



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

CESPK-RDC-N

25 July 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-2022-00427

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

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.

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2. SUMMARY OF CONCLUSIONS. The following is 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).

Waters Name	Cowardin Code	Acreage/Linear Feet	Waters of the U.S.	Navigable Waters of the U.S.
Pond 1	PUBKx	1.17 acre	No	No
Pond 2	PUBKx	1.00 acre	No	No
Pond 3	PUBKx	1.17 acre	No	No
Pond 4	PUBKx	0.71 acre	No	No
Pond 5	PUBKx	1.27 acre	No	No
Wetland 1	PEM1A	0.17 acre	No	No
Wetland 2	PEM1A	0.04 acre	No	No

3. 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).

4. REVIEW AREA. The review area is the approximately 15-acre Project Area depicted in Enclosure 1, located at [REDACTED] west of Portola, in Plumas County, California. The property is within the Section 3, Township 22 North, Range 13 East, Mount Diablo Base and Meridian.

5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is the Feather River (Enclosures 2 - 4). The Sacramento District identifies the Feather River as a navigable water of the United States pursuant to the Rivers and Harbors Act and 33 CFR Part 329 (i.e., a Section 10 Water) from its confluence with the Sacramento River, upriver 28 miles to Railroad Bridge at Marysville.⁵

⁵ See Rivers and Harbors Act Navigable Waters of the U.S. in Sacramento District at <https://www.spk.usace.army.mil/Missions/Regulatory/Jurisdiction/Navigable-Waters-of-the-US/>.

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

The ponds within the review area, Pond 1 – 5, are a part of a wastewater treatment plant and are excluded from the waters of the U.S.

a. Water from Wetland 1 generally flows southeast (Enclosures 1 and 2). Wetland 1 is approximately 353 feet from an unnamed stream that flows into Middle Fork Feather River. However, the area in-between Wetland 1 and the unnamed stream lacks a connection via a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert. Nor is there a natural berm, bank, dune, or similar natural landform between the wetland and the stream that would provide evidence of a continuous surface connection.

b. Water from Wetland 2 flows southeast into Wetland 1 through a swale (Enclosures 1 and 2). A discrete upland swale is present in-between Wetlands 1 and 2 (Enclosure 12). This swale is approximately 60 feet long, and water from Wetland 2 flows through this swale into Wetland 1. From this point, water from Wetland 2 flows in the same direction as Wetland 1.

c. The unnamed stream⁶ outside of the review area to the west is a stream order 2 tributary to the Middle Fork Feather River (Enclosure 2). At the approximate latitude [REDACTED] the general flow direction of Wetlands 1 and 2 reaches the unnamed tributary where it also crosses under a railroad line through a culvert (Enclosure 2). The unnamed stream then enters the Middle Fork Feather River at the approximate latitude [REDACTED] and approximately 0.17 mile from Wetland 1. The Middle Fork Feather River flows for approximately 76.3 miles to Lake Oroville (Enclosure 3). The portion of Lake Oroville, from where the Middle Fork Feather River enters to the Oroville Dam, is approximately 8.8 miles long. The Feather River then flows from the dam for approximately 42 miles downstream before it becomes a TNW (Enclosure 4).

7. SECTION 10 JURISDICTIONAL WATERS⁷: 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

⁶ Since there is no continuous surface connection between wetlands 1 and 2 and this unnamed stream, we have not evaluated whether or not this off-site unnamed stream has relatively permanent flowing or standing water.

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

9. 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).

i. The ponds within the review area, Pond 1 – 5, are a part of the [REDACTED] Wastewater Treatment Plant and are excluded from the waters of the U.S. The [REDACTED] operates the [REDACTED] Treatment Plant under the National Pollutant Discharge Elimination System (NPDES) Permit Number [REDACTED]. Pond 1 – 5 are included within the permitted facility. The applicant’s agent described the five ponds within the review area as artificially flooded freshwater ponds ([REDACTED] 2021, p. 11). Pond 1 is an approximately 1.17-acre pond. Pond 2 is an approximately 1.00- acre pond. Pond 3 is an approximately 1.17-acre pond. Pond 4 is an approximately 0.71-acre pond. Pond 5 is an approximately 2.17-acres pond.

ii. Ponds 1 through 5 do not meet the criteria of waters of the U.S. because they are a component of a waste treatment system, designed to meet the requirements of the Clean Water Act as outlined in 33 CFR 328.3(b)(1). The EPA Regulation 40 CFR Part 230.3(s)(7) states that waste treatment systems, including treatment ponds are not waters of the U.S. The ponds within the review area are not present on United States Geological Survey (USGS) topographical maps until 1972. Up until 2018, only two ponds are shown on USGS topographical maps (USGS, 1972 and 2018). However, aerial imagery from the website www.historicaerials.com show that the two northern ponds were constructed sometime prior to 1974 and the three other ponds were constructed prior to 1984. The ponds are a part of a functioning wastewater treatment center and are performing the function for which they were designed.

