



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

CESPK-RDC-N

9 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) ,<sup>1</sup> SPK-2024-00184.

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.<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>

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),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

2. SUMMARY OF CONCLUSIONS.

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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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a. Provide a 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).

- (1) Vernal Pool 1 (W-1), non-jurisdictional.
- (2) Vernal Pool 2 (W-2), non-jurisdictional.
- (3) Vernal Pool 3 (W-3), non-jurisdictional.
- (4) Vernal Pool 4 (W-4), non-jurisdictional.
- (5) Seasonal Wetland (W-5), non-jurisdictional.

### 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 61964-61969 (September 8, 2023).
- c. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)

4. REVIEW AREA. The approximately 6 acres review area is located near an existing water tower and electrical infrastructure facility, on Doolittle Drive, Latitude: 39.14852°, Longitude: -121.42553°, Beale Air Force Base, Yuba County, California. The area marked "Project Footprint Area" in the enclosed map titled "Doolittle Solar Project: Wetland Sampling" is the review area (Enclosure 1).

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

6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The subject waters are geographically near an unnamed creek which flows approximately six miles to Reeds Creek. Reeds Creek continues south where it flows into a non-navigable portion of the Feather River, which then becomes a Traditionally Navigable Waterway approximately 3.5 miles downstream.

7. 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.

8. SECTION 404 JURISDICTIONAL WATERS: None of the aquatic resources within the review area 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*.

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

a. W-1 is an approximately 0.01-acre vernal pool within the review area. Under the 2023 Rule, W-1 does not meet the "Waters of the United States" definition as it doesn't meet the definition of a water identified in 33 CFR 328.3(a)(1) through (a)(3) and does not have a continuous surface connection to a water identified in (a)(1), or to a relatively permanent, standing, or continuously flowing body of water identified in (a)(2) or (a)(3). Additionally, aerial images from Google Earth and images of W-1 supplied by the applicant show that there is a natural earthen barrier resulting from an elevation change severing the aquatic resource on all sides from any discernable feature indicating adjacency to other jurisdictional features. A review of Digital Globe imagery from the wet seasons, and historic areal imagery ranging from 2020-1947, does not indicate any hydrologic or subsurface connectivity between existing vernal pools within the study area. According to a vernal pool hydrologic study conducted on Beale Air Force Base in 2009, the nearest neighboring vernal pools not within the study area are approximately 0.87-miles away, with the nearest vernal pool complex existing 1.65 miles away across the airfield. Given the distances between existing vernal pool complexes, it is evident that the vernal pools do not share any hydrologic connectivity with other aquatic resources, not fitting the "One Wetland" concept identified in the 2023 preamble, or the joint USACE / EPA memorandum. Therefore, W-1 does not meet the category of a Water of the United States under the 2023 Rule set forth in 33 CFR 328.3(a)(4)(ii).

b. W-2 is an approximately 0.007-acre vernal pool within the review area. Under the 2023 Rule, W-2 does not meet the "Waters of the United States" definition as it doesn't meet the definition of a water identified in 33 CFR 328.3(a)(1) through (a)(3) and does not have a continuous surface connection to a water identified in (a)(1), or to a relatively permanent, standing, or continuously flowing body of water identified in (a)(2) or (a)(3). According to a vernal pool hydrologic study conducted on Beale Air Force Base in 2009, the nearest neighboring vernal pools not within the study area are approximately 0.87-miles away, with the nearest vernal pool complex existing 1.65 miles away across the airfield. Given the distances between existing vernal pool complexes, it is evident that the vernal pools do not share any hydrologic connectivity with other aquatic resources, not fitting the

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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.

“One Wetland” concept identified in the 2023 preamble, or the joint USACE / EPA memorandum. Additionally, aerial images from Google Earth and images of W-1 supplied by the applicant show that there is a natural earthen barrier resulting from elevation change severing the aquatic resource on all sides of any discernable feature indicating adjacency to other jurisdictional features. A review of Digital Globe imagery from the wet seasons, and historic areal imagery ranging from 2020-1947, does not indicate any hydrologic or subsurface connectivity between existing vernal pools within the study area. Therefore, W-2 does not meet the category of a Water of the United States under the 2023 Rule set forth in 33 CRF 328.3(a)(4)(ii).

c. W-3 is an approximately 0.001-acre vernal pool within the review area. Under the 2023 Rule, W-3 does not meet the “Waters of the United States” definition as it doesn’t meet the definition of a water identified in 33 CFR 328.3(a)(1) through (a)(3) and does not have a continuous surface connection to a water identified in (a)(1), or to a relatively permanent, standing, or continuously flowing body of water identified in (a)(2) or (a)(3). Additionally, aerial images from Google Earth and images of W-3 supplied by the applicant show that there is a natural earthen barrier resulting from an elevation change severing the aquatic resource on all sides from any discernable feature indicating adjacency to other jurisdictional features. A review of Digital Globe imagery from the wet seasons, and historic areal imagery ranging from 2020-1947, does not indicate any hydrologic or subsurface connectivity between existing vernal pools within the study area. According to a vernal pool hydrologic study conducted on Beale Air Force Base in 2009, the nearest neighboring vernal pools not within the study area are approximately 0.87-miles away, with the nearest vernal pool complex existing 1.65 miles away across the airfield. Given the distances between existing vernal pool complexes, it is evident that the vernal pools do not share any hydrologic connectivity with other aquatic resources, not fitting the “One Wetland” concept identified in the 2023 preamble, or the joint USACE / EPA memorandum. Therefore, W-3 does not meet the category of a Water of the United States under the 2023 Rule set forth in 33 CRF 328.3(a)(4)(ii).

