



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

CESPK-RDC-S

14 July 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-2013-00597].²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 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, the territorial seas, or interstate water 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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).

Waters Name	Cowardin	Waters of the U.S.	Navigable Waters of the U.S.	Latitude	Longitude
Trenton Creek	R4 Intermittent Riverine	No	No	40.636353	-117.234273
Mill Creek (MC)	R6 Ephemeral Riverine	No	No	40.626721	-117.248028
Timber Creek (TC)	R6 Ephemeral Riverine	No	No	40.583235	-117.237391
Drainage 1	R6 Ephemeral Riverine	No	No	40.621110	-117.280866
Drainage 2	R6 Ephemeral Riverine	No	No	40.618663	-117.279042
Drainage 3	R6 Ephemeral Riverine	No	No	40.621838	-117.258130
Drainage 4	R6 Ephemeral Riverine	No	No	40.618116	-117.242726
Drainage 5	R6 Ephemeral Riverine	No	No	40.612566	-117.259546
Drainage 6	R6 Ephemeral Riverine	No	No	40.616951	-117.262762
Drainage 7	R6 Ephemeral Riverine	No	No	40.608599	-117.258552
Drainage 8	R6 Ephemeral Riverine	No	No	40.605754	-117.279205
Drainage 9	R6 Ephemeral Riverine	No	No	40.598959	-117.265791
Drainage 10	R6 Ephemeral Riverine	No	No	40.596465	-117.284071
Drainage 11	R6 Ephemeral Riverine	No	No	40.595046	-117.260141
Drainage 12	R6 Ephemeral Riverine	No	No	40.588274	-117.289876
Drainage 13	R6 Ephemeral Riverine	No	No	40.596021	-117.231872
Drainage 14	R6 Ephemeral Riverine	No	No	40.589650	-117.246533
Drainage 15	R6 Ephemeral Riverine	No	No	40.582977	-117.290562
Drainage 16	R6 Ephemeral Riverine	No	No	40.638838	-117.250944
Drainage 17	R6 Ephemeral Riverine	No	No	40.631931	-117.245205
Drainage 18	R6 Ephemeral Riverine	No	No	40.625936	-117.237948
Drainage 19	R6 Ephemeral Riverine	No	No	40.635016	-117.276674
Drainage 20	R6 Ephemeral Riverine	No	No	40.629161	-117.269369
Drainage 21	R6 Ephemeral Riverine	No	No	40.582481	-117.244042
Non-Wetland 1	PUB Pond	No	No	40.633173	-117.257503
Non-Wetland 2	PUB Pond	No	No	40.609589	-117.276657
Non-Wetland 3	PUB Pond	No	No	40.601454	-117.290317

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., 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The approximately 9,349-acre project site is located near the census-designated place of Valmy with approximate center at Section 25, Township 32 North, Range 42 East, MDB&B, Latitude 40.616144°, Longitude -117.259204°, Lander County, Nevada. The review area is located in the Dixie Valley (HUC 16060001) watershed. The review area consists of valley floor, alluvial fan, and part of adjacent mountain range. The elevation ranges from approximately 4,850 to 6,685 feet above mean sea level. The direction of elevation and, consequently, water flow is from Battle Mountain in the east down to alluvial fan and valley in the west. Mining in the area began in the 1920s and is ongoing. Another type of land use in the area is for maintenance of livestock. Weather at the nearby Winnemucca, Nevada station indicated that monthly temperature ranged from 30.9 to 73.9°F and annual precipitation was 8.15 inches, averaged over 1988 to 2023. The predominant soils are Oxcorel-Beoska-Whirlo association and Needle Peak silt loam.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Rye Patch Reservoir, which is approximately 53 miles straight-line distance west of the review area (Google Earth map produced June 12, 2025). Rye Patch Reservoir was formed by a trench cut by the Humboldt (Nevada State Parks, n.d.), but lies within a different watershed and has no apparent connection to the subject aquatic resources within the Review Area. A Navigable-in-fact determination made for Rye Patch Reservoir (SPK-2007-01874) was issued on April 10, 2024. The determination was made based on a report of findings prepared by the Sacramento District and replaces a determination made on March 4, 2009.⁶

