

# Jurisdictional Determinations

**James Robb**

Wetland Specialist

Sacramento District Regulatory Program  
Workshop

22 February 2016



US Army Corps of Engineers  
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# What's New?

- Definition of Waters of the U.S. regulation published 29 June 2015 (80 Fed. Reg. 37054-37127)
- Stayed



## FEDERAL REGISTER

Vol. 80 Monday,  
No. 124 June 29, 2015

### Part II

#### Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 328

#### Environmental Protection Agency

40 CFR Parts 110, 112, 116, *et al.*

Clean Water Rule: Definition of "Waters of the United States"; Final Rule

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# What's New

- Minimum Standards for the Acceptance of Aquatic Resources Delineation Reports, update effective January 2016
  - ▶ <http://1.usa.gov/1V68IYa>



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# What's New

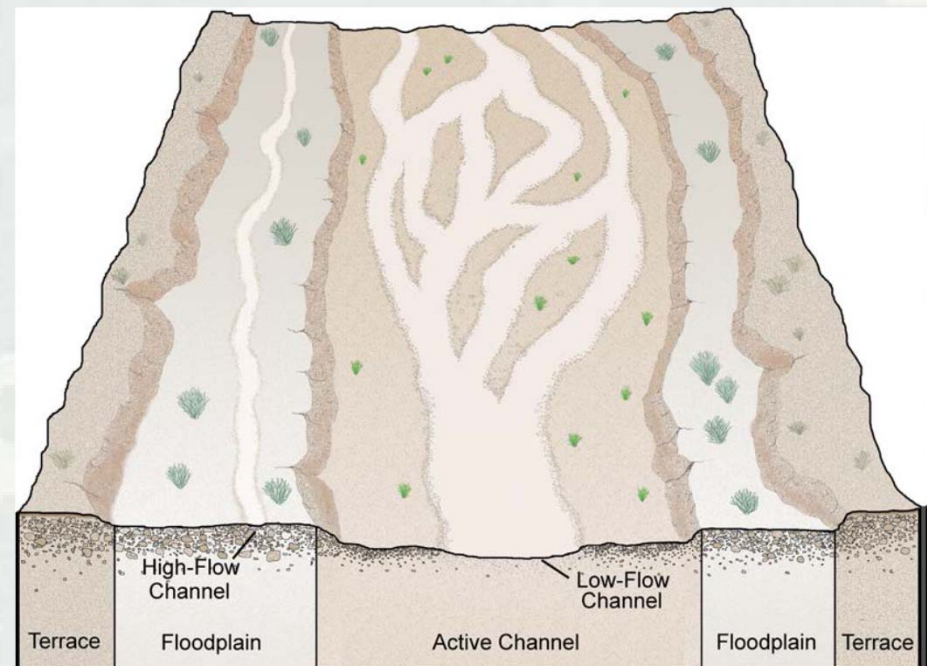
- Connectivity literature review published January 2015





# What's New?

- Guide to OHWM Delineation for Non-Perennial Streams in the Western Mountains Valleys and Coast



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# What's New?

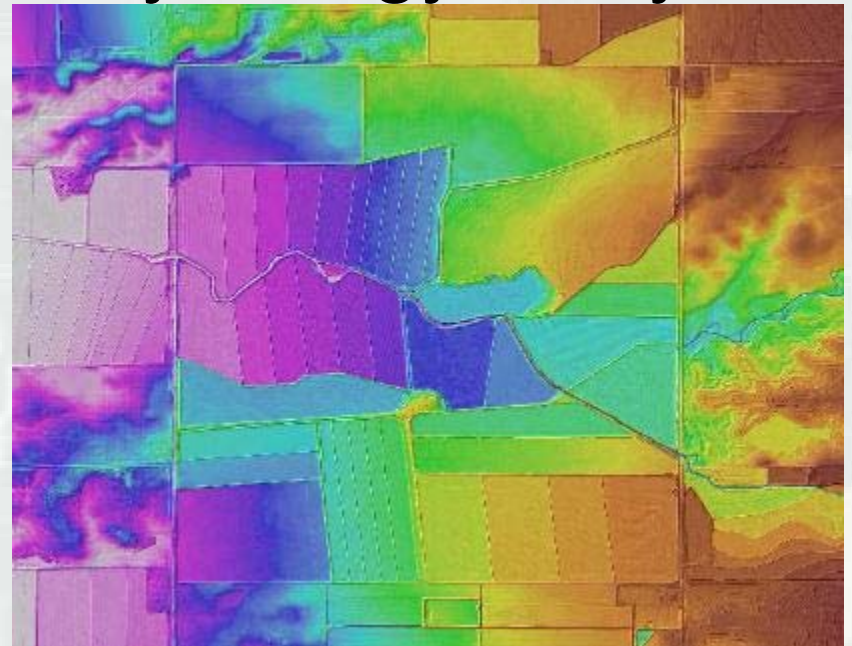
- Proposed annual update to the National Wetland Plant List September 2015



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# What's New?

- SPD Irrigated Wetlands Delineation Procedures (12510-SPD)
- Formerly irrigated lands hydrology study, in progress



# Common Pitfalls

- Vague or incomplete data sheets
- Sample point placement
- Antecedent precipitation and drought



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Sampling Point: U33

## HYDROLOGY



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## SOIL

Sampling Point: U33

**Profile Description:** (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

[illegible]

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. <sup>2</sup>Location: PL=Pore Lining, M=Matrix.

## Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- ☐ Histosol (A1)
- ☐ Histic Epipedon (A2)
- ☐ Black Histic (A3)
- ☐ Hydrogen Sulfide (A4)
- ☐ Stratified Layers (A5) (**LRR C**)
- ☐ 1 cm Muck (A9) (**LRR D**)
- ☐ Depleted Below Dark Surface (A11)
- ☐ Thick Dark Surface (A12)
- ☐ Sandy Mucky Mineral (S1)
- ☐ Sandy Gleyed Matrix (S4)
- ☐ Sandy Redox (S5)
- ☐ Stripped Matrix (S6)
- ☐ Loamy Mucky Mineral (F1)
- ☐ Loamy Gleyed Matrix (F2)
- ☐ Depleted Matrix (F3)
- ☐ Redox Dark Surface (F6)
- ☐ Depleted Dark Surface (F7)
- ☐ Redox Depressions (F8)
- ☐ Vernal Pools (F9)

### Indicators for Problematic Hydric Soils<sup>3</sup>:

- ☐ 1 cm Muck (A9) (**LRR C**)  
☐ 2 cm Muck (A10) (**LRR B**)  
☐ Reduced Vertic (F18)  
☐ Red Parent Material (TF2)  
☐ Other (Explain in Remarks)

<sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

## Restrictive Layer (if present):

Type: \_\_\_\_\_

Depth (inches): \_\_\_\_\_

Hydric Soil Present? Yes \_\_\_\_\_ No X

Remarks:



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## HYDROLOGY

### Wetland Hydrology Indicators:

Primary Indicators (minimum of one required; check all that apply)

