



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

CENWS-Seattle District

May 13, 2025

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> NWS-2024-617

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 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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- 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. Ditch 1, non-jurisdictional
  - ii. Wetland B, non-jurisdictional
  - iii. Wetland C, non-jurisdictional
  - iv. Wetland D, non-jurisdictional

## 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)
- d. "Memorandum To The Field Between The 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)

- 3. REVIEW AREA. The 1.42-acre review area is located at unincorporated Snohomish County, Washington (Lat: 47.83251, Long: -121.96499). The review area consists of a sloped road with steep banks on either side. The review area is bounded by the continuance of North High Rock Road to northeast and southwest, and forested areas to the northwest and southeast. Ditch 1 flows southwest through the review area; two wetlands were identified on a raised plateau south of Ditch 1.
- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Skykomish River is approximately four miles downstream and west of the review area. The Skykomish River is listed as a navigable waterway on

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the Navigable Waters of the United States in Washington State list dated December 31, 2008.<sup>5</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Water flows approximately 660 feet southwest through the open channel of Ditch 1 and outlets to a palustrine wetland (off-site wetland) located south of North High Rock Road at 47.831687, -121.966315. Water in Ditch 1 also drains to catch basins located within the ditch; these catch basins drain to a buried pipe that parallels the ditch alignment and also outlets to the aforementioned off-site wetland. This off-site wetland drains to Riley Slough. Riley Slough drains approximately 1.8 miles northeast to Haskell Slough. Haskell Slough drains approximately 0.5 miles northeast to the Skykomish River.
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.

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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.

<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.

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

- 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).

Ditch 1: Ditch 1 is an approximately 660 foot long feature in the central portion of the review area. Ditch 1 does not have a defined bed and bank. No water was observed in the ditch during a site visit on 19 February 2025 during normal precipitation conditions according to data collected at the Monroe precipitation tracking station; there was approximately 1 inch of rain at the site within the 5 days prior to the site visit. ditch is sparsely vegetated with Himalayan blackberry (*Rubus armeniacus* - FAC), reed canarygrass (*Phalaris arundinacea* - FACW), and (*Athyrium cyclosorum* – FAC) with a rocky bottom. Ditch 1 does not

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

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experience flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that Ditch 1 does connect downstream to an (a)(1) water, but it does not meet the relatively permanent standard and is therefore not a water of the US.

Wetland B: Wetland B is an approximately 750 square foot palustrine wetland located approximately 12-19 feet higher in elevation above Ditch 1 in the southeastern portion of the review area. A steep slope separates Wetland B from Ditch 1. Wetland B has no visible outlet or surface water connection to any other aquatic feature. The soil within and around Wetland B is mapped by the USDA Web Soil Survey as Tokul-Winston gravelly loams which are not considered hydric soils. Wetland B is located approximately 40 feet southeast of Ditch 1. Wetland B is not located within a floodplain. Wetland B does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland B does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland C: Wetland C is an approximately 800 square foot palustrine wetland located approximately 10-16 feet higher in elevation above Ditch 1 in the southeastern portion of the review area. A steep slope separates Wetland C from Ditch 1. Wetland C has no visible outlet or surface water connection to any other aquatic feature. The soil within and around Wetland C is mapped by the USDA Web Soil Survey as Tokul-Winston gravelly loams which are not considered hydric soils. Wetland C is located approximately 9 feet southeast of Ditch 1. Wetland C is not located within a floodplain. Wetland C does not abut (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland C does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland D: Wetland D is an approximately 1,200 square foot palustrine wetland located in the central portion of the review area. Ditch 1 flows into and out of Wetland D. Three catch basins within Wetland D drain water to an underground pipe that flows to the southwest as described in Section 5 above. The soil within and around Wetland D is mapped by the USDA Web Soil Survey as Tokul-Winston gravelly loams which are not considered hydric soils. The wetland is sparsely vegetated with Himalayan blackberry (*Rubus armeniacus*), reed canarygrass (*Phalaris arundinacea* - FACW), and (*Athyrium cyclosorum* – FAC). Wetland D does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland D does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

