



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

August 14, 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) ,¹ SPA-2024-00307

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. SUMMARY OF CONCLUSIONS.

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.

- 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. **“Highway Wetland (100)” is not a water of the United States**

- ii. **“Fraser River Wetland (200)” is 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 88 FR (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. **The review parcel (review area) is 2.2 acres, and is adjacent to United States Highway 40, centered at latitude 39.9338°, longitude -105.7921°, within the township of Fraser, in Grand County, Colorado.**

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. **The Colorado River, beginning at the 5th Street Bridge located in Grand Junction, Colorado is the closest Traditional Navigable Water (TNW). This is approximately 160 aerial miles away from the review parcel.⁵**

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. **“Fraser River Wetland (200)” directly abuts the Fraser River, with a continuous surface connection located outside of the review area. The Fraser River conveys relatively permanent flows to the Colorado River at a location approximately 20 miles northwest of the review area. The Colorado River has a Strahler stream order of nine (9) from its confluence with the Roaring Fork River to its confluence with the Green River. Within that reach, the Colorado River intersects the**

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.

boundary between the states of Colorado and Utah at a location approximately 183 aerial miles to the southwest of the review area.

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**

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.

- f. Adjacent Wetlands (a)(4): **“Fraser River Wetland (200)” is a 0.04-acre palustrine scrub-shrub (PSS) wetland and has a continuous surface connection to the Fraser River ((a)(3) water).**

- 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).

-- “Highway Wetland (100)” is a 0.06-acre PSS wetland. The hydrology supporting the wetland is mainly from snowmelt and runoff from the highway. The wetland is depressional and there is not a significant slope or defined flow path connection between the wetland and the Fraser River (an (a)(3) water). The wetland doesn’t have a continuous surface connection to any jurisdictional water, based on a desktop survey resources (USACE National Regulatory Viewer, 2024, Google Earth aerial photographs taken in 2019, 2015, 2011, 2005, 1999, USDA NRCS Web Soil Survey, 2024, and information provided by the agent ([REDACTED]). “Highway Wetland (100)” is surrounded by uplands and is located approximately 284 feet west of the Fraser River adjacent wetlands.

- 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. **Google Earth Imagery dated September 1999, October 2005, September 2011, October 2015, September 2019. Accessed on August 5, 2024.**

