



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

CESPK-RDC-D

13 November 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 (18 January 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),¹ SPK-2023-00778.

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

On 18 January 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 (18 January 2023) ("2023 Rule"). On 8 September 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),⁴ 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. 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 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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2023-00778]

(1) D-1/IC-2, non-jurisdictional tributary

(2) IC-1, jurisdictional tributary

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 AJD review area is approximately 115 acres and is located southeast of the City of Stockton at Latitude 37.91928°, Longitude -121.21056° in an unincorporated portion of San Joaquin County, California. The review area is portrayed on the USGS 7.5-minute *Stockton East, California* topographic quadrangle. Enclosures 1 is a vicinity map and Enclosure 2 is the aquatic resources delineation map prepared on behalf of the requestor.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest traditional navigable water (TNW) is French Camp Slough located approximately 5 river miles to the west. Enclosure 3 is a figure portraying the flowpath of the review area aquatic resources to a TNW.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. D-1, a non-relatively permanent water (NRPW), flows southeast and connects to IC-2, a relatively permanent water (RPW). D-1/IC-2 flows southeast into North Littlejohns Creek (RPW) just outside the southwestern corner of the review area. IC-1 is the reach of North Littlejohns Creek located within the review area. Subsequently, North Littlejohns Creek flows westward approximately 5 river miles before flowing into French Camp Slough (TNW).

6. SECTION 10 JURISDICTIONAL WATERS: N/A. 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.

7. SECTION 404 JURISDICTIONAL WATERS: Describe the 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*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the

size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- 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):

1. IC-1, a 200-linear foot reach (0.07 acre) of North Littlejohns Creek within the review area, is a jurisdictional tributary as it is an RPW with a surface flowpath to a TNW, French Camp Slough. It is approximately 15 feet wide and has a distinct ordinary high-water mark (OHWM) characterized by the presence of an earthen bed and bank, shelving, scour, and the destruction of terrestrial vegetation. Portions of it support wetland vegetation (*Rumex crispus*). IC-1 has flowing or standing water year-round or continuously during certain times of the year. Baseflows during the dry season are augmented by tailwater (i.e., irrigation return flow) from irrigated fields to the east. A review of aerial photography displayed the presence of surface water during the winter and during the irrigation season across several years.

- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe 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). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁵ N/A.

b. Describe 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).

- 1. D-1/IC-2 is not a water of the U.S.

Due to the highly anthropogenically altered nature of the Central Valley landscape, the Strahler stream order could not be established for features within the review area. Lands

⁵ 88 FR 3004 (January 18, 2023)

around the review area support numerous public, private, maintained, and abandoned drainage and irrigation channels, some of which represent relocated natural drainages. The direction and magnitude of flows can vary from year to year due to evolving land uses and proprietary water rights.

D-1/IC-2 collectively represents a lower order stream that is tributary to IC-1/North Littlejohns Creek, a higher order stream. The average width of D-1/IC-2 is approximately 4 to 5 feet, while the average width of IC-1/North Littlejohns Creek is approximately 15 feet. D-1/IC-2 drains a smaller catchment that is limited to the immediately adjacent agricultural fields.

The features mapped as D-1 and IC-2 are a single, unbranched reach of tributary. D-1 and IC-2 each support an earthen bed and bank, and an OHWM; however, the requestor's consultant labeled IC-2/D-1 as two separate features based on their differing hydrologic regimens. The lower reaches of IC-2 support cattail (*Typha* sp.), a plant indicative of at least semi-permanent presence of water. The D-1 reach, a NRPW, is topographically higher and does not support obligate wetland vegetation. D-1 also possesses a less distinct OHWM with less pronounced shelving and scour than IC-2. As such, we consider D-1 and IC-2 to be equivalent to the same stream order for purposes of identifying the reach of the tributary.

