



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

CESPK-RDC-D

19 April 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-2019-00684] (MFR 1 of 1)

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

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),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.

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1. SUMMARY OF CONCLUSIONS.

a. The following table lists each individual feature within the review area and its jurisdictional status.

Waters Name	Cowardin Code	Waters of the U.S.	Authority	Navigable Waters of the U.S.
DC-1	R5	Yes	Section 404	No
DC-2	R5	Yes	Section 404	No
DC-3	R5	Yes	Section 404	No
DC-4	R5	Yes	Section 404	No
DC-5	R5	Yes	Section 404	No
DC-6	R5	Yes	Section 404	No
DD-1	R6	No	N/A	No
RD-1	R6	No	N/A	No
RD-2	R6	No	N/A	No
RD-3	R6	No	N/A	No
RD-4	R6	No	N/A	No
RD-5	R6	No	N/A	No
RD-6	R6	No	N/A	No
RD-7	R6	No	N/A	No
RD-8	R6	No	N/A	No
RD-9	R6	No	N/A	No
RD-10	R6	No	N/A	No
RD-11	R6	No	N/A	No
RD-12	R6	No	N/A	No
RD-13	R6	No	N/A	No
RD-14	R6	No	N/A	No
RD-15	R6	No	N/A	No
RD-16	R6	No	N/A	No
RD-17	R6	No	N/A	No

2. REFERENCES.

a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

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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 AJD review area covers approximately 53 acres and is located generally between the Sacramento River Deep Water Ship Channel and the Sacramento River, in the southern portion of West Sacramento, Latitude 38.51673, Longitude -121.57071, City of West Sacramento, Yolo County, California (Enclosure 1).

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

The TNW nearest to the survey area is the Sacramento Deep Water Ship Channel (Enclosures 2 and 3). The Sacramento Deep Water Ship Channel is a TNW over its entire 26-mile length, which includes the area adjacent to the survey area. The Sacramento District has determined that the entire 26 miles of the Sacramento Deep Water Ship Channel, from its start near the Sacramento River through the Port of Sacramento to its terminus at Cache Slough (southern tip of Liberty Island), is a navigable water of the U.S. under the Rivers and Harbors Act of 1899.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

Water from DC-1 flows north into a culvert that passes under Burrows Avenue and continues north (out of the survey area) along the drainage canal for approximately 1,488 feet before reaching a culvert that passes under the levee and into the Main Drain Canal (shown and labeled in Enclosure 3). Water flows west through the Main Drain Canal to the Reclamation District 900 pumping facility, where water is pumped approximately 190 feet west under the levee and into the Sacramento Deep Water Ship Channel, the nearest (a)(1) water.

Water from DC-2 flows east along the north side of Burrows Avenue for approximately 0.25 mile and then flows out of the survey area and into a drainage canal that runs perpendicular to DC-2. Water flows north in this canal for approximately 1,488 feet before reaching a culvert that passes under the levee and into the Main Drain Canal (Enclosure 3). From this point, water flows west in the Main Drain Canal to the Reclamation District 900 pumping facility, where water is pumped approximately 190 feet west under the levee and into the Sacramento Deep Water Ship Channel, the nearest (a)(1) water.

Water from DC-3 flows west along the south side of Bevan Road for approximately 0.08 mile and then flows out of the survey area and continues west where it flows through three different culverts under residential driveways and then briefly through a separate portion of the survey area (DC-6; 12 linear feet). The water then flows further west and into the Main Drain Canal (Enclosure 3) where it continues south for approximately 0.5 mile before turning west and flowing for approximately 0.9 mile to the Reclamation District 900 pumping facility, where water is pumped approximately 190 feet west under the levee and into the Sacramento Deep Water Ship Channel, the nearest (a)(1) water.

Water from DC-4 flows into a culvert underneath Southport Parkway and southwest out of the survey area into a drainage canal that flows south. Water continues in a southerly direction in this canal for approximately 0.17 mile and then turns west for 0.15 mile before turning south for another 0.18 mile before flowing into a culvert under the levee and into the Main Drain Canal (Enclosure 3) where it flows west for approximately 0.46 mile to the Reclamation District 900 pumping facility, where water is pumped approximately 190 feet west under the levee and into the Sacramento Deep Water Ship Channel, the nearest (a)(1) water.

Water from DC-5 flows west for approximately 0.40 mile towards a pumping structure which pumps water immediately west into an adjacent canal. From here, water flows south through a culvert underneath a levee access road and continues south approximately 0.42 mile, where it flows south under part of the RD 900 facility to the main pumping portion of the RD 900 facility. From there, the water is pumped approximately 190 feet west under the levee and into the Sacramento Deep Water Ship Channel, the nearest (a)(1) water (Enclosure 3).

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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

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.

d. Impoundments (a)(2): N/A

e. Tributaries (a)(3): The aquatic resources DC-1, DC-2, DC-3, DC-4, DC-5, and DC-6 are contiguous features and jurisdictional relatively permanent tributaries to the Sacramento Deep Water Ship Channel, an (a)(1) water (Enclosures 2 and 3). The aquatic resource DC-1 is approximately 22 feet long and is a segment of an approximately 1.30-mile-long reach that flows north through a portion of the review area (Enclosure 3). The reach starts approximately 0.48 mile south of the review area and terminates approximately 0.30 mile north of the review area, where it enters the Main Drain Canal (Enclosure 3). The Applicant's agent characterizes this drainage canal as "perennial" [REDACTED], an assertion that is consistent with our review of available aerial and street view imagery retrieved from Google Earth. Water is visible in this aquatic resource in Google Earth imagery from January 2022 (Enclosure 4) and June 2021 (Enclosure 5). The NHD identifies this entire reach as "canal ditch" (Enclosure 3), which does not clearly provide evidence for this assertion, but neither does it disprove that DC-1 is a relatively permanent tributary since it is an artificial feature. Supporting documentation provided by the Applicant's agent, the available aerial imagery, and the NHD all indicate that aquatic resource DC-1 contains flowing or standing water continuously during certain times of the year (though perhaps not year-round) but also more than only for a short duration in direct response to precipitation (see 88 FR 3004, 3102, January 18, 2023). Based upon this evidence, we conclude that drainage canal DC-1 is a relatively permanent water.

The aquatic resource DC-2 is approximately 1,338 feet long and is located on the north side of Burrows Avenue, running parallel to the roadway. The reach starts within the review area at the intersection of Jefferson Boulevard and Burrows Avenue and flows east along Burrows Avenue for approximately 0.25 mile, where it flows into a larger canal (a perpendicular feature that encompasses DC-1). Water continues north for approximately 0.28 mile, flowing through a culvert into the Main Drain Canal (Enclosure 3). The feature supports some hydrophytic vegetation in the form of small stands of bulrush (*Schoenoplectus acutus*) along the feature length, but the sample point collected at this location did not meet all three wetland parameters. The Applicant's agent characterizes this drainage canal as "perennial" (Madrone, 2022, p. 4), an assertion that is consistent with our review of available aerial and street view imagery retrieved from Google Earth. Water is visible in this aquatic resource in Google Earth imagery from June 2021 (aerial image, Enclosure 6) and January 2022 (street view, Enclosure 7). The NHD identifies this entire reach as "canal ditch" (Enclosure 3), which does not clearly provide evidence for this assertion, but neither does it disprove that DC-2 is a relatively permanent tributary since it is an artificial feature. Supporting documentation provided by the Applicant's agent, the available aerial imagery, and the NHD all indicate that aquatic resource DC-2 contains flowing or standing water continuously during certain times of the year (though perhaps not year-round) but also more than only for a short duration in direct response to precipitation

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(See 88 FR 3004, 3102, January 18, 2023). Based upon this evidence we conclude that drainage canal DC-2 is a relatively permanent water.

The aquatic resource DC-3 and DC-6 are approximately 413 feet long and 10 feet long, respectively, and are segments of an approximately 0.45-mile-long reach that flows west through a portion of the review area (Enclosure 3). The reach starts approximately 380 feet east of the DC-3 review area and terminates approximately 357 feet west of the DC-6 review area, where it enters the Main Drain Canal (Enclosure 3). The Applicant's agent characterizes this drainage canal as "perennial" [REDACTED], an assertion that is consistent with our review of available aerial and street view imagery retrieved from Google Earth. Water is visible in this aquatic resource in Google Earth imagery from May 2021 (aerial image, Enclosure 8) and February 2022 (aerial image, Enclosure 9). The NHD identifies this entire reach as "canal ditch" (Enclosure 3), which does not clearly provide evidence for this assertion, but neither does it disprove that DC-3 and DC-6 are relatively permanent tributaries since they are artificial features. Supporting documentation provided by the Applicant's agent, the available aerial imagery, and the NHD all indicate that aquatic resources DC-3 and DC-6 contain flowing or standing water continuously during certain times of the year (though perhaps not year-round) but also more than only for a short duration in direct response to precipitation (See 88 FR 3004, 3102, January 18, 2023). Based upon this evidence, we conclude that drainage canals DC-3 and DC-6 are relatively permanent waters.

The aquatic resource DC-4 is approximately 27 feet long and is a segment of an approximately 0.85-mile-long reach that flows north through a portion of the review area (Enclosure 3). The reach starts approximately 0.29 mile upstream (north-northeast) of the review area and terminates approximately 0.55 mile south of the DC-4 review area, where it enters the Main Drain Canal (Enclosure 3). The Applicant's agent characterizes this drainage canal as "perennial" [REDACTED], an assertion that is consistent with our review of available aerial and street view imagery retrieved from Google Earth. Water is visible in this aquatic resource in Google Earth imagery from October 2020 (aerial image, Enclosure 10) and February 2022 (aerial view, Enclosure 11). The NHD identifies this entire reach as "canal ditch" (Enclosure 3), which does not clearly provide evidence for this assertion, but neither does it disprove that DC-4 is a relatively permanent tributary since it is an artificial feature. Supporting documentation provided by the Applicant's agent, the available aerial imagery, and the NHD all indicate that aquatic resource DC-4 contains flowing or standing water continuously during certain times of the year (though perhaps not year-round) but also more than only for a short duration in direct response to precipitation (See 88 FR 3004, 3102, January 18, 2023). Based upon this evidence we conclude that the drainage canal DC-4 is a relatively permanent water.

The aquatic resource DC-5 is approximately 2,200 feet long and is a segment of an approximately 1.36-mile-long reach that flows north through a portion of the review area (Enclosure 3). The reach starts approximately 0.32 mile north of the DC-5 review area and terminates approximately 0.48 mile south of the action area, where it flows to the pump station at the end of the Main Drain Canal (Enclosure 3). The Applicant's agent characterizes this drainage canal as "perennial" [REDACTED], an assertion that is consistent with our review of available aerial and street view imagery retrieved from Google Earth. Water is visible in this aquatic resource in Google Earth imagery year-round, as shown in the June 2021 (aerial image, Enclosure 12) and February 2022 (aerial view, Enclosure 13) images. The NHD identifies this entire reach as "canal ditch" (Enclosure 3), which does not clearly provide evidence for this assertion, but neither does it disprove that DC-4 is a relatively permanent tributary since it is an artificial feature. Supporting documentation provided by the Applicant's agent, the available aerial imagery, and the NHD all indicate that aquatic resource DC-4 contains flowing or standing water continuously during certain times of the year (though perhaps not year-round) but also more than only for a short duration in direct response to precipitation (See 88 FR 3004, 3102, January 18, 2023). Based upon this evidence we conclude that the drainage canal DC-4 is a relatively permanent water.

