

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 1/19/2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SPK-2002-25061 CORTEZ GOLD MINES

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Nevada County/parish/borough: Lander City: Beowawe
Center coordinates of site (lat/long in degree decimal format): Lat. 40.299° ° **N**, Long. -116.553° ° **W**.
Universal Transverse Mercator: 11

Name of nearest waterbody: Humboldt River

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:

Name of watershed or Hydrologic Unit Code (HUC): 16040104, 16040105, 16060004

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: January 13, 2010

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: **Established by OHWM.**

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: **The waters identified as unnamed drainage 1, 2, 3, 4, 5, 6, and 7 are intrastate isolated waters. Unnamed drainages 1, 5 and 6 drain into the large playa within Crescent Valley (HUC 16040105 south of Interstate 80). Unnamed drainages 3, 4, and 7 drain to the edge of a gravel pit within the Cortez mine. Unnamed drainage 2 drains to mine tailings.**

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs: NOT APPLICABLE

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS: NOT APPLICABLE

C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: NOT APPLICABLE

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):⁴

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
Identify type(s) of waters: .
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: **There are no fisheries of any type, there are no sand and gravel operations or any other commercial endeavor that utilizes or impacts surface waters or wetlands that would support a determination of "Significant Nexus"** .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): **3,000,000** linear feet, **2-3**width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: **16,000** acres. List type of aquatic resource: **Playa**.
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: December 15, 2009 .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .

⁴ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date):
- Previous determination(s). File no. and date of response letter: SPK-2002-25061-NO; June 25 2002.
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): USDA, BLM Final EIS for the Cortez Pipeline - January 1996.

B. ADDITIONAL COMMENTS TO SUPPORT JD: A delineation for the project area was provided to the Corps in May 2002 and a site visit was conducted on June 5, 2002. The Corps completed a previous JD in the project area and a non-jurisdictional determination letter was sent on June 25, 2002.

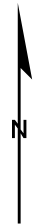
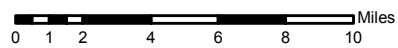
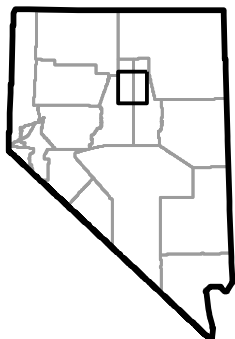
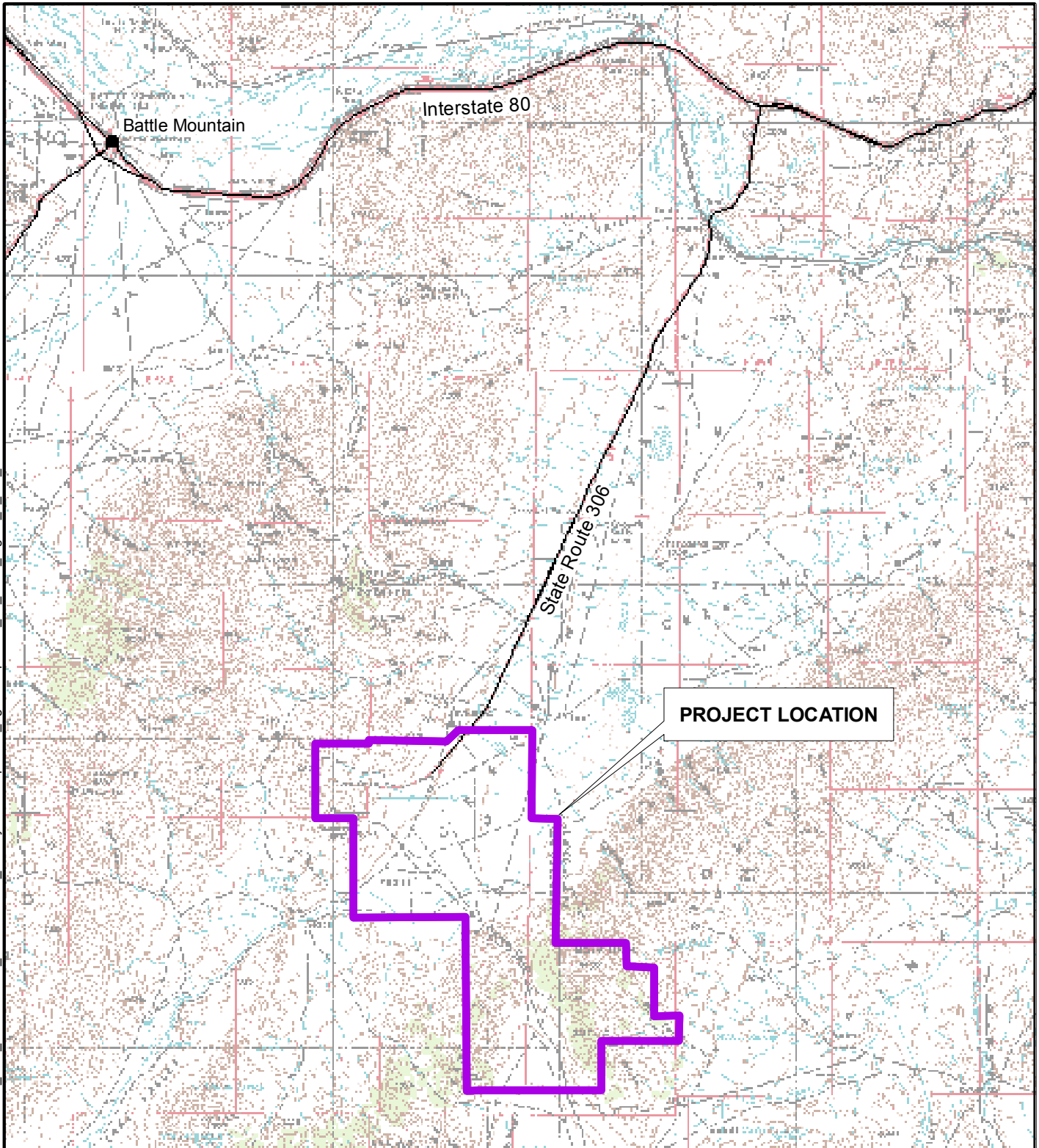
The intermittent washes reviewed in the project area (unnamed drainages 1, 2, 3, 4, 5, 6, and 7) as well as those within Crescent Valley (HUC 16040105 south of Interstate 80) were determined to all lose definition within the valley floor prior to connecting to the Humboldt River. Specifically, unnamed drainages 1, 5 and 6 drain into the large playa within Crescent Valley; unnamed drainages 3, 4, and 7 drain to the edge of a gravel pit within the Cortez mine and unnamed drainage 2 drains to mine tailings. The distance from the Cortez Mine area in Southern Crescent Valley and the Humboldt River is approximately 30 miles. The drainages within the project area in Crescent Valley drain internally to the valley floor with no connection to the Humboldt River. These drainages are isolated intrastate non-navigable waters with no connection to a TNW.

