



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT  
4735 EAST MARGINAL WAY, SOUTH BLDG 1202  
SEATTLE, WA 98134-2388

CENWS-ODR

March 27, 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination (JD) 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> NWS-2018-1114; MFR 1 of 1.

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.

1. SUMMARY OF CONCLUSIONS.

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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 Clean Water Act (CWA), and no effect on any waters covered under the Rivers and Harbors Act (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> The Corps 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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- a. List of each individual feature within the review area and the jurisdictional status of each one.
  - i. Kettle Wetland is not a water of the U.S.

## 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. \_\_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is located on an approximately 42.3-acre property located near 4301 Pioneer Way in DuPont, Pierce County, Washington (47.12 N latitude, -122.65 W longitude). The review area consists of one wetland (Kettle Wetland) in the enclosed figure dated February 13, 2024. The subject property consists of heavily mined and disturbed areas. Two previously finalized jurisdictional determinations, under reference numbers NWS-2008-911 and NWS-2018-1114, determined Kettle Wetland is not a water of the U.S. Kettle wetlands, such as the subject wetland, exist within glacially carved, static depressions, and do not tend to change quickly as other types of wetlands might. Therefore, it is appropriate to consider findings from the previous jurisdictional determinations.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Puget Sound is a listed navigable waterway on the Navigable Waters of the United States in Washington State dated December 31, 2008.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Hydrology within the review area would not flow offsite.

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6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: N/A

7. SECTION 404 JURISDICTIONAL WATERS:

- a. Traditional Navigable Waters (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 area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b). 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).

Kettle Wetland: Kettle Wetland is 1.78-acre palustrine scrub shrub wetland. The wetland has no outlet, and no surface water leaves the unit. The nearest known feature, Sequalitchew Creek, which is located approximately 0.5-mile north of the

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<sup>5</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.

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wetland. The soil within the review area is mapped Spanaway gravelly sandy loam, which is a somewhat excessively drained non-hydric soil. The soils micro component is listed as Spana, which is also considered a non-hydric soil. According to the delineation, “Kettle Wetland soil characteristics were the same during the 2007 and 2017 investigations. Soils consist of 16 to 20 inches of black peat above a layer of lower permeability silty clay. The peat contained low chroma (less than 1) with slightly decomposed wood fragments indicative of extended periods of inundation.” While Kettle Wetland is mapped by the Flood Emergency Management Agency as Zone A, these areas have 1% annual chance of flooding and a 26% chance of flooding over 30 years. Again, the wetland also does not have an outlet and no surface water leaves the unit. Kettle Wetland is located approximately 0.6-mile from the Puget Sound. Kettle Wetland does not abut, is not separated by natural berm or bank, nor does Kettle Wetland have a discrete conveyance connection to, an (a)(1), (a)(2), or (a)(3) water. Based on the above information, Kettle Wetland does not have a continuous surface connection downstream and is not a water of the U.S.

## 9. DATA SOURCES.

- a. Delineation report, dated March 2021, submitted on behalf of the applicant: Pioneer Aggregates Mine Expansion (South Parcel) Kettle Wetland Delineation Report
- b. U.S. Geological Survey national hydrography dataset web tool accessed March 6, 2024.
- c. U.S. Geological Survey topo viewer accessed March 6, 2024.
- d. U.S. Fish and Wildlife Service National Wetland Inventory accessed March 6, 2024.
- e. Washington Department of Fish and Wildlife Fish Passage web tool accessed March 6, 2024.
- f. Corps Approved Jurisdictional Determinations, NWS-2008-911 and NWS-2018-1114

## 10. OTHER SUPPORTING INFORMATION.

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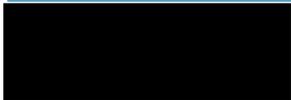
The datasheets in the wetland delineation are dated from the year 2007. The Corps generally does not accept wetland delineations beyond 5-years due to changes potential changes in the hydrologic conditions. This area has not been developed and the only changes on-site have been due to the gravel mining operation. The consultant has also received previous Approved Jurisdictional Determinations from the Corps. The consultant has continued to verify at the same six test plots, but have not been updating the forms, only verifying that all information is correct. This has been done at least 3 times formally since 2007 and many more times informally. This was done in 2017 and 2019.

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.

