



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

CESPK-RDI-U

9 June 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-2024-00377]

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 Utah 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) Pond W-1, Non-Jurisdictional under Section 404 of the Clean Water Act.

(2) Pond W-2, Jurisdictional under Section 404 of the Clean Water Act.

(3) Pond W-3, Jurisdictional under Section 404 of the Clean Water Act.

(4) Pond W-4, Jurisdictional under Section 404 of the Clean Water Act.

(5) Wetland W-5, Jurisdictional under Section 404 of the Clean Water Act.

(6) Wetland W-6, 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)

3. REVIEW AREA. The approximately 3.56-acre review area is located in Section 5, Township 14 N, Range 5 E, Latitude 41.987673°, Longitude -111.410348°, Rich County, Utah. (AJD MFR Enclosure 1)

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Bear Lake, directly abutting the eastern property boundary.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Pond W-2 holds ground water that flows into Pond W-4. Water from a natural spring (located north of the delineation boundary) flow into the north two ponds (W3 & W4) and off the property to the north where these two spring fed ponds eventually drain into Bear Lake.

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Pond W-2 and Pond W-3 flow into Pond W-4 which flows into the Bear Lake. Wetland W-5 directly abuts Pond W-2, W-3, and W-4 (AJD Enclosure 3).

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ N/A

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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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 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. 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): There is 0.35 acre of tributaries that are relatively permanent waters (RPWs) within the review area.

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

use because of changed conditions or the presence of obstructions.

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.

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Pond W-2 – Approximately 0.30 acre of a pond occurs within the study area. Pond W-2 flows into Pond W-4, which flows into Bear Lake (AJD MFR Enclosure 2). Pond W-2 meets (a)(5) category “waters of the United States” in the pre-2015, post Sackett regime. A review of aerial records between 2011 and 2024 with photos taken during different times of the year show water flows year-round.

Pond W-3 – Approximately 0.01 acre of a pond occurs within the study area. Water is sourced from a natural spring which surfaces between the highway and the northwest property boundary and flows into Pond W-3 before it naturally spills over into Pond W-4.

Pond W-4 – Approximately 0.04 acre of a pond occurs within the study area. Pond W-4 has a tributary flow into Bear Lake via drainage features identified by LiDAR and shown on the Flow Path Map (AJD Enclosure 3).

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7): There is a wetland (W-5) having a continuous surface connection (directly abutting) to a RPW within the review area.

Wetland W-5, totaling 0.13 acres, is generally downslope from the ponds and natural seepage is likely providing the hydrology which supports the growth of hydrophytic vegetation. Wetland W-5 is adjacent to Ponds W2, W3 and W4 which connect to Bear Lake.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe 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 Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A

b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A

c. Describe 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. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A

⁷ 51 FR 41217, November 13, 1986.

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d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A

e. Describe 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.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. [N/A or enter rationale/discussion here.]

f. Describe 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 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).

There are aquatic resources totaling 0.15 acre of 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 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).

Pond W-1 (0.13 acre) and Wetland W-6 (0.02 acre), Pond W-1 is located on the southern side on the study area, but is separated by a man-made dirt road and contains no culvert to connect with Pond W-2. Pond W-1 was created separately from Pond W-2, Pond W-3, and Pond W-4, as such the one wetland concepts is not applicable. Pond W-1 appears to be created within uplands, with fresh water being added via a hose from the adjacent developed artesian spring. Wetland W-6 directly abuts Pond W-1 but remains isolated from Bear Lake with surrounding uplands to the east. As such, Pond W-1 and Wetland W-6 was determined to be non-jurisdictional under Section 404 of the Clean Water Act (AJD MFR Enclosure 2).

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. The Corps visited the site on May 19th, 2025 to view any potential connections between Pond W-1 and Pond W-2.

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b. Aquatic Resources Delineation Report “Big Bear Delineation Aquatic Resources Report” prepared by [REDACTED] dated May 2024. The consultant prepared the wetland delineation report in accordance with the U.S. Army Corps of 1987 Wetland Delineation Manual and the USACE Regional Supplement for the Arid West Region.

c. Nearby Wetland Connections map showing the nearest flow path to Bear Lake. Included in the [REDACTED] Aquatic Resource Delineation Report (AJD MFR Enclosure 3).

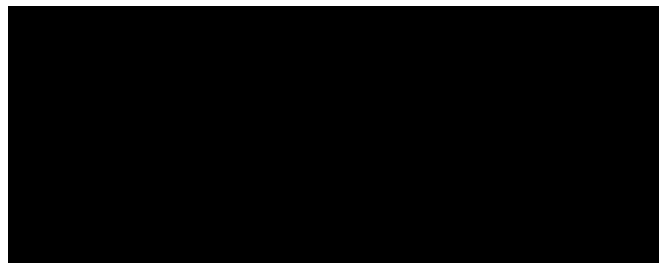
d. Photographs: Photos included in the [REDACTED] Aquatic Resources Delineation Report. Corps photolog collected (May 19th, 2025). Rich County, Latitude° Longitude°. Retrieved May 12th, 2025, from <http://www.earth.google.com> (AJD MFR Enclosure 5)

e. LiDAR – National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved May 12th, 2025 (AJD MFR Enclosure 4)

f. USDA Natural Resources Conservation Service Soil Survey: Included in the [REDACTED] Aquatic Resource Delineation Report (AJD MFR Enclosure 6).

10. OTHER SUPPORTING INFORMATION. N/A

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.





LEGEND

Delineation Area (3.56 ac)

Bear Lake

Bear Lake Blvd

Bear Lake State Park

Garden City

Figure created by:
[redacted] on 05/16/2023
Imagery: Hexagon 2021

**BIG BEAR
WETLAND DELINEATION**

SITE LOCATION



FIGURE NO.
1A

Delineation Area (3.56 ac)

Photo Points

Sample Points

Cross Sections

Artisan Spring

Natural Spring

Contours:

Surveyed Major Contours (5 ft)

Surveyed Minor Contours (1 ft)

LiDAR Major Contours (5 ft)

LiDAR Minor Contours (1 ft)

Ordinary High Water Marks (OHWM):

Delineated Bear Lake OHWM (Survey 5,921 ft; LiDAR 5,928 ft)

State Designated Bear Lake OHWM (Survey 5,923.65 ft)

Pond Ordinary High Water Mark (see callouts)

Aquatic Resources:

W1: Excavated Pond (0.14 ac) - Isolated and recommended Non-Jurisdictional

W2: Excavated Pond (0.29 ac) - USACE guidance requested for Potential Jurisdiction

W3: Excavated Pond (0.01 ac) - Anticipated Jurisdictional

W4: Excavated Pond (0.04 ac) - Anticipated Jurisdictional

W5: Emergent Marsh (0.13 ac) - Anticipated Jurisdictional

W6: Emergent Marsh (0.03 ac) - Isolated and recommended Non-Jurisdictional

Figure created by:
[redacted] on 05/01/2024
Imagery: Hexagon 2021

[redacted]	BIG BEAR WETLAND DELINEATION	DELINEATION RESULTS	NORTH: 	SCALE: 	FIGURE NO. 2A