



US ARMY CORPS OF ENGINEERS (USACE)
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
2023 RULE

OMB Control Number: 0710-0024
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I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): [5/17/2023](#)

ORM Project Name: [ZNHN East](#)

ORM Identification Number: [SPK-2021-00747](#)

- 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).

Associated JD Names and Numbers: [N/A](#)

Review Area Location: State/Territory: California City: [Oroville](#)

County/Parish/Borough: [Butte County](#)

Center Coordinates of Review Area: Latitude: [39.53319°N](#), Longitude: [-121.56945°W](#)

Limits of review area: [See Attached "ZNHN Approved Jurisdictional Determination Review Area" Map](#)

II. SUMMARY²

Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding tables in Section III., summarize data sources in Section IV., and attach completed Appendices A and/or B when specified.

- 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). Rationale: [N/A](#)
- There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete the table in Section III.A.).
- There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section III.B. and complete and attach appendices as appropriate).
- Potentially jurisdictional waters and/or features were assessed within the review area and determined to be non-jurisdictional (complete appropriate tables in Section III.C. and complete and attach appendices as appropriate).

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>.

² Map(s)/figure(s) or descriptions of the review area and any jurisdictional waters are attached to the AJD provided to the requestor.



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III. FINDINGS IN THE REVIEW AREA

A. Jurisdictional under the Rivers and Harbors Act of 1899³ (Section 10)⁴

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			

B. Jurisdictional under the Clean Water Act

Paragraph (a)(1) waters: ⁵ 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			

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			

³ If the navigable water of the United States is not subject to the ebb and flow of the tide and not included on the district's list of Rivers and Harbors Act (RHA) Section 10 navigable waters of the United States list do NOT use this form 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 procedure 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 Rivers and Harbors Act.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this AJD form, jurisdiction under RHA will be referred to as Section 10.

⁵ A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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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			

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	
WF06	0.14	acres	There is an unbroken surface or shallow subsurface connection to a jurisdictional water
Type of paragraph (a)(4) water	(a)(4)(ii) adjacent wetland that meets the relatively permanent standard		

Rationale for determination: WF06 flows through a swale into a culvert which connects to a roadside drainage ditch. The swale can be seen in the January 4, 2023, site visit photos; as well as, in the LiDAR imagery. The drainage ditch does not have any ordinary high water mark indicators based on GoogleEarth "street view." The drainage ditch acts as an unbroken surface connect to the drainage ditch that is the tributary of interest which is discussed in Section IV.D. Once the roadside drainage ditch connects to the tributary of interest, it flows into the Thermalito Power Canal which flows into the Thermalito Forebay. The Forebay flows into the Thermalito Afterbay which flows into the Feather River, a traditionally navigable water.

WF09	0.003	acres	There is an unbroken surface or shallow subsurface connection to a jurisdictional water
Type of paragraph (a)(4) water	(a)(4)(ii) adjacent wetland that meets the relatively permanent standard		

Rationale for determination: WF09 flows into the tributary of interest via a swale which can be seen in the January 4, 2023, site visit photos. A swale can also be seen in the LiDAR imagery. The swale creates an unbroken surface connection to the tributary of interest which flows into the Thermalito Power Canal. The canal flows into the Thermalito Forebay which flows into the Thermalito Afterbay. The afterbay flows into the Feather River, a traditionally navigable water.

WF10	0.01	acres	There is an unbroken surface or shallow subsurface connection to a jurisdictional water
Type of paragraph (a)(4) water	(a)(4)(ii) adjacent wetland that meets the relatively permanent standard		

Rationale for determination: WF10 flows through a swale into a culvert which connects to the roadside drainage ditch which flows into the tributary of interest. The swale can be seen in the January 4, 2023, site



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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	
visit photos; as well as, in the LiDAR imagery. The roadside drainage ditch acts as an unbroken surface connection to the drainage ditch that is the tributary of interest which is discussed in Section IV.D. Once the roadside drainage ditch connects to the tributary of interest, it flows into the Thermalito Power Canal which flows into the Thermalito Forebay. The Forebay flows into the Thermalito Afterbay which flows into the Feather River, a traditionally navigable water.			

WF11	0.08	acres	There is an unbroken surface or shallow subsurface connection to a jurisdictional water
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Type of paragraph (a)(4) water	(a)(4)(ii) adjacent wetland that meets the relatively permanent standard		
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Rationale for determination: WF11 flows through a swale along the south side of the Review Area into the tributary of interest. The swale can be seen in the LiDAR imagery and the January 4, 2023, site visit photos. The swale creates an unbroken surface connection to the tributary of interest which flows into the Thermalito Power Canal. The canal flows into the Thermalito Forebay which flows into the Thermalito Afterbay. The afterbay flows into the Feather River, a traditionally navigable water.