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:

i. Wetland 1 and Wetland 2 are non-jurisdictional features because they are not adjacent to a jurisdictional (a)(1), (a)(2), or (a)(3) water (Enclosure 1). Wetland 1 is an approximately 0.17-acre wetland and Wetland 2 is approximately 0.04-acre. The applicant’s agent described these wetlands as freshwater emergent wetlands ([REDACTED] 2021, p. 11). The closest aquatic resources to Wetland 1 and 2 is the unnamed stream to the west of the review area. This unnamed stream is a tributary to

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the Middle Fork Feather River. There is no connection through a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert between these wetlands and the unnamed stream. Nor is there a natural berm, bank, dune, or similar natural landform between the wetland and the stream that would provide evidence of a continuous surface connection. Additionally, there is an elevation change along the fence long and southern end of Wetland 1 that sever any chance of a continuous surface connection south of the review area (Enclosure 9 and 12). These conclusions are supported by our analysis of aerial imagery (Enclosures 5 - 8) and 3DEP Elevation Imagery (Enclosure 9), in addition to the conditions observed during the Corps May 28, 2024, site visit (Enclosure 12). The area between the wetlands and unnamed stream to the southwest of the review area consists of upland grassland and sagebrush. Neither of the two wetlands have a surface connection to the stream and a discrete feature is not present. The wetlands are also not present on National Hydrography Dataset (Enclosure 10), National Wetland Inventory (Enclosure 11), and USGS topographic maps (USGS, 1972, 2018, and 2021). Since neither wetland has a continuous surface connection to the unnamed stream, even if we were to consider them as one wetland due to their proximity, situation in the same swale morphology, general similarity, and probable hydrologic connectivity, this would still not make them adjacent. As a result, Wetland 1 and Wetland 2 do not have a continuous surface connection to a jurisdictional water and consequently are non-jurisdictional.

10. DATA SOURCES. Sources of data/information used in making determination.

- a. [REDACTED]. October 19, 2021. Site Visit.
- b. U.S. Army Corps of Engineers. May 28, 2024. Site Visit.
- c. [REDACTED] 2021. Aquatic Resources Delineation Delleker Wastewater Treatment Plant Project Delleker, California.
- d. U.S. Fish and Wildlife Service. 2020. National Wetland Inventory. Project area: NWI Map (SPK-2022-00427). Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved March 11, 2024, from Wetland Mapper: <https://www.fws.gov/wetlands/data/mapper.html>.
- e. Natural Resources Conservation Service. 2021. Custom Soil Resource Plumas National Forest Area, California Grizzly Flat WWTF, Delleker CA. Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved October 13, 2021, from <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.html>.
- f. U.S. Geological Survey. 1972. USGS 1:24000-scale Quadrangle for Portola, CA: U.S. Geological Survey.

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g. U.S. Geological Survey. 2018. USGS 1:24000-scale Quadrangle for Portola, CA: U.S. Geological Survey.

h. U.S. Geological Survey. 2021. USGS 1:24000-scale Quadrangle for Portola, CA: U.S. Geological Survey.

i. U.S. Geological Survey. 2023. The National Map. National Geospatial Program, USGS National Hydrography Dataset Best Resolution (NHD). Retrieved March 11, 2024, from <https://msc.fema.gov/portal/home>.

j. Digital Globe: *Digital Globe March 28, 2017, Imagery* [map]. 1:850. Generated by Army Corps of Engineers, February 20, 2024. Using ArcGIS Pro.

k. Digital Globe: *Digital Globe Nov 4, 2019, Imagery* [map]. 1:850. Generated by Army Corps of Engineers, February 20, 2024. Using ArcGIS Pro.

l. Digital Globe: *Digital Globe Dec 10, 2019, Imagery* [map]. 1:850. Generated by Army Corps of Engineers, February 20, 2024. Using ArcGIS Pro.

m. Google Earth: *Google Earth Nov 10, 2023, Imagery (SPK-2022-00427)* [map]. 1:1,000. Generated by Army Corps of Engineers, February 20, 2024. Using Google Earth.

n. Google Earth: *Google Earth August 4, 2016, Imagery (SPK-2022-00427)* [map]. 1:1,000. Generated by Army Corps of Engineers, February 20, 2024. Using Google Earth.

