

# REGULATORY PROGRAM BRIEF

**Michael S Jewell**

Chief, Regulatory Division

US Army Corps of Engineers, Sacramento District

17 SEPTEMBER 2020



US Army Corps of Engineers  
**BUILDING STRONG®**



# Overview

## ■ Area of Responsibility

- ▶ CA Central Valley and Sierra Nevada, NV, UT, and CO Western Slope
- ▶ Highly diverse area climatically, topographically, politically
- ▶ Challenges: endangered species, cult. resources, Tribes, public interest

## ■ Execution

- ▶ 800-1000 permit decisions (95% by General Permit)
- ▶ 500 jurisdictional determinations
- ▶ 50 enforcement actions resolved

## ■ Organization

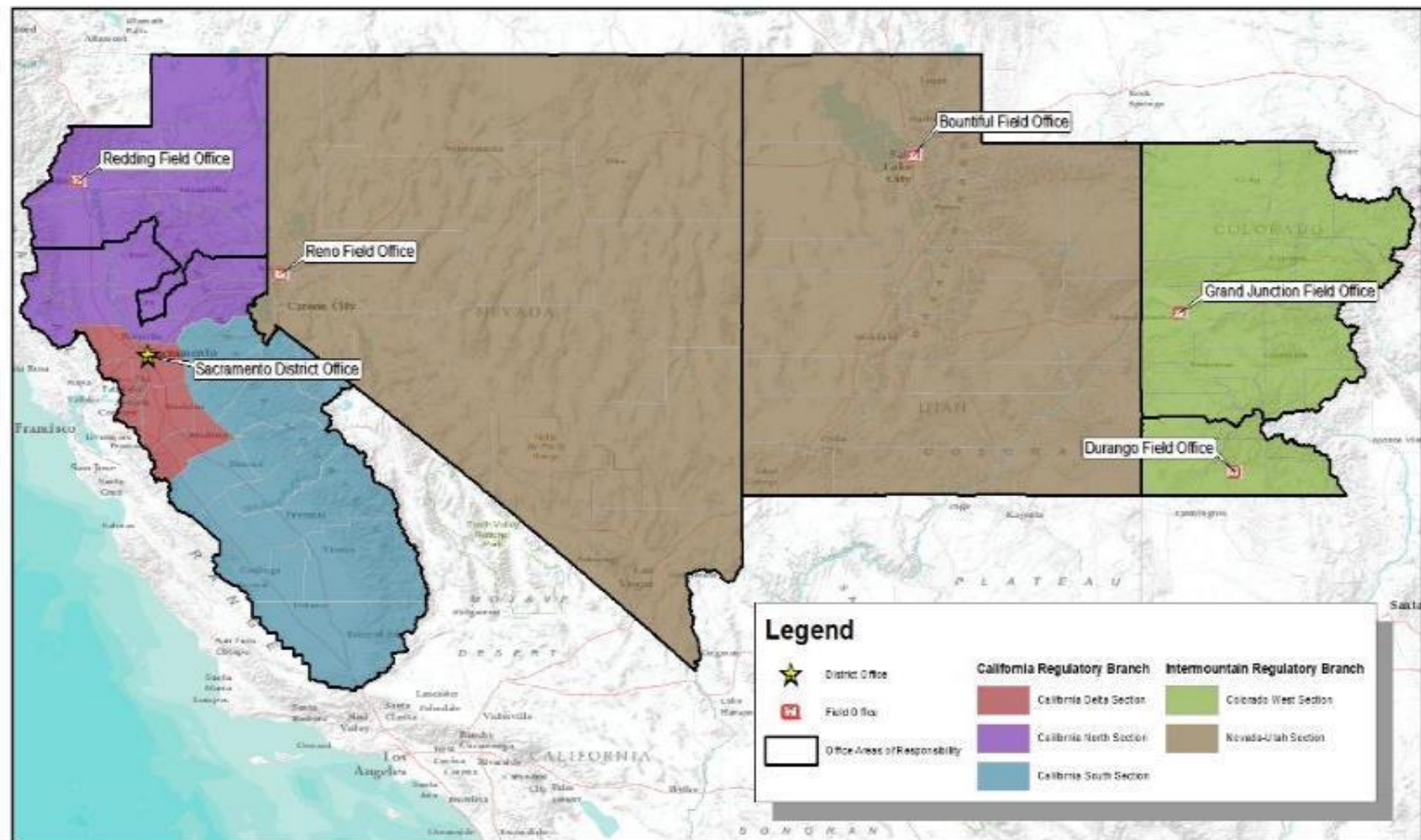
- ▶ 50 people in 6 offices across 4 states
- ▶ Report directly to District Commander

## ■ Funding

- ▶ General Regulatory Functions (GRF)
- ▶ Section 214 of Water Resources Development Act of 2000







# US Army Corps of Engineers Sacramento District

Regulatory Branches, Sections, Offices, and Areas of Responsibility

**BUILDING STRONG®**

# Program Update

## ■ National

- ▶ Navigable Waters Protection Rule
- ▶ CWA Section 401 Rule
- ▶ National Environmental Policy Act Regulations
- ▶ Proposed 2020 Nationwide Permits (33 CFR Part 330)

## ■ Regional/State

- ▶ Proposed NHPA 106 Programmatic Agreement with UT SHPO
- ▶ Reauthorization of General Permit 10
  - Minimal Impact Activities Authorized in Conjunction with the State of Utah's Stream Alteration Program
  - Expires Feb 2021
  - Public Notice in Oct 20



**BUILDING STRONG®**

# Customer Resources

- **HQUSACE Website** (<https://www.usace.army.mil/>)
  - ▶ National program info
  - ▶ Final and pending permit actions and Approved JDs
  - ▶ Link to National Customer Service Survey
- **Sacramento District Website**  
(<https://www.spk.usace.army.mil>, click on “Permits”)
  - ▶ Submit new jurisdiction requests and permit applications electronically
  - ▶ Latest News
  - ▶ Public Notices - sign up!
  - ▶ Regulatory Program Workshop materials
  - ▶ Link to National Customer Service Survey
- **Regulatory Program Workshops**
  - ▶ Next: October 16 in Sacramento



Michael Jewell  
(916) 557-6605  
[michael.s.jewell@usace.army.mil](mailto:michael.s.jewell@usace.army.mil)



**BUILDING STRONG®**



# REQUESTING A JURISDICTIONAL DETERMINATION NAVIGABLE WATERS PROTECTION RULE

James T. Robb  
Wetlands Specialist /  
Jurisdiction SME  
Sacramento District  
17 September 2020



Railroad Tie Drive, Provo River, 1898. Courtesy of Utah State Historical Society



Bridge Across Horker Cut Looking Upstream March 1952



BATHING AT GARFIELD, GREAT SALT LAKE



US Army Corps  
of Engineers®

*The views, opinions and findings contained in this presentation are those of the author and should not be construed as an official Department of the Army position, policy or decision, unless so designated by other official documentation.*



# JURISDICTION INFO NEEDS



- ☐ All aquatic resources are given a unique name
- ☐ Maps that include the location of all aquatic resources labeled with their unique name
- ☐ Maps and unique names that DO NOT indicate jurisdiction status
- ☐ Map and describe flow path to the TNW
- ☐ Ditch history
- ☐ Stream flow characterization WITH DOCUMENTATION

