

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

CESPK-RDI-U

25 Mar 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ [SPK-2023-00705]

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 For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 Rapanos-Carabell guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the Sackett decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of "waters of the United States" found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 "Revised Definition of 'Waters of the United States," as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

¹ While the Supreme Court's decision in *Sackett* 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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1. SUMMARY OF CONCLUSIONS.

a. Provide 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) W-5a, non-jurisdictional under Section 404 of the Clean Water Act.

2. REFERENCES.

a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)

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

e. Memorandum on NWP-2023-602 (19 March 2024)

f. *Memorandum on NWK-2024-00392* (21 November 2024)

3. REVIEW AREA. The approximately 0.89-acre review area is located east of North Highway 89, Latitude 41.31220°, Longitude -112.00719°, Pleasant View, Weber County, Utah (AJD MFR Enclosure 1 and 2). The review area only includes the extent of W-5a, as delineated by the requestor. It is a smaller portion of the overall 26-acre Pleasant View City aquatic resource (AR) review area. The Corps reduced the review area solely to determine if jurisdiction is present at the site (e.g. a jurisdictional presence/absence determination as identified in 33 CFR 331.2), prior to completing its determination of onsite AR boundary accuracy for the remainder of the site. Should jurisdiction not be present onsite, the latter step would be moot.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Great Salt Lake, which is a water of the United States pursuant to 33 C.F.R. §328.3(a)(1) and 40 C.F.R. §230.3(s)(1), the "traditional navigable waters." Waters are traditional navigable waters if they meet one of the following criteria:

a. Are subject to section 9 or 10 of the Rivers and Harbors Appropriations Act of 1899;

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- b. Have been determined by a federal court to be navigable-in-fact under Federal law;
- c. Are waters currently being used for commercial navigation, including commercial waterborne recreation (for example, boat rentals, guided fishing trips, or water ski tournaments);
- d. Have historically been used for commercial navigation, including commercial waterborne recreation; or
- e. Are susceptible to being used in the future for commercial navigation, including commercial waterborne recreation.

The Great Salt Lake meets Criteria b, above, having been found navigable-in-fact under Federal law in *Utah v. United States,* 403 U.S. 9 (1971). Thus, the Great Salt Lake (GSL) is a "traditional navigable water" and is regulated by the Corps under Section 404 of the CWA.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. W-5a directly abuts a pipe underneath Highway 89 that is part of Pleasant View City's piped stormwater system (AJD MFR Enclosure 3). There is no RPW between the wetland and the pipe. Water enters the pipe and flows for approximately 4,842 feet through a multi-lateral piped stormwater system before discharging into a city managed stormwater pond, an (a)(5) water (AJD MFR Enclosure 4). The water from the pond is released via slide gates along the western boundary into a relatively permanent tributary ditch (RPW), an (a)(5) water. The frequency in which water is released into the ditch is unknown. The open ditch flows for approximately 5.77 miles (30,447 feet) with 19 otherwise culverted sections, the longest being 425 feet, before discharging into the Willard Bay Reservoir toe ditch (RPW), an (a)(5) water. Water flows west for approximately 8,340 feet before flowing under a 70-foot canal where it enters the Harold Crane Waterfowl Management Area (WFMA), an (a)(4) water. Water flows through the WFMA for approximately 12,900 aerial feet (2.44 miles) before discharging into Willard Bay, then the Bear River Bay, before finally flowing into the GSL, the nearest TNW (AJD MFR Enclosure 5).

6. 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 1899.⁶

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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7. SECTION 404 JURISDICTIONAL WATERS: None of the aquatic resources within the review area were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*.

a. TNWs (a)(1): N/A.

b. Interstate Waters (a)(2): N/A.

- c. Other Waters (a)(3): N/A.
- d. Impoundments (a)(4): N/A.
- e. Tributaries (a)(5): N/A.
- f. The territorial seas (a)(6): N/A.
- g. Adjacent wetlands (a)(7): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. There are no aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").⁷

b. There are no aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance.

c. There are no aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA.

d. There are no aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.).

⁶ 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.

⁷ 51 FR 41217, November 13, 1986.

