



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

CESPK-RDI-U

24 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),<sup>1</sup> [SPK-2025-00175] (MFR 1 of 1)<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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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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 Utah due to litigation.

## 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) Ditch 1, Jurisdictional under Section 404 of the Clean Water Act.
- (2) Pond 1, Jurisdictional under Section 404 of the Clean Water Act.
- (3) Ditch 2, Jurisdictional under Section 404 of the Clean Water Act.
- (4) Ditch 3, Jurisdictional under Section 404 of the Clean Water Act.
- (5) Wetland C, Jurisdictional under Section 404 of the Clean Water Act.
- (6) Wetland D, Jurisdictional under Section 404 of the Clean Water Act.
- (7) Wetland A, Non-Jurisdictional under Section 404 of the Clean Water Act.
- (8) Wetland B, 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 5.55 acre review area is located at 750 North 800 West, Latitude 41.745395°, Longitude -111.852866°, Logan, Cache County, Utah. (AJD MFR Enclosure 1)

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

The nearest TNW is Cutler Reservoir.

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

All aquatic resources within the review area drain into a city storm drain ditch that also receives stormwater from two buried storm drain pipes – one 24 inches in diameter and the other 18 inches. This open ditch carries the combined flow from the pipes and surface runoff from the delineated aquatic and wetland features for approximately 236 feet westward. At that point, the flow enters a buried 15-inch storm drainpipe. From there, the water is conveyed through a series of increasingly larger buried storm pipes – 18-inch, 36-inch, and 48-inch – ultimately discharging into the 54-inch main storm drain trunkline, which outlets into Blanchard Springs approximately 2,728 feet downstream from the initial transition into the buried system. Blanchard Springs flows into Cutler Reservoir (AJD MFR Enclosure 1).

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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.

aquatic resource in acres or linear feet and attach and reference related figures as needed.

a. TNWs (a)(1): None.

b. Interstate Waters (a)(2): None

c. Other Waters (a)(3):

d. Impoundments (a)(4): None.

e. Tributaries (a)(5): There are 0.205 acre of open water pond and 401 linear feet of tributaries that are relatively permanent waters (RPWs) that flow to a Cutler Reservoir within the review area. (AJD MFR Enclosure 2)

Pond 1 Off-site and On-site – Approximately 0.205 acre occur within (0.172 acre) and outside (0.033 acre) the study area. Pond 1 is an excavate springs and is also fed by surface water from a city stormwater drainage ditch (Ditch 1). An earthen berm with three 15-inch concrete outlet pipes controls the water levels in the on-site portion of Pond 1. Both the on-site and off-site portions of the pond were filled with water to the OHWM at the time of the delineation site inspections. In addition, a review of aerial photo records taken during different times of the year between 2005 through 2024 show water within Pond 1 for an extend period during numerous months.

Ditch 1 Off-site and On-site – Approximately 179 linear feet occur within (30 linear feet) and outside (149 linear feet) the study area. The stormwater drainage ditch (Ditch 1, Ditch 2, Ditch 3) is a relatively permanent tributary with seasonal flows to Blanchard Springs which flows into Cutler Reservoir (TNW). On May 5<sup>th</sup>, 2025, the Corps conducted a site visit which demonstrates water flows during this period. In addition, a review of aerial photo records taken during different times of the year between 2006 through 2024 show water flows for an extended period during numerous months (Ditch 1, Ditch 2, Ditch 3). Ditch 1 Off-site and onsite flow into Pond 1.

Ditch 2 Off-site – Approximately 127 linear feet occur outside the study area. The stormwater drainage ditch is a relatively permanent tributary which receives outflows from Pond 1 and conveys it westward towards 800 West Street. The ditch runs off-site along the south property line where it crosses a gravel road through a buried culvert.

