

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

CESPK-RDC-N

19 February 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-2024-00297]

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. 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). None features within the review area are waters of the U.S. and none are navigable waters of the U.S.

Waters Name	Stream/Wetland	CWA Jurisdiction	Navigable Waters of the U.S.
1:IS	Stream	No	No
2:WS	Wetland	No	No
3:WS	Wetland	No	No
4:WS/5:WS	Wetland	No	No
6:WS	Wetland	No	No
7:WS	Wetland	No	No

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 6194. (September 8, 2023))

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

4. REVIEW AREA. The review area is the approximately 8.95-acre "Study Area Boundary" depicted in Enclosure 1, located near Walton Avenue and Main Street, Latitude 40.19218°, Longitude -122.24198°, within the City of Red Bluff, Tehama County, California. The site is in Section 18, Township 27 North, Range 3 West, of the U.S. Geological Survey (USGS) Red Bluff, East 7.5-minute quadrangle.

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 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.

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

a. The feature labeled 1:IS is a non-relatively permanent stream within the review area. The stream begins at a culvert along the western part of the review area. The stream then flows for approximately 372 feet southeast through the review area and out of the review area through a culvert. According to the delineation report

p. 1 and 2) "the stream passes under Main Street and the Union Pacific Railroad through an approximately 400-foot-long culvert. The stream continues to flow in an easterly direction in an open channel for approximately 700 feet and re-enters the City's storm drainage system at the driveway for the auto dealership at 545 Adobe Road." In aerial imagery a flowpath past the auto dealership is not visible. The agent could not trace the flowpath past the car dealership either p. 1 and 2). Although not confirmed, the storm drain may flow southeast for approximately 2,000 feet on the south side of Adobe Road to an open channel on the west side of Interstate 5, and ultimately enter the Sacramento River, a traditionally navigable (a)(1)(i) water. In aerial imagery, the stream can be seen in the review area and to the east of the Main Street in the auto dealership parking lot. In historic aerial imagery, specifically in an image from 1947, the stream is seen going east and diverging into two branches near the area where the current auto dealership is located. One branch continues east and flows into Dibble Creek. Another branch flows south across Adobe Road and flow cannot be determined after. In current aerial imagery, the stream 1:IS is not visible after going underneath the auto dealership on Adobe Road. However, a storm drain is seen to the south of the auto dealership on the south side of Adobe Road. Flow from the storm drain south of Adobe Road cannot be determined through aerial imagery. The city's storm sewer system ultimately conveys flow to the Sacramento River; however, the exact discharge locations, hydrologic conditions, and flow frequencies remain unknown. In the absence of verifiable data demonstrating a continuous surface, the Corps could not make a continuous surface connection to a relatively permanent water. The Sacramento River is approximately 3,969 linear feet away from the review area.

b. There is no discernable flowpath from 2:WS to any other aquatic resources inside or outside of the review area.

c. Storm water enters the project site as surface discharge from the Walton Avenue gutter in the southwestern corner of the site. The water enters a broad swale that descends in a northeasterly direction through 7:WS, 6:WS, 4:WS/5:WS, and 3:WS ultimately joining 1:IS. The swale does not exhibit bed and back features and is a poorly defined upland swale.

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7. SECTION 10 JURISDICTIONAL WATERS⁵: There are no Section 10 Jurisdictional Waters within the review area.

8. SECTION 404 JURISDICTIONAL WATERS: 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.

9. 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).⁶ N/A.

b. 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) are described here:

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.
⁶ 88 FR 3004 (January 18, 2023)

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1) The stream 1:IS is a relatively permanent tributary with no traceable flowpath to a TNW, and as result, is a non-jurisdictional water. The stream 1:IS is an approximately 350-foot-long stream within the review area. The requestor asserts that the stream 1:IS is an intermittent stream. The requestor's agent defines an intermittent stream as a drainage channel that has a bed and bank and flows for more than several days following precipitation events. It is also stated that surface water is present near the outlet of the stream nearly year-round, supporting the assertion that the stream is relatively permanent (page 4, We have corroborated this assertion finding evidence of flowing or standing water year-round or continuously during certain times of year using aerial imagery from the wet season when we expect to see streams that flow seasonally to have water in them. We observed water in the channel in aerial dated 23 February 2017, 2 March 2017, 28 November 2024, and 8 December 2024. While some of these images are during wetter than normal conditions, the 28 November 2024, image is during normal conditions with a mild drought Palmer Index, indicating that it is the most representative image of normal conditions that is available. The 28 November 2024 image has water present in over 50% of the reach of the stream 1:IS. 1:IS starts within the review area from a culvert in the western part of the review area. 1:IS flows southeast through the review area and out of the review area through the eastern side. Upon exiting the review area 1:IS flows through a culvert under Main Street and the Union Pacific Railroad for approximately 400-feet. 1:IS flows out of a culvert and into open area in an easterly direction for approximately 700 feet and re-enters the City's storm drainage system at the driveway for the auto dealership at 545 Adobe Road. While the city's storm sewer system no doubt discharges to the Sacramento River at one or more points, we do not have information on when, where or under what circumstances these discharges occur.