The non-relatively permanent portion of the reach of the tributary (i.e., D-1) is 2,521 linear feet (0.20 acre) while the relatively permanent portion (i.e., IC-2) is 1,210 linear feet (0.14 acre). While the farthest downstream limit of the reach (i.e., IC-2) has standing or flowing water seasonally and not just in direct response to precipitation, these flow characteristics are not representative throughout the evaluated tributary reach. See *Memorandum on MVS-2023-00288* (16 February 2024) and 88 FR 3004, 3086 (18 January 2023). D-1/IC-2 is a tributary reach consisting of multiple flow regimes; however, the D-1 reach is larger and longer and best characterizes the entire tributary reach. Because D-1/IC-2 is not relatively permanent, it is non-jurisdictional.

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. The Corps conducted a site visit on 27 May 2022.

b. *Aquatic Wetland Delineation 115+/- Acre "Mariposa Industrial Park 2"*
San Joaquin County, California, dated October 2023 and prepared by [REDACTED]
[REDACTED]

c. Aerial photography of the project area, flown 31 March 2023, and provided by Maxar.

d. Google Earth aerial photography - from 1985 to 2024 including June 2024; March 2024; February 2021; and September 2021.

e. USGS East Stockton, CA 7.5-Minute Topographic Quadrangle, 2012.

f. USGS East Stockton, CA 7.5-Minute Topographic Quadrangle, 1968.

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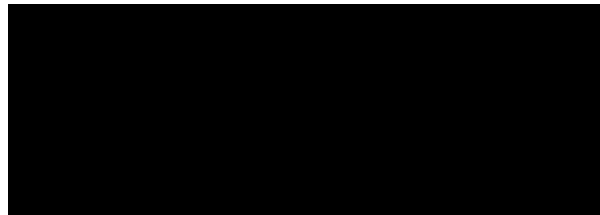
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2023-00778]

g. USGS East Stockton, CA 7.5-Minute Topographic Quadrangle, 1966.

h. USGS East Stockton, CA 7.5-Minute Topographic Quadrangle, 1952.

10. OTHER SUPPORTING INFORMATION. Additional information about the survey area, its aquatic resources, and their hydrological characteristics was provided by the requestor's consultant during a 10 May 2024 phone conversation. The requestor's consultant performed extensive biological surveys in the area during the wet and dry seasons over the last several years.

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.



3 Encls

1. Vicinity Map
2. Aquatic Resources Delineation Map
3. Flowpath Map

[DISTRICT OFFICE CODE]

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [ORM Identification Number]