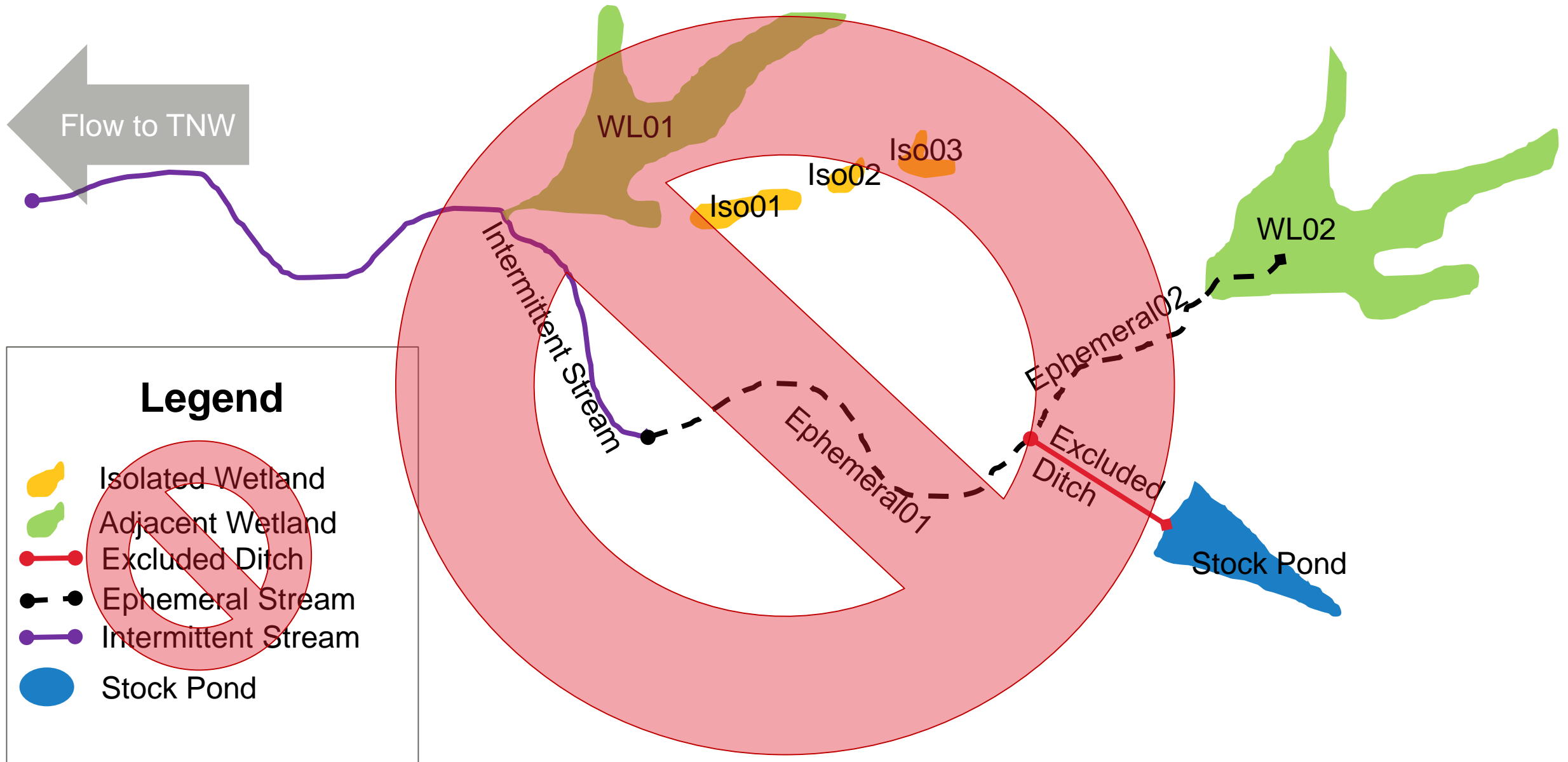


Jurisdiction-indicative names and  
map symbols result in avoidable  
revision-caused delays



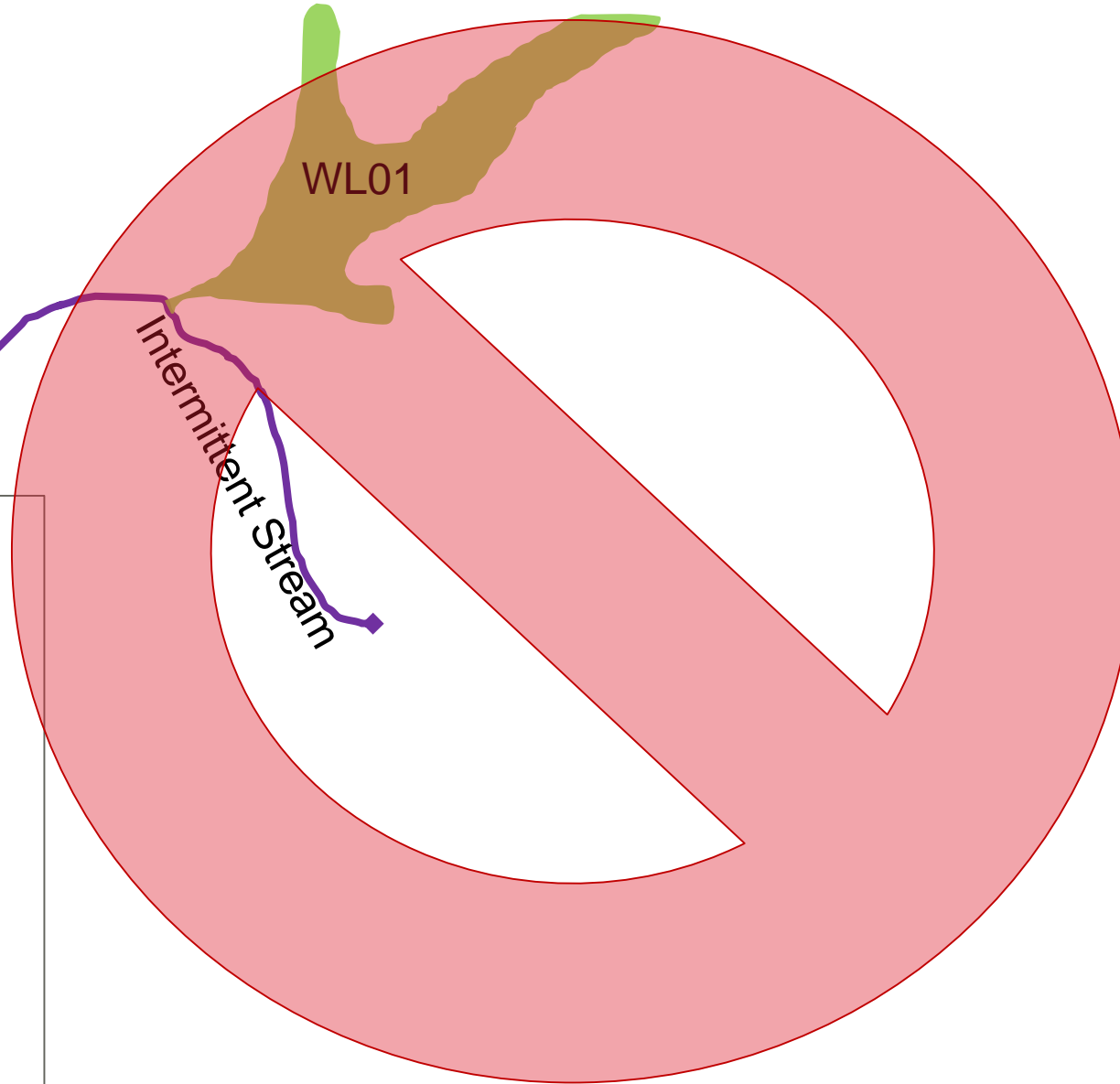
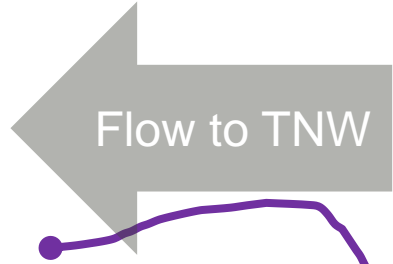


