



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

CESPK-RDC-D

17 June 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-2024-00107]<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>

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>5</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

---

<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.

<sup>5</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. The following is a list of each individual feature within the review area and the jurisdictional status of each one.

(1) DD-1, non-jurisdictional

(2) DD-2, 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.

Review area included an approximately 25-acre parcel located at 5300 Port of Stockton Expressway, on Rough and Ready Island, in the Port of Stockton, Latitude 37.94244°, Longitude -121.35306°, San Joaquin County, California. The resources are as depicted on the enclosed January 31, 2023, *Aquatic Resources: Ferguson Expansion Project* drawing prepared by [REDACTED]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest traditionally navigable water is Burns Cut, a TNW under Section 10 of the RHA of 1899 and an (a)(1) water under the 2023 rule as amended.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The two sections of ditch are part of the same system with the upstream portion (DD-1) approximately 1,390 linear feet from the downstream portion (DD-2). From there the waters flow approximately 7,700 linear feet along a series of drainage ditches to a levee system which runs the entire perimeter of Rough and Ready Island. There is one stormwater pumping station located on the western portion of the island. The stormwater pumping station is kept in the closed position until there is a weather event that requires accumulated precipitation to be pumped from the east to the west and into the Burns Cutoff, a TNW under Section 10 of the RHA of 1899.

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: There are no Section 10 Jurisdictional Waters within the review area.

---

<sup>6</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.

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. DD-1, DD-2: It was determined that the aquatic resources on site consist of one artificial drainage ditch separated into northern (DD-2) and southern (DD-1) portions. The ditch that connects the two portions is outside the review area but is characterized in the same way. The ditches qualify for exclusion under paragraph b(3) of the Amended 2023 Water Rule, as they were excavated wholly in and draining only dry lands and do not carry a relatively permanent flow of water.

Historical aerial photographs from May 1993 and June 2006, as shown in the delineation, show the site in leveled cropland until construction of the Ferguson Facility began in 2006. Construction of the ditch system is underway in the October 2006 aerial photograph which clearly depicts the excavation of the ditch wholly in uplands.

In addition to the nature of their construction, the ditch only flows in response to rain and does not appear to carry a relatively permanent flow of water. A review of recent aerial photos, over the course of several months, shows that water is not present in these ditches for a significant amount of time, and flow of water is correlated to storm events.

A review of the ditches over several dates in the last five years in Digital Globe and Google Earth reveals that the ditches are seasonally moist but are not characterized with standing or flowing water. DD-2 carries the most water since it is further downstream within the ditch system. Standing water is rarely seen in DD-1; moist conditions and vegetation do not persist into the dry season in that area.

The dates of the aerial imagery analyzed include March 10, 2023, December 29, 2023 (date of pictures in enclosed delineation), March 11, 2022, July 21, 2020, February 4, 2022, April 29, 2021, and March 5, 2021.

Precipitation data provided by the U.S. Army Corps of Engineers (USACE) Antecedent Precipitation Tool (APT) shows normal conditions for all dates except April 29, 2021,

March 11, 2022, and April 6, 2022, which are drier than normal and March 10, 2023, which is wetter than normal. During the drier than normal times and the aerial imagery during the dry season the ditches are dry. However, the ditches also do not appear to hold standing water under the normal conditions either, although they are clearly greener. This information supports the conclusion that these features do not contain relatively permanent water.

## 9. DATA SOURCES.

a) Digital Globe. March 05, 2021. G-EGD. Latitude 37.94244°, Longitude -121.35306°. Zoom Level: 17. Accessed April 17, 2024.

b) Digital Globe. April 29, 2021. G-EGD. Latitude 37.94244°, Longitude -121.35306°. Zoom Level: 17. Accessed April 17, 2024.

c) Digital Globe. February 4, 2022. G-EGD. Latitude 37.94244°, Longitude -121.35306°. Zoom Level: 17. Accessed April 17, 2024.

d) Google Earth Pro 7.3.3.7786. September 27, 2020. Stockton, California. Latitude 37.94244°, Longitude -121.35306°. Eye Alt. 2129 ft. Accessed June 4, 2024.

e) Google Earth Pro 7.3.3.7786. March 11, 2022. Stockton, California. Latitude 37.94244°, Longitude -121.35306°. Eye Alt. 563 ft. Accessed April 24, 2024.

f) Google Earth Pro 7.3.3.7786. February 25, 2021. Stockton, California. Latitude 37.94244°, Longitude -121.35306°. Eye Alt. 2150 ft. Accessed June 4, 2024.

g) Google Earth Pro 7.3.3.7786. April 6, 2022. Stockton, California. Latitude 37.94244°, Longitude -121.35306°. Eye Alt. 2150 ft. Accessed June 4, 2024.

h) *Aquatic Resources Delineation 25+/- Acre "Ferguson Expansion Project" Port of Stockton, San Joaquin County, California*. Moore Biological Consultants. February 2024.

i) Wetlands Mapper. USFWS National Wetlands Inventory. Accessed April 17, 2023. Stockton, California. Latitude 37.94244°, Longitude -121.35306°.

j) Antecedent Precipitation Tool. March 05, 2021. Latitude 37.94244°, Longitude -121.35306. U.S. Army Corps of Engineers. Accessed June 6, 2024.

## 10. OTHER SUPPORTING INFORMATION.

None of the ditches being evaluated are listed on the National Wetlands Inventory (NWI) Wetland Mapper.