2) The wetland 2:WS is a non-jurisdictional wetland that is approximately 0.01-acre. 2:WS is not an adjacent wetland and does not have a continuous surface connection to an (a)(3), (a)(2), or (a)(1) water (Enclosure 1). The Requester's Agent characterizes the wetlands 2:WS as a wet swale 2024, p. 5). No discrete feature that would provide a continuous surface connection from this wetland to 1:IS or another aquatic resource is present.

3) The wetlands 3:WS, 4:WS/5:WS, 6:WS, and 7:WS are not adjacent and do not have a continuous surface connection to an (a)(3), (a)(2), or (a)(1) water and are non-jurisdictional (Enclosure 1). The wetland 3:WS is approximately 0.01-acres. The wetland 4:WS/5:WS is approximately 0.01-acres. The wetland 6:WS is 0.01-acres. The wetland 7:WS is 0.03-acres. The Requester's Agent characterizes the wetlands 3:WS, 4:WS/5:WS, 6:WS, and 7:WS as wet swales 2024, p. 5). Although some of the wetlands are in close proximity to each other, the wetlands are all separated from each other by uplands, except for 4:WS and 5:WS which is one contiguous wetland. An upland swale provides a connection to 1:IS and flows through 7:WS, 6:WS, 4:WS/5:WS, and 3:WS (Enclosure 1 and 2). The swale flows northeast for approximately 395 feet.

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The delineation report states that the storm water flow and summer "nuisance" flows are discharged into the swale in the southwestern portion of the review area and the flow ultimately enters the on-site stream, 1:IS 2024, p. 4 and 5). The wetlands receive flow from this larger swale, but do not receive the summer "nuisance" flows 2024, p. 4 and 5). The wetlands overflow and flow in the poorly defined large upland swale, and eventually flow into 1:IS 2024, p. 4 and 5). The wetlands 3:WS, 4:WS/5:WS, 6:WS, and 7:WS are not included on U.S. Geological Survey topographic maps or in the NHD and NWI. Although the wetlands 3:WS, 4:WS/5:WS, 6:WS, and 7:IS through the large upland swale, a discrete feature, 1:IS is not an (a)(3) tributary since it does not meet the relatively permanent standard. The next downstream covered water is the Sacramento River, an (a)(1) traditional navigable water. However, the flowpath enters a city's storm sewer before discharging to the Sacramento River. In *Memorandum on NWP-2023-602* (19 March 2024), the agencies found that a connection through a city's storm sewer system does not qualify as a continuous surface connection.

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

a. U.S. Army Corps of Engineers. August 21, 2024. Office Evaluation.

b. 2019. Aquatic Resources Delineation Report Schnabl Mini-Storage Facility, City of Red Bluff, Tehama County, CA.

c. U.S. Fish and Wildlife Service. 2010. National Wetland Inventory. Project area: 2024-00297 NWI. Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved June 25, 2024, from Wetland Mapper: <u>https://www.fws.gov/wetlands/data/mapper.html</u>.

d. Natural Resources Conservation Service. 2020. Custom Soil Resource Report for Tehama County Area, California Schnabl Mini-Storage Facility (SPK-2024-00297). Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved from <u>https://websoilsurvey.sc.egov.usda.gov/App/HomePage.html</u>.

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

f. U.S. Geological Survey. 1894. USGS 1:250000-scale Quadrangle for Red Bluff, CA 1894: U.S. Geological Survey.

g. U.S. Geological Survey. 2022. USGS 1:24000-scale Quadrangle for Red Bluff East, California 2022: U.S. Geological Survey.

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h. Digital Globe: February 21, 2014 SPK-2024-00297 [map]. 1:650. Generated by Army Corps of Engineers, January 24, 2025. Using ArcGIS Pro.

i. Digital Globe: February 23, 2017 SPK-2024-00297 [map]. 1:650. Generated by Army Corps of Engineers, January 24, 2025. Using ArcGIS Pro.

j. Digital Globe: March 2, 2017 SPK-2024-00297 [map]. 1:650. Generated by Army Corps of Engineers, January 24, 2025. Using ArcGIS Pro.

k. Digital Globe: March 2, 2017 SPK-2024-00297 [map]. 1:300. Generated by Army Corps of Engineers, May 31, 2024. Using ArcGIS Pro.

