



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2004

CENAP-OPR

April 28, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),¹ 2023-00323-85 MFR 1 of 1²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended,

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. Ditch A-Non-Jurisdictional
 - ii. Ditch B-Non-Jurisdictional
 - iii. Ditch C-Non-Jurisdictional
 - iv. Ditch D-Non-Jurisdictional
 - v. Ditch E-Non-Jurisdictional
 - vi. Ditch F-Non-Jurisdictional
 - vii. Ditch G-Non-Jurisdictional
 - viii. Ditch H- Non-Jurisdictional
 - ix. Ditch I-Section 404 Jurisdictional
 - x. Ditch J- Non-Jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)
- d. Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection'

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Under The Definition Of “Waters Of The United States” Under The Clean Water Act (March 12, 2025)

3. REVIEW AREA. The review area is approximately 35 acres of a larger 50.50 acres site located at tax map parcel 533-18.00-39.00 on Marlyn Lane in Selbyville, Sussex County, Delaware. Based on NOAA data approximately 0.42 inches of rainfall fell the week prior to the site investigation. Even with the rainfall, the region remains in a drought condition.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Greys Creek located approximately 2 miles from the review area. Greys Creek is identified as an estuarine waterway by the United States Fish and Wildlife Service National Wetland Inventory Mapper.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The ditches flow east into Sub 1 Prong 2 of the White Oaks Swamp Prong of the Bunting Tax Ditch and White Oak Swamp Prong, and enters into the Bunting Main Tax Ditch, which then empties into Greys Creek.
6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as “navigable in law” even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
- b. The Territorial Seas (a)(1)(ii): N/A
- c. Interstate Waters (a)(1)(iii): N/A
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): Ditch I is approximately 1,182 linear feet within the review area. Ditch I scores a 20 on the NC Division of Water Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an intermittent feature. Ditch I flows directly into White Oak Swamp Tax Ditch and is considerably deeper and wider than all other ditches on site and exhibited an ordinary high water mark with a prominent debris line, recent sediment deposits on vegetation, and dried algae. An observable base flow was identifiable in the White Oak Swamp Tax Ditch along the northern parcel boundary during the time of investigation. These indicators were identifiable even in drought conditions. For these reasons, Ditch B2 meets the definition of an (a)(3) Tributary.
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature

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within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁹

Ditch A is approximately 1,150 linear feet within the review area. The ditch reach is excavated wholly in dry land, drains only dry land and does not carry a relatively permanent flow of water. Additionally, the ditch lacks a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water. Ditch A scores a 7.25 on the NC Division of Water Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an ephemeral feature. The NC stream methodology is an acceptable substitution for the Delaware Stream methodology, as the Delaware stream methodology is modeled after the NC stream methodology. All ditches within the property are clearly man-made and none are a result of straightened streams in natural valleys. The ditch did not support a base flow of water at the time of the investigation and site visit. The ditch is dominated by cocklebur, nutsedge, swamp smartweed, Pennsylvania smartweed, morning glory, ragweed, common reed, foxtail, and barnyard grass. For these reasons, the ditch meets the (b)(3) ditch exclusion.

Ditch B is approximately 300 linear feet within the review area. The ditch reach is excavated wholly in dry land, drains only dry land and does not carry a relatively permanent flow of water. Additionally, the ditch lacks a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water. Ditch B scores a 7.25 on the NC Division of Water Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an ephemeral feature. The NC stream methodology is an acceptable substitution for the Delaware Stream methodology, as the Delaware stream methodology is modeled after the NC stream methodology. All ditches within the property are clearly man-made and none are a result of straightened streams in natural valleys. The ditch did not support a base flow of water at the time of the investigation and site visit. The ditch is dominated by cocklebur, nutsedge, swamp smartweed, Pennsylvania smartweed, morning glory, ragweed, common reed, foxtail, and barnyard grass. For these reasons, the ditch meets the (b)(3) ditch exclusion.

