



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

CESPK-RDC-D

16 August 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-2003-00691 (MFR 1 of 2)²

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.³ 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.⁴

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

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 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS. Provided below is a list of each individual feature within the review area and the jurisdictional status of each one (i.e. whether each feature is/is not a water of the United States and/or a navigable water of the United States).

- (1) Intermittent Stream 1 (Sand Creek), jurisdictional, Section 404, 1.90 acre
- (2) Impoundment 2/Ephemeral Stream 1 & 2, non-jurisdictional, 0.484 acre
- (3) Impoundment 1/Ephemeral Stream 3, jurisdictional, Section 404, 0.947 acre
- (4) Ephemeral Stream 4, non-jurisdictional, 0.075 acre
- (5) Ephemeral Stream 5/6/7, non-jurisdictional, 0.089 acre
- (6) Ephemeral Stream 8/9, non-jurisdictional, 0.024 acre
- (7) Ephemeral Stream 10/11, non-jurisdictional, 0.077 acre
- (8) Ephemeral Stream 12, non-jurisdictional, 0.016 acre
- (9) Seasonal Wetland Pool 1, non-jurisdictional, 0.016 acre
- (10) Seasonal Wetland Pool 2, non-jurisdictional, 0.061 acre
- (11) Seasonal Wetland Pool 3, non-jurisdictional, 0.072 acre
- (12) Seasonal Wetland Pool 4, non-jurisdictional, 0.015 acre
- (13) Seasonal Wetland Pool 5, non-jurisdictional, 0.020 acre
- (14) Seasonal Wetland Pool 6, non-jurisdictional, 0.073 acre
- (15) Seasonal Wetland Pool 7, non-jurisdictional, 0.105 acre
- (16) Seasonal Wetland Pool 8, non-jurisdictional, 0.014 acre

⁵ 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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SPK-2003-00691

- (17) Seasonal Wetland Pool 9, non-jurisdictional, 0.021 acre
- (18) Seasonal Wetland Pool 10, non-jurisdictional, 0.045 acre
- (19) Seasonal Wetland Pool 11, non-jurisdictional, 0.006 acre
- (20) Seasonal Wetland Pool 12, non-jurisdictional, 0.018 acre
- (21) Seasonal Wetland Pool 14, non-jurisdictional, 0.008 acre
- (22) Wetland Seep A, jurisdictional, Section 404, 0.003 acre
- (23) Wetland Seep B, jurisdictional, Section 404, 0.003 acre
- (24) Wetland Seep C, jurisdictional, Section 404, 0.006 acre
- (25) Wetland Seep D, jurisdictional, Section 404, 0.005 acre
- (26) Wetland Seep E/Seasonal Wetland Pool 13, jurisdictional, Section 404, 0.028 acre
- (27) Wetland Drainage, non-jurisdictional, 0.286 acre

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("Amended 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. The review area encompasses the proposed project area for the Ranch at Antioch development project, totaling 546 acres, and is located near the intersection of Deer Valley Road and Sand Creek Road, Latitude 37.94885°, Longitude -121.79266°, City of Antioch, California. The review area is shown in the enclosed delineation map (Enclosure 1)

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

The nearest TNW to which the onsite aquatic resources are connected is the Dutch Slough in the Sacramento-San Joaquin Delta.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Sand Creek, a relatively permanent water within the review area, is a tributary of Marsh Creek, a third order perennial stream. Marsh Creek flows into Dutch Slough, a TNW, at the Big Break Shoreline near the City of Antioch. Dutch Slough is a TNW as it is subject to the ebb and flow of the tide.

6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe 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. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ N/A, there are no Section 10 jurisdictional waters in the review area.