# DO NOT INDICATE JURISDICTION ON MAP





# ALL AQUATIC RESOURCES SHOULD BE ON THE MAP



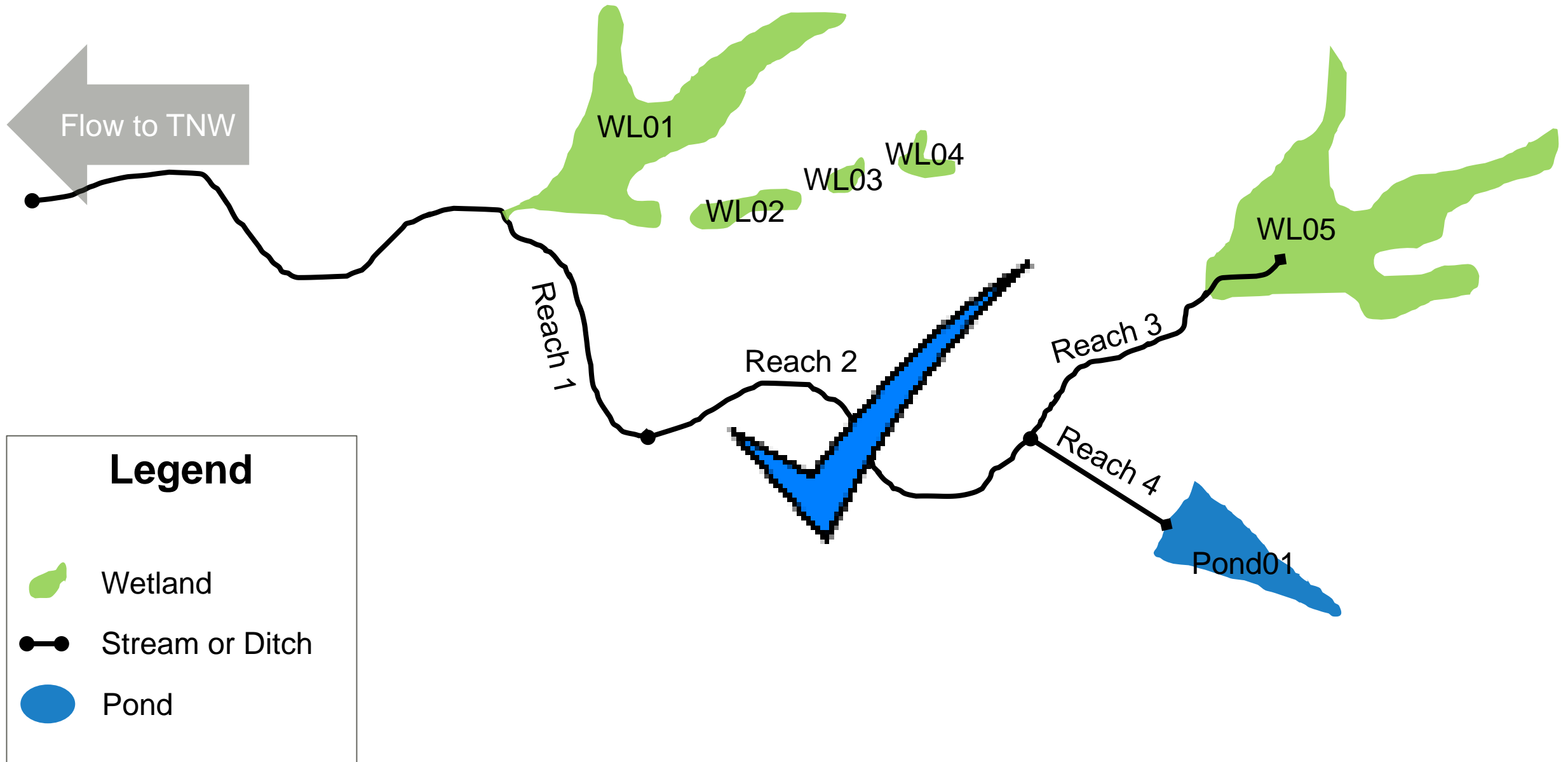
## Legend

-  Adjacent Wetland
-  Intermittent Stream

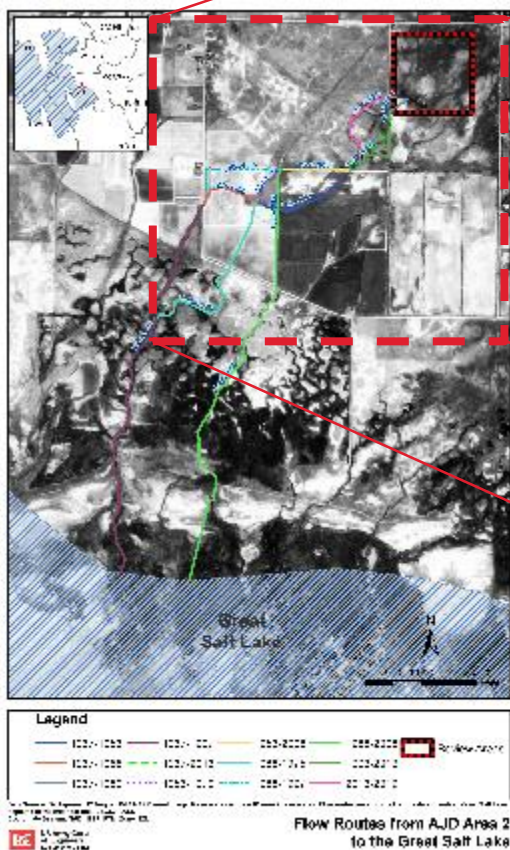


# DO NOT INDICATE JURISDICTION ON MAP

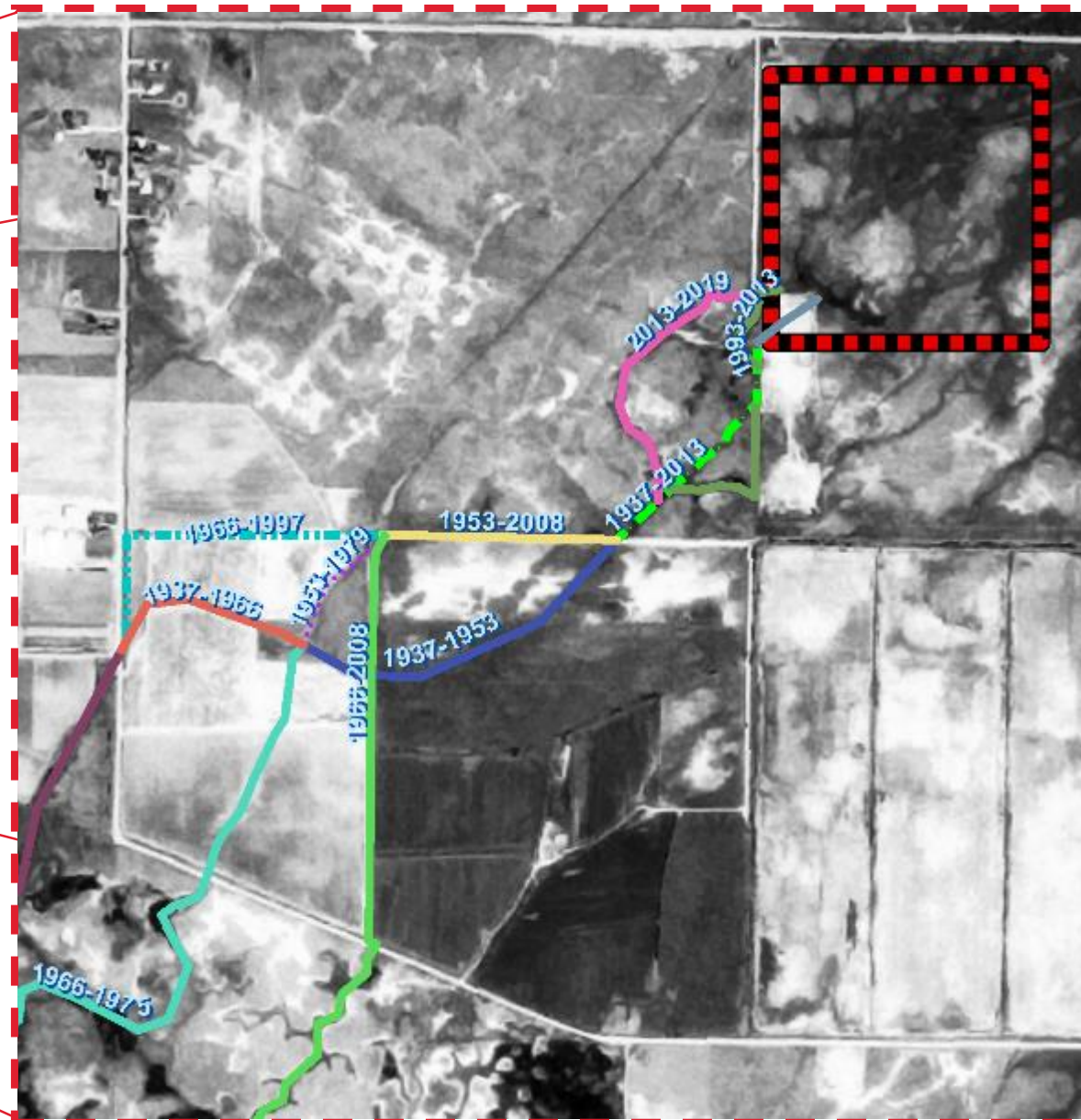
6







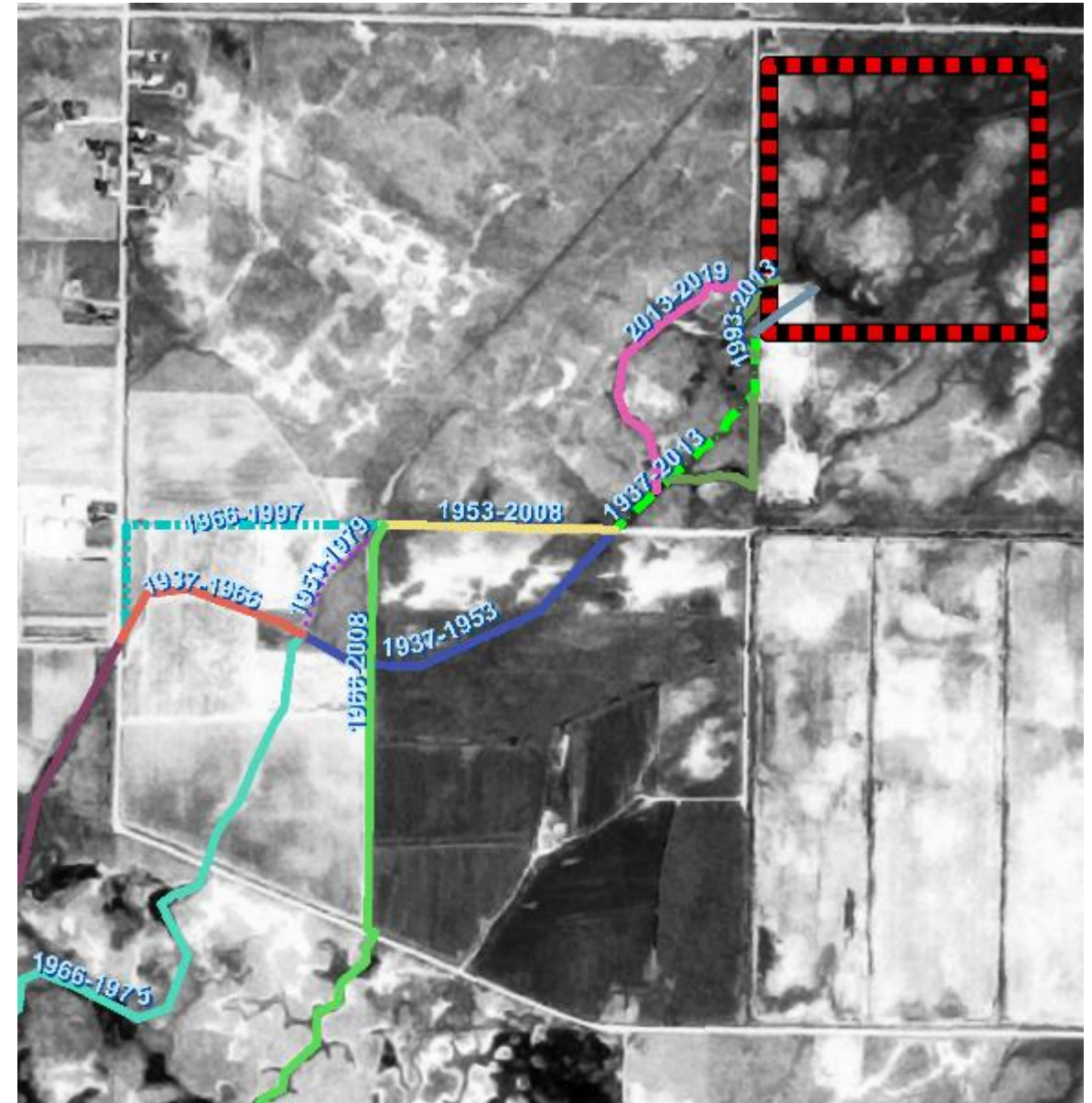
If you believe a break in jurisdiction (85 FR 22276-80, 21 April 2020) occurs somewhere along the flow path, describe the break, its location, and why you believe it severs jurisdiction.





# DITCHES

- ☐ When was the ditch constructed?
- ☐ What was there when the ditch was constructed?
  - Constructed in a tributary?
  - Relocate a tributary?
  - Constructed in an adjacent wetland?



