



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

October 4, 2023

CESPK-RDI-N

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),<sup>1</sup> SPK-2023-00646.

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.<sup>2</sup> 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.<sup>3</sup>

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),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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.

## 1. SUMMARY OF CONCLUSIONS.

(1) Las Vegas Creek (reaches 1 and 2) is a relatively permanent, jurisdictional water, which has both a defined channel and an Ordinary High Water Mark (OHWM) measuring at 425 linear feet within the 5.21-acre project area.

(2) AR 2, is a non-relatively permanent, non-jurisdictional artificial flood conveyance channel which has a defined channel and an OHWM measuring at 1,880 linear feet within the 5.21-acre project area.

## 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. "Aquatic Resources Delineation Report Springs Preserve Cienega Site," Universal Engineering Sciences (May 2023)

3. REVIEW AREA. The 5.21-acre project area is located within the Springs Preserve property at 333 S. Valley View Boulevard, Latitude 36.17184, Longitude -115.18516, Las Vegas, Clark County, Nevada. The project area does not include any of the aquatic resources to the north of AR 2, referred to as La Cienega, which is a series of wetlands constructed in 2004. There are no previous JDs identified within the review area in ORM. An item of particular importance is the area immediately north of the review area- the Meadows Detention Basin and the Springs Preserve. The Meadows Detention Basin is part of a Clark County Regional Flood Control District (CCRFCD) facility (ID LCME0020) which included the construction of a flood control channel (referred to as the Peaking Channel or Sloan Flood Control Channel; AR 2) and La Cienega- a series of wetlands whose base flows are diverted from Las Vegas Creek, around the western border of the detention basin (and through the wetlands), and back into Las Vegas Creek through an outlet structure. Since the Meadows Detention Basin was last modified in 2002, AR 2 is designed to capture flows that exceed 20 cubic feet per second (CFS) up to 200 CFS. Base flows which do not exceed 20 CFS are delivered to the wetlands along the western boundary (La Cienega) through a 24-inch pipe. When flows exceed 200 CFS they overflow the channel and enter the Meadows Detention Basin. These aquatic resources are presumed to be jurisdictional and are excluded from the review area as they are not a part of any planned modifications.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is Lake Mead.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Aquatic resources leaving the review area continue through a series of flood control channels before entering the Las Vegas Wash—an RPW—and then Lake Mead- a TNW (Enclosure 1). The review area is approximately 24 river miles upstream of Lake Mead.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: N/A

7. SECTION 404 JURISDICTIONAL WATERS:

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): Las Vegas Creek, 425 linear feet, is a man-altered flood control channel that flows directly into an (a)(1) water. This feature meets the relatively permanent standard as it has flowing or standing water year-round. The source of flow is primarily flood conveyance and effluent (nuisance) flows. There are two separate reaches of the Las Vegas Creek within the 5.21-acre project area. The first reach is 175 linear feet and is the further upstream aquatic resource within the review area. Flows from this reach of Las Vegas Creek are diverted within the Meadows Detention Basin. The second reach of Las Vegas Creek is below the outlet for the Meadows Detention Basin including the combined flows of AR 2 and any discharge from the wetlands within the Meadows Detention Basin. The combined hydrologic input from these sources retain the relatively permanent standard similarly to the upstream (first) reach of Las Vegas Creek within the project area.

f. Adjacent Wetlands (a)(4): N/A

g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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<sup>5</sup> 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.

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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2023-00646]

a. AR 2 is not a naturalized tributary and was constructed as part of channelization efforts dating back to the 1960s, continuing into the early 2000s as part of the CCRFCD 10-Year Master Plan. AR 2 only receives flows when Las Vegas Creek's baseflows exceed 20 CFS and therefore do not carry relatively permanent flow. The most suitable designation for this resource is a (b)(3) ditch that was excavated wholly in and draining only dry land that does not carry relatively permanent flow of water.

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 September 2022 and May 2023 site visits.

b. Universal Engineering Sciences, 2023. "Aquatic Resources Delineation Report Springs Preserve Cienega Site."

c. Worldview. 2023. "WV01, 01OCT 016025509-10." *Orthorectified satellite imagery*. Westminster, CO: DigitalGlobe, Inc., October 2023

10. OTHER SUPPORTING INFORMATION. The project's Aquatic Resources Delineation Report included a detailed narrative and series of historic aerial imagery for the review area dating back to 1950. This information outlined a clear history of the project area where no natural tributaries, wetlands, or other aquatic resources existed within the project area. Aerial imagery from 1965 showed the construction of a housing development immediately southeast of the review area along with channelization of Las Vegas Creek within the current alignment of AR 2. 1989 aerial imagery shows the footprint and initial construction of the Meadows Detention Basin (CCRFCD Facility ID LCME0020). 2002 aerial imagery shows the latest major development to the review area- the construction of La Cienega and its wetland areas. As of 2002 AR 2 no longer received base flows from Las Vegas Creek which is representative of existing conditions at the date of this MFR.

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.



MICHAEL S. JEWELL  
CHIEF  
REGULATORY DIVISION

Enclosures