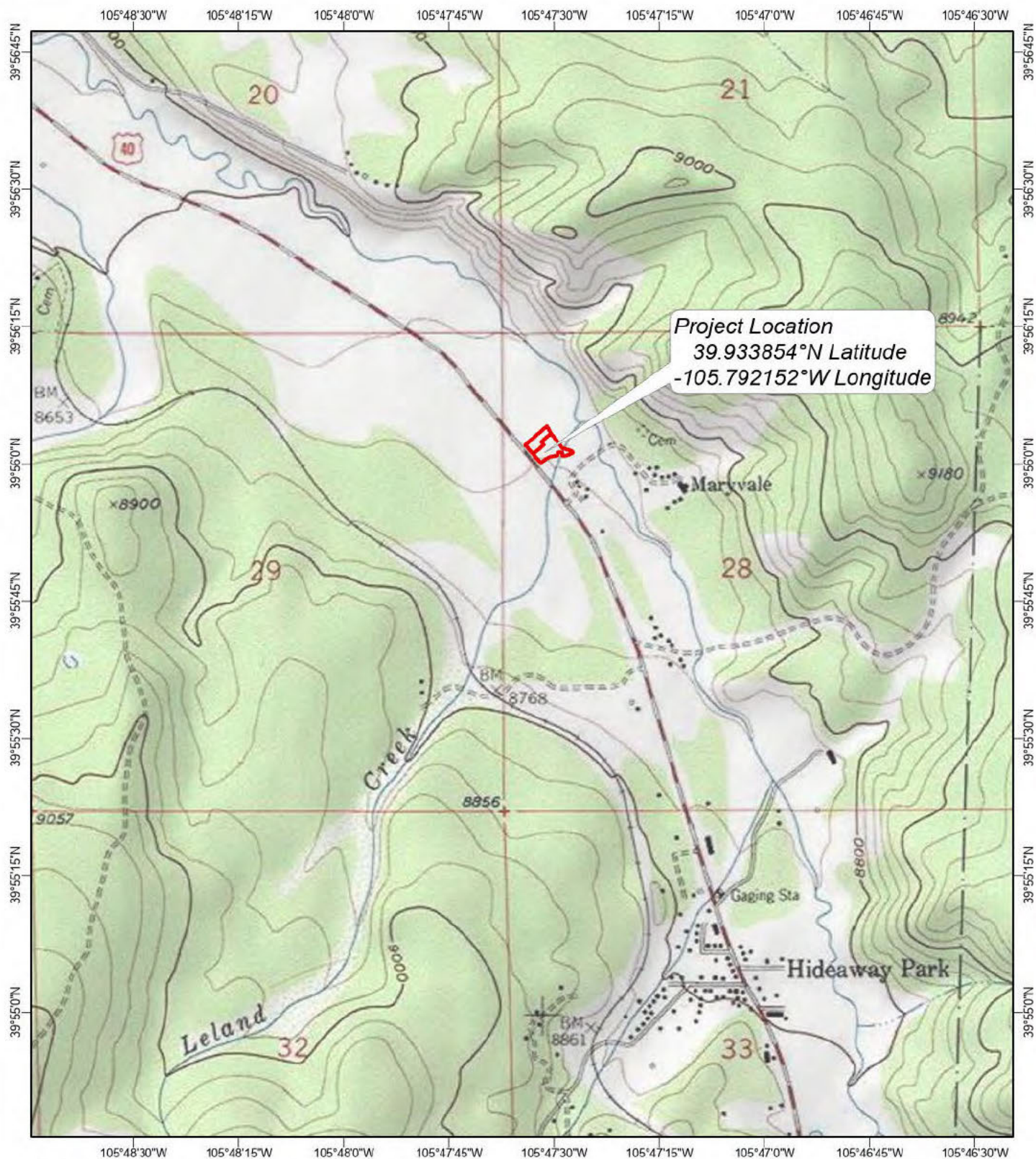
⁸ 88 FR 3004 (January 18, 2023)

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- b. **USACE National Regulatory Viewer, Hillshade Maps. Accessed August 5, 2024.**
- c. **USACE National Regulatory Viewer, National Hydrology Data Map. Accessed August 5, 2024.**
- d. **USACE National Regulatory Viewer, National Wetland Inventory Map. Accessed August 5, 2024.**
- e. **July 2024, Wetland Delineation Report with photographs, prepared by [REDACTED]**
- f. **USDA, Natural Resources Conservation Service, Web Soil Survey (<https://websoilsurvey.sc.egov.usda.gov/app/WebSoilSurvey.aspx>). Accessed on August 5, 2024.**

10. **OTHER SUPPORTING INFORMATION. In conclusion, two wetlands (“Fraser Wetland (200)” and “Highway Wetland (100)” are located within the review area. “Fraser Wetland (200)” has a continuous surface connection to the Fraser River located outside of the review area (33 CFR 328.3(a)(4)). “Highway Wetland (100)” has no surface connection to a water of the United States and therefore this resource has been determined to not be a water of the United States because it does not meet one or more categories of waters of the United States under the 2023 Rule as amended.**