- ☐ Surface Water (A1)
- ☐ High Water Table (A2)
- ☐ Saturation (A3)
- ☐ Water Marks (B1) (**Nonriverine**)
- ☐ Sediment Deposits (B2) (**Nonriverine**)
- ☐ Drift Deposits (B3) (**Nonriverine**)
- ☐ Surface Soil Cracks (B6)
- ☐ Inundation Visible on Aerial Imagery (B7)
- ☐ Water-Stained Leaves (B9)

- ☐ Salt Crust (B11)
- ☐ Biotic Crust (B12)
- ☐ Aquatic Invertebrates (B13)
- ☐ Hydrogen Sulfide Odor (C1)
- ☐ Oxidized Rhizospheres along Living Roots (C3)
- ☐ Presence of Reduced Iron (C4)
- ☐ Recent Iron Reduction in Tilled Soils (C6)
- ☐ Thin Muck Surface (C7)
- ☐ Other (Explain in Remarks)

Secondary Indicators (2 or more required)

- ☐ Water Marks (B1) (**Riverine**)
- ☐ Sediment Deposits (B2) (**Riverine**)
- ☐ Drift Deposits (B3) (**Riverine**)
- ☐ Drainage Patterns (B10)
- ☐ Dry-Season Water Table (C2)
- ☐ Crayfish Burrows (C8)
- ☐ Saturation Visible on Aerial Imagery (C9)
- ☐ Shallow Aquitard (D3)
- ☐ FAC-Neutral Test (D5)

### Field Observations:

Surface Water Present? Yes ☐ No ☒ Depth (inches): \_\_\_\_\_

Water Table Present? Yes ☐ No ☒ Depth (inches): \_\_\_\_\_

Saturation Present? Yes ☐ No ☒ Depth (inches): \_\_\_\_\_  
(includes capillary fringe)

Wetland Hydrology Present? Yes ☐ No ☒

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:



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## SOIL

Sampling Point: U33

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type <sup>1</sup>	Loc <sup>2</sup>		
<u>0-5</u>	<u>10YR 4/3</u>	<u>95</u>	<u>10YR 4/6</u>	<u>5</u>	<u>C</u>		<u>Silty Clay</u>	

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains.<sup>2</sup>Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- ☐ Histosol (A1)
- ☐ Histic Epipedon (A2)
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- ☐ 1 cm Muck (A9) (LRR D)
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- ☐ Red Parent Material (TF2)
- ☐ Other (Explain in Remarks)

<sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if present):

Type: \_\_\_\_\_

Depth (inches): \_\_\_\_\_

Hydric Soil Present? Yes \_\_\_\_\_ No ☒

Remarks: \_\_\_\_\_

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Water Table Present? Yes ☐ No ☒ Depth (inches): \_\_\_\_\_

Saturation Present? Yes ☐ No ☒ Depth (inches): \_\_\_\_\_  
(includes capillary fringe)

Wetland Hydrology Present? Yes ☐ No ☒

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:



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Sampling Point: U33

**Profile Description:** (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

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Restrictive Layer (if present):

Type: \_\_\_\_\_

Depth (inches): \_\_\_\_\_

Hydric Soil Present? Yes \_\_\_\_\_ No X

Remarks:



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### WETLAND DETERMINATION DATA FORM – Arid West Region

Project/Site: Banama Ranch City/County: Tehama Sampling Date: \_\_\_\_\_  
Applicant/Owner: Bruce Banner State: CA Sampling Point: U33  
Investigator(s): Jack McGee Section, Township, Range: \_\_\_\_\_  
Landform (hillslope, terrace, etc.): \_\_\_\_\_ Local relief (concave, convex, none): \_\_\_\_\_ Slope (%): \_\_\_\_\_  
Subregion (LRR): \_\_\_\_\_ Lat: \_\_\_\_\_ Long: \_\_\_\_\_ Datum: \_\_\_\_\_  
Soil Map Unit Name: Coing- Redding gravelly loams NWI classification: \_\_\_\_\_  
Are climatic / hydrologic conditions on the site typical for this time of year? Yes ☒ No \_\_\_\_\_ (If no, explain in Remarks.)  
Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ significantly disturbed? Are "Normal Circumstances" present? Yes ☒ No \_\_\_\_\_  
Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ naturally problematic? (If needed, explain any answers in Remarks.)

#### SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes _____	No <input checked="" type="checkbox"/>
Hydric Soil Present?	Yes _____	No <input checked="" type="checkbox"/>
Wetland Hydrology Present?	Yes _____	No <input checked="" type="checkbox"/>

Is the Sampled Area within a Wetland?	Yes _____	No <input checked="" type="checkbox"/>
--	-----------	--

Remarks:



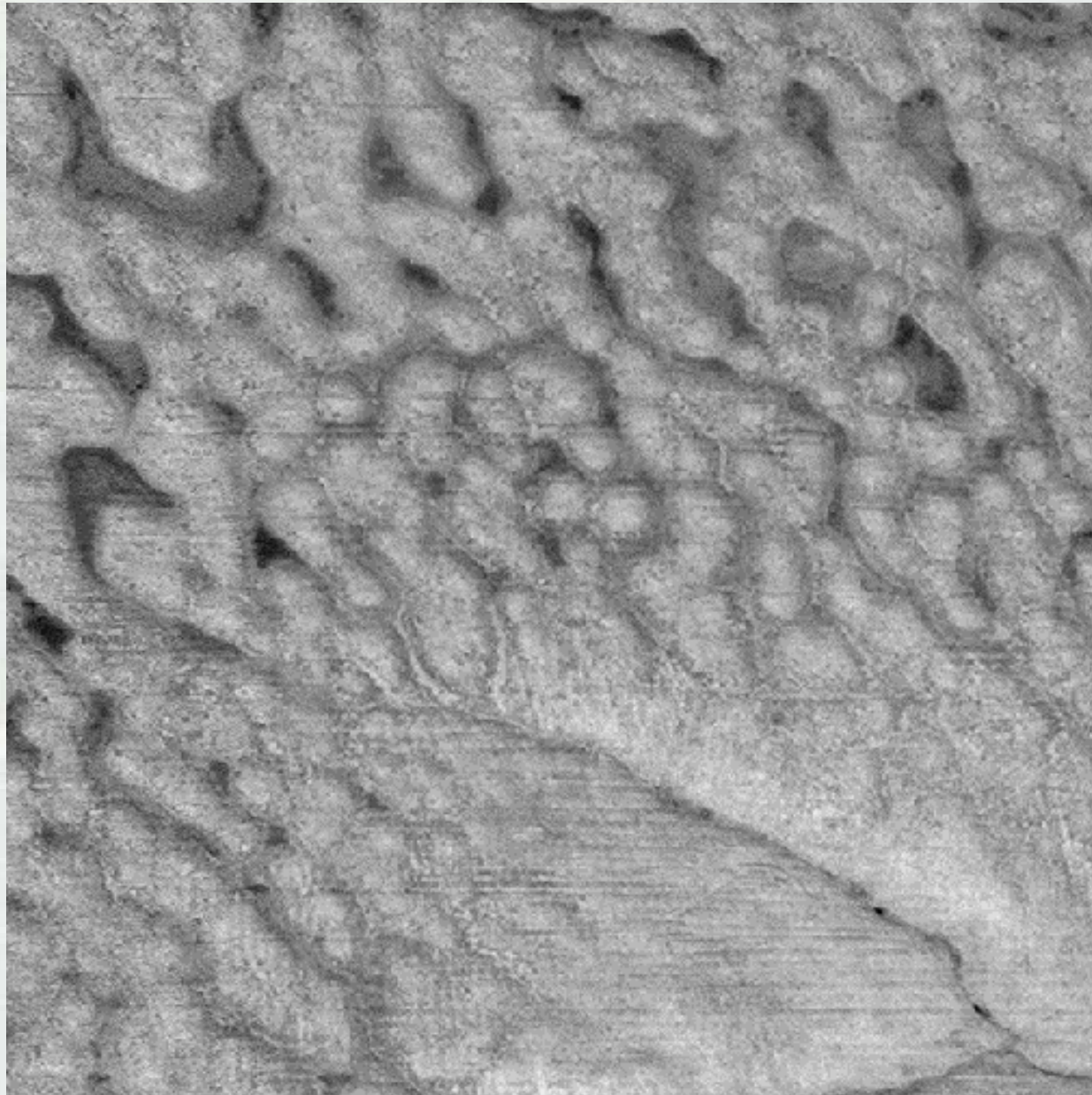
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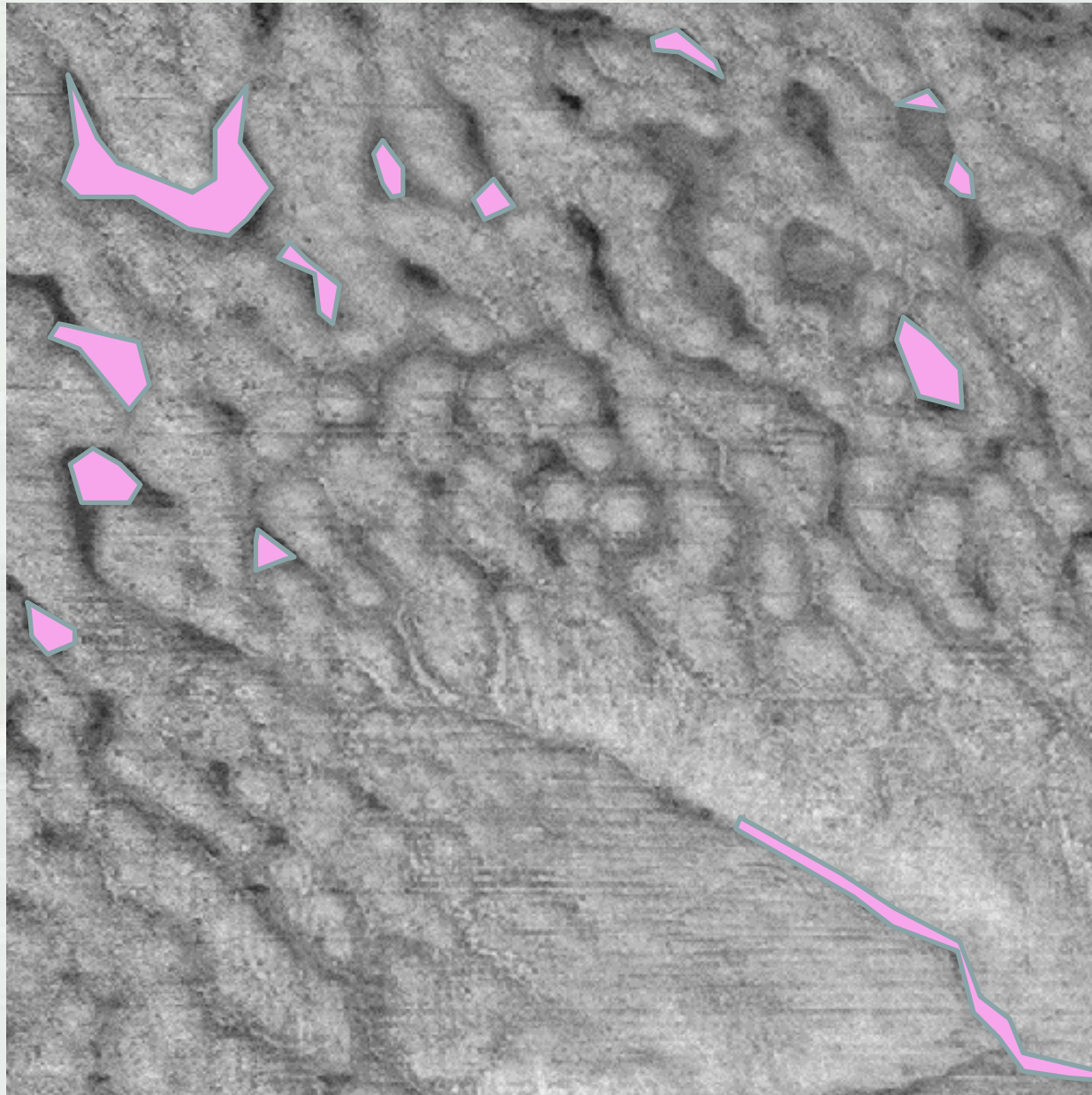


