), or (a)(5) water and is considered to be part of that water for the purposes of documenting jurisdiction (see Figures 4, 5, and 6), staff may use Section IV.D of the AJD Form to provide information on the size of the area below the MHW, HTL, or OHWM which meets the definition of wetland (i.e., Within the review area, 0.5-acres of wetland lies entirely below the OHWM of the Mississippi River, which is a section 10 water, and therefore the wetland is jurisdictional as part of the section 10 water.).

documenting jurisdiction under Section 404, the portion of the wetland that lies below the OHWM of a non-tidal paragraph (a)(1) water should be considered part of the non-tidal paragraph (a)(1) water on the (a)(1) table and any portion of the wetland that lies above of the OHWM of the non-tidal paragraph (a)(1) water and is determined to be jurisdictional under the CWA should be described as a separate paragraph (a)(4) water on the (a)(4) table (Section III.B. of the AJD Form). (See Figure 4 below.)

FIGURE 4. DOCUMENTING JURISDICTION OF WETLANDS THAT LIE ENTIRELY BELOW THE OHWM OR SPAN THE OHWM OF A NON-TIDAL SECTION 10 AND A NON-TIDAL PARAGRAPH (A)(1) WATER. Wetlands that span the OHWM of a Section 10 and paragraph (a)(1) non-tidal water should be documented in both Section III.A and Section III.B of the AJD Form. The graphics below depict and describe the limits of Section 10 jurisdiction (top) and the limits of Section 404 jurisdiction (bottom) as they apply to the same scenario.



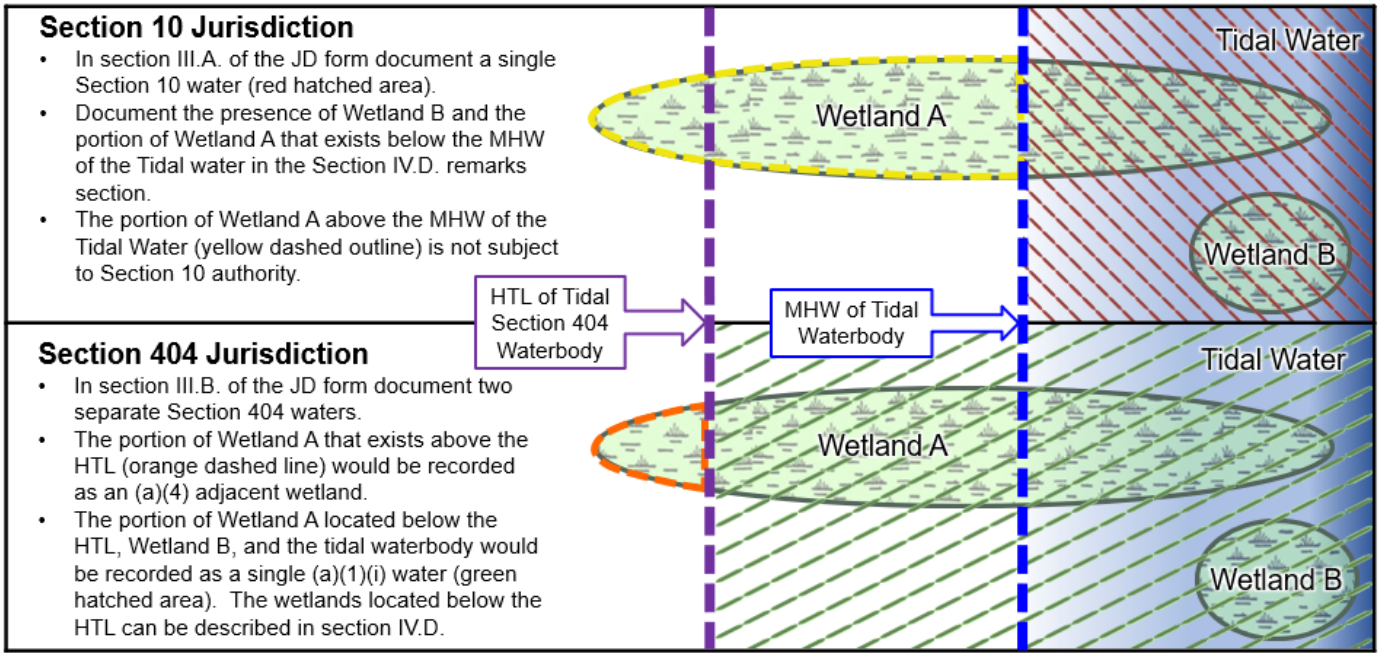
For the purposes of documenting jurisdiction under Section 10, when a wetland lies entirely below the MHW of a tidal Section 10 water, the wetland should be considered part of that tidal Section 10 water on the Section 10 table (Section III.A. of the AJD Form). For the purposes of documenting jurisdiction under Section 404, when a wetland lies entirely below the HTL of a tidal Section 404 paragraph (a)(1) water, the wetland should be considered part of that tidal Section 404 paragraph (a)(1) water on the Section 404 table (Section III.B. of the AJD Form).

Alternatively, a wetland may also be located both above and below the MHW of a tidal Section 10 water or a wetland may be located both above and below the HTL of a tidal Section 404 paragraph (a)(1)(i) water. While this is a single wetland, for documentation purposes of tidal Section 10 waters, include the portion of the wetland below the MHW of the tidal Section 10 water as part of that tidal Section 10 water on the Section 10 table (Section III.A. of the AJD Form). The portion of the wetland

that is located above the MHW of the tidal Section 10 water is not subject to Section 10 and therefore does not need to be documented on the Section 10 table of the AJD Form. For CWA purposes, the HTL is the limit of jurisdiction for tidal waters. Therefore, the portion of the wetland that lies below the HTL of the tidal Section 404 water should be considered part of the tidal paragraph (a)(1)(i) water on the (a)(1) table and any portion of the wetland that lies above the HTL of the tidal Section 404 water and is determined to be jurisdictional under the CWA should be considered a separate paragraph (a)(4) water on the (a)(4) table (Section III.B. of the AJD Form). NOTE: In these cases, the aerial extent of the Section 10 waterbody may differ from the aerial extent of the Section 404 paragraph (a)(1) waterbody, since the limit of jurisdiction (MHW for Section 10 vs. HTL for Section 404 for delineating the extent of tidal waters) may not be the same under both authorities. (See Figure 5 below.)

FIGURE 5. DOCUMENTING JURISDICTION OF WETLANDS THAT LIE ENTIRELY BELOW OR SPAN THE MHW OF A SECTION 10 TIDAL WATER AND/OR THE HTL OF A SECTION 404 TIDAL PARAGRAPH (A)(1) WATER.

Wetlands that span the OHWM of a Section 10 and paragraph (a)(1) tidal water should be documented in both Section III.A and Section III.B of the AJD Form. The graphics below depict and describe the limits of Section 10 jurisdiction (top) and the limits of Section 404 jurisdiction (bottom) as they apply to the same scenario.



For the purposes of documenting jurisdiction under Section 404 for paragraph (a)(2), (a)(3), or (a)(5) waters, when a wetland lies entirely below the OHWM of a paragraph (a)(2), (a)(3), or (a)(5) water, consider it part of that paragraph (a)(2), (a)(3), or (a)(5) water and not as a separate water on the (a)(4) or (a)(5) table. (See Figures 6 and 7 below.) (See footnote 12 above.) A wetland that is located both above and below the OHWM of a paragraph (a)(2) or (a)(3) water and is determined to be jurisdictional under the CWA should be described in its entirety as a separate water with a different name than the paragraph (a)(2) or (a)(3) water and should be described as an adjacent wetland with an unbroken surface connection to a

jurisdictional water in the (a)(4) table. (See Figure 6 below.) A wetland that is located both above and below the OHWM of a paragraph (a)(5) water should be described and assessed in its entirety as a separate potential paragraph (a)(5) water with a different name than the paragraph (a)(5) lake, pond, or tributary to which it is associated, and if found jurisdictional under paragraph (a)(5) should be described in the (a)(5) table as a unique paragraph (a)(5) water. (See Figure 7 below.)

FIGURE 6. DOCUMENTING JURISDICTION OF ADJACENT WETLANDS THAT LIE ENTIRELY BELOW THE OHWM OR SPAN THE OHWM OF A PARAGRAPH (A)(2) OR (A)(3) WATER

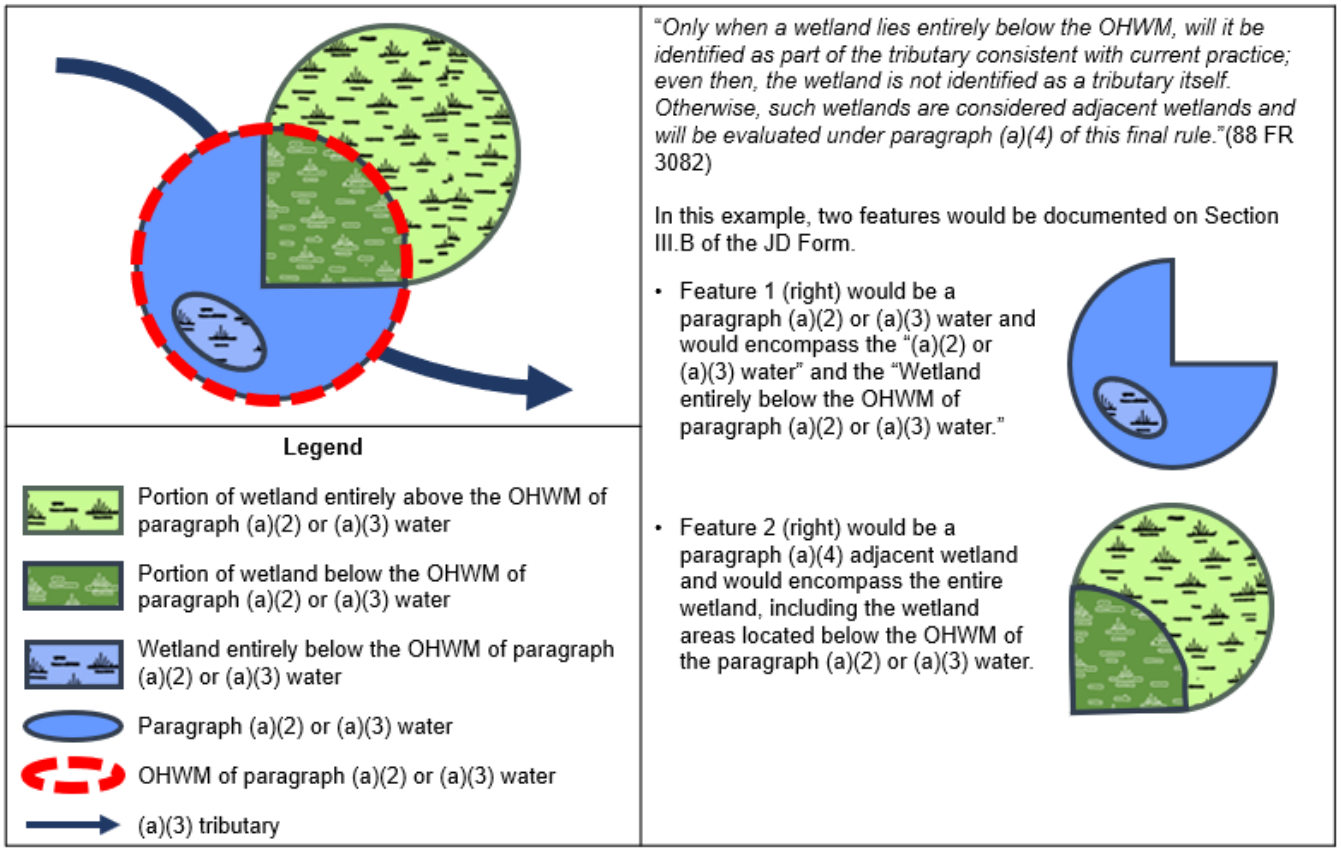
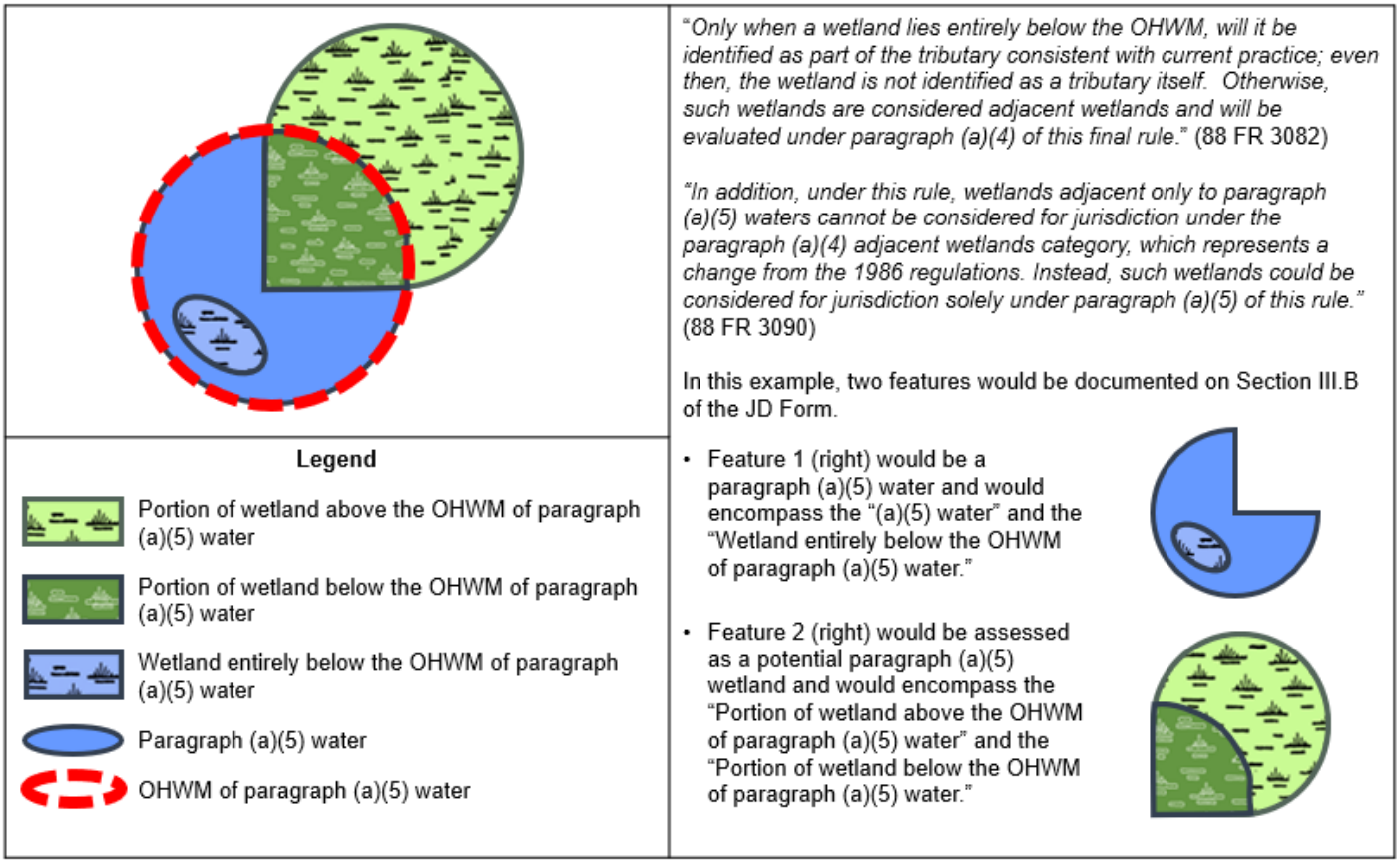


FIGURE 7. DOCUMENTING JURISDICTION OF WETLANDS THAT LIE ENTIRELY BELOW THE OHWM OR SPAN THE OHWM OF A PARAGRAPH (A)(5) WATER



To fully document determinations for certain types of potentially jurisdictional waters under the CWA, the first step should be to determine the Strahler stream order[13] of the water itself or the tributary to which a wetland is adjacent. Stream order is used to assist in determining the flow characteristics of tributaries, identifying the extent of interstate waters that are rivers and streams, and defining catchments for the purpose of completing a significant nexus analysis.

The size of each water in the review area will be reported on the AJD Form. In Section III of the AJD Form, the size should reflect only the amount of the water that is located within the review area. In AJD Form Appendix A – Significant Nexus Analysis for potential (a)(3)(ii) and (a)(4)(iii) waters (Appendix A), the estimated total size of each water considered in the significant nexus analysis will be reported, rather than only the size of the water in the review area. Enter the size of the water in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a different unit of measure than those described above.

[13] Strahler, A. N. 1957. "Quantitative analysis of watershed geomorphology." *American Geophysical Union* Transactions 38: 913-920.