d. W-4 is an approximately 0.003-acre vernal pool within the review area. Under the 2023 Rule, W-4 does not meet the “Waters of the United States” definition as it doesn’t meet the definition of a water identified in 33 CFR 328.3(a)(1) through (a)(3) and does not have a continuous surface connection to a water identified in (a)(1), or to a relatively permanent, standing, or continuously flowing body of water identified in (a)(2) or (a)(3). Additionally, aerial images from Google Earth and images of W-4 supplied by the applicant show that there is a natural earthen barrier resulting from a change in elevation severing the aquatic resource on all sides from any discernable feature indicating adjacency to other jurisdictional features. A review of Digital Globe imagery from the wet seasons, and historic areal imagery ranging from 2020-1947, does not indicate any hydrologic or subsurface connectivity between existing vernal pools within the study area. According to a vernal pool hydrologic study conducted on Beale Air Force Base in 2009, the nearest neighboring vernal pools not within the study area are approximately 0.87-miles away, with the nearest vernal pool complex existing 1.65 miles away across the airfield. Given the distances between existing vernal pool complexes, it is evident that the vernal pools do not share any hydrologic connectivity with other aquatic resources, not fitting the “One Wetland” concept

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identified in the 2023 preamble, or the joint USACE / EPA memorandum. Therefore, W-4 does not meet the category of a Water of the United States under the 2023 Rule set forth in 33 CFR 328.3(a)(4)(ii).

e. W-5 is an approximately 0.01-acre seasonal wetland within the review area. Under the 2023 Rule, W-5 does not meet the “Waters of the United States” definition as it doesn’t meet the definition of a water identified in 33 CFR 328.3(a)(1) through (a)(3). Additionally, a review of historic aerial imagery from Google Earth and Digital Globe indicate that the resource is only inundated as a direct response to rain events, or during overflow release of the adjacent water tower. There is a discernable flow path through a constructed ditch that directs water southeast from the water tower. LiDAR imagery (Enclosure 2) and photos supplied by the applicant show that the discrete feature within the ditch terminates to sheet-flow approximately 175 feet away from the water tower, severing any continuous surface connections W-5 has to a water identified in (a)(1), or to a relatively permanent, standing, or continuously flowing body of water identified in (a)(2) or (a)(3). Therefore, W-5 does not meet the categories of a Water of the United States under the 2023 Rule set forth in 33 CFR 328.3(a)(4)(ii).

10. 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. The site evaluation was performed by office (desk) review on April 25, 2024.

b. The April 14, 2024, *Doolittle Solar Project: Wetland Sampling* delineation map supplied and prepared by [REDACTED]

c. NRCS (April 25, 2024) *Custom Soil Resource Report for Yuba County, California, Doolittle Solar AJD (SPK-2024-00184)*. Natural Resources Conservation Service, U.S. Department of Agriculture, retrieved from <https://websoilsurvey.sc.egov.usda.gov/App/WebsoilSurvey.aspx>.

d. USFWS (n.d.) National Wetland Inventory. Project Area: Yuba County, California. Source Imagery Date: 1987. Washington D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved April 25, 2024, from Wetland Mapper: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>.

e. FEMA (Effective February 18, 2011) Flood Map Service Center. National Flood Hazard Layer 06115C0375D. Federal Emergency Management Agency, U.S. Department of Homeland Security. Retrieved April 25, 2024, from <https://msc.fema.gov/portal/search?AddressQuery=-121.42553%2C%2039.14852>.

f. Google Earth 7.3.3.7692 (May 12, 2023, and September 29, 2016). Placer County, California, 39.148804 N, -121.425784 W, eye alt 611 ft. Retrieved April 25, 2024, from <http://www.earth.google.com>.

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g. Attachment 1, June 2023, *Technical Memorandum; Doolittle Power Station Upgrade Project Wetland Assessment*, prepared by [REDACTED]

h. Historic Aerials (2020, 1993, and 1947), Historic Aerial Viewer, NETRonline. Placer County, California, Latitude 39.14852°, Longitude -121.42553°. Retrieved April 25, 2024, from <http://www.historicaerials.com/viewer>.