The drainage in the South of the project area that drains to Grass Valley (HUC 1606004) was reviewed and determined to drain toward the large playa at the valley bottom. Grass Valley is an intrastate closed basin with no connection to a TNW.

Horse Creek the major drainage in the Eastern portion of the project site is within the Pine Valley drainage (HUC 16040104 upstream of the confluence of Big Pole Creek). Horse Creek was surveyed for the original delineation in 2004, in September and October 2006, and December 4, 2009, to determine if it connects to Willow Creek or Pine Creek which are tributary to the Humboldt River. Horse Creek loses definition prior to connection with Pine Creek or Willow Creek. The area where Horse Creek dissipates was surveyed for wetlands but none were found. It is noted that the channels definition has increased over time in 2006 the channel was approximately 2 miles longer than in 2004 and in 2009 it has extended approximately 1 mile from the 2006 survey. Topo graphic maps show the confluence of Horse Creek and Willow Creek below the road to Buckhorn Mine. Both drainages were walked from the road down past where the confluence is mapped. Willow Creek stays to the North in a very incised channel (approx. 12 ft deep) and does not connect with Horse Creek prior to where Horse Creek dissipates in a field. Horse Creek does not follow the blue line mapping on the topo either. In the field it was observed that Horse Creek actually flows in the channel to the South that appears disconnected on the topo and then dissipates into the field losing the OHWM prior to connecting with Willow Creek and Pine Creek. Horse Creek is an isolated intra state water with no connection to a TNW.

All drainages within the project area were determined to not have physical connection with downstream flows that may reach the Humboldt River except in periods of large (100 year) storm events. The drainages within the Cortez Mine project area do not drain to the Humboldt River, the nearest potential jurisdictional tributary or any TNW. The drainages within the project area are intra state, isolated non-navigable waters. They are associated with the Cortez Gold Mine (which has interstate commerce), as they could be impacted/filled due to road crossings and tailings piles. However, the mine operation does not derive the gold from these drainages and thus the degradation of these aquatic resources would have no affect on the mine and thus no adverse impact on interstate commerce. Additionally, there are no fisheries of any type, there are no sand and gravel operations or any other commercial endeavor being conducted on the surface waters of these watersheds.

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**CORTEZ GOLD MINES
JURISDICTIONAL DETERMINATION**

**FIGURE 1
PROJECT LOCATION**



DESIGN BY RW

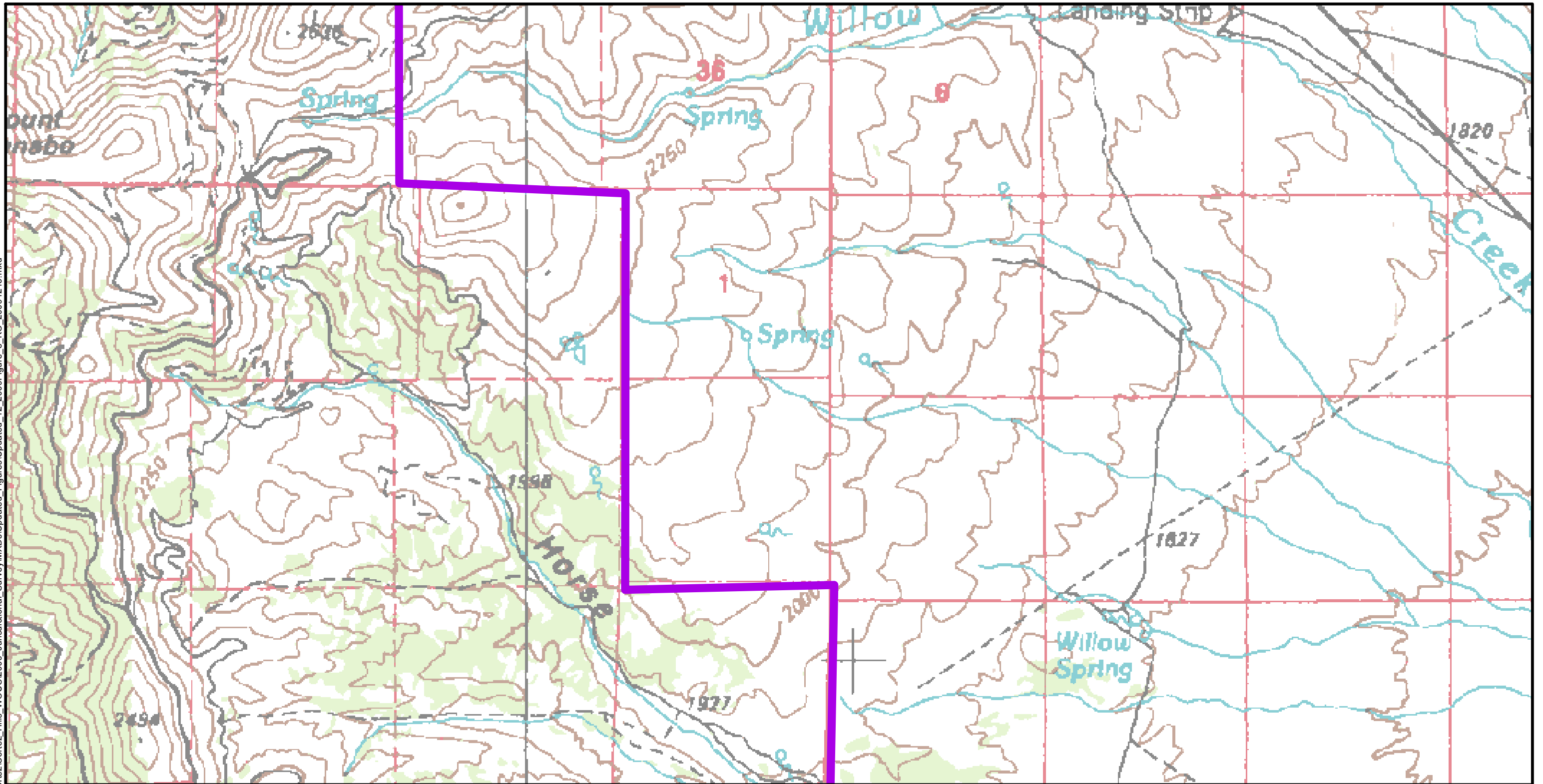
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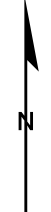
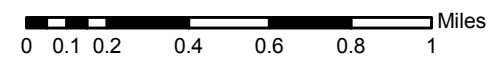
DATE DRAWN 05/01/2009


DATE REVISED 12/15/2009

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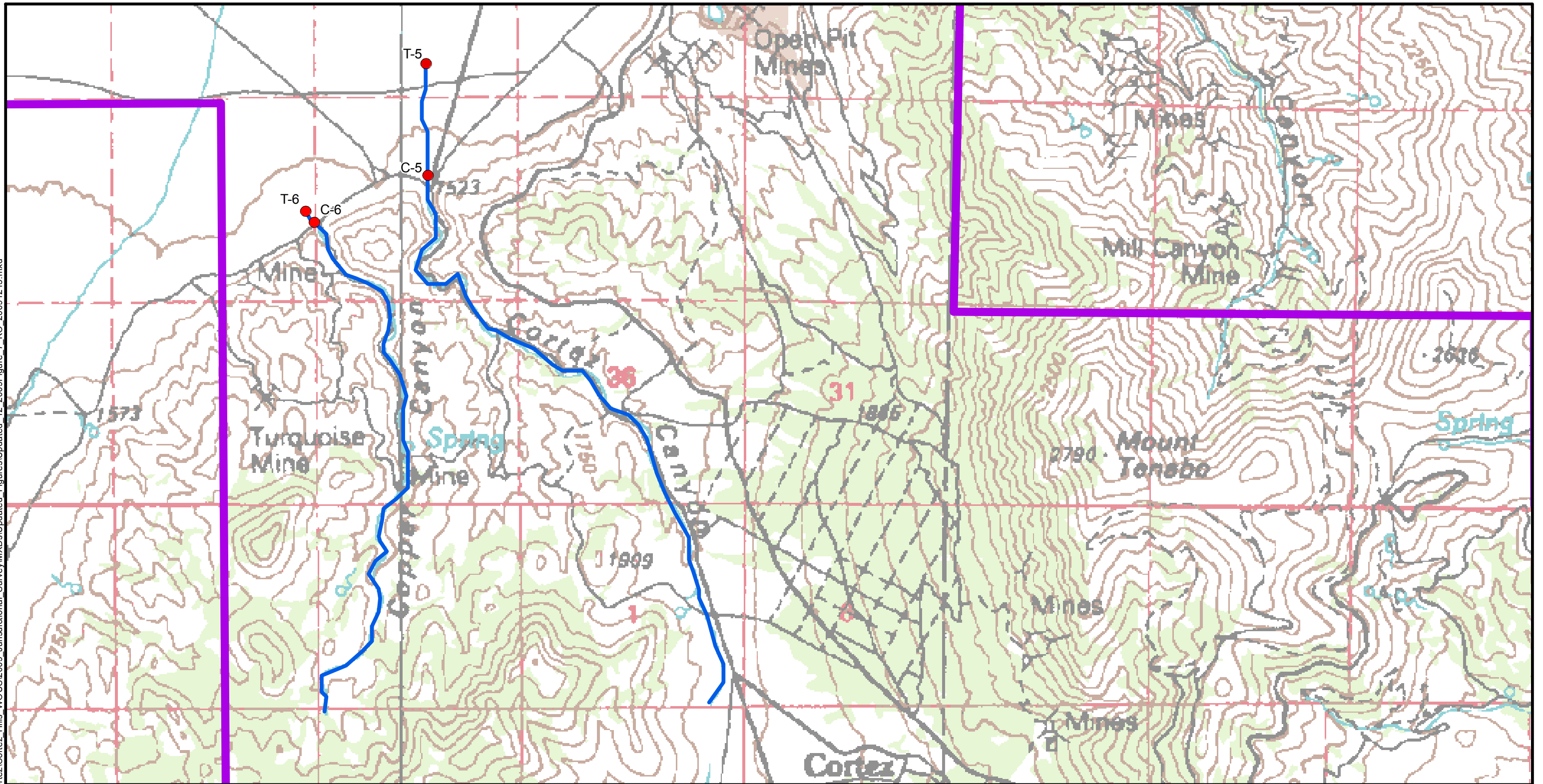


