



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

CESPK-RDC-D

2 January 2026

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-2021-00501]

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.

- (1) ED-1, Section 404, Non jurisdictional
- (2) ED-2, Section 404, Non jurisdictional
- (3) ED-3, Section 404, Non jurisdictional
- (4) ED-4, Section 404, Non jurisdictional
- (5) ED-6, Section 404, 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)

3. REVIEW AREA. The review area is approximately 1,285 acres and is located north of South Corral Hollow Road and west of I-580, except for Phase 1C which is located east of I-580, Latitude 37.67627°, Longitude -121.47736°, City of Tracy, San Joaquin County, California.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the San Joaquin River, which is approximately 7.1 miles east of the review area. No aquatic resources delineated have a flow path to the San Joaquin River, an (a)(1) water, or any relatively permanent (a)(2) or (a)(3) waters.⁵

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

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.

6. SECTION 10 JURISDICTIONAL WATERS⁶: There are no Section 10 waters within the Review Area.

7. SECTION 404 JURISDICTIONAL WATERS: Before conducting field surveys, [REDACTED] staff reviewed the *Aquatic Resources Delineation Tracy Hills Phases 1C, 2, 3, and 4 Project* prepared by [REDACTED] in April 2021 (ARDR), as well as aerial imagery, United States Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) data, and Natural Resource Conservation Service (NRCS) web soil survey data. Previously identified wetlands and other waters identified in the preliminary desktop assessment of the Review Area were investigated in the field by [REDACTED] biologist [REDACTED] on January 8, 2025, to determine whether the findings from the April 2021 study remained valid and to determine if any other aquatic resources are present in accordance with the *Corps of Engineers Wetlands Delineation Manual*, the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* (Version 2.0), and the USACE's *A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States*.

- 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

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

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.

area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁷ 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).

The review area contains five drainage features (ED-1, ED-2, ED-3, ED-4, and ED-6), totaling approximately 0.860 acre and 13,660 linear feet. A consolidated analysis is provided as all five features exhibit similar physical characteristics (e.g., geomorphology and dominance by upland vegetation) and are non-jurisdictional for the same underlying reasons.

A review of available desktop information revealed inconsistent classifications among the standard remote sensing sources. For features ED-1 and ED-3, the NWI and the 2012/2015 U.S. Geological Survey (USGS) topographic maps use an 'intermittent' classification, while the National Hydrography Dataset (NHD) uses an 'ephemeral' classification. Furthermore, these features and remaining features (ED-2, ED-4 and ED-6) are absent from other historic topographic maps (1962, 2018, 2021). This lack of consensus among desktop sources makes them individually unreliable for a final determination and underscores the necessity of giving greater weight to the physical evidence gathered during multi-date, site-specific field observations. Field work conducted on 18 December 2020, 17 February 2021, 18 June 2021, and verified again on 8 January 2025, provide support for the non-jurisdictional determination. The Antecedent Precipitation Tool (APT) analysis confirms that observations across all four dates were made under "Normal" or drier climatic conditions, validating that the observed site conditions are characteristic of the features and not related to drought conditions. All five ephemeral features have brief hydroperiods not supported by groundwater, evidenced by their geomorphology and dominance by upland grassland plant species. Due to brief and infrequent flow, the channels exhibit poorly defined OHWMs however had sufficient indicators of water flow including scour, sediment deposits and/or drift deposits. The channels are thus consistent with the 'ephemeral' classification used by the NHD than the 'intermittent' classification. Since the ephemeral channels are not relatively permanent waters, they do not meet the definition of a tributary under paragraph (a)(3) and therefore are not jurisdictional under the 2023 Waters Rule, as Amended.