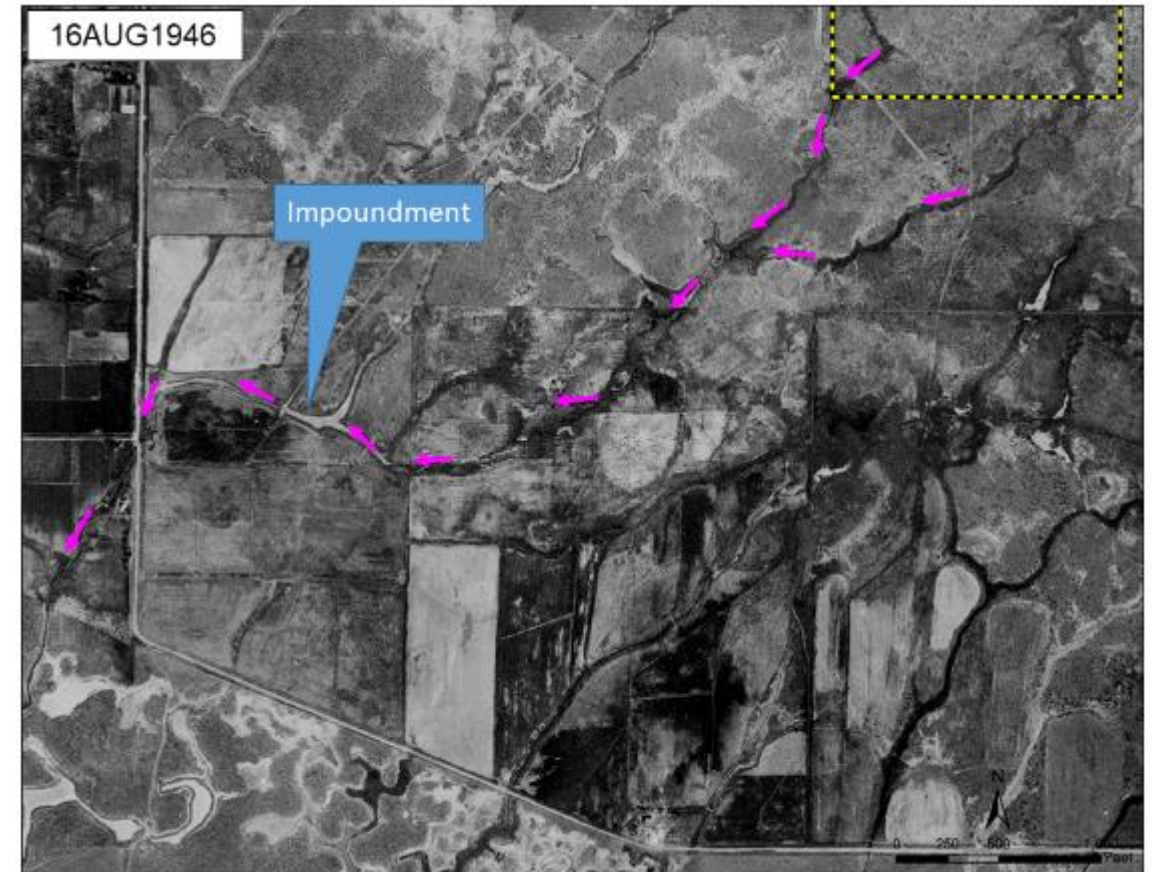
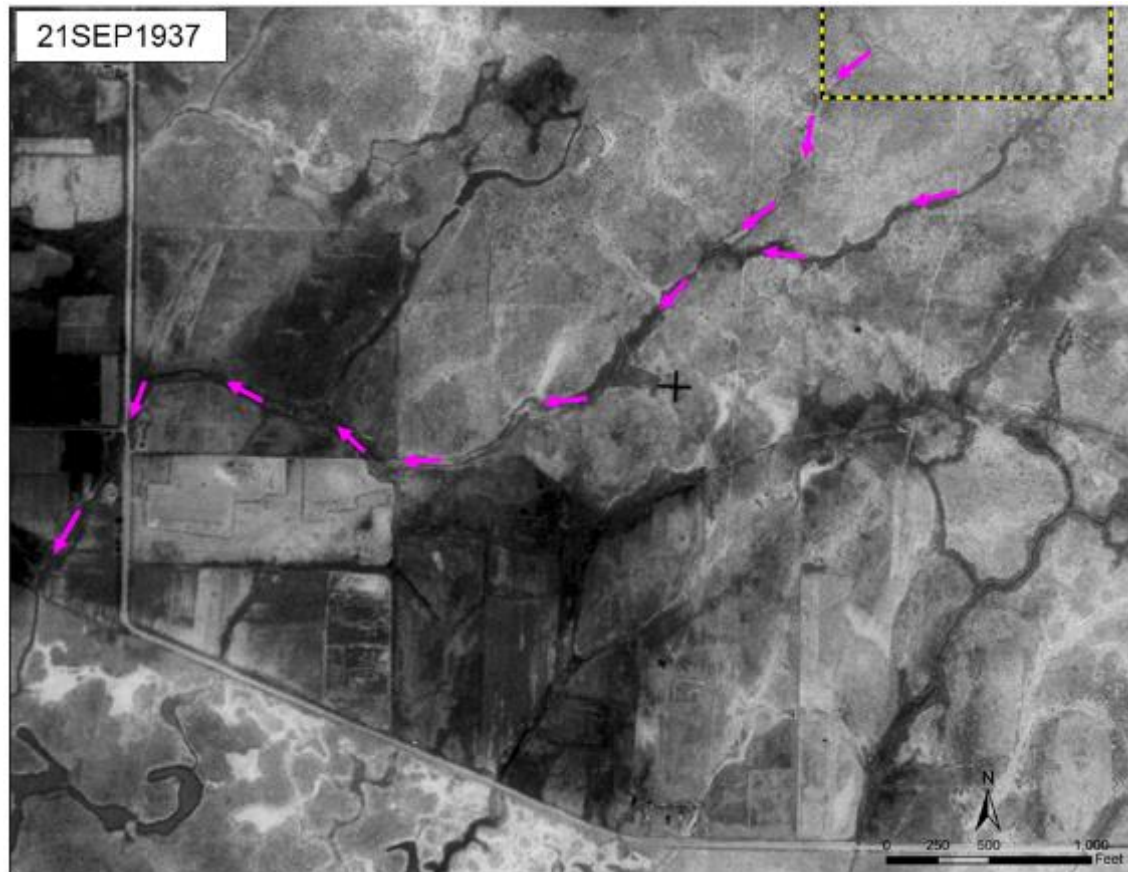




# DITCH HISTORY - SOURCES



Historic aerial imagery from EarthExplorer (<https://earthexplorer.usgs.gov/>)

