



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

CESPK-RDC-N

24 February 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-2023-00136].

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.

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. The following table lists each individual feature within the review area and the jurisdictional status of each one (i.e., identifies whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Name of Aquatic Resource	Cowardin	Description	CWA Jurisdiction	RHA Jurisdiction
PO01	PUB	Isolate Pond	No	No
WF01	PEM	Vernal Swale	No	No
WF02	PEM	Vernal Swale	No	No
WF03	PEM	Vernal Swale	No	No
WF04	PEM	Vernal Swale	No	No
WF05	PEM	Vernal Swale	No	No
WF06/07	PEM	Seasonal Swale	Yes	No
WF08	PEM	Seasonal Wetland	Yes	No

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 No. 173 (September 8, 2023).

c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023).

3. REVIEW AREA. The review area is an approximately 58.89-acre review area located at 5915 Power House Hill Road, Latitude 39.42849° and Longitude -121.59025°, within Palermo, a census-designated place, in Butte County, California (Enclosure 1). The Property is located within the United States Geologic Survey (USGS) Palermo Quadrangle, within Section 12, Township 18N, Range 3E.

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

The nearest downstream TNW is the Feather River (Enclosure 2 and 3). The Sacramento District identifies the Feather River as a navigable water of the

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United States pursuant to the Rivers and Harbors Act and 33 CFR Part 329 (i.e. a Section 10 Water) from its confluence with the Sacramento River, upriver 28 miles to Railroad Bridge at Marysville.⁵

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

a. The flow path from the subject aquatic resources within the review area was evaluated using information acquired from the National Hydrography Dataset (NHD), National Wetland Inventory (NWI), LiDAR Imagery, aerial imagery from Digital Globe and Google Earth, field observations from site visits, and through the Streamflow Duration Assessment Method. The properties south of the review area are not accessible, as a result the analysis of flow in that area relied on remote methods.

b. The wetlands along the southern boundary of the review area, WF01 - WF04, are partially constrained due to the lower elevation of the southern field. The four wetlands pool along the fence line, but during seasons of high precipitation can overtop the elevation change along the fence line and continue to flow offsite (APN 025-320-002).

c. Water from WF01 - WF04 flow into offsite features that eventually reach a predominantly non-relatively permanent unnamed tributary of North Honcut Creek, which we will call the South Tributary for purposes of this MFR (Enclosure 2, 4, and 5). North Honcut Creek, a relatively permanent stream, is a tributary of Honcut Creek, which in turn is a tributary of the Feather River, a TNW. The South Tributary is a predominantly non-relatively permanent tributary to the Feather River and first-order stream, which begins at approximately latitude 39.44534°, longitude -121.57949° (Enclosure 6). The South Tributary extends downstream to its confluence with a 3-order stream at approximately latitude 39.40339°, longitude -121.59469°.

d. The water from WF01 flows out of the review area to the south (Enclosures 4 and 5). A concrete culvert is present along the south side of WF01 (Enclosures 1, 7, and 8). In an email to the Corps dated February 2, 2024, the agent, working on behalf of the applicant, stated that they remembered the culvert being filled in with sediment and the other end of the culvert being buried where it would have historically come out on the property to the south. The location of the culvert aids in the transportation of water out of WF01 and offsite to the south. Between the southern side of WF01 and the first discrete feature (swale) is approximately 45 feet. The area in between WF01 and the discrete feature can be observed on LiDAR (Enclosure 5) and aerial imagery (Enclosures 9 and 10). Based on topography, water from WF01 flows overland in this

⁵ See Rivers and Harbors Act Navigable Waters of the U.S. in Sacramento District at <https://www.spk.usace.army.mil/Missions/Regulatory/Jurisdiction/Navigable-Waters-of-the-US/>.