o. Google Earth: *Google Earth Oct 13, 2020, Imagery (SPK-2022-00427)* [map]. 1:1,000. Generated by Army Corps of Engineers, February 20, 2024. Using Google Earth.

p. Google Earth: *Google Earth July 31, 2019, Imagery (SPK-2022-00427)* [map]. 1:1,000. Generated by Army Corps of Engineers, February 20, 2024. Using Google Earth.

q. Google Earth: *Google Earth Sept 15, 2021, Imagery (SPK-2022-00427)* [map]. 1:1,000. Generated by Army Corps of Engineers, February 20, 2024. Using Google Earth.

r. 3DEP Elevation: *3DEP Elevation Imagery (SPK-2022-00427)* [map]. 1:850. Generated by Army Corps of Engineers, February 20, 2024. Using ArcGIS Pro.

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s. NHD Flowline (USGS 2023): *Flow to the Middle Fork Feather River (SPK-2022-00427)* [map]. 1:1,060. Generated by Army Corps of Engineers, June 3, 2024. Using ArcGIS Pro.

t. NHD Flowline (USGS 2023): *Flow to Lake Oroville (SPK-2022-00427)* [map]. 1:60,000. Generated by Army Corps of Engineers, February 20, 2024. Using ArcGIS Pro.

u. NHD Flowline (USGS 2023): *Flow to the Feather River (SPK-2022-00427)* [map]. 1:80,000. Generated by Army Corps of Engineers, February 20, 2024. Using ArcGIS Pro.

11. OTHER SUPPORTING INFORMATION.

a. There are no jurisdictional waters within the 15-acre review area. The ponds (Pond 1 – 5) and wetlands (Wetland 1 and 2) are not Waters of the United States. Treatment Ponds do not meet the criteria of waters of the U.S. because they are a component of a waste treatment system. EPA Regulation 40 CFR Part 230.3(s)(7) states that waste treatment systems, including treatment ponds are not waters of the U.S. Wetland 1 and Wetland 2 are not adjacent to a jurisdictional water because they are not adjacent to an (a)(1), (a)(2), or (a)(3) water.

b. The Wetland 1 and Wetland 2 are not adjacent wetlands pursuant to (a)(4) because they lack a continuous surface connection to an (a)(1), (a)(2), or (a)(3) water. Lack of a connection to an (a)(1), (a)(2), and (a)(3) water was observed during the Corps site visit and is also supported by aerial imagery (Enclosures 5 - 8), 3DEP Elevation Imagery (Enclosure 9), National Hydrography Dataset (Enclosure 10), National Wetland Inventory (Enclosure 11), and USGS topographic maps (USGS, 1972, 2018 and 2021).

c. The Corps' Antecedent Precipitation Tool (APT) shows that the November 10, 2023, Google Earth Imagery and March 28, 2017, November 4, 2019, and December 10, 2019, Digital Globe imagery was helpful in this review because the images were acquired in the wet season during normal to wetter than normal conditions. The August 4, 2016, July 31, 2019, October 13, 2020, and September 15, 2021, Google Earth aerial images were not relevant in evaluating the jurisdiction of the aquatic resources because the images were taken during the dry season, when we would not expect to see a surface connection in aerial imagery. The Corps May 28, 2024, site visit was conducted in the dry season, however conditions were normal.

12. 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.