7. SECTION 404 JURISDICTIONAL WATERS: The following 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*.

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, the impoundments on-site are not created by impounding waters of the U.S., therefore they will not be evaluated under section (a)(2) of the Amended 2023 Rule. In accordance with the preamble of the Amended 2023 Rule, "The flow characteristics of lakes, ponds, and impoundments that are part of the

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

tributary network will be assessed in conjunction with the stream they connect to.” Further discussion on these impoundments and their respective tributaries can be found below in sections 7(e) for Impoundment 1 and 8(b) for Impoundment 2.

e. Tributaries (a)(3): The stretch of river/stream within the review area labeled Intermittent Stream 1 is a relatively permanent reach of Sand Creek, which extends from its conjunction with Oil Creek to its confluence with Marsh Creek. This reach of Sand Creek exhibits a deeply incised channel and visible Ordinary High Water Mark (OHWM). At the tributary’s confluence with Marsh Creek, standing or continuously flowing water can be observed for greater than three months on aerial imagery during the wet season (*Enclosure 4*). Furthermore, this reach of Sand Creek is identified as a second-order intermittent stream in National Hydrography Dataset (NHD) (*Enclosure 3*) and in the Corps’ prior AJD for this review area, dated February 23, 2016 (*Enclosure 2*). Therefore, Intermittent Stream is jurisdictional as it meets the relatively permanent standard by containing flowing or standing water continuously for certain times of the year and more than for only a short duration in direct response to precipitation.

Impoundment 1/Ephemeral Stream 3 is a single 1st order reach of tributary connected to each other by a culvert. This reach ends at Sand Creek, a 2nd Order tributary. The lowermost portion of the reach, where the tributary meets Sand Creek, does not meet the relatively permanent standard as it does not contain flowing or standing water continuously for certain times of the year (the wet season) or for more than a short duration in direct response to precipitation. However, this flow regime is not representative of the entire reach of this tributary. As is shown in the consultant’s delineation map (*Enclosure 1*) the impounded portion accounts for a significant portion of each reach, approximately 70% of the total reach, and contains relatively permanent water. We base this conclusion on the fact that water is visible in the impounded portion of this reach from early spring well into the dry season as evidenced in aerial imagery dated March 16, 2023; and April 15, 2023; and June 15, 2023 (*Enclosure 4*). As the impoundment contains relatively permanent water and is representative of the flow regime in this reach, Impoundment 1/Ephemeral Stream 3 meets the relatively permanent standard and thus the definition of an (a)(3) tributary under the Amended 2023 Rule.

f. Adjacent Wetlands (a)(4): Wetland Seeps A-D and Seasonal Wetland Pool 13/Wetland Seep E are a collection of slight topographic depressions abutting Ephemeral Stream 12 that fulfill the Corps’ three-part wetland test. Wetland Seep E is mapped contiguously with Seasonal Wetland Pool 13 and is thus evaluated as a single resource. Ephemeral Stream 12 serves as a non-jurisdictional physical conveyance between these wetlands and Sand Creek. Although no standing or flowing water is visible from aerial imagery, sufficient flow between these wetlands and Sand Creek occurs to create a clearly-defined OHWM in Ephemeral Stream 12. This flow is also unimpeded by any man-made or natural barriers. The closest wetland to Sand Creek, Seasonal Wetland Pool 13/Wetland Seep E, is separated from the confluence of Sand

Creek and Ephemeral Stream 12 by approximately 100 linear feet (LF) of non-relatively permanent tributary. Wetland seeps A-D are separated from Sand Creek by approximately 310, 270, 220, and 190 LF of tributary, respectively. Based on the policy direction provided in the 25 June 2024 joint EPA-Army policy memos for NAP-2023-01223, NWK-2022-00809, and SWG-2023-00284, the relatively short length of the non-relatively permanent physical conveyance meets the requirements for a CSC. As these wetlands have a CSC with Sand Creek, an (a)(3) water, they are jurisdictional under the Amended 2023 Rule.

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

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. There are no aquatic resources or other features within the review area that are identified in the Amended 2023 Rule as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5).

b. The following aquatic resources and features within the review area were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the Amended 2023 Rule.

Ephemeral Stream 1 and 2, and their associated impoundment (Impoundment 2) are not jurisdictional as they in aggregate form a non-relatively permanent reach of a tributary to Sand Creek. This reach begins at the source of the tributary offsite to the northwest and ends at the confluence with Sand Creek. At the confluence, standing or continuously flowing water was not visible in aerial imagery at any point throughout the wet season assessed (*Enclosure 4*). Although Impoundment 2 and an additional impoundment offsite further upstream are relatively permanent and contain standing water year-round, they account for less than 10% of the total reach and are not representative of the flow characteristics of the entire reach. Therefore, this tributary reach does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary as the for the majority of its length it only carries water for a short duration and in response to direct precipitation.