I. Digital Globe: April 1, 2018 SPK-2024-00297 [map]. 1:650. Generated by Army Corps of Engineers, January 24, 2025. Using ArcGIS Pro.

m. Digital Globe: October 17, 2018 SPK-2024-00297 [map]. 1:250. Generated by Army Corps of Engineers, May 31, 2024. Using ArcGIS Pro.

n. Digital Globe: April 24, 2019 SPK-2024-00297 [map]. 1:250. Generated by Army Corps of Engineers, May 31, 2024. Using ArcGIS Pro.

o. Digital Globe: June 7, 2019 SPK-2024-00297 [map]. 1:250. Generated by Army Corps of Engineers, May 31, 2024. Using ArcGIS Pro.

p. Digital Globe: December 7, 2020 SPK-2024-00297 [map]. 1:250. Generated by Army Corps of Engineers, May 31, 2024. Using ArcGIS Pro.

q. Digital Globe: May 11, 2023 SPK-2024-00297 [map]. 1:250. Generated by Army Corps of Engineers, May 31, 2024. Using ArcGIS Pro.

r. Digital Globe: November 28, 2024 SPK-2024-00297 [map]. 1:650. Generated by Army Corps of Engineers, January 24, 2025. Using ArcGIS Pro.

s. Digital Globe: December 8, 2024 SPK-2024-00297 [map]. 1:650. Generated by Army Corps of Engineers, January 24, 2025. Using ArcGIS Pro.

t. Ground photos: April 2024. Aquatic Resources Delineation Report Schnabl Mini-Storage Facility City of Red Bluff, Tehama County, CA.

11. OTHER SUPPORTING INFORMATION.

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a. There are no jurisdictional waters within the 8.95-acre review area. The stream 1:IS within the review area is relatively permanent and enters a city storm sewer system before presumably discharging to the Sacramento River. However, it does not have a traceable flowpath and as a result is non jurisdictional.

b. LiDAR was not particularly useful in the review area as there seems to be no data in the area.

c. Digital Globe images from 21 February 2014, 23 February 2017, 2 March 2017, 1 April 2018, 7 December 2020, 28 November 2024, and 8 December 2024, were particularly useful in determining the flow path, flow direction, and duration of the aquatic resources as they were acquired in the wet season or near the beginning of the dry season. Some of the images were acquired during the wet season in drought condition, however, they were still helpful in determining the duration of flow in the aquatic resources. Digital Globe images from 7 May 2020, 11 May 2023, and 24 April 2019, were not particularly helpful as they were acquired in the dry season.

d. The Corps' Antecedent Precipitation Tool (APT) shows that the 21 February 2014, imagery was acquired in drier than normal conditions, during the wet season, and with severe drought Palmer Drought Severity Index. The Corps' APT shows that the 23 February 2017, imagery was acquired in wetter than normal conditions, during the wet season, and with an extreme wetness Palmer Drought Severity Index. The Corps' APT shows that the 2 March 2017, imagery was acquired in wetter than normal conditions, during the wet season, and with severe wetness Palmer Drought Severity Index. The Corps' APT shows that the 1 April 2018, imagery was acquired in normal conditions, during the dry season, and with a mild drought Palmer Drought Severity Index. The Corps' APT shows that the 24 April 2019, imagery was acquired in normal conditions, during the dry season, and with a moderate wetness Palmer Drought Severity Index. The Corps' APT shows that the 7 May 2020, imagery was acquired in drier than normal conditions, during the dry season, and with a mild drought Palmer Drought Severity Index. The Corps' APT shows that the 7 December 2020, imagery was acquired in drier than normal conditions, during the wet season, and with a severe drought Palmer Drought Severity Index. The Corps' APT shows that the 11 May 2023, imagery was acquired in wetter than normal conditions, during the dry season, and with a normal Palmer Drought Severity Index. The Corps' APT shows that the 28 November 2024, imagery was acquired in normal conditions, during the wet season, and with a mild drought Palmer Drought Severity Index. The Corps' APT shows that the 8 December 2024, imagery was acquired in wetter than normal conditions, during the wet season, and with an incipient drought Palmer Drought Severity Index.

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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 Map
- 2. Flowpath SPK-2024-00297



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Feet Figure 3 ¹⁵⁰ Aquatic Resources Delineation Results

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Enclosure 2