 2006 Jurisdictional Survey Boundary



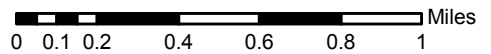
CORTEZ GOLD MINES			
JURISDICTIONAL DETERMINATION			
FIGURE 8			
SOUTHWEST SURVEY AREA DETAIL			
	DESIGN BY	DATE DRAWN	07/07/2009
	KM	JCV	12/15/2009
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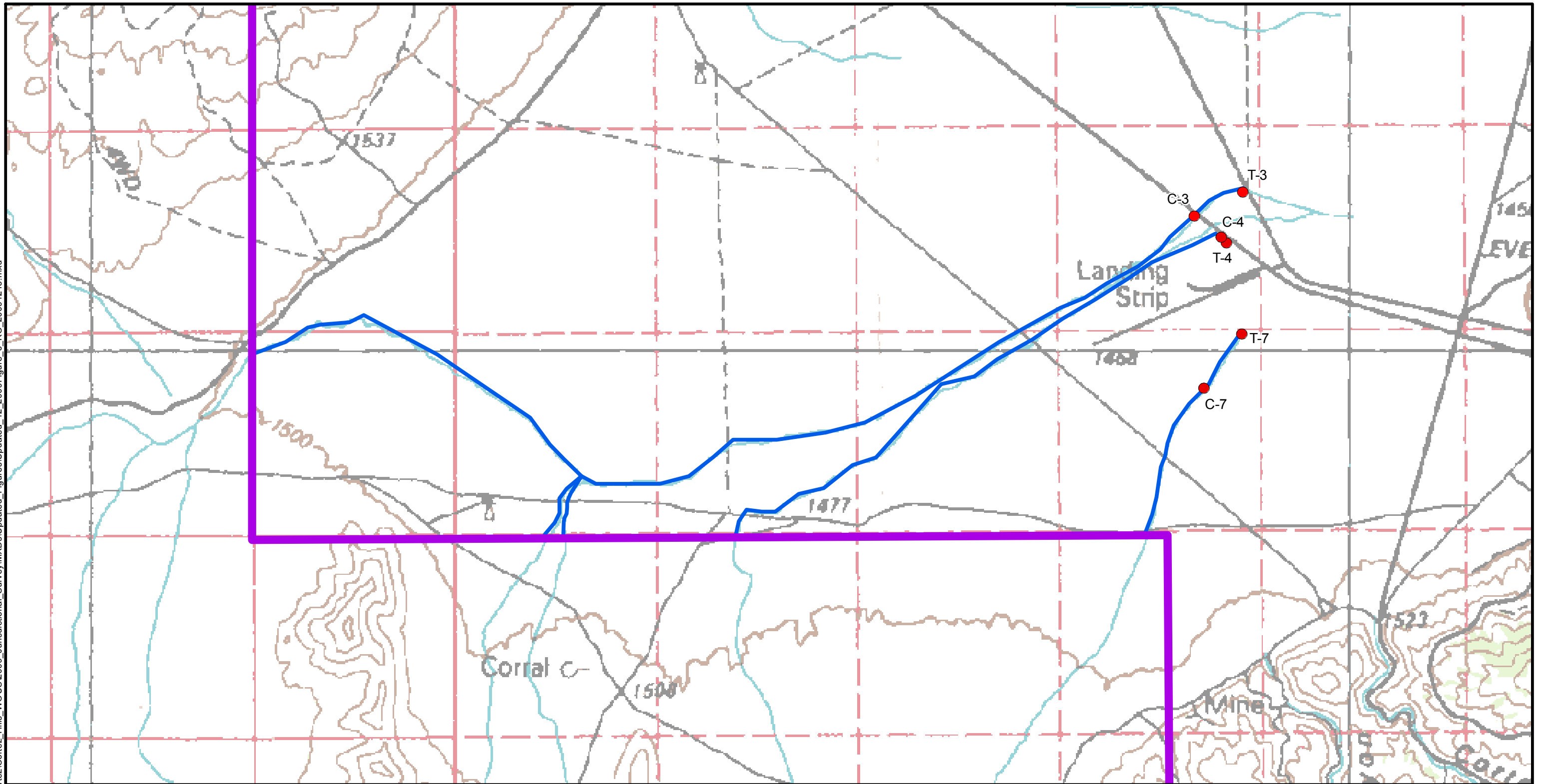
█ 2006 Jurisdictional Survey Boundary
█ Relevant Section of Reach

- C-5 = Unnamed Drainage 5 Channel Photo
- C-6 = Unnamed Drainage 6 Channel Photo
- T-5 = Unnamed Drainage 5 Termination Photo
- T-6 = Unnamed Drainage 6 Termination Photo

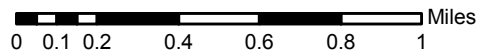


CORTEZ GOLD MINES			
JURISDICTIONAL DETERMINATION			
FIGURE 7			
DRAINAGE 5 CORTEZ CANYON AND DRAINAGE 6 COPPER CANYON DETAIL			
DESIGN BY KM	DRAWN BY JCV	SCALE 1:30,000	DATE DRAWN 07/07/2009
			DATE DRAWN 12/15/2009

