



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT  
5950 LA PLACE CT., SUITE 160  
CARLSBAD, CALIFORNIA 92008

CESPL-RGS

April 8, 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> SPL-2024-00684<sup>2</sup>

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>3</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>4</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>5</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

---

<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> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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.

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. Hicks Canyon Wash from Culver Drive to 1,650 feet east of Yale Drive (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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The Review Area is 13.5 acres, with center coordinates of 33.722558, -117.759276. See Exhibit 1.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Hicks Canyon Wash flows to the Pacific Ocean, a territorial sea.<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Hicks Canyon Wash flows to Peters Canyon Wash, which in turn drains to San Diego Creek, which outlets to the Pacific Ocean.

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

---

<sup>6</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>7</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.

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>8</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

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

---

<sup>8</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.

within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>9</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).

Hicks Canyon Wash is generally either unvegetated or dominated by FACU species throughout the Review Area. The Review Area contains one small, approximately 0.10-acre (160-foot) area where water pools and where FACW species (*Salix goodingii* and *Cyperus incolucratus*) are present (Exhibit 1, Figure a; Exhibit 2, photos 1 and 2). This limited area of pooling is not representative of the overall Review Area as it only represents 2.5 percent of the Review Area length.

In addition to evaluating flow characteristics for portions of Hicks Canyon Wash within the 1.2-mile Review Area, we also considered indicators of relatively permanent flow throughout the larger, same Strahler stream order reach. The overall Strahler stream order reach of Hicks Canyon Wash ("Reach 4" in Exhibit 3) is approximately 2.3 miles long, which is inclusive of the 1.2-mile Review Area. The overall reach of Hicks Canyon Wash is characterized by a lack of hydrophytic vegetation, no observations of aquatic macroinvertebrates, moderate slope, rooted upland plants dispersed within the streambed, algal growth only at a downstream storm drain outlet, little compositional or density differences in vegetation on the banks vs adjacent uplands, and lack of riffle-pool sequences (see photos in Exhibit 2).

Based on the above information, the Corps has determined that more than 50% of the larger, 2.3-mile reach of Hicks Canyon Wash exhibits non-relatively permanent flow characteristics. As a consequence, the 1.2-mile portion of Hicks Canyon Wash within the Review Area is considered to be a non-jurisdictional, non-relatively permanent water. Hicks Canyon Wash does not qualify as a tributary as defined under 33 CFR 328.3(a)(3) because it flows only in direct response to precipitation and lacks visible presence of hydrology throughout most of the same Strahler stream order reach. This determination is made consistent with the Strahler stream order-based evaluation approach stated in the January 2023 rule preamble (88 FR 3086) and recognized in jurisdiction policy memorandum MVS-2023-00288.

---

<sup>9</sup> 88 FR 3004 (January 18, 2023)

CESPL-RGS

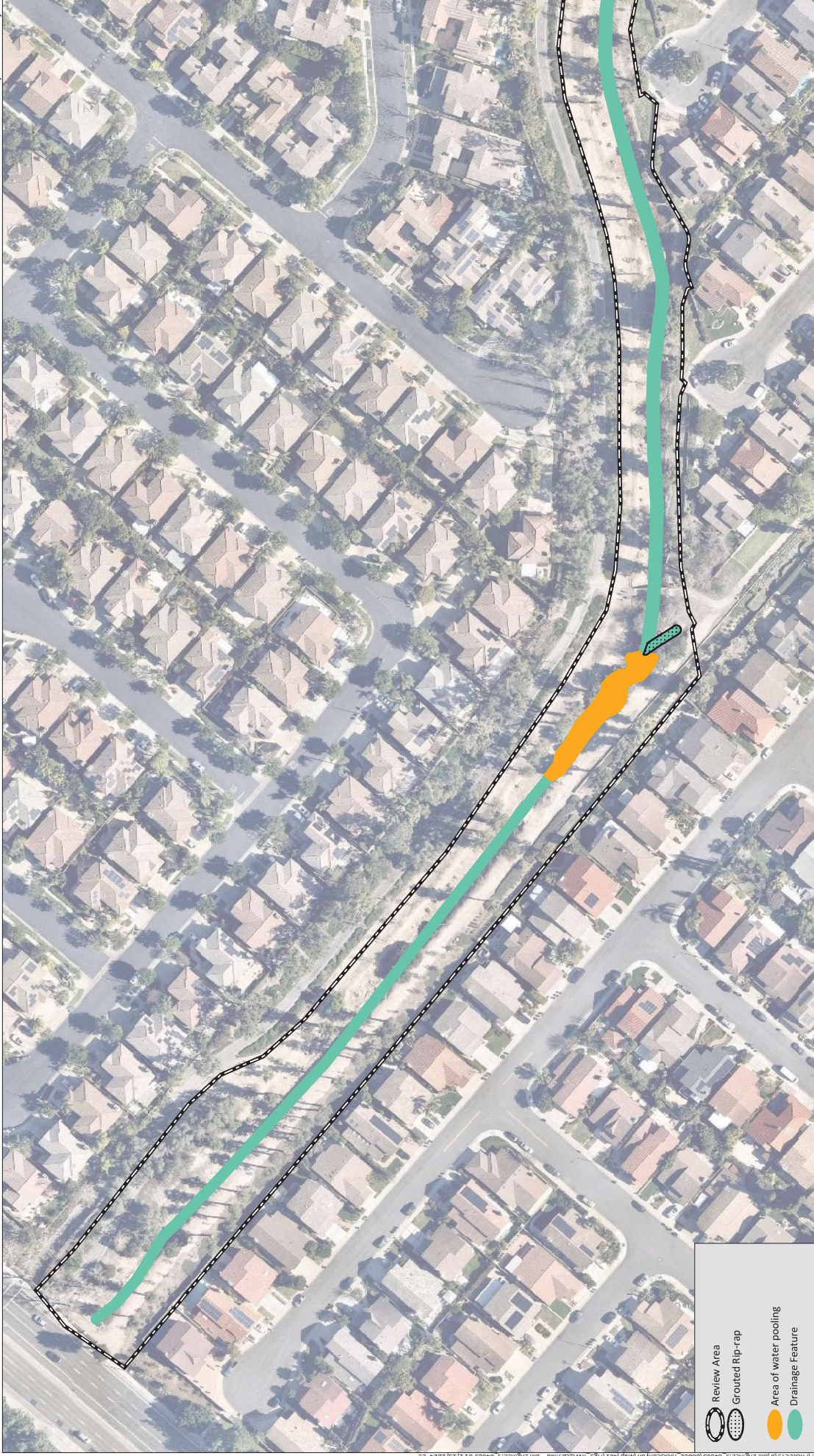
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SPL-2024-00684

