



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

CESPK-RDI-N

5 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-2025-00077]

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States (WOTUS) 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.

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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).

Name of Aquatic Resource	Size	Jurisdictional Status	Section 404/Section 10
AR-1b	0.10 acres	Jurisdictional	Section 404
AR-1a	0.07 acres	Jurisdictional	Section 404
AR-1	1,800 linear feet	Jurisdictional	Section 404

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. 651, 143 S. Ct. 1322 (2023)

d. Memorandum to the Field Between 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)

e. Memorandum for the Commander, Carson River and its East Fork, Navigable Waters of the United States Determination, CESPD-ZB (19 May 2021)

f. Memorandum for the Record, Tributary Analysis for the Hot Springs Development Approved Jurisdictional Determination Request, CESPK-RDI-N (11 December 2025)

3. REVIEW AREA. The approximately 80-acre review area is located northwest of the corner of Vicky Lane and North Santa Barbara Drive, Longitude: 39.05774°N, Latitude: 119.74718°W, Johnson Lane, Douglas County, Nevada. There are no previous jurisdictional determinations that overlap with the review area.

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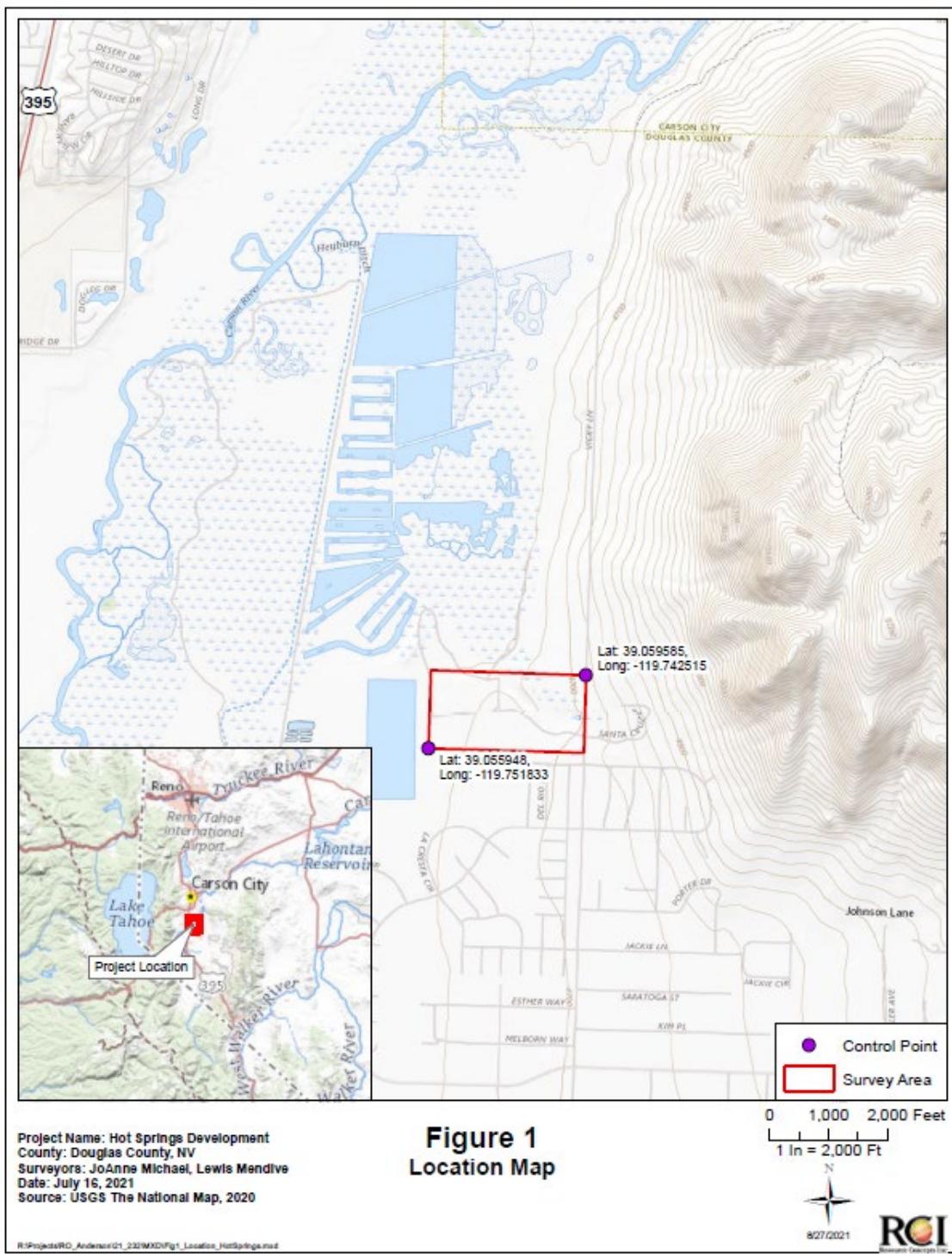