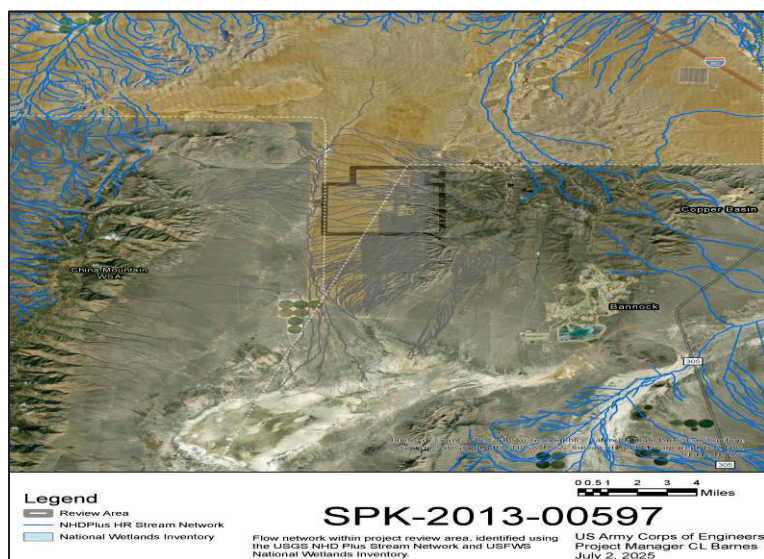
⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Aquatic resources in the review area flow in the general direction west downslope from Battle Mountain Range to the Buffalo Valley. From there, flow appears to dissipate into the substrate within alluvial fans and valley fills prior to reaching a TNW. From inspection of the aquatic resources report submitted on behalf of the applicant, National Wetlands Inventory, NHDPlus HR Stream Network, and EPA MyWATERS, there does not appear to be connection between aquatic resources in the review area and the TNW.



6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ N/A.

7. SECTION 404 JURISDICTIONAL WATERS: The subject aquatic resources were evaluated using the USACE Regulatory Guidance Letter 05-05 Subject: Ordination High Water Mark Identification (USACE, 2005) and A Field Guide to the Identification of the Ordinary High-Water Mark (USACE, 2008a). the surveyed subject aquatic resources were documented by taking photographs and completing the Updated Datasheet for the Identification of the OHWM in the Arid West Region of the United States (USACE, 2010). Potential wetlands were inspected in accordance with the USACE's Corps of Engineers Wetland Delineation Manual (USACE, 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0) (USACE, 2008b). The relative permanence of Trenton Creek was evaluated using the Field Form for the Beta Arid Streamflow Duration Assessment Method ("SDAM," USACE and USEPA; Revision Date December 8, 2020). Across the review area, the relative permanence of aquatic resources was also evaluated by matching historical aerial imagery with outputs from the Antecedent Precipitation Tool ("APT," USACE; version 2.0.0 released June 27, 2023). The latter provides a standardized methodology for evaluating normal precipitation conditions, assess presence of drought conditions, and approximate dates of the wet and dry seasons for a location.

- 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.

⁷ 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.

⁸ 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.

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).⁹

i. The aquatic features **Drainages 1-21**, **Mill Creek**, and **Timber Creek** are identified in the 2023, as Amended, as not “waters of the U.S.” and meet the definition of b(8) excluded swales and erosional features characterized by low volume, infrequent or short duration flow. The aquatic features were surveyed by Nexus Environmental Consultants and found to lack and OHWM. From review of the APT for the review area, aligned temporally with aerial imagery, flow within these aquatic features appears to be derived from direct response to precipitation. These headwaters do not appear to have connection to the TNW discernible from review of aerial imagery, elevational, and flow path spatial layers.

ii. The presence of well-draining soils, lack of hydric class soils and insufficient precipitation preclude continuous sustenance of hydrophytic vegetation and other wetland conditions in the area. From inspection of National Agriculture Imagery Program (NAIP) aerial using reflectance adjusted to highlight the near-infrared spectrum, colors associated with water (shades of blue to black) do not appear to persist and red shading associated with live vegetation appears to be limited throughout the review area and vicinity. The inference of low vegetation quality, quantity, and density sustained by hydrology in the review area is also supported by very low Normalized Difference Vegetation Index (NDVI) calculated from NAIP imagery. That is, the NAIP and Digital Globe aerial imagery indicate sparse vegetation and predominantly barren land.

