



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109-3435

May 15, 2024

CESPA-RD

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-2005-75590².

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.³ 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.⁴

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),⁵ 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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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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).

Water Feature Table

Highlands Wetland	wetland water feature	9.99 ac
Bolts Lake Wetlands	wetland water feature	11.53 ac
Totals		21.52 ac

2. REFERENCES.

1. USACE. 2009. List of Navigable Waters of the United States in the Albuquerque District. June 17, 2009.
2. Battle North LLC. 2017 Waters of the U.S. Delineation Report. April 2017
3. USDA, NRCS. 2016. Web Soil Survey. Available online at <http://websoilsurvey.nrcs.usda.gov/>.
3. REVIEW AREA. The review area consists of the 2 water features within the project area a 21.52-acre parcel of land, approximate center point of latitude 39.553223°, longitude -106.41021°, Eagle County, Colorado. The applicant has requested the review of 2 aquatic resource areas located within the review area.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. These features do not have a continuous surface connection to a water identified in paragraph (a)(1) or (a)(3) of the 2023 Rule, as amended.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There were no flow paths identified between the aquatic resource within the review area and an A1 water.

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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.

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- 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
- 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).

Highlands (H) Wetlands – 9.99 acres, Bolts Lake (BL) Wetlands – 11.53 acres. These wetlands are physically isolated.

The Bolts Lake (BL) Wetlands are situated in the historic Bolts Lake reservoir formed in the basin or reservoir bottom after the spillway was lowered in 1995 and the lake drained. The reservoir was created in a basin ringed with a terminal moraine, and the dam was constructed in a lower section of the moraine to allow for water storage. These wetlands are located in the bottom of the abandoned reservoir and primarily fed by local groundwater discharge, snowmelt runoff and precipitation. The basin is confined, has never been connected to the Eagle River, and is separated from the river by the moraine. These wetlands are approximately 35-40 feet higher in elevation than the Eagle River. In 1995 an area was excavated through the moraine, and culverts were placed under the access road and Hwy 24 to help drain the reservoir. However, direct observations identified that this drainage path is relic because it currently does not exhibit an OHWM and is populated with upland plant species. The Bolts Lake wetlands are approximately 690 feet from the Eagle River and its 100-foot floodplain and are not considered adjacent from a physical or regulatory perspective.

Highlands (H) Wetlands are located upgradient, approximately 100 feet in elevations, from the Bolts Lake wetlands (wetland BL) and separated from Cross Creek wetlands by a natural ridge that acts as a hydrologic divide. These wetlands are comprised of a complex of wetland depressions that hold enough snowmelt and precipitation to sustain hydrophytic vegetation. The North Ditch (aka Bolts Ditch) historically conveyed groundwater discharge from a diversion

⁸ 88 FR 3004 (January 18, 2023)