area. Aerial Imagery demonstrates that the area in between WF01 and the swale is more wet than the surrounding areas, suggesting subsurface and overland water flow. The flow path then proceeds through a series of wetlands, unnamed swales, and through several culverts outside of the review area (Enclosures 4 and 5). The first swale along the flow path flows southeast approximately 645 feet. Standing water along the swale is present in the Digital Globe imagery dated April 14, 2017 (Enclosure 9), and January 18, 2022 (Enclosure 10). Standing water indicates that wetland hydrology is present in these areas. The flow path then goes through a culvert (dimensions of the culvert are unknown as it is not clearly visible in arial imagery) and continues south into a portion of swale that appears to have been ditched. The ditched swale flows for approximately 290 feet. The flow path then goes through another culvert (dimensions of the culvert are unknown as it is not clearly visible in arial imagery) before flowing into another section of the ditched swale to the east. This section of the flow path is approximately 230 feet. The flow path then goes through another culvert (dimensions of the culvert are unknown as it is not clearly visible in arial imagery) before flowing into a stock pond. The stock pond is approximately 300 feet long. After the stock pond the flow path continues through a culvert that is visible in arial imagery. This culvert is approximately 20 feet long. The culvert outlets into a swale that is approximately 305 long and flows southeast into the South Tributary. In total, the flow path from wetland WF01 to the South Tributary approximately 2,125 feet.

e. Upstream of where the final swale enters the South Tributary, the flow regime of the tributary is non-relatively permanent. However, where the swale enters the South Tributary the flow regime becomes more sustained and becomes relatively permanent (Enclosure 6), as supported by aerial imagery. The National Hydrography Dataset identifies the South Tributary as ephemeral for another approximately 1 mile downstream. In total, approximately 2.24 miles of the South Tributary is non-relatively permanent and approximately 1.73-mile is relatively permanent. As a result, the tributary has a predominately non-relatively permanent flow regime. Approximately 8.5-miles more downstream, the stream flows into North Honcut Creek (Enclosure 2). North Honcut Creek then flows into Honcut Creek approximately 0.45-mile downstream. Honcut Creek flows approximately 3.9-miles before reaching the Feather River, a TNW.

f. The water WF02 flows southwest out of the review area where it converges with the flow path (unnamed swale) of WF01 as described above (Enclosure 5 and 5). The distance between WF02 and the flow path of WF01 is approximately 150 feet. A discrete physical feature is not present in the 150-foot-long area between the WF02 and the unnamed swale. Instead, the flow of water in this area is ambiguous and not continuous until it reaches the flow path for WF01.

g. The water from the wetland WF03 flows southwest out of the review area where it converges with the flow path (unnamed swale) of WF01 as described above

(Enclosures 4 and 5). The distance between WF03 and the flow path of WF01 is approximately 370 feet. A discrete physical feature is not present in the 370-foot-long area between the WF03 and the unnamed swale. Instead, the flow of water in this area is ambiguous and not continuous until it reaches the flow path for WF01.

h. The water from wetland WF04 flows south out the review area (Enclosures 4 and 5). Water from WF04 may flow both southwest and southeast once it leaves the review area. The flow path of wetland WF04 is not discernable after it leaves the review area.

i. Wetland WF05 lacks a discernable flow path out of the review area and to a downstream TNW, territorial sea, or interstate water (Enclosures 4 and 5).

j. The mapped features labeled WF06 and WF07 are a single contiguous wetland as these wetlands are abutting (Enclosure 1), we will refer to this wetland as WF06/07.

k. The wetlands WF06/07 and WF08 flow north out of the review area and eventually reach unnamed relatively permanent tributary of the Feather River. For the purposes of this MFR we will call this North Tributary (Enclosures 3, 11, and 12). The North Tributary is a first order stream. The North Tributary starts north of the review area at the approximate latitude 39.43628°, longitude -121.59011° and extends downstream until its confluence with the Feather River at the approximate latitude 39.40921°, longitude -121.61963° (Enclosure 3). In total this tributary is approximately 3.95 miles long.

l. The North Tributary is a relatively permanent tributary. This determination was made utilizing the Arid West Regional Streamflow Duration Assessment Methods (SDAM; SDAM Version 1.0 Release Date: September 2024). The site visit for the SDAM was conducted on January 23, 2025, and indicates that the North Tributary is intermittent (Enclosure 18). This is supported by the NWI which documents this tributary as riverine, freshwater emergent wetland, and freshwater forested/shrub wetland. The North Tributary is also present on the Palermo CA United States Geological Survey Topography Maps starting in 1912; however, the stream is not present on the map from 2021.