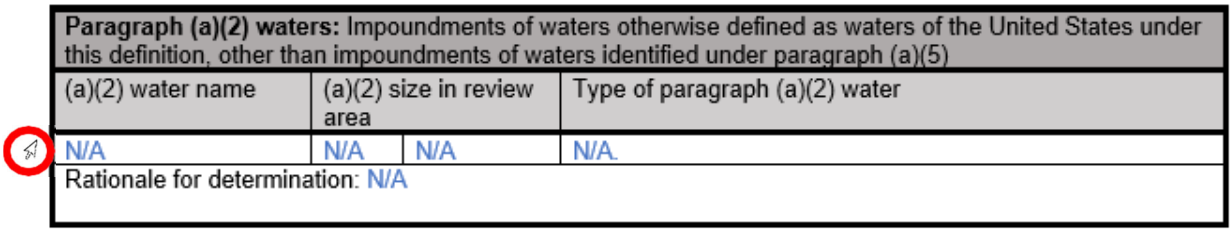
B.2.1. General instructions for adding rows to the tables in Section III, Appendix A.6., and Appendix B.5. of the AJD Form:

Each table in Section III comes pre-loaded with a block to enter information specific to a single water (indicated by white cells surrounded by a heavy border), but there are occasions where additional blocks must be added to accommodate a review area that contains multiple waters of the same type. All necessary blocks should be generated prior to entering data.

To add a block to a table, you will copy the rows below the shaded title rows. There are multiple ways to do this; one quick method is demonstrated below.

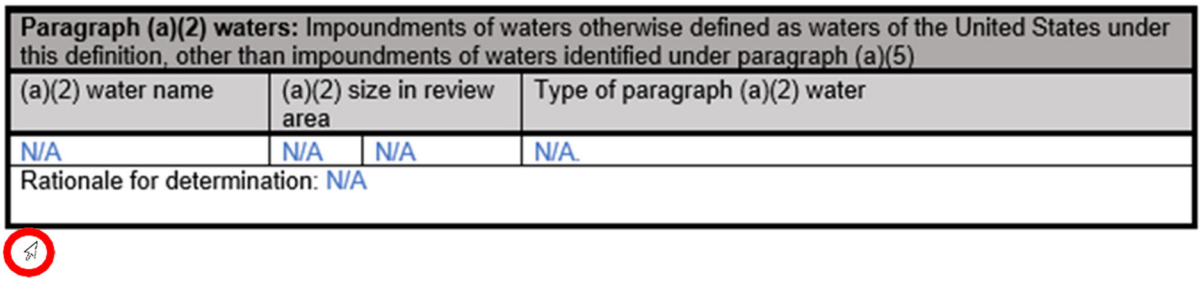
EXAMPLE: A review area contains a total of three paragraph (a)(2) waters. To accommodate the data, two additional blocks are needed in the paragraph (a)(2) table. This can be done by following these instructions:

1. Place the cursor and click to the left of the block to be copied (below the title rows, outside the table border). Drag the mouse down to select both rows.



Paragraph (a)(2) waters: Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)			
(a)(2) water name	(a)(2) size in review area		Type of paragraph (a)(2) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

2. Keeping the two rows highlighted, place the mouse cursor anywhere within the two highlighted rows. Then, with the rows still highlighted, hold the CTRL key and the left mouse button, and drag the mouse cursor to the white space below the last row of the table (as shown in the example below).



Paragraph (a)(2) waters: Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)			
(a)(2) water name	(a)(2) size in review area		Type of paragraph (a)(2) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

Release the mouse button, and the rows are now duplicated for your use. The table now contains one additional data entry block.

Paragraph (a)(2) waters: Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)			
(a)(2) water name	(a)(2) size in review area		Type of paragraph (a)(2) water
N/A	N/A	N/A	N/A
Rationale for determination: N/A			
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

3. Repeat the process as many times as necessary to generate the number of rows you need.

Paragraph (a)(2) waters: Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)			
(a)(2) water name	(a)(2) size in review area		Type of paragraph (a)(2) water
N/A	N/A	N/A	N/A
Rationale for determination: N/A			
N/A	N/A	N/A	N/A
Rationale for determination: N/A			
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

The table now contains two additional data entry blocks to accommodate the three paragraph (a)(2) waters in the example review area. Repeat the process as many times as necessary to generate the appropriate number of blocks. If more than the necessary number of blocks is created, click outside of the table border and to the left of the unneeded block(s) to highlight the block(s) as depicted in step "1," then right click and select "cut" to remove unwanted rows or blocks.

The same procedure described above can also be used to add more blocks to table (a)(4), as needed.

Paragraph (a)(4) waters: Wetlands adjacent to the following waters: (i) Waters identified in paragraph (a)(1); or (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3)(i) and with a continuous surface connection to those waters; or (iii) Waters identified in paragraph (a)(2) or (3) when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)			
(a)(4) water name	(a)(4) size in review area		Adjacency criteria
N/A	N/A	N/A	N/A
Type of paragraph (a)(4) water	N/A		
Rationale for determination: N/A			

Paragraph (a)(4) waters: Wetlands adjacent to the following waters: (i) Waters identified in paragraph (a)(1); or (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3)(i) and with a continuous surface connection to those waters; or (iii) Waters identified in paragraph (a)(2) or (3) when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)			
(a)(4) water name	(a)(4) size in review area		Adjacency criteria
N/A	N/A	N/A	N/A
Type of paragraph (a)(4) water	N/A		
Rationale for determination: N/A			
N/A	N/A	N/A	N/A
Type of paragraph (a)(4) water	N/A		
Rationale for determination: N/A			

B.2.2. General instructions for adding rows to the tables in Section IV.C., Appendix A.4.a. and b., and Appendix B.4. of the AJD Form (when necessary):

The table in Section IV.C. comes pre-loaded with several drop-down lists from which various data sources may be chosen. Since multiple sources cannot be selected from a single drop-down list, there are occasions where additional rows will be necessary to accommodate multiple sources within a single drop-down list. NOTE: All necessary rows should be generated prior to entering data.

The tables in Section 4 of Appendix A and Appendix B come pre-loaded with a row (indicated by white cells surrounded by a heavy border) to enter information specific to a single water, but there are occasions where additional rows must be added to accommodate multiple waters of the same type. NOTE: All necessary rows should be generated prior to entering data.

A row can be added using the same method described in Section B.2.1. of this Guidebook above, or alternatively, rows can be added using copy/paste as demonstrated in the examples below.

EXAMPLE: Three USACE data sources were used in the evaluation of an AJD. To accommodate the data, two additional “USACE Sources” rows are needed in the table.

1. Place the cursor and click to the left of the row to be copied (outside the table border). This should highlight the entire row:

Data source (Select)	Name, date, and other relevant information
USGS Sources	N/A
USEPA Sources	N/A
USDA Sources	N/A
NOAA Sources	N/A
USACE Sources	N/A
State/Local/Tribal Sources	N/A
Other Sources	N/A

2. Press CTRL+C (or right click and select *copy* from the drop-down list), then place the cursor and click in the white space just below the table:

Data source (Select)	Name, date, and other relevant information
USGS Sources	N/A
USEPA Sources	N/A
USDA Sources	N/A
NOAA Sources	N/A
USACE Sources	N/A
State/Local/Tribal Sources	N/A
Other Sources	N/A

3. Right click and from the “Paste Options” menu, select “Keep Original Table Formatting” as shown in this image: 

Data source (Select)	Name, date, and other relevant information
USGS Sources	N/A
USEPA Sources	N/A
USDA Sources	N/A
NOAA Sources	N/A
USACE Sources	N/A
State/Local/Tribal Sources	N/A
Other Sources	N/A
USACE Sources	N/A

The table now has one additional “USACE Sources” row.

4. To add more rows, continue to right click and from the “Paste Options” menu, select “Keep Original Table Formatting” as many times as needed to generate the correct number of rows.

Data source (Select)	Name, date, and other relevant information
USGS Sources	N/A
USEPA Sources	N/A
USDA Sources	N/A
NOAA Sources	N/A
USACE Sources	N/A
State/Local/Tribal Sources	N/A
Other Sources	N/A
USACE Sources	N/A
USACE Sources	N/A

The table now contains two additional data entry rows to accommodate the three total USACE sources described in the example. The process can be repeated as many times as necessary to generate the appropriate number of rows. If more than the necessary number of rows is created, click outside of the table border and to the left of the unneeded row(s) to highlight the row as depicted in step “1,” then right click and select “delete rows.”

The procedure described above can also be used to add more rows to the tables under Section 4 of Appendix A.

Tributary Name	Tributary Size		Describe rationale for the determination that this waterbody is a tributary and part of a tributary system
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

C. DETAILED AJD FORM INSTRUCTIONS:

C.1. Completing Section I. Administrative Information

Completion Date of Approved Jurisdictional Determination (AJD): This is the date on which the AJD is finalized by a person with authority to do so (e.g., district chief or project manager with delegated authority). This date should match the ORM end date for the AJD, the date on the AJD letter, and the date on the Notification of Administrative Appeal Options and Process Form.[14]

ORM Project Name: Enter the name of the action as identified in the ORM database.

ORM Identification Number: Enter the ORM identification number (also known as the "Department of the Army (DA) Number") in the designated format. Districts may add an optional identifier (such as project manager initials or field office identifier) at their discretion.

Other sites (e.g., offsite mitigation sites, disposal sites or other review areas, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form(s): This interim AJD Form is designed to document the jurisdictional status of all waters within a review area on a single form. There may be circumstances where there are multiple JDs associated with an action (e.g., large projects may require multiple JDs, separate JDs for offsite mitigation areas or disposal sites, and/or preliminary JDs and approved JDs are prepared for different parts of a project site). If there are other JDs associated with a project site or action and are recorded on a different JD form(s), check the box for "Other sites (e.g., offsite mitigation sites, disposal sites or other review areas, etc.) and follow the instructions in the "Associated JD Names and Numbers" section below.

Associated JD Names and Numbers: List any other associated JDs (either preliminary or approved) for this project area, and/or those associated with off-site locations such as mitigation sites. If there are no associated JDs, delete all but the "N/A" portion of the blue text in this field. Where the associated JDs have the same ORM number, an identifier or sequence number of some kind should be added to the ORM number to distinguish the sites from one another. An example of sequencing might look like: HQS-2023-00001-MSW-MITSITE; or HQS-2023-00001-MSW-JD01, HQS-2023-00001-MSW-JD02, etc.

Review Area Location: Reference the location of the review area in terms of the approximate

[14] See RGL 06-01 for guidance on appropriately dating the AJD letter, and Notification of Administrative Appeal Options and Process Form.

center of the review area, regardless of size (including linear projects). The review area may consist of a portion of, or the entirety of one or more parcels, and should be clearly marked as a polygon on any plans or maps accompanying the AJD Form. Use of a point feature on maps or plans to identify a review area is not sufficient since a point feature does not describe the boundaries of the review area.

- State/Territory: Enter the name of the state or territory where the center of the review area is located. Abbreviations are acceptable, but not necessary.
- City: Enter the name of the city closest to the center of the review area. Abbreviations are not recommended.
- County/Parish/Borough: Enter the county/parish/borough name where the center of the review area is located. Abbreviations are not recommended.
- Center coordinates of review area: Enter approximate coordinates of the center of the review area, in decimal degree format. Example: 38.89917°N, 77.01743°W. There is no requirement for the number of decimal digits, but generally five decimal digits provides accuracy within about four feet of the actual location. For most projects, the review area will be located in west longitude (W). For review areas in or near Guam or the Northern Mariana Islands, the project will be located in east longitude (E). Use the dropdown box to change the longitude from W to E when appropriate.
- Limits of review area: If a map showing the limits of the review area is attached to the AJD form, select “See attached map” and delete the rest of the blue text. If no map is provided, delete the blue text in the box and provide a description of the limits of the review area. This may include reference to the boundaries of a specific parcel of land, or a description of the limits of the review area in relation to nearby landscape features (e.g., “The northern boundary lies on the south side of Main Street between Smith Road and Jones Road.”). If multiple JDs are prepared for the same project area, clearly identify which review area is associated with the AJD being documented on the AJD Form.

C.2. Completing Section II. Summary

Check all of the boxes in this section that apply to the review area addressed by the AJD Form. At least one box from the list in Section II must be selected. The boxes and associated instructions are:

☐ *The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area):* Only check this box when there are no waters of any kind within the entire review area. When this box is checked, include a rationale in the space provided to support the conclusion that the entire review area does not contain any waters of any kind and then skip to Section IV of the AJD Form. If this box is checked, no other boxes in Section II or Section III should be checked. If there are any waters in the review area, whether jurisdictional or non-jurisdictional, do not check this box. If there are waters in the review area, select one or more of the other boxes within Section II and complete the corresponding tables in Section III and the Appendices, if appropriate.

☐ *There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area:* Check this box when there are “navigable waters of the United States” within RHA jurisdiction, as defined by 33 CFR 329, within the review area. When this box is checked, complete the corresponding table in Section III.A.

☐ *There are "waters of the United States" within Clean Water Act jurisdiction within the review area:* Check this box when there are waters within the review area that meet the definition of one of the categories of "waters of the United States" within CWA jurisdiction, as defined by 33 CFR 328.3(a). When this box is checked, complete all appropriate tables in Section III.B.

☐ *Potentially jurisdictional waters and/or features were assessed within the review area and determined to be non-jurisdictional.* Check this box when waters and/or features within the review area are determined to be non-jurisdictional, including when there are waters excluded from CWA jurisdiction as specified in 33 CFR 328.3(b). When this box is checked, complete all appropriate tables in Section III.C.

C.3. Completing Section III. Findings in the Review Area

C.3.1. Completing Section III.A. Jurisdictional under the Rivers and Harbors Act of 1899 (Section 10):

Complete this section when "navigable waters of the United States" (i.e., waters subject to Section 10 jurisdiction as defined by 33 CFR 329) are found in the review area. In order to use the AJD Form to document the jurisdictional status of a navigable water of the United States in the review area, the navigable water of the United States must be either subject to the ebb and flow of the tide or currently on the district's list of Section 10 "navigable waters of the United States**."**[15]

If the district believes that a water is a potential navigable water of the United States and that potential navigable water of the United States is not subject to the ebb and flow of the tide and is not included on the district's list of Section 10 "navigable waters of the United States," a determination that the water is a navigable water of the United States would need to be made by the division engineer before the water could be documented as a Section 10 water. District level reports of findings to support a navigability determination must be completed in accordance with the procedures outlined in 33 CFR 329.14. Do not use the AJD Form to document reports of findings to support a navigability determination.

In most cases, a Section 10 water will also be a paragraph (a)(1)(i) water that is also jurisdictional under the CWA.[16] In this situation, the same water described as a Section 10 water in Section III.A. of the AJD Form will also need to be described as a CWA paragraph (a)(1)(i) water in Section III.B. of the AJD Form. Instructions for documenting a water's jurisdictional status as a paragraph (a)(1)(i) water under the CWA are provided in Section C.3.2.1. of this Guidebook (below).

[15] Refer to 33 CFR 329.16 Use and maintenance of lists of determinations.

[16] Where an area that is subject to Section 10 of the Rivers and Harbors Act of 1899 has been physically modified such that it is no longer an aquatic resource (e.g., it has been converted to fast land/dry land), that area remains subject to Section 10 of the Rivers and Harbors Act of 1899 but would not be subject to the CWA since it is not an aquatic resource.

Section 10 Waters			
Section 10 water name	Section 10 size in review area		Type of Section 10 water
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

Section 10 water name: Each water should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM.

Section 10 water size in review area: Each water being evaluated for jurisdiction within the review area requires a numerical size with a unit of measurement. The size should reflect the amount the water that is located within the review area, not the total size of the water. Enter the size in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a different unit of measure than those described above.

Type of Section 10 water: Select the type of water from the drop-down list that applies to the subject water. If the water meets multiple types, select the strongest criterion from the list and discuss it, along with all other applicable criteria in the rationale section.

Rationale for determination: Based on the criterion selected for a specific water, include the following information in the corresponding rationale:

- *Section 10 Tidal water is subject to the ebb and flow of the tide:* Include information supporting that the water is tidally influenced, or
- *Section 10 Non-tidal water is on the district's Section 10 waters list:* Include a reference to the water on the district's Section 10 "navigable waters of the United States" list.
- If a wetland straddles the OHWM or MHW, and a portion of the wetland is documented in the Section 10 table (See Figures 4, 5, and 6), include a statement that this wetland is a single wetland, but for documentation purposes, the portion of the wetland that is a Section 10 water is included here, and identify the other table(s) in Section III.B. of the AJD Form where the other portion of the same wetland is described.

C.3.2. Completing Section III.B. Jurisdictional Under Clean Water Act

C.3.2.1. Completing Paragraph (a)(1) waters: Traditional Navigable Waters, The Territorial Seas, and Interstate Waters (Including Interstate Wetlands)

For the purpose of the 2023 Rule, paragraph (a)(1) waters are waters which are:

(i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (i.e., traditional navigable waters);
(ii) The territorial seas; or
(iii) Interstate waters, including interstate wetlands.

When evaluating waters that are jurisdictional under paragraph (a)(1) of the 2023 Rule, it is important to keep in mind that waters that are jurisdictional under paragraph (a)(1) of the rule are not subject to the 2023 Rule's paragraph (b) exclusions. In other words, a paragraph (a)(1) water can never be excluded under paragraph (b) of the 2023 Rule, even if the water would otherwise satisfy the terms of one of the 2023 Rule's paragraph (b) exclusions.