The resources identified as Ephemeral Stream 4-12 are non-jurisdictional waters as they are also tributaries to Sand Creek that are not relatively permanent. These streams were evaluated as unmapped first- and second-order streams that did not influence the published stream order of Sand Creek in the NHD. The rationale for applying unmapped stream orders for Ephemeral Streams 4-12 is further supported in Section 10 of the MFR. The unmapped stream orders also do not affect the extent of Ephemeral Streams 6, 9, and 11 as they appear in the applicant’s delineation map. Although these streams contain unmapped second-order reaches, mapping these reaches as separate resources would not change their jurisdictional status. Aerial imagery shows no water flowing in any of the streams or at their confluence with Sand Creek during the wet or

dry season between 2022 and 2023, despite an abnormally wet winter with historical precipitation. According to the applicant's 2014 aquatic resources delineation, these streams did not meet the Corps' wetland criteria and contain no hydrologic indicators aside from drainage patterns. These streams exhibit a defined bed and bank, however, they have flowing or standing water for only a short duration in direct response to precipitation and thus does not meet the relatively permanent standard required to satisfy the definition of an (a)(3) tributary.

Wetland Drainage 1 is an approximately 850 LF steep wetland originating from a drainage culvert in the residential subdivision directly to the north of the review area. There do not appear to be any jurisdictional waters in this subdivision that this drainage could be connected to. Although the topography slopes steeply towards the channel of Sand Creek, the limits of Wetland Drainage 1 cease approximately 400 feet from Sand Creek and there are no discrete features between the two resources to establish a continuous surface connection.

Seasonal Wetland Pools 1-5 are non-jurisdictional as they are isolated wetlands. They are separated from the channel of Sand Creek by varying lengths from approximately 500 feet of uplands, in the case of Seasonal Wetland Pool 3, up to nearly 2000 feet of uplands in the case of Seasonal Wetland Pool 1. Furthermore, these wetland pools are not connected to Sand Creek by any discrete features that would extend a continuous surface connection.

Seasonal Wetland Pools 6-12 and 14 are a series of wetland features that appear to be man-made, exhibiting bermed edges that separate them from each other and Ephemeral Stream 12. Although these wetlands could be evaluated as "One Wetland", there is no evidence that these resources were previously connected, and it is likely they were already separate when the berms were constructed. The closest wetland to Sand Creek (Seasonal Wetland Pool 14) is separated by approximately 85 feet of uplands. As these wetlands are not abutting Sand Creek and exhibit no continuous surface connection with Sand Creek through a discrete feature or non-jurisdictional physical conveyance, they are also non-jurisdictional under the Amended 2023 Rule.

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. Prior AJD, issued February 23, 2016.

b. [REDACTED]

c. USGS National Hydrography Dataset Plus Version 2.1. ArcGIS Pro. Latitude 37.94612°, Longitude -121.79362°. Accessed April 15, 2024.

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d. Digital Globe. Taken December 15, 2022. G-EGD. Latitude 37.94612°, Longitude -121.79362°. Zoom Level: 14. Accessed April 18, 2024.

e. Digital Globe. Taken March 16, 2023. G-EGD. Latitude 37.94612°, Longitude -121.79362°. Zoom Level: 14. Accessed April 18, 2024.

f. Digital Globe. Taken April 15, 2023. G-EGD. Latitude 37.94612°, Longitude -121.79362°. Zoom Level: 14. Accessed April 18, 2024.

g. Digital Globe. Taken December 15, 2022. G-EGD. Latitude 37.93814°, Longitude -121.70735°. Zoom Level: 16. Accessed April 18, 2024.

h. Digital Globe. Taken March 16, 2023. G-EGD. Latitude 37.93814°, Longitude -121.70735°. Zoom Level: 16. Accessed April 18, 2024.

i. Digital Globe. Taken April 15, 2023. G-EGD. Latitude 37.93814°, Longitude -121.70735°. Zoom Level: 16. Accessed April 18, 2024.