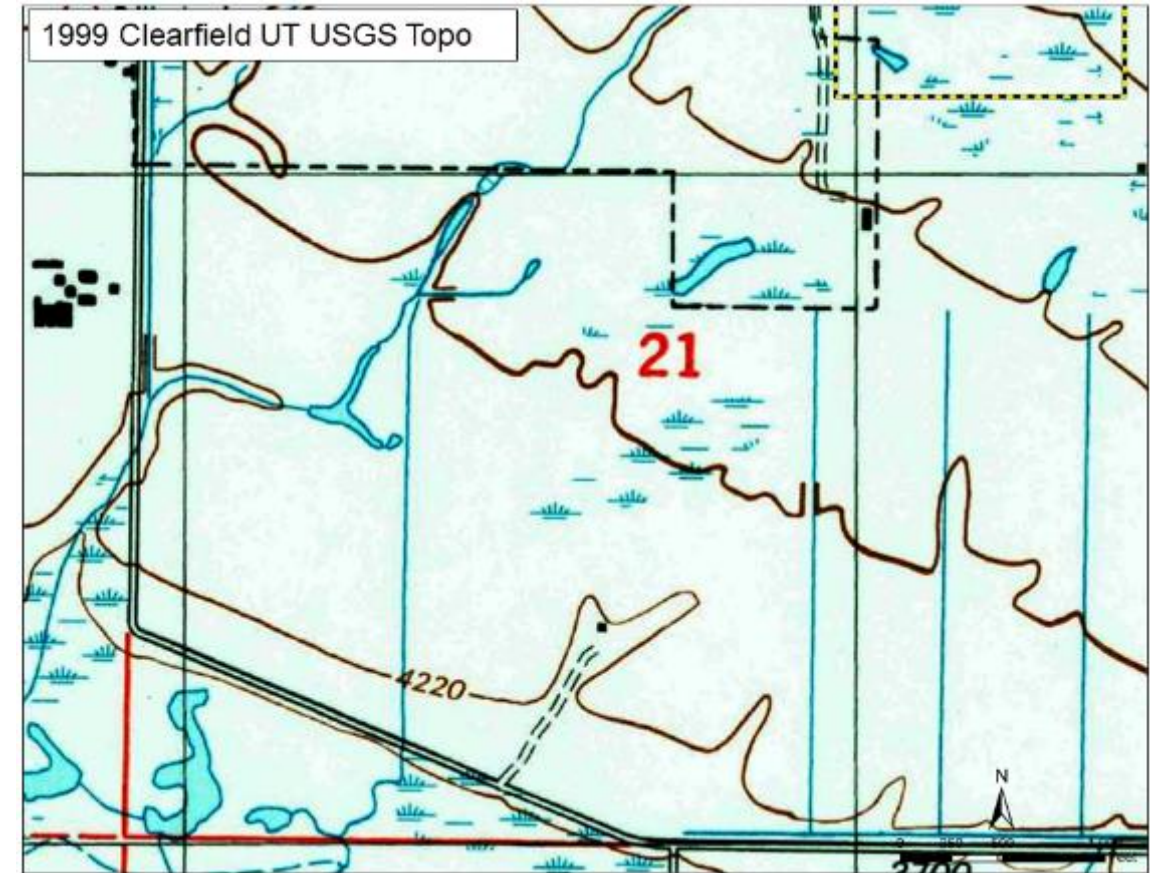
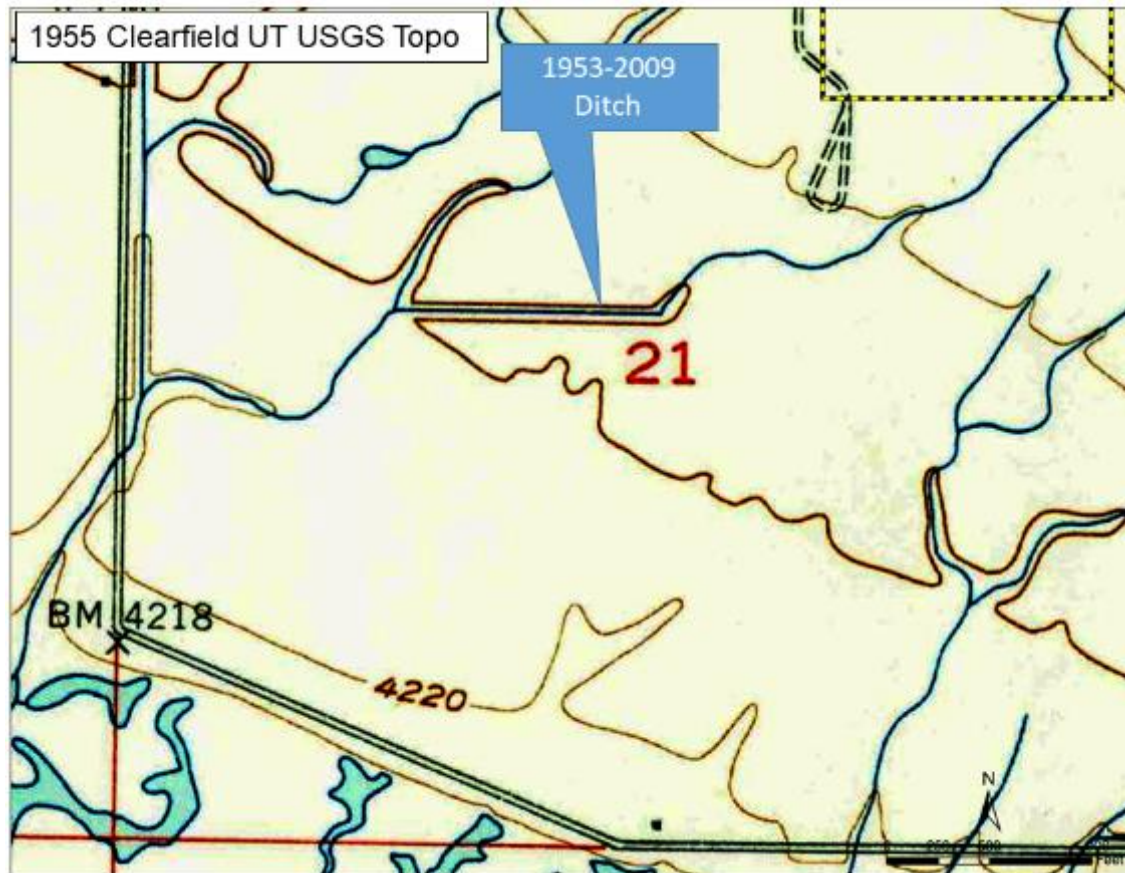




# DITCH HISTORY - SOURCES



Historic maps from TopoView (<https://ngmdb.usgs.gov/topoview/>)





# DITCH HISTORY - SOURCES

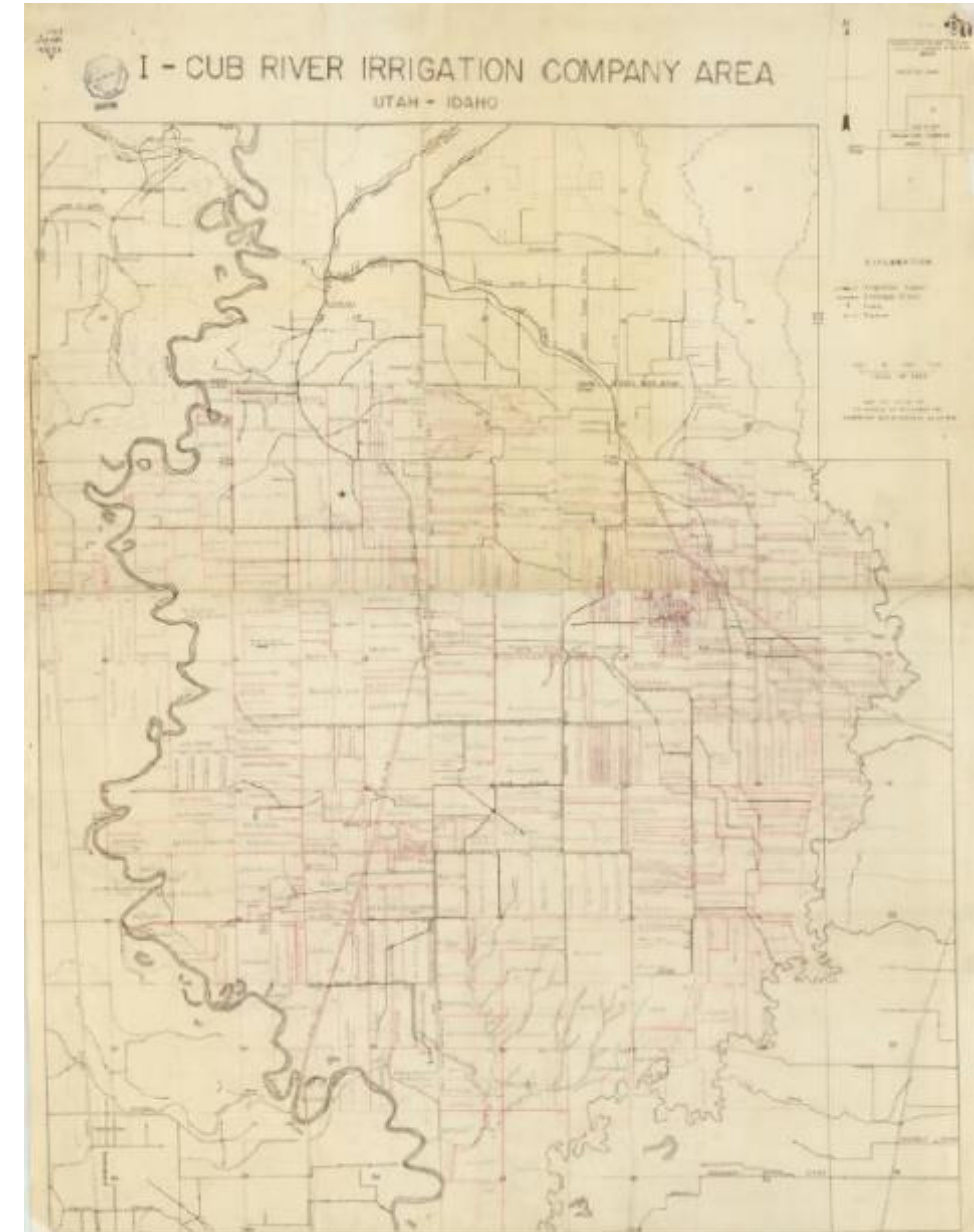


## ☐ Historical Documents

- Water rights
- Irrigation district documents
- Water Master Reports
- Court cases
- Newspapers

