



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

CESPK-RDC-D

18 March 2024
(updated: 6 January 2025)

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-2023-00195.

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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Below a list of each individual feature within the review area, as well as the acreage and 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 (IS1), 0.131 acre, jurisdictional
- (2) Seasonal Wetland Swale 1 (SWS1), 0.047 acre, non-jurisdictional
- (3) Depressional Seasonal Wetland 1 (DSW1), 0.016 acre, jurisdictional
- (4) DSW2, 0.010 acre, non-jurisdictional
- (5) Ephemeral Stream 7 (SB7), 0.081 acre, non-jurisdictional
- (6) Ephemeral Stream 8 (S8), 0.369 acre, non-jurisdictional
- (7) Sediment Basin 9 (SB9), 0.131 acre, jurisdictional
- (8) SB10, 0.264 acre, jurisdictional
- (9) SB11, 0.405 acre, 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 review area is approximately 74 acres in area and encompasses the southeast corner of the Prairie City State Vehicular Recreation Area (SVRA) and a portion of the conservation easement property (Barton Ranch) to the south. Prairie City SVRA is located at 13300 White Rock Road in unincorporated Sacramento County, approximately 1.5 miles northeast of the City of Rancho Cordova and 7 miles south of the City of Folsom. The review area boundary is depicted in the enclosed wetland delineation map (*Enclosure 1*).

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

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CONNECTED. The nearest TNW to which the onsite aquatic resources are connected is the Cosumnes River.⁵

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The review area is drained by an intermittent drainage (IS1) and ephemeral drainage (S8) that originates on Spectator hill, west of Scott Road and within the SVRA. Surface water is conveyed to the south via constructed basins, culverts, and natural and armored drainages. These features converge and are discharged offsite into Coyote Creek, located approximately 1,800 feet to the south of the Barton Ranch parcel. Coyote Creek flows to the east into Carson Creek, which is tributary to Deer Creek. Deer Creek is directly confluent to the Cosumnes River.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ N/A, there are no Section 10 waters in the review area.

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

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.

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.

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; although the settling basins on site were created by impounding IS1 and S8, they will be evaluated as components of their respective tributary reaches. SB9, SB10, and SB11 are included with the first order reach of IS1 from its source to the confluence with S8 in section 7(e) below. SB7 is included with the reach of S8 from its source to its confluence with IS1 in section 8(b).

e. Tributaries (a)(3): The first order reach of IS1, from its source outside the review area, to its confluence with S8 where it becomes a second order reach, is a relatively permanent tributary of the second order reach of IS1. The first order reach of IS1 includes settling basins SB9, SB10, and SB11, which hold water year-round, as visible in aerial imagery (*Enclosure 4*). According to the delineation report and the Zones 2, 3, and Barton Ranch Delineation Map (*Enclosure 2*), the settling basins are connected via culverts and natural drainages that represent the historic stream channel of IS1. Based on aerial imagery, the relatively permanent stretches of this reach account for approximately 50% of the total stream reach. Therefore, this reach of IS1 achieves the relatively permanent standard, thus meeting the definition of an (a)(3) tributary under the 2023 Rule.

The second-order reach of IS1, from its confluence with S8 to its junction with Coyote Creek, also exhibits characteristics of a relatively permanent tributary. To determine the flow regime of this reach of IS1, aerial imagery was reviewed at the point where IS1 enters Coyote Creek. Standing or continuously flowing water can be observed via aerial imagery at the confluence between February and April across multiple years, and occasionally as early as October (*Enclosure 3*). The duration and volume of the flow, as well as a visible OHWM supports the determination that this reach of IS1 is a paragraph (a)(3) tributary of Coyote Creek. The flowpath of IS1, from its source to its confluence with Coyote Creek is demarcated in the enclosed National Hydrography Database (NHD) flowline and stream order map (*Enclosure 7*). Please note that the stream order shown on the map is different from the order in this assessment, as S8 is not recorded in the NHD.

f. Adjacent Wetlands (a)(4): The wetland identified in the applicant's delineation map as DSW1 is jurisdictional as it is adjacent to, and exhibits a continuous surface connection with, the relatively permanent reach of Coyote Gulch, IS1, identified above.

DSW1 is connected by a discrete natural drainage feature, an approximately 50 linear foot (lf) gully draining directly to the south into IS1. This feature can be seen clearly on LiDAR imagery (*Enclosure 5*). Due to the proximity of DSW1 to IS1, the presence of a discrete feature indicative of a continuous surface connection, and lack of features that would sever this connection, DSW1 meets the definition of (a)(4) adjacent wetlands under the 2023 Rule, as amended.

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 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) pursuant to the exclusions listed in 33 CFR 328.3(b).⁸

b. The following aquatic resources and features within the review area are non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended:

Ephemeral Stream 8 (S8) is a non-relatively permanent tributary of IS-1 with a defined channel and visible OHWM. This determination assesses the reach of S8 from its source within the review area to its confluence with IS1, and includes the feature marked as Ephemeral Stream 7 (SB7) on the review area delineation map, which is an artificial settling basin excavated from the channel of S8. Based on aerial imagery, at its confluence with IS1, S8 appears to be relatively permanent as water is standing or continuously flowing during certain times of the year for more than for a short duration in direct response to precipitation (*Enclosure 4*). Additionally, SB7 carries water year-round. However, the segment of S8 including and below SB7 is not representative of the entire reach of S8. Aerial imagery shows that the majority of this reach, approximately 90%, does not carry standing or continuous flowing water at any point throughout the year, including the wet season when water can be observed in IS1 downstream. According to the consultant’s report, this resource carries water only as a direct response to precipitation, and is not fed by groundwater, unlike other aquatic resources on the site. Therefore, the reach of S8 assessed, including SB7, is not jurisdictional as it has 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.

⁸ 88 FR 3004 (January 18, 2023)

SWS1 is non-jurisdictional as it does not exhibit a continuous surface connection with a paragraph (a)(1) water, relatively permanent (a)(2) impoundment, or tributary that meets the relatively permanent standard to meet the definition of an (a)(4) wetland. SWS1 meets the Corps' three-part criteria for definitions of a wetland and LiDAR imagery shows that the swale flows towards the direction of IS1 (*Enclosure 5*). However, the boundary of SWS1 is separated from the OHWM of IS1 by approximately 150 feet of uplands. There is no discrete feature visible on aerial or LiDAR imagery connecting the two resources. Therefore, water flow from SWS1 to IS1 occurs as overland sheetflow or shallow subsurface flow which does not qualify as a continuous surface connection.

DWS2 is also a non-jurisdictional wetland as it lacks a discrete feature indicative of a continuous surface connection with IS-1. DSW2 is located approximately 80 feet from the channel of IS-1. However, LiDAR imagery shows that the topography at this location slopes away from IS-1 and reveals a shallow wash extending in the north-south direction that encompasses DSW2. The applicant's April 2017 *Section 404 Wetlands and Other Waters: Zones 2, 3, and Barton Ranch* delineation map (*Enclosure 2*) illustrates the entire area adjacent to DSW2 and identifies a wetland swale, W10, that comprises the wash visible in LiDAR imagery. This swale abuts IS-1 further downstream, however it is separated from DSW2 by approximately 120 feet of uplands. Since there are no artificial structures severing a potential connection between DSW1 and W10, they will not be treated as one wetland. DSW2, therefore, is a wetland that lacks a continuous surface connection to a requisite water and does not meet one or more categories of waters of the United States under the 2023 Rule as amended.

9. DATA SOURCES. The following is a list of sources used in making the determination, including titles and dates of the sources used. The information referenced is also available in the administrative record.

a. *Aquatic Resource Delineation Report Coyote Gulch Erosion Control Project Prairie City State Vehicular Recreation Area*. California State Parks. December 2021.

b. USGS National Map 3D Digital Elevation Program (3DEP). ArcGIS Pro. Latitude 38.65306°, Longitude -121.44547°. Accessed February 29, 2024.

c. Google Earth Pro 7.3.3.7786 (July 21, 2020). Taken February 2, 2018. Folsom, California. Latitude 38.59961°, Longitude -121.14057°. Eye Alt. 2976 ft. Accessed February 29, 2024.

d. Google Earth Pro 7.3.3.7786 (July 21, 2020). Taken October 25, 2016. Folsom, California. Latitude 38.59961°, Longitude -121.14057°. Eye Alt. 2976 ft. Accessed February 29, 2024.