WF12	0.01	Acre(s)	There is an unbroken surface or shallow subsurface connection to a jurisdictional water.
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Type of paragraph (a)(4) water	(a)(4)(ii) adjacent wetland that meets the relatively permanent standard		
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Rationale for determination: WF12 flows into the tributary of interest via a swale which can be seen in the January 4, 2023, site visit photos. A swale can also be seen in the LiDAR imagery. The swale creates an unbroken surface connection to the tributary of interest which flows into the Thermalito Power Canal. The canal flows into the Thermalito Forebay which flows into the Thermalito Afterbay. The afterbay flows into the Feather River, a traditionally navigable water.

WF13	0.06	acres	There is an unbroken surface or shallow subsurface connection to a jurisdictional water
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Type of paragraph (a)(4) water	(a)(4)(ii) adjacent wetland that meets the relatively permanent standard		
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Rationale for determination: WF13 flows through a swale along the south side of the Review Area into the tributary of interest. The swale can be seen in the LiDAR imagery and the January 4, 2023, site visit photos. The swale creates an unbroken surface connection to the tributary of interest which flows into the Thermalito Power Canal. The canal flows into the Thermalito Forebay which flows into the Thermalito Afterbay. The afterbay flows into the Feather River, a traditionally navigable water.

WF14	0.004	acres	There is an unbroken surface or shallow subsurface connection to a jurisdictional water
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Type of paragraph (a)(4) water	(a)(4)(ii) adjacent wetland that meets the relatively permanent standard		
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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
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Rationale for determination: WF14 flows through a swale which connects to the roadside drainage ditch which flows into the tributary of interest. The swale can be seen in the January 4, 2023, site visit photos; as well as, in the LiDAR imagery. The roadside drainage ditch acts as an unbroken surface connect to the drainage ditch that is the tributary of interest which is discussed in Section IV.D. Once the roadside drainage ditch connects to the tributary of interest, it flows into the Thermalito Power Canal which flows into the Thermalito Forebay. The Forebay flows into the Thermalito Afterbay which flows into the Feather River, a traditionally navigable water.

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).⁶

(a)(5) water name	(a)(5) size in review area	Type of paragraph (a)(5) water
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N/A	N/A.	N/A	N/A
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Rationale for determination: N/A

⁶ 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.



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C. Waters or features that are not jurisdictional under the Clean Water Act

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			

(b)(1) – (b)(8) Excluded Features⁷			
Excluded feature name	Excluded feature size in review area		Exclusion ⁸
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

IV. SUPPORTING INFORMATION

A. Paragraph (a)(1) water that is outside the review area:

- a. Provide the name of the paragraph (a)(1) water: N/A
- b. Type of paragraph (a)(1) water: N/A.
- c. Provide the rationale for jurisdiction of the paragraph (a)(1) water: N/A

B. Significant nexus analyses

- Appendix A is attached and includes the significant nexus analysis for any waters in the review area that were evaluated under paragraph (a)(3)(ii) and/or paragraph (a)(4)(iii).
- Appendix B is attached and includes the significant nexus analyses for any waters in the review area that were evaluated under paragraph (a)(5)(ii).
- There are no waters in the review area that require evaluation under the significant nexus standard. Therefore, neither Appendix A nor Appendix B are included with this form

C. Data, models, and other relevant methods Select/enter all resources that were used to support this determination and include data/maps and/or references/citations in the administrative record, as appropriate.

⁷ Transient features on the landscape that are difficult to document due to their non-permanent nature, such as rills and gullies, may not be specifically identified on the AJD form unless a requestor specifically asks a USACE district to do so. USACE districts may, in case-by-case instances, elect to document any such feature on a case-by-case basis, such as when the feature is relevant to analysis of the jurisdictional status of another water.

⁸ Note the full text of the exclusions for (b)(1)-(6) and (b)(8) are included in the dropdown list, while the text for the (b)(7) exclusion is truncated due to space limitations. The full text of the (b)(7) exclusion is as follows: (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



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Aquatic resources delineation submitted by, or on behalf of, the requestor: [Draft Aquatic Resource Delineation Zos Ntuj Hmoov Ntuj East Project, dated September 2021, prepared by Gallaway Enterprises. Zos Ntuj Hmoov Ntuh East Delineation of Aquatic Resources Figure 4, dated August 12, 2022.](#)

The aquatic resources delineation submitted by or on behalf of the requestor is sufficient for purposes of this AJD No

Rationale: [The delineation accurately delineates the wetlands within the Review Area; however, the delineation report calls wetlands WF06, WF09, WF10, WF11, WF12, WF13, and WF14 isolated. The Corps disagrees with this determination based off of the January 4, 2023, site visit and aerial imagery.](#)

Aquatic resources delineation prepared by the USACE: [N/A](#)

Wetland field data sheets prepared by the USACE: [N/A](#)

OHWM data sheets prepared by the USACE: [N/A](#)