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

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

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. The aquatic resource DD-1 is a 22-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED]) located along the east side of Jefferson Boulevard (Enclosure 2). DD-1 terminates at the end of the agricultural field (before reaching Burrows Avenue). As described in the aquatic resources delineation, this ditch is annually re-constructed in uplands to convey stormwater from the adjacent agricultural field (dry-farmed crops), and only supports ephemeral flows. Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 14, dated January 2023. However, flowing or standing water is only present for a short duration in direct response to precipitation events, and further, DD-1 is devoid of any emergent or hydrophytic vegetation. This feature is not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, DD-1 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from "waters of the U.S." (WOTUS), in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-1 is a 753-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] located along the east side Jefferson Boulevard (Enclosure 2). Water is not visible in this aquatic resource in aerial imagery (current or historic). Additionally, this feature appears to be isolated along the 753-foot segment with no continuous surface connection to an (a)(1), (a)(2), or (a)(3) water, and it is not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-1 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-2 is an 85-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] that is located along the east side Jefferson Boulevard (Enclosure 2). Water is not visible in this aquatic resource in available aerial imagery (current or historical), and it appears that this feature likely only supports flowing or standing water for only a short duration in direct response to precipitation. The feature appears to be isolated along the 85-foot segment adjacent to an agricultural field with no continuous surface connection to an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-2 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-3 is a 1,620-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] located along the east side of Jefferson Boulevard (Enclosure 2), that lies parallel and just east of feature DD-1. Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 14, dated January 2023. However, flowing or standing water is only present for a short duration in direct response to precipitation events, and further, RD-3 is devoid of any emergent or hydrophytic vegetation. The feature appears to be isolated along the 1,620-foot segment adjacent to an agricultural field (terminating before reaching Burrows Avenue) with no continuous surface connection to a an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-3 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-4 is a 2,268-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] and located along Armfield Avenue and Fisher Avenue (Enclosure 2). Water is not visible in this aquatic resource in the available aerial imagery (current or historical) and is devoid of any emergent or hydrophytic vegetation. The feature also appears to be isolated along the 1,620-foot segment adjacent to an agricultural field with no continuous surface connection to an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-4 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-5 is a 46-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] located along the west side Jefferson Boulevard (Enclosure 2). Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 15, dated January 2023. However, flowing or standing water is only present for a short duration in direct response to precipitation events, and further, RD-5 is devoid of any emergent or hydrophytic vegetation. The feature appears to be isolated along the 46-foot segment adjacent to an agricultural field with no continuous surface connection to a an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-5 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-6 is a 1,520-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] located along the north side of Burrows Avenue (Enclosure 2). Water is not visible in this aquatic resource in the available aerial imagery (current or historical), and it appears that this feature would only support flowing or standing water for only a short duration in direct response to precipitation. Similar to RD-4 and RD-5, which drain the same agricultural field, RD-6 does not support any emergent or hydrophytic vegetation. The feature appears to be isolated from other features and to have been established along the perimeter of the agricultural field to drain off excess water, with no apparent continuous surface connection to a an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-6 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or

(a)(5) “other water.” Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-7 is an 835-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] that is located along the west side of Goodell Avenue (Enclosure 2). Water is not visible in this aquatic resource in the available aerial imagery (current or historical), and it appears that this feature would only support flowing or standing water for only a short duration in direct response to precipitation. The feature appears to have been established along the perimeter of the agricultural field to drain off excess water off the field, with no apparent continuous surface connection off-site to a an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA’s How’s My Waterway databases. Therefore, RD-7 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) “other water.” Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-8 is a 956-foot-long non-relatively permanent, linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] that is located along the east side of Goodell Avenue (Enclosure 2). Water is not visible in this aquatic resource in the available aerial imagery (current or historical), and it appears that this feature would only support flowing or standing water for only a short duration in direct response to precipitation. The feature is disconnected from other features and appears to have been established along the perimeter of the agricultural field to drain off excess water off of the field, with no continuous surface connection off-site to a an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA’s How’s My Waterway databases. Therefore, RD-8 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) “other water.” Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-9 is a 9-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] that is located along the east side of Jefferson Boulevard (Enclosure 2). Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 16, dated January 2023. However, flowing or standing water is only present for a short duration in direct response to precipitation events, and further, RD-9 is devoid of any emergent or hydrophytic vegetation. The feature appears to be isolated with no continuous surface connection to a an (a)(1),

(a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-9 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-10 is a 133-foot-long non-relatively permanent linear feature (unvegetated roadside ditch) that is located along the east side of Jefferson Boulevard (Enclosure 2). Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 16, dated January 2023. However, flowing or standing water is only present for a short duration in direct response to precipitation events, and further, RD-10 is devoid of any emergent or hydrophytic vegetation, and appears to be isolated with no continuous surface connection to an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-10 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-11 is a 305-foot-long shallow, non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] that is located along the south side of Burrows Avenue (Enclosure 2). Water is not visible in this aquatic resource in the available aerial imagery (current or historical). RD-11 appears to have been established along the perimeter of an agricultural field to drain off excess water, with no apparent continuous surface connection to a an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-11 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-12 is a 185-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] located along the east side of Jefferson Blvd. (Enclosure 2). Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 17, dated January 2023. However, flowing or standing water is only present for a short duration in direct response to precipitation events, and further, RD-12 is devoid of any emergent or hydrophytic vegetation. The

feature appears to be isolated with no continuous surface connection to an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-12 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-13 is a 345-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] located along the east side of Jefferson Blvd. (Enclosure 2). Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 18, dated January 2023. However, flowing or standing water is only present for a short duration in direct response to precipitation events, and further, RD-13 is devoid of any emergent or hydrophytic vegetation. The feature appears to be isolated with no continuous surface connection to a an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-13 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-14 is a 139-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] that is located along the east side of Jefferson Blvd. (Enclosure 2). Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 19, dated January 2023. However, flowing or standing water is only present for a short duration in direct response to precipitation events, and further, RD-14 is devoid of any emergent or hydrophytic vegetation. There is no apparent continuous surface connection to a an (a)(1), (a)(2), or (a)(3) water, and this feature is not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-14 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-15 is a 183-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] that is located along the east side of Jefferson Blvd. (Enclosure 2). Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 20, dated January 2023. However,

flowing or standing water is only present for a short duration in direct response to precipitation events, and further, RD-15 is devoid of any emergent or hydrophytic vegetation. There is no apparent continuous surface connection to a an (a)(1), (a)(2), or (a)(3) water, and this aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-15 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-16 is an 11-foot-long non-relatively permanent, shallow, linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] that is located along the east side of Burrows Avenue (Enclosure 2). Water is not visible in this aquatic resource in the available aerial imagery (current or historical). The feature appears to have been established along the roadway to drain off excess water, with no apparent continuous surface connection to a an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-16 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

The aquatic resource RD-17 is an 89-foot-long non-relatively permanent linear feature (identified in the aquatic resource delineation as a roadside ditch [REDACTED] that is located along the west side of Jefferson Blvd. (Enclosure 2). Aerial imagery shows that this reach periodically supports standing or flowing water during the wet season, as visible in Enclosure 21, dated January 2023. However, flowing or standing water is only present for a short duration in direct response to precipitation events. The feature appears to be isolated with no continuous surface connection to a an (a)(1), (a)(2), or (a)(3) water. This aquatic resource is also not included in the NWI, NHD, or the EPA's How's My Waterway databases. Therefore, RD-17 is not jurisdictional as it does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary or (a)(5) "other water." Additionally, this aquatic feature meets the ditches exclusion from WOTUS, in that it was constructed in the uplands to drain water from an upland (a roadway) and does not carry a relatively permanent flow of water.

b. N/A

9. DATA SOURCES. The following is a list of sources of data/information used in making this determination.

CESPK-RDC-D

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2019-00684]

a. U.S. Army Corps of Engineers. Various dates; January-April 2024. Office Evaluation.

b. [REDACTED]

c. U.S. Fish and Wildlife Service. n.d. National Wetland Inventory. Project area: Yarbrough 2019-00684. Source imagery date: 1990. Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved December 19, 2023, and March 28, 2024, from Wetland Mapper: <https://www.fws.gov/wetlands/data/mapper.html>.

d. U.S. Geological Survey. 2023. National Geospatial Program, USGS National Hydrography Dataset Best Resolution (NHD) for Hydrological Unit (HU) 10 – 1802016306. Shapefile: U.S. Geological Survey.

e. Google Earth. (Imagery from October 2020, May 2021, June 2021, February 2022, January 2023). West Sacramento, Yolo County, California. Latitude 38.51673, Longitude -121.57071. Retrieved various dates January-March 2024, from <http://www.earth.google.com>.

f. NHD Flowline (USGS 2024): USGS NHD Flow Path – 1 2019-00684 [map]. 1:1,600. Generated by Army Corps of Engineers, March 2024. Using ArcGIS Pro.

10. OTHER SUPPORTING INFORMATION. RD 900 Water flow paths to main pump station map, provided by RD 900 in correspondence dated January 31, 2024.