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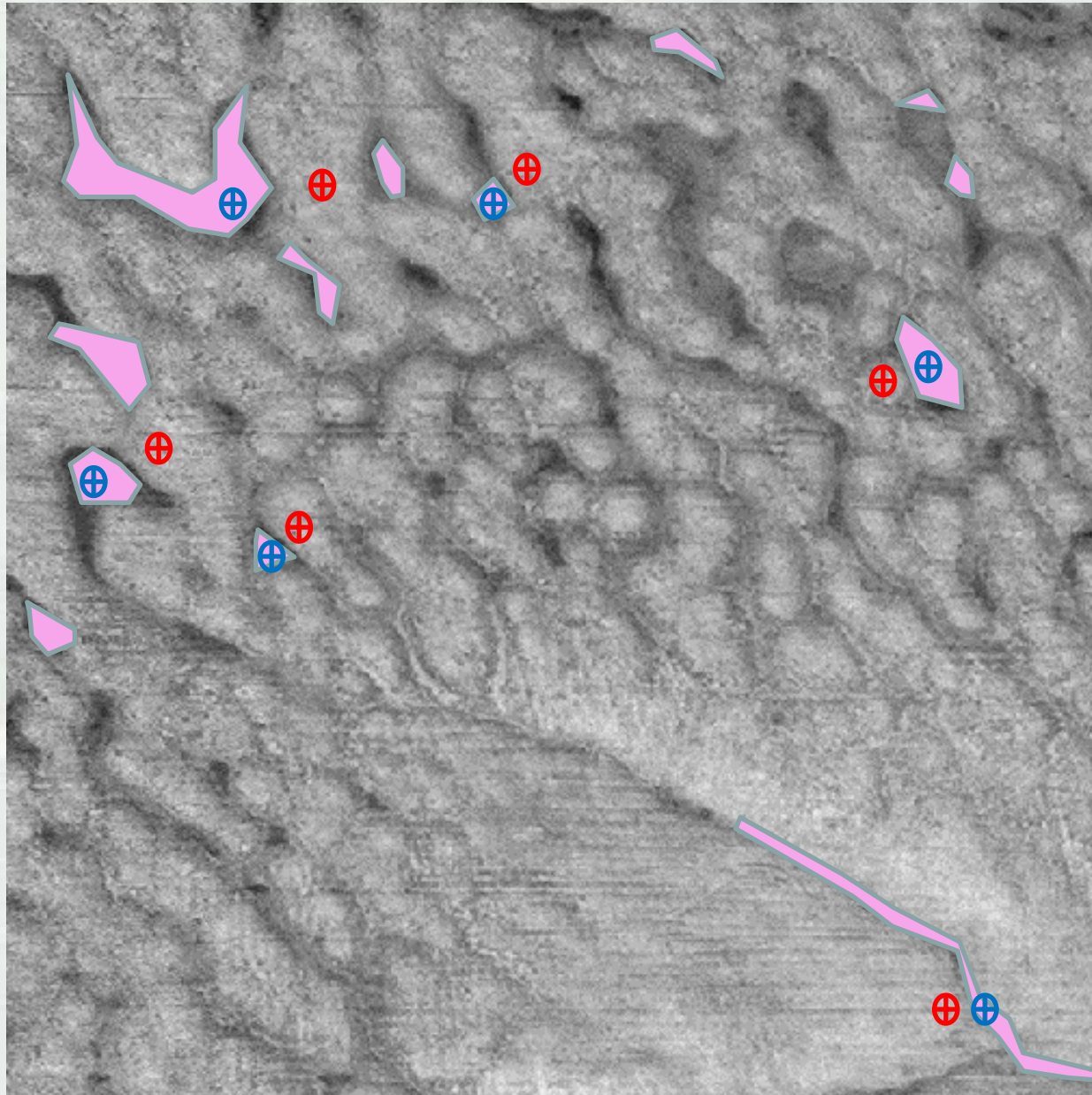
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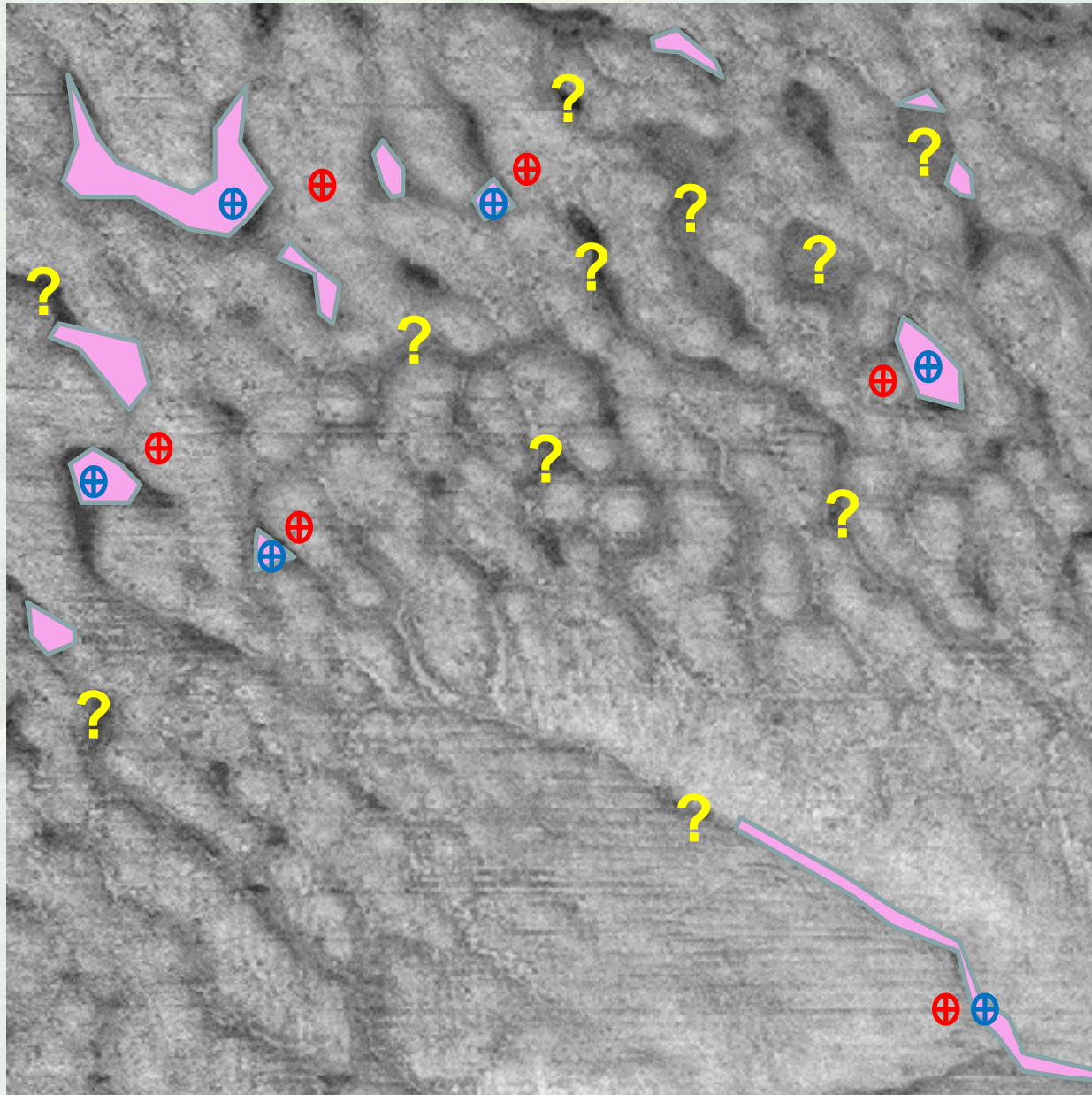