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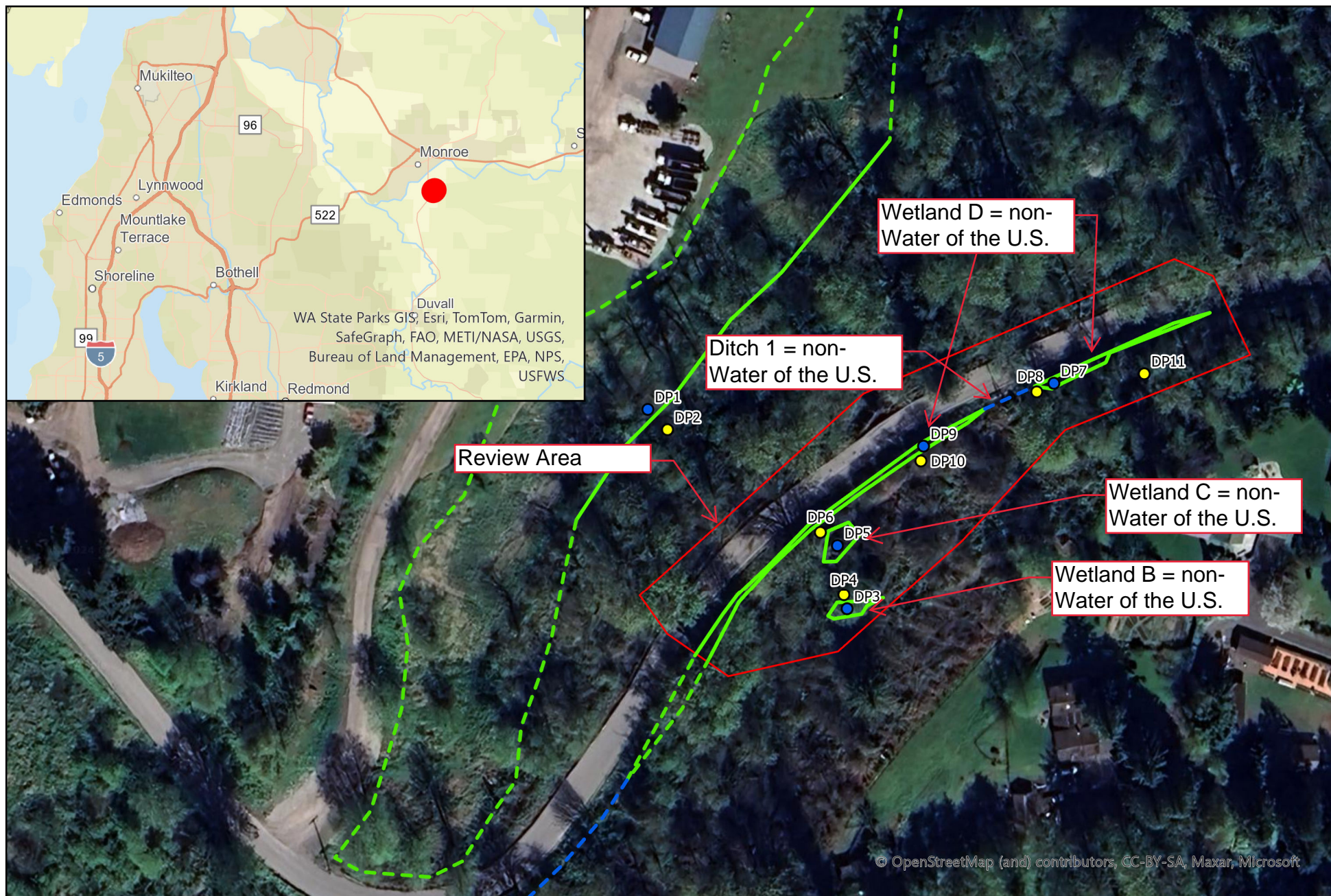
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Site visit on 19 February 2025
- b. Snohomish County Drainage Inventory mapping tool accessed on 2/25/2025
- c. USGS TopoViewer accessed on 2/25/2025 at <https://ngmndb.usgs.gov/topoview/viewer/>
- d. National Wetland Inventory accessed on 2/25/2025 at <https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper>
- e. Washington DNR LiDAR Portal accessed on 3/15/2025 at <https://lidarportal.dnr.wa.gov/>
- f. USGS National Hydrography Dataset accessed on 3/15/2025 at [https://hydro.nationalmap.gov/arcgis/rest/services/NHDPlus\\_HR/MapServer](https://hydro.nationalmap.gov/arcgis/rest/services/NHDPlus_HR/MapServer)
- g. USDA Web Soils Survey accessed on 3/15/2025 at <https://websoilsurvey.nrcs.usda.gov/app>
- h. WETS table data taken from NRCS Field office Technical guide accessed on 4/24/2025 at <https://efotg.sc.egov.usda.gov/#/>

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.





## Figure 1

Review Area  
North Highrock Road  
Snohomish County, WA  
2024.06.27

## Legend

- Upland Data Point
- Wetland Data Point
- Estimated Wetland Boundary
- Delineated Wetland Boundary
- Review Area
- Ditch

0 75 150 Feet

