



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

CESPK-RDC-N

19 NOV 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-1997-25227]

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 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.

1. SUMMARY OF CONCLUSIONS. A total of eight features were surveyed, of which three were identified as having OHWM characteristics present; no potential wetlands were present in the Project Area. The remaining five features that were surveyed in the Project Area were found to be upland swales that lacked presence of OHWM.

Aquatic Resource Name	Cowardin Code/Water Type	Length (feet)	Width (feet)	Square Feet	Aquatic Resource Size (acres)	Latitude	Longitude
Granite Creek	R6	3,859	1.0	3,859	0.09	41.135151	-117.268153
D4	R6	1,298	1.0	1,298	0.03	41.123010	-117.278598
Pit Lake	B6-ECL-ART.LK	NA	NA	368,518	8.46	41.135182	-117.253243
Total				373,675	8.58	--	--

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) Granite Creek, Section 404, non-jurisdictional, approximately 3,859 linear feet
- (2) D4, Section 404, non-jurisdictional, approximately, 1,298 linear feet
- (3) Pit Lake, Section 404, non-jurisdictional, approximately 8.46 acres

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)
- d. CESPK, memorandum for record (Navigable-in-Fact Determination for the Rye Patch Reservoir in Nevada (ID SPK-2007-01874)), 10 April 2024.

3. REVIEW AREA. The approximately 1,758-acre review area is on the eastern slope of the Osgood Mountains, in Humboldt County, Nevada. Red House Flat is located southeast of the Project Area (Enclosure 1). There is one previous approved jurisdiction determination, dated July 18, 2001, for this review area. Coordinates of the approximate center of the Project Area are latitude 41.130306° and longitude -117.257735°.

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

The closest TNW to the review area is Rye Patch Reservoir. Rye Patch Reservoir is located approximately 100 miles southwest of the review area (reference 2.d). However, no aquatic resources within the survey area have a downstream connection to the Rye Patch Reservoir or any TNW, Territorial Seas, or Interstate Waters (Enclosure 2).

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. No aquatic resources within the survey area have a downstream connection or flow path to any TNW, Territorial Sea or Interstate Waters.

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 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): N/A.
- b. The Territorial Seas (a)(1)(ii): N/A.
- c. Interstate Waters (a)(1)(iii): N/A.

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.

- 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 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).

(1) There are three aquatic resources within the review area that were determined to be non-jurisdictional, Granite Creek, D4 and Pit Lake. Granite Creek is an approximately 3,859 linear foot non-relatively permanent stream in the review area. D4 is an approximately 1,298 linear foot non-relatively permanent stream with the review area. Pit Lake is a man-made feature that is filled with groundwater and serves as a catchment basin that is isolated from connections other potential jurisdictional waters and has no surface water connections into or out of the lake.

(2) Granite Creek and D4 are non-relatively permanent waters that do not have a downstream connection to an (a)(1) water. The consultant, on behalf of the applicant performed a Streamflow Duration Assessment (SDAM) on both streams. The SDAM results showed that Granite Creek could be classified as either an “ephemeral” or “intermittent” stream. The SDAM results classified D4 as “ephemeral”. Upon reviewing aerial imagery, water was not present in the channels for the majority of the year, therefore both streams are non-relatively permanent.

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 March and April of 2024.
- b. Aquatic Resources Delineation Report, Granite Creek Mine, Humboldt County, Nevada, dated November 29, 2022, prepared by Nexus Environmental Consultants.
- c. Photographs: Provided in the *Aquatic Resources Delineation Report*, prepared by Nexus Environmental Consultants, from field visit occurring from August 10, 2022.

- d. EPA Beta Stream Flow Duration Assessment Method for the Arid West. Conducted on August 10, 2022, by Nexus Environmental Consultants. Provided in the *Aquatic Resources Delineation Report*, dated November 29, 2022, prepared by Nexus Environmental Consultants.
- e. U.S. Geological Survey. (1955). USGS 1:250,000-scale. McDermitt, Nevada.
- f. USDA NRCS Soil Survey: NRCS. (2022, September 9). Custom Soil Resource Report for Humboldt County, Nevada, East Part. Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved by Nexus Environmental Consultants from <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>
- g. Response to Request for Additional Information, Granite Creek Mine, dated March 27, 2024. Prepared by Nexus Environmental Consultants.
- h. Digital Globe: July 9, 2017 - (SPK-1997-25227). Imagery [map]. 1:2,000. Generated by the Corps of Engineers on May 15, 2024.
- i. Digital Globe: August 3, 2020 - (SPK-1997-25227). Imagery [map]. 1:2,000. Generated by the Corps of Engineers on May 15, 2024.
- j. Digital Globe: December 21, 2020 - (SPK-1997-25227). Imagery [map]. 1:2,000. Generated by the Corps of Engineers on May 15, 2024.
- k. Aquatic Resources Delineation Map, dated December 7, 2023, prepared by Nexus Environmental Consultants.

10. OTHER SUPPORTING INFORMATION. Granite Creek and D4 begin in the Osgood Mountains, upstream of the mine. Granite Creek enters the project area from the mine and flows for approximately 43 feet, where it meets a culvert and diversion pipe. The portion of Granite Creek has OHWM indicators for approximately 43 feet prior to entering the diversion pipe. The diversion pipe routes the flow of water to retention ponds used in mining operations. Granite Creek is then routed back to its original location through a culvert and diversion pipe where it exits the diversion pipe. The distance between the inlet and outlet culvert is approximately 3,420 feet. Granite Creek flows from the outlet culvert and diversion pipe for approximately 4,000 feet, where it then exits the project area through a culvert under Getchell Mine Road (Enclosure 3). Granite Creek continues to flow southeast to private property, where it ends at an area that appears to be used for agricultural pivots. Granite Creek has weak OHWM indicators after it exits the diversion pipe, until it ends in the agricultural pivots. D4 flows southeast for approximately 4,200 linear feet where it ends in an abandoned road area.

CESPK-RDC-N

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-1997-25227]

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.

2 Encls

1. Vicinity Map
2. Delineation Map