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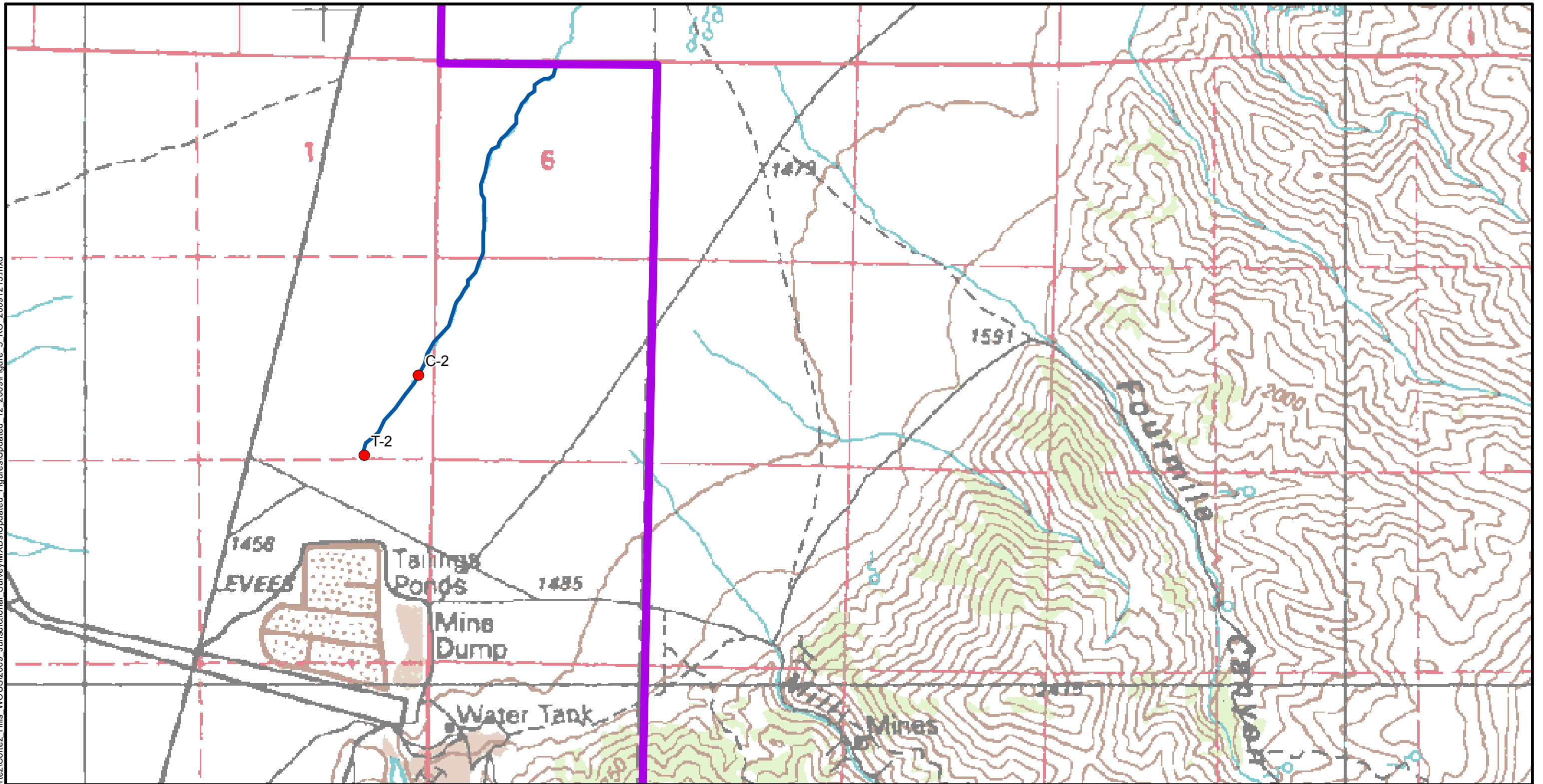


- █ 2006 Jurisdictional Survey Boundary
- █ Relevant Section of Reach
- C-3 = Unnamed Drainage 3 Channel Photo
- C-4 = Unnamed Drainage 4 Channel Photo
- C-7 = Unnamed Drainage 7 Channel Photo
- T-3 = Unnamed Drainage 3 Termination Photo
- T-4 = Unnamed Drainage 4 Termination Photo
- T-7 = Unnamed Drainage 7 Termination Photo

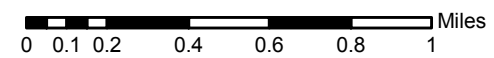


CORTEZ GOLD MINES			
JURISDICTIONAL DETERMINATION			
FIGURE 6			
UNNAMED DRAINAGE 3, 4, and 7 DETAIL			
	DESIGN BY KM	DRAWN BY JCV	SCALE 1:30,000
DATE DRAWN 07/07/2009	DATE DRAWN 12/15/2009		