m. The water from WF06/07 and WF08 flows out of the review area to the north (Enclosure 11-13); however, the current and historic conditions north of the review area differ. The property to the north of the review area was subject to a potential unauthorized modification, which resulted in modified hydrology and disrupted the natural flow of water. The work that occurred north of the review area can be seen in the Google Earth imagery dated July 15, 2022 (Enclosure 14). The current hydrology of the

site can be observed in Google Earth imagery dated April 21, 2023 (Enclosure 14). During the potential unauthorized modification, a berm and ditch were constructed along the northern boundary of the review area (Enclosure 16).

n. In pre-disturbance conditions WF06/07 and WF08 were a part of the wetland mosaic that extended from the review area to the Northern Tributary (Enclosures 11 and 13). The January 22, 2018, imagery from Digital Globe demonstrates that the WF06/07 and WF08 were hydrologically connected to the wetlands north of the review area and are therefore apart of the wetland mosaic (Enclosure 17). At the website, historicaerials.com, the 1958 and 1969 aerial image shows northern portion of the review area was connected to the wetland complex north of the review area. Historic aerial imagery, topographic data, and soils information indicate that these wetlands occupy the same geomorphic feature (depression) as the wetlands to the north, albeit altered through the land management of the review area. As a result, they are considered to be one wetland. Under pre-disturbance conditions, water from WF06/07 and WF08 would flow northwest into the wetland complex (Enclosures 11). The wetland complex extends approximately 1,785 to 2,245 feet northwest before reaching the unnamed relatively permanent stream, referred to as the North Tributary in this document (Enclosures 3). The North Tributary then flows southwest approximately 1,350 to 1,945 feet before going under Power House Hills Road. The culverts at Power House Hills Road consist of three approximately 40-foot long culverts.

o. In post-disturbance conditions, water from WF06/07 and WF08 is intercepted by the newly constructed ditch that flows east to west along the northern boundary of the review area (Enclosure 12). The newly constructed ditch starts at the approximate latitude 39.43029°, longitude -121.58466° and ends at the approximate latitude 39.43018°, longitude -121.59553° where it converges with the Northern Tributary at Power House Hills Road. In total, the ditch is approximately 2,425 feet long. The ditch is relatively permanent which is supported by the presence of water in the feature during the Corps January 23, 2025, site visit (Enclosure 16).

p. After the Power House Hills Road culverts, the North Tributary flows another approximately 1 mile before crossing under Highway 70 through a culvert of unknown dimensions (Enclosure 3). After crossing under Highway 70 the North Tributary is ponded in several locations and flows approximately 0.9 mile before taking a sharp turn south around an agricultural field. At this point, the North Tributary flows for another approximately 1 mile before reaching the Feather River.

6. SECTION 10 JURISDICTIONAL WATERS⁶: There are no Section 10 Jurisdictional Waters within the review area.

7. SECTION 404 JURISDICTIONAL WATERS:

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): WF06/07 and WF08 are wetlands adjacent to the North Tributary, a relatively permanent (a)(3) tributary (Enclosure 11 and 12). WF06/07 is an approximately 0.71-acre wetland and WF08 is an approximately 0.01-acre wetland. In pre-disturbance conditions, WF06/07 and WF08 were a part of a wetland mosaic that extended from the review area to abut North Tributary. The wetland mosaic directly abutted the North Tributary, a relatively permanent tributary of the Feather River. In identifying wetlands, the agencies will ordinarily consider all wetlands within a wetland mosaic collectively (reference 2.a at p. 3093). In post-disturbance conditions, WF06/07 and WF08 have been disconnected from the wetland mosaic through the construction of a ditch and berm along the northern boundary of the review area. Water from WF06/07 and WF08 now abut the recently constructed relatively permanent ditch which flows west towards Power House Road and converges with the flow path of the North Tributary. As a result, WF06/07 and WF08 are adjacent to an (a)(3) water, the Northern Tributary, in both the pre- and post-disturbance conditions. See Section 5 for more information regarding the continuous surface connection. We conclude that wetlands WF06/07 and WF08 are adjacent wetlands within the meaning of 33 CFR 328.3(a)(4), as amended (reference 2.b).