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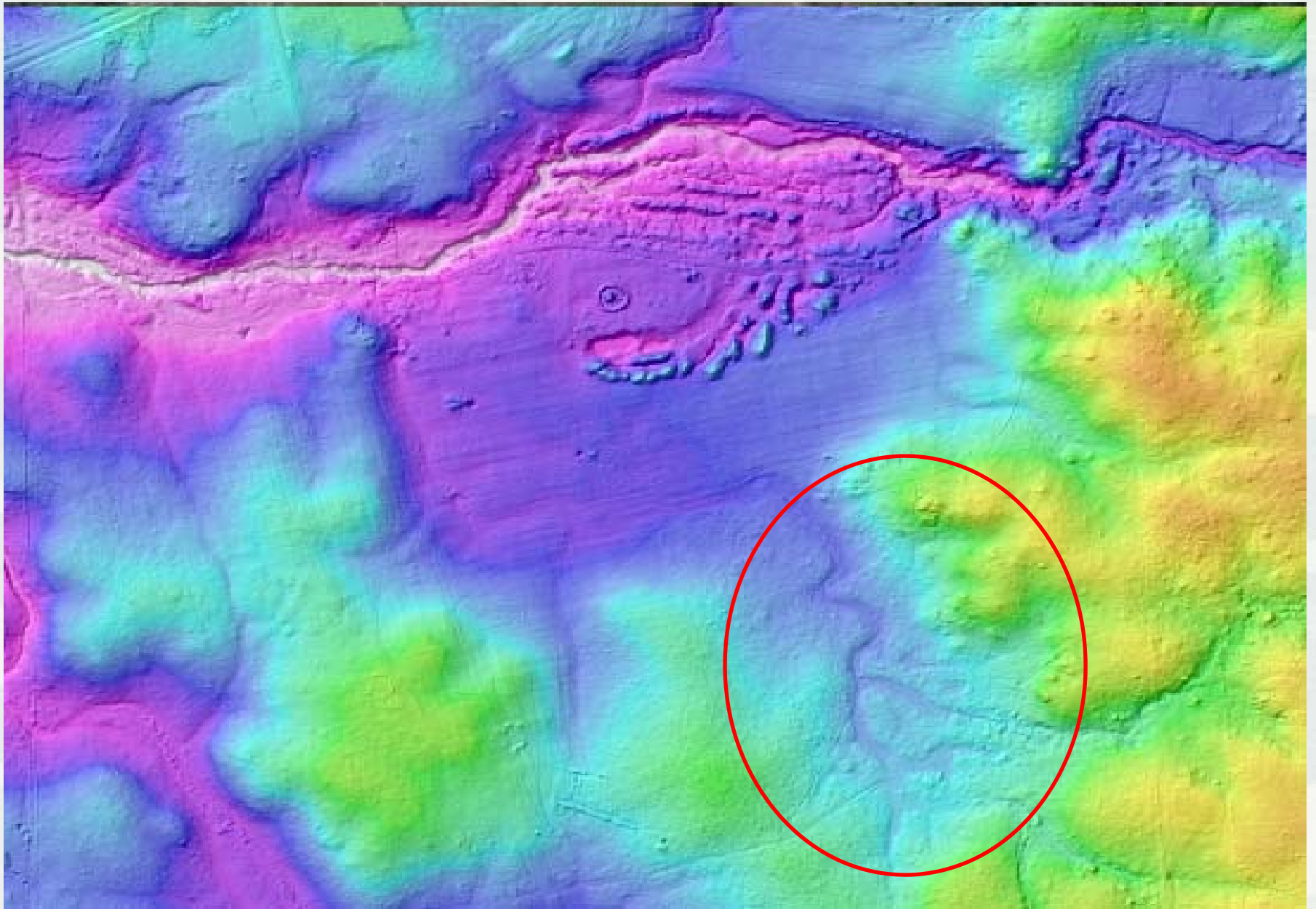
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# Evaluating Normal Rain Fall

## WETS tables

- USDA National Water and Climate Center  
([http://www.wcc.nrcs.usda.gov/climate/navigate\\_wets.html](http://www.wcc.nrcs.usda.gov/climate/navigate_wets.html))
- Analyze monthly precipitation data from >8,000 National Weather Service stations
- Based on a standard 30 years of rainfall data
- Provide monthly and annual thresholds for:
  - Below normal rainfall (lowest 3 years in 10)
  - Above normal rainfall (highest 3 years in 10)



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ERDC/EL TR-WRAP-00-1

Environmental Laboratory



**US Army Corps  
of Engineers®**

Engineer Research and  
Development Center

*Wetlands Regulatory Assistance Program*

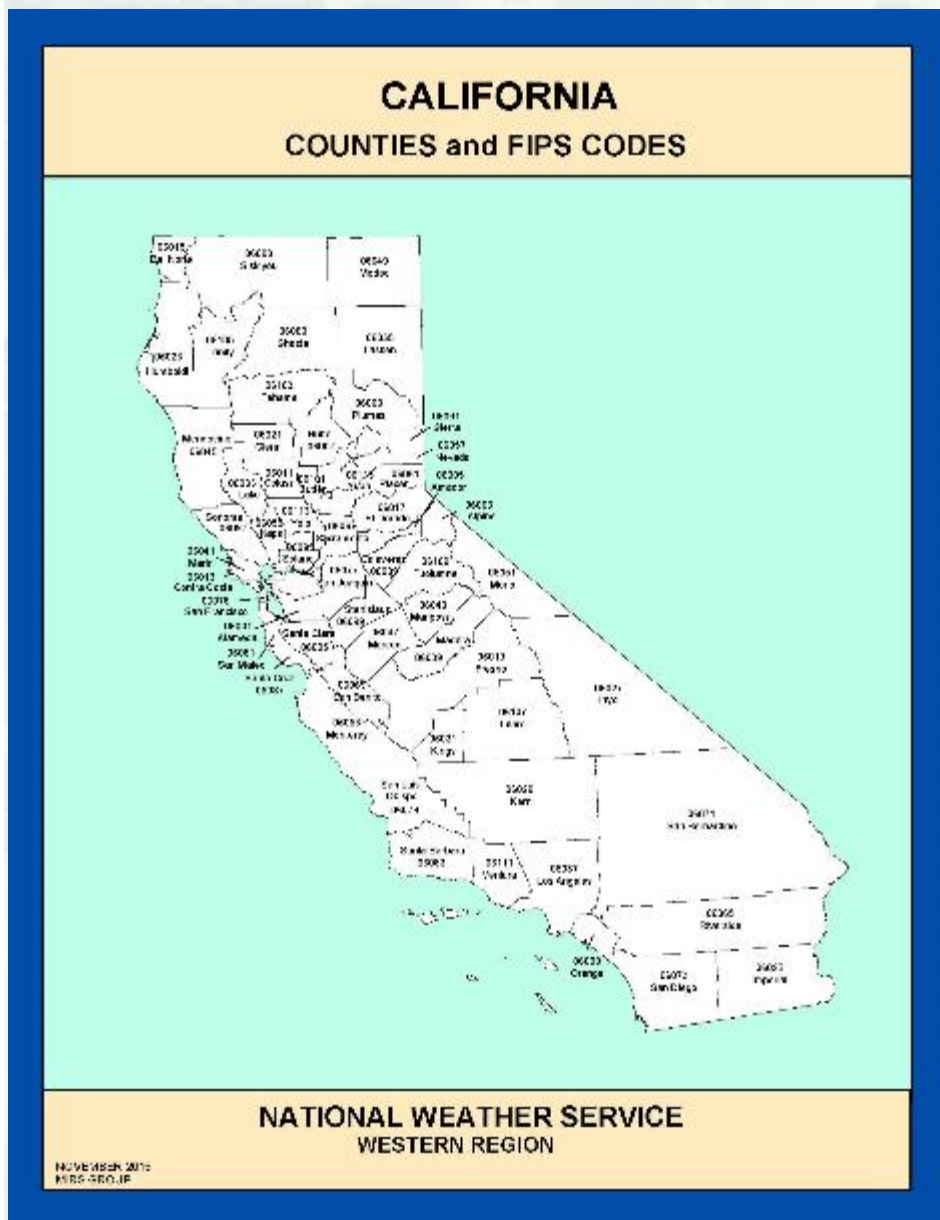
## **Accessing and Using Meteorological Data to Evaluate Wetland Hydrology**

