



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

CESPK-RDI-U

7 July 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-2020-00778] (MFR 1 of 1)

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>2</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>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</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 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.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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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## 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) Wetland 1 – Non-Jurisdictional under Section 404 of the Clean Water Act.

(2) Ditch 1 – 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 4.9 acre review area is located between SR-67 and I-84, Latitude 41.140636°, Longitude -111.814276°, Mountain Green, Morgan 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 the Great Salt Lake.

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

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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

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<sup>5</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.

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resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>6</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 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): 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. 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>7</sup>

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<sup>6</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.

<sup>7</sup> 51 FR 41217, November 13, 1986.

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b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance.

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.

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.).

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.”

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 1.3 acres 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 and do not have a continuous surface connection to a jurisdictional water).

Ditch 1 (0.20 acre) and Wetland 1 (1.10). Both Ditch 1 and Wetland 1 were verified under a Preliminary Jurisdictional Determination on December 03, 2020. Ditch 1 is a now-defunct irrigation/wastewater ditch constructed through uplands along the southern border of the review area. The Corps visited the site on June 11, 2024 which documented water within the Ditch 1. Further site visits on April 8, 2025 and additional provided ground photos throughout May 2025 showed water no longer present in Ditch 1. As such, Ditch 1 is now a non-RPW. On August 30, 2021, a Nationwide Permit 43 was authorized for the construction of a stormwater detention basin associated with a proposed residential subdivision. The construction which took place between June 11, 2024 – April 8, 2025, have altered the hydrology of the site. As well as irrigation via several man-made irrigation ditches ceasing in 2020. Wetland 1 directly abuts Ditch 1 but remains isolated from Weber River because of the now-defunct irrigation/waste ditch. Wetland 1 has no other connection to the Weber River. As such, Ditch 1 and Wetland 1 were determined to be non-jurisdictional under Section 404 of the Clean Water Act (AJD MFR Enclosure 2)

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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 June 11, 2024 as well as April 08, 2025 to view any potential connections between Wetland 1 and Ditch 2 to the Weber River.

b. Aquatic Resources Delineation Report "Aquatic Resources Delineation [REDACTED] Mountain Green, Utah" prepared by [REDACTED] dated February 13, 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 Weber River. 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 (April 08, 2025) (AJD MFR Enclosure 4). Ground photos provided by the requestor throughout May 2025. Morgan County, Latitude 41.140636°, Longitude -111.8142764°

e. Antecedent Precipitation collected (April 08, 2025 and May 27, 2025) (AJD MFR Enclosure 5) Morgan County, Latitude 41.140636°, Longitude -111.8142764°

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.

[REDACTED]

[REDACTED]

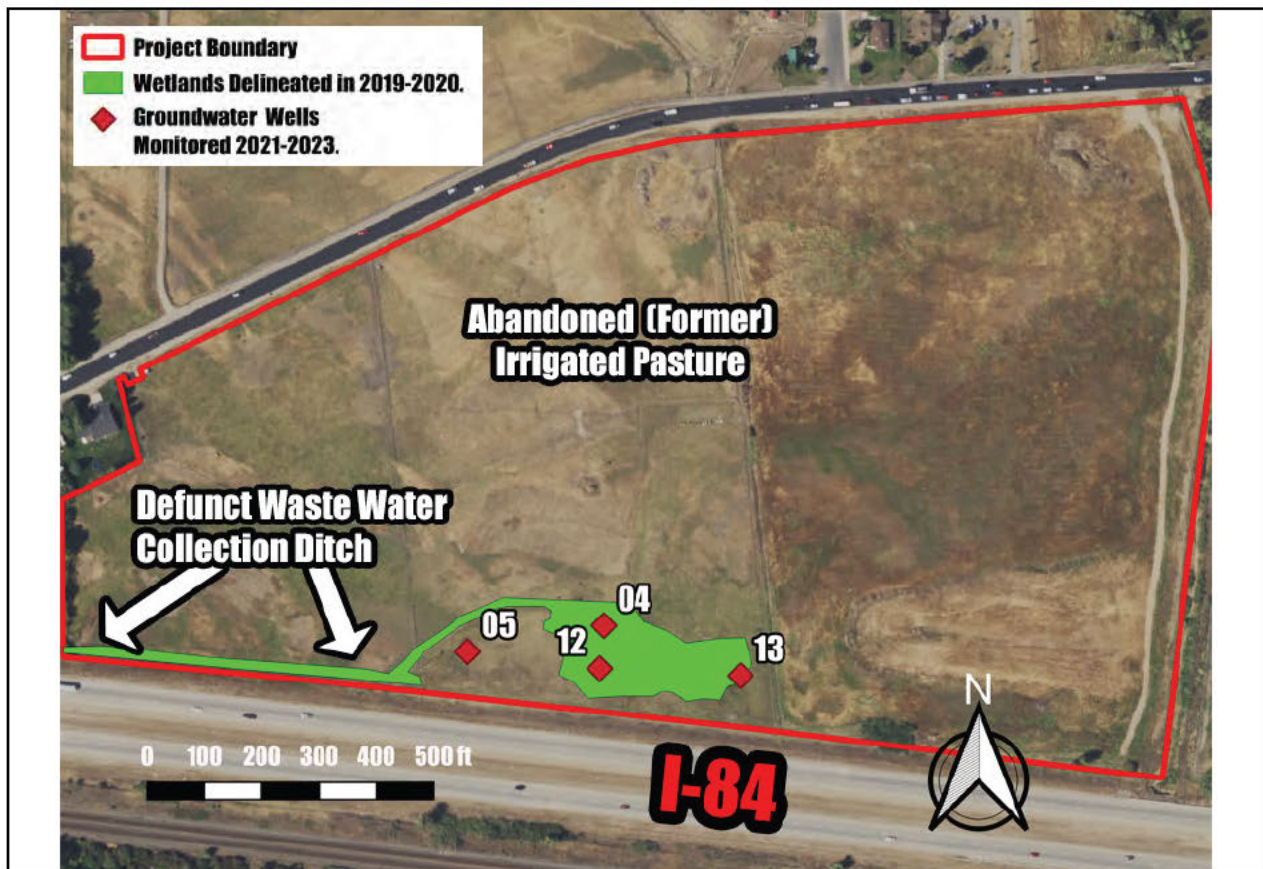


**FIGURE 1. LOCATION OF THE AMG SITE.**

The study area is located primarily in Section 26, Township 5 North, Range 1 East, Salt Lake Meridian, and the remaining western portion is located in Section 27, Township 5 North, Range 1 East. The approximate center of the project site is located at UTM 431643.98 m E, 4554687.85 m N, Zone 12 T; or 41.140627°, -111.814510° in decimal degrees.

As heading from Morgan, Utah, head north on 100 East/North State Street for about one mile, then merge onto I-84 West. Continue on I-84 West for about 6.5-miles, then take exit 96. Turn right onto West 4300 North, then after about 150-feet turn left onto West Old Highway Road (Highway 30/UT-167). Then after about four miles, the property will be on the left.





**FIGURE 2. LOCATION OF WELLS MONITORED 2021 THROUGH 2023.**

The locations of the groundwater wells monitored during the early growing seasons of 2021 through 2023 are shown as red diamonds. Wetlands delineated [REDACTED] in 2019 and 2021 are highlighted in green. The now-abandoned irrigation ditch is also indicated.

The background photograph was captured on August 29, 2018.

[REDACTED]