



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

CESPK-RDI-N

04 June 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-2024-00773].

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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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) Carson River, 7.47 acres, jurisdictional under Section 10 and Section 404.

(2) El Dorado Canyon, 0.15 acres, non-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 61964 (September 8, 2023))

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

d. "Carson River and its East Fork, Navigable Waters of the United States Determination", CESP-D-ZB (19 MAY 2021)

3. REVIEW AREA. The center of the approximately 14 acres review area is located at Latitude: 39.236653, Longitude: -119.587220. The project is located off Interstate 50 along the Carson River in Dayton, Lyon County, Nevada. No previous JD requests overlap with the current review area.

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Figure 2. Review Area

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Carson River itself is a TNW (See References 2.d) and El Dorado Canyon flows directly into the Carson River.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. El Dorado Canyon flows directly into the Carson River.

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

The Carson River is jurisdictional under Section 10. Sacramento District found that the Carson River from river mile (RM) 32.5 at the Nevada Highway 117 bridge, upriver to and including the East Fork Carson River to the confluence with Silver King Creek (RM 177.5), Alpine County, California, was used in the past, or, in the case of the reach from Sutro, Nevada (RM 95.7) to the NV 117 bridge (RM 32.5), was susceptible for use, to transport interstate Commerce. Based on those findings, South Pacific Division determined these portions of the Carson River and its East Fork to be a navigable water of the United States pursuant to the Rivers and Harbors act and 33 CFR 329.4.

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 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): The Carson River is a TNW. "Paragraph (a)(1)(i) waters include all of the 'navigable waters of the United States,' defined in 33 CFR part 329"⁷ (See Reference 2.a). With the determination that the Carson River was subject to Section 10 jurisdiction due to a combination of past and susceptible transportation of interstate commerce, that

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 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 88 FR 3069

determination would also be applicable to the TNW criteria of determining waters which are used in interstate commerce.

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.

8. 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).⁸ N/A.

b. 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 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).

El Dorado Canyon, 260 linear feet within the review area, is a tributary of a TNW but is non-relatively permanent and does not meet the paragraph (a)(3) definition of waters of the United States.

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. Office evaluation conducted on 18 February 2025 utilizing the following information:

⁸ 88 FR 3004 (January 18, 2023)

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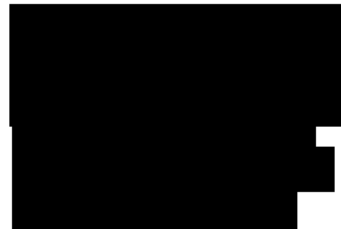
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b. "Aquatic Resources Delineation Report, Carson River Bank Stabilization Project" prepared by UES dated June 2023.

c. USGS Digital Elevation Model, accessed 18 February 2025.

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.



Carson River	1,900 LF	7.473 Acres
Eldorado Canyon	260 LF	0.152 Acres

Dates of Survey:
 March 23, 2023
 May 2, 2023
 June 8, 2023

Carson River

Dayton Valley Road

Data Point

El Dorado Canyon

Rice Road

Carson River

 **Survey Area**



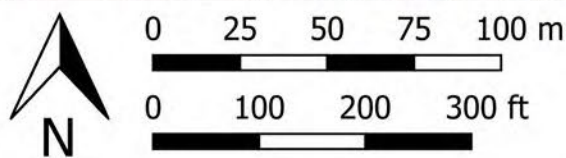
0 10 20 30 m

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Carson River Bank Stabilization Project
 El Dorado Canyon Aquatic Resources

Carson River	1,900 LF	7.473 Acres
Eldorado Canyon	260 LF	0.152 Acres

Dates of Survey:
March 23, 2023
May 2, 2023
June 8, 2023



Scale:
1: 2,800

Base Imagery: Google Earth

CRS: EPSG 3857-WGS84/ Pseudo-Mercator

Carson River Bank Stabilization Project

Aquatic Resources