MFR Enclosures

MFR Enclosure 1 – Vicinity Map

MFR Enclosure 2 – Aquatic Resources Delineation Map

MFR Enclosure 3 – Flowpath to TNWs

MFR Enclosure 1 – Vicinity Map

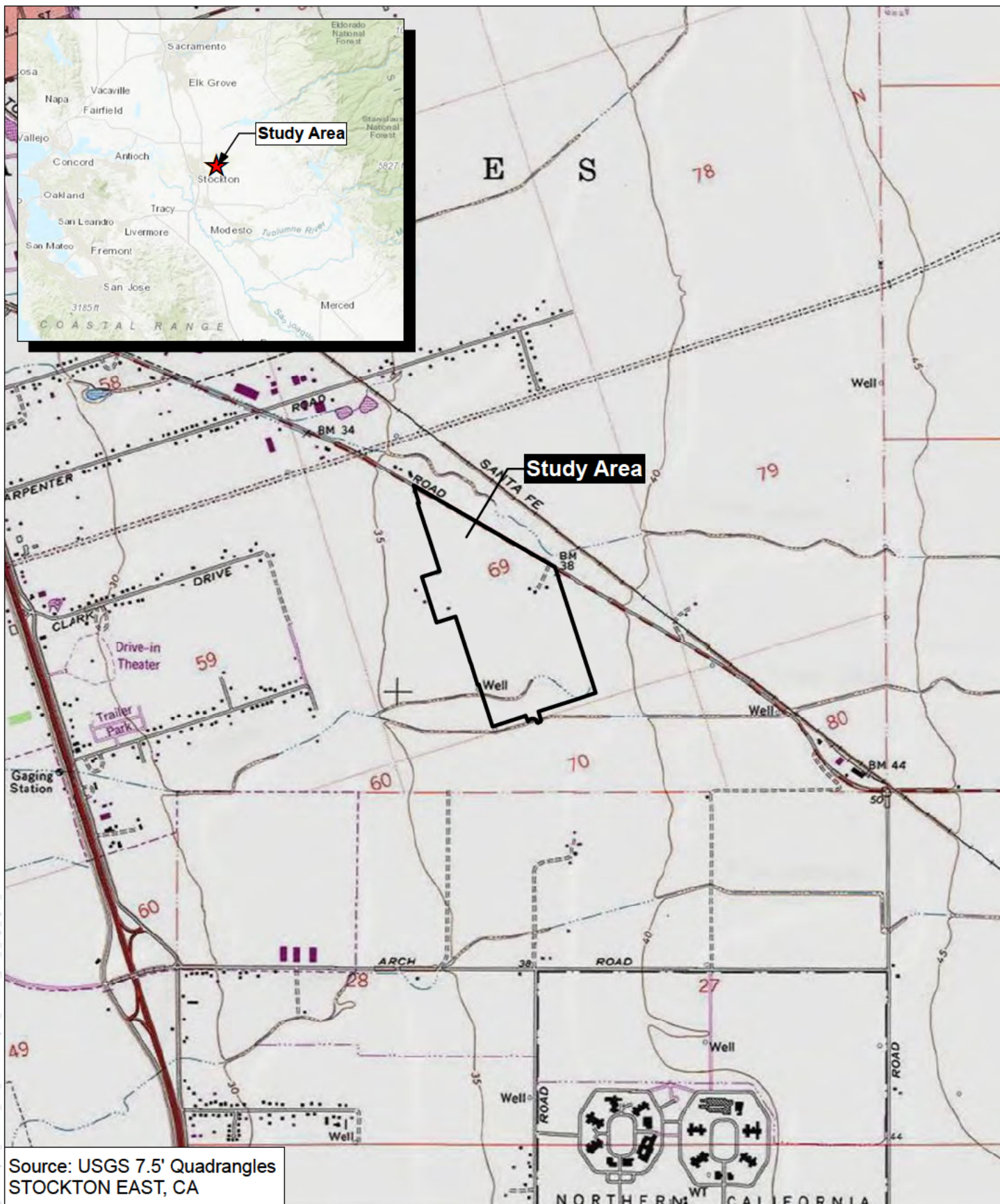


Figure 1

0 1,000 2,000



Map Date: 03/28/2023

USGS

Mariposa Industrial Park 2


San Joaquin County, CA


MFR Enclosure 2 – Aquatic Resources Delineation Map




Data Disclaimer:
The delineation has been done in accordance with the 1987 Wetlands Delineation Manual, US Army Corps of Engineers and the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. The boundaries and jurisdictional status of all waters shown on this map are preliminary and subject to verification by the U.S. Army Corps of Engineers.

Aerial Image: Google Earth (04/26/2022)

 Project Area (±115 ac.)

