



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

CESPK-RDC-D

16 Feb 2024

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 SPK-2022-00364

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

a. 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*").

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

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 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.

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).

(1) SW-1, non-jurisdictional

(2) SW-2, non-jurisdictional

(3) UD-1, 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)

3. REVIEW AREA. The review area consists of an approximately 9.3-acre study area located at the northwest corner of Watt Avenue and Jackson Highway, Latitude 38.540733°, and Longitude -121.372145°, within the unincorporated community of Rosemont, Sacramento County, California. Please see Enclosure 1 for a map of the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

The nearest TNW is the Sacramento River, which is approximately 10 miles southwest of the review area. No aquatic resources delineated have a flow path to the Sacramento River an (a)(1) water, or any relatively permanent (a)(2) or (a)(3) waters.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. No aquatic resources within the review area have a connection or flow path to any TNW, Territorial Seas, or Interstate Waters.

6. SECTION 10 JURISDICTIONAL WATERS⁵. There are no Section 10 Jurisdictional Waters within the review area.

7. SECTION 404 JURISDICTIONAL WATERS. There are no Section 404 jurisdictional waters within the review area.

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): N/A

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

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

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES.

a. **UD-1**, is an approximately 0.18 acre upland ditch consisting of two ditches that are mapped as an individual feature. According to the delineation report the perimeter of the site drains stormwater via a manmade roadside ditch along Jackson Road that conveyed into the City of Sacramento's stormwater system. Additionally, a drainage ditch exists along the windrow of trees that separates the eastern and western parcels, which discharges into the roadside ditch along Jackson Road. The portion of the ditch that parallels the windrow of trees is unvegetated and covered with redwood leaves. The portion of the ditch along Jackson Road is maintained and dominated by non-native grasses and forbs including bermudagrass (*Cynodon dactylon*), black mustard (*Brassica nigra*), Italian ryegrass (*Lolium perenne*), and milk thistle (*Silybum marianum*) as seen in photo 1 of Enclosure 2. This ditch was determined to meet the definition of an excluded water pursuant to 33 CFR 328.3(b)(3) certain ditches (including roadside ditches) based on evidence that 1) it was excavated wholly in and draining only dry land; 2) does not carry a relatively permanent flow of water; and 3) is not considered relatively permanent under the Amended 2023 Rule. Topographic maps from 1902 to

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.

the 1950s, and aerial imagery of recent years (as referenced in *Enclosure 3* and *Enclosure 4*) provided evidence that the review area has historically been considered dry land, as well as evidence that UD-1 lacks a relatively permanent flow.

b. **SW-1, SW-2**, the wetlands with the review area are not waters of the U.S. because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended. SW-1 and SW-2 are situated in depressions within the valley grassland and do not have a continuous surface connection to a paragraph (a)(1) water, (a)(2) impoundment, or relatively permanent jurisdictional tributary (a)(3).

9. DATA SOURCES.

- a. U.S. Army Corps of Engineers. November 13, 2023. Field Visit.
- b. U.S. Army Corps of Engineers. December 15, 2023. Office Evaluation.
- c. [REDACTED]. October 2023. Maverik Gas Station at South Watt Avenue and Jackson Road Project Aquatic Resources Delineation Report.
- d. Google Earth. February 18, 2022, Imagery. 1:800 Accessed 29 Dec 2023.
- e. Google Earth. June 26, 2023, Imagery. 1:800 Accessed 19 Jan 2024.
- f. Google Earth. April 22, 2023, Imagery. 1:800 Accessed 19 Jan 2024.
- g. Google Earth. May 14, 2021, Imagery. 1:800 Accessed 19 Jan 2024.
- h. Google Earth. May 10, 2018, Imagery. 1:800 Accessed 19 Jan 2024.
- i. Imagery of South Watt Avenue and Jackson Highway, Sacramento, CA (38.539152, -121.371830). <https://www.bing.com/maps?cp=38.539422%7E-121.371127&lvl=19.7&dir=-30&style=g>. Retrieved from Bing Maps on 19 Jan 2024.
- j. U.S. Geological Survey. (1902). USGS 1:62500-scale Quadrangle for Fair Oaks, CA 1902: U.S. Geological Survey.
- k. U.S. Geological Survey. (1911). USGS 1:31680-scale Quadrangle for Mills, CA 91911: U.S. Geological Survey.
- l. U.S. Geological Survey. (1954). USGS 1:24000-scale Quadrangle for Fair Oaks, CA 1954: U.S. Geological Survey.

10. OTHER SUPPORTING INFORMATION.

a. The review area is a small portion of the larger Teichert Perkins Plant complex, which was first established in the 1930s by Brighton Sand and Gravel to mine and produce construction materials (sand, gravel, asphalt, and concrete products). Mining activities occurred on and around the larger site from the late 1930s until the early 1960s, when the mining resources were depleted. Once the resources were depleted, mining activities moved south of Jackson Highway to the Aspen 1 site, while the Perkins Plant complex continued as an industrial use to process and support the mining activities occurring elsewhere on Teichert-owned properties. The majority of the property was used for mining or mining support operations, some of which have continued to this day. Activities include water settlement basins, soil settling ponds, material storage (both soil and equipment), and buffer/staging areas for equipment and mining operations.

b. While the Maverik parcel located at the NW corner of Jackson Highway and South Watt Avenue was never directly mined (it was part of the original Manlove Road right of way which was ultimately abandoned in favor of the current South Watt Avenue alignment) it has historically served as a major roadway right of way, industrial staging area, and buffer area to the adjacent mining operations. Activities over the years have left the property in a highly disturbed state requiring periodic maintenance by the property owner.

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.

Enclosures

1. Review Area Map
2. Site Photos
3. Historic Topographic Maps
4. Aerial Imagery





AQUATIC RESOURCES INDIVIDUAL FEATURE			
Seasonal Wetlands			
Label	Acres	Latitude	Longitude
SW-1	0.013	38.540689	-121.371626
SW-2	0.292	38.539258	-121.371356
Subtotal	0.305		

- NOTES
- The boundaries and jurisdictional status of all waters shown on this map are preliminary and subject to verification by the U.S. Army Corps of Engineers.
 - Delineation conducted G. Davis on 1/4/2022 & 1/6/2022.
 - Aquatic resources were mapped by [redacted] using a Juniper Geode GNSS submeter GPS unit.
 - This delineation utilizes the USACE 1987 three-parameter methodology and Arid West Supplement to delineate jurisdictional waters of the U.S.
 - The Hydrologic Unit Code for this site is 18020163.
 - Topographic contour interval is 2 feet.
 - Coordinate System: State Plane Zone II.
 - Projection: Lambert Conic Conformable.
 - Datum: North American Datum 1983.

Other Features

Upland Data Point

Wetland Data Point

Contour (2ft)

Upland Ditch - 0.206 Acre

Study Area - 9.38 Acres

Aerial Imagery Date: 03/4/2021
Aerial Imagery Source: DigitalGlobe

REVISIONS		
DATE	DESCRIPTION	BY

0100200

Feet

1 inch = 100 feet

N

Drawn By: [redacted]

AQUATIC RESOURCES DELINEATION MAP
Maverick Gas Station at South Watt Avenue and Jackson Road
Rosemont, Sacramento County, California
March 7, 2022

APPENDIX B