



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT  
400 ROOD AVENUE, ROOM 224  
GRAND JUNCTION, COLORADO 81501-2520

SPA-RD-W

July 18, 2024

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) ,<sup>1</sup> SPA-2023-00183

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.<sup>2</sup> 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.<sup>3</sup>

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),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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).

- i. **Wetland B (0.03 acre) is not a water of the United States.**

- ii. **Wetland D, (0.12 acre), is not a water of the United States.**

- iii. **Wetland E, (0.01 acre), is not a water of the United States.**

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 3116-17 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. \_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. **The review area is approximately 0.85 acre and is located south of the Fraser River and just north of the intersection of Pioneer Drive and Fox Drive, centered at latitude 40.0803°, longitude -105.9334°, within the Town of Granby, in Grand County, Colorado. Note: Two additional wetland areas (Wetland A and Wetland C) are located on the same parcel as the above wetlands but were not included in the current review area.**

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. **N/A** <sup>5</sup>

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<sup>5</sup> 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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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. **N/A**
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup> **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**

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<sup>6</sup> 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.

<sup>7</sup> 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.

- 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).<sup>8</sup> **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).

**Wetland B is 0.03-acre palustrine scrub-shrub wetland that does not have a continuous surface connection to any jurisdictional waters. The determined absence of surface connection is based on review desktop resources (USACE National Regulatory Viewer, 2023, Google Earth 1999, Google Earth 2005, Google Earth 2006, Google Earth, 2007, Google 2010, Google 2013, Google Earth 2016, Google Earth 2019, USDA NRCS, 2023, and Birch Ecology, 2023). Wetland B is located within (and likely created by) a man-made circular depression surrounded by a berm which appears to have been excavated between 2005 and 2007, according to historic aerial imagery. This circular depression was excavated in and is currently surrounded by uplands and is located approximately 70 feet south of the Fraser River (an (a)(3) water).**

**Wetland D is 0.12-acre palustrine emergent wetland that does not have a continuous surface connection to any jurisdictional waters. The determined absence of a surface connection is based on review desktop resources (USACE National Regulatory Viewer, 2023, Google Earth 1999, Google Earth 2005, Google Earth 2006, Google Earth, 2007, Google 2010, Google 2013, Google Earth 2016, Google Earth 2019, USDA NRCS, 2023, and Birch Ecology, 2023). Wetland D is surrounded by uplands and is located approximately 221 feet south of the Fraser River (an (a)(3) water).**

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<sup>8</sup> 88 FR 3004 (January 18, 2023)

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**Wetland E is a 0.01-acre palustrine emergent wetland. The wetland does not have a continuous surface connection to any jurisdictional waters based on a review of desktop resources (USACE National Regulatory Viewer, 2023, Google Earth 1999, Google Earth 2005, Google Earth 2006, Google Earth, 2007, Google 2010, Google 2013, Google Earth 2016, Google Earth 2019, and USDA NRCS, 2023), as well as field reports provided by Birch Ecology, dated April 2023 and June 2024. Wetland E is surrounded by uplands and is located approximately 160 feet south of the Fraser River (an (a)(3) water).**