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

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. The artificial pond, PO01, is an excluded feature pursuant to 33 CFR Part 328.3(b)(5). The pond PO01, is an 0.46-acre artificial pond (Enclosure 1),

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.

created by excavating dry land to collect and retain water for such purposes as stock watering or irrigation. The manmade pond was constructed within uplands during the late 1960s. The pond PO01 first shows up on the Palermo 7.5 Minute Quadrangle in 1970. The 1970 Quadrangle also shows intermittent stream flowing southeast out of the pond. The pond and intermittent stream are not present on topographic maps prior to 1970. The pond is present on the 2021 Palermo 7.5 Minute Quadrangle; however, the intermittent stream is no longer shown. According to the delineation report water used to be pumped into the pond and flow south out of the pond through a series of manmade ditches. The water pump is no longer functional, and the ditch that used to flow south out of the pond has been blocked. As a result, the pond no longer has a discernable flow path to a TNW, the territorial seas, or an interstate water.

a. The non-tidal wetlands with the review area, WF01 - WF08, are not waters of the U.S. because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended.

b. The wetland WF01 is a non-jurisdictional wetland that is less than 0.06-acre. This wetland is not adjacent to waters of the United States as defined in 33 CFR §328.3(a)(1), (a)(2), or (a)(3) water. In total, the wetland WF01 is approximately 2,125 feet from the closest tributary and that tributary does not become relatively permanent for another 1-mile downstream (see Section 5 for more details). The topography of the area indicates that water from WF01 can flow south out of the review area by overtopping the lower elevation of the review area. The water flow from WF01 wetland is also likely aided by the culvert within the wetland (Enclosures 7 and 8). Once water from WF01 leaves the review area it flows overland for approximately 45 feet before reaching an unnamed swale, which severs any possible continuous surface connection (Enclosure 4 and 5). In addition, water from the wetland then flows through a series of swales, sections of ditches, stock ponds, and culverts south of the review area before reaching the South Tributary. After consideration of flow, the number, the types, and the length of connection, the distance between WF01 and the Southern Tributary is not physically close enough to meet the continuous surface connection requirement. Thus, FW01 is not considered “adjacent.” This evaluation of adjacency was conducted in accordance with EPA and Department of Army guidance in NWK-2024-00392.

c. The wetland WF02 is a non-jurisdictional wetland that is less than 0.06-acre. The wetland WF03 is a non-jurisdictional wetland that is less than 0.01-acre. The wetland WF04 is a non-jurisdictional wetland that is less than 0.01-acre. These wetlands are not adjacent to waters of the United States as defined in 33 CFR §328.3(a)(1), (a)(2), or (a)(3) water. Although water from wetlands WF02-WF04 can flow south out of the review area, their surface connection is discontinuous to the swales south of the review area (Enclosure 4 and 5). Water from WF02 must flow approximately 150 feet before reaching a discrete feature (swale). Water from WF03 must flow approximately 370 feet

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before reaching a discrete feature (swale). Water from WF04 may flow both west and east out of the review area through flow paths that are not explicitly traceable to the unnamed swales. The distance from the southern boundary of the review to the unnamed swales severs the continuous surface connection for wetlands WF02 – WF04. The lack of a continuous surface connection between WF02 – WF04 and the swales to the south of the review area can be seen on aerial imagery from Google Earth and Digital Globe and is supported by the National Hydrography Dataset (NHD) and LiDAR imagery, which do not map any connection between the wetlands and the swales. The wetlands are not adjacent to the swales to the south, and no discrete physical features connect them to the swale. In particular, the discontinuous surface connections can be observed in the April 21, 2017 (Enclosure 9), and January 18, 2022 (Enclosure 10), aerial imagery from Digital Globe.

d. The wetland WF05 is a non-jurisdictional wetland that is approximately 0.06-acre. This wetland is not adjacent to waters of the United States as defined in 33 CFR §328.3(a)(1), (a)(2), or (a)(3). No discrete features that could connect this wetland to jurisdictional waters is present. Instead, they are surrounded by upland grassland.