Ditch 3 Off-site – Approximately 95 linear feet occur outside the study area. The stormwater drainage ditch is a relatively permanent tributary which is an off-site continuation of Ditch 2 on the west side of the gravel road. Ditch 3 conveys flows to a road culvert that passes under 800 West Street. The city storm drain ditch continues on the west side of 8000 West and conveys flows westward where the water drains into a buried storm drainpipe which continues flows to Cutler Reservoir.



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

g. Adjacent wetlands (a)(7): There are adjacent wetlands having a continuous surface connection to a TNW within the review area. (AJD MFR Enclosure 2)

A total of 0.023 acre of wetlands (0.012 palustrine wet meadow and 0.011 palustrine emergent marsh)

Wetland C is adjacent (i.e. directly abutting) to Pond 1. This wetland meets the (a)(7) category “waters of the United States” per the pre-2015 regulatory regime since it is directly abutting and has a continuous surface connection to an (a)(5) RPW.

Wetland D is adjacent (i.e. directly abutting) to Ditch 3. Wetland D is on-site whereas Ditch 3 is off-site. Water in Ditch 3 is a main source of hydrology for Wetland D. This wetland meets the (a)(7) category “waters of the United States” per the pre-2015 regulatory regime since it is directly abutting and have a continuous surface connection to the seasonal stormwater drainage ditch, an (a)(5) RPW.

## 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”).<sup>8</sup> 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

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

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<sup>8</sup> 51 FR 41217, November 13, 1986.

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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 0.277 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).

Wetland A (0.233 acre) and Wetland B (0.044 acre) are located on the west side of the review area. Wetland A appears to be fed by two spring sources associated with water right 20-6026, which has a 1902 priority date for stock watering and irrigation. The springs that flow through Wetland A do not have a defined OHWM. Wetland A is directly abutting a culvert, which is not a valid continuous surface connection per current guidance. Uplands between Wetland A and Wetland B, isolate Wetland B. (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 05 May 2025 to verify the findings of the aquatic resources delineation report. The office evaluation was finalized June 23, 2025.

b. Aquatic Resources Delineation Report “Schreiber Foods Facilities South Parking Lot Project Aquatic Resources and Wetlands Delineation Technical Report Logan, Cache County, Utah” prepared [REDACTED], dated August 2024 (Updated February 2025). The Corps did not fully concur with the delineation report. Specifically, the Corps did not concur with the recommended jurisdictional status of Ditch 1, Pond 1, Ditch 2, Ditch 3, Wetland C, and Wetland D.

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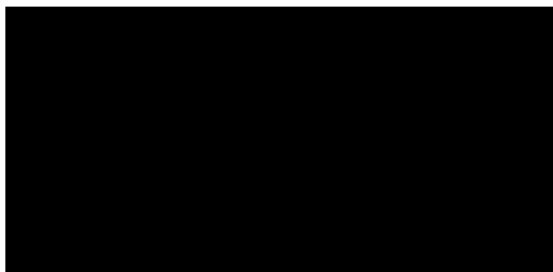
c. Photos included in [REDACTED], Corps photolog dated 05 May 2025 (AJD MFR Enclosure 3), GoogleEarth (August 2005, July 2006, October 2014, September 2018, and April 2023). Logan, Cache County, Utah. Latitude 41.745397 Longitude -111.863581. Retrieved June 17, 2025, <http://www.earth.google.com>.

d. LiDAR – National Regulatory Viewer for the South Pacific Division. Retrieved June 17, 2025. (AJD MFR Enclosure 4)