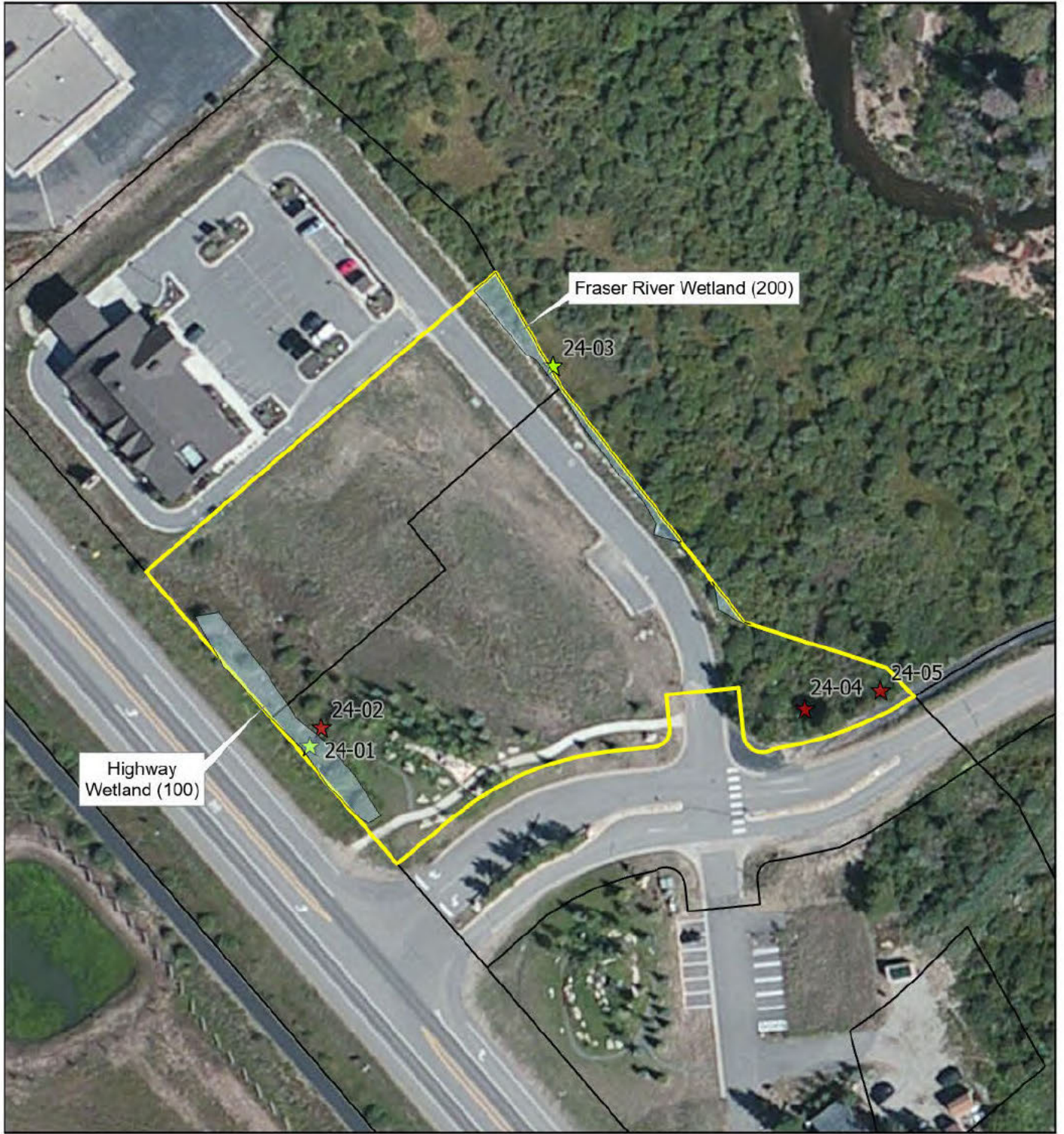
BASE: USGS 7.5' Fraser, Colorado Quadrangle
Grid Lat/Long WGS 1984



COLORADO



Scale: 1:24,000
1 inch equals 2,000 feet



BASE: ESRI Imagery Clarity

- Wetlands
- ★ Wetland Data Point
- ★ Non Wetland Data Point
- Parcel Boundary
- County Parcels

N

Date: July 2024
Scale: 1:1,200
1 inch equals 100 ft

Note: Wetland delineation conducted on 6/18/2024 by PeakEco and wetland flags surveyed with Trimble Geo7x and with sub-foot accuracy. Parcel boundaries obtained from Grand County.