Steven W. Sprecher and Andrew G. Warne

April 2000



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http://agacis.rcc-acis.org/06057/wets

File Edit View Favorites Tools Help

Suggested Sites Per Diem Rates Wi-Fi

### Climate Data for Nevada County, California

1. Product	2. Location	3. Thresholds	4. View
<input type="radio"/> Daily data for a month	BOWMAN DAM	24	<a href="#">Go</a>
<input type="radio"/> Daily almanac	DEER CREEK FOREBAY	28	
<input type="radio"/> Monthly avgs/totals	DONNER MEM SP	32	
<input type="radio"/> Monthly occurrences	FARAD		
<input type="radio"/> Monthly extremes	GRASS VALLEY #2		
<input type="radio"/> Daily extremes	HARRY ENGLEBRIGHT DM		
<input type="radio"/> Daily/monthly normals	NEVADA CITY		
<input type="radio"/> Record extremes	SAGEHEN CREEK		
<input type="radio"/> Frost/freeze dates	TRUCKEE RS		
<input type="radio"/> TAPS	TRUCKEE-TARGE AP DIS		
<input type="radio"/> FROST			
<input type="radio"/> GROWTH			
<input checked="" type="radio"/> WETS			
<input type="radio"/> DRAIN			

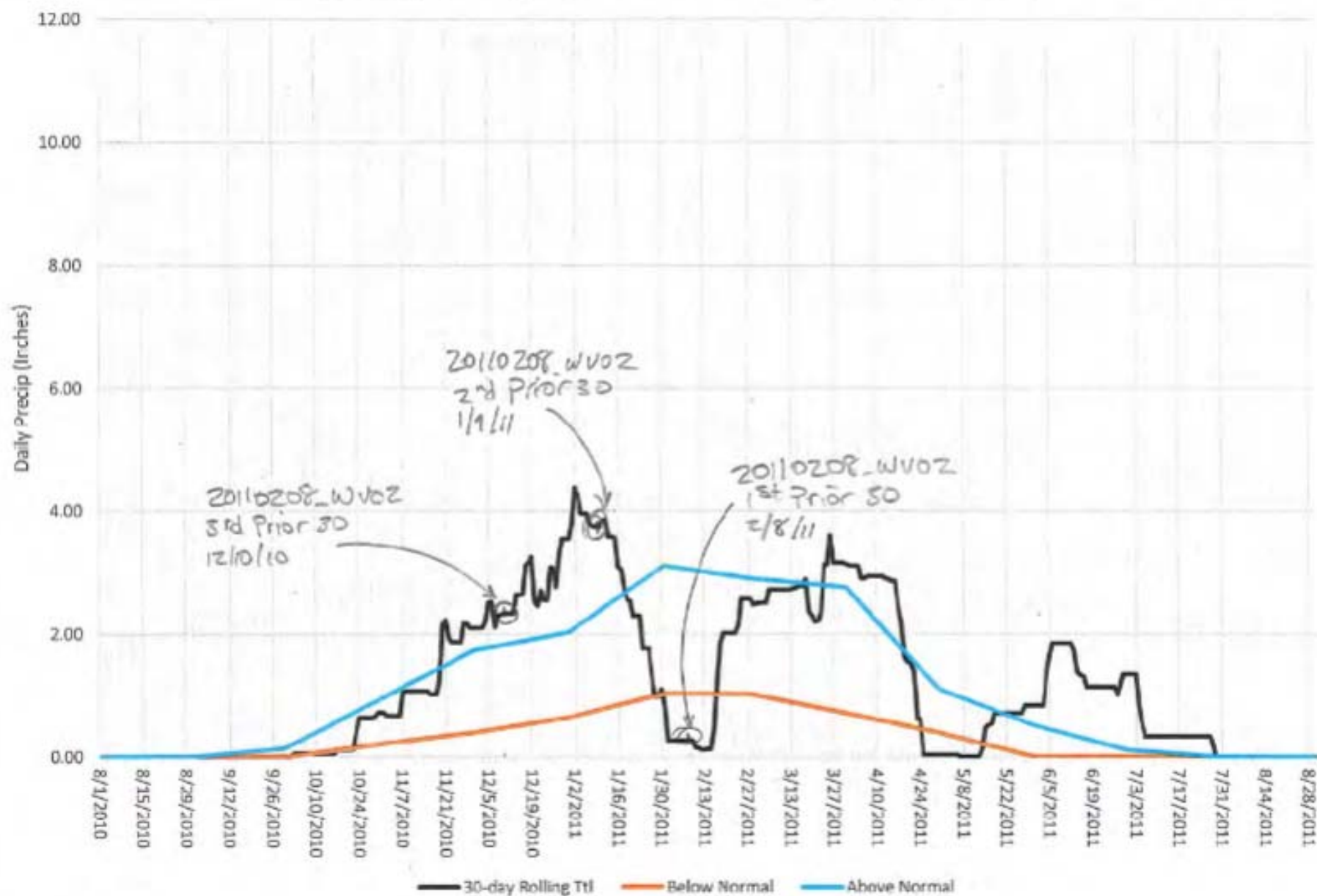
**Product Description:**

The WETS table gives a month by month summary and probability analysis of temperature and precipitation. The table also provides average length of growing season using three index temperatures (32, 28, and 24 degrees Fahrenheit) at 50 and 70% probabilities.

[Questions, comments](#)

Powered by **ACIS**  
160th Regional Climate Center

# Modesto City Co AP Daily Precip (with any missing measurements substituted from Turlock #2)





DRAFT

SPK [REDACTED]