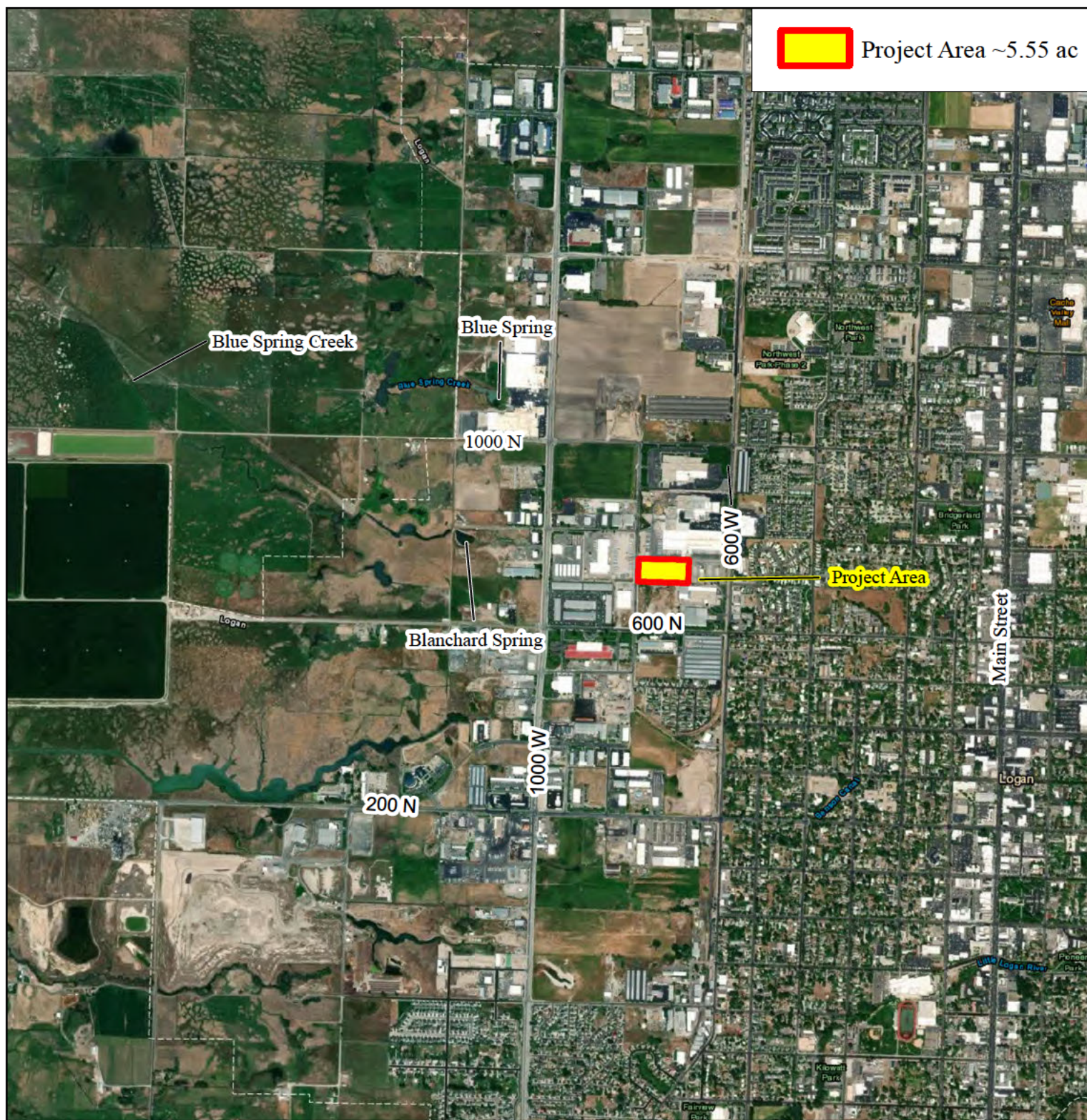
e. Logan Storm Drain Existing System Maps. Included in Frontier Corporation USA Aquatic Resources Delineation Report. (AJD MFR Enclosure 5)

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.







**Figure 2b: Project Area Location Map**  
**1:24,000 Scale Aerial Base**

Map Date: 8/21/2024  
 Created By: [REDACTED]  
 Aerial Imagery: Maxar 9/11/2020

0 1,000 2,000 Feet  
 1 in = 2,000 feet  
 at 1:24k Scale







Figure 3: Aquatic Resources and Wetlands Delineation Survey Map