An AJD (SPK-2020-00950) was issued on June 22, 2021, for the approximately 123-acre project site directly north of this parcel. That AJD included the north portion of the drainage ditch included here as DD-2. It was determined then that the waters were

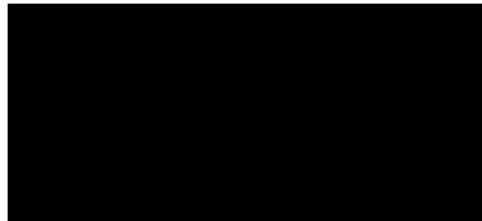
CESPK-RDC-D

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00107]

non-jurisdictional under both paragraph (b)(10) Section 404 of the Clean Water Act due to being a stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff as well as under Section 10 of the Rivers and Harbors Act.

An AJD (SPK-2020-00825) was completed on June 16, 2021, on the levee system that runs along the perimeter of Rough in Ready Island, into which the waters in this delineation flow. That water was determined to be non-jurisdictional under both paragraph (b)(10) Section 404 of the Clean Water Act and under Section 10 of the Rivers and Harbors Act.

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.



Encls  
Aquatic Resources Delineation  
Flow Map





0 100 200  
Feet



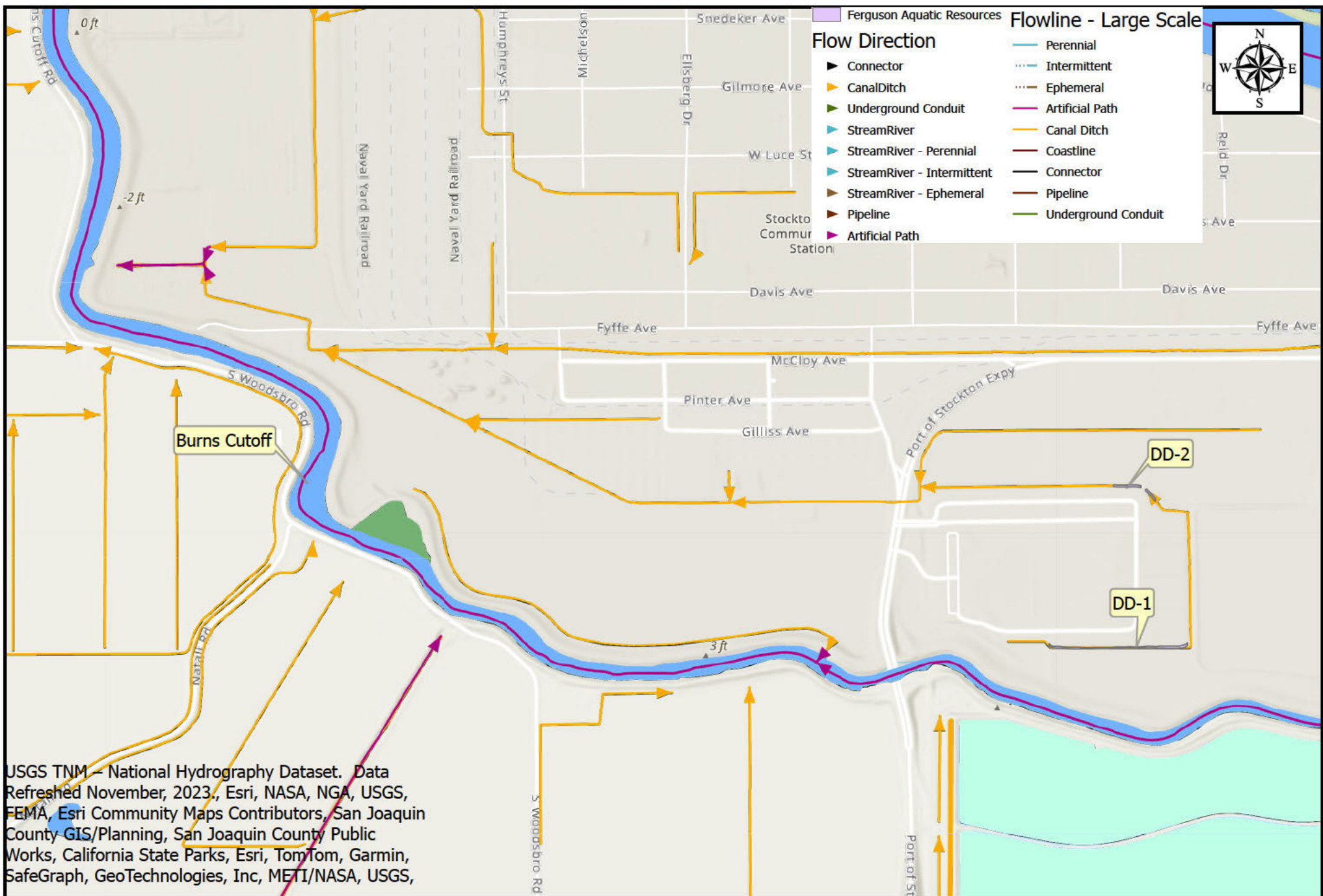
Map Date: 01/31/2024  
Aerial Source: Google Earth (May 10, 2023)

**Aerial Photograph - May 10, 2023**

**Ferguson Expansion Project**

*Port of Stockton, San Joaquin County, CA*





## Ferguson AJD Flow Map

0 500 1,000 2,000  
Feet

Map Center: 121.364076°W 37.946057°N

Date: 6/14/2024

Coordinate System: GCS WGS 1984  
Datum: WGS 1984