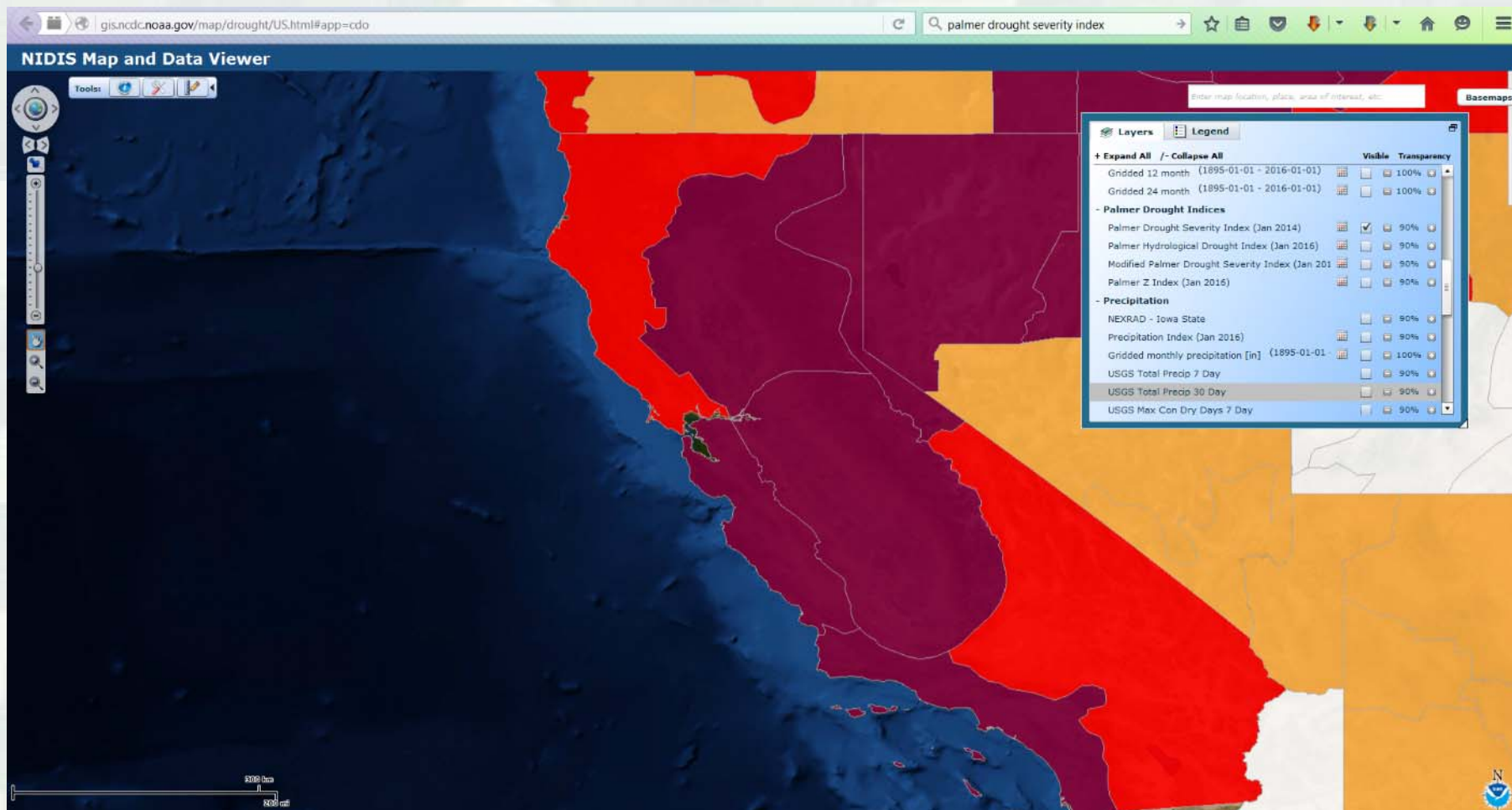
Weather Station: Modesto CITY CO AP

## Antecedent Precip by Event Date

DATE	DESCRIPTION	EVENT	2nd Prior 30 days	3rd Prior 30 Days	Condition (1st Prior 30 Days)	Condition (2nd Prior 30 Days)	Condition (3rd Prior 30 Days)	Antecedent Precip	Season
12/11/1940	USGS Aerial Photo	19401211_USGS	11/11/1940	10/12/1940	Dry	Normal	Dry	Dry	Wet
4/22/1982	USGS Aerial Photo	19820422_USGS	3/23/1982	2/21/1982	Wet	Wet	Normal	Wet	Wet
8/15/1998	Digital Ortho Quad	19980815_DOQ	7/16/1998	6/16/1998	Normal	Normal	Wet	Normal	Dry
2/24/2006	Quick Bird satellite image	20060224_QB02	1/25/2006	12/26/2005	Dry	Normal	Wet	Normal	Wet
12/4/2006	Quick Bird satellite image	20061204_QB02	11/4/2006	10/5/2006	Normal	Dry	Normal	Normal	Wet
3/26/2010	Orb View satellite image	20100326_OV05	2/24/2010	1/25/2010	Normal	Normal	Wet	Normal	Wet
2/8/2011	World View satellite image	20110208_WV02	1/9/2011	12/10/2010	Dry	Wet	Wet	Normal	Wet
11/4/2013	World View satellite image	20131104_WV01	10/5/2013	9/5/2013	Dry	Normal	Normal	Dry	Dry
6/18/2014	World View satellite image	20140618_WV02	5/19/2014	4/19/2014	Normal	Normal	Normal	Normal	Dry
3/15/2015	World View satellite image	20150315_WV01	2/13/2015	1/14/2015	Dry	Normal	Normal	Dry	Wet
3/27/2015	World View satellite image	20150327_WV01	2/25/2015	1/26/2015	Dry	Normal	Dry	Dry	Wet
6/16/2015	[REDACTED] sample point range 6/15-	[REDACTED] 01	5/17/2015	4/17/2015	Normal	Normal	Dry	Normal	Dry
6/17/2015	[REDACTED] sample point range 6/15-	[REDACTED] 02	5/18/2015	4/18/2015	Normal	Normal	Dry	Normal	Dry
6/18/2015	[REDACTED] sample point range 6/15-	[REDACTED] 03	5/19/2015	4/19/2015	Normal	Normal	Dry	Normal	Dry
6/19/2015	[REDACTED] sample point range 6/15-	[REDACTED] 04	5/20/2015	4/20/2015	Normal	Normal	Dry	Normal	Dry
6/20/2015	[REDACTED] sample point range 6/15-	[REDACTED] 05	5/21/2015	4/21/2015	Normal	Normal	Dry	Normal	Dry
7/3/2015	World View satellite image	20150703_WV02	6/3/2015	5/4/2015	Normal	Normal	Normal	Normal	Dry
9/22/2015	World View satellite image	20150922_WV02	8/23/2015	7/24/2015	Normal	Normal	Normal	Normal	Dry

