



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

CESPK-RDC-N

11 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-2024-00334]

**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>2</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>3</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>4</sup> 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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

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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). A field survey conducted by [REDACTED] on February 12, 2024, found no aquatic resources within the review area.

## 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 No.173 (September 8, 2023).

c. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023).

3. REVIEW AREA. The review area consists of the approximate 6.2-acre survey area located at Latitude 39.207932°, Longitude -121.202106°, within Nevada County, California (Enclosure 1). The property is within the United States Geological Survey (USGS) Rough and Ready Quadrangle, Section 33, Township 16N, Range 7E.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A, there are no aquatic resources on site.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A, there are no aquatic resources on site.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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. N/A, there are no aquatic resources within the review area.

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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.

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7. SECTION 404 JURISDICTIONAL WATERS: Aquatic resources within the review area that were found 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*. There are no aquatic resources in the review area.

#### 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Aquatic resources and 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). N/A.

b. 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). N/A.

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. U.S. Army Corps of Engineers. May 10, 2024. Office Evaluation.

b. U.S. Fish and Wildlife Service. (n.d.). National Wetland Inventory. Project area: 2024-00334 Holiday Market NWI. Source imagery date: 1983. Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved May 6, 2024, from Wetland Mapper: <https://www.fws.gov/wetlands/data/mapper.html>.

c. Natural Resources Conservation Service. (2023, August 28). Custom Soil Resource Nevada County Area, 2024-00334 Holiday Market. Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved May 6, 2024, from <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.html>.

d. Federal Emergency Management Agency. (n.d.). FEMA Flood Map Service Center. FEMA Firm Map: 06057C0604E, Effective on February 3, 2010. FEMA, Dept. of Homeland Security. Retrieved May 6, 2024, from <https://msc.fema.gov/portal/home>.

f. Digital Globe: March 22, 2020, Imagery [map]. 1:450. Generated by Army Corps of Engineers, May 10, 2024. Using ArcGIS Pro.

g. Digital Globe: April 8, 2021, Imagery [map]. 1:450. Generated by Army Corps of Engineers, May 10, 2024. Using ArcGIS Pro.

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h. Digital Globe: November 15, 2022, Imagery [map]. 1:450. Generated by Army Corps of Engineers, May 10, 2024. Using ArcGIS Pro.

i. Digital Globe: September 23, 2023, Imagery [map]. 1:450. Generated by Army Corps of Engineers, May 10, 2024. Using ArcGIS Pro.

j. LiDAR: LiDAR [map]. 1:300. Generated by Army Corps of Engineers, May 10, 2024. Using ArcGIS Pro.

k. U.S. Geological Survey. (2023). USGS 1:24000-scale Quadrangle for Rough and Ready, CA: U.S. Geological Survey.

l. U.S. Geological Survey. (1950). USGS 1:24000-scale Quadrangle for Rough and Ready, CA: U.S. Geological Survey.

m. *Aquatic Resources Delineation Report Holiday Market*. [REDACTED]  
[REDACTED] April 2024.

10. OTHER SUPPORTING INFORMATION. No aquatic resources were found in the Study Area. A data point was taken at the lowest elevation location in the Study Area near the vicinity of a drop inlet. The data point did not have any of the wetland indicators of hydrophytic vegetation, hydric soils, or hydrology. The aerial imagery from Digital Globe on March 22, 2020, April 8, 2021, and November 15, 2022, taken during the wet season, does not show saturation or water in the area of the data point, or in any other area within the Study Area. The National Wetland Inventory (NWI) does not show a wetland or aquatic resource in the Study Area. The national hydrography dataset (NHD) does not show an aquatic resource in the Study Area.

The Corps' Antecedent Precipitation Tool (APT) shows that the consultant's delineation on February 12, 2024, was conducted in normal conditions, during the wet season, with an incipient wetness drought index. The APT shows that the March 22, 2020, imagery was acquired in drier than normal conditions, during the wet season, with a moderate drought index. The APT shows that the April 8, 2021, imagery was acquired in normal conditions during the wet season, with an extreme drought index. The APT shows that the November 15, 2022, imagery was acquired in normal conditions during the wet season, with a severe drought index. The APT shows that the September 23, 2023, imagery was acquired in normal conditions during the dry season, and with an incipient wetness drought index.

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

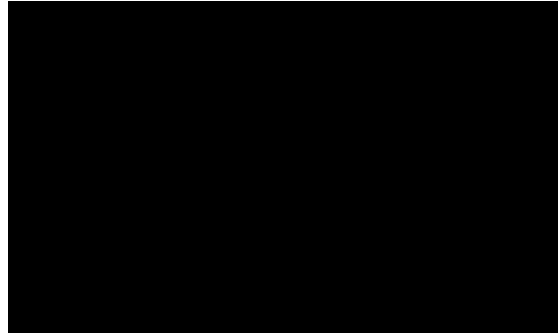
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to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Enclosures

1. LiDAR
2. Digital Globe Imagery
3. NWI Map
4. NHD Map


















P:\Holiday Market - 23111\Maps\MXDs\ABD\Figure 3\_AquaticResources\_HolidayMarket.ABD.v1.mxd (gwagner) 3/22/2024

<p><b>Prepared For:</b> [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p><b>Sources</b> Aerial: Maxar, 23 September 2023 Boundary: [REDACTED] Topographic Contours: USGS, NED</p>	<p><b>Delineation Performed by:</b> [REDACTED] <b>Map Prepared by:</b> [REDACTED] <b>Date Map Prepared:</b> 3/22/2024 Made in accordance with the <i>Updated Map and Drawing Standards for the South Pacific Division Regulatory Program,</i> as amended on February 10, 2016</p>	<p> 0 70 Feet</p> <p><b>Map Scale:</b> 1 inch = 70 feet (at 11"x17") <b>Coordinate System</b> NAD 1983 State Plane CA II (U.S. Feet)</p>	<p><b>Location Map</b></p> 	<p> Study Area (6.2 acres)  Reference Point (NAD83)  Data Point  Drop Inlet  20' Contour (NAVD88 U.S. Feet)</p>	<p><b>Aquatic Resources (0.000 acres)</b> No Aquatic Resources in Study Area</p>	<p><b>Figure 3</b> <b>Aquatic Resources Delineation</b></p> <p><i>Holiday Market Penn Valley, Nevada County, California</i></p>
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