USACE site visit: Date(s) of site visit(s): [January 4, 2023, Photos from Jan 4th Site Visit, prepared by USACE, dated January 4, 2023.](#)

Previous Jurisdictional Determinations (AJDs or PJDs) addressing the same (or portions of the same) review area: [N/A](#)

Photographs: [Photos from Jan 4th Site Visit, prepared by USACE, dated January 4, 2023.](#)

Aerial Imagery: GoogleEarth 7.3.3.786 (December 29, 2018). ZNHN Flow Direction, California. Latitude **39.53319°**, Longitude **-121.56945°**. eye alt 1100 feet. accessed October 17, 2022, from <http://www.earth.google.com>. GoogleEarth 7.3.3.786 (February 2021), ZNHN Overview, California. Latitude 39.53319°, Longitude -121.56945°, eye alt 46 miles, accessed October 17, 2022, from <http://www.earth.google.com>. GoogleEarth 7.3.3.786 (February 11, 2008). February 27, 2021, California. Latitude **39.53319°**, Longitude **-121.56945°**. eye alt 2000 feet, accessed May 16, 2023, from <http://www.earth.google.com>. GoogleEarth 7.3.3.786 (February 27, 2021). February 11, 2008, California. Latitude **39.53319°**, Longitude **-121.56945°**. eye alt 2000 feet, accessed May 16, 2023, from <http://www.earth.google.com>. GoogleEarth 7.3.3.786 (May 29, 2017). May 29, 2017, California. Latitude **39.53319°**, Longitude **-121.56945°**. eye alt 2000 feet, accessed May 16, 2023, from <http://www.earth.google.com>. GoogleEarth 7.3.3.786 (October 29, 2017). October 29, 2017, California. Latitude **39.53319°**, Longitude **-121.56945°**. eye alt 2000 feet, accessed May 16, 2023, from <http://www.earth.google.com>. Digital Globe: WorldView. (April 21, 2017). April 21, 2017. Westminster, CO, USA: DigitalGlobe, Inc., WorldView. (November 16, 2018). November 16, 2018. Westminster, CO, USA: DigitalGlobe, Inc.,

LiDAR: : ZNHN Approved Jurisdictional Determination Review Area [map]. 1:160. Generated by USACE, October 17, 2022. Using ArcGIS Pro.

USDA NRCS Soil Survey: U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). 2020. Web Soil Survey, accessed October 17, 2022.

<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

USFWS NWI maps: National Wetlands Inventory, ZNHN NWI, dated October 17, 2022, retrieved from <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>

USGS topographic maps: **1:24K; Oroville, 2022**

USGS NHD data/maps: [N/A](#)

USGS Dynamic Surface Water Extent: [N/A](#)

Section 10 navigability resource used: [N/A](#)

Other data sources or models used to aid in this determination:



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Data source or model (Select)	Name, date, and other relevant information
USGS Sources	N/A
USEPA Sources	N/A
USDA Sources ⁹	N/A
NOAA Sources	N/A
USACE Sources	N/A
State/Local/Tribal Sources	N/A
Other Sources	

D. Additional comments to support AJD: The Antecedent Precipitation Tool (APT) was run for January 3, 2023, since there were storm conditions present after the site visit on January 4, 2023. The APT showed normal conditions were present during the wet season. The drought index was unavailable. The delineation report describes the drainage ditch that WF09, WF11, WF12, WF13 flow into as an intermittent drainage that starts just north of the AJD Review Area and then continues along the east side of the Review Area. The ditch then continues to flow parallel to the Thermalito Power Canal and enters the Thermalito Power Canal via a culvert. The flow path from the ditch to the canal can be seen in the map labeled “ZNHN Flow Direction.” In the GoogleEarth image from February 27, 2021, water can be seen in the ditch. The APT was run for the February 27, 2021, aerial photo and shows drier than normal conditions were present during the wet season. The drought index was unavailable. There were some recent rainfall events prior to this date. In the GoogleEarth October 29, 2017, aerial photo there is also water present within the ditch. The APT was run for the October 29, 2017, photo which shows normal conditions were present during the dry season. There were no recent rain events prior to this date. The GoogleEarth May 29, 2017, aerial photo also shows water in the ditch. The APT was run for this aerial photo and shows normal conditions were present during the dry season. There were no recent rain events prior to this date. The GoogleEarth February 11, 2008, aerial photo also shows water flowing in the ditch. The APT was run for this photo and shows normal conditions were present during the wet season. There were some recent rainfall events prior to this date. Based upon the delineation report, the aerial imagery, and the APT, the drainage ditch (tributary of interest) is a relatively permanent water. WF06, WF10, and WF14 flow through a culvert to a road side ditch that does not contain any ordinary high water mark indicators. The road side ditch acts as a discrete surface connection which connects to the drainage ditch (tributary of interest) that the other wetland features flow into.

⁹ Including Certified Wetland Determination from the NRCS.