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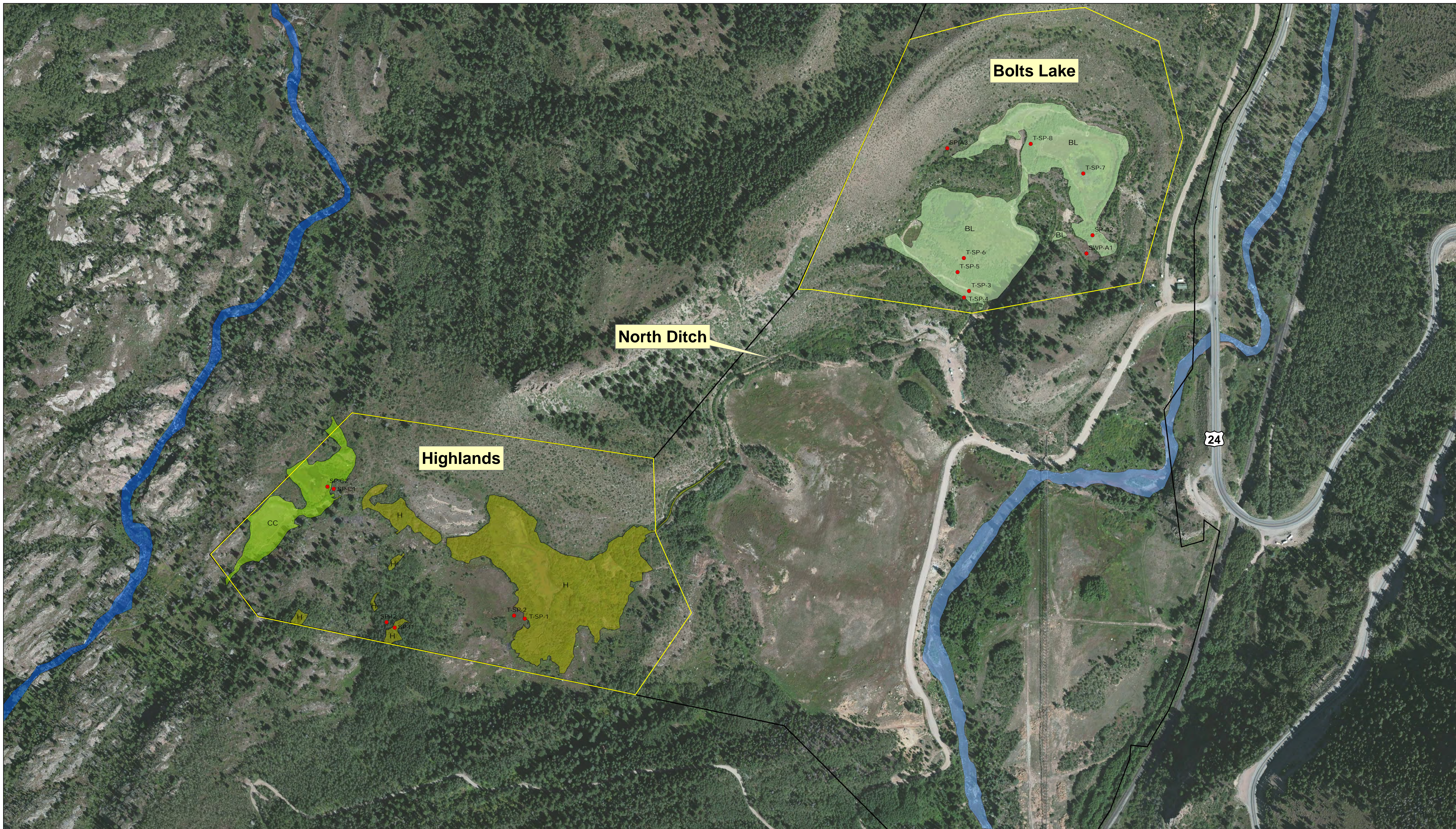
on Cross Creek through the Highlands wetlands to Bolts Lake for storage. However, this diversion on Cross Creek was removed under the direction of the US Forest Service in the fall of 2010. Currently, the ditch only conveys overland sheetflow from snowmelt and groundwater discharge, which generally infiltrates within the ditch prior to reaching Bolts Lake.

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. National Wetlands Inventory Mapper (5/13/2024)

b. USGS Topo Map Eagle County, CO 2022

10. OTHER SUPPORTING INFORMATION.



Battle North Property
Highlands and Bolts Lake Project Areas
Minturn, Colorado
Wetland Boundaries 2016

Claffey Ecological Consulting, Inc.

Legend

□ BMP Property Boundary	■ Cross Creek
□ Battle North Survey Area	■ Eagle River
■ Bolts Lake (BL) Wetlands (11.53 ac)	● Data Sheets
■ Cross Creek (CC) Wetlands (2.92 ac)	
■ Highlands (H) Wetlands (9.99 ac)	

1:2,500 0 200 400 Feet

Map Drawn: March 2017
Map Revised: October 4, 2017

Datum: NAD_1983_UTM_Zone_13
Source: 2015 NAIP Orthophoto

Figure 1