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e. Google Earth Pro 7.3.3.7786 (July 21, 2020). Taken April 17, 2014. Folsom, California. Latitude 38.59961°, Longitude -121.14057°. Eye Alt. 2976 ft. Accessed February 29, 2024.

f. Google Earth Pro 7.3.3.7786 (July 21, 2020). Taken April 21, 2013. Folsom, California. Latitude 38.59961°, Longitude -121.14057°. Eye Alt. 2976 ft. Accessed February 29, 2024.

g. Google Earth Pro 7.3.3.7786 (July 21, 2020). Taken February 2, 2018. Folsom, California. Latitude 38.58819°, Longitude -121.13631°. Eye Alt. 1889 ft. Accessed March 28, 2024.

h. Google Earth Pro 7.3.3.7786 (July 21, 2020). Taken October 25, 2016. Folsom, California. Latitude 38.58819°, Longitude -121.13631°. Eye Alt. 1889 ft. Accessed March 28, 2024.

i. Google Earth Pro 7.3.3.7786 (July 21, 2020). Taken April 14, 2014. Folsom, California. Latitude 38.58819°, Longitude -121.13631°. Eye Alt. 1889 ft. Accessed March 28, 2024.

j. Google Earth Pro 7.3.3.7786 (July 21, 2020). Taken April 21, 2013. Folsom, California. Latitude 38.58819°, Longitude -121.13631°. Eye Alt. 1897 ft. Accessed March 28, 2024.

k. USGS National Hydrography Database Plus Version 2.1. ArcGIS Pro. Latitude 38.65306°, Longitude -121.44547°. Accessed April 23, 2024.

10. OTHER SUPPORTING INFORMATION. Corps PM Matthew Hirkala conducted a visit to this review area on May 4, 2022, to document the conditions of S8 in support of a non-relatively-permanent determination. He noted that the channel was devoid of vegetation and did not support any algal growth, which indicated that water did not stay in the channel for very long. No water was present during the site visit though it was well into the dry season. He also did not see any other indicators that would imply prolonged surface ponding such as aquatic insect carapaces or fish skeletons. His site photographs are enclosed (*Enclosure 6*).

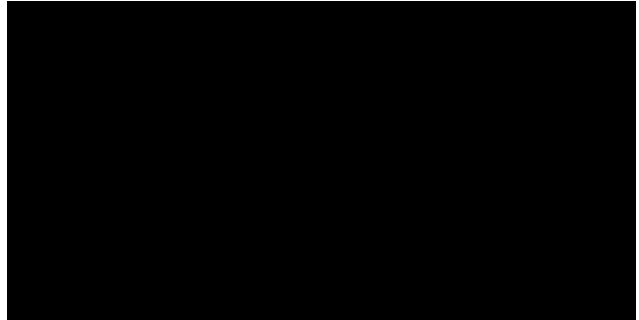
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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