Figure 1. Review Area Map

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW to which the aquatic resources are connected to is the Carson River. The Carson River was determined to be a navigable water of the U.S (Reference 2.e). “*Paragraph (a)(1)(i) waters include all of the ‘navigable waters of the United States,’ defined in 33 CFR part 329*”⁵ (See Reference 2.a). With the determination that the Carson River was subject to Section 10 jurisdiction due to a combination of past and susceptible transportation of interstate commerce, that determination would also be applicable to the TNW criteria of determining waters which are used in interstate commerce.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. AR-1 continues to flow offsite through an effluent treatment facility. The flowpath continues northward into the Carson River. Reference 2.e discusses the flowpath in detail.

⁵ 88 FR 3069

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Figure 2. Flowpath Map

6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

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

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): AR-1 has an ordinary high water mark for approximately 1,800 linear feet within the review area. AR-1 is a first order stream and is entirely perennial and as such meets the relatively permanent standard. AR-1 is tributary to the Carson River (See Reference 2.e). AR-1 meets all requirements to be jurisdictional under the paragraph (a)(3) definition of WOTUS.
- f. Adjacent Wetlands (a)(4):

AR-1a is a wetland that is approximately 0.07 acres in size and directly touches the ordinary high water mark of AR-1, a relatively permanent tributary, and as such has a continuous surface connection to a jurisdictional water (Reference 2.d). AR-1a meets the definition of an adjacent wetland.

⁷ "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.

AR-1b is a wetland that is approximately 0.10 acres in size and directly touches the ordinary high water mark of AR-1, a relatively permanent tributary, and as such has a continuous surface connection to a jurisdictional water (Reference 2.d). AR-1b meets the definition of an adjacent wetland.

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 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). N/A.

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. Field visit on 10 June 2025.

b. U.S. Geological Survey. National Hydrography Dataset (NHD) accessed 11 December 2025.

c. U.S. Geological Survey. 3D Elevation Program (3DEP) Bare Earth DEM Dynamic Service accessed 11 December 2025.

d. U.S. Fish and Wildlife Service. National Wetland Inventory accessed 11 December 2025.

e. Natural Resource Conversation Service. Web Soil Survey (SSURGO Data) accessed 11 December 2025.

⁸ 88 FR 3004 (January 18, 2023)

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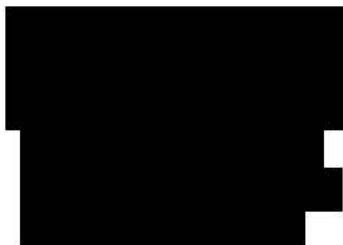
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f. Google. Google Earth Pro accessed 11 December 2025.

g. *"Aquatic Resources Delineation Report (Revised), Hot Springs Development"* prepared by Resource Concept Inc., dated 11 November 2024.