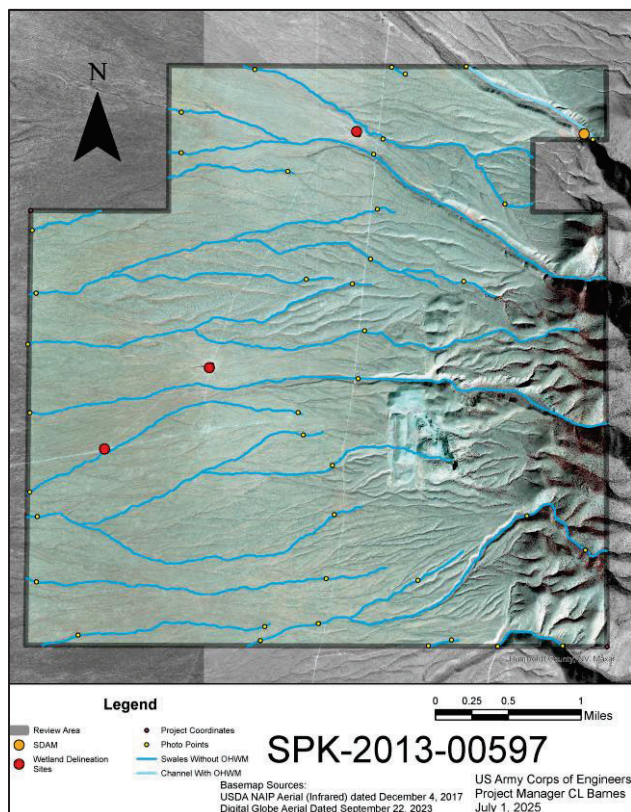
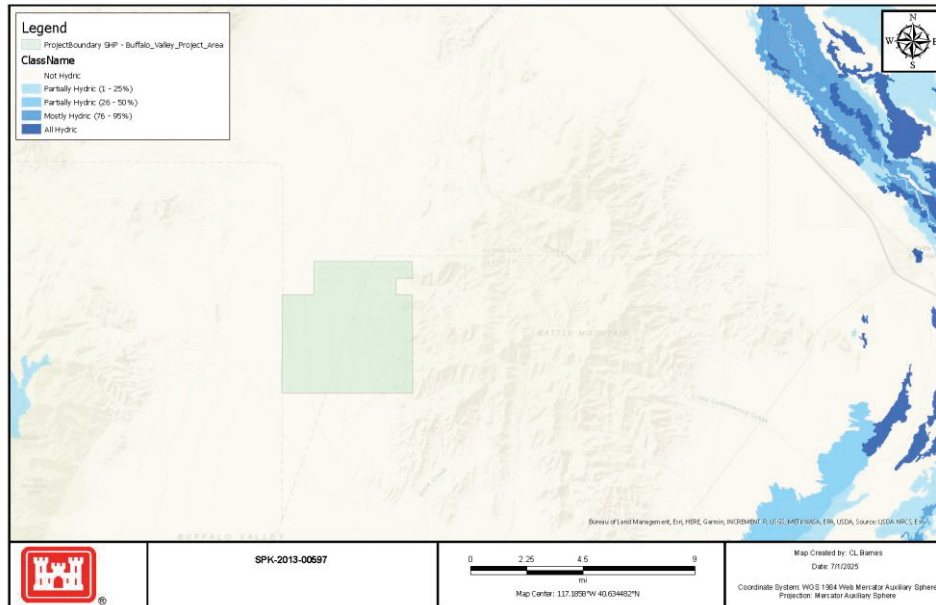
The **Non-Wetland 1** feature appears to consist of two stock ponds and a trough. The source seems to be from underground. This feature contained flowing water and hydrophytic vegetation but lacked hydric soil indicators. **Non-Wetland 2** appeared to consist of a stock pond and trough. possessed flowing water, but not hydrophytic vegetation and hydric soil indicators. **Non-Wetland 3** was a dry site, lacked signs of hydrology, hydrophytic vegetation, and hydric soils. Non-Wetlands 1, 2, and 3 appear to meet the definition of stock ponds outlined in 40 CFR 232.3(c)(3). Further, riverine and freshwater forested/shrub wetlands identified by the National Wetlands Inventory

⁹ 88 FR 3004 (January 18, 2023)