Ditch C is approximately 425 linear feet within the review area. The ditch reach is excavated wholly in dry land, drains only dry land and does not carry a relatively permanent flow of water. Additionally, the ditch lacks a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water. Ditch C scores a 7.5 on the NC Division of Water

⁹ 88 FR 3004 (January 18, 2023)

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Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an ephemeral feature. The NC stream methodology is an acceptable substitution for the Delaware Stream methodology, as the Delaware stream methodology is modeled after the NC stream methodology. All ditches within the property are clearly man-made and none are a result of straightened streams in natural valleys. The ditch did not support a base flow of water at the time of the investigation and site visit. The ditch is dominated by cocklebur, nutsedge, swamp smartweed, Pennsylvania smartweed, morning glory, ragweed, common reed, foxtail, and barnyard grass. For these reasons, the ditch meets the (b)(3) ditch exclusion.

Ditch D is approximately 1,225 linear feet within the review area. The ditch reach is excavated wholly in dry land, drains only dry land and does not carry a relatively permanent flow of water. Additionally, the ditch lacks a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water. Ditch D scores a 7.5 on the NC Division of Water Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an ephemeral feature. The NC stream methodology is an acceptable substitution for the Delaware Stream methodology, as the Delaware stream methodology is modeled after the NC stream methodology. All ditches within the property are clearly man-made and none are a result of straightened streams in natural valleys. The ditch did not support a base flow of water at the time of the investigation and site visit. The ditch is dominated by cocklebur, nutsedge, swamp smartweed, Pennsylvania smartweed, morning glory, ragweed, common reed, foxtail, and barnyard grass. For these reasons, the ditch meets the (b)(3) ditch exclusion.

Ditch E is approximately 455 linear feet within the review area. The ditch reach is excavated wholly in dry land, drains only dry land and does not carry a relatively permanent flow of water. Additionally, the ditch lacks a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water. Ditch E scores an 8 on the NC Division of Water Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an ephemeral feature. The NC stream methodology is an acceptable substitution for the Delaware Stream methodology, as the Delaware stream methodology is modeled after the NC stream methodology. All ditches within the property are clearly man-made and none are a result of straightened streams in natural valleys. The ditch did not support a base flow of water at the time of the investigation and site visit. The ditch is dominated by cocklebur, nutsedge, swamp smartweed, Pennsylvania smartweed, morning glory, ragweed, common reed, foxtail, and barnyard grass. For these reasons, the ditch meets the (b)(3) ditch exclusion.

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Ditch F is approximately 1,045 linear feet within the review area. The ditch reach is excavated wholly in dry land, drains only dry land and does not carry a relatively permanent flow of water. Additionally, the ditch lacks a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water. Ditch F scores a 5.5 on the NC Division of Water Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an ephemeral feature. The NC stream methodology is an acceptable substitution for the Delaware Stream methodology, as the Delaware stream methodology is modeled after the NC stream methodology. All ditches within the property are clearly man-made and none are a result of straightened streams in natural valleys. The ditch did not support a base flow of water at the time of the investigation and site visit. The ditch is dominated by cocklebur, nutsedge, swamp smartweed, Pennsylvania smartweed, morning glory, ragweed, common reed, foxtail, and barnyard grass. For these reasons, the ditch meets the (b)(3) ditch exclusion.

Ditch G is approximately 385 linear feet within the review area. The ditch reach is excavated wholly in dry land, drains only dry land and does not carry a relatively permanent flow of water. Additionally, the ditch lacks a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water. Ditch G scores a 14 on the NC Division of Water Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an ephemeral feature. The NC stream methodology is an acceptable substitution for the Delaware Stream methodology, as the Delaware stream methodology is modeled after the NC stream methodology. All ditches within the property are clearly man-made and none are a result of straightened streams in natural valleys. The ditch did not support a base flow of water at the time of the investigation and site visit. The ditch is dominated by cocklebur, nutsedge, swamp smartweed, Pennsylvania smartweed, morning glory, ragweed, common reed, foxtail, and barnyard grass. For these reasons, the ditch meets the (b)(3) ditch exclusion.

