



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

CESPK-RDC-S

27 March 2024

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),¹ [SPK-2024-00174].

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

¹ 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.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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.

CESPK-RDC-S

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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).

(1) Unnamed Tributary to Battle Creek: non-jurisdictional, non-relatively permanent stream.

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)

3. REVIEW AREA. The approximately 0.463-acre review area is located in Section 2, Township 29 North, Range 3 West, MDB&B, Latitude 40.398897°, Longitude - 122.162420°, City of Anderson, Shasta County, California. The project site is located along Coleman Fish Hatchery Road, north of the Battle Creek Wildlife Area and west of the Coleman National Fish Hatchery. The proposed project is primarily replacing the existing bridge deck with a reinforced concrete bridge deck. The dominant vegetation community within the review area is characterized as oak woodland (e.g., valley oak, *Quercus lobata*; blue oak, *Q. douglasii*; wild grape, *Vitis* spp.; blackberry, *Rubus armeniacus*; blue elderberry, *Sambucus cerulea*; poison oak, *Toxicodendron diversibolum*; and herbaceous ground cover) and Mediterranean California naturalized annual and perennial grassland (e.g., common wild oat, *Asena* sp.; bromes, *Bromus* spp.; and greater quaking-grass, *Briza maxima*). Soils of the site are Keefers cobbly loam and Tuscan cobbly loam.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW, the Sacramento River, is located approximately 1.5-miles straight-line distance to the west of the review area from estimation using the Corps Navigable Waters layer in Google Earth.⁵

⁵ 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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. About 0.10 mile below the review area, the unnamed tributary flows into an unnamed intermittent stream to the south where it either continues northward directly to the Sacramento River (TNW), with divergence paths to the Sacramento River via canals, or is redirected south to the Sacramento River via Battle Creek.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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.

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.

⁶ 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.

⁷ 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.

CESPK-RDC-S

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00174]

- 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).⁸ 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). There is one non-jurisdictional aquatic resource within the review area: an unnamed tributary (0.013 acres; 65 linear feet). While a continuous surface connection persists between the unnamed tributary and a jurisdictional water (see Sections 4 and 5 above), this is a non-relatively permanent water.

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. Aquatic Resource Delineation Report Coleman Fish Hatchery Road Bridge Deck Replacement (prepared by VESTRA Resources, Inc., March 2023).
- b. USACE Google Earth Layers accessed March 22, 2024.
- c. USGS National Map Viewer National Hydrography Dataset, 3DEP LiDAR and Flow Path layers, accessed March 22, 2024.
- d. National Wetlands Inventory Mapper accessed March 26, 2024.

⁸ 88 FR 3004 (January 18, 2023)

CESPK-RDC-S

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e. Digital Globe Aerial Photographs, Archive Dated August 18, 2019; December 7, 2020; July 15, 2021; April 28, 2023; May 16, 2023.