## ☐ Other sources

- Local history
- Local storm water managers
- Water quality agencies
- USDA
- Local soil and water conservation districts
- Zoning / Planning
- Interviews with previous landowners





**EPHEMERAL, INTERMITTENT, PERENNIAL**





# DIRECT OBSERVATION SCENARIO



- ☐ Direct observation of water in the channel during the early dry season
- ☐ The last rainfall, 1/10 inch, was 12 days before the direct observation
- ☐ 3-month antecedent precipitation was drier than the range of normal
- ☐ The Palmer Drought Severity Index indicates the region was in moderate drought

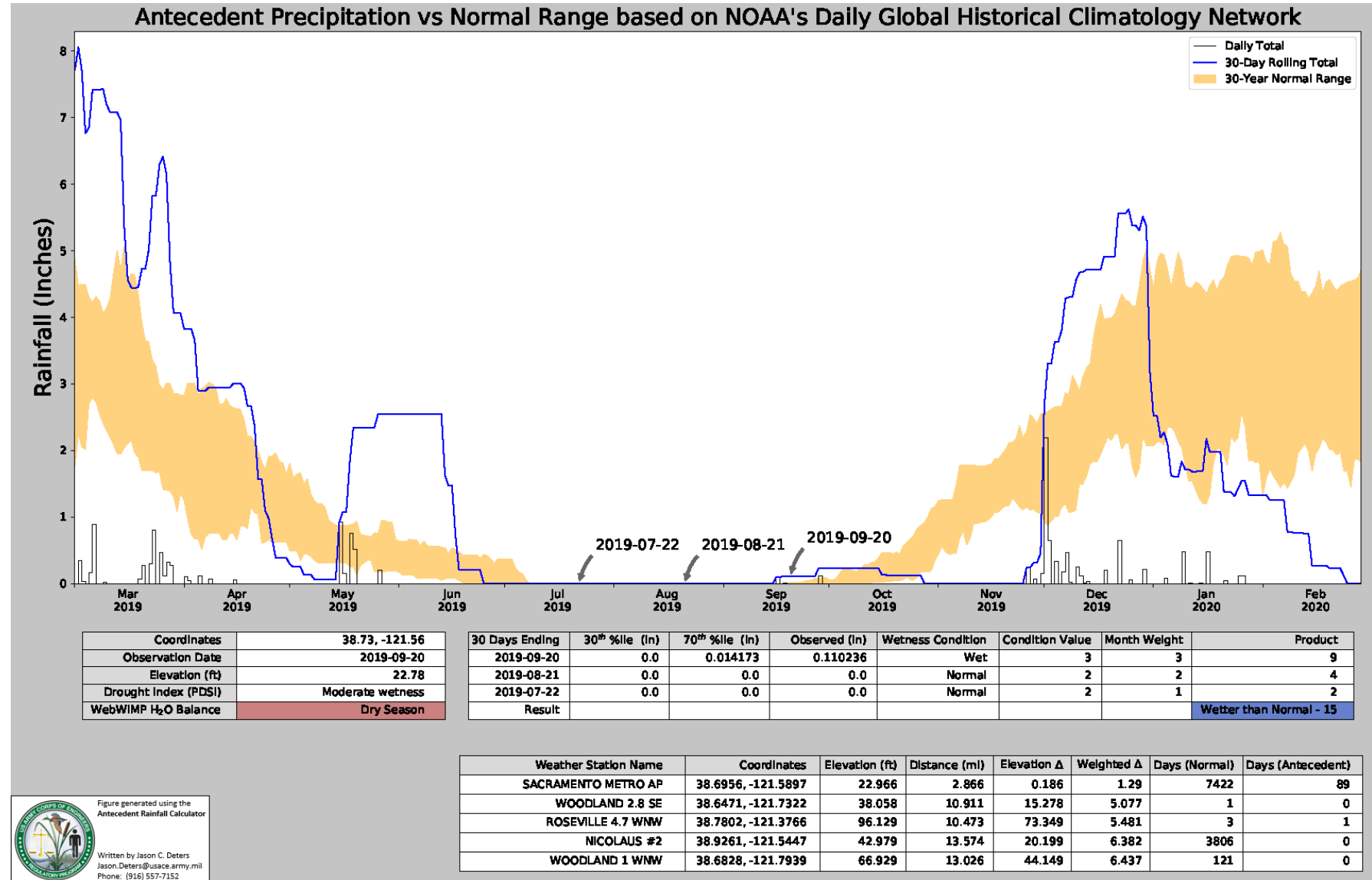




# DIRECT OBSERVATION SCENARIO



- ❑ Direct observation of a dry channel during the late dry season
- ❑ The last rainfall, 1/10 inch, was 5 days before the direct observation
- ❑ 3-month antecedent precipitation was wetter than the range of normal
- ❑ The Palmer Drought Severity Index indicates the region was not in drought