Ditch H is approximately 620 linear feet within the review area. The ditch reach is excavated wholly in dry land, drains only dry land and does not carry a relatively permanent flow of water. Additionally, the ditch lacks a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water. Ditch G scores a 7.25 on the NC Division of Water Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an ephemeral feature. The NC stream methodology is an acceptable substitution for the Delaware Stream methodology, as the Delaware stream methodology is modeled after the NC stream

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methodology. All ditches within the property are clearly man-made and none are a result of straightened streams in natural valleys. The ditch did not support a base flow of water at the time of the investigation and site visit. The ditch is dominated by cocklebur, nutsedge, swamp smartweed, Pennsylvania smartweed, morning glory, ragweed, common reed, foxtail, and barnyard grass. For these reasons, the ditch meets the (b)(3) ditch exclusion.

Ditch J is approximately 430 linear feet within the review area. The ditch reach is excavated wholly in dry land, drains only dry land and does not carry a relatively permanent flow of water. Additionally, the ditch lacks a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water. Ditch G scores a 7.25 on the NC Division of Water Quality-Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11, which qualifies as an ephemeral feature. The NC stream methodology is an acceptable substitution for the Delaware Stream methodology, as the Delaware stream methodology is modeled after the NC stream methodology. All ditches within the property are clearly man-made and none are a result of straightened streams in natural valleys. The ditch did not support a base flow of water at the time of the investigation and site visit. The ditch is dominated by cocklebur, nutsedge, swamp smartweed, Pennsylvania smartweed, morning glory, ragweed, common reed, foxtail, and barnyard grass. For these reasons, the ditch meets the (b)(3) ditch exclusion.

- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

N/A

- 9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. USACE site visit conducted on February 7, 2024.
- b. Report created by Watershed ECO, dated September 30, 2024.
- c. U.S. Army Corps of Engineers (USACE) Request for Jurisdictional Determination (JD), dated January 16, 2024.

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- d. Historic Aerial Imagery, dated 1926, 1937, 1961, 1997, 2002, 2012, 2017, 2021, and 2022, 9 sheets.
- e. WETLANDS/WATERWAY EXHIBIT PLAN, prepared by Becker Morgan Group, dated, January 15, 2025, 2 sheets.

10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

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METES & BOUNDS FOR ON-SITE DITCHES

DITCH A			
LINES	LENGTH	CHD. BEARING	
L25	213.84'	S41° 47' 07" W	
L26	188.37'	S41° 26' 41" W	
L27	342.69'	S41° 12' 41" W	
L28	5.00'	S48° 32' 16" E	
L29	342.70'	N41° 42' 47" E	
L30	188.34'	N41° 26' 41" E	
L31	213.43'	N41° 47' 07" E	
L32	239.70'	N41° 18' 43" E	
L33	100.82'	N40° 59' 11" E	
L34	52.42'	N44° 48' 54" E	
L35	8.66'	N40° 59' 11" E	
L36	4.04'	N81° 23' 04" E	
L37	10.61'	S53° 21' 57" E	
L38	27.68'	S47° 33' 44" E	
L39	97.26'	S42° 22' 50" E	
L40	10.00'	N47° 37' 10" W	
L41	97.26'	N42° 22' 50" W	
L42	29.12'	N37° 27' 19" W	
L43	18.30'	N53° 21' 57" W	
L44	15.81'	N41° 23' 04" W	
L45	26.91'	S38° 51' 42" W	
L46	39.66'	S37° 22' 10" W	
L47	100.78'	S40° 59' 11" W	
L48	75.75'	S41° 28' 17" W	
L49	160.97'	S39° 50' 46" W	
L51	47.52'	S39° 33' 43" E	
L55	55.23'	N44° 58' 31" E	
L66	10.00'	S47° 37' 10" W	