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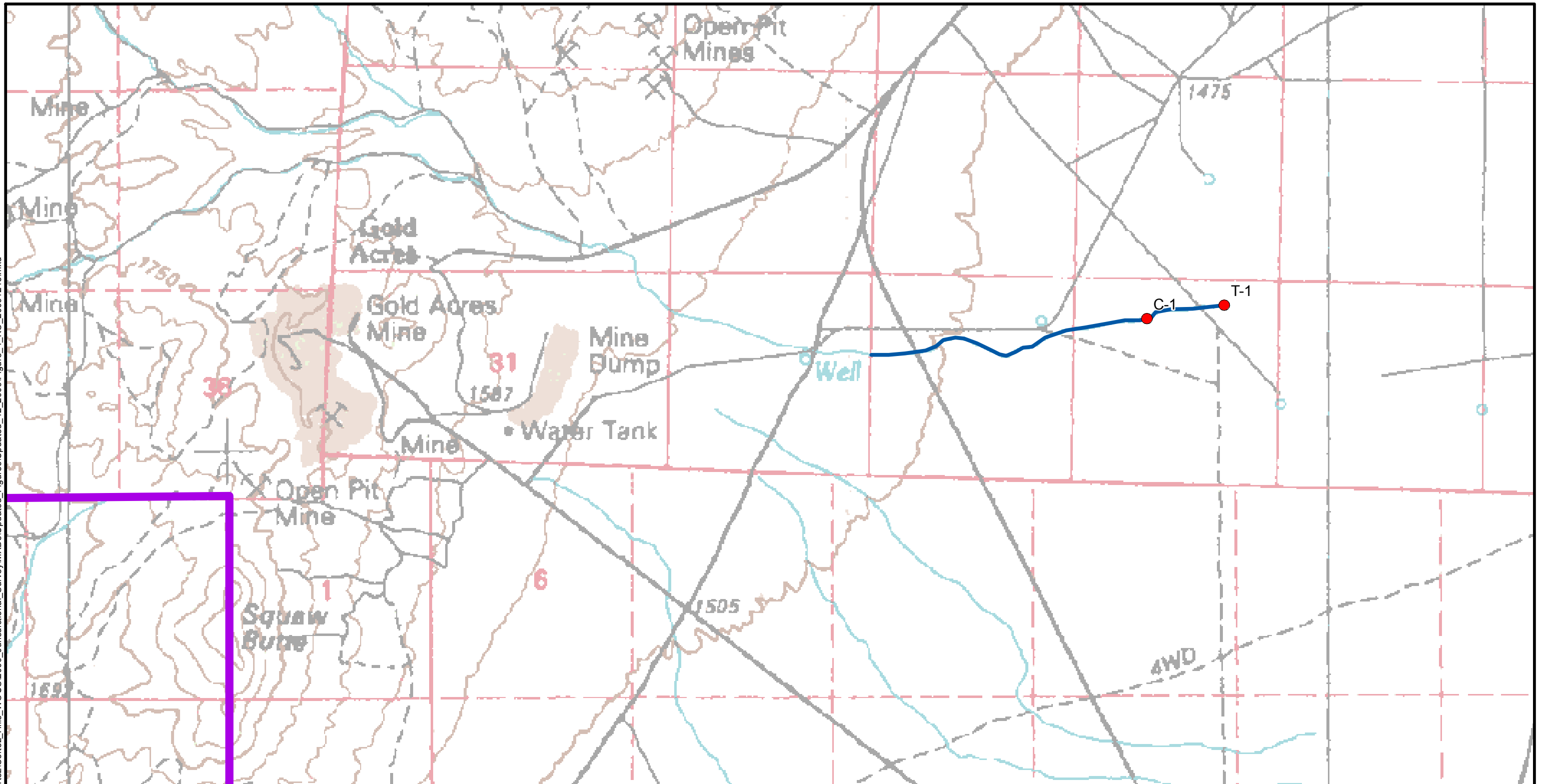






- 2006 Jurisdictional Survey Boundary
- Relevant Section of Reach
- T-2 = Unnamed Drainage 2 Termination Photo
- C-2 = Unnamed Drainage 2 Channel Photo

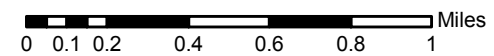


CORTEZ GOLD MINES			
JURISDICTIONAL DETERMINATION			
FIGURE 5			
UNNAMED DRAINAGE 2 DETAIL			
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-  2006 Jurisdictional Survey Boundary
-  Relevant Section of Reach
-  T-1 = Unnamed Drainage 1 Termination Photo
-  C-1 = Unnamed Drainage 1 Channel Photo