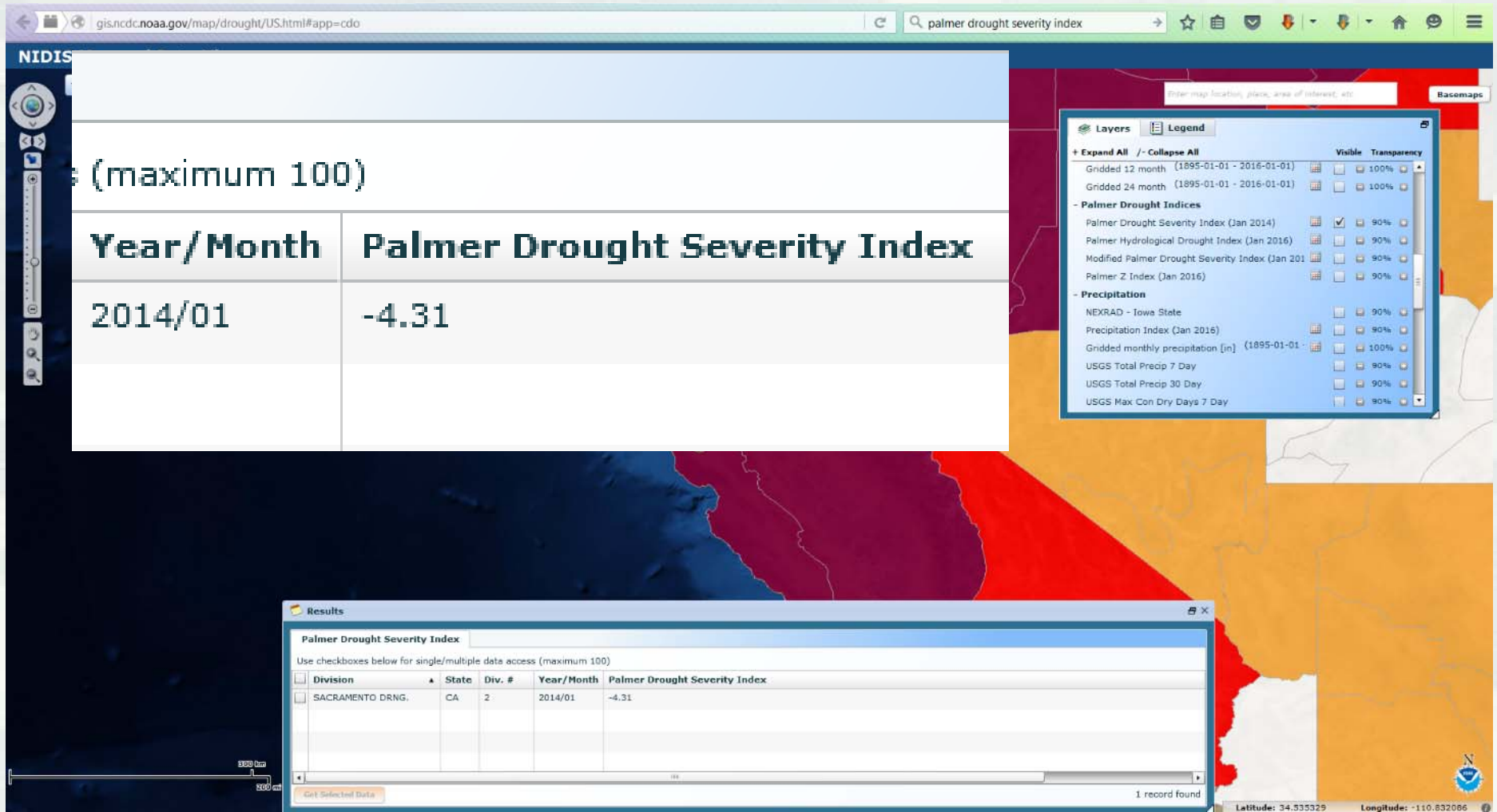


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### WETLAND DETERMINATION DATA FORM – Arid West Region

Project/Site: Banama Ranch City/County: Tehama Sampling Date: \_\_\_\_\_  
 Applicant/Owner: Bruce Banner State: CA Sampling Point: U33  
 Investigator(s): Jack McGee Section, Township, Range: \_\_\_\_\_  
 Landform (hillslope, terrace, etc.): \_\_\_\_\_ Local relief (concave, convex, none): \_\_\_\_\_ Slope (%): \_\_\_\_\_  
 Subregion (LRR): \_\_\_\_\_ Lat: \_\_\_\_\_ Long: \_\_\_\_\_ Datum: \_\_\_\_\_  
 Soil Map Unit Name: Coring- Redding gravelly loams NWI classification: \_\_\_\_\_  
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes ☒ No \_\_\_\_\_ (If no, explain in Remarks.)  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ significantly disturbed? Are "Normal Circumstances" present? Yes ☒ No \_\_\_\_\_  
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#### SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

<table style="width: 100%;"> <tr> <td style="width: 30%;">Hydrophytic Vegetation Present?</td> <td style="width: 10%;">Yes _____</td> <td style="width: 10%;">No <input checked="" type="checkbox"/></td> </tr> <tr> <td>Hydric Soil Present?</td> <td>Yes _____</td> <td>No <input checked="" type="checkbox"/></td> </tr> <tr> <td>Wetland Hydrology Present?</td> <td>Yes _____</td> <td>No <input checked="" type="checkbox"/></td> </tr> </table>	Hydrophytic Vegetation Present?	Yes _____	No <input checked="" type="checkbox"/>	Hydric Soil Present?	Yes _____	No <input checked="" type="checkbox"/>	Wetland Hydrology Present?	Yes _____	No <input checked="" type="checkbox"/>	<table style="width: 100%;"> <tr> <td style="width: 60%;">Is the Sampled Area within a Wetland?</td> <td style="width: 20%;">Yes _____</td> <td style="width: 20%;">No <input checked="" type="checkbox"/></td> </tr> </table>	Is the Sampled Area within a Wetland?	Yes _____	No <input checked="" type="checkbox"/>
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Wetland Hydrology Present?	Yes _____	No <input checked="" type="checkbox"/>											
Is the Sampled Area within a Wetland?	Yes _____	No <input checked="" type="checkbox"/>											
Remarks:													



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# PJD vs. AJD

Preliminary Jurisdictional Determination	Approved Jurisdictional Determination
Not appealable (instead request an AJD)	Appealable
No set expiration date	Expires after 5 years
Cannot use to disclaim jurisdiction over an aquatic resource	Required to disclaim jurisdiction over an aquatic resource
Not posted on the web	Posted on the web
Sufficient for permitting	Sufficient for permitting



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# AJD/PJD FAQs

I have a non-tidal irrigation ditch excavated on dry land in my study area. Can I just leave it off the map and do a PJD?

No, if it's an aquatic resource it needs to be on the map. If it's a preamble excluded water then the Corps will need to do an AJD to disclaim jurisdiction.



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# AJD/PJD FAQs

Does the Corps have to coordinate all Approved JDs with EPA?

No, the Corps is only required to coordinate isolated & significant nexus calls with EPA. Other non-jurisdictional findings (i.e., preamble excluded waters) do not required EPA coordination but do require an AJD.



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# AJD/PJD FAQs

What about puddles? The stayed rule talks about these in the same context as the 1986 preamble excluded waters. Do I have to map those?

No, puddles are not aquatic resources since they do not have an OHWM nor are they wet long enough to meet the definition of wetland.



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# AJD/PJD FAQs

How long is EPA's review of an Approved JD?

15 days for a significant nexus determination, 21 days for isolated



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# AJD/PJD FAQs

Can the Corps issue an Approved JD when I asked for a Preliminary JD?

Yes, when jurisdiction is contested or when the Corps determines that it does not have jurisdiction over an aquatic resource (Regulatory Guidance Letter 08-02)



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# AJD/PJD FAQs

Where can I find jurisdictional determinations on the web?

The Sacramento District publishes all of its approved jurisdictional determinations at <http://www.spk.usace.army.mil/Missions/Regulatory/Jurisdiction.aspx>



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