



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

CESPK-RDC-N

26 September 2023

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> SPK-2022-00716

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.

- a. The 0.34-acre irrigation ditch is not a water of the United States.

## 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 61964-61969, September 8, 2023

- c. *Sackett v. EPA*, 598 U.S. \_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area consists of the approximate 3.22-acre area depicted in the enclosed map. The review area is located at Latitude 39.0284°, Longitude -121.39143°, within the City of Wheatland, Yuba County, California.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.<sup>5</sup>  
N/A.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A.

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

7. SECTION 404 JURISDICTIONAL WATERS: N/A.

- 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.

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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.

- 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. The feature consists of a 0.34-acre irrigation ditch which was excavated wholly in and draining only dry land and does not carry a relatively permanent flow of water. None of the mapped resources identify this feature as a stream or wetland and all confirm that it was excavated draining only dry land. The irrigation ditch appears on aerial photos as early as 1947 and continues to appear on aerials over the years. The irrigation ditch is well defined and seems to have been built as a part of adjacent farming activities. While some portions of the ditch contain wetland characteristics, these areas are entirely part of the ditch feature. The ditch does not carry relatively permanent water, the source of water in the ditch consists of stormwater. The feature was previously used to carry runoff water from the adjacent orchards but was decommissioned over 20 years ago and therefore no longer functions as an irrigation ditch. Additionally, the culverts that connected the feature to the slough have been closed and can no longer convey water into the slough.

b. 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). N/A

## 9. DATA SOURCES.

- a. Office evaluation conducted: September 12, 2023
- b. Aquatic resource delineation submitted by, or on behalf of, the requestor: Aquatic Resource Delineation Report for the Grasshopper Slough Levee Modification Project, prepared by Robertson-Bryan Incorporated, dated October 2022.
- c. Photographs: Provided in the Aquatic Resources Delineations Report, prepared by Robertson-Bryan Incorporated, dated October 2022
- d. Aerial Imagery: GoogleEarth 7.3.3.7692. (1993, May 22; 1998, October 30; 2011, March 21; 2020). Wheatland, California. Latitude 39.0284°N, Longitude -121.386744°W, Retrieved August 28, 2023, from <http://www.earth.google.com>.

e. LiDAR: Grasshopper Slough LiDAR [map]. 1:740. Generated by the Army Corps of Engineers, August 22, 2023. Using ArcGIS Pro.

f. USDA NRCS Soil Survey: NRCS. (2023, August 28). Custom Soil Resource Report for Yuba County, California- Hydric Rating by Map Unit for SPK-2022-00716. Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved from <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

g. USFW NWI maps: USFWS. (n.d.). National Wetland Inventory. Project area: Wheatland, California. Source imagery date: 1976. Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved August 23, 2023, from Wetland Mapper: <https://www.fws.gov/wetlands/data/mapper.html>.