As noted above, in most cases, a Section 10 water will also be a paragraph (a)(1)(i) water that is also jurisdictional under the CWA. In this situation, the same water described as a Section 10 water in Section III.A. of the AJD Form should also be documented in the paragraph (a)(1) table in Section III.B. of the AJD Form. Instructions for documenting a water's jurisdictional status under Section 10 are provided in Section C.3.1. of this Guidebook (above).

To document any paragraph (a)(1) water within the review area, select the most applicable type, these may include:

- (a)(1)(i) Traditional Navigable Waters
- (a)(1)(ii) The Territorial Seas:
- (a)(1)(iii) Interstate Waters (Including Interstate Wetlands):

Paragraph (a)(1) waters: Waters which are: (i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (Traditional Navigable Waters); (ii) The territorial seas; or (iii) Interstate waters, including interstate wetlands			
(a)(1) water name	(a)(1) size in review area		Type of paragraph (a)(1) water
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

(a)(1) water name: Each water in the review area should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM.

(a)(1) size in review area: Each water being evaluated for jurisdiction within the review area requires a numerical size with a unit of measurement. The size should reflect the amount the water that is located within the review area, not the total size of the water. Enter the size in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a different unit of measure than those described above.

Type of paragraph (a)(1) water: Select the type of paragraph (a)(1) water from the drop-down list that applies to the subject water. If the water meets multiple types, select the strongest type from the list and discuss it, along with all other applicable types that the water meets in the rationale section.

Rationale for determination: Support the conclusion that a water meets the (a)(1) criteria with a discussion of all appropriate data sources using a reasoned basis supported by the record and

document the assessment in the rationale section of the table.

Rationale for (a)(1)(i) determination: Traditional Navigable Waters (TNW): As defined by regulation, a TNW includes "all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide." Provide the following information as it applies:

- Document that a water is subject to ebb and flow of the tide.
- Document that the water is on the district's Section 10 list.
- Cite to a valid stand-alone TNW determination (including USACE file number).[17]
- Cite to a federal court case that has determined the water to be navigable in fact.
- Cite to an Act of Congress that determined the water to be a navigable water.
- Provide a case-specific TNW determination.[18]
    - Where the review area includes a water determined to be a TNW through a case-specific TNW determination, include in the rationale a similar statement: "This AJD includes a case-specific TNW (navigable-in-fact for CWA purposes) determination on a water which has not previously been determined to be a TNW with a stand-alone TNW determination."
    - Documentation supporting a case-specific TNW determination can be lengthy. Therefore, it is recommended that the AJD Form include reference to such documentation as an attachment to the AJD Form. Do not use the form rationale section to document a case-specific TNW determination. Clearly indicate in the rationale portion of the table, where the case-specific TNW determination is documented. Follow applicable guidance including "Waters that Qualify as 'Traditional Navigable Waters' Under Section (a)(1) of the Agencies' Regulations" to complete the case-specific TNW determination.[19]

Rationale for (a)(1)(ii) determination: The Territorial Seas: The territorial seas are defined by the CWA as, "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." Discuss that the water is located between the baseline (i.e., the line of ordinary low water along that portion of the coast) and seaward for a distance of three miles from that baseline.[20] The rationale section may also reference a map that illustrates the location of the review area in relation to the baseline and the three-mile limit seaward from the baseline.

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[17] "Stand-alone TNW determination" means a CWA TNW designation conducted for a specific segment of a river or stream or other type of waterbody, such as a lake, where the stand-alone TNW designation is made independently of a regulatory permit action or a request for an approved jurisdictional determination, and where upstream or downstream limits or lake borders are established. The term does not apply to "TNW determinations associated with approved jurisdictional determination(s) or authorizations for the discharge of dredged or fill material into all waters of the United States, including wetlands." See 16 October 2008 Memorandum on Stand-Alone Traditional Navigable Water Determinations Under the Clean Water Act – Clarifying Guidance.

[18] A case-specific TNW determination is associated with a specific AJD request, expires with the specific AJD, and cannot be referenced to support future AJDs. A case-specific TNW determination is also associated with a particular review area and does not establish upstream or downstream limits of navigability for the TNW. A case-specific TNW determination that is made as part of an AJD is an appealable action under 33 CFR 331.

[19] See https://www.epa.gov/system/files/documents/2022-12/Water%20that%20Qualify%20as%20TNWs_Final_0.pdf

[20] For additional information, see also 33 CFR 328.4 and 33 CFR 329.12.

Rationale for (a)(1)(iii) determination: Interstate Waters (Including Interstate Wetlands): Interstate waters, under the 2023 Rule, are interpreted to mean "all rivers, lakes, and other waters that flow across, or form a part of, State boundaries". Interstate waters also include waters that cross or form a part of boundaries with other countries (Canada and Mexico). Lakes, ponds, and similar lentic (or still) water resources, as well as wetlands, crossing state boundaries are jurisdictional as "interstate waters" through the entirety of their delineated extent. For streams and rivers, the "interstate water" extends upstream and downstream of the boundary for the entire length of the water that is the same Strahler stream order.

- Identify the type of water (i.e., river, lake, stream, and/or other water including wetlands) that flows across or forms part of a state boundary or a boundary with another country.
- Identify which state and/or country boundaries are formed by or crossed by the water.
- Discuss that the water in the review area is located within the upstream and downstream limits of the stream or river that forms or crosses a state boundary (or a boundary with another country) or that the water in the review area is within the delineated limits of the wetland or lentic (e.g., lake or pond) water resource that forms or crosses a state boundary (or a boundary with another country).

C.3.2.2. Completing Paragraph (a)(2): Impoundments

A water can be found to be a jurisdictional impoundment under paragraph (a)(2) of the 2023 Rule if (1) the impounded water was a "water of the United States" based on the rule's definition when the impoundment was created or (2) the water that is being impounded is, at the time of assessment, a "water of the United States" under paragraph (a)(1), (a)(3), or (a)(4), regardless of the water's jurisdictional status at the time the impoundment was created.[21] Waters that are jurisdictional under paragraph (a)(5) are the exception to these two implementing principles.[22]

Use the paragraph (a)(2) table to document that either (1) the impounded water was a "water of the United States" based on the 2023 Rule's definition when the impoundment was created or (2) the water that is being impounded is, at the time of assessment, a "water of the United States" under paragraph (a)(1), (a)(3), or (a)(4), regardless of the water's jurisdictional status at the time the impoundment was created. For impoundments of tributaries that met the 2023 Rule's definition of "waters of the United States" at the time the impoundment was created, there must be evidence of a flowpath directly or indirectly through another water or waters, downstream from the structure that created the impoundment to a paragraph (a)(1) water. This flowpath must be traceable at the time that the impoundment was created, but it does not have to be present at the time of assessment. Thus, an impoundment of a tributary that met the 2023 Rule's definition of "waters of the United States" at the time the impoundment was created could currently be located off-channel (e.g., due to changes in hydrology) or in-line with the channel, but the flowpath would only need to be traceable at the time the impoundment was created.

[21] A water that is impounded may not meet the rule's jurisdictional criteria at the time the water was originally impounded, but the water may meet the rule's jurisdictional criteria at the time the AJD request is finalized (in some cases, many years later).

[22] Waters that are jurisdictional under paragraph (a)(5) do not categorically retain their jurisdictional status as "waters of the United States" under paragraph (a)(2) if they are subsequently impounded. However, a subsequently impounded jurisdictional paragraph (a)(5) water may still be determined to be jurisdictional if it meets the requirements of a category of "waters of the United States" other than paragraph (a)(2) at the time of assessment (i.e., as a TNW, the territorial seas, interstate water, jurisdictional tributary, jurisdictional adjacent wetland, or paragraph (a)(5) water).

In assessing whether an impoundment of an adjacent wetland is jurisdictional under paragraph (a)(2), such a flowpath is not required. This is because under the 2023 Rule, certain types of adjacent wetlands do not require a flowpath to the tributary network, and similarly, impoundments of such adjacent wetlands do not require a flowpath.

If an impoundment, at the time of assessment, is a "water of the United States" under paragraph (a)(1), (a)(3), or (a)(4), field staff may document any such waters as jurisdictional under the relevant provision of the rule rather than documenting that it is jurisdictional as a paragraph (a)(2) impoundment. In such a case, document the jurisdictional status of the impoundment in the appropriate table for paragraph (a)(1), (a)(3), or (a)(4) waters. If the impoundment is documented in the table for a paragraph (a)(1), (a)(3), or (a)(4) waters, do not also document the impoundment in the table for paragraph (a)(2) waters.

Instructions for documenting a water that has been determined jurisdictional under paragraph (a)(2) of the 2023 Rule are provided below. See Section C.3.3. of this Guidebook (below) for instructions for how to document waters or features that are not jurisdictional under the Clean Water Act.

Paragraph (a)(2) waters: Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)			
(a)(2) water name	(a)(2) size in review area		Type of paragraph (a)(2) water
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

(a)(2) water name: Each water in the review area should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM2.

(a)(2) size in review area: Each water being evaluated for jurisdiction within the review area requires a numerical size with a unit of measurement, the size should reflect the amount the water that is located within the review area, not the total size of the water. Enter the size in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a different unit of measure than those described above.

Type of paragraph (a)(2) water: Select the water type from the drop-down list that applies to the subject water. If the water meets multiple types, select the strongest type from the list and discuss it, along with all other applicable types in the rationale section.

Rationale for paragraph (a)(2) determination: Support the conclusion that an impoundment meets the selected criteria of a paragraph (a)(2) impoundment with a discussion of all appropriate data sources using a reasoned basis supported by the record and document the assessment in the rationale section of the table. Such supporting information should include, but is not limited to, the following:

- Document the presence of a discrete structure(s) that creates the impoundment.

- Support the assertion that the impounded water currently meets the conditions to be a paragraph (a)(1), (a)(3), or (a)(4) water at the time of assessment or that the impounded water met the 2023 Rule's criteria to be a paragraph (a)(1), (a)(3), or (a)(4) water at the time that the impoundment was created. See the directions for completing the rationale section in the paragraph (a)(2) table by following the directions for providing supporting rationale for paragraph (a)(1) waters in Section C.3.2.1. of this Guidebook (above), for paragraph (a)(3) waters in Section C.3.2.3. of this Guidebook (below), or for paragraph (a)(4) waters in Section C.3.2.4. of this Guidebook (below).
- For impoundments of (a)(3) tributaries, it is necessary to describe the flowpath[23] directly or indirectly through another water or waters, downstream from the structure that creates the paragraph (a)(2) impoundment to a paragraph (a)(1) water.
    - If describing an impoundment that is jurisdictional under paragraph (a)(2) on the basis that it meets the condition of impounding a paragraph (a)(3) tributary at the time of assessment, describe the flowpath downstream from the structure creating the impoundment to a paragraph (a)(1) water.
    - If describing an impoundment that is jurisdictional under paragraph (a)(2) on the basis that it impounded a water that met the requirements to be a paragraph (a)(3) tributary under the 2023 Rule at the time the impoundment was created, there must be evidence that, at the time the impoundment was created, there was a flowpath downstream from the structure creating the impoundment to a paragraph (a)(1) water. In this case, describe the flowpath downstream from the structure creating the impoundment to a paragraph (a)(1) water, as the flowpath existed at the time the impoundment was created.
- For impoundments of paragraph (a)(4) adjacent wetlands, it is necessary to document how the impounded wetland either meets the requirements to be a paragraph (a)(4) adjacent wetland under the 2023 Rule at the time of assessment or how the impounded wetland met the requirements to be a paragraph (a)(4) adjacent wetland under the 2023 Rule at the time the impoundment was created:
    - If describing an impoundment that is jurisdictional under paragraph (a)(2) on the basis that it meets the condition of impounding a paragraph (a)(4) adjacent wetland at the time of assessment, document:
        - The jurisdictional status of the paragraph (a)(1), (a)(2), or (a)(3) water to which the impounded wetland is adjacent, and
        - How the impounded wetland meets the criteria to confer wetland adjacency under the 2023 Rule.
    - If describing an impoundment that is jurisdictional under paragraph (a)(2) on the basis that it met the requirements to be a paragraph (a)(4) adjacent wetland under the 2023 Rule at the time the impoundment was created, document:
        - The jurisdictional status of the paragraph (a)(1), (a)(2), or (a)(3) water to which the impounded wetland was adjacent at the time the impoundment was created, and
        - How the impounded wetland met the criteria to confer wetland adjacency under the 2023 Rule at the time that the impoundment was created.
- Name the paragraph (a)(1) water at the downstream end of the flowpath from the

[23] As with assessment of tributaries under this rule, while the physical flowpath from the paragraph (a)(2) impoundment to the paragraph (a)(1) water must be traceable, there is not a need to demonstrate that flow from the impoundment reaches the paragraph (a)(1) water.

paragraph (a)(2) impoundment (or in the case of an impounded adjacent wetland, the paragraph (a)(1) water at the downstream end of the flowpath from the jurisdictional water to which the wetland is adjacent). If this paragraph (a)(1) water is outside the review area, provide evidence to support that the water meets the criteria to be a paragraph (a)(1)(i), (a)(1)(ii), and/or (a)(1)(iii) water in Section IV.A.

C.3.2.3. Completing Paragraph (a)(3) waters: Tributaries of paragraphs (a)(1) or (a)(2) waters

A tributary for purposes of the 2023 Rule includes rivers, streams, lakes, ponds, and impoundments,[24] regardless of their flow regime, that flow directly or indirectly through another water or waters to a paragraph (a)(1) water or a paragraph (a)(2) impoundment. A tributary may be natural, human-altered, or human-made.[25]

In order for a water to be a paragraph (a)(3) tributary, first the water must be a tributary for the purposes of the 2023 Rule, and second, the tributary must be part of a tributary system[26] of a paragraph (a)(1) water.[27] Tributaries are jurisdictional if they meet either the relatively permanent standard (per paragraph (a)(3)(i)) or the significant nexus standard (per paragraph ((a)(3)(ii)). To determine if the tributary meets the requirements of paragraph (a)(3)(i), identify the flow characteristics at the farthest downstream limit[28] of the tributary reach that is being assessed, using Strahler stream order to identify the limits of the reach. A tributary that does not meet the requirements of paragraph (a)(3)(i) must be assessed under paragraph (a)(3)(ii).

A tributary reach is the entire reach of the tributary that is of the same Strahler stream order (i.e., from the point of confluence, where two lower order streams meet to form the tributary reach of interest, downstream to the point that the tributary reach of interest enters a higher order stream). (See Figure 8 below.) For example, if in the review area a 1st order tributary joins with another 1st order tributary to become a 2nd order tributary, describe these waters as three separate reaches (e.g., Tributary A-1st order, Tributary C-1st order, and Tributary B-2nd order) and thus three separate waters on the (a)(3) table (See Figure 9 below.)

- Where a tributary reach includes a ditch, lake, pond, or impoundment that meets the definition of a tributary, describe those waters as part of the tributary reach and not as a separate water on the tributary table.
- For the purposes of documenting jurisdiction, where a wetland lies entirely below the OHWM of the paragraph (a)(3) water, describe it as part of that paragraph (a)(3) water and not as a separate water on the paragraph (a)(4) table.

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[24] Lakes, ponds, and impoundments with both an inlet and outlet connected to the tributary network, as well as lakes, ponds, and impoundments with an outlet connected to the tributary network are tributaries if they contribute flow directly or indirectly through one or more waters or features that lie along the flow-path to a paragraph (a)(1) water.

[25] Swales and erosional features (e.g., gullies, small washes) characterized by low volume, infrequent, or short duration flow are not tributaries.

[26] A tributary may flow through a number of downstream waters, including a non-jurisdictional tributary or non-jurisdictional features, such as a ditch excluded under paragraph (b) or an excluded waste treatment system, and jurisdictional waters that are not tributaries, such as an adjacent wetland —but to be jurisdictional, the tributary must be part of a tributary system that eventually flows to a paragraph (a)(1) water.

[27] Streams that are not tributaries for the purpose of this rule or are not part of a tributary system will be assessed under paragraph (a)(5) of this rule.

[28] To determine if a tributary meets the relatively permanent standard, the flow characteristics of a particular tributary generally will be evaluated at the farthest downstream limit of such tributary (i.e., the point the tributary enters a higher order stream). Where data indicate the flow characteristics at the downstream limit are not representative of the entire reach of the tributary, the flow characteristics that best characterizes the entire tributary reach will be used.

NOTE: For tributaries that do not meet the relatively permanent standard and that are therefore assessed under the significant nexus standard, the results of the significant nexus analysis will determine whether the subject water is jurisdictional and therefore should be documented in Section III.B of the AJD Form or that the water is non-jurisdictional and therefore should be documented in Section III.C. of the AJD Form.

Assessment of a water under paragraph (a)(3)(ii) must be documented using Appendix A.

Use Appendix A to document the presence or absence of a significant nexus for each tributary being analyzed under paragraph (a)(3)(ii). Procedures for completing Appendix A are provided in Section C.3.2.5. (below).

Completion of an Appendix A is required for all tributaries analyzed under paragraph (a)(3)(ii), regardless of whether the result is assertion or non-assertion of jurisdiction based on the significant nexus analysis. If the result of the significant nexus analysis is a demonstration that the water meets the significant nexus standard, then document the water in the Section III.B. of the AJD Form in the table for paragraph (a)(3) waters. If the result of the significant nexus analysis is a demonstration that the water does not meet the significant nexus standard, then document the water in Section III.C. of the AJD form in the table for waters analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined to be non-jurisdictional.

Instructions for documenting a water that has been determined jurisdictional under paragraph (a)(3) of the 2023 Rule are provided below. See Section C.3.3. (below) for instructions for how to document waters or features that are not jurisdictional under the Clean Water Act.

Paragraph (a)(3) waters: Tributaries of waters identified in paragraph (a)(1) or (2): (i) That are relatively permanent, standing or continuously flowing bodies of water; or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)			
(a)(3) water name	(a)(3) size in review area		Type of paragraph (a)(3) water
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

(a)(3) water name: Each tributary reach in the review area should be considered a separate water and should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM2.

FIGURE 8. IDENTIFYING A TRIBUTARY REACH

The tributary reach includes the entire extent of the tributary that is of the same stream order. In this case, the tributary reach of tributary C is the extent of the first order stream.

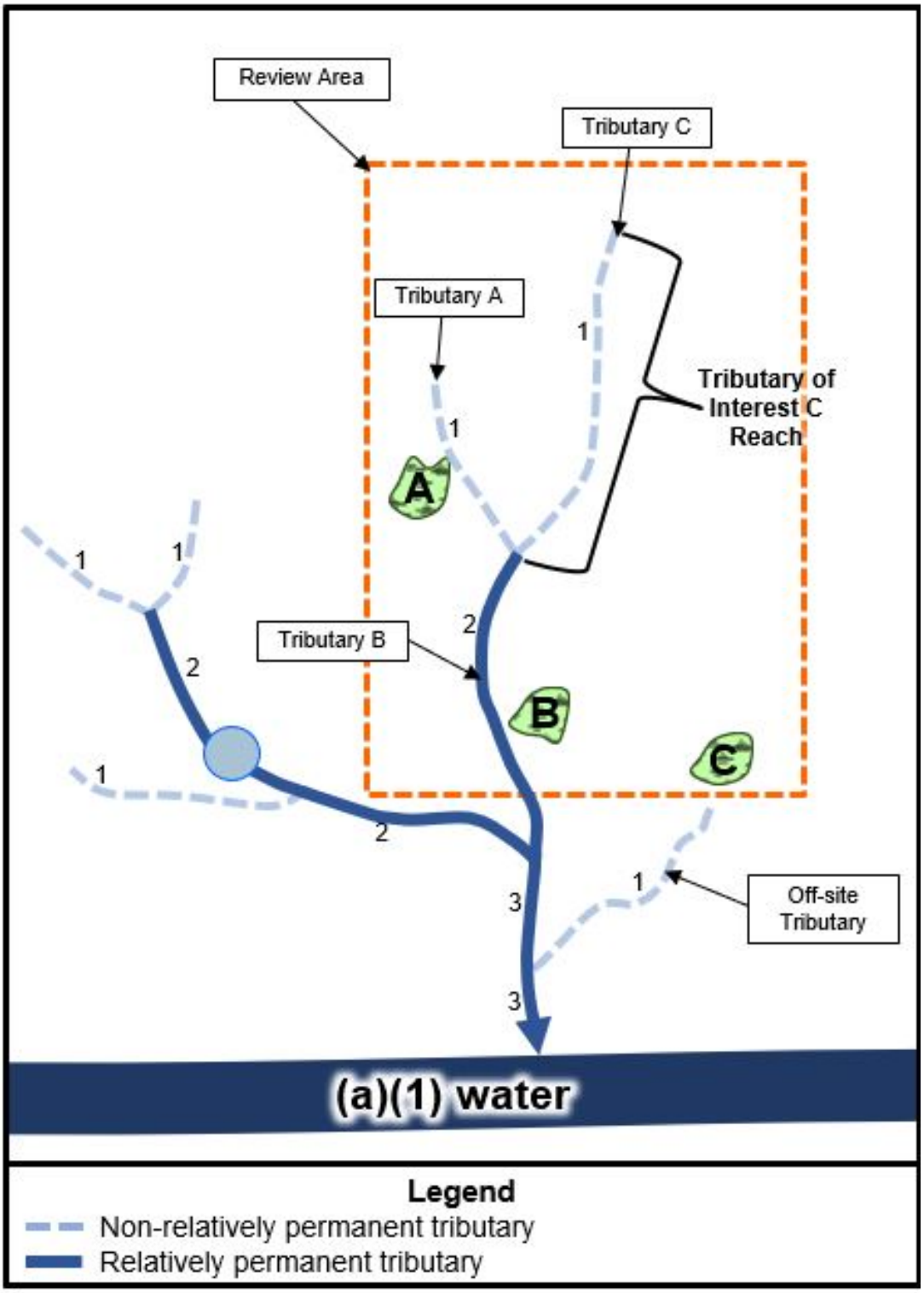
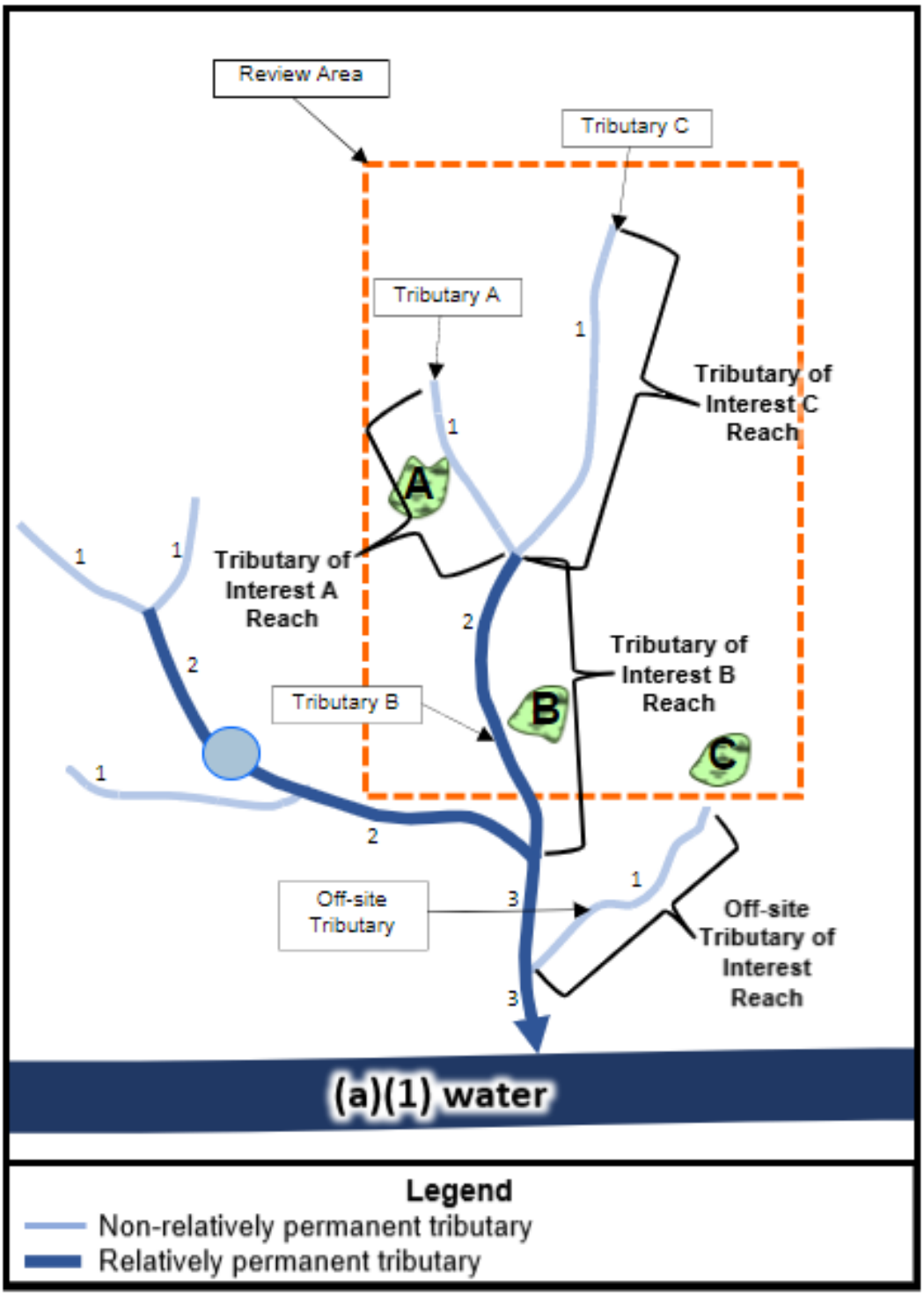


FIGURE 9. IDENTIFYING MULTIPLE TRIBUTARY REACHES IN THE REVIEW AREA

The review area contains two 1st order tributaries that join together to form a 2nd order tributary, therefore document each of these waters as three separate reaches (e.g., Tributary A-1st order, Tributary C-1st order, and tributary B-2nd order) and thus three separate waters on the paragraph (a)(3) table.



(a)(3) size in review area: Each water being evaluated for jurisdiction within the review area requires a numerical size with a unit of measurement. In this table, the size should reflect the amount the water that is located within the review area, not the total size of the water. Enter the size in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a different unit of measure than those described above.

Type of paragraph (a)(3) water: Select the type of paragraph (a)(3) water from the drop-down list that applies to the subject water.

Rationale for determination: Support the conclusion that a water meets the (a)(3) criteria with a discussion of all appropriate data sources using a reasoned basis supported by the record and document the assessment in the rationale section of the table.

Rationale for (a)(3)(i) determination: Support the conclusion that a water meets the (a)(3)(i) criteria (the relatively permanent standard). Supporting rationale should include, but is not limited to, the following:

- The name of the paragraph (a)(1) water to which the tributary reach directly or indirectly flows. Note: Where this paragraph (a)(1) water is located outside the review area, provide evidence to support that this is a paragraph (a)(1) water in Section IV.A. of the Form.
- Support the tributary reach is part of a tributary system of a paragraph (a)(1) water by describing the flowpath between the tributary reach and the paragraph (a)(1) water (NOTE: It is often beneficial to include a figure in the AR that illustrates this flowpath).[29]
- Identify any discontinuities in the OHWM, and address whether discontinuities in the OHWM sever connection to upstream waters.[30]
- Support the determination that the tributary reach[31] is a relatively permanent, standing or continuously flowing body of water.[32]

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[29] A tributary may flow through a number of downstream waters to a paragraph (a)(1) water, including other tributaries, non-jurisdictional features, and jurisdictional features that are not tributaries. Tributaries are not required to have a surface flowpath all the way down to the paragraph (a)(1) water, for instance, if they contribute flow through certain natural and artificial breaks (including certain non-jurisdictional features), some of which may involve subsurface flow as described in section IV.C.4.b of the final rule preamble. For tributaries of paragraph (a)(2) impoundments, field staff do not need to determine that flow occurs over, though, around, or underneath the structure that creates the impoundment. Instead, the agencies will document that flow occurs from the tributary to the impoundment, either directly or indirectly through another water or waters, including non-jurisdictional features, and that there is evidence of a flowpath downstream of the structure (e.g., physical features on the landscape, such as a channel, non-jurisdictional ditch, pipe, or swale) to a paragraph (a)(1) water, either directly or indirectly through another water or waters.

[30] A natural or human-made discontinuity in the OHWM does not necessarily sever jurisdiction upstream. A discontinuity may exist where the stream temporarily flows underground. Tributaries may temporarily flow underground in regions with karst geology, for example, maintaining the same or very nearly the same flow volume underground and at the downstream point where they return to the surface. Discontinuity in the OHWM also does not typically sever jurisdiction upstream where the OHWM has been removed by development, agricultural, or other land uses.

[31] The flow characteristics of lakes, ponds, and impoundments that are part of the tributary network will be assessed in conjunction with the stream they connect to.

[32] The relatively permanent standard encompasses surface waters that have flowing or standing water year-round or

Rationale for (a)(3)(ii) determination: This subcategory of waters identifies tributaries that meet the significant nexus standard. Tributaries that don't meet the relatively permanent standard must be assessed under the significant nexus standard. A tributary meets the significant nexus standard when it, either alone or in combination with similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of paragraph (a)(1) water. Tributaries and their adjacent wetlands are considered "similarly situated" waters. The "region" is the catchment that drains to and includes the tributary of interest. Catchments will be delineated from the downstream-most point of the tributary reach of interest and include the land uphill that drains to that point.

A significant nexus analysis is required to determine jurisdiction for a potential paragraph (a)(3)(ii) tributary. Completion of Appendix A is required for all waters analyzed under paragraph (a)(3)(ii), regardless of whether the result is assertion or non-assertion of jurisdiction based on the significant nexus standard. If the analysis indicates that the tributary meets the significant nexus standard, include the tributary in the table for paragraph (a)(3) waters. If the analysis indicates that the tributary does not meet the significant nexus standard, list the tributary in the table of non-jurisdictional waters in Section III.C. of the AJD Form. Instructions on how to complete Appendix A are provided in Section C.3.2.5. of this Guidebook (below).

The rationale for determination section of the paragraph (a)(3) table should include, but may not necessarily be limited to, identifying the Appendix A that applies to the tributary (e.g., in the rationale section write, "See Appendix A #1 of 1 for the significant nexus analysis for this tributary.").

C.3.2.4. Completing Paragraph (a)(4) waters: Adjacent wetlands

Wetlands are "adjacent" if they are "bordering, contiguous, or neighboring." The entire wetland is "adjacent" if any part of the wetland is "adjacent." Wetlands are "adjacent" if they meet one of three criteria: 1) There is an unbroken surface or shallow subsurface connection[33] to a jurisdictional water,

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continuously during certain times of the year. Relatively permanent waters do not include tributaries with flowing or standing water for only a short duration in direct response to precipitation. The phrase "certain times of the year" is intended to include extended periods of standing or continuously flowing water occurring in the same geographic feature year after year, except in times of drought. The defining characteristic of relatively permanent waters with flowing or standing water continuously during only certain times of the year is a temporary lack of surface flow, which may lead to isolated pools or dry channels during certain periods of the year. The phrase "direct response to precipitation" is intended to distinguish between episodic periods of streamflow associated with discrete precipitation events versus continuous flow for extended periods of time. Non-relatively permanent flow may occur simply because it is raining or has very recently rained, or because a recent snow has melted. However, in certain regions relatively permanent flow may occur as a result of multiple back-to-back storm events throughout a watershed, during which the combination of runoff and upstream contributions of flow is high enough to exceed rates of transmission loss for an extended period of time. Streams that flow as a result of "snowpack melt" are also considered relatively permanent waters, where snowpack is defined as "layers of snow that accumulate over extended periods of time in certain geographic regions or at high elevation (e.g., in northern climes or mountainous regions)."

[33] All wetlands that directly abut jurisdictional waters have an unbroken surface or shallow subsurface connection because they physically touch the jurisdictional water. An unbroken surface or shallow subsurface connection to jurisdictional waters can also be established by a non-jurisdictional physical feature or discrete conveyance that supports at least periodic flow between the wetland and a jurisdictional water, such as a pipe, culvert, non-jurisdictional ditch, or flood gate. Water does not have to be continuously present in this hydrologic connection and the flow between the wetland and the jurisdictional water may move in either or both directions. A shallow subsurface hydrologic connection is predominantly lateral water flow through a shallow subsurface layer. Such flows may be found, for

2) The wetland is physically separated from a jurisdictional water by human-made dikes or barriers, or natural landforms (e.g., river berms, beach dunes), or 3) The wetland's proximity to a jurisdictional water is reasonably close such that "adjacent wetlands have significant effects on water quality and the aquatic ecosystem."[34]

Once it is determined a wetland is "adjacent", under the 2023 Rule there are three criteria under which an adjacent wetland may be jurisdictional under paragraph (a)(4). Jurisdictional adjacent wetlands under paragraph (a)(4) of the 2023 Rule include: 1) wetlands adjacent to traditional navigable waters, the territorial seas, and interstate waters; 2) wetlands adjacent to and with a continuous surface connection to paragraph (a)(2) impoundments or paragraph (a)(3)(i) tributaries that meet the relatively permanent standard; and 3) wetlands adjacent to paragraph (a)(2) impoundments or jurisdictional tributaries when the wetlands meet the significant nexus standard.

Wetlands that are adjacent to paragraph (a)(1) waters are jurisdictional and require only documentation that the wetland is, in fact, adjacent to the paragraph (a)(1) water. A wetland adjacent to a paragraph (a)(2) impoundment and/or a wetland adjacent to a jurisdictional tributary must satisfy either the relatively permanent standard or the significant nexus standard.

NOTE: For adjacent wetlands that are not adjacent to a paragraph (a)(1) water and do not meet the relatively permanent standard, and are therefore assessed under the significant nexus standard, the results of the significant analysis will determine whether the subject water is jurisdictional and therefore should be documented in Section III.B. of the AJD Form or that the water is non-jurisdictional and therefore should be documented in Section III.C. of the AJD Form.