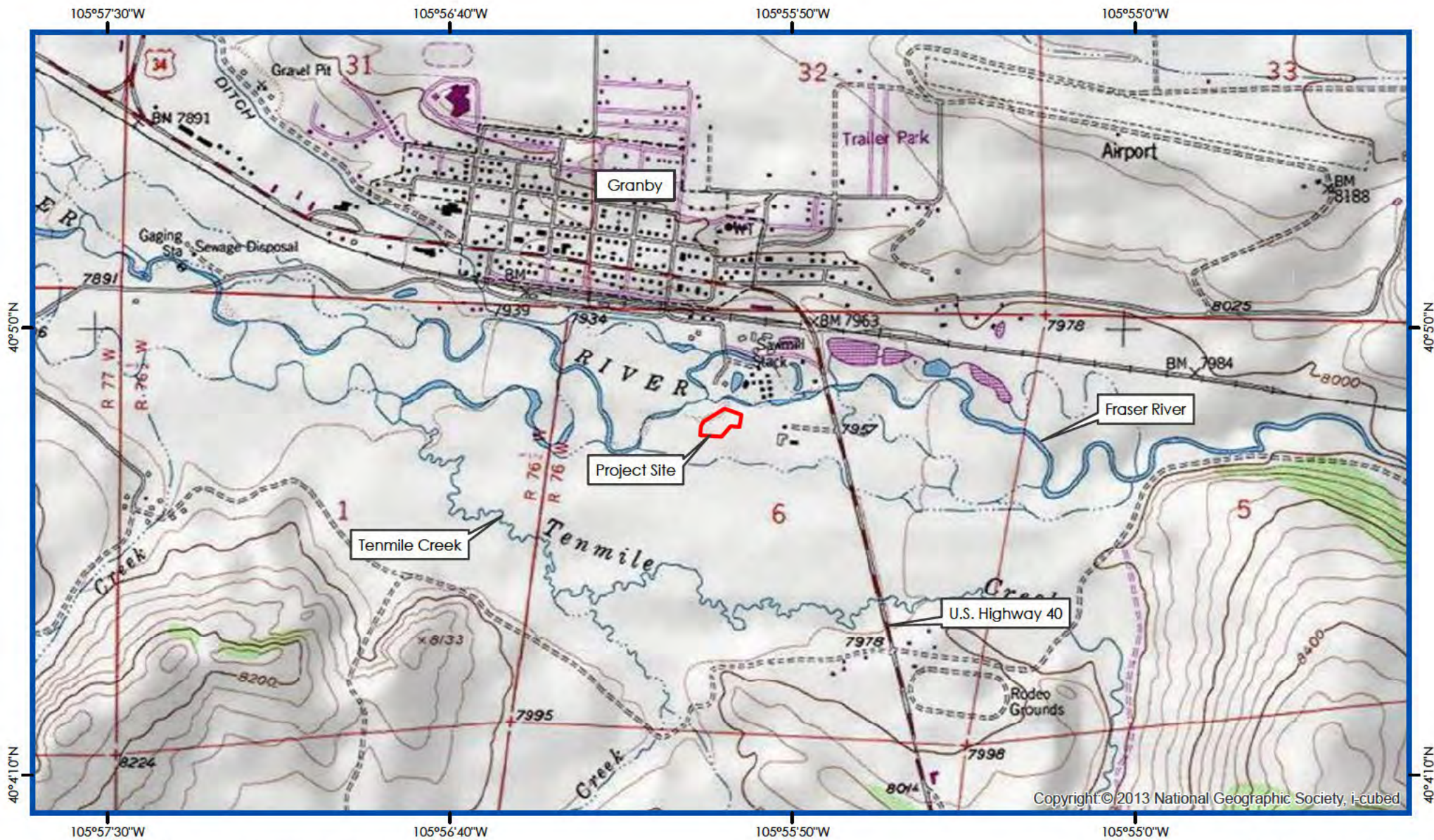
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. **USACE National Regulatory Viewer, National Wetland Inventory Map. Assessed on November 6, 2023.**
  - b. **USACE National Regulatory Viewer, Hillshade Map. Assessed on November 6, 2023.**
  - c. **USACE National Regulatory Viewer, Digital Elevation Model Map. Assessed on November 6, 2023.**
  - d. **USACE National Regulatory Viewer, Slope Map. Assessed on November 6, 2023.**
  - e. **Google Earth Imagery (Aerial Photographs taken in October 1999, October 2005, March 2006, August 2007, September 2010, October 2013, September 2016, and August 2019).**
  - f. **November 6, 2023, USDA, Natural Resources Conservation Service, Web Soil Survey (<https://websoilsurvey.sc.egov.usda.gov/app/WebSoilSurvey.aspx>),**
  - g. **April 2023, Wetland Delineation Report, prepared by Birch Ecology.**
  - h. **June 2024, Wetland E Memo, prepared by Birch Ecology.**
10. OTHER SUPPORTING INFORMATION. **In conclusion, three wetlands (Wetland B, Wetland D, and Wetland E) are located within the review area, as shown in Enclosure 1. These wetlands have no surface connection to a water of the**

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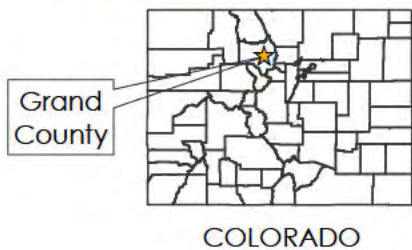
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**United States and therefore these resources have been determined to not be waters of the United States. There are other resources (Wetland A and Wetland C) in the review area, but these resources were not evaluated under this Approved Jurisdictional Determination.**





BASE: USGS 7.5' Hygiene Quadrangle, Colorado



#### LEGEND

Project Boundary



1:24,000

0 600 1,200 2,400

Feet

**Figure 1. Project Location Map**  
**Village at Riverside**

APRIL 2023



**Figure 5. AJD Wetland Map  
Village at Riverside  
Granby, Colorado**

**LEGEND:**

-  Wetlands for AJD Review
-  Other Delineated Wetlands
-  Contour Lines
-  100-Year Floodplain
-  Culvert
-  Property Boundary



Date: April 2023  
Contour Interval = 1 ft  
Scale: 1 in = 50 ft

Wetland flagging was surveyed by  
Tim Shenk Land Surveying  
of Granby, CO.

