



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

CESPK-RDC-D (SPK-2023-00353)

01 Mar 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),<sup>1</sup> SPK-2023-00353<sup>2</sup>

**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>3</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>4</sup>

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 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> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

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1. SUMMARY OF CONCLUSIONS. The following is a list of each individual feature within the review area and the jurisdictional status of each one. The Corps concurs with the extent of wetlands and other waters as mapped by [REDACTED] and portrayed on their Aquatic Resource Delineation (ARD) map (*Enclosure 1*).

- a. Isolated Swale, non-jurisdictional
- b. Stormwater Drainage, 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 10-acre area located at 7340 28th Street, Latitude 38.70050°, and Longitude -121.40017°, City of Rio Linda, Sacramento County, California. The review area for purposes of this MFR, is identical to the "Project Area" depicted on the enclosed map *Appendix A: Aquatic Resources within the Project Area (Enclosure 1)*.

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 located approximately 10 miles southwest of the review area. No aquatic resources within the review area have a flow path to the Sacramento River, an (a)(1)(i) 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. Aquatic resources in the review area flow from east to west towards a potentially relatively permanent (a)(3) tributary (a pond located outside of the review area on the parcel to the west).

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: There are no 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.<sup>6</sup>

7. SECTION 404 JURISDICTIONAL WATERS: There are no aquatic resources within the review area that meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*.

- 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. There are no aquatic resources or other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5).

b. 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 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). The aquatic resource within the review area found not to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*:

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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.

<sup>6</sup> 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.

(1) **Isolated Swale:** This wetland feature lacks a continuous surface connection to a paragraph (a)(1) water, relatively permanent (a)(2) impoundment, or (a)(3) tributary that meets the relatively permanent standard. It is located approximately 0.5 miles from a pond that is a potential relatively permanent (a)(3) tributary (located on the parcel west of the review area). The wetland is located on the eastern side of the review area abutting an adjacent property and is surrounded by paved roads, a trucking storage facility, and uplands which can be seen the enclosed map of the review area (*Enclosure 1*). The nearest potential flow path off the review area is through Stormwater Drainage, which connects to a culvert via a roadside ditch and continues under 28<sup>th</sup> street where it then ponds in a low-lying area within the adjacent property. However, onsite observations provided evidence that there is no discrete physical feature like a pipe, culvert, or ditch, connecting this wetland to Stormwater Drainage or otherwise to an (a)(1) water, or a relatively permanent (a)(2) or (a)(3) water. Nor is there a natural landform such as a natural berm, bank, dune, or similar landform between the wetland and other jurisdictional waters that provides evidence of a continuous surface connection. For more details, please see photos 1 and 2 of the enclosed site photos (*Enclosure 2*).

(2) **Stormwater Drainage:** This wetland swale starts at the southeast corner of the review area and follows the southern boundary of the review area until it then begins to flow northwest extending approximately 400 feet, where it then terminates at a roadside ditch. There is a culvert present approximately 60 feet north from the edge of Stormwater Drainage which runs under 28<sup>th</sup> Street and drains roadside runoff (*Enclosure 2, photo 5*). The roadside ditch, which lacks an OHWM and does not meet the definition of wetland, connects Stormwater Drainage to the culvert. The culvert discharges into a low-lying area of the adjacent property. Approximately 350 feet west of the culvert is a potentially relatively permanent pond. There is no discernable discrete physical feature connecting the area the culvert discharges into to the pond to the west (*Enclosure 2, photo 6 and 7*). The intervening area between the culvert and the potentially relatively permanent pond include a residential driveway and upland ruderal grassland communities maintained as a lawn. There is no continuous surface connection through this area (*Enclosure 2, photo 8*). To the extent water flows between the culvert and the pond to the west it does either through a subsurface connection or via non-discrete overland flow neither of which meets the requirements for a continuous surface connection. Therefore, this wetland feature lacks a continuous surface connection to a paragraph (a)(1) water, relatively permanent (a)(2) impoundment, or (a)(3) tributary that meets the relatively permanent standard. Aerial Imagery and street view imagery from google earth and Bing Maps provides evidence of a lack of a discrete feature connecting the culvert to the pond (*Enclosure 3*).

9. DATA SOURCES. List sources of data/information used in making a determination. Include titles and dates of sources used and ensure that the information referenced is available in the administrative record.

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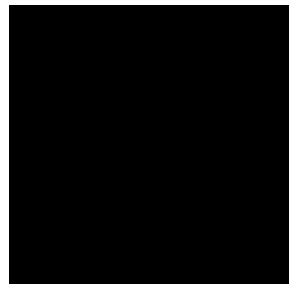
- a. U.S. Army Corps of Engineers. December 11, 2023. Field Visit.
- b. U.S. Army Corps of Engineers. December 28-30, 2023. Office Evaluation.
- c. [REDACTED]. June 2022. Draft Aquatic Resource Delineation Report 7340 28th Street, Rio Linda, CA.
- d. Google Earth: Flow Path Closeup SPK-2023-00353 February 18, 2022, Imagery [map]. 1:800. Generated by Army Corps of Engineers, December 29, 2023. Using Google Earth
- e. U.S. Army Corps of Engineers. June 15, 2023. Preliminary Jurisdictional Determination for the 7340 28<sup>th</sup> Street Grading Permit project site.
- f. Google Earth: SPK-2023-00353 February 18, 2022, Imagery [map]. 1:800. Generated by Army Corps of Engineers, February 07, 2024. Using Google Earth
- g. Bing Maps: 7340 28<sup>th</sup> street, north highland, CA; Imagery. Generated by Army Corps of Engineers, February 07, 2024. Using Bing Maps

#### 10. OTHER SUPPORTING INFORMATION.

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.

3 Encls

1. Review Area Map
2. Site Photos
3. Imagery Analysis



## Appendix A: Aquatic Resources within the Project Area