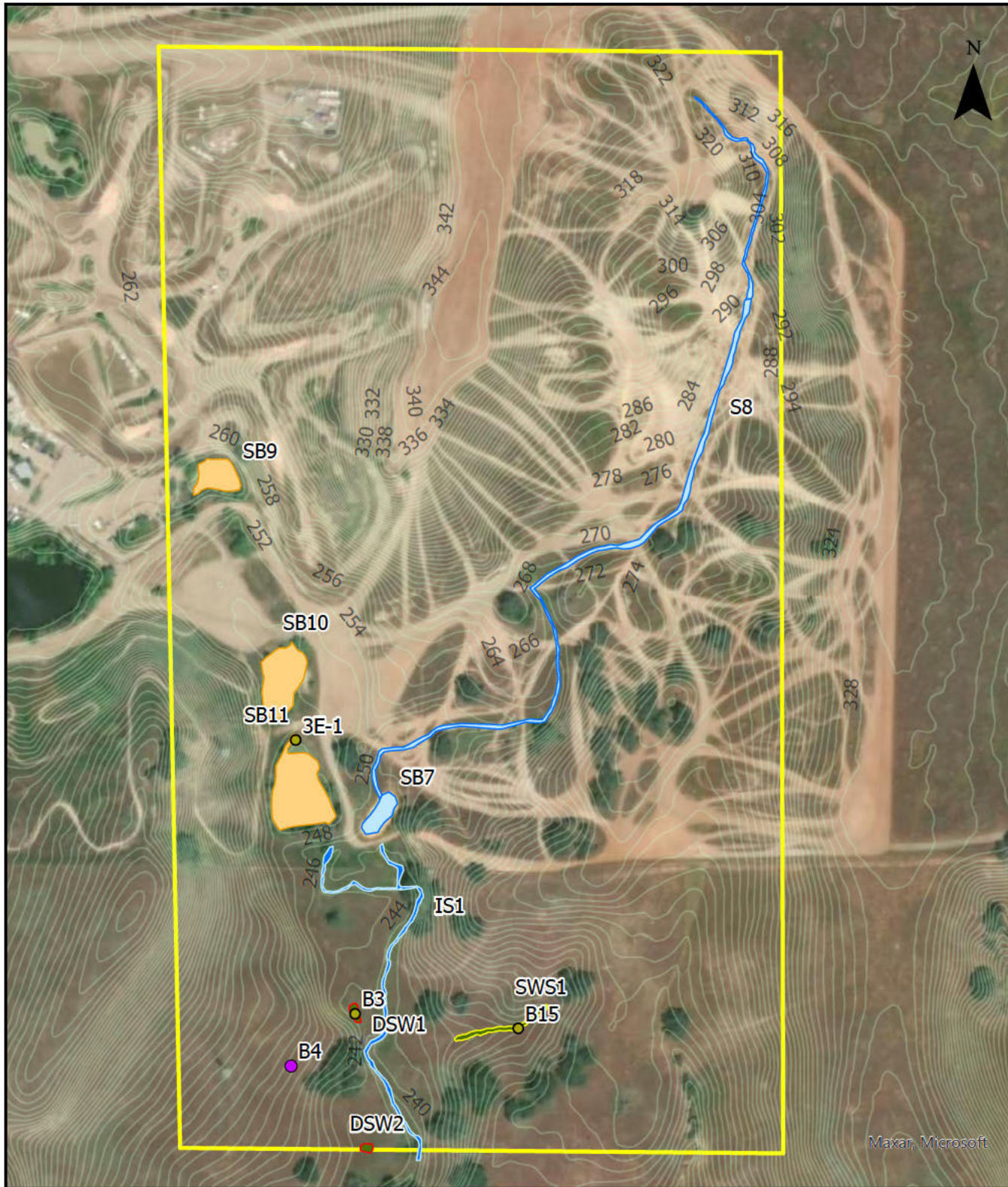
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7 Encls

1. Review Area Delineation Map
2. Zones 2, 3, and Barton Ranch Delineation Map
3. IS1 Second Order Reach Google Earth Imagery
4. S8 and IS1 First Order Reach Google Earth Imagery
5. IS1 and Wetlands LiDAR Imagery
6. Site Photographs
7. NHD Flowlines and Stream Order Map





Delineation of Wetlands and Other Waters of the U.S. for the proposed Coyote Gulch Erosion Control Project.

Sample Points

- Upland (B4)
- Wetland (B3, B15 and 3E-1)
- 2-ft Contours
- Study Area Boundary (74 acres)

water_type

- Depressional Seasonal Wetland
- Ephemeral Stream
- Intermittent Stream
- Seasonal Wetland Swale
- Sediment Basin

ID	Water Type	Acres
IS1	Intermittent Stream	0.131
SWS1	Seasonal Wetland Swale	0.047
DSW1	Depressional Seasonal Wetland	0.016
DSW2	Depressional Seasonal Wetland	0.010
SB7	Ephemeral Stream	0.081
S8	Ephemeral Stream	0.369
SB9	Sediment Basin	0.131
SB10	Sediment Basin	0.264
SB11	Sediment Basin	0.405

0 400
US Feet

Geographic Coordinate System: WGS1984 UTM Zone 10N
Projection: Transverse Mercator
Datum: North American 1983
Vertical Datum: NAVD88, U.S. Feet
1 inch = 400 feet

Created on 2/21/2023

Made in accordance with the
Updated Map and Drawing Standards for the
South Pacific Division Regulatory Program,
as amended on February 21, 2023, by: