



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

CESPK-RDC-S

12 November 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-2025-00485].

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,

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.

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
Ephemeral Drainage 1 (ES1)	R6 Ephemeral Riverine	No	No	37.825947	-120.139498

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 0.06-acre project site is located along the (unpaved) Tower 107S Access Road, in Section 29, Township 1 South, Range 17 East, MDB&M, Latitude 37.825927°, Longitude -120.139537°, in unincorporated Tuolumne County, California. The review area is in the HUC 12 1804000941002 Upper Tuolumne watershed, east of Big Creek. Further, the area is characterized by Mediterranean climate with hot, dry summers that have highs of around 80 degrees F and cold, wet winters with average lows near 25 degrees F. The predominant soil type within the review area consists of Josephine family, moderately deep- deep complex, 5 to 35 slopes.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Tuolumne River, which is approximately 6.35 miles straight-line distance from the review area (Google Earth map produced November 4, 2025). The Tuolumne River originates in a pair of sources along the slopes of Mount Dana and at the base of the glacier on Mount Lyell (source: National

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Wild and Scenic River System), flowing through the Central Valley before joining the San Joaquin River.⁵

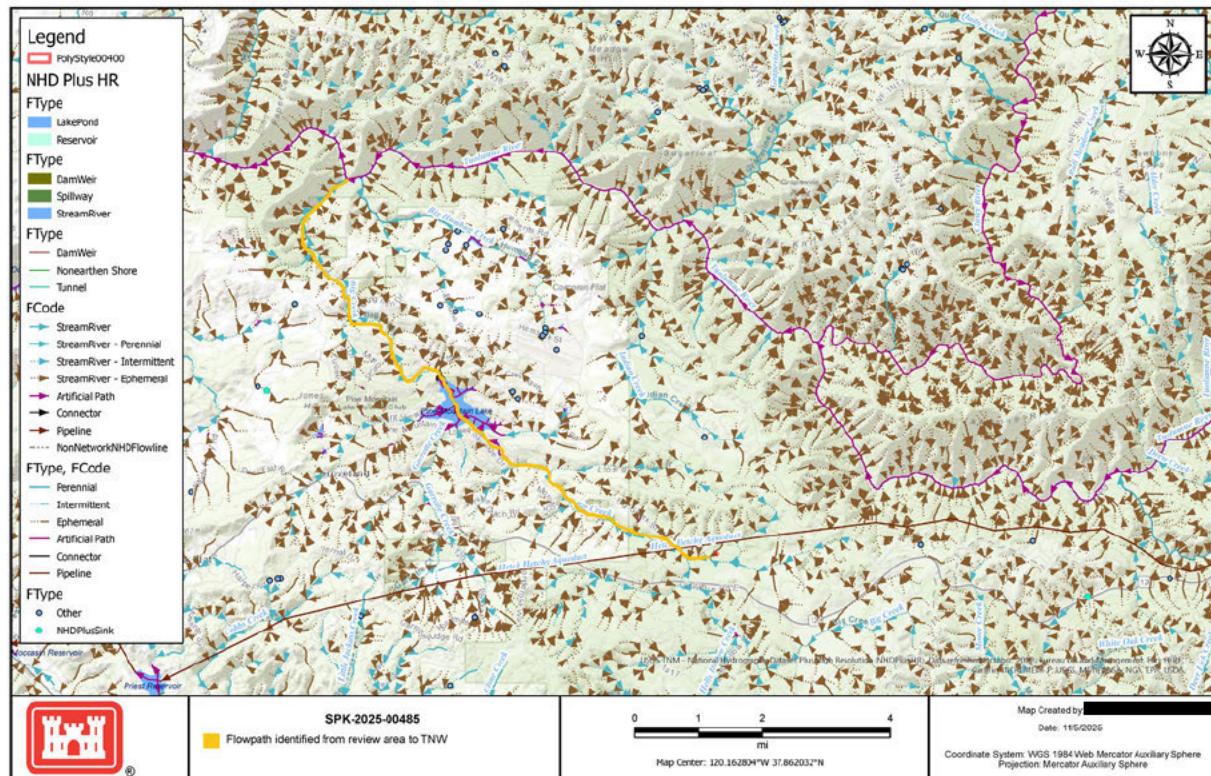


5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Potential flowpath from the unnamed tributary in the review area to the TNW (i.e., Tuolumne River) was highlighted using USGS NHD Plus HR layer on the USACE National Regulatory Viewer platform. From review of USGS DEM, USGS NHD, and USDA NAIP spatial layers the tributary identified within the review area also appears to be a low Strahler order headwater, originating in nearby foothills. That is, the tributary appears to flow downhill to Big Creek, through Pine Mountain Lake, and then again northwards within Big Creek to the TNW.

⁵ 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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6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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.
- 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

⁶ 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.

⁷ 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.

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).

Delineation was conducted by [REDACTED] on February 25, 2025. The tributary ES1 appeared to possess OHWM, evidenced by transition of sediments in channel and leaf (*Quercus kelloggii*) accumulation/disturbance instream. Formation of pool and riffle features also appeared to indicate direction of water flow. The delineated ES1 totals 0.02 acres (172 linear feet) within the 0.06-acre review area.

However, comparison against delineation site descriptions, photos provided, and Antecedent Precipitation Tool (USACE ERDC, version 2.9) run for the sampling dates in February 2025 the tributary does not appear to be relatively permanent. That is, water was not present (i.e., either standing or flowing) in the channels during normal conditions of the wet season when a rain event persisted within 30 days prior, albeit occurring under drought index (PDSI) severe drought. These parameters appear to be supported in the Corps’ review of Digital Globe aerial imagery (mild drought November 15, 2019; severe wetness February 9, 2023; mild drought November 27, 2023; and severe drought August 10, 2025) paired with APT (USACE ERDC, version 3.0). High landscape positioning relative within the river continuum- evidenced by USGS DEM, second Strahler order count identified using USGS NHD, narrow and shallow channel (approximately 5ft by 0.5ft bankfull, respectively) from USGS Stream Stats- support the characterization of ES1 as an erosional feature with low volume, infrequent, or short-duration flow.

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.

⁸ 88 FR 3004 (January 18, 2023)

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- a. Aquatic Resources Delineation Report Winter Storm Rehabilitation Project J14-b Tuolumne County, California (prepared by [REDACTED], August 2025).
- b. FEMA National Flood Hazard Layer Viewer accessed November 5, 2025.
- c. USACE Google Earth TNW Layers accessed November 5, 2025
- d. USACE National Regulatory Viewer National Wetlands Inventory and National Hydrography Dataset Layer- Accessed November 5, 2025.
- e. Tiles of the standard 1-m 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, published on May 15, 2025. Georeferenced TIFF and metadata from the source are included in the USACE administrative Record.
- f. NHD Plus flowlines, with attribute data, GIS layers downloaded from U.S. Geological Survey using “The National Map Downloader” tool on October 27, 2025. GIS layers and metadata from the source are included in the USACE administrative record
- g. USDA National Agriculture Imagery Program (NAIP) aerial dated August 11, 2022, 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.
- h. USGS Stream Stats report for stream basins within review area generated November 5, 2025.
- i. Digital Globe aerial imagery dated November 15, 2019; February 9, 2023; November 27, 2023; and August 10, 2025.
- j. USACE ERDC Antecedent Precipitation Tool version 3.0, Lat/Long 37.82593, -120.13954, Dates: congruent with Digital Globe imagery compiled by the Corps (November 15, 2019; February 9, 2023; November 27, 2023; and August 10, 2025).

10. OTHER SUPPORTING INFORMATION. Aquatic Resources Delineation Report Winter Storm Rehabilitation Project J14-b Tuolumne County, California (prepared by [REDACTED] August 2025).

Tuolumne River. n.d. National Wild and Scenic Rivers System. Retrieved November 4, 2025 from <https://rivers.gov/river/tuolumne>

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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

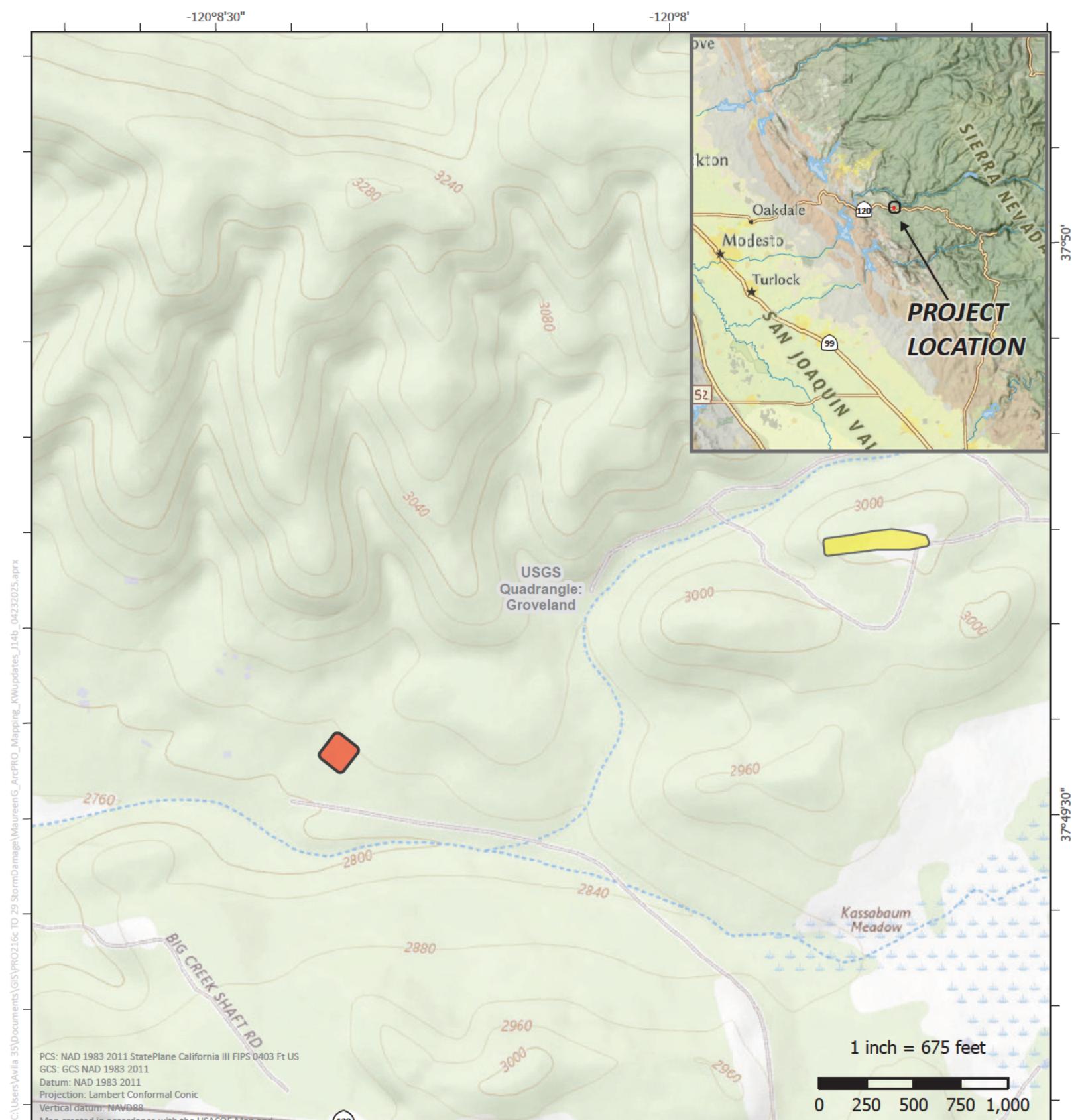


Figure 1. Overview Map - J14-b

- Study Areas
- Staging Areas (proposed)



PCS: WGS 1984 Web Mercator Auxiliary Sphere
 GCS: GCS WGS 1984
 Datum: WGS 1984
 Projection: Mercator Auxiliary Sphere
 Map created by [REDACTED] in accordance
 with the USACOE Map and Drawing Standards (2016).

1 inch = 44 feet
 0 25 50 75 100
 Feet

Figure 5. Aquatic Resources Delineations Results - J14-b

▲ OHWM Points

Aquatic Resources

- Ephemeral Stream
- Culverted Waters

■ Work Area

■ Study Areas