



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

CESPK-RDC-D

7 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-2025-00581]

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.

CESPK-RDC-D

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2025-00581]

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).

(1) DD-1; non-jurisdictional

(2) SW-1, non-jurisdictional

(3) SW-2, non-jurisdictional

(4) SW-3, non-jurisdictional

(5) SW-4, non-jurisdictional

(6) RD-1, non-jurisdictional

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 (September 8, 2023))

c. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)

d. "Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of 'Waters Of The United States' Under The Clean Water Act" (March 12, 2025)

3. REVIEW AREA. The review area is approximately 40 acres and is located immediately west of Sorento Road, 1.2-miles south of West Elkhorn Boulevard, and 0.7-mile north of Del Paso Road, at Latitude: 38.66718°, Longitude: -121.49338°, City of Sacramento, Sacramento County, California. Please see Attachment 1 for a map of the review area.

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

CONNECTED. The nearest TNW is the American River, which is approximately 4.2 miles south of the review area. No aquatic resources delineated have a flow path to the American River, an (a)(1) water, or any relatively permanent (a)(2) or (a)(3) waters.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. No aquatic resources within the review area have a connection or flow path to any TNW, Territorial Seas, 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 There are no Section 10 Jurisdictional Waters within the review area.

7. SECTION 404 JURISDICTIONAL WATERS: There are no Section 404 jurisdictional waters within the review area.

- 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

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.

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).⁷

1) SW-3 is an artificial wetland, located in the northwestern portion of the review area, and is approximately 0.316 acre. The feature formed in 2023, with the installation of an underground utility and an adjacent dirt access road and would not be present had those facilities not been installed. Review of aerial imagery confirmed the construction activities are ongoing, as well as creation of the wetland feature in dry land before construction had occurred. Therefore, this wetland was determined to be non-jurisdictional because it meets the criteria for an exclusion under the 2023 Rule, as amended, specifically 33 CFR 328.3(b)(7) for water-filled depressions created in dry land incidental to construction activity.

2) SW-4 is a small artificial wetland, located in the eastern portion of the review area, approximately 0.031 acre in size. The feature formed beginning in 2017 and originated in ruts left by heavy construction equipment and has been subject to ongoing disturbance from associated construction activities. Review of aerial imagery confirmed the construction activities are ongoing, as well as creation of the wetland feature in dry land before construction had occurred. Because the feature resulted from human activity and is not part of the natural landscape, it is considered and incidentally created water-filled depression and also does not have the necessary continuous surface connection to be a jurisdictional Water of the U.S. This wetland is non-jurisdictional as it meets the exclusion criteria under 33 CFR 328.3(b)(7) for water-filled depressions created in dry land incidental to construction activity.

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).

1) DD-1 is an approximately 0.071-acre drainage ditch located along the western boundary of the review area. According to the delineation report, DD-1 is identified as a remnant fragment of a defunct agricultural drainage/irrigation ditch, which was historically utilized for draining precipitation during the wet season and conveying irrigation water during the growing season. However, the ditch's original function has been discontinued, as it has been filled to the north and south of the review area.

⁷ 88 FR 3004 (January 18, 2023)

Review of historic aerials of the site confirm that the ditch has been filled outside of the review area, cutting off previous tributary connections from the north or south. This feature was determined to be non-jurisdictional because it does not meet the criteria for a "Water of the United States" under the 2023 Rule, as amended. Specifically, due to the fill material immediately adjacent to the review area, DD-1 no longer functions as a tributary and lacks a continuous surface connection to any Traditional Navigable Water (TNW) or any relatively permanent (a)(2) or (a)(3) jurisdictional waters.

2) SW-1 (0.101 acre) and SW-2 (0.025 acre) are seasonal wetland features located in the north-central portion of the review area. These features are topographically separated from other aquatic resources. Specifically, SW-1 and SW-2 lack a continuous surface connection to any TNW or any relatively permanent (a)(2) or (a)(3) jurisdictional waters. Pursuant to the March 12, 2025, Joint Guidance on the proper implementation of "Continuous Surface Connection," these wetlands are not considered adjacent to jurisdictional waters and therefore do not meet the definition of the Waters of the United States under the 2023 Rule, as amended.

3) RD-1 is an approximately 0.001-acre (16 linear feet) roadside ditch located along the eastern boundary of the review area. This feature is situated at the outfall of a roadway culvert and is designed to receive and convey stormwater runoff from the eastern side of Sorrento Road. According to the delineation report, water temporarily ponds in the ditch during rainfall, and when the feature is full, flow transitions to sheet flow across adjacent upland grasslands to the west. A review of wet season aerial imagery from 2022 to 2025 provides evidence that RD-1 does not carry a relatively permanent flow of water, and therefore, it does not meet the criteria for a relatively permanent tributary. Therefore, RD-1 is non-jurisdictional because it does not meet the criteria for "Water of the United States" under the 2023 Rule, as amended.

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. U.S. Army Corps of Engineers. 3-7 November 2025. Office Evaluation.
- b. Google Earth. 15 February 2022, Imagery. 1:800 Accessed 3 Nov 2025.
- c. Google Earth. 24 April 2022, Imagery. 1:800 Accessed 3 Nov 2025.
- d. Google Earth. 6 March 2024, Imagery. 1:800 Accessed 3 Nov 2025.
- e. Google Earth. 19 April 2024, Imagery. 1:800 Accessed 3 Nov 2025.
- f. Google Earth. 1 February 2018, Imagery. 1:800 Accessed 7 Nov 2025.

CESPK-RDC-D

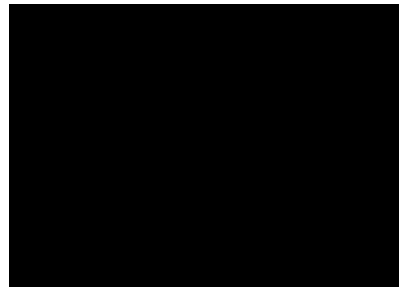
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2025-00581]

g. Google Earth. 14 May 2021, Imagery. 1:800 Accessed 7 Nov 2025.

h. Google Earth. 10 July 2016, Imagery. 1:800 Accessed 7 Nov 2025.

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.





Aquatic Resource Features		
Wetlands		
Seasonal Wetland		
Feature ID	Acreage	
SW-1	0.101	
SW-2	0.025	
SW-3	0.316	
SW-4	0.031	
Subtotal:	0.472	
Total Wetlands:	0.472	
Other Waters		
Drainage Ditch		
Feature ID	Acreage	Linear Feet
DD-1	0.071	655
Subtotal:	0.071	655
Roadside Ditch		
Feature ID	Acreage	Linear Feet
RD-1	0.001	16
Subtotal:	0.001	16
Total Other Waters:	0.072	671
Aquatic Resources Total: 0.545 acre		
* Small summation errors may occur due to rounding		

Study Area (40 acres)

Reference Coordinate (NAD83)

Data Point

Culvert

2' Contour (NAVD88 U.S. Feet)

Aquatic Resources (0.545 acres)*

Wetlands (0.472 acre)

Seasonal Wetland (0.472 acre)

Other Waters (0.072 acre)

Drainage Ditch (0.071 acre)

Roadside Ditch (0.001 acre)

Prepared For:
[Redacted]

Sources:
Aerial Source: Sacramento County 2024 (NAIP), 26 June 2024
Topographic Contours: Sacramento County

Delineation Performed by: [Redacted]

Map Prepared by: [Redacted]

Date Map Prepared: 18 June 2025

Made in accordance with the
Updated Map and Drawing Standards for the
South Pacific Division Regulatory Program,
as amended on February 10, 2016.
* Small summation errors may occur due to rounding

Map Scale:
1 inch = 100 feet (at 11"x32")

Coordinate System
NAD 1983 State Plane CA II (U.S. Feet)

Aquatic Resources Delineation
Cononelos Property
Sacramento
Sacramento County, California

[Redacted]