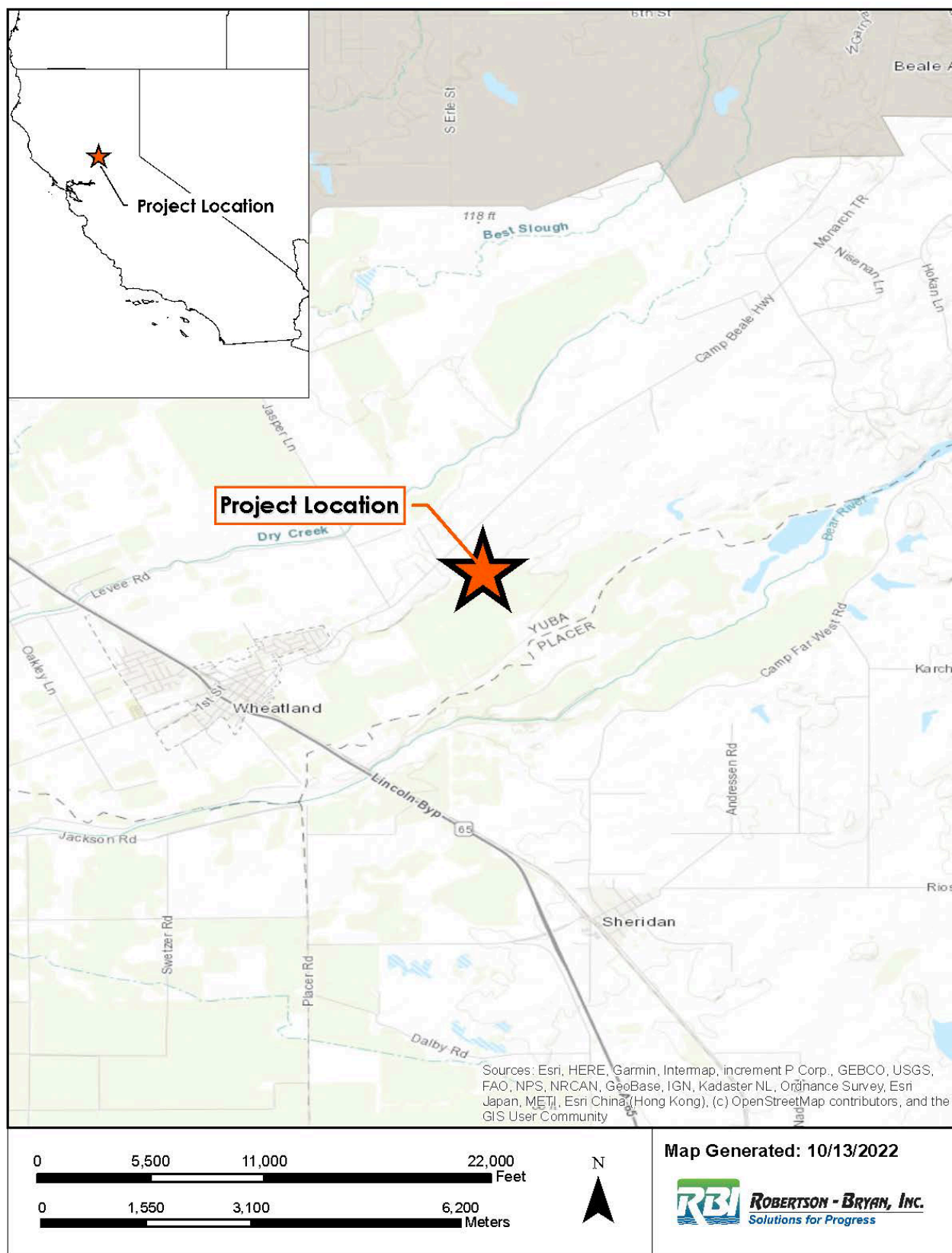
h. USGS topographic maps: USGS topo maps dated 1910-2023 and obtained on [www.historicaerials.com](http://www.historicaerials.com)

i. USGS NHD data/maps: USGS. (2022, October). National Hydrography Dataset Plus High Resolution (NHDPlus HR) for 4-digit Hydrologic Unit - 1802. Washington, D.C., USA. Retrieved from <https://apps.nationalmap.gov/viewer/>

10. OTHER SUPPORTING INFORMATION. The irrigation ditch appears on aerials as early as 1947 and has historically carried irrigation runoff water from the adjacent orchards. The irrigation ditch was decommissioned 20 years ago and no longer is used for orchard activities. The irrigation ditch sits at a higher elevation than Grasshopper Slough and previously linked the ditch to the slough for orchard irrigation. The downstream culvert at the west end of the ditch is at 95 feet above the slough, where the pipe sits above OHWM indicators for the slough at this location. This can be seen by a break in slope and change in elevation. These pipes have been sealed since the ditch has been decommissioned and has not been used since.

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.