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.

21 Encls

1. Vicinity Map

CESPK-RDC-D

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2019-00684]

2. Aquatic Resources Overview
3. Flow Path Map
4. Google Earth Image, DC-1 (2021)
5. Google Earth Image, DC-1 (2022)
6. Google Earth Image, DC-2 (2022)
7. Google Earth Image, DC-2 (2023)
8. Google Earth Image, DC-3 (2022)
9. Google Earth Image, DC-4 (2020)
10. Google Earth Image, DC-4 (2021)
11. Google Earth Image, DC-5 (2021)
12. Google Earth Image, DC-5 (2022)
13. Google Earth Image, DC-6 (2021)
14. Google Earth Image, DD-1 (2023)
15. Google Earth Image, RD-5 (2023)
16. Google Earth Image, RD-9 (2022)
17. Google Earth Image, RD-12 (2022)
18. Google Earth Image, RD-13 (2022)
19. Google Earth Image, RD-14 (2023)
20. Google Earth Image, RD-15 (2023)
21. Google Earth Image, RD-17 (2023)

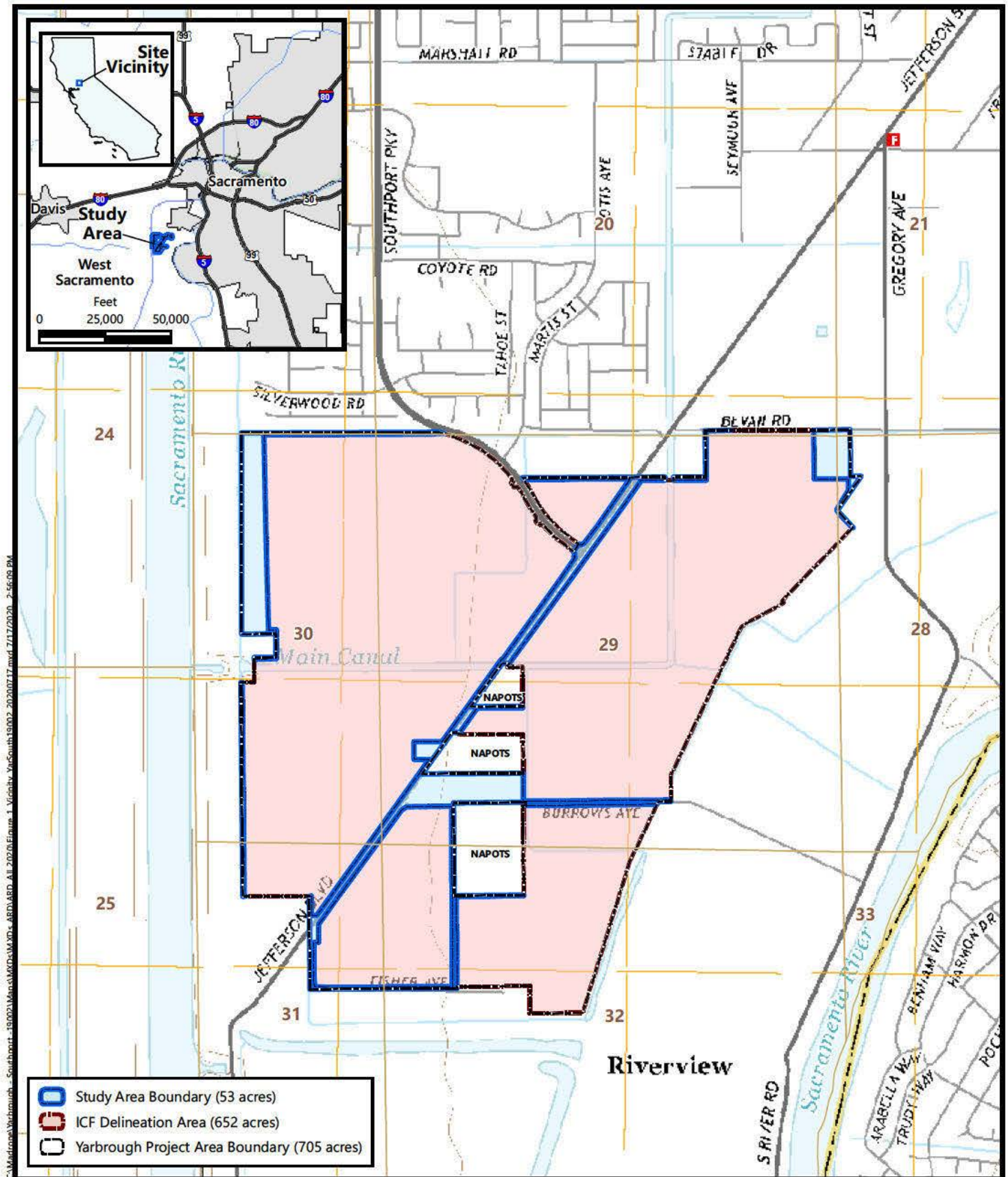
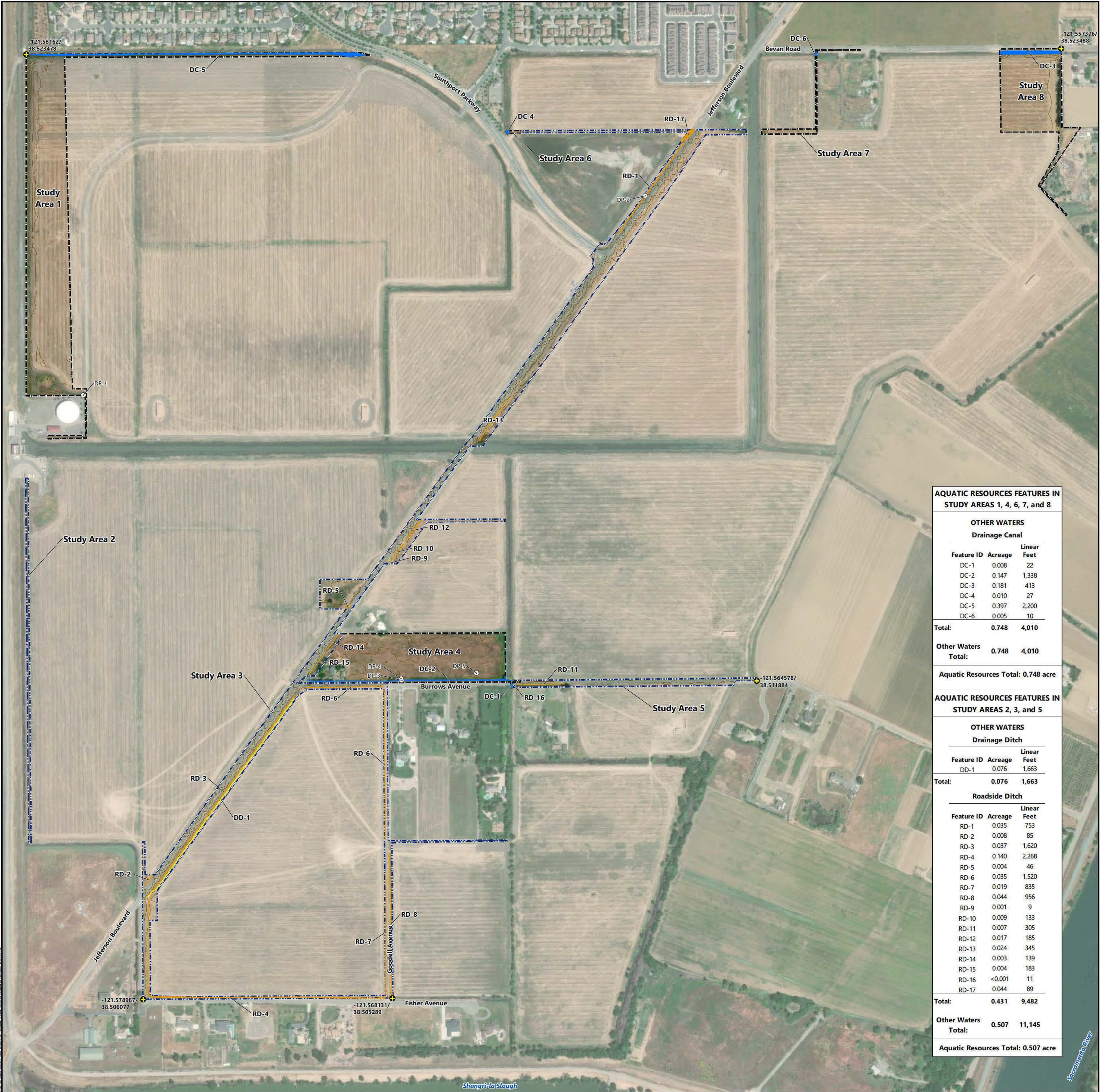