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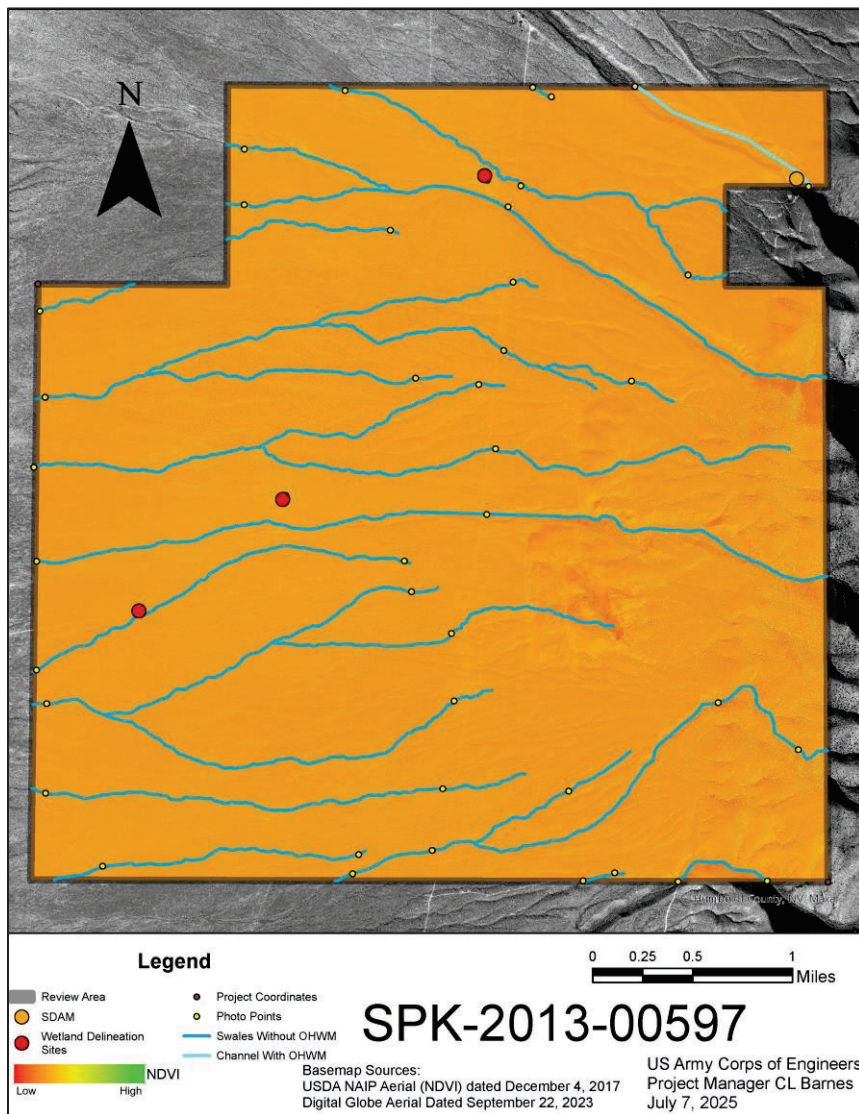
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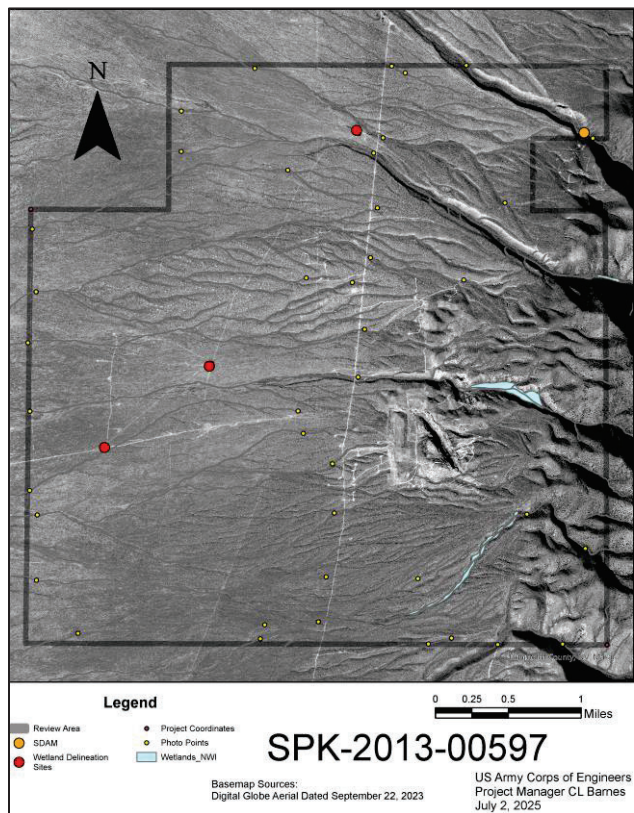
were inspected by the consultant and found to consist of swales and valley bottoms not supporting wetlands.