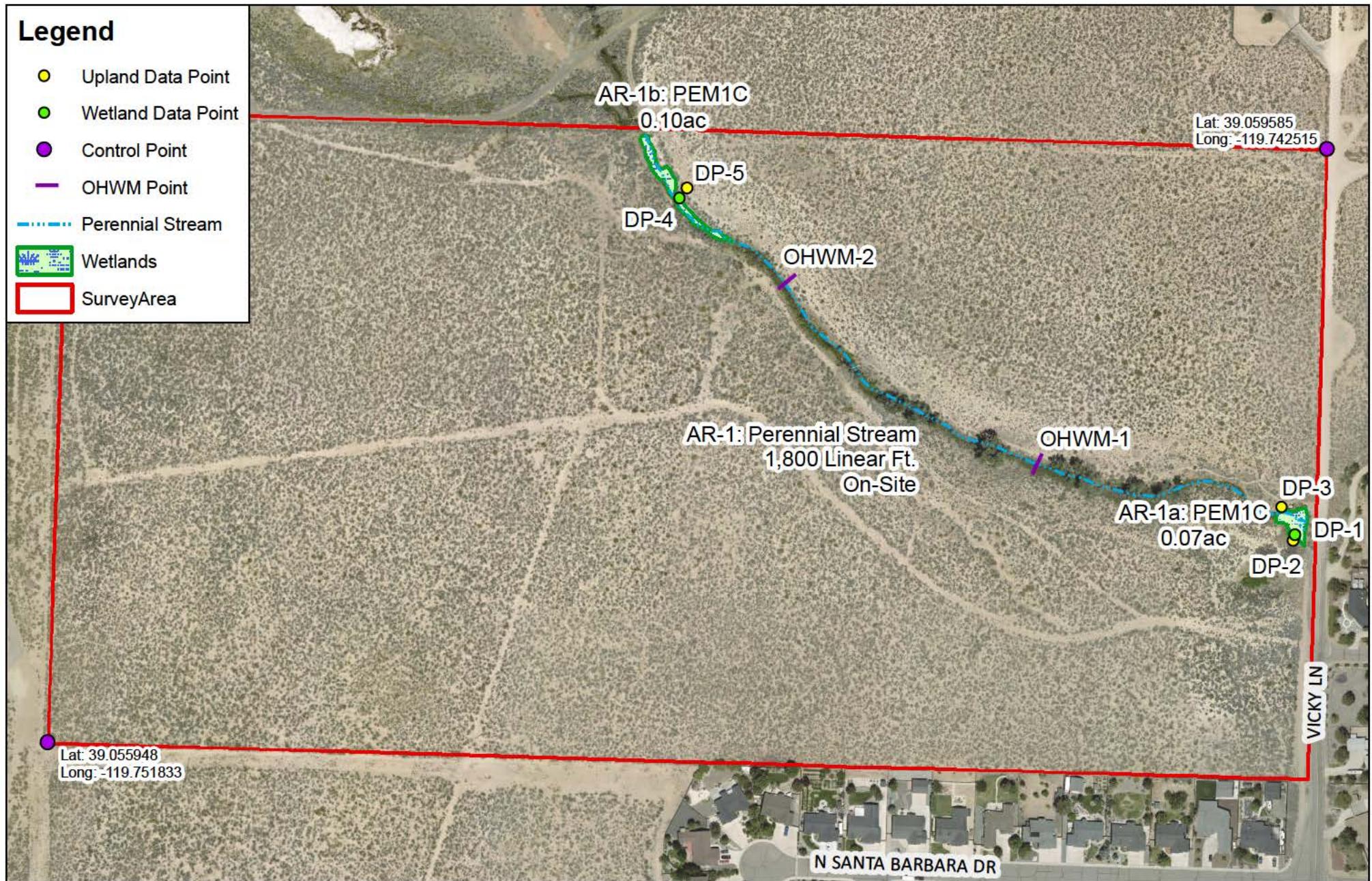
10. OTHER SUPPORTING INFORMATION. N/A.

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.



Legend

- Upland Data Point
- Wetland Data Point
- Control Point
- OHWM Point
- Perennial Stream
- Wetlands
- SurveyArea



Project Name: Hot Springs Development
County: Douglas County, NV
Surveyors: JoAnne Michael, Lewis Mendive
Date: July 16, 2021
Source: ESRI Imagery Services
EagleView 7/30/2020

Aquatic Resource Delineation

8/27/2021

RCI
Resource Concepts Inc