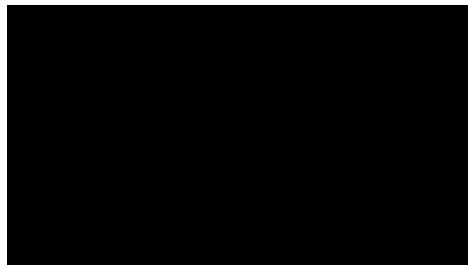
i. LiDAR, *Doolittle Solar LiDAR (SPK-2024-00184)* [map], 1:1431. Generated by the US Army Corps of Engineers, April 25, 2024

11. OTHER SUPPORTING INFORMATION. The Corps of Engineers Antecedent Precipitation Tool (APT) indicated that the agent's March 13, 2023, site visit occurred during the wet season, when three-month antecedent precipitation was within the range of normal, with the Palmer Drought Severity Index indicating severe wetness rather than drought conditions regionally. The APT indicated that the May 12, 2023, Google Earth Aerial Imagery was obtained during the dry season, when three-month antecedent precipitation was within the range of normal, and the PDSI indicated no drought conditions regionally. The APT indicated that the September 29, 2016, Google Earth aerial imagery was obtained during the dry season, when three-month antecedent precipitation was within the range of normal, and the PDSI indicated mild drought conditions regionally.

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 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. Location Map
2. LiDAR Imagery
3. Aquatic Resources Delineation



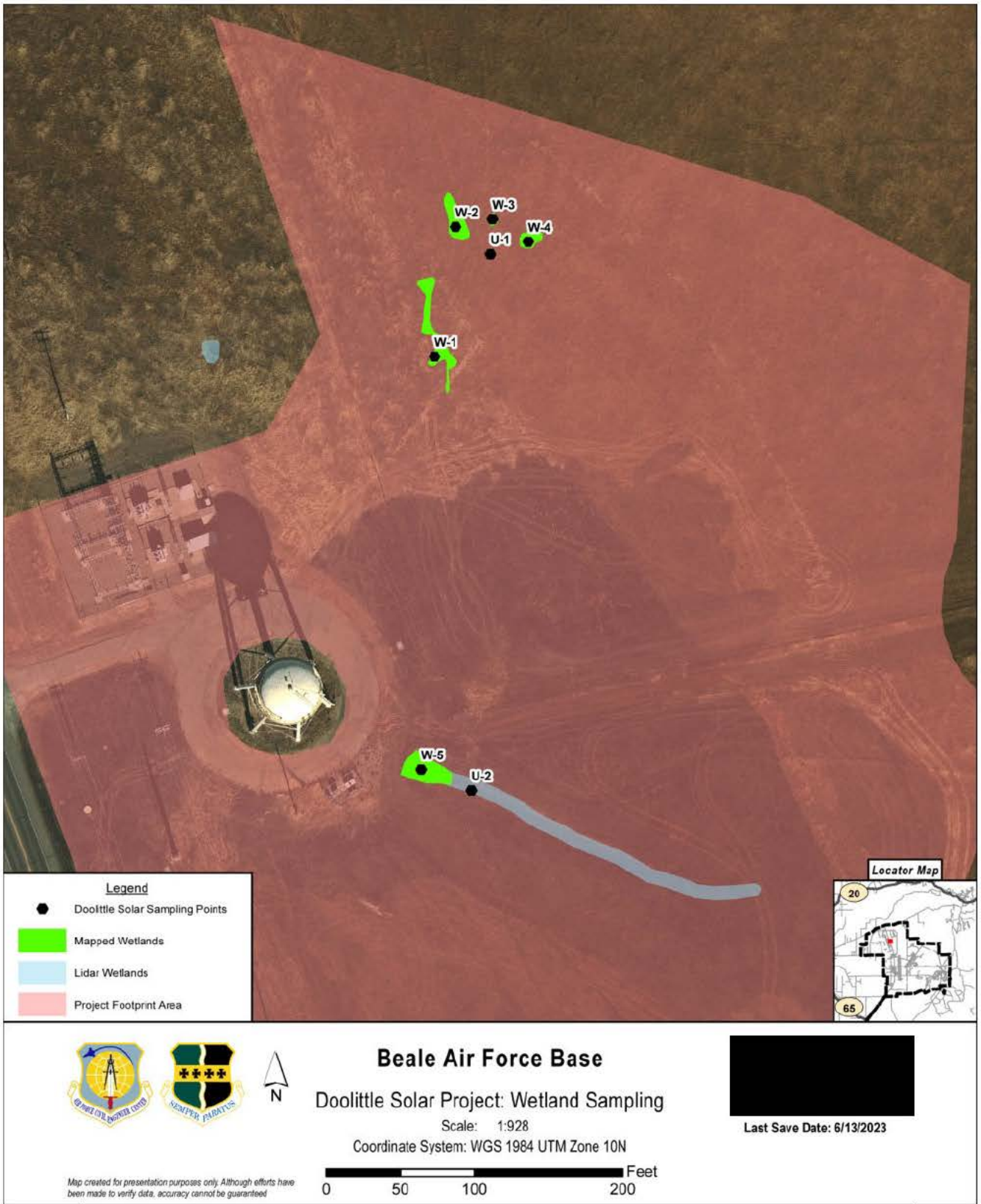


Figure 1. Doolittle Power Station Upgrade Project Wetland Map.