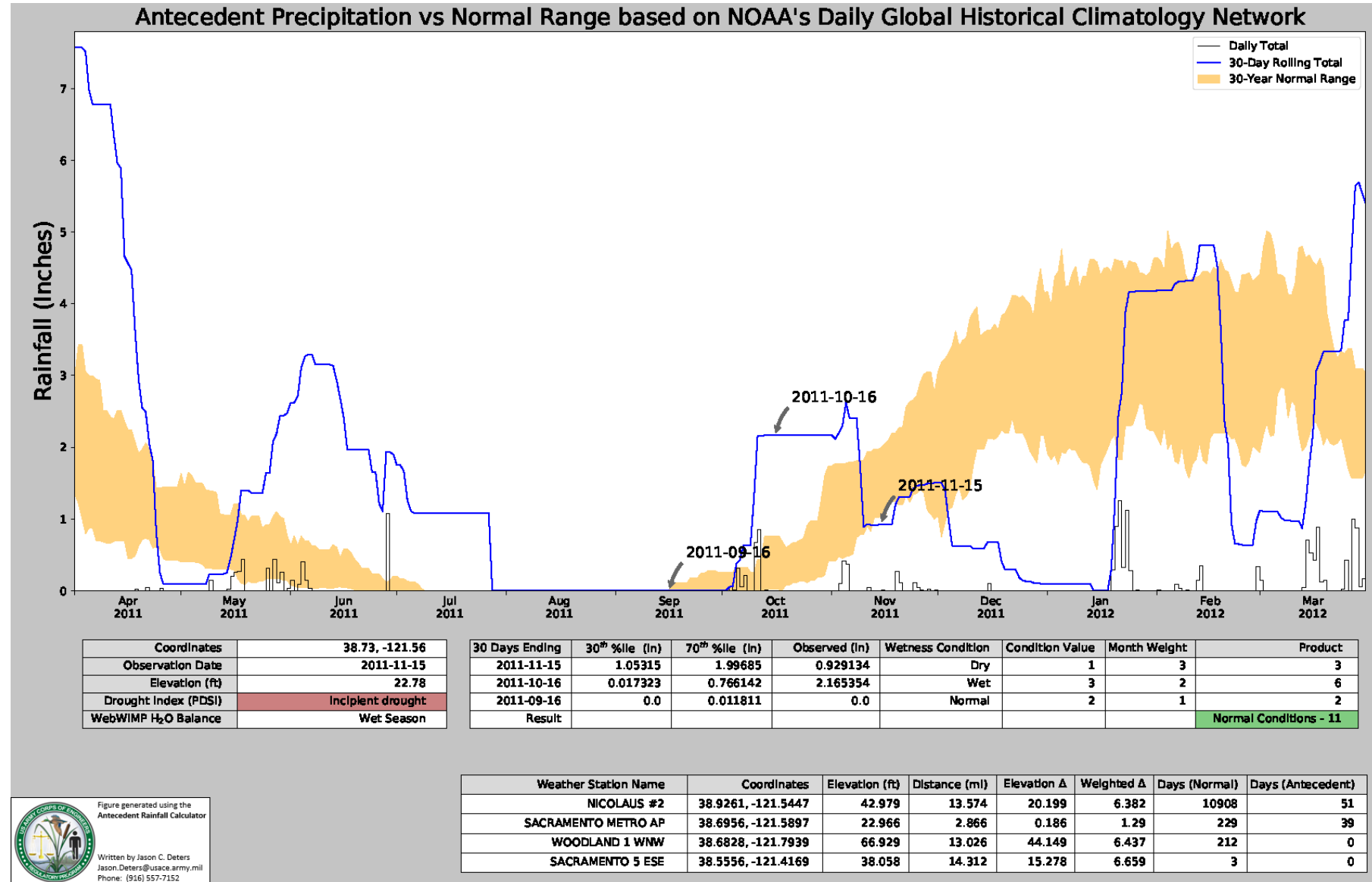


# DIRECT OBSERVATION SCENARIO

15



- ❑ Direct observation of dry channel during the early wet season
- ❑ The last rainfall, 1/10 inch, was 5 days before the direct observation
- ❑ 3-month antecedent precipitation was within the range of normal
- ❑ The Palmer Drought Severity Index indicates the region was not in drought.







# DIRECT OBSERVATION SCENARIO



- ☐ Direct observation of dry channel during the late wet season
- ☐ The last rainfall, 1/10 inch, was 3 days before the direct observation
- ☐ 3-month antecedent precipitation was wetter than the range of normal
- ☐ The Palmer Drought Severity Index indicates the region was not in drought







# DIRECT OBSERVATION SCENARIO



- ☐ Direct observation of water in the channel during the dry season
- ☐ The last rainfall, 1/10 inch, was 60 days before the direct observation
- ☐ 3-month antecedent precipitation was within the range of normal (i.e. near zero)
- ☐ The Palmer Drought Severity Index indicates the region was in mild drought
- ☐ The summer water source is excess water from upstream lawn watering





# DIRECT OBSERVATION SCENARIO



- ☐ Direct observation of water in the channel during the late wet season
- ☐ The last rainfall was two days before the direct observation
- ☐ 3-month antecedent precipitation was within the range of normal
- ☐ The Palmer Drought Severity Index indicates the region was not in drought

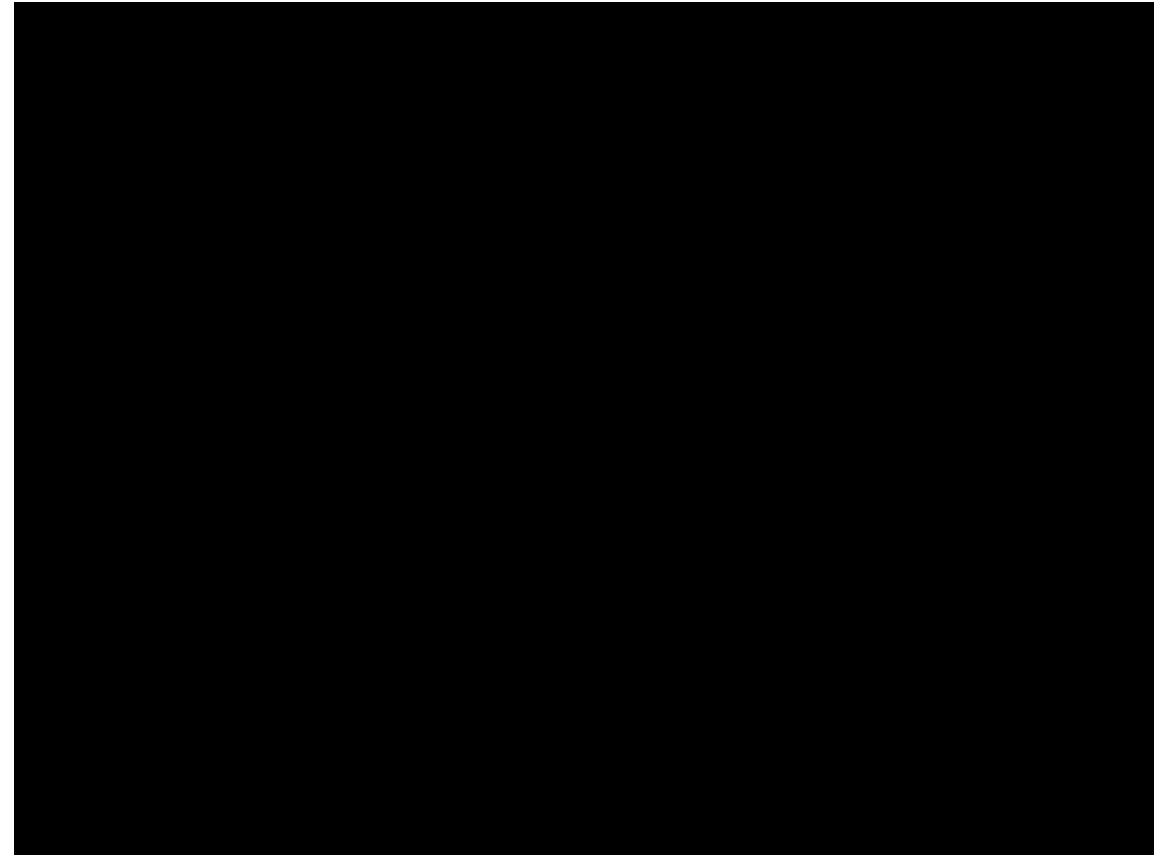




# AERIAL IMAGERY



- ☐ Observations over time using aerial imagery
- ☐ Typical year analysis (e.g. seasonality, drought, antecedent precipitation) provides context to interpret aerial imagery







# WHAT'S THE SAME



- ☐ Delineation and Verification
- ☐ RGL 16-01
- ☐ Request for Aquatic Resources Verification or Jurisdictional Determination
- ☐ Map and drawing standards
- ☐ Delineation report standards



## MORE INFO



- ❑ [Navigable Waters Protection Rule: Definition of Waters of the United States” \(85 FR 22250-22342, April 12, 2020\)](#)
- ❑ [Overview of the Navigable Waters Protection Rule – Fact Sheet](#)
- ❑ [Mapping and the Navigable Waters Protection Rule – Fact Sheet](#)
- ❑ [Implementing the Navigable Waters Protection Rule – Fact Sheet](#)
- ❑ [Rural America and the Navigable Waters Protection Rule – Fact Sheet](#)
- ❑ [“Typical Year” and the Navigable Waters Protection Rule – Fact Sheet](#)
- ❑ [Navigable Waters Protection Rule Photo Appendix](#)

### Questions about the Regulatory Program?

(916) 557-5250

CESPK-REGULATORY-  
INFO@USACE.ARMY.MIL

<https://www.spk.usace.army.mil/Missions/Regulatory.aspx>

<https://www.epa.gov/nwpr/navigable-waters-protection-rule-step-two-revise#mats>

<https://www.epa.gov/nwpr/final-rule-navigable-waters-protection-rule>

<https://www.epa.gov/nwpr/navigable-waters-protection-rule-factsheets>