



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

CESPK-RD-C-D

06 December 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-2024-00398

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 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),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.

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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a. Provided below is 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) Seasonal Wetland 1 (SW-1), 11.899 acre, non-jurisdictional

(2) Seasonal Wetland 2 (SW-2), 0.209 acre, non-jurisdictional

(3) Drainage Ditch 1 (DD1)/DD2, 0.271 acre, non-jurisdictional

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 61694 (September 8, 2023))

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

3. REVIEW AREA. The approximately 42-acre review area is located at Latitude 38.38158°, Longitude -121.41237°, City of Elk Grove, Sacramento County, California (Enclosure 1). The review area encompasses the review areas of two prior AJDs, SPK-2004-00036 and SPK-2007-00393. SPK-2004-00036 found 6.6 acres of waters onsite to be jurisdictional as they were considered tributary to the Sacramento River under the existing Waters Rule. SPK-2007-00393 found 0.0697 acre of jurisdictional waters that were likewise considered tributary to the Sacramento River. Based on aerial imagery collected on the site (Enclosure 2), the property occupying the review area of SPK-2007-00393 was demolished in 2006 and the land was graded over the following years.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The aquatic resources onsite do not exhibit a tributary connection or continuous surface connection with a TNW, the territorial seas, or interstate water. However, the TNW that is geographically nearest to the review area is the Sacramento River, which is 5.4 air miles to the west.⁵

⁵ 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.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There is no flowpath, direct or indirect, from the aquatic resources onsite to a TNW, territorial sea, or and interstate water.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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

7. SECTION 404 JURISDICTIONAL WATERS: 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*.

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): N/A

f. Adjacent Wetlands (a)(4): N/A

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

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. No aquatic resources or other features within the review area are excluded 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).

⁶ 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.

⁷ 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.

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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 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).

Seasonal wetland 1 (SW-1) was determined to be non-jurisdictional as it does not exhibit a continuous surface connection with an (a)(1)-(a)(3) jurisdictional water. Although this wetland is mapped contiguously with the drainage ditches identified in the delineation mapping as DD-1/DD-2, these ditches do not flow directly or indirectly into a paragraph (a)(1)-(a)(3) jurisdictional water, as discussed further below. Therefore, SW-1 does not meet the definition of an (a)(4) adjacent wetland under the 2023 Rule, as amended.

SW-2 is non-jurisdictional as it is an isolated depression with no physical connection, such as a continuous surface connection, to other waters. The nearest aquatic resource, SW-1, is separated from SW-2 by approximately 75 feet of uplands. As SW-2 does not exhibit a continuous surface connection with a paragraph (a)(1)-(a)(3) water, it does not meet the definition of an (a)(4) adjacent wetland under the 2023 Rule, as amended.

The applicant's delineation report identifies two tributary resources, drainage ditches DD-1 and DD-2. These ditches are connected by a short (20-foot) culvert beneath a farm road, thus they are treated as one feature in this AJD. Although the ditch exhibits characteristics of flow and a defined ordinary high-water mark, based on information provided by the applicant there is no existing outlet for this ditch, which runs approximately 800 linear feet from the boundary with SW-1 to a dead-end at the eastern edge of the review area boundary. Since DD-1/DD-2 does not flow directly or indirectly into a jurisdictional aquatic resource, it does not meet the definition of a paragraph (a)(3) tributary under the 2023 Rule, as amended.

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. Google Earth Pro 7.3.3.7786 (July 21, 2020). Imagery Date June 2005. Sacramento, California. Latitude 38.38158°, Longitude -121.41237°. Eye Alt. 3395 ft. Accessed November 18, 2024.

b. Google Earth Pro 7.3.3.7786 (July 21, 2020). Imagery Date July 2006. Sacramento, California. Latitude 38.38158°, Longitude -121.41237°. Eye Alt. 3395 ft. Accessed November 18, 2024.

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c. Google Earth Pro 7.3.3.7786 (July 21, 2020). Imagery Date October 2016. Sacramento, California. Latitude 38.38158°, Longitude -121.41237°. Eye Alt. 3395 ft. Accessed November 18, 2024.

d. Google Earth Pro 7.3.3.7786 (July 21, 2020). Imagery Date January 2022. Sacramento, California. Latitude 38.38158°, Longitude -121.41237°. Eye Alt. 3395 ft. Accessed November 18, 2024.

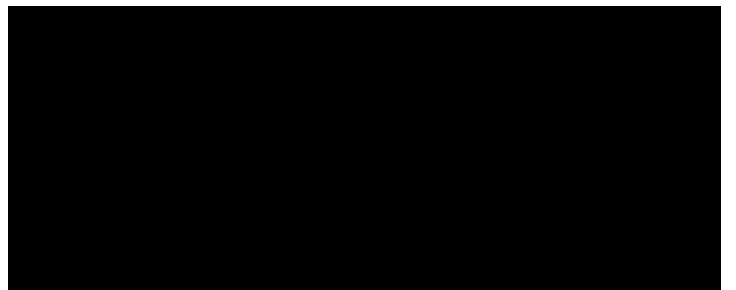
e. Google Earth Pro 7.3.3.7786 (July 21, 2020). Imagery Date May 2023. Sacramento, California. Latitude 38.38158°, Longitude -121.41237°. Eye Alt. 3395 ft. Accessed November 18, 2024.