10. OTHER SUPPORTING INFORMATION.

The conclusions from the Joint Army-EPA memos on NAP-2023-01223, NWK-2022-00809, and SWG-2023-00284 were applied in determining whether Ephemeral Stream 12 can meet the continuous surface connection for Wetland Seeps A-D and Seasonal Wetland Pool 13/Wetland Seep E. The length of physical connection separating these wetlands from Sand Creek is more similar in scale to the conveyances evaluated in SWG-2023-00284 and NAP-2023-01223 than that of NWK-2022-00809.

The drainage features identified on the delineation mapping as Ephemeral Drainage 1 and 2 are not evaluated as aquatic resources in this jurisdictional determination even though they may appear to be resources on the enclosed aerial imagery. The features do not exhibit a visible channel or OHWM and do not meet the Corps' definition of a wetland.

This MFR uses the stream orders published by USGS in the National Hydrography Dataset. The tributaries identified as Ephemeral Streams 4-12 were mapped at ground-scale and do not appear in the NHD, which was mapped at a broader scale than the ground-scale mapping within the review area. Strahler stream orders are scale dependent.⁹ Since we cannot apply ground-scale mapping in the entirety of this

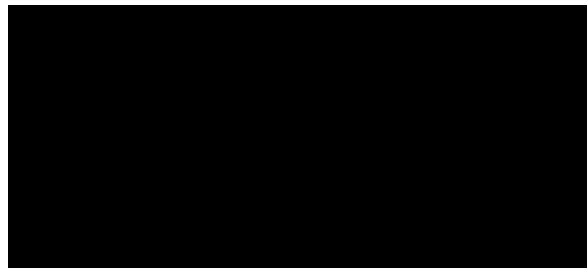
⁹ See for example Scheidegger (Effect of Map Scale on Stream Orders 1966), Caruso & Haynes (Biophysical-Regulatory Classification and Profiling of Streams Across Management Units and Ecoregions 2011), and Wohl, et al. (Synthesizing the Scientific Foundation for Ordinary High Water Mark Delineation in Fluvial Systems, SR-16-5 2016).

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watershed we must rely on published stream orders. To maintain consistency with the published stream orders we have treated those streams that were not included in the NHD as unmapped first- and second-order streams that did not increase the stream order of Sand Creek. This allows us to use the published stream orders to determine where the relevant reach of Sand Creek begins and ends outside of the review area.

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.



4 Encls

1. Ranch Review Area Delineation Map
2. Prior Corps AJD
3. The Ranch at Antioch Stream Flowline and Order Map
4. Digital Globe Aerial Imagery



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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.³ 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.⁴

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

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 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

a. Provided below is a list of each individual feature within the review area and the jurisdictional status of each one (i.e. whether each feature is/is not a water of the United States and/or a navigable water of the United States).

(1) Seasonal Wetland, non-jurisdictional, 0.016 acre

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. The review area encompasses the proposed offsite infrastructure area for the Ranch at Antioch development project, totaling 11 acres, and is located near the intersection of Deer Valley Road and Sand Creek Road, Latitude 37.94885°, Longitude -121.79266°, City of Antioch, California. The review area is shown in the enclosed delineation map (Enclosure 1).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A, the onsite aquatic resource is not connected to any TNWs however the closest TNW is the Dutch Slough in the Sacramento-San Joaquin Delta which is subject to the ebb and flow of the tide.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Sand Creek, a relatively permanent

⁵ 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.

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

water that runs adjacent to the review area, is a tributary of Marsh Creek, a third order perennial stream. Marsh Creek flows into Dutch Slough, a TNW, at the Big Break Shoreline near the City of Antioch.

6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe 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. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ N/A, there are no Section 10 jurisdictional waters in the review area.