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. U.S. Army Corps of Engineers. April 12, 2023. Field Visit.
- b. U.S. Army Corps of Engineers. September 20 and 21, 2023. Office Evaluation.
- c. [REDACTED] *Duration Assessment Methods*. February 6, 2025.
SDAM Version 1.0 Release Date: September 2024
- d. [REDACTED] 2022. Delineation of Aquatic Resources
5915 Power House Hill Road, Butte County, California.
- e. U.S. Fish and Wildlife Service. (n.d.). National Wetland Inventory. Project area: Power House Hill Road (2023-00136). Source imagery date: 1976. Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved September 21, 2023, from Wetland Mapper: <https://www.fws.gov/wetlands/data/mapper.html>.
- f. Natural Resources Conservation Service. 2020. Custom Soil Resource Report for Butte Area, California, Parts of Butte and Plumas Counties. Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved from <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.html>.

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g. Federal Emergency Management Agency. (n.d). FEMA Flood Map Service Center. FEMA Firm Map: 06007C0990E, Effective on January 6, 2011. FEMA, Dept. of Homeland Security. Retrieved September 6, 2023, from <https://msc.fema.gov/portal/home>.

h. U.S. Geological Survey. 1968. USGS 1:24000-scale Quadrangle for Palermo, CA 1912, 1973, 1973, and 2021: U.S. Geological Survey.

i. U.S. Geological Survey. 2023. National Geospatial Program, USGS National Hydrography Dataset Best Resolution (NHD) for Hydrological Unit (HU) 8 - 18020125. Shapefile: U.S. Geological Survey.

j. Digital Globe: *Power House Hill Road Flow Path April 25, 2023, Imagery* [map]. 1:800. Generated by Army Corps of Engineers, September 20, 2023. Using ArcGIS Pro.

k. Digital Globe: *Power House Hill Road Flow Path January 18, 2022, Imagery* [map]. 1:800. Generated by Army Corps of Engineers, September 20, 2023. Using ArcGIS Pro.

l. Digital Globe: *Power House Hill Road Flow Path May 1, 2018, Imagery* [map]. 1:800. Generated by Army Corps of Engineers, September 20, 2023. Using ArcGIS Pro.

m. Digital Globe: *Power House Hill Road Flow Path April 21, 2017* [map]. 1:800. Generated by Army Corps of Engineers, September 20, 2023. Using ArcGIS Pro.

n. Digital Globe: *Power House Hill Road Flow Path May 2, 2016, Imagery* [map]. 1:800. Generated by Army Corps of Engineers, September 20, 2023. Using ArcGIS Pro.

o. Google Earth: *Power House Hill Road July 15, 2022, Imagery* [map]. 1:2000. Generated by Army Corps of Engineers, February 1, 2024. Using Google Earth.

p. Google Earth: *Power House Hill Road April 21, 2023, Imagery* [map]. 1:2000. Generated by Army Corps of Engineers, February 1, 2024. Using Google Earth.

q. LiDAR: *Power House Hill Road LiDAR* [map]. 1:800. Generated by Army Corps of Engineers, September 20, 2023. Using ArcGIS Pro.

r. LiDAR: *Power House Hill Road Southern Flow Path – LiDAR (SPK-2023-00136)* [map]. 1:800. Generated by Army Corps of Engineers, September 20, 2023. Using ArcGIS Pro.

s. LiDAR: *Power House Hill Road LiDAR* [map]. 1:800. Generated by Army Corps of Engineers, September 20, 2023. Using ArcGIS Pro.

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t. NHD Flowline (USGS 2023): *NHD Southern Flow Path (SPK-2023-00136)* [map]. 1:2. Generated by Army Corps of Engineers, December 22, 2023. Using ArcGIS Pro.

u. NHD Flowline (USGS 2023): *NHD Northern Flow Path (SPK-2023-00136)* [map]. 1:1.1. Generated by Army Corps of Engineers, February 1, 2024. Using ArcGIS Pro.

v. Ground photos: [REDACTED]. 2022. *Delineation of Aquatic Resources 5915 Power House Hill Road Butte County, California*.

w. Ground photo: U.S. Army Corps of Engineers. 2025. Photographs from January 23, 2025, Field Visit.

x. Ground photo: U.S. Army Corps of Engineers. 2023. Photographs from April 12, 2023, Field Visit.

y. Ground photo: U.S. Army Corps of Engineers. 2022. Photographs from February 28, 2022, Field Visit.