⁷ 88 FR 3004 (January 18, 2023)

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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. U.S. Army Corps of Engineers. 21 Nov through 10 Dec 2025. Office Evaluation.
- b. U.S. Army Corps of Engineers. Approved Jurisdictional Determination, File Number SPK-2021-00501, issued on July 22, 2021.
- c. National Regulatory Viewer. U.S. Army Corps of Engineers. NHD Plus HR Layer. Accessed 10 Dec 2025.
- d. National Regulatory Viewer. U.S. Army Corps of Engineers. National Wetland Inventory Layer. Accessed 10 Dec 2025.
- e. National Regulatory Viewer. U.S. Army Corps of Engineers. LiDAR Digital Elevation Model (DEM). Accessed 21 Nov 2025, and 10 Dec 2025.
- f. "Request for Re-verification of the Aquatic Resources Delineation and Approved Jurisdictional Determination for the Tracy Hills Phases 1C, 2, 3 and 4 Project in Tracy, San Joaquin County, California," letter report from [REDACTED] dated 4 Feb 2025.
- g. "Tracy Hills Project: Phase 1C, 2, 3, and 4 Aquatic Resources Delineation Report," prepared by [REDACTED], dated April 2021.
- h. U.S. Geological Survey (USGS) 7.5-minute historic topographic quadrangles for the Tracy, CA and Midway, CA areas, accessed via the USGS TopoView service (<https://ngmdb.usgs.gov/topoview/viewer/#14/37.6750/-121.4783>).
- i. U.S. Army Corps of Engineers (USACE) Antecedent Precipitation Tool (APT) results for site observation dates of 18 December 2020; 17 February 2021; 18 June 2021; and 8 January 2025. Accessed on 10 December 2025.

10. OTHER SUPPORTING INFORMATION. On 22 July 2021, the Corps issued an AJD, Corps No.: SPK-2021-00501, for the Review Area. At that time, the 2021 AJD identified 0.930 acre of non-jurisdictional features under the Navigable Waters Protection Rule. These features consisted of one seasonal wetland (SW-1, 0.040 acre) and six drainage features (ED-1 through ED-6, totaling 0.887 acre). Subsequent to the 2021 AJD, portions of the site have been graded and developed pursuant to the Tracy Hills Phase 1C, 2, 3, and 4 project. An update to the 2021 Aquatic Resources Delineation Report was prepared to document current site conditions, inclusive of describing results of a field visit by the requestor's consultant to confirm current site

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conditions (conducted on 8 January 2025). The January 2025 field assessment confirmed that the previously identified seasonal wetland (SW-1) and one drainage feature (ED-5) have been filled. Additionally, a portion of drainage feature ED-6 was also filled, with storm flow from its remaining upstream segment now captured and managed by a new stormwater control system.

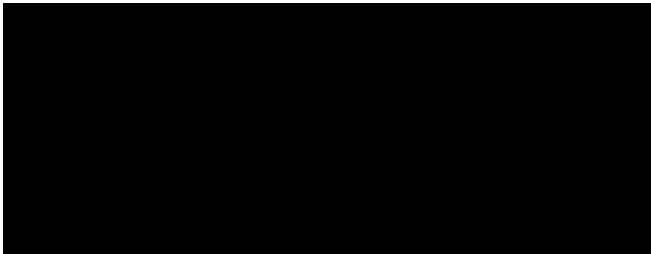
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11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Enclosures

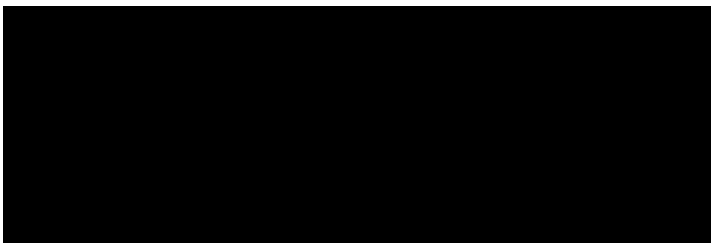
PREPARED BY:

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Date: 2 January 2026

CA Delta Section

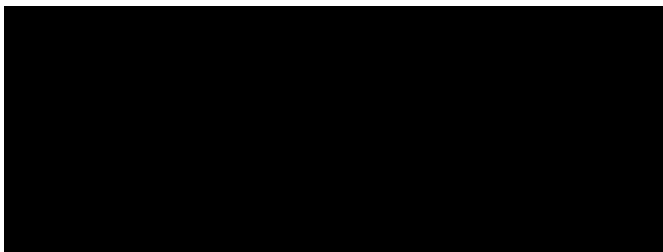
REVIEWED BY:

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Date: 2 January 2026

CA Delta Section

APPROVED BY:

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Date: 2 January 2026

CA Delta Section