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e. There are no aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in *"SWANCC*," would have been jurisdictional based solely on the *"Migratory Bird Rule."*

f. One aquatic resource within the review area was determined to be nonjurisdictional because it does not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

W-5a is not adjacent to an (a)(1)-(a)(6) water as this wetland in the review area abuts a pipe entering a multi-lateral city stormwater system and flows in the piped system for approximately 4,842 feet before discharging into an (a)(5) water. The 4,842-foot-long connection between the review area and the (a)(5) water through a multi-branched city stormwater system does not qualify as flow through a discrete feature that can serve as a continuous surface connection for the purposes of adjacency. The city stormwater system through which this connection flows is substantially similar to the city storm sewer system that the agencies found could not be a part of a continuous surface connection in Memorandum on NWP-2023-602 (19 March 2024). Additionally, the approximately 4.842-foot-long connection via a non-jurisdictional feature, in this case a pipe, exceeds the distance found not to support a continuous surface connection via non-jurisdictional features found in Memorandum on NWK-2024-00392 (21 November 2024), by approximately 4,117 feet. This is due to the requisite covered water not being physically close enough to meet the continuous surface connection requirement. Thus, W-5a does not have a continuous surface connection to the downstream relatively permanent tributary and, consistent with Sackett, is not "adjacent."

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. Aquatic Resource Delineation prepared by CNL Environmental Consultants dated 28 July 2023. The consultant prepared the delineation report in accordance with the U.S. Army Corps of Engineers 1987 Wetland Delineation manual and the USACE Regional Supplement for the Arid West Region.

b. Storm Drain System maps prepared by Jones and Associates on 04 March 2025.

c. February 13, 2025, USACE site visit and Mapped Photo Log (Site Visit Photos).

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d. WGS 1984 Web Mercator Auxiliary Sphere in the National Regulatory Viewer for the South Pacific Division. Retrieved 07 March 2025.

10. OTHER SUPPORTING INFORMATION. This is a Presence/Absence AJD in accordance with 33 CFR 331.2. There are other aquatic resources (ARs) on site with disputed boundaries. This AJD is not intended to identify the geographic limits of all ARs within the review area. Rather it is simply to establish if Section 404 jurisdiction exists onsite in order to determine if the remaining AR boundaries need to be further investigated.

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.

4 Encls Encl 1 – Location Encl 2 – Photograph of pipe Encl 3 – City stormwater system Encl 4 – Flowpath ALYSSA SCHAFF REGULATORY PROJECT MANAGER UTAH SECTION



AJD MFR Enclosure 1





Cordinate System: CCS /VGS 1884 Proto Coordinate System: CCS /VGS 1884 Proto Coordinates: -11520109885 - 41.3/12182 Lyper Heilt Conner. -1122010222 - 41.3/12182 Lyper Heilt Conner. -112201022 - 41.3/12182 Lyper Heilt Conner. -11220102 - 41.3/12182 Lyper Heilt Conner. -1122000 - 41.3/12182 Lyper Heilt Conner. -112200 - 41.3/12182 Lyper Heilt Conner. -12200 - 41.3/12182 Lyper Heilt Conner. -12200 - 41.3/12182 Lyper



Mapped Photo Log for Pleasant View City Public Works Yard SPK-2023-00705 Page 25 of 86

Description:

Photographed by Alyssa Schaff on 2/13/2025 at 10:18:06 AM MST Camera: NIKON CORPORATION COOLPIX W300 Location Source: Camera's internal GPS Heading Source: Camera's internal compass Map generated on 2/18/2025 using the Photo Log Toolbar, written by Jason C. Deters

AJD MFR Enclosure 3

Storm Drain System



3/4/2025, 9:15:42 AM

e	PVC Outfall	<u>SD</u>	Manhole	60	Manhole	••••	8 Inch	 24 Inch		Open Channels, Canals & Stream	ns
	Hydrodynamic Separator	J	Junction Box	\bigcirc	Unknown	PVC	Storm Drain Pipes	 27 Inch	Basin	s to Investigate	
PVC	Structures	┛	Flared End	J	Junction Box		8 Inch	 30 Inch	3	Yes	
CB	Catch Basin	Non F	VC Structures	•	Pipe Opening		12 Inch	 36 Inch	Deten	tion & Retention Basins	
OE	Combination Box	CE	Catch Basin	PVC I	Land Drain Pipes		15 Inch	 42 Inch		Pleasant View City	
CS	Control Structure	CS	Control Structure	• • • •	4 Inch		18 Inch	Unknown		Private	
							21 Inch			Other	

This map is for general reference only, and makes no guarantee regarding the accuracy or completeness of the information provided. AJD MFR Enclosure 4

SPK-2023-00705 - Pleasant View Public Works Yard Wetlands



Source: Esri, Maxar, Earthstar Geographics, IGN, and the GIS User Community





SPK-2023-00705 Flowpath Map



Map Center: 112.012001°W 41.31349°N

mi

Map Created by: Alyssa Schaff

Date: 3/7/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere AJD MFR Enclosure 5



Map Center: 112.03085°W 41.322373°N

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere





SPK-2023-00705 Flowpath Map



Map Center: 112.121745°W 41.334425°N

Map Created by: Alyssa Schaff

Date: 3/7/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



mi

Map Center: 112.242595°W 41.309479°N

Date: 3/7/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere