



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

CESPK-RDC-N

23 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-2024-00618.

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.

a. A list of each individual feature within the review area and the jurisdictional status of each one.

(1) Seasonal Wetland 1 (SW-1), 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 88 FR 61964-61969 (September 8, 2023).

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

4. REVIEW AREA. The approximately 13-acre review area is located east of Gateway Park Blvd, south of North Freeway Blvd, and west of Promenade Circle in a portion of the City of Sacramento known as Natomas, Latitude 38.63845° North, Longitude 121.50125° West, Sacramento County, California. The area marked "Study Area" in the enclosed map titled "Aquatic Resource Delineation Natomas 100 Promenade" 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. The Sacramento River is the nearest downstream TNW (Enclosure 2). The Sacramento District identifies the Sacramento District's Sacramento 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 Suisun Bay, an arm of the San Francisco Bay, to Keswick Dam, at river mile 301.6.

6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The subject water within the review area would flow north outside of the review area to a storm drain. It is unknown where the storm drain flows, but undoubtedly it flows eventually into the Sacramento River. The nearest water to the review area is approximately 1,700 feet to the east of the East Drainage Canal. The East Drainage Canal flows for approximately 1.5 miles southwest into the Natomas Main Drainage Canal. The Natomas Main Drainage Canal flows south for approximately 1.22 miles into the Sacramento River, a TNW (Enclosure 2).

7. SECTION 10 JURISDICTIONAL WATERS⁵: 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. SW-1 is an approximately 0.03-acre seasonal wetland within the review area. Under the 2023 Rule, SW-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)(5). SW-1 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, information supplied by the applicant, by LiDAR imagery, and aerial imagery show that the review area is quite flat and there is no apparent drainage direction of the wetland, SW-1. A review of Digital Globe imagery from the wet seasons, and historic areal imagery ranging from 1947-2022, does not indicate any discrete feature connecting SW-1 to any other aquatic feature outside of the review area. The review area was an agricultural field from 1947-2002. In 2005, the review area was graded for construction of the surrounding development. According to the aquatic resources delineation there are no culverts that exit the site to carry surface or subsurface water offsite. The distance between SW-1 and the nearest water, an unnamed drainage ditch to the south of the review area, is approximately 0.25 miles. There is no discrete continuous surface connection between SW-1 and any aquatic resource. Therefore, SW-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).

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

a. U.S. Army Corps of Engineers. September 30, 2024, September 31, 2024, and October 4, 2024. Office Evaluation.

b. [REDACTED] 2024. *Aquatic Resources Delineation Report Natomas 100 Promenade Sacramento County, CA*.

⁵ 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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c. U.S. Fish and Wildlife Service. 1983. National Wetland Inventory. Project area: NWI 2024-00618. Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved September 26, 2024, from Wetland Mapper: <https://www.fws.gov/wetlands/data/mapper.html>.

d. Natural Resources Conservation Service. 2020. Custom Soil Resource Report for Sacramento County, California Natomas 100 Promenade 2024-00618. Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved from <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.html>.

e. U.S. Geological Survey. 2024. National Geospatial Program, USGS National Hydrography Dataset Best Resolution (NHD). National Map.

f. Flow Path to a TNW Natomas 100 Promenade [map]. 1:2,000. Generated by Army Corps of Engineers, September 27, 2024. Using ArcGIS Pro.

g. Digital Globe: December 19, 2020 Natomas 100 Promenade [map]. 1:260. Generated by Army Corps of Engineers, September 27, 2024. Using ArcGIS Pro.

h. Digital Globe: January 29, 2022 Natomas 100 Promenade [map]. 1:260. Generated by Army Corps of Engineers, September 27, 2024. Using ArcGIS Pro.

i. Digital Globe: February 8, 2022 Natomas 100 Promenade [map]. 1:260. Generated by Army Corps of Engineers, September 27, 2024. Using ArcGIS Pro.

j. Digital Globe: October 11, 2022 Natomas 100 Promenade [map]. 1:260. Generated by Army Corps of Engineers, September 27, 2024. Using ArcGIS Pro.

k. Digital Globe: January 12, 2023 Natomas 100 Promenade [map]. 1:260. Generated by Army Corps of Engineers, September 27, 2024. Using ArcGIS Pro.

l. Digital Globe: January 22, 2023 Natomas 100 Promenade [map]. 1:260. Generated by Army Corps of Engineers, September 27, 2024. Using ArcGIS Pro.

m. 3DEP: LiDAR Natomas 100 Promenade [map]. 1:260. Generated by Army Corps of Engineers, February September 27, 2024. Using ArcGIS Pro.

11. OTHER SUPPORTING INFORMATION. There are no jurisdictional waters within the review area. The wetland SW-1 does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) water.

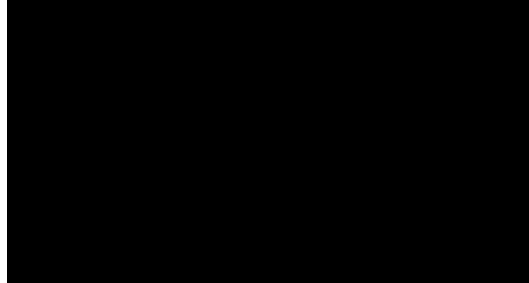
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12. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Encls

1. Aquatic Resources Delineation
Natomas 100 Promenade Map
2. Flowpath to a TNW Natomas 100
Promenade





Sources

Aerial:Sacramento County, 27 February 2022

Boundary: Sacramento County GIS Parcels

Topographic Contours:Sacramento County

Date Map Prepared: 26 August 2024

Made in accordance with the
Updated Map and Drawing Standards for the
South Pacific Division Regulatory Program,
as amended on February 10, 2016

Map Scale:
1 inch = 50 feet (at 22"x26")

Coordinate System
NAD 1983 State Plane California II
(U.S. Feet)

Location Map

Study Area (13.0 acres)

Reference Point (NAD83)

2' Contour (NAVD88 U.S. Feet)

Data Point

Aquatic Resources (0.026 acre)

Wetlands

Seasonal Wetland (0.026 acre)

Aquatic Resources Delineation

Natomas 100 Promenade

Sacramento, Sacramento County, California