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. Photo point map/Review Area map and photos of the Review Area (Exhibits 1 and 2, respectively)
  - b. Strahler stream order map showing Hicks Canyon Wash relative to higher/lower order drainages in the San Diego Creek watershed (Exhibit 3).
  - c. Email correspondence from applicant's consultant, dated February 13, 2025 and March 25, 2025 detailing observations of flow duration indicators in the Review Area and characterizing the extent of the same Strahler stream order reach.
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.



# Exhibit 1

Hicks Canyon Wash Project



**HELIX**  
Environmental Planning

**Exhibit 1 - Review Area**  
Figure a





Exhibit 1 - Review Area

Figure b





Source: Aerial (Nearmap, 2023)



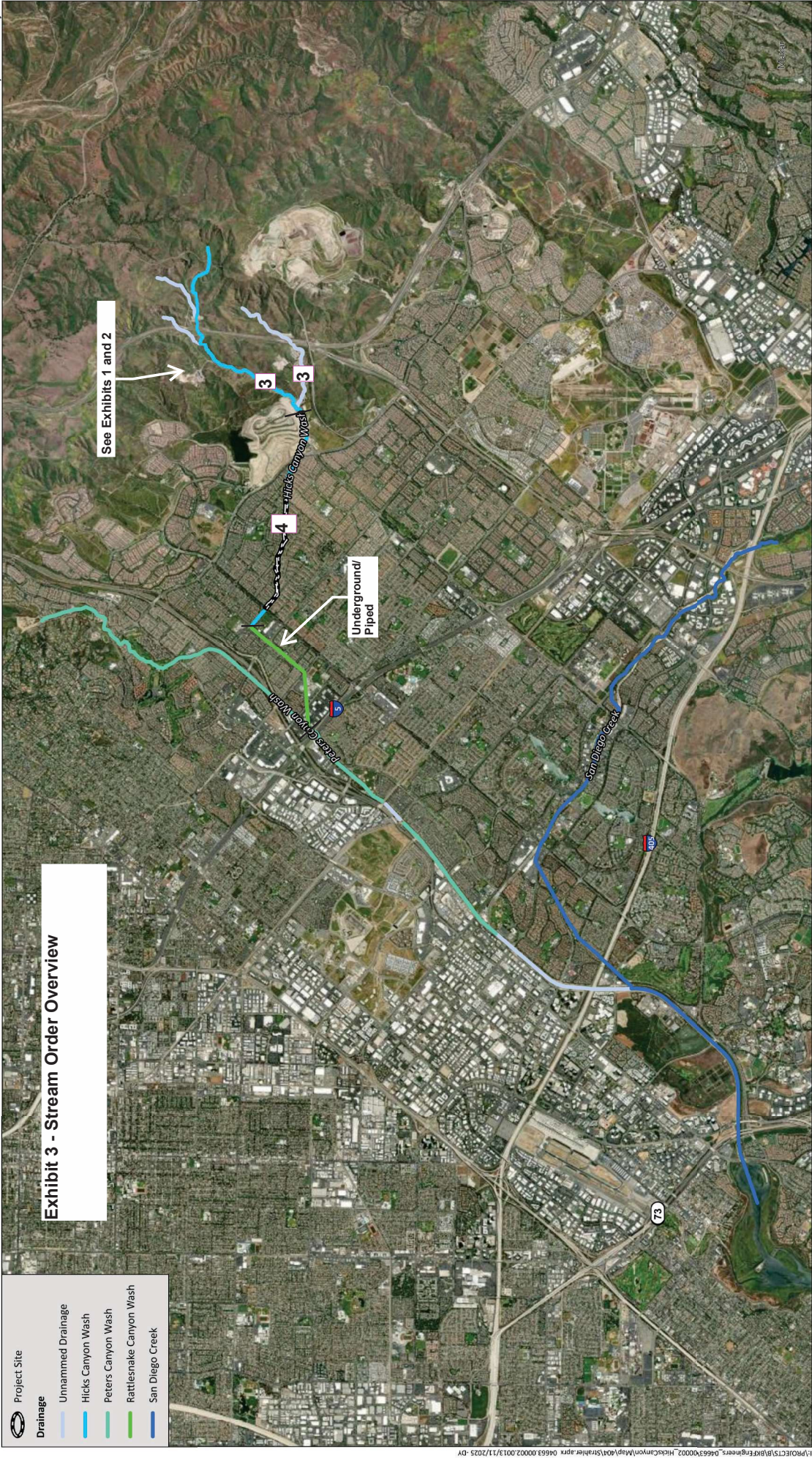


Exhibit 1 - Review Area



# Exhibit 3

Hicks Canyon Wash Project



Source: Aerial (Maxar, 2024).

Hicks Canyon Wash Strahler