



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

CESPK-RDI-N

19 Dec 2023

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ [SPK-2023-00034].

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Utah due to litigation.

¹ While the Supreme Court’s decision in *Sackett* 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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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1. SUMMARY OF CONCLUSIONS.

a. 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 and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area). The site is a developed auto salvage yard and does not contain any sample points which met the criteria for wetlands.

2. REFERENCES:

a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008).

d. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023).

e. Aquatic Resource Delineation Report [REDACTED].

f. Google Earth.

3. REVIEW AREA: The approximately 3.5 acre review area is located on Cache County Parcel Id 05-059-0012, Latitude 41.735426°, Longitude -111.883137°, Logan, Cache County, Utah (AJD MFR Attachment 1).

The project area has elevations ranging from 4,430 to 4,435 feet above mean sea level (msl). The topography of the project area is relatively flat. The project area is part of a large auto salvage yard and recycling center that has been in place for almost 10 years. The project area appears disturbed/unvegetated in recent historical aerials.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED: The nearest TNW to the site is Cutler Reservoir, as identified in the [DATE] SPK Regulatory Division memo. However, there are no waters of the U.S. within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. As such this issue is moot.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: N/A. There are no waters of the

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U.S. within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area, as such there is no flow path to identify from the subject aquatic resources to a TNW, Interstate Water, or the Territorial Seas.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ 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 in accordance with the pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. TNWs (a)(1): N/A.
- b. Interstate Waters (a)(2): N/A.
- c. Other Waters (a)(3): N/A.
- d. Impoundments (a)(4): N/A.
- e. Tributaries (a)(5): N/A.
- f. The territorial seas (a)(6): N/A.

⁵ 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.

⁶ 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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g. Adjacent wetlands (a)(7): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES:

a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁷ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A. The site is comprised entirely of uplands. No ARs are present on site.

b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A.

c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A.

d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A.

e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A.

f. 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 pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (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.

⁷ 51 FR 41217, November 13, 1986.

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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. Aquatic Resources Delineation Report, [REDACTED] [REDACTED], dated August 2022. The consultant prepared the wetland delineation report in accordance with the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and the USACE Regional Supplement for the Arid West Region.

b. Photographs: Photos included in [REDACTED] Aquatic Resources Delineation Report. Corps photolog collected from GoogleEarth (June 2023, June 2020, September 2018, September 2017, October 2014, August 2011, December 2006, and July 2004). Logan, Cache County, Latitude 41.735426°, Longitude -111.883137°. Retrieved 9 November 2023, from <http://www.earth.google.com> (AJD MFR Attachment 2).

c. LiDAR – National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved 14 November 2023. (AJD MFR Attachment 3).

d. National Hydrography Dataset Flowlines and National Wetland Inventory Map: [REDACTED]. Aquatic Resources Delineation Report. (AJD MFR Attachment 4).

e. USDA Natural Resources Conservation Service Soil Survey: [REDACTED] [REDACTED] Aquatic Resources Delineation Report. (AJD MFR Attachment 5).

f. Topographic Map: [REDACTED]. Aquatic Resources Delineation Report. (AJD MFR Attachment 6).

10. OTHER SUPPORTING INFORMATION. N/A.

Encls

[REDACTED]
[REDACTED]
[REDACTED]

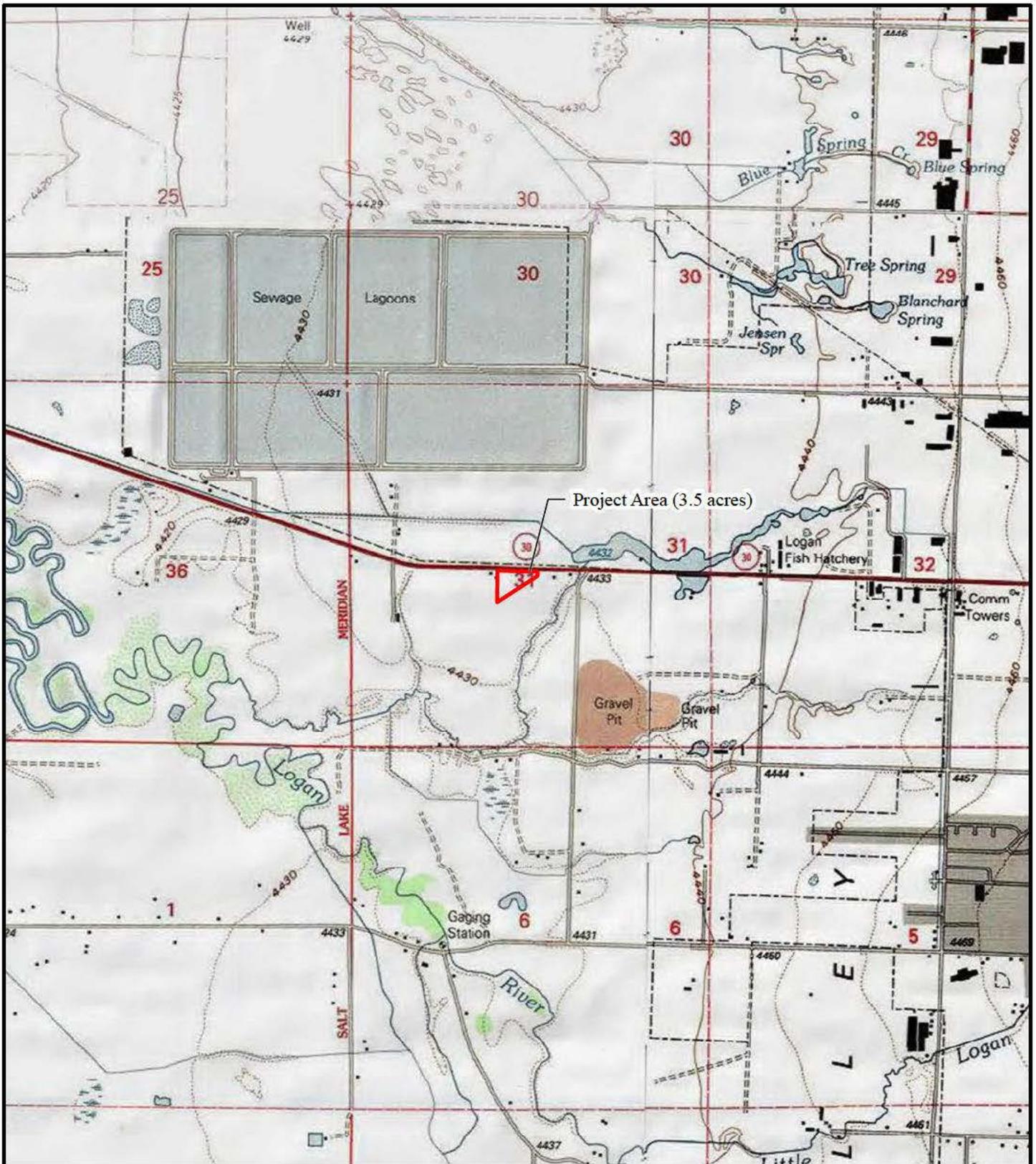
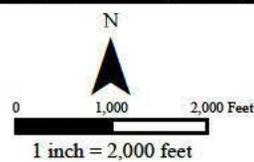


Figure 2a. Project Area Map
24k Topo Base

Base layer: USGS 7.5 Minute Quad- Wellsville, UT
Map Date: 8/19/2022

 Project Area





**Figure 3.
Aquatic Resource
Delineation Map**

- Project Area
- Delineation Sample Point
- ↑ Photo View Direction

Map Date: 2/10/2022
 Map By: [REDACTED]
 Delineation Date: 11/23/2022,
 7/12/2022, 7/20/2022, and
 8/3/2022 by [REDACTED]
 Aerial Imagery: Maxar 2020



0 50 100 200
 Feet
 1 inch = 100 feet

Coordinate System: NAD 1983 StatePlane Utah North FIPS 4301 Feet
 Projection: Lambert Conformal Conic
 Datum: North American 1983

No Aquatic Resources Identified within the Project Area