Assessment of a water under paragraph (a)(4)(iii) must be documented using Appendix A. The catchment for the significant nexus for a wetland being assessed under paragraph (a)(4)(iii) will be based on the tributary to which the subject wetland is adjacent. If the tributary to which the wetland is adjacent is within the review area, the Appendix A that was completed for the catchment of that tributary will provide the analysis for the subject wetland. However, if the tributary to which the wetland is adjacent is located outside of the review area, an Appendix A will need to be completed for that tributary that is outside the review area, along with any similarly situated waters in the region, since the subject wetland is assessed together with that offsite tributary and with any other tributaries in the catchment of that offsite tributary and any other wetlands that are adjacent to those tributaries.

The Appendix A that corresponds to the tributary to which the subject wetland is adjacent will document if the subject wetland being assessed under paragraph (a)(4)(iii) meets the significant

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example, in wetlands on slopes, where water seeps through surface soils to downstream waters, in soils with a restrictive horizon, in the hyporheic zone, or in karst systems. A shallow subsurface connection also exists, for example, when the adjacent wetland and the water to which it is adjacent are in contact with the same shallow aquifer or with the same shallow water table which fluctuates within the soil profile, sometimes rising to or near the ground surface. Shallow subsurface connections can also be maintained as water moves through karst topography, and through confined human-made subsurface conveyance systems such as drain tiles and storm sewers. Shallow subsurface connections may be found below the ordinary root zone (below 12 inches), where other wetland delineation factors may not be present.

[34] The agencies conclude that close proximity between an adjacent wetland and a jurisdictional water means the wetland can modulate water quantity or water quality in the jurisdictional water, and the jurisdictional water can modulate water quantity or quality in the wetland.

nexus standard. Procedures for completing Appendix A are provided in Section C.3.2.5. of this Guidebook (below).

Completion of an Appendix A is required for all tributaries to which a wetland analyzed under paragraph (a)(4)(iii) is adjacent, regardless of whether the result is assertion or non-assertion of jurisdiction based on the significant nexus standard. If the result of the significant nexus analysis is a demonstration that the subject wetland meets the significant nexus standard, then document the wetland in the Section III.B. of the AJD Form in the table for paragraph (a)(4) waters. If the result of the significant nexus analysis is a demonstration that the wetland does not meet the significant nexus standard, then document the wetland in Section III.C. of the AJD form in the table for waters analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined to be non-jurisdictional.

Instructions for documenting a wetland that has been determined jurisdictional under paragraph (a)(4) of the 2023 Rule are provided below. See Section C.3.3. of this Guidebook (below) for instructions for how to document waters or features that are not jurisdictional under the Clean Water Act.

Paragraph (a)(4) waters: Wetlands adjacent to the following waters: (i) Waters identified in paragraph (a)(1); or (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3)(i) and with a continuous surface connection to those waters; or (iii) Waters identified in paragraph (a)(2) or (3) when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)			
(a)(4) water name	(a)(4) size in review area		Adjacency criteria
N/A	N/A	N/A	N/A
Type of paragraph (a)(4) water	N/A		
Rationale for determination: N/A			

(a)(4) water name: Each wetland in the review area should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM.

(a)(4) size in review area: Each water being evaluated for jurisdiction within the review area requires a numerical size with a unit of measurement. In this table, the size should reflect the amount the water that is located within the review area, not the total size of the water. Enter the size in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a different unit of measure than those described above.

Adjacency criteria: Select the adjacency criteria from the drop-down list that applies to the subject wetland. If the wetland meets multiple adjacency criteria, select the strongest criteria that the wetland meets and discuss it along with the other applicable criteria that the wetland meets in the rationale section.

Type of paragraph (a)(4) water: Select the type of paragraph (a)(4) water from the drop-down list that applies to the subject water. If the water meets multiple types, select the strongest type from the list and discuss it, along with all other applicable paragraph (a)(4) types that the wetland meets in the rationale section.

Rationale for determination: Support the conclusion that a water meets the (a)(4) criteria with a discussion of all appropriate data sources using a reasoned basis supported by the record and document the assessment in the rationale section of the table.

Rationale for (a)(4)(i) determination: Supporting rationale should include, but is not limited to, the following:

- Identify the paragraph (a)(1) water to which the wetland is adjacent. Where this paragraph (a)(1) water is outside the review area, provide evidence to support that this is a paragraph (a)(1) water in Section IV.A.
- Describe and document how the wetland is adjacent to the paragraph (a)(1) water by describing the relationship between the geographic limits of the paragraph (a)(1) water and the wetland and how one or more of the three adjacency criteria are met.
- If the wetland straddles the OHWM, MHW, or HTL of the paragraph (a)(1) water and the portion of the wetland located below the OHWM, MHW, or HTL of the paragraph (a)(1) water is documented as part of the paragraph (a)(1) water in the (a)(1) table (and on the Section 10 table, when applicable) (See Figures 4, 5, and 6), include a statement that this wetland is a single wetland, but for documentation purposes, the portion of the wetland that is above the OHWM, MHW, or HTL of the paragraph (a)(1) water (and Section 10 water, when applicable) is a paragraph (a)(4) water covered here, and identify that the portion of the same wetland that is located below the OHWM, MHW, or HTL of the paragraph (a)(1) water is described as part of the paragraph (a)(1) water (and as part of the Section 10 water, when applicable) in other table(s) on the AJD Form, and note which tables contain that additional documentation for the subject wetland.

Rationale for (a)(4)(ii) determination: Supporting rationale should include, but is not limited to, the following:

- Identify the relatively permanent paragraph (a)(2) or the paragraph (a)(3)(i) water to which the wetland is adjacent.
    - If the wetland is adjacent to a paragraph (a)(2) impoundment, determine that the paragraph (a)(2) impoundment meets the relatively permanent standard (i.e., determine that the paragraph (a)(2) water is relatively permanent, standing or continuously flowing).[35]
    - If the paragraph (a)(2) or (a)(3)(i) water to which the wetland is adjacent is located outside of the review area, you must provide evidence in the rationale to support that the water outside the review area meets all applicable criteria to be a relatively permanent paragraph (a)(2) water or a paragraph (a)(3)(i) water. See the directions for completing the rationale sections for the table for paragraph (a)(2) waters in Section C.3.2.2. of this Guidebook and the table for paragraph (a)(3)(i) waters in Section C.3.2.3. of this Guidebook (above).

[35] If the paragraph (a)(2) impoundment is not relatively permanent, standing or continuously flowing, then field staff will assess the adjacent wetlands under the significant nexus standard.

- Describe and document how the wetland is adjacent to the paragraph (a)(2) or (a)(3)(i) water, by describing the relationship between the geographic limits of the paragraph (a)(2) or (a)(3)(i) water and the wetland and how one or more of the three adjacency criteria are met.
- Describe the continuous surface connection[36] between the adjacent wetland and the paragraph (a)(2) or (a)(3)(i) water.

Rationale for (a)(4)(iii) determinations: This subcategory of waters is used to assess wetlands that are not adjacent to a paragraph (a)(1) water and that also lack a continuous surface connection to a relatively permanent paragraph (a)(2) impoundment or a paragraph (a)(3)(i) tributary. Thus, wetlands that are assessed under paragraph (a)(4)(iii) include wetlands adjacent to non-relatively permanent tributaries or to non-relatively permanent paragraph (a)(2) impoundments and wetlands that are adjacent to relatively permanent paragraph (a)(2) impoundments or paragraph (a)(3)(i) tributaries but that lack a continuous surface connection to such relatively permanent waters. An adjacent wetland meets the significant nexus standard when it, either alone or in combination with similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a paragraph (a)(1) water. Tributaries and their adjacent wetlands are considered "similarly situated" waters. Similarly situated waters are "in the region" when they lie within the catchment area of the tributary of interest.

A significant nexus analysis is required to determine jurisdiction for a potential paragraph (a)(4)(iii) adjacent wetland. Completion of an Appendix A is required for all waters or features analyzed under paragraph (a)(4)(iii), regardless of whether the result is assertion or non-assertion of jurisdiction based on the significant nexus standard. If the analysis indicates that the adjacent wetland meets the significant nexus standard, include the adjacent wetland in the table for paragraph (a)(4) waters. If the analysis indicates that the adjacent wetland does not meet the significant nexus standard, list the wetland in the table of non-jurisdictional waters in Section III.C. of the AJD Form. Instructions on how to complete Appendix A are provided in Section C.3.2.5. of this Guidebook (below).

The rationale for determination section of the paragraph (a)(4) table should include, but may not necessarily be limited to, identifying the Appendix A that applies to the catchment within which the adjacent wetland was analyzed (e.g., in the rationale section write, "See Appendix A #1 of 1 for the significant nexus analysis for this adjacent wetland.").

C.3.2.5. Completing Appendix A – Significant nexus analysis for potential (a)(3)(ii) and (a)(4)(iii) waters

C.3.2.5.1 General procedures for completing Appendix A

This portion of the AJD Form is designed to collect the information required to document the presence or absence of a significant nexus for waters being analyzed under paragraph (a)(3)(ii) and (a)(4)(iii) of the 2023 Rule. Evaluation under the significant nexus standard

[36] Wetlands meet the continuous surface connection requirement if they physically abut or touch a relatively permanent paragraph (a)(2) impoundment or a (a)(3)(i) relatively permanent tributary. Wetlands also meet the continuous surface connection requirement if they are connected to relatively permanent waters by a discrete feature like a ditch, swale, pipe, or culvert. A natural berm, bank, dune, or similar natural landform between an adjacent wetland and a relatively permanent water does not sever a continuous surface connection to the extent it provides evidence of a continuous surface connection.

requires that certain waters be analyzed, either alone or in combination with similarly situated waters in the region, in order to determine if they significantly affect the chemical, physical, or biological integrity of paragraph (a)(1) waters.

Similarly situated waters are tributaries and their adjacent wetlands. Similarly situated waters are determined to be “in the region” when they lie within the catchment area of the tributary of interest. A catchment is the area of the land surface that drains to a specific location for a specific hydrologic feature. Catchments will be delineated from the downstream-most point of the tributary of interest and include the land uphill that drains to that point. For example, if the tributary of interest is a second order stream, the catchment would be delineated from the point that the second order stream enters a third order stream.

Where the review area includes a water that requires a significant nexus analysis, the significant nexus analysis will focus on the catchment area defined by the “tributary of interest, which could either be a tributary that requires a significant nexus analysis to determine its own jurisdictional status (e.g., a tributary that does not meet the relatively permanent standard) or a tributary to which a wetland in the review area is adjacent, where the adjacent wetland requires a significant nexus analysis to determine the wetland’s jurisdictional status (e.g., an adjacent wetland that does not meet the relatively permanent standard). The “tributary of interest” for purposes of the significant nexus analysis will encompass the entire tributary reach of the same order. All tributaries within the catchment of the tributary of interest, and any wetlands adjacent to those tributaries will be considered “similarly situated waters in the region” and will be included in the significant nexus analysis. (See Figure 10 below.) However, the jurisdictional determination resulting from the significant nexus analysis would only apply to the portion of the tributary of interest that is located in the review area and to any wetlands in the review area that are adjacent to the tributary of interest.

A separate Appendix A must be completed for each tributary in the review area that is being assessed under paragraph (a)(3)(ii). If any wetlands in the review area are being analyzed under paragraph (a)(4)(iii), those wetlands must be analyzed for a significant nexus in conjunction with the tributary of interest to which they are adjacent and with similarly situated tributaries and wetlands in the region. A significant nexus analysis is required for each tributary of interest even when the catchments overlap. (See Figure 10 below.) A significant nexus analysis is required for a tributary of interest that lies entirely outside the review area if there are wetlands in the review area that are adjacent to that offsite tributary and are being analyzed under paragraph (a)(4)(iii). (See Figure 11 below.)

If multiple wetlands in the review area are being analyzed under paragraph (a)(4)(iii), and a subset of those wetlands are adjacent to one tributary of interest and another subset of those wetlands are adjacent to a different tributary of interest, then there are two separate tributaries of interest which require a separate significant nexus analysis and a separate Appendix A must be completed for each tributary of interest. If more than one tributary of interest will be assessed, make additional copies of Appendix A before entering any data.

The determination of jurisdiction applies only to the subject waters located in the review area and is a case-specific determination based on current conditions (except in the case

of a potential enforcement action which would consider the conditions at the time of the alleged violation). Any similarly situated waters that are part of the significant nexus analysis but that are not in the review area are not subject to the jurisdictional decision (and so would not automatically be deemed jurisdictional or non-jurisdictional). For example, where a subject water is a portion of a tributary reach, the significant nexus analysis would encompass the entire tributary reach of the same order and any adjacent wetlands, any tributaries within the catchment of that reach, and any wetlands adjacent to those tributaries. However, the jurisdictional determination would only apply to the portion of the tributary reach within the review area that is subject to the determination. As an additional example, in reference to Figure 10 below, the result of a significant nexus analysis for Tributary of Interest B does not pre-determine the result of any significant nexus analysis that would be required for either Tributary A or Tributary C, even though Tributary A and Tributary C (and their adjacent wetlands) were analyzed as “similarly situated waters in the region” in a significant nexus analysis for Tributary of Interest B.

As such, where a water(s) in the review area, either alone or in combination with similarly situated waters in the region, is found to significantly affect a paragraph (a)(1) water, only the water(s) in the review area that are associated with the tributary of interest that was the subject of the significant nexus analysis would be determined jurisdictional based on the result of the significant nexus analysis. Similarly, where a water(s) in the review area, either alone or in combination with similarly situated waters in the region, is found not to significantly affect a paragraph (a)(1) water, only the water(s) in the review area that are associated with the tributary of interest that was the subject of the significant nexus analysis would be determined non-jurisdictional based on the result of the significant nexus analysis.

FIGURE 10. IDENTIFYING MULTIPLE CATCHMENTS IN THE REVIEW AREA

If two lower order tributary reaches come together within the review area to form a higher order tributary reach that is also located in the review area, and if all three of those tributary reaches do not meet the relatively permanent standard, then there are three tributaries of interest that require a significant nexus analysis. Each of the three tributaries of interest will require a separate Appendix A significant nexus analysis. NOTE: The catchments for the lower order tributaries of interest will lie within the catchment for the higher order tributary of interest