7. SECTION 404 JURISDICTIONAL WATERS: There were no 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*.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. There are no 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).

b. The aquatic resource denominated as Seasonal Wetland in the delineation map was determined to be non-jurisdictional because it did not meet one or more categories of waters of the United States under the 2023 Rule as amended. This resource meets the Corps' definition of a wetland based on the 1987 *Corps of Engineers Wetland Delineation Manual* however it lacks a continuous surface connection with waters that fall under Paragraph (a)(1)-(3) of the 2023 Rule as amended. The seasonal wetland is located approximately 850 feet from the nearest (a)(1)-(3) jurisdictional water, the (a)(3) tributary identified as Intermittent Stream 1 or Sand Creek in MFR 1 of 2. The wetland is separated by uplands and roads with no discrete features that would extend a continuous surface connection from Sand Creek to the seasonal wetland.

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.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

CESPK-RDC-D

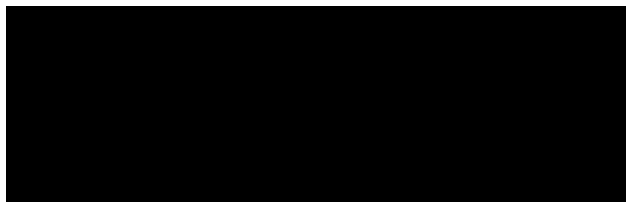
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2003-00691]

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. 


10. OTHER SUPPORTING INFORMATION. Sand Creek and other nearby waters are described to a greater detail in the June 3, 2014, delineation report *Investigation of Waters of the United States Cowan Property* by Live Oak Associates, Inc. The description and jurisdictional status of those waters is discussed in MFR 1 of 2. Aerial imagery from the consultant's delineation report and compiled for MFR 1 of 2 were also utilized in supporting this determination by confirming the absence of any discrete features and verifying that the boundaries of Seasonal Wetland did not extend beyond the review area and potentially have a continuous surface connection with Sand Creek.

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.



Encl

1. Figure 3 Aquatic Resources
The Ranch Offsite Infrastructure Area

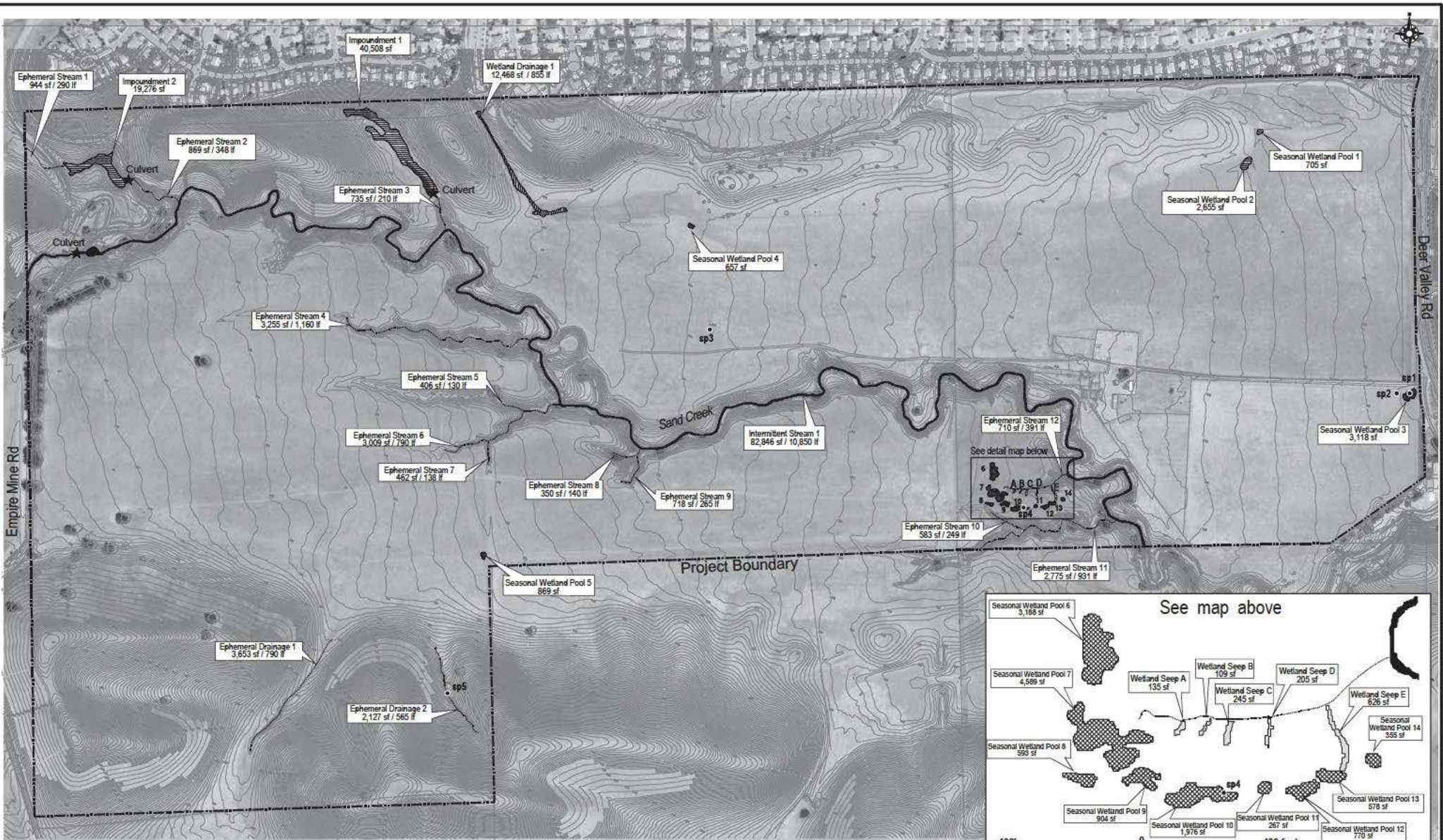


Table 2. HYDROLOGIC FEATURES IDENTIFIED ON THE STUDY AREA

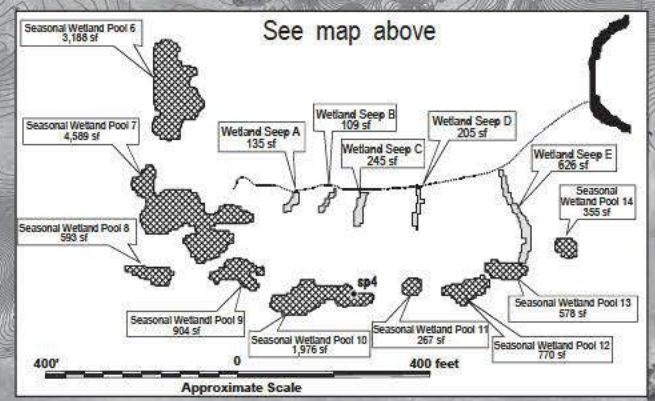
HYDROLOGIC FEATURE	Length (Approx. #)	Area (Approx. sf)	Average (Approx. ac)
POTENTIALLY JURISDICTIONAL WATERS			
Tributary Waters			
Intermittent Stream (Sand Creek)	10,850	82,848	1,901
Ephemeral Stream (Tributary to Sand Creek)	5,942	14,816	0,340
Impoundment	NA	99,794	1,372
Adjacent Wetlands			
Seasonal Wetland Pool	NA	13,220	0,303
Wetland Seep	NA	1,320	0,030
Sub-Total	15,992	171,968	3,948
POTENTIALLY NON-JURISDICTIONAL WATERS			
Non-Tributary Waters			
Ephemeral Drainage (1 & 2)	1,255	5,780	0,132
Isolated Wetlands			
Wetland Drainage	855	12,468	0,286
Seasonal Wetland Pools (1, 2, 3, 4, & 5)	NA	8,004	0,183
Sub-Total	2,210	25,252	0,601
Total	18,192	198,220	4,551

LEGEND

- Ephemeral Drainage / Stream
- Intermittent Stream (Sand Creek)
- Wetland Seep
- Impoundment
- Wetland Drainage
- Seasonal Wetland Pools

Other Features

- Project Boundary 546 Ac
- Culvert
- Sample Point



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Figure 3
Aquatic Resources

*The Ranch Offsite Infrastructure Area
Antioch, Contra Costa County, California*

Aerial Source: Maxar, 24 October 2019.