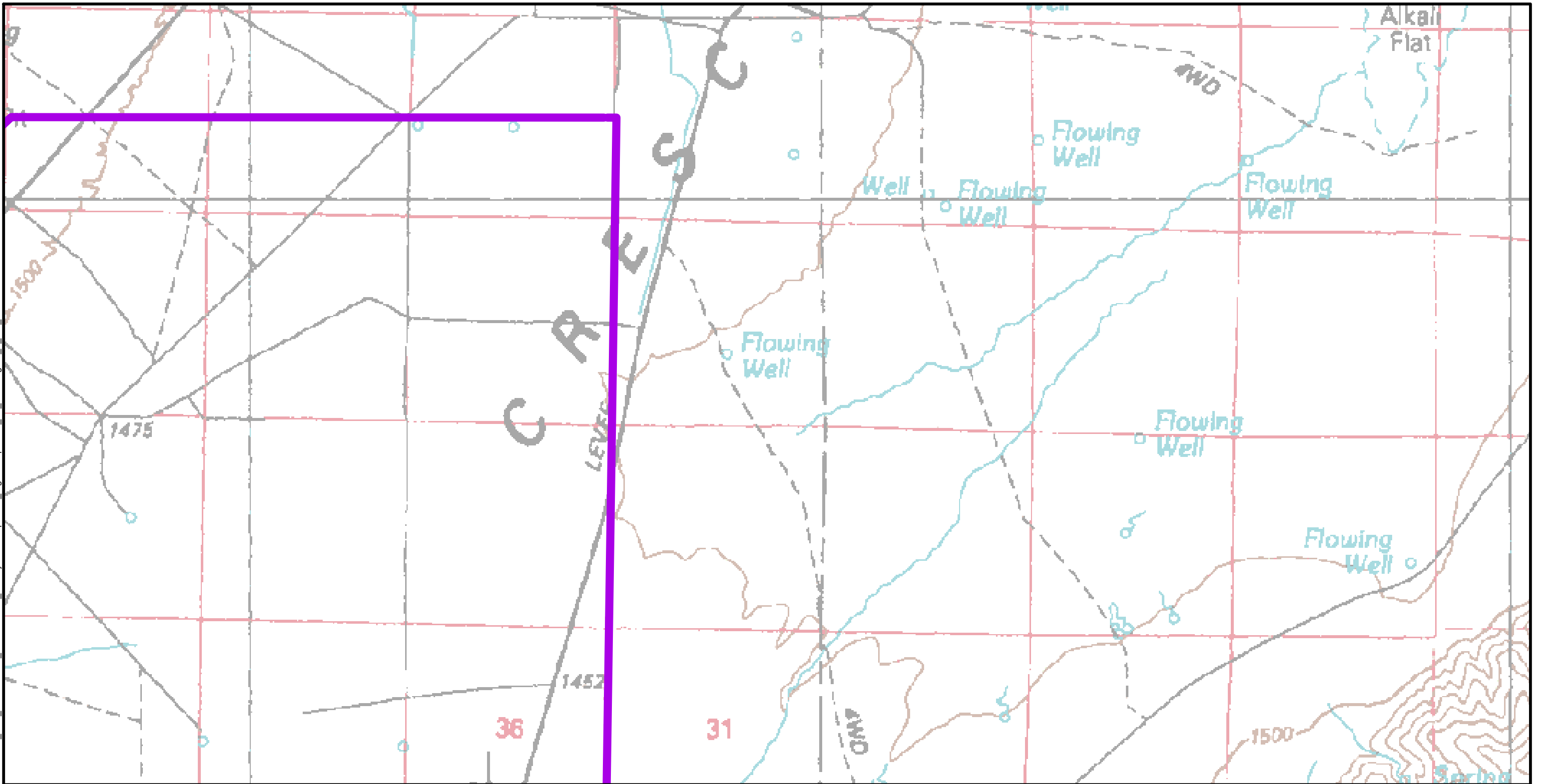
CORTEZ GOLD MINES
 JURISDICTIONAL DETERMINATION

FIGURE 4
 UNNAMED DRAINAGE 1 DETAIL

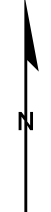
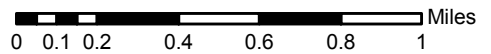


DESIGN BY KM	DRAWN BY JCV	SCALE 1:30,000	DATE DRAWN 07/07/2009
			DATE DRAWN 12/15/2009

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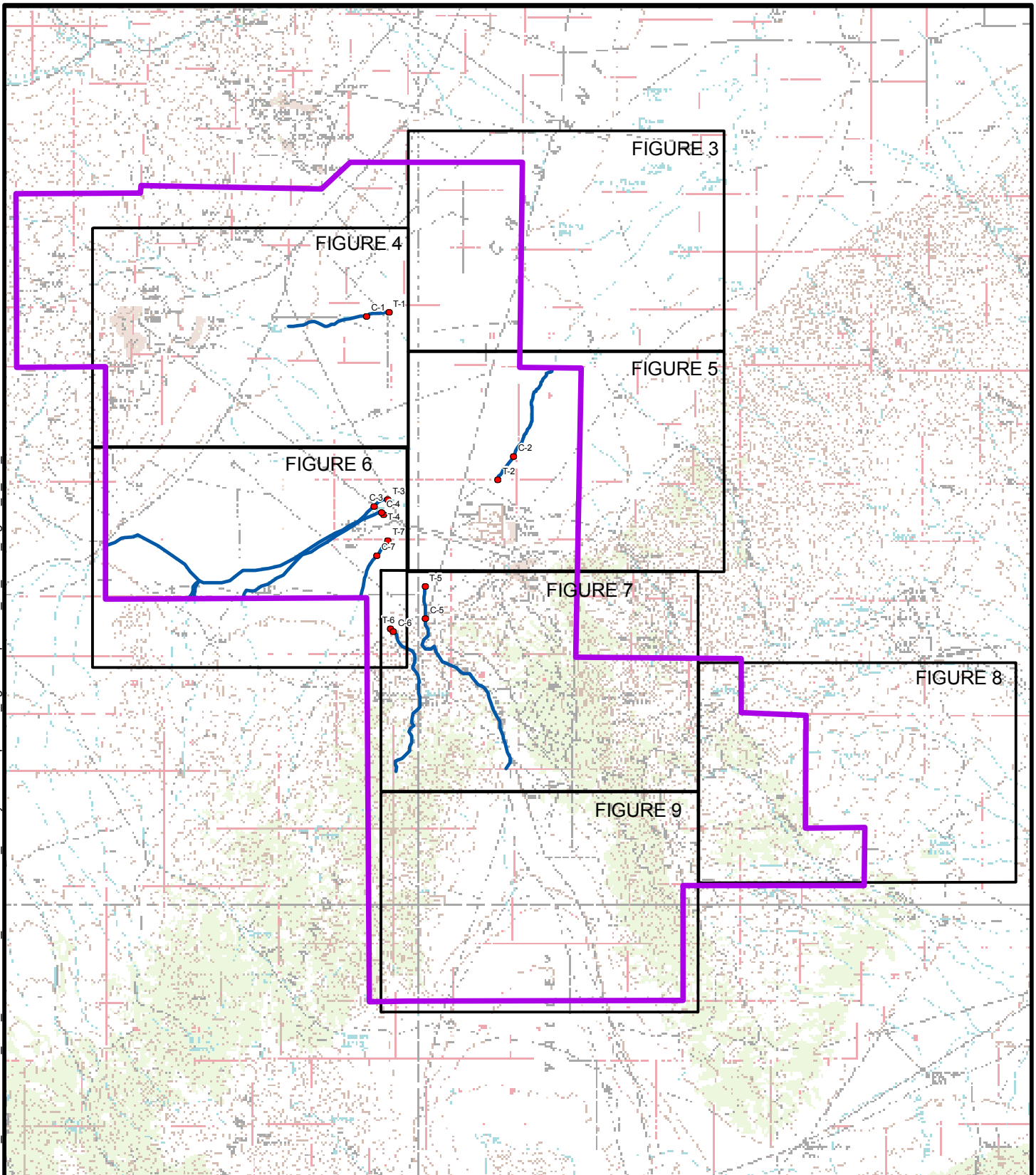