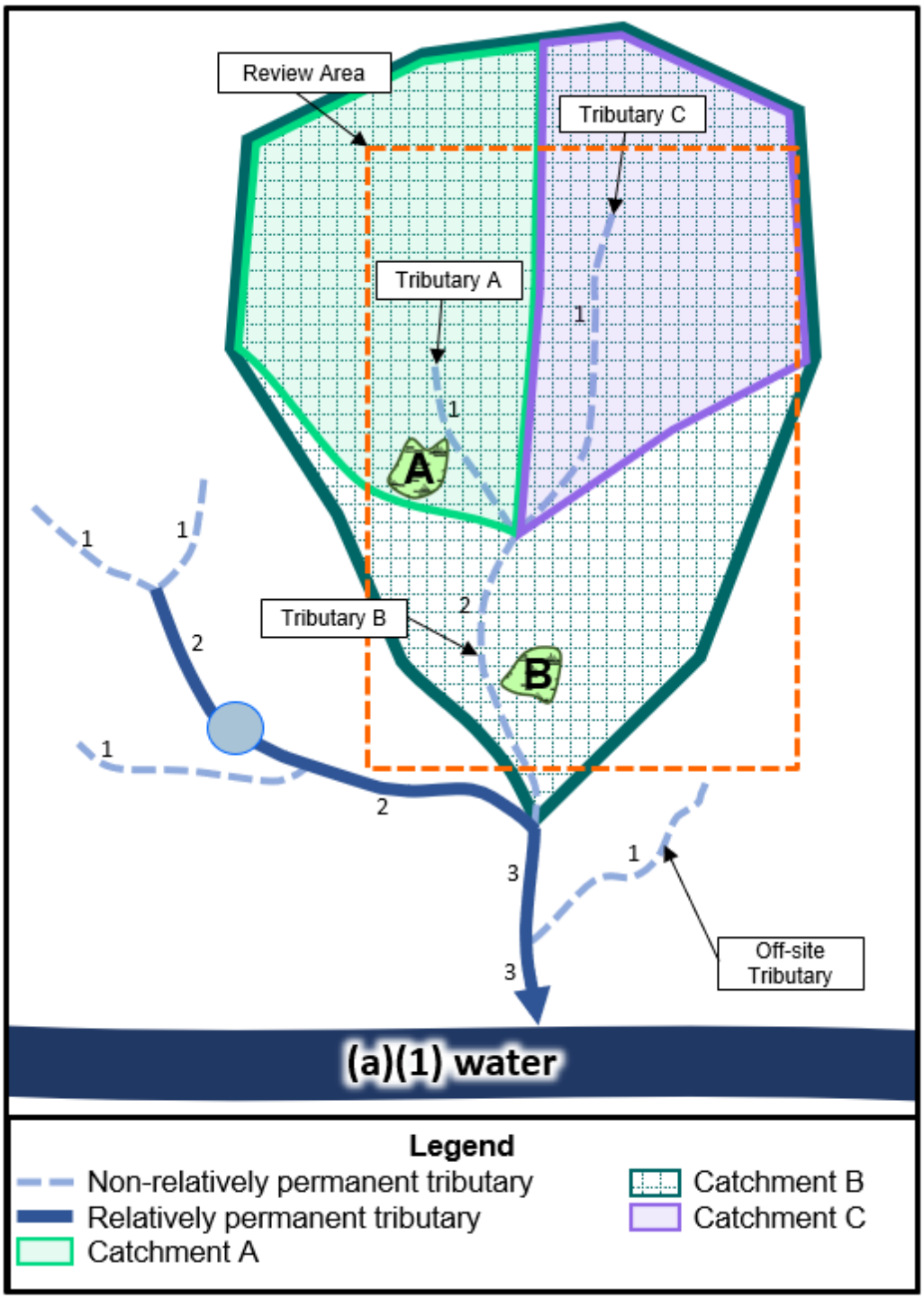
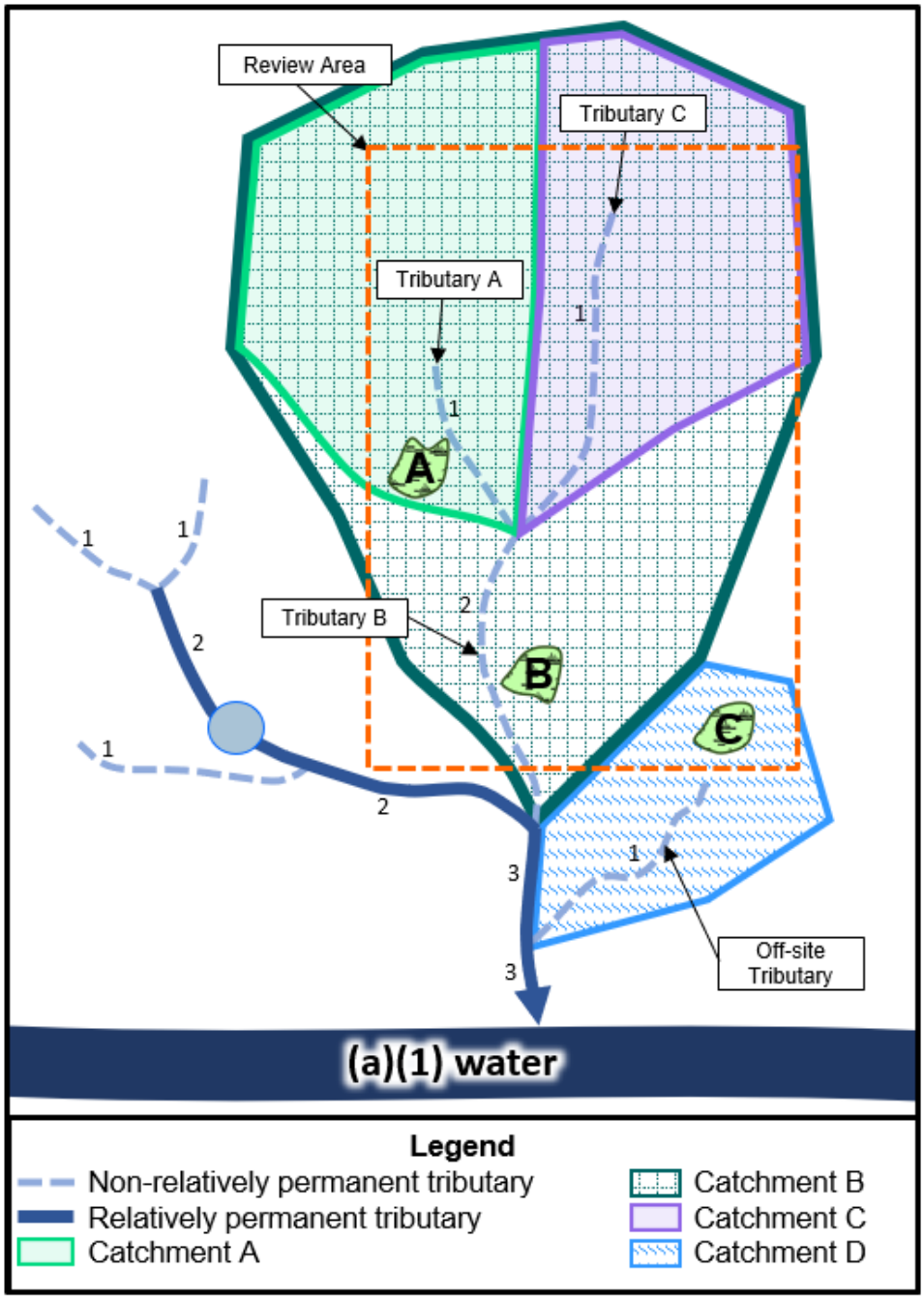


FIGURE 11. IDENTIFYING CATCHMENT AREAS OF TRIBUTARIES OF INTEREST THAT REQUIRE A SIGNIFICANT NEXUS ANALYSIS

The review area contains three tributaries (Tributaries A, B, and C) that do not meet the relatively permanent standard and therefore are being evaluated under paragraph (a)(3)(ii). The review area also contains a wetland (Wetland C) that is adjacent to different tributary which is located outside the review area. Wetland C does not meet the relatively permanent standard, therefore requires evaluation under paragraph (a)(4)(iii). As a result, there are four tributaries of interest (Tributaries A, B, C, and Off-site Tributary) that require a significant nexus analysis.



C.3.2.5.2 Detailed procedures for completing Appendix A

ORM Project Name: Enter the name of the action exactly as identified on the corresponding AJD Form.

ORM Identification Number: Enter the ORM identification number exactly as identified on the corresponding AJD Form.

Waters in the review area that are included in this significant nexus analysis: List names of the potential paragraph (a)(3)(ii) and/or (a)(4)(iii) waters which are located in the review area and are included in the significant nexus analysis of this Appendix A. Use names consistent with those used on other parts the AJD Form, the maps and drawings in the AR and consistent with the aquatic resource names used in ORM.

Complete Appendix A (#X of X) Use numbers (e.g., #1 of 2) to identify each significant nexus analysis. For each water in the review area that requires a significant nexus analysis, ensure that the rationale section of the appropriate table in Section III of the AJD Form lists the Appendix number which documents the significant nexus analysis.

Step 1: Identify and describe the "region" or catchment that will be referenced on the particular Appendix sheet. Catchments are delineated from the downstream-most point of the tributary reach of interest and include the land uphill that drains to that point.

- Identify the location of the downstream limit of the catchment.
- Describe the extent of the catchment area, including the approximate size of the catchment.
- Reference and attach a map of the catchment showing the review area, the tributary of interest and its adjacent wetlands, and all similarly situated tributaries and all wetlands adjacent to those similarly situated tributaries.

Step 2: Identify the paragraph (a)(1) water to which the tributary of interest directly or indirectly flows. Where this paragraph (a)(1) water is located outside the review area, provide evidence to support that this is a paragraph (a)(1) water in Section IV.A. of the AJD Form.

Step 3: Describe the flowpath between the downstream limit of the tributary of interest and the paragraph (a)(1) water. (See footnote 23.) (NOTE: It is often beneficial to include a figure in the AR that illustrates this flow path.)[37]

Step 4: Identify all the similarly situated tributaries and adjacent wetlands within the catchment area.

[37] Waters through which a tributary may flow indirectly include, for example, impoundments, wetlands, lakes, ponds, and streams. A tributary may flow through a number of downstream waters, including a non-jurisdictional tributary or non-jurisdictional features, such as a ditch excluded under paragraph (b) of this rule or an excluded waste treatment system, and jurisdictional waters that are not tributaries, such as an adjacent wetland. For tributaries of paragraph (a)(2) impoundments, field staff do not need to determine that flow occurs over, though, around, or underneath the structure that creates the impoundment. Instead, the agencies will document that flow occurs from the tributary to the impoundment, either directly or indirectly through another water or waters, including non-jurisdictional features, as described in section IV.C.4 of the final rule preamble, and that there is evidence of a flowpath downstream of the structure (e.g., physical features on the landscape, such as a channel, non-jurisdictional ditch, pipe, or swale) to a paragraph (a)(1) water, either directly or indirectly through another water or waters.

List the tributary of interest, the tributaries within the catchment of the tributary of interest and the adjacent wetlands within the catchment, if any. These similarly situated waters will be assessed in combination to determine whether the significant nexus standard is met for the potential paragraph (a)(3)(ii) and/or (a)(4)(iii) waters located within the review area.

NOTE: For practical administrative purposes, the 2023 Rule does not require evaluation of all similarly situated waters when concluding that those waters have a significant nexus to a paragraph (a)(1) water. When an identified subset of similarly situated waters provides a sufficient science-based justification to conclude presence of a significant nexus, for efficiency purposes a significant nexus analysis need not require time and resources to locate and analyze all similarly situated waters in the entire catchment. For example, if a single water or a group of similarly situated waters in a portion of the catchment is determined to significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water, the analysis does not have to document all of the similarly situated waters in the catchment in order to complete the significant nexus analysis for the water(s) subject to the jurisdictional determination.

A conclusion that a significant nexus is lacking may not, however, be based on consideration of some subset of similarly situated waters because under the significant nexus standard, the inquiry is how the similarly situated waters in combination affect the integrity of the paragraph (a)(1) water.

Tables are provided on the Appendix A sheet to record the necessary information about the similarly situated tributaries and adjacent wetlands within the catchment. See the Procedural Notes section of this Guidebook for instructions on adding rows to these tables.

Step 4.a.: List the similarly situated tributaries within the catchment, including the tributary of interest. The names of tributaries should be consistent with the names used on the AJD Form, on the catchment map and with the maps and drawings in the AR. The tributary name and total size of the tributary reach should be recorded in the table.

The last column of the table should include documentation that the water is a tributary for the purpose of the 2023 Rule and is part of a tributary system that eventually flows to a paragraph (a)(1) water. Identify any discontinuities in the OHWM, and address whether or not discontinuities in the OHWM sever connection to upstream waters. Staff should use best available information to characterize tributaries located outside the review area.

Tributary Name	Tributary Size		Describe rationale for the determination that this waterbody is a tributary and part of a tributary system
N/A.	N/A.	N/A.	N/A.

Step 4.b.: List all similarly situated adjacent wetlands within the catchment that are used in the significant nexus analysis. If the tributaries in the catchment have no adjacent wetlands, consider only the factors and assess the functions of the tributaries in determining whether there is a significant effect on the chemical, physical, or biological integrity of downstream paragraph (a)(1) waters. If any of the tributaries in the catchment have adjacent wetlands, consider the factors and assess the functions of the tributaries together with the functions provided by the wetlands adjacent

to the tributaries in the catchment, in evaluating whether a significant nexus is present. All adjacent wetlands in the catchment must be considered in the significant nexus analysis unless there is a science-based justification that a subset of the similarly situated waters in the catchment can be analyzed. The adjacent wetland name and the total size of the wetland should be recorded in the table. The names of the wetlands should be consistent with the names used on the AJD Form, on the catchment map, and with the maps and drawings in the AR. Staff should use best available information to characterize adjacent wetlands that are located outside the review area.

For each similarly situated adjacent wetland considered in the significant nexus analysis, provide the following information:

- Provide information to support that the water is a wetland.
- Identify the paragraph (a)(2) or (a)(3) water to which the wetland is adjacent. If the paragraph (a)(2) or (a)(3) water is outside the review area, you must provide evidence in the rationale to support that it is a paragraph (a)(2) or (a)(3) water. See the directions for completing the rationale sections for the table for paragraph (a)(2) waters in Section C.3.2.2. of this Guidebook and the table for paragraph (a)(3) waters in Section C.3.2.3. of this Guidebook (above).
- Identify which of the adjacency criteria are met. Describe and document how the wetland is adjacent to the paragraph (a)(2) or (a)(3) water by describing the relationship between the geographic limits of the paragraph (a)(2) or (a)(3) water and the wetland and how one or more of the three adjacency criteria are met. The adjacency rationale should conclude by stating that the wetland is bordering, contiguous, or neighboring because it meets one or more of the adjacency criteria.

Wetland Name	Wetland Size		Describe rationale for the determination that this water is a wetland, identify the paragraph (a)(2) or (a)(3) water to which the wetland is adjacent, and support the determination that the wetland meets adjacency criteria.
N/A	N/A	N/A	N/A

Step 4.c.: If a subset of the catchment is being used for the significant nexus analysis, discuss how this subset of the catchment provides sufficient science-based justification to conclude the presence of a significant nexus. When an identified subset of similarly situated waters provides a sufficient science-based justification to conclude presence of a significant nexus, for efficiency purposes a significant nexus analysis need not locate and analyze all similarly situated waters in the entire catchment. NOTE: A conclusion that a significant nexus is lacking may not be based on consideration of some subset of similarly situated waters.

Step 5: Consider the factors and assess the functions provided by the similarly situated waters in the catchment area of the tributary of interest. Complete the factors table by describing the site-specific conditions that exist in the catchment area of the tributary of interest.

FACTORS
Distance from a water identified in paragraph (a)(1) (river miles and straight-line miles):
List the distance in river miles and straight-line miles between the downstream end of the catchment and the paragraph (a)(1) water.
Hydrologic factors, such as the frequency, duration, magnitude, timing, and rate of hydrologic connections, including shallow subsurface flow:
Describe the hydrologic factors that apply to the similarly situated waters in the catchment, such as the amount of water from the tributary or the adjacent wetland that reaches the paragraph (a)(1) water.
Size, density, or number of waters that have been determined to be similarly situated:
Describe the size, density, or number of similarly situated waters in the catchment area.
Landscape position and geomorphology:
Generally describe the landscape position and the geomorphology of the waters in relation to the paragraph (a)(1) water, including characteristics such as topography, slope, and soil porosity.
Climatological variables such as temperature, rainfall, and snowpack:
Evaluate the climate in the area of the catchment area of the tributary of interest, such as whether high temperatures lead to high evaporation rates. At a minimum annual rainfall should be listed.

The functions table should be completed to describe the functions that are provided by the similarly situated waters in the catchment area of the tributary of interest. For each function, consider each factor to evaluate the likely strength of any effect of that function on a paragraph (a)(1) water. Consider whether the factors are likely to increase or decrease the strength of the influence of the function on the paragraph (a)(1) water. The first two factors, distance from the paragraph (a)(1) water and hydrology, will generally be given the greatest weight in the assessment of functions.

FUNCTIONS
Contribution of flow:
Describe the contribution of flows.
Trapping, transformation, filtering, and transport of materials (including nutrients, sediment, and other pollutants):
Explain the extent of the functions of the similarly situated waters in the catchment with regard to trapping, transformation, filtering, and transport of materials (including nutrients, sediment, and other pollutants).
Retention and attenuation of floodwaters and runoff:
Describe the extent of any retention and attenuation of floodwaters and runoff provided by the similarly situated waters in the catchment.
Modulation of temperature in waters identified in paragraph (a)(1):
Explain the extent of the influence of the similarly situated waters in the catchment on the modulation of temperatures in a paragraph (a)(1) water.
Provision of habitat and food resources for aquatic species located in waters identified in paragraph (a)(1):
Describe any provisions of habitat and food resources functions provided for aquatic species located in a paragraph (a)(1) water.

Step 6: Document the conclusion of the significant nexus analysis. Select a conclusion statement from the drop-down box to indicate whether the similarly situated waters in the catchment do or do not significantly affect a paragraph (a)(1) water. Provide a rationale to support the conclusion in the summary table. Consider the factors and assess the functions[38] of the similarly situated waters, and whether they significantly affect[39] the chemical, physical, or biological integrity of the paragraph (a)(1) water. The analysis should assess the functions of the waters under evaluation and consider the factors in the 2023 Rule to analyze the strength of the influence of the functions on paragraph (a)(1) waters. In general, functions associated with stronger factors increase the likelihood of demonstrating a material influence on paragraph (a)(1) waters. The agencies will consider all of the factors together when assessing the functions and the strength of the influence in the context of each case-specific determination of jurisdiction.

Conclusion Summary	
Conclusion:	N/A
Rationale Summary:	Click or tap here to enter text.

C.3.2.6. Paragraph (a)(5) waters: Waters not identified in paragraph (a)(1) through (a)(4). Paragraph (a)(5) of the 2023 Rule defines "waters of the United States" to include "intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (a)(4)" that meet either the relatively permanent standard or the significant nexus standard. Jurisdiction should generally be assessed over aquatic resources based on the requirements in paragraphs (a)(1) through (a)(4) of the 2023 Rule before assessing jurisdiction based on paragraph (a)(5), assuming that the water being assessed does not meet any of the 2023 Rule's paragraph (b) exclusions.

Paragraph (a)(5) provides for case-specific analysis of waters not addressed by any other provision of the 2023 Rule to determine whether they are jurisdictional under the relatively permanent or significant nexus standard. Waters assessed under paragraph (a)(5) meet the relatively permanent standard if they are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to a paragraph (a)(1) water or tributary that is relatively permanent. Paragraph (a)(5) waters meet the significant nexus standard if they "significantly affect" the chemical, physical, or biological integrity of a paragraph (a)(1) water.

NOTE: For waters assessed under paragraph (a)(5) that do not meet the relatively permanent

[38] In assessing the functions under this rule, if a water, either alone or in combination with similarly situated waters in the region, performs one function that has a material influence on the integrity of a paragraph (a)(1) water, that water would have a significant nexus.