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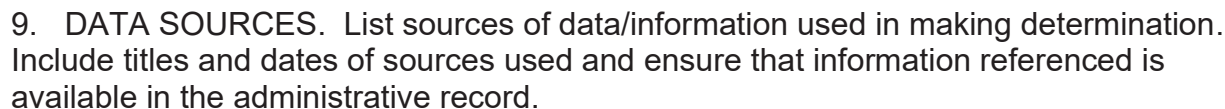




b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

c. Trenton Creek is a first order stream entering the northeast corner of the review area identified to have an OHWM and was observed to be flowing during the delineation in May 2024. OHWM indicators observed for Trenton Creek included flowing water, change in vegetation cover, surface relief, and change in average sediment texture. An SDAM survey point and analysis on May 20, 2024, identified Trenton Creek to be characterized as at least intermittent class. Intermittent streams sustain flowing water for only part of the year, typically during the wet season, where the streambed may be below the water table or where the snowmelt from surrounding uplands provides sustained flow. Further, the flow of intermittent streams may vary greatly with stormwater runoff. (Mazor et al. 2021). The flow path from Trenton Creek continues from the Battle Mountain Range to Buffalo Valley, where the channel terminates via dissipation into the substrate approximately 6,200 feet outside of the review area.

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- a. Desk evaluation was conducted during June and July 2025.
- b. Maps, plans, plots or plat submitted by or on behalf of the applicant- Aquatic Resources Delineation Report Buffalo Valley Project SPK-2013-00597 Lander, Humboldt, and Pershing Counties, Nevada by Nexus Environmental Consultants. GIS shapefiles of points (SDAM, wetland delineation, photo locations, and project coordinates), linear features (streams with and without OHWM), and polygons (review area) submitted by the applicant to the US Army Corps of Engineers in June 2024.
- c. USACE Google Earth TNW Layers- Accessed July 1, 2025.
- d. Digital Globe aerial imagery dated May 11, 2019; March 3, 2020; March 30, 2021; October 10, 2021; January 16, 2021; and September 22, 2023.
- e. USACE ERDC Antecedent Precipitation Tool version 2.0.0, Lat/Long 40.616144, -117.259204, Dates: congruent with aquatic resources delineation by Nexus

Environmental (May 6-10 and 20, 2024), the SDAM run by Nexus Environmental (May 20, 2024), and the Digital Globe imagery compiled by the Corps (May 11, 2019; March 3, 2020; March 30, 2021; October 10, 2021; January 16, 2021; and September 22, 2023).

f. USACE National Regulatory Viewer USA Soils Hydric Class Layer- Accessed July 1, 2025.

g. Tiles of the standard 1-meter resolution digital elevation model (DEM), produced through the 3D Elevation Program (3DEP) were downloaded from U.S. Geological Survey using “The National Map Downloader” tool on June 30, 2025. Georeferenced TIFF and metadata from the source are included in the USACE administrative Record.

h. NHD Plus flowlines, with attribute data, GIS layers downloaded from U.S. Geological Survey using “The National Map Downloader” tool on June 30, 2025. GIS layers and metadata from the source are included in the USACE administrative record.

i. USDA National Agriculture Imagery Program (NAIP) aerial dated December 4, 2017, downloaded from Earth Explorer. ArcGIS Pro v. 3.3.0 was used to visualize infrared spectrum and NDVI. Georeferenced TIFF and metadata from the source are included in the USACE administrative Record.

j. EPA MyWATERS surface water features layer (KMZ file) accessed on July 7, 2025 through USACE Sacramento District Regulatory Data.

10. OTHER SUPPORTING INFORMATION. Aquatic Resources Delineation Report Buffalo Valley Project SPK-2013-00597 Lander, Humboldt, and Pershing Counties, Nevada.

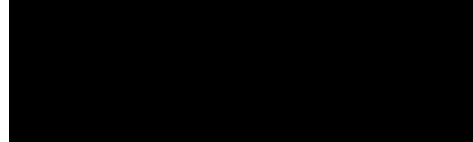
Mazor, R. D., Topping, B. J., Nadeau, T. L., Fritz, K. M., Kelso, J. E., Harrington, R. A., ... & David, G. C. (2021). Implementing an operational framework to develop a streamflow duration assessment method: A case study from the arid west United States. *Water*, 13(22), 3310.

June 2, 2005, Regulatory Division (SPK-2013-00597)- A delineation was submitted to the Corps of Engineers on May 30, 2013. This approved jurisdictional determination review area encompassing approximately 5,968 acres encompassed portions of Humboldt and Lander Counties, Nevada. A drainage identified as Drainage 13, spanning 2.72 acres, as an intrastate isolated water with no apparent interstate or foreign commerce connection. Therefore, the water was determined to presently not be regulated under Section 404 of the Clean Water Act.

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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.



Encls

Encl – Vicinity Map

Encl – Aquatic Resource Delineation Map