Figure 1
Vicinity Map

Source: United States Geologic Survey, 2015.
 "Sacramento West, California" 7.5-Minute Topographic Quadrangle
 Longitude -121.573454, Latitude 38.516596
 Sections 19-21, and 28-32, Township 8 North, Range 4 East

Yarrow Southport
 West Sacramento, Yolo County, California



**AQUATIC RESOURCES FEATURES IN
STUDY AREAS 1, 4, 6, 7, and 8**

OTHER WATERS		
Drainage Canal		
Feature ID	Acreage	Linear Feet
DC-1	0.008	22
DC-2	0.147	1,338
DC-3	0.181	413
DC-4	0.010	27
DC-5	0.397	2,200
DC-6	0.005	10
Total:	0.748	4,010
Other Waters Total:	0.748	4,010
Aquatic Resources Total: 0.748 acre		

**AQUATIC RESOURCES FEATURES IN
STUDY AREAS 2, 3, and 5**

OTHER WATERS		
Drainage Ditch		
Feature ID	Acreage	Linear Feet
DD-1	0.076	1,663
Total:	0.076	1,663
Roadside Ditch		
Feature ID	Acreage	Linear Feet
RD-1	0.035	753
RD-2	0.008	85
RD-3	0.037	1,620
RD-4	0.140	2,268
RD-5	0.004	46
RD-6	0.035	1,520
RD-7	0.019	835
RD-8	0.044	956
RD-9	0.001	9
RD-10	0.009	133
RD-11	0.007	305
RD-12	0.017	185
RD-13	0.024	345
RD-14	0.003	139
RD-15	0.004	183
RD-16	<0.001	11
RD-17	0.044	89
Total:	0.431	9,482
Other Waters Total:	0.507	11,145
Aquatic Resources Total: 0.507 acre		

Notes:
Scale: 1 inch = 350 feet
Coordinate System: NAD 1983 State Plane California II
Datum: NAD83
Projection: Lambert Conformal Conic
Vertical Data: NAVD88
Topographic Contours: Yolo County, 2012
Map Prepared by: [Redacted]
Delineation Performed by: [Redacted]

Aerial Base: Maxar
Aerial Base Flown: 4 May 2022
Date Map Prepared: 8 July 2020
First Map Revision: 13 October 2020
Second Map Revision: 15 August 2022

Definitions:
NAD = North American Datum
NAVD = North American Vertical Datum

Prepared For:
ASB Southport II LLC.
c/o David Stroud
1107 Kentucky Street
Fairfield, California 94533

Study Areas 1, 4, 6, 7, and 8 (32 acres)
Study Area 2, 3, and 5 (21 acres)

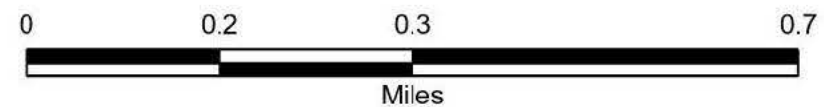
Aquatic Resources in Study Areas 1, 4, 6, 7, and 8 (0.748 acre)
Other Waters (0.748 acre)
Drainage Canal (0.748 acre)

Aquatic Resources in Study Areas 2, 3, and 5 (0.507 acre)
Other Waters (0.507 acre)
Drainage Ditch (0.076 acre)
Roadside Ditch (0.431 acre)

Aquatic Resources Delineation
Yarbrough Southport
West Sacramento, Yolo County, California



SPK-2019-00684
National Hydrography Dataset (NHD) Flow Path



Map Center: 121°34'13"W 38°30'49"N

Map created by [REDACTED]
on 3/25/2024 at 10:55 AM

Attachment 3