[39] "Significantly affect" for purposes of determining whether a water meets the significant nexus standard means "a material influence on the chemical, physical, or biological integrity of" a paragraph (a)(1) water. The phrase "material influence" establishes that the agencies will be assessing the influence of the waters either alone or in combination on the chemical, physical, or biological integrity of a paragraph (a)(1) water and will provide qualitative and/or quantitative information and articulate a reasoned basis for determining that the waters being assessed significantly affect a paragraph (a)(1) water.

standard and are therefore assessed under the significant nexus standard, the results of the significant analysis will determine whether the subject water is jurisdictional and therefore should be documented in Section III.B. of the AJD Form or the water is non-jurisdictional and therefore should be documented in Section III.C. of the AJD Form.

As noted in Section IV.C.6.c.iii. of the preamble to the 2023 Rule, in implementing the significant nexus standard, the agencies generally intend to analyze waters under paragraph (a)(5) individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water. Assessment of an individual water under paragraph (a)(5)(ii) must be documented using AJD Form Appendix B-Significant Nexus Analysis for potential (a)(5)(ii) waters (Appendix B).

Use Appendix B to document the presence or absence of a significant nexus for each water being analyzed under paragraph (a)(5)(ii). Procedures for completing Appendix B are provided in Section C.3.2.7. of this Guidebook (below).

Completion of an Appendix B is required for all waters analyzed under paragraph (a)(5)(ii), regardless of whether the result is assertion or non-assertion of jurisdiction based on the significant nexus standard. If the result of the significant nexus analysis is a demonstration that the water has a significant nexus with a paragraph (a)(1) water, then document the water in the Section III.B. of the AJD Form in the table for paragraph (a)(5) waters. If the result of the significant nexus analysis is a demonstration that the water does not have a significant nexus with a paragraph (a)(1) water, then document the water in Section III.C. of the AJD form in the table for waters analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined to be non-jurisdictional.

Instructions for documenting a water that has been determined to be jurisdictional under paragraph (a)(5) of the 2023 Rule are provided below. See Section C.3.3. of this Guidebook (below) for instructions for how to document waters or features that are not jurisdictional under the Clean Water Act.

Paragraph (a)(5) waters: Intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4): (i) That are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3)(i); or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).			
(a)(5) water name	(a)(5) size in review area		Type of paragraph (a)(5) water
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

(a)(5) water name: Each water should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM.

(a)(5) size in review area: Each water being evaluated for jurisdiction within the review area requires a numerical size with a unit of measurement. In this table, the size should reflect the amount the water that is located within the review area, not the total size of the water. Enter the size in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a

different unit of measure than those described above.

Type of paragraph (a)(5) water: Select the type of paragraph (a)(5) water from the drop-down list that applies to the subject water.

Rationale for determination: Support the conclusion that a water meets the paragraph (a)(5) criteria with a discussion of all appropriate data sources using a reasoned basis supported by the record and document the assessment in the rationale section of the table.

Rationale for (a)(5)(i) determination: Support the conclusion that a water meets the (a)(5)(i) criteria. Supporting information should include, but is not limited to, the following:

- Document that the water is a relatively permanent, standing or continuously flowing body of water. [40]
- Describe the continuous surface connection from the water being assessed to a paragraph (a)(1) or (a)(3)(i) water.[41] (NOTE: It is often beneficial to include a figure in the AR that illustrates this continuous surface connection to the paragraph (a)(1) or (a)(3)(i) water).
- Name of the paragraph (a)(1) or (a)(3)(i) water to which the water being assessed under paragraph (a)(5) has a continuous surface connection. Where this paragraph (a)(1) or (a)(3)(i) water is outside of the review area, provide evidence in the rationale to support that this is a paragraph (a)(1) or (a)(3)(i) water. For a paragraph (a)(3)(i) water, see directions for completing the rationale sections for table (a)(3)(i) above. For a paragraph (a)(1) water, provide evidence to support that this is a paragraph (a)(1) water in Section IV.A. of the AJD form.

Rationale for paragraph (a)(5)(ii) determination: This subcategory of waters identifies intrastate lakes or ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4) that meet the significant nexus standard. Waters being analyzed under paragraph (a)(5)(ii) should generally be assessed individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.

The rationale for determination section of the paragraph (a)(5) table should include, but may not necessarily be limited to, identifying the Appendix B that documents the significant nexus analysis of the potential paragraph (a)(5)(ii) water (e.g., in the rationale section write, “See Appendix B #1 of 1 for the significant nexus analysis for this wetland.”).

C.3.2.7. Completing Appendix B - Significant nexus analysis for potential (a)(5)(ii) waters

C.3.2.7.1 General procedures for completing Appendix B

Each potential paragraph (a)(5)(ii) water should generally be analyzed individually to determine whether the significant nexus standard is met.

[40] Identify relatively permanent waters under paragraph (a)(5) using a similar approach to the approach described for relatively permanent tributaries (see 2023 Rule preamble Section IV.C.4.c.ii).

[41] Identify a continuous surface connection between a water being assessed under paragraph (a)(5) and a paragraph (a)(1) water or a tributary that is relatively permanent using the approach described for adjacent wetlands (see 2023 Rule preamble Section IV.C.5.c). Note, however, that waters assessed under paragraph (a)(5) are not subject to the adjacency requirement for jurisdictional adjacent wetlands.

If multiple copies of Appendix B are required, make additional copies of Appendix B before entering any data.

C.3.2.7.2. Detailed procedures for completing Appendix B

ORM Project Name: Enter the name of the action exactly as identified on the corresponding AJD Form.

ORM Identification Number: Enter the ORM identification number exactly as identified on the corresponding AJD Form.

Complete Appendix B (#X of X) Use numbers (e.g., #1 of 2) to identify each significant nexus analysis. For each water in the review area that requires a significant nexus analysis, list the Appendix number which documents the significant nexus analysis in the rationale section of the appropriate table in Section III of the AJD Form.

Step 1: Identify and describe the catchment (region): (location of downstream limit of catchment, and approximate size and extent of the catchment) (include map of catchment showing all waters within the review area[42] that are being analyzed under paragraph (a)(5)(ii), and the location of the review area). Catchments are delineated from the downstream-most point of the tributary that is most closely associated with the potential (a)(5)(ii) water(s) and include the land uphill that drains to that point.

- Identify the location of the downstream limit of the catchment.
- Describe the extent of the catchment area, including the approximate size of the catchment.
- Attach a map of the catchment showing the review area and showing all waters within the review area that are being analyzed under paragraph (a)(5)(ii).

Step 2: Identify the paragraph (a)(1) water to which the tributary that is most closely associated with the potential (a)(5)(ii) water(s) directly or indirectly flows. Where this paragraph (a)(1) water is located outside the review area, provide evidence to support that this is a paragraph (a)(1) water in Section IV.A. of the AJD Form.

Step 3: Describe the flowpath from the downstream limit of the tributary most closely associated with the potential (a)(5)(ii) water(s) to the paragraph (a)(1) water. (See footnotes 23 and 37.) (NOTE: It is often beneficial to include a figure in the AR that illustrates this flow path.)

Step 4: Use the table below to list each intrastate lake or pond, stream, and/or wetland within the review area that is being analyzed under paragraph (a)(5)(ii). Provide information explaining why the subject water does not meet the criteria for paragraphs (a)(1) through (a)(4) or paragraph (a)(5)(i). Also provide information supporting the rationale that this waterbody is most closely

[42] In implementing the significant nexus standard, the agencies generally intend to analyze waters under paragraph (a)(5) individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water. This approach reflects the agencies' consideration of public comments, as well as implementation considerations for waters assessed under paragraph (a)(5). (See 88 FR 3102). When assessing waters individually under paragraph (a)(5)(ii) of the 2023 Rule, it is not necessary to identify or consider any similarly situated waters in the region that are located outside of the review area. Supplemental information to identify and describe potential paragraph (a)(5)(ii) waters in the region, which are located outside of the review area, may be referenced in Section IV.C or provided in Section IV.D of the AJD form.

associated with the tributary reach that was selected to define the region.

Lake or pond, stream, or wetland name	Resource type	Explain why the subject water does not meet the criteria for paragraphs (a)(1) through (a)(4) or paragraph (a)(5)(i). Support the rationale that this waterbody is most closely associated with the tributary reach that was selected to define the region.
N/A	N/A	N/A

Lake or pond, stream, or wetland name: Provide the name of the intrastate lake or pond, stream, or wetland that is being analyzed. The name used on Appendix B should match the name used for the corresponding water on the AJD Form, AJD letter, and in ORM.

Resource type: Choose the resource from the drop-down box that matches the type of potential paragraph (a)(5)(ii) water.

Explain why the subject water does not meet the criteria for paragraphs (a)(1) through (a)(4) or paragraph (a)(5)(i). Support the rationale that this waterbody is most closely associated with the tributary reach that was selected to define the region.: Discuss the rationale that the potential paragraph (a)(5)(ii) water does not meet the criteria for paragraphs (a)(1) through (a)(4) or paragraph (a)(5)(i). Include site-specific information about the resource type and location, as well as the presence/lack of relative permanence and connectivity between the potential paragraph (a)(5)(ii) water and the associated tributary reach. Discuss the site-specific characteristics (i.e., topography and/or landscape characteristics, distance between the potential paragraph (a)(5)(ii) water and the associated tributary reach, etc.) and the rationale for determining that the tributary reach selected to define the region is most closely associated with the potential paragraph (a)(5)(ii) water.

Step 5: Use the tables below to consider the factors and assess the functions provided by each potential paragraph (a)(5)(ii) water(s) listed above. Each potential paragraph (a)(5)(ii) water should generally be evaluated individually. Complete the factors table by describing the site-specific conditions that relate to the potential paragraph (a)(5)(ii) water.[43]

[43] Supplemental information to consider the factors and assess the functions of waters in the region, which are located outside of the review area, may be referenced in Section IV.B, or Section IV.C. or provided in Section IV.D. of the AJD form

FACTORS
Distance from a water identified in paragraph (a)(1) (river miles and straight-line miles):
List the distance in both river miles and in straight-line miles between the potential (a)(5)(ii) water and the (a)(1) water.
Hydrologic factors, such as the frequency, duration, magnitude, timing, and rate of hydrologic connections, including shallow subsurface flow:
Describe the hydrologic factors that apply to the potential paragraph (a)(5)(ii) water.
Size, density, or number of waters that have been determined to be similarly situated:
Note that, because waters assessed under paragraph (a)(5)(ii) are generally assessed individually, generally only the total size of the potential paragraph (a)(5)(ii) water will be described.
Landscape position and geomorphology:
Generally, describe the landscape position and the geomorphology of the potential (a)(5)(ii) water in relation to the paragraph (a)(1) water, including characteristics such as topography, slope, and soil porosity.
Climatological variables such as temperature, rainfall, and snowpack:
Describe any climatological variables that apply to the analysis. At a minimum annual rainfall should be listed.

The functions table should be completed to describe the functions that are provided by the potential paragraph (a)(5)(ii) water. For each function, consider each factor to evaluate the likely strength of any effect of that function on a paragraph (a)(1) water. Consider whether the factors are likely to increase or decrease the strength of the influence of the function on the paragraph (a)(1) water. The first two factors, distance from the paragraph (a)(1) water and hydrology, will generally be given the greatest weight in the assessment of functions.

FUNCTIONS
Contribution of flow:
Describe the potential (a)(5)(ii) water's contribution of flow.
Trapping, transformation, filtering, and transport of materials (including nutrients, sediment, and other pollutants):
Explain the extent of the functions of the potential paragraph (a)(5)(ii) water with regard to trapping, transformation, filtering, and transport of materials (including nutrients, sediment, and other pollutants).
Retention and attenuation of floodwaters and runoff:
Describe the extent of any retention and attenuation of floodwaters and runoff provided by the potential paragraph (a)(5)(ii) water.
Modulation of temperature in waters identified in paragraph (a)(1):
Explain the extent of the influence of the potential paragraph (a)(5)(ii) water on the modulation of temperatures in the paragraph (a)(1) water.
Provision of habitat and food resources for aquatic species located in waters identified in paragraph (a)(1):
Describe any provisions of habitat and food resources functions provided for aquatic species located in a paragraph (a)(1) water.

Step 6: For each potential paragraph (a)(5)(ii) water within the review area, enter the name(s) of the water(s) in the table below and select a conclusion statement from the drop-down menu that applies to that water. Consider the factors and assess the functions of the potential paragraph (a)(5)(ii) water and whether the subject water significantly affects the chemical, physical, or biological integrity of the paragraph (a)(1) water to support the conclusion in the summary table. The analysis should consider the factors in the 2023 Rule to analyze the strength of the influence of the functions on the paragraph (a)(1) water and then assess the functions of the potential paragraph (a)(5)(ii) water being analyzed. In general, functions associated with stronger factors increase the likelihood of demonstrating a material influence on paragraph (a)(1) waters. The agencies will consider all of the factors together when assessing the functions and the strength of the influence in the context of each case-specific determination of jurisdiction.

Conclusion Summary	
Water name: Click or tap here to enter text.	Conclusion: N/A
Rationale Summary: Click or tap here to enter text.	

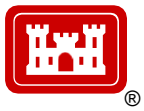
C.3.3. Completing Section III.C. Waters or features that are not jurisdictional under the Clean Water Act

C.3.3.1 Waters or features analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined non-jurisdictional

Any potential paragraph (a)(3)(ii) tributaries, potential paragraph (a)(4)(iii) adjacent wetlands and/or potential paragraph (a)(5)(ii) waters that are analyzed in Appendix A or Appendix B and are determined to not significantly affect a paragraph (a)(1) water should be listed in this table.

Waters analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined non-jurisdictional: Tributaries of waters identified in paragraph (a)(1) or (2); and/or wetlands adjacent to waters identified in paragraph (a)(2) or (3); and/or intrastate lakes and ponds, streams, or wetlands not identified as (a)(1) through (4) waters; that either alone or in combination with similarly situated waters in the region, do not significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).			
Water name	Water size in review area		Type of water for which significant nexus was not met:
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

Water name: Each water should have a unique name. Assign names consistent with the maps



and drawings in the AR and consistent with the aquatic resource names used in ORM.

Water size in review area: Each water being analyzed for jurisdiction within the review area requires a numerical size with a unit of measurement. In this table, the size should reflect the amount the water that is located within the review area, not the total size of the water. Enter the size in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a different unit of measure than those described above.

Type of water for which significant nexus was not met: Select the criterion from the drop-down list that applies to the subject water.

Rationale for determination: The rationale for determination section of the table should include, but may not necessarily be limited to, identifying the Appendix A or Appendix B that documents the significant nexus analysis which supports the selected determination (e.g., in the rationale section write, “See Appendix B #1 of 1 for the significant nexus analysis for this wetland.”). Instructions on how to complete Appendix A and Appendix B are provided in Section C.3.2.5. and Section C.3.2.7. of this Guidebook (above).

C.3.3.2. Excluded features

Paragraph (b) of the 2023 Rule codifies eight exclusions from the definition of “waters of the United States.” Where a feature satisfies the terms of an exclusion, it is excluded from jurisdiction even where the feature would otherwise be jurisdictional under paragraphs (a)(2) through (5) of the 2023 Rule. Where a feature satisfies the terms of an exclusion but would otherwise be jurisdictional under paragraph (a)(1) of the rule, the feature is not excluded. If a previously excluded feature no longer meets and satisfies the terms of the exclusion, it is no longer an excluded feature.

In implementing the 2023 Rule, generally consider first if a water qualifies as a paragraph (a)(1) water (i.e., a traditional navigable water, the territorial seas, or an interstate water). If a waterbody is determined to be a paragraph (a)(1) water, then document the jurisdictional status using the (a)(1) table in Section III.B. of the AJD Form. If a water is not a paragraph (a)(1) water, generally consider next whether any of the exclusions in paragraph (b) of the 2023 Rule apply to the water. The exclusions in the 2023 Rule do not apply to paragraph (a)(1) waters, and therefore, a traditional navigable water, the territorial seas, or an interstate water cannot be excluded under the 2023 Rule, even if the water would otherwise meet the criteria for an exclusion. If a water does not qualify as a paragraph (a)(1) water and an exclusion is applicable (e.g., waters that meet the waste treatment system exclusion, wetlands that qualify as prior converted cropland, etc.), the water would not be jurisdictional under the 2023 Rule. If the water is not a paragraph (a)(1) water, and an exclusion under paragraph (b) does not apply, then generally determine next if the water can be assessed under paragraphs (a)(2) through (a)(4) of the 2023 Rule. If the water does not meet the criteria for paragraphs (a)(1) through (4), assess next if the water is jurisdictional under paragraph (a)(5) of the 2023 Rule. If a water is not jurisdictional under paragraphs (a)(1) through (a)(5) of the 2023 Rule, then the water is not a WOTUS.

Wetlands may develop within an excluded feature. Wetlands that develop entirely within the confines of an excluded feature should be considered part of the excluded feature and are not jurisdictional.[44]

The excluded features table in Section III.C. of the AJD Form should be used to identify each excluded feature in the review area and provide a rationale to demonstrate that the feature meets one of the 2023 Rule's exclusions.