MICHAEL S. JEWELL  
Chief, Regulatory Division

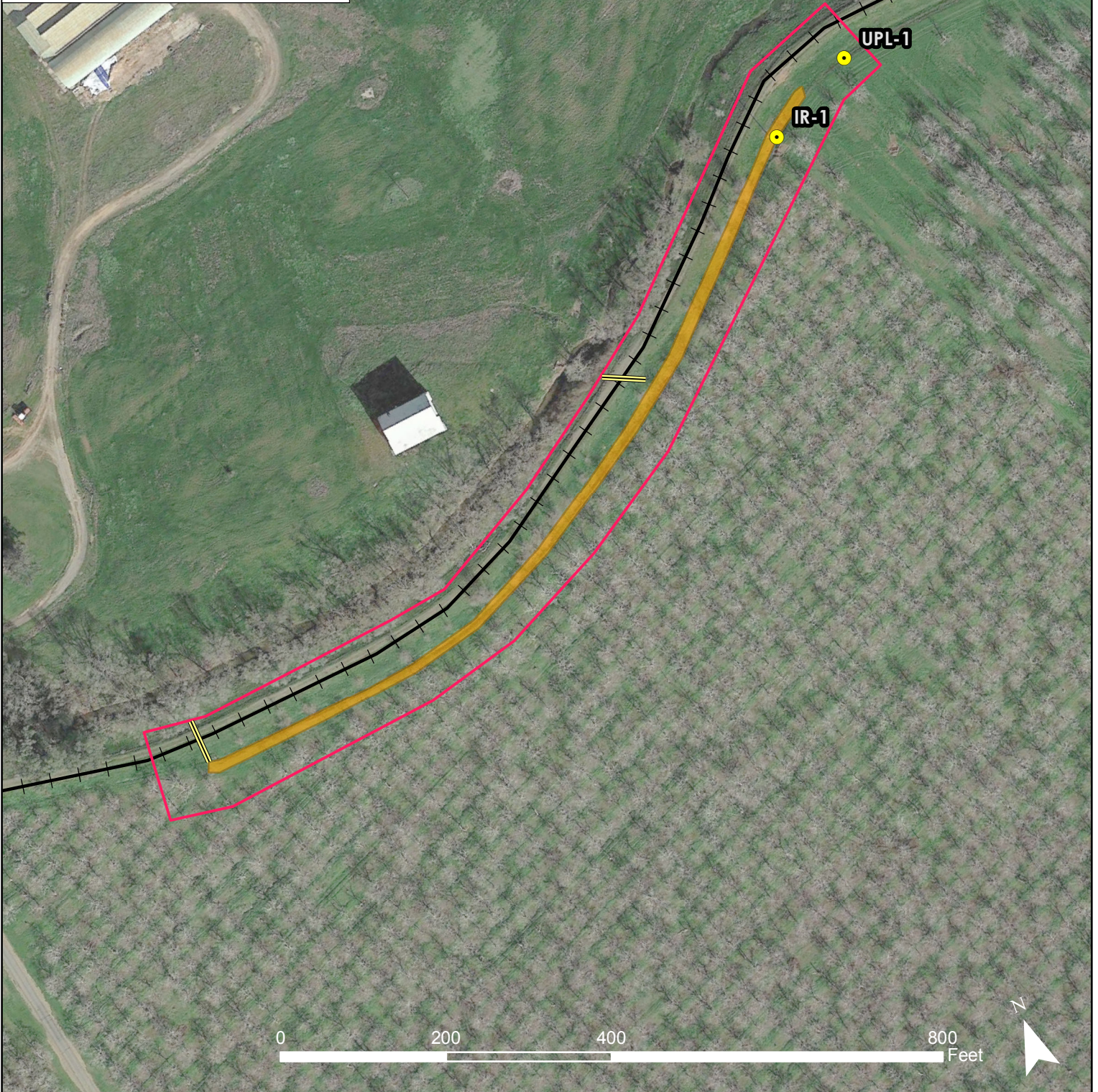


**Figure 1. Project location.**



Aerial Imagery Date: 02/01/2018

-  Irrigation Ditch (0.34 acre)
-  Survey Area (3.22 acres)
-  Sample Points
-  Levee
-  Culverts



### Grasshopper Slough Levee Modifications Project - Irrigation Ditch

Delineated by H. Price on September 23, 2022.  
Made in accordance with the "Updated Map and Drawing Standards for the South Pacific Division Regulatory Program", as ammended on February 10, 2016.