— 2006 Jurisdictional Survey Boundary



CORTEZ GOLD MINES			
JURISDICTIONAL DETERMINATION			
FIGURE 3			
NORTHWEST SURVEY AREA DETAIL			
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			12/15/2009

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-  2006 Jurisdictional Survey Boundary
-  Relevant Section of Each Reach
-  C-# = Unnamed Drainage X Channel
-  T-# = Unnamed Drainage X Termination
-  Figure Boundaries



CORTEZ GOLD MINES
JURISDICTIONAL DETERMINATION

FIGURE 2
SURVEY AREA



DESIGN BY

RW

DRAWN BY

JCV

SCALE

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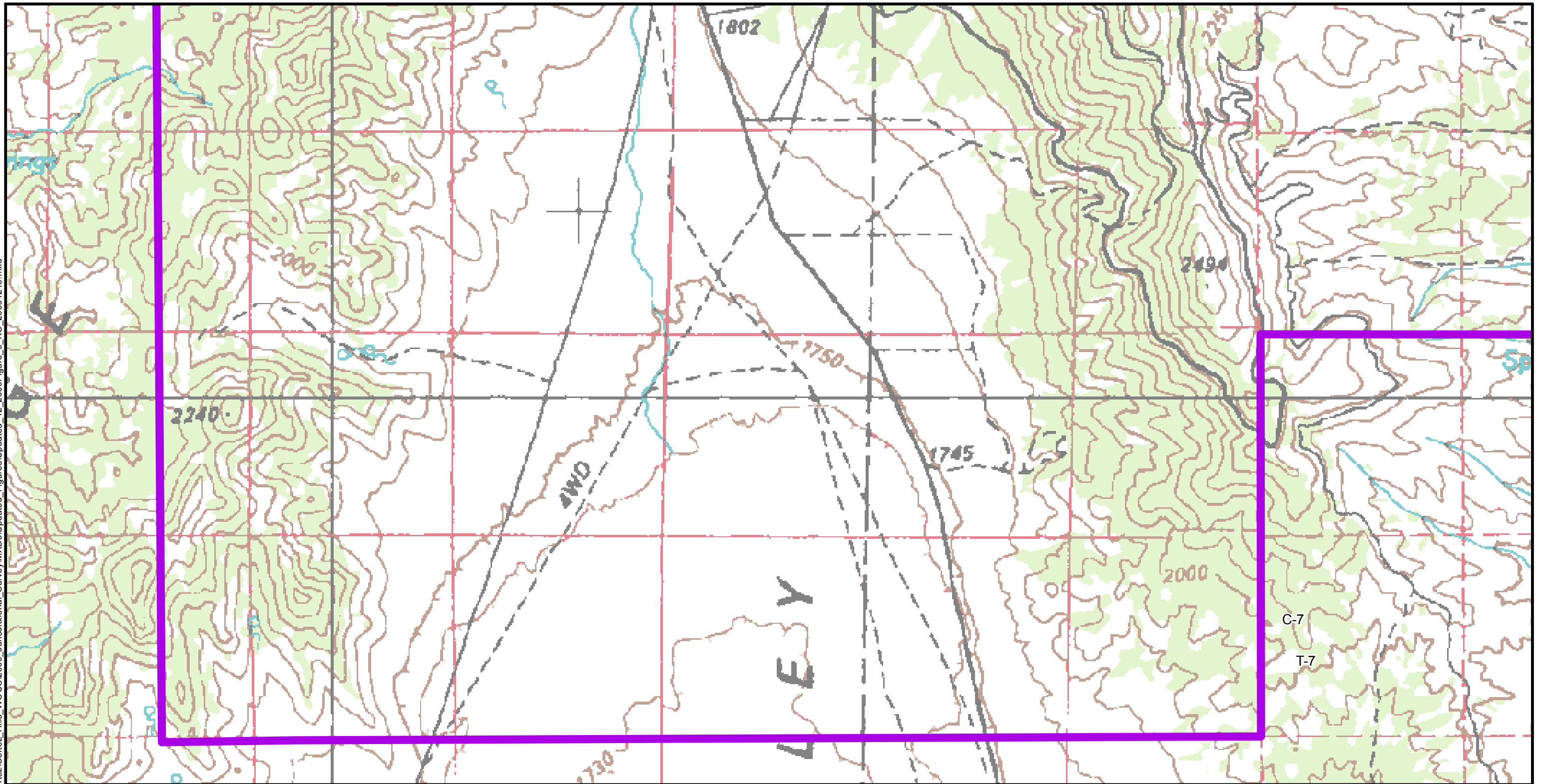
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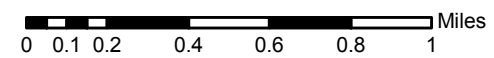
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12/15/2009

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 2006 Jurisdictional Survey Boundary



CORTEZ GOLD MINES			
JURISDICTIONAL DETERMINATION			
FIGURE 9			
SOUTHEAST SURVEY AREA DETAIL			
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