An exception to the requirement to document all excluded features in the review area may be made when excluded features are transient features on the landscape that are difficult to document due to their non-permanent nature. For example, the paragraph (b)(8) exclusion refers to erosional features. While these features may be present on the surface in a review area, they may lack the characteristics, such as an OHWM, to be considered an aquatic resource and therefore do not require in-depth analysis for jurisdiction. It is not expected that the district will identify or document on the AJD Form every excluded rill, gully, or erosional feature on the landscape. However, the district will document on the AJD Form any particular rill, gully, or erosional feature that a requestor specifically asks the district to document. The district may also elect to document any such feature on a case-specific basis, such as when the feature is relevant to analysis of the jurisdictional status of another water.

(b)(1) – (b)(8) Excluded Features			
Excluded feature name	Excluded feature size in review area		Exclusion
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

Excluded feature name: Each excluded feature should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM2.

Excluded feature size in the review area: Each excluded feature being evaluated for jurisdiction within the review area requires a numerical size with a unit of measurement. In this table, the size should reflect the amount of the water or feature that is located within the review area, not the total size of the water or feature. Enter the size in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a different unit of measure than those described above.

Exclusion: Select the exclusion category from the drop-down list that applies to the feature being evaluated.

[44] However, a wetland may be located both within and outside the boundaries of an excluded feature or entirely outside the boundaries of an excluded feature. In these circumstances, the wetland will be evaluated under the 2023 Rule's provisions for "adjacent wetlands" and paragraph (a)(5) "intrastate lakes and ponds, streams, or wetlands" and not considered as part of the excluded feature.

Rationale for determination:
An assessment that a water meets one of the exclusions in paragraphs (b)(1) through (b)(8) may require the use of multiple data sources. Support the conclusion that a feature meets an exclusion with a discussion of all data sources used in the rationale section for each specific feature in this section of the AJD Form.

When the AJD includes a delineation of the limits (boundaries) of jurisdiction and the boundaries are relevant to a particular exclusion, discuss in the rationale which indicator(s) and/or methods were used to determine the boundaries of the excluded area entered in this section of the AJD Form.

Several of the 2023 Rule's exclusions refer to "dry land." The term "dry land" refers to areas of the geographic landscape that do not include waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like. Where an exclusion refers to a feature being created in, excavated in, draining, or reverting to "dry land," the rationale for the determination must document that any and all dry land criteria in the exclusion are applicable to the feature being assessed for the exclusion.

Based on the exclusion selected for a specific feature, the corresponding rationale must also consider the following information:

Rationale for (b)(1) Waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act:

- State how it was determined that the waste treatment system was designed to meet the requirements of the CWA (e.g., it was constructed pursuant to a Section 404 permit and if there are discharges from the system to "waters of the United States," such discharges are covered by a Section 402 National Pollution Discharge Elimination System (NPDES) permit).
- Demonstrate that the waste treatment system has not ceased to serve the treatment function for which it was designed.

Rationale for (b)(2) Prior converted cropland designated by the Secretary of Agriculture. The exclusion would cease upon a change of use which renders the area no longer available for the production of agricultural commodities. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA:

For this exclusion to apply, the excluded area must be designated as "prior converted" (PC) by the Secretary of Agriculture.[45]

- State that the USDA has certified that the excluded area has been designated as "prior converted" (PC) and reference the USDA certification. The AR should include the USDA's certification that the area is designated as PC. The USDA certification will typically need to be provided by the requestor asserting that the wetland at issue is

[45] This rule will implement the prior converted cropland exclusion so that it encompasses all areas designated by USDA as PC, and no additional areas. The exclusion for prior converted cropland does not apply to areas designated by USDA as meeting other Food Security Act (FSA) exemptions, including exemptions for farmed wetlands, or areas that meet the USDA definition of wetlands and do not have a valid prior converted cropland designation.

excluded.[46]

- Support that no *change in use*[47] has occurred. To determine that a change in use has not occurred, document that no action has occurred (or is planned to occur, based on the best available information) that would make the prior converted cropland no longer available for the production of an agricultural commodity.[48]

Rationale for (b)(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water:

- Support the determination that the ditch satisfies the following three criteria to satisfy the exclusion:
  - Document that the ditch was excavated wholly in dry land;
  - Document that the ditch drains only dry land; and
  - Document that the ditch does not carry a relatively permanent flow of water.[49]

Rationale for (b)(4) Artificially irrigated areas that would revert to dry land if the irrigation ceased:

- Provide a discussion supporting the determination that the specific area is artificially irrigated.
- Provide a discussion of the evidence supporting that the area would revert to dry land in the absence of the artificial irrigation.

Rationale for (b)(5) Artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing:

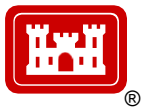
- Provide a discussion of the evidence supporting the determination that the feature is an artificially constructed lake or pond that currently satisfies the terms of the exclusion.
- Provide information to support that the footprint of the feature was dry land before the

[46] For purposes of the CWA exclusion, a landowner may demonstrate that a water retains its prior converted cropland status through a USDA [NRCS] prior converted cropland certification/designation.

[47] A "change in use" is an action that would make the prior converted cropland no longer available for the production of an agricultural commodity. A "change in use" is a proposed or planned modification of prior converted cropland for filling and development, so that the area would no longer be available for commodity crop production after development. Plans or proposals for development may include applications for CWA section 404 permits or other federal, state, or local permits for residential, commercial, or industrial development; energy infrastructure; mining; or other non-agricultural uses. On the one hand, the agencies recognize that plans and proposals do not themselves change the characteristics of a wetland, and that some do not come to fruition. On the other hand, the agencies would like to provide certainty and fair notice to landowners and other persons about the status of the areas under their control while they are in the planning stage. To address these considerations, the agencies will interpret the prior converted cropland designation to continue to apply to a farmer's use of prior converted cropland for agricultural purposes even after development plans or proposals have been developed, and even after land has been sold. However, the prior converted cropland designation would not be available to the developer for the same parcel once proposals or plans for development have begun, even prior to a discharge occurring in the wetland.

[48] An area may retain its prior converted cropland status if it is used for any of the agricultural purposes identified in the 2020 Navigable Waters Protection Rule preamble, which include but are not limited to idling land for conservation uses (*e.g.,* habitat; pollinator and wildlife management; and water storage, supply, and flood management); irrigation tailwater storage; crawfish farming; cranberry bogs; nutrient retention; and idling land for soil recovery following natural disasters like hurricanes and drought, as well as crop production, haying, and grazing, so long as the area remains available for the production of agricultural commodities. See 85 FR 22321 (April 21, 2020).

[49] The phrase, "does not carry a relatively permanent flow of water" means that the ditch is not a relatively permanent water as that term is explained in the 2023 Rule.



excavation or diking.
- Provide a discussion supporting that the feature is currently used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.[50]

Rationale for (b)(6) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking dry land to retain water for primarily aesthetic reasons:
- Provide a discussion of the evidence supporting the determination that the area is an artificial reflecting or swimming pool or other small ornamental body of water created by excavating or diking dry land to retain water for primarily aesthetic reasons.
- Provide information to support that the footprint of the feature was dry land before the excavation or diking.

Rationale for (b)(7) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of "waters of the United States":
- Provide a discussion of the evidence supporting the determination that the area is a waterfilled depression created in dry land incidental to construction activity or a pit excavated in dry land for the purpose of obtaining fill, sand, or gravel.
- Provide information to support that the footprint of the feature was dry land before the excavation or diking.
- Provide information to document that the construction or excavation operation has not been abandoned.

Rationale for (b)(8) Swales and erosional features (e.g., gullies, small washes) characterized by low volume, infrequent, or short duration flow:
- Provide a discussion of the evidence supporting the determination that the swale or erosional feature is a discrete topographic feature characterized by low volume, infrequent, or short duration flow.
- Document and discuss the distinguishing characteristic(s) that lead to this feature(s) exclusion (e.g., lack of an OHWM, lack of a defined channel, lack of natural wetland characteristics, etc.).[51]

C.4 Completing Section IV. SUPPORTING INFORMATION

C.4.1. Completing Section IV.A.: Paragraph (a)(1) water that is outside of the review area:

Assessment of the jurisdictional status of a paragraph (a)(2), (a)(3), (a)(4), and/or (a)(5) water requires the identification of a relevant paragraph (a)(1) water. For instance:
- A paragraph (a)(3) tributary must flow directly or indirectly through another water or waters to a paragraph (a)(1) water.
- Waters which meet the significant nexus standard must, alone or in combination with similarly

[50] The agencies recognize that artificial lakes and ponds are often used for more than one purpose and can have other beneficial purposes, such as animal habitat, water retention, or recreation. The agencies consider these features as excluded even when there is another incidental beneficial use of the feature.

[51] The agencies do not consider wetlands forming within low gradient depressional areas to be "within the confines of a non-jurisdictional feature," and such wetlands would be assessed to determine if they meet any of the provisions of the 2023 Rule.

situated waters in the region, significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.
- Paragraph (a)(2) impoundments must have a traceable flowpath downstream from the structure that creates the impoundment, to a paragraph (a)(1) water (unless they are impoundments of adjacent wetlands, in which case the water to which the wetland is adjacent must meet either the relatively permanent standard or the significant nexus standard and therefore must have a relationship with a paragraph (a)(1) water).
- Paragraph (a)(4)(i) wetlands are adjacent to paragraph (a)(1) waters.

When the paragraph (a)(1) water is not in the review area, complete this section to document the jurisdictional status of that paragraph (a)(1) water. See Section C.2.3.1. of this Guidebook (above) on documenting paragraph (a)(1) waters.

When documentation of the jurisdictional status of waters in the review area is dependent upon more than one paragraph (a)(1) water that is located outside the review area, provide the required information for the additional paragraph (a)(1) waters in Section IV.D. of the AJD Form.

C.4.2. Completing Section IV.B.: Significant nexus analyses

Complete this section to identify which, if any, significant nexus analyses are part of the AJD Form. A minimum of one checkbox must be checked in this section. A maximum of two checkboxes may be checked in this section. The information in this section should be consistent with the information in Section II, Section III.B., and Section III.C. of the AJD Form.

C.4.3. Completing Section IV.C.: Data, models, and other relevant methods

Complete this section to provide a list of the data sources used to support the AJD. This information should be accurate and reliable. Provide conclusions made from the referenced data sources in the appropriate section(s) of the AJD Form and in Section IV (when necessary).

The resources listed on the AJD Form do not represent an all-inclusive list of all possible sources of information; rather, the Form includes the categories of information that are most commonly used to support an AJD (e.g., maps, aerial photography, soil surveys, watershed studies, scientific literature, previous JDs for the review area, and local development plans). Other data sources which were used to support the AJD and that are not specifically listed on the Form should be noted in the table under *Other data sources used to aid in this determination*.

When completing the AJD Form, be sure to check all the boxes that identify the data considered as part of the AJD decision, and provide titles, names, dates, and other requested information in the relevant spaces.

- Any data sources used to support the AJD should be referenced (even where the data are non-site specific and/or publicly available information). You may include parenthetical references throughout the AJD Form where appropriate, while a full citation can be produced and annotated in Section IV.C. Citations to publicly available information should be adequate to ensure that a person unfamiliar with the site could reasonably identify the data source used, such that they can independently obtain and review the cited data. Titles, dates, and sources in the citations should be adequate to reasonably identify any maps and/or data sources in the AR.

- It is recommended that a copy of the cover page and/or specific pages from the publicly available document(s) (including maps) used to support the AJD be included in the AR.

Additional information for select sections is as follows:

Aquatic resources delineation submitted by, or on behalf of, the requestor: Provide the title(s) and date(s) of map(s), delineation report(s), data sheet(s), and/or other supporting information generated/supplied by the requestor. Example: "ABC delineation report, dated 5/1/2023," or "Revised Wetland Determination Data Sheets – Arid West Region, dated 4/12/2023." Identify information received without a date using the date it was received.

The aquatic resources delineation submitted by or on behalf of the requestor is sufficient for purposes of this AJD: Select "Yes" "No" or "N/A" from the drop-down list. In this context:

- *Yes* – means that the district has determined the entirety of the information provided by or on behalf of the requestor accurately reflects the district's conclusions on the AJD.
- *No* – means that the district disagrees with some or all of the submitted information. If "*No"* is selected, provide a rationale describing why it was determined to be unacceptable and what information was used to supplement the missing information and/or address the incorrect information. If some of the information is acceptable, identify what information (including specific data sheets, as necessary) was acceptable.
- *N/A* – means that no delineation was provided from the requestor.

Aquatic resources delineation prepared by the USACE / Wetland field data sheets prepared by the USACE: Enter title(s) and date(s) of delineation and/or data sheets prepared by the district. The district will prepare delineation and/or data sheets either in the absence of a delineation and/or data sheets provided by the requestor, or to replace some or all of the delineation and/or data sheets submitted where USACE has determined they were insufficient to support the conclusions in the AJD. Where it is determined that the delineation and/or data sheets (*i.e., Aquatic resources delineation submitted by or on behalf of the requestor*) are insufficient, this entry will typically be checked and the district delineation and/or data sheets that support the findings in the AJD will be provided in the AR and referenced on the AJD Form here.

OHWM data sheets prepared by the USACE: Enter title(s) and date(s) of any OHWM data sheets prepared by the district. The district will prepare OHWM data sheets when needed. This could be in the absence of OHWM data sheets that were needed but were not provided by the requestor, or to replace some or all of the OHWM data sheets submitted where USACE has determined they were insufficient to support the conclusions in the AJD. Where it is determined that OHWM data sheets (*i.e., Aquatic resources* d*elineation submitted by or on behalf of the requestor*) are insufficient, this entry will typically be checked and the district OHWM data sheets that support the findings in the AJD will be provided in the AR and referenced on the AJD Form here.

USACE site visit: If a site visit was conducted by USACE staff, check the box, select the date(s) that the site visit(s) occurred and provide the title and date of memorandum or field notes which document the site visit(s). If more than one site visit occurred, write in the additional dates of the site visits.

Previous Jurisdictional Determinations (AJDs or PJDs) addressing the same (or portions of the same) review area: If previous JDs are associated with all or a portion of the review area, enter the ORM number(s) and finalized date(s) of each one. NOTE: Do not include jurisdictional determinations that are listed in Section I of the AJD Form, under *Other sites (e.g., offsite mitigation sites, disposal sites or other portions of the review areas, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form(s).*

Photographs: For any photographs that are not aerial photos, which could be site photos provided by the requestor or taken by USACE staff during a site visit or images such as a Google Street View screen capture, provide source of the photograph, title(s) and date(s) of each (e.g., month/year, or day/month/year where possible).

Aerial Imagery: Aerial photographs can come from sources such as Google Earth, MapQuest, Bing, USDA, Landsat, and others. The citation must include both the source and the date of the aerial photograph (i.e., not just "2008 aerial," but "2008 Digital Globe aerial"). Provide source(s), titles, and date(s) of each (e.g., month/year, or day/month/year where possible).

LiDAR: LiDAR topographic and bathymetric data can come from sources such as the National Map, United States Interagency Elevation Inventory, and others. Provide source(s), title(s) and date(s) of when the LiDAR data was created (e.g., month/year, or day/month/year where possible).

USDA NRCS Soil Survey, USFWS NWI Maps, USGS Topographic Maps, USGS NHD data/maps, and USGS Dynamic Surface Water Extent: These are commonly used data sources and should be cited adequately to ensure that a person unfamiliar with the site could reasonably identify the data source used, such that they can independently obtain and review the cited data. Typically, providing accurate titles and dates of these materials will be sufficient.

Section 10 navigability resource used: Identify the document (e.g., District Section 10 list, "navigable waters of the United States" determination, Act of Congress, or Federal court decision) or the data source (i.e., information documenting the water as a tidal water) which supports the determination that a water is a navigable water of the United States in accordance with 33 CFR 329. Include appropriate identifying information (e.g., dates, websites, public notices, and pertinent information sources) for the document or data source used.

Other data sources used to aid in this determination: Use this table to capture sources used to support the AJD which are not listed next to the check boxes in this section (e.g., relevant USGS gage information, NRCS (USDA) PC determinations and designations, associated ORM numbers, relevant climatic or meteorologic data sources, EPA water quality data, applicable/relevant case law, scientific literature, modeling tools, etc.). Include appropriate identifying information (e.g., dates, websites, public notices, and pertinent information sources) for the document or data source used, such that the reader could reasonably identify the data source used. The source categories in the table are provided in an effort to minimize the length of the AJD Form. Copy specific rows as necessary by following the instructions found in the Section B.2.2 of this Guidebook.

Data source or model (Select)	Name, date, and other relevant information
USGS Sources	N/A
USEPA Sources	N/A
USDA Sources	N/A
NOAA Sources	N/A
USACE Sources	N/A
State/Local/Tribal Sources	N/A
Other Sources	N/A

C.4.4. Completing Section IV.D: Additional Comments to Support AJD

This section is used to provide any additional information to support the conclusions made in the AJD Form. If complex site conditions are present, clarify extenuating conditions in this section. Include a detailed discussion of any of the entries on the AJD Form that require further clarification and/or that cannot fit in the space provided. Provide full references for any parenthetical citations made throughout the AJD Form if they have not been captured in Section IV.C. of the AJD Form. When providing information in this section, identify the waters to which the information is relevant, using names that are consistent with other sections of the AJD Form, the maps and drawings in the AR, and with the aquatic resource names used in ORM.