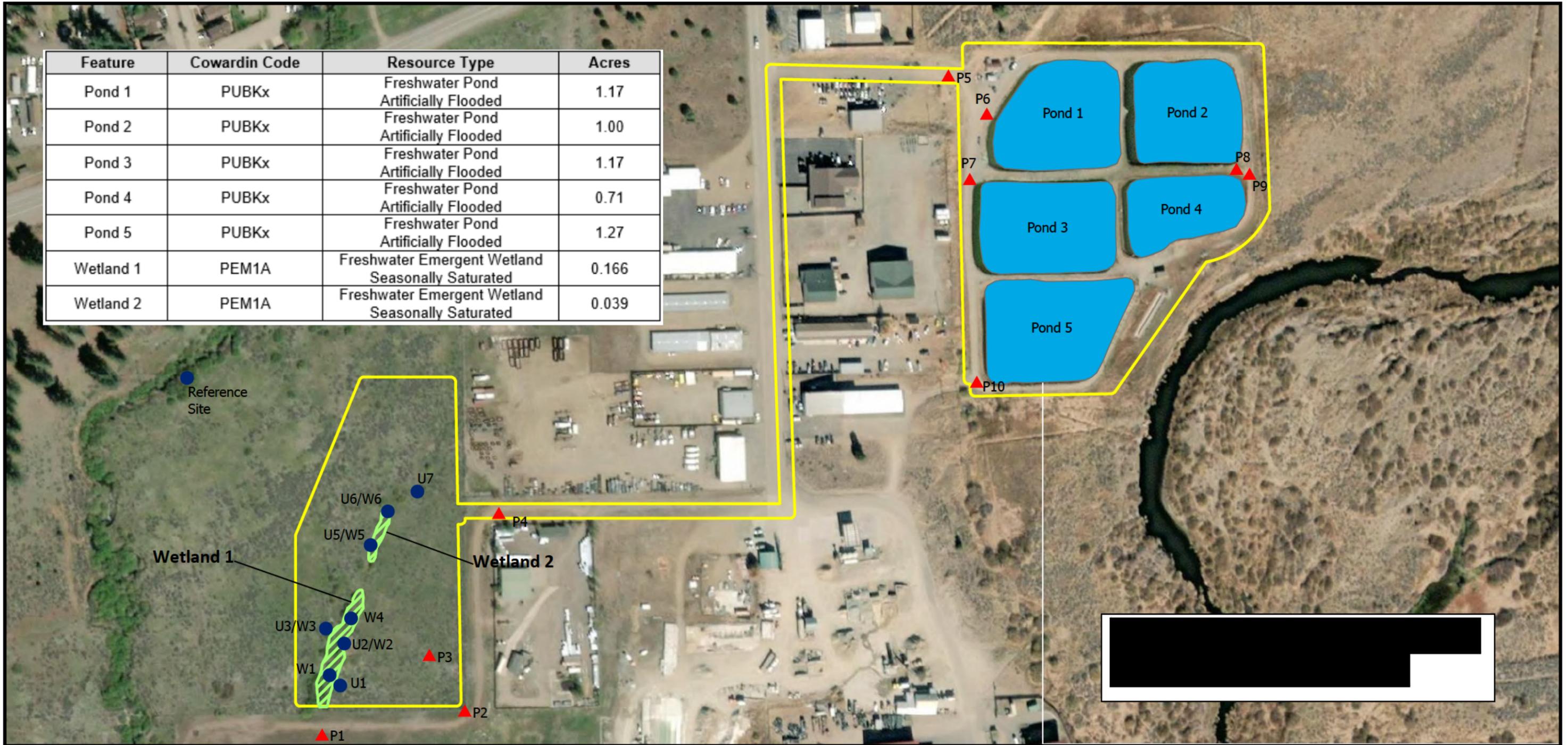


11 Encls:

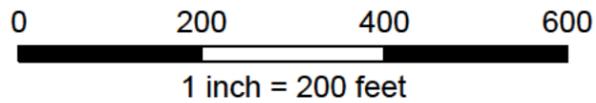
1. [REDACTED] Delleker WWTP Aquatic Resources Delineation
2. Flow to the Middle Fork Feather River (SPK-2022-00427)
3. Flow to Lake Oroville (SPK-2022-00427)
4. Flow to the Feather River (SPK-2022-00427)
5. Digital Globe March 28, 2017, Imagery (SPK-2022-00427)
6. Digital Globe Nov 4, 2019, Imagery (SPK-2022-00427)
7. Digital Globe Dec 10, 2019, Imagery (SPK-2022-00427)
8. Google Earth Nov 10, 2023, Imagery (SPK-2022-00427)
9. 3DEP Elevation Imagery (SPK-2022-00427)
10. NHD MAP (SPK-2022-00427)
11. NWI Map (SPK-2022-00427)
12. May 28, 2024, Site Visit Photographs



Feature	Cowardin Code	Resource Type	Acres
Pond 1	PUBKx	Freshwater Pond Artificially Flooded	1.17
Pond 2	PUBKx	Freshwater Pond Artificially Flooded	1.00
Pond 3	PUBKx	Freshwater Pond Artificially Flooded	1.17
Pond 4	PUBKx	Freshwater Pond Artificially Flooded	0.71
Pond 5	PUBKx	Freshwater Pond Artificially Flooded	1.27
Wetland 1	PEM1A	Freshwater Emergent Wetland Seasonally Saturated	0.166
Wetland 2	PEM1A	Freshwater Emergent Wetland Seasonally Saturated	0.039



- Project Area
- Pond
- Data Point
- Wetland
- ▲ Photo Point



Project Area

[Redacted]
Delleker WWTP
 Aquatic Resources Delineation

Figure 3
 Aquatic Resource
 Delineation

Date Drawn:
11/11/2021

Drawn By:
[Redacted]