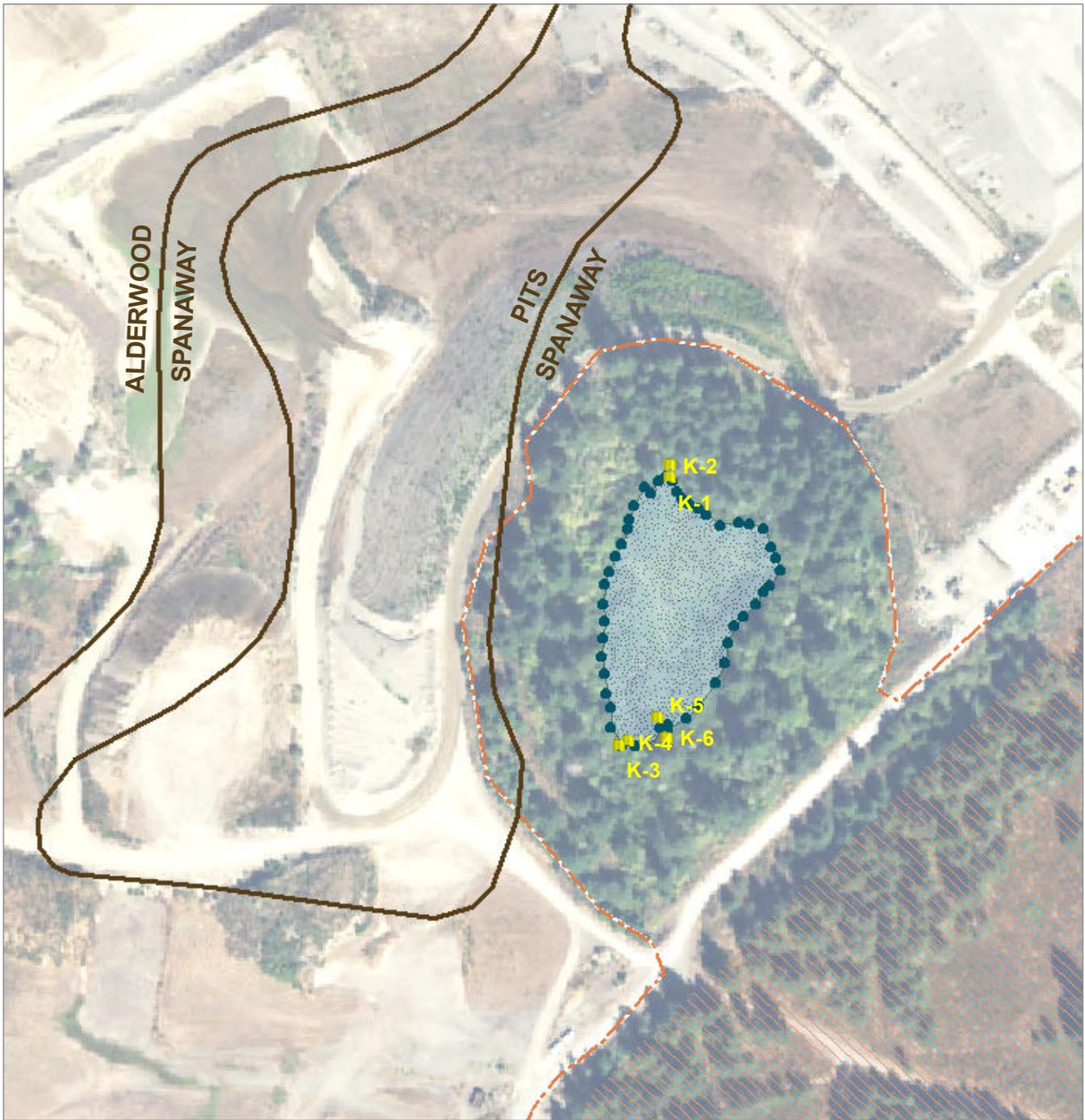
On March 26, 2024, EPA concurred with the Corps determination.



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**Figure 1**  
**Vicinity Map**  
Kettle Wetland Delineation Report  
Pioneer Aggregates South Parcel Project

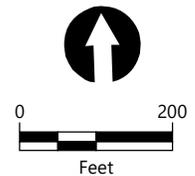


**LEGEND:**

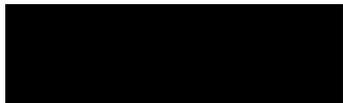
-  South Parcel Expansion Area (188 ac)
-  South Parcel Mineral Resource Area Expansion
-  Mining Limits (existing and proposed, 620 ac)
-  Pioneer Aggregates Property (791 ac)
-  Data Plot
-  Wetland Boundary Flag
-  Kettle Wetland
-  Sequalitchew Creek

**NOTES:**

Imagery: 2017 USDA NAIP



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**Figure 2**  
**Kettle Wetland Map**  
 Kettle Wetland Delineation Report  
 Pioneer Aggregates South Parcel Project