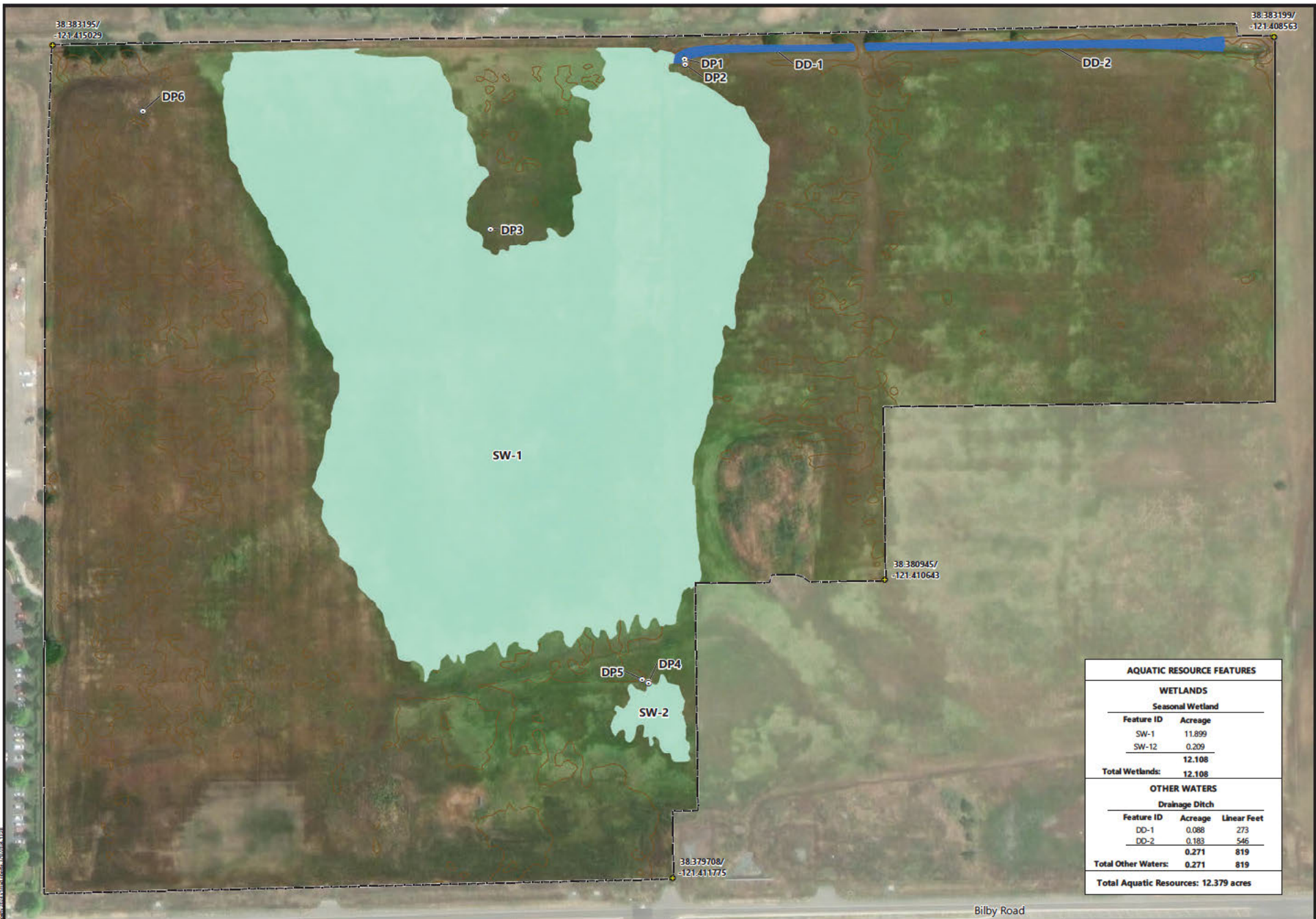
f. Google Earth Pro 7.3.3.7786 (July 21, 2020). Imagery Date March 2024. Sacramento, California. Latitude 38.38158°, Longitude -121.41237°. Eye Alt. 3395 ft. Accessed November 18, 2024.

10. OTHER SUPPORTING INFORMATION. The applicant's delineation report included a data point collected within DD1/DD2 near its abutment with SW-1 which identified hydrophytic vegetation and hydrology but no hydric soils. Therefore, DD-1/DD-2 does not meet the Corps' three-part test for identifying wetlands and is not considered an extension of SW-1.

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.

- 2 Encls
- 1. Delineation Map
- 2. Aerial Imagery





AQUATIC RESOURCE FEATURES		
WETLANDS		
Seasonal Wetland		
Feature ID	Acreage	
SW-1	11.899	
SW-2	0.209	
	12.108	
Total Wetlands:	12.108	
OTHER WATERS		
Drainage Ditch		
Feature ID	Acreage	Linear Feet
DD-1	0.088	273
DD-2	0.183	546
	0.271	819
Total Other Waters:	0.271	819
Total Aquatic Resources:	12.379 acres	

Map Scale: 1 inch = 100 feet
Coordinate System: NAD 1983 State Plane California II
Datum: NAD83 (North American Datum 1983)
Projection: Lambert Conformal Conic
Vertical Data: NAVD88 (North American Vertical Datum 1988)
Aerial Base: Maxar
Aerial Base Flown: 26 April 2022
Topographic Contours: City of Elk Grove Open Portal

Delineation Performed by: D. Brown
Map Prepared by: N. Bente
Date Map Prepared: 13 March 2024
Definitions:
 NAD = North American Datum
 NAVD = North American Vertical Datum

Prepared For:
Richland Communities, Inc.
 3000 Lava Ridge Court, #115
 Roseville, California 95661

- Study Area Boundary (42 acres)
- Reference Point
- Data Point
- Ground Surface Elevation, 2 foot contour

Aquatic Resources (12.379 acres)
Wetlands (12.108 acres)
 Seasonal Wetland (12.108 acres)
Other Waters (0.271 acre)
 Drainage Ditch (0.271 acre)

Aquatic Resources Delineation
 Treasure Property
 Sacramento County, California