 Culvert

 3-Parameter Data Point

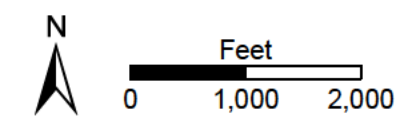
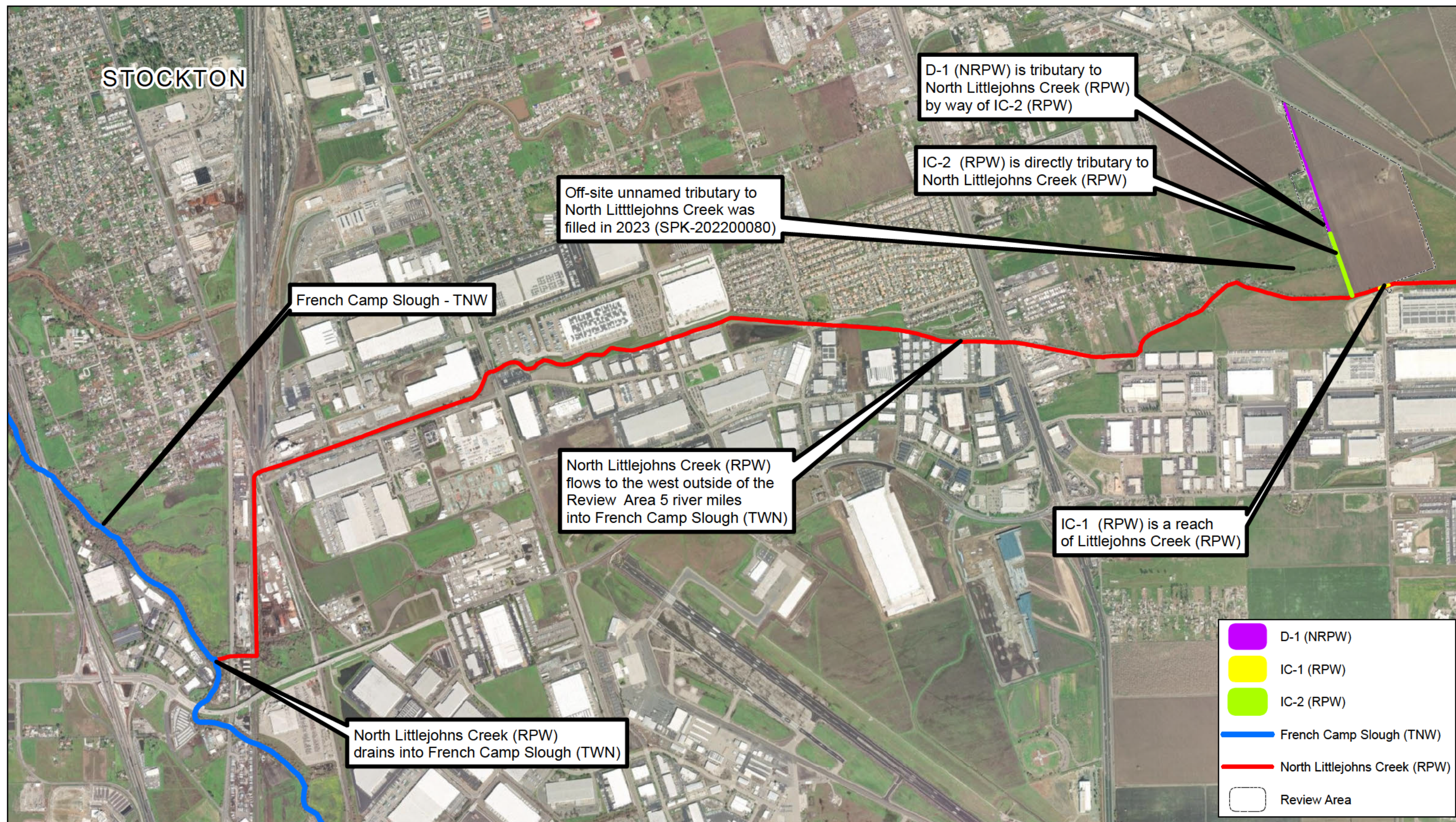
Aquatic Resources

Mariposa Industrial Park 2

San Joaquin County, CA

Map Date: 03/28/2023

MFR Enclosure 3 – Flowpath to TNWs



Aerial Source: Maxar, March 31, 2023

Flowpath to TNW (French Camp Slough)
SPK-2023-00778 (Mariposa Industrial Park II)