DITCH B		
LINE	LENGTH	CHD. BEARING
L24	295.38'	S45° 26' 38"E
L50	398.84'	N45° 30' 34"W

DITCH C		
LINE	LENGTH	CHD. BEARING
L19	165.51'	S47° 13' 41"W
L20	271.51'	S46° 57' 07"W
L21	5.00'	S42° 43' 53"E
L22	271.51'	N47° 35' 06"E
L23	165.80'	N47° 13' 41"E

DITCH D		
LINE	LENGTH	CHD. BEARING
L1	9.00'	S87° 17' 09"W
L2	60.29'	N11° 01' 37"W
L3	212.53'	N10° 02' 55"W
L4	231.70'	N10° 41' 34"W
L5	237.86'	N10° 59' 05"W
L6	307.06'	N9° 52' 41"W
L7	198.66'	N10° 34' 55"W
L8	54.52'	N31° 56' 39"W
L12	56.56'	S31° 56' 39"E
L13	200.61'	S10° 34' 55"E
L14	307.03'	S10° 48' 34"E
L15	237.78'	S11° 04' 24"E
L16	231.79'	S10° 41' 34"E
L17	274.01'	S10° 02' 18"E

DITCH E		
LINE	LENGTH	CHD. BEARING
L9	86.23'	N87° 17' 09"E

DITCH F		
LINE	LENGTH	CHD. BEARING
L52	208.16'	S42° 36' 42"W
L53	223.56'	S41° 17' 02"W
L54	403.99'	S41° 36' 57"W
L55	229.62'	S41° 00' 09"W
L56	3.00'	S48° 07' 27"E
L57	229.66'	N42° 44' 57"E
L58	195.51'	N41° 29' 17"E
L59	277.28'	N41° 41' 34"E
L60	154.72'	N41° 09' 37"E
L61	206.66'	N42° 36' 42"E

DITCH G		
LINE	LENGTH	CHD. BEARING
L88	101.84'	N40° 03' 25"E
L89	249.93'	N37° 20' 27"E
L90	8.17'	S76° 06' 34"E
L91	8.11'	S29° 07' 30"E
L92	250.18'	S38° 28' 19"W
L93	95.43'	S37° 46' 58"W
L94	15.35'	N76° 05' 20"W

DITCH H		
LINE	LENGTH	CHD. BEARING
L71	60.65'	S77° 05' 54"E
L72	365.27'	S82° 52' 12"E
L73	201.31'	N30° 32' 14"E

DITCH I		
LINE	LENGTH	CHD. BEARING
L74	30.15'	S88° 11' 40"W
L75	329.76'	S40° 26' 01"W
L76	15.88'	S20° 25' 35"W
L77	15.59'	S29° 10' 26"E
L78	752.10'	S53° 13' 09"E

DITCH J		
LINE	LENGTH	CHD. BEARING
L62	123.94'	S41° 06' 55"E
L63	23.80'	N39° 39' 49"W
L64	126.68'	N40° 59' 24"W
L67	23.93'	S39° 40' 20"E
L68	77.09'	S41° 29' 21"E
L70	82.95'	N41° 29' 21"W
L79	15.52'	S38° 49' 07"W

PROJECT TITLE

LANDS OF
**MARTHA P.
WHITWORTH**

38510 MARLYN LN.
SELBYVILLE
SUSSEX COUNTY, DE
BALTIMORE HUNDRED

SHEET TITLE

WETLANDS/WATERWAY EXHIBIT PLAN

ISSUE BLOCK		
	DATE	DESCRIPTION

BBQ 1503T NO. 00000000.00

PROJECT NO.: 2022283.00

DATE: 01/15/2025

SCALE: 1" = 100'

DRAWN BY:	MRS	PROJ. MGR.:	EHH
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SHEET

2.05.2

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