10. OTHER SUPPORTING INFORMATION

a. There are two jurisdiction (a)(4) wetlands, WF06/07 and WF08, within the 58-acre review area. The wetlands WF06/07 and WF08 are jurisdictional because they have a continuous surface connection, directly abutting, to an (a)(3) jurisdictional water, the Northern Tributary. In pre-disturbance conditions, the wetlands were a part of a wetland mosaic that abutted the relatively permanent Northern Tributary which is an (a)(3) water to the Feather River. In post-disturbance conditions water from the wetlands is intercepted by a relatively permanent ditch that flows into the Northern Tributary.

b. The wetlands WF01, WF02, WF03, WF04, and WF05 area are not adjacent wetlands as they do not share a continuous surface connection to waters of the United States as defined in 33 CFR §328.3(a)(1), (a)(2), or (a)(3). Although the water from WF01 – WF04 can flow out of the review area their continuous surface connection is severed by the lack of discrete features between the wetlands and the flow path south of the review area. Although water from the WF01 – WF04 can be traced to an (a)(1) water, after considering lack of a continuous flow, the number, the types, and the length of connection, the distance between these wetlands and nearest relatively permanent water is not physically close enough to meet the continuous surface connection requirement. WF05 does not have continuous surface connection or traceable flow out of the review area.

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c. The pond, PO01, is excluded from the definition of waters of the United States under 33 CFR 328.3(b)(5), as amended (reference 2.b), as an artificial pond created in uplands.

d. The Corps' Antecedent Precipitation Tool (APT) shows that the Digital Globe imagery from January 18, 2022, was acquired in the wet season during normal conditions. This imagery proved helpful for the review of this delineation. Although the Digital Globe imagery from April 21, 2017, is from the dry season, it was acquired wetter than normal conditions and aided in this analysis. Additionally, although the APT shows that the Google Earth imagery from April 21, 2023, is from the dry season, it was acquired in normal conditions and was helpful in conducting this analysis. The APT shows that the January 23, 2025, SDAM was conducted in the wet season during normal conditions.

e. The following memoranda were used to inform this review, including the analysis of "continuous surface connection" and "adjacency":

f. Memorandum on NWK-2024-00392. November 21, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

g. Memorandum on POH-2023-00187. November 20, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

h. Memorandum on LRB-2023-00451. September 3, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

i. Memorandum on NAP-2023-01223. June 25, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

j. Memorandum on NWK-2022-00809. June 25, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

k. Memorandum on SWG-2023-00284. June 25, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

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

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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.

Enclosures

- 1.** *5915 Power House Hill Rd
Delineation of Aquatic Resources*
- 2.** *Power House Hill Road South
Tributary Flow Path*
- 3.** *Power House Hill Road North
Tributary Flow Path*
- 4.** *Southern Flow Path 1 –
Jan. 18 2022*
- 5.** *Southern Flow Path - LiDAR*
- 6.** *NHD Flow Path*
- 7.** *Power House Hills Road Culvert
Location Map*
- 8.** *WF01 Culvert Photo provided by
[REDACTED] [REDACTED]*
- 9.** *Power House Hill Road
April 21, 2017, Imagery*
- 10.** *Power House Hill Road
January 18, 2022, Imagery*
- 11.** *Power House Hill Road North
Tributary Flow Path – Jan. 18, 2022*
- 12.** *Wetlands WF06/07 and WF08
April 25, 2023, Imagery*
- 13.** *Power House Hill Road LiDAR
Northern Flow Path*
- 14.** *Power House Hill Road
July 15, 2022, Imagery*
- 15.** *Power House Hill Road
April 21 2023, Imagery*
- 16.** *Mapped Photo Log*
- 17.** *Wetlands WF06/07 and WF08
Jan. 22, 2018, Imagery*
- 18.** *Streamflow Duration Assessment
Methods Report*