Map Generated: 8/28/2023



**ROBERTSON - BRYAN, INC.**  
Solutions for Progress

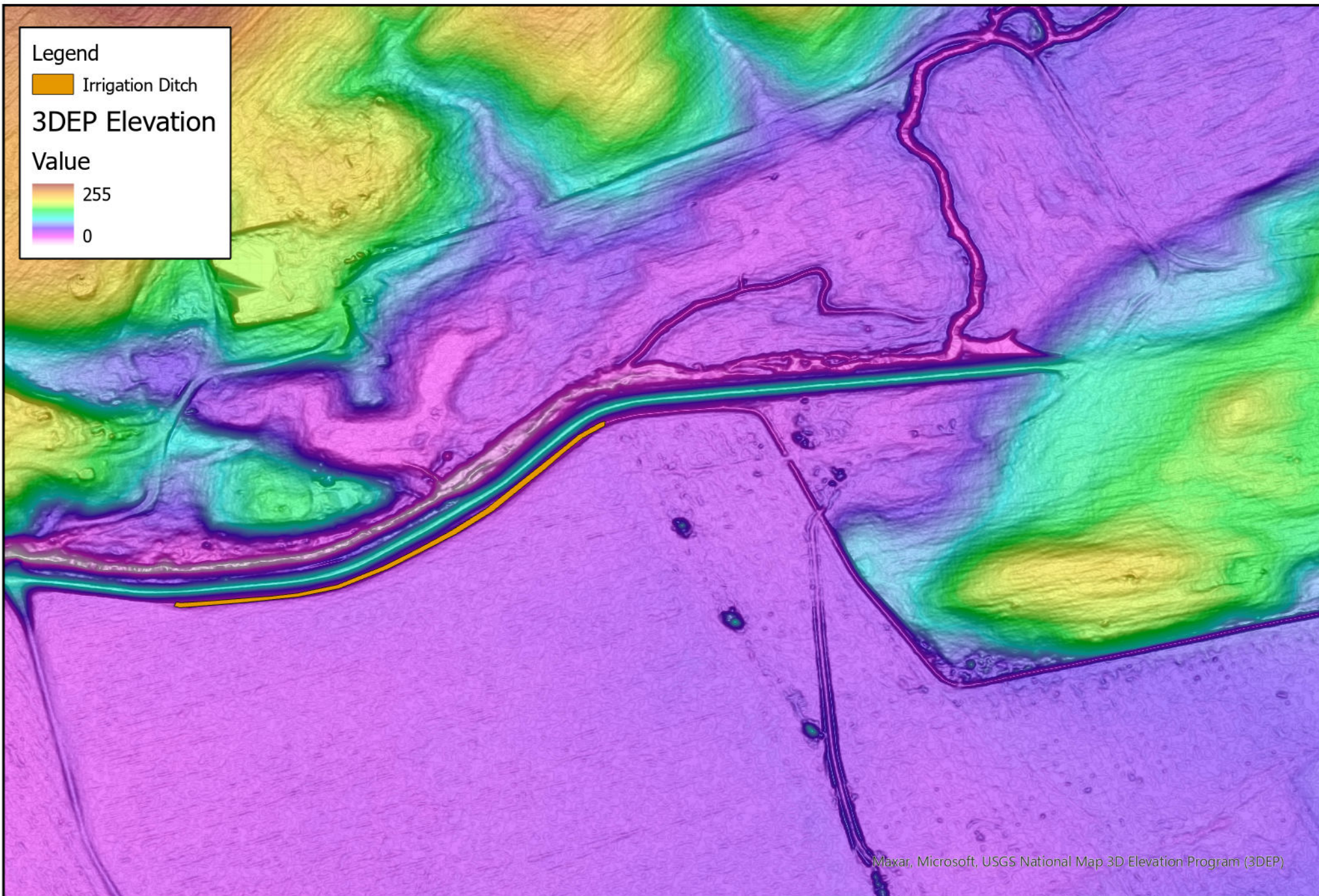
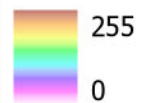


Legend

 Irrigation Ditch

3DEP Elevation

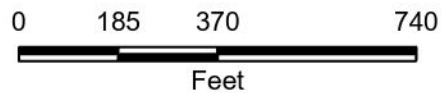
Value



Maxar, Microsoft, USGS National Map 3D Elevation Program (3DEP)



**Grasshopper Slough Irrigation Ditch**



Map Center: 121.386448°W 39.028117°N

Map Created by:  
Lillian Jepson

Date: 8/22/2023

Coordinate System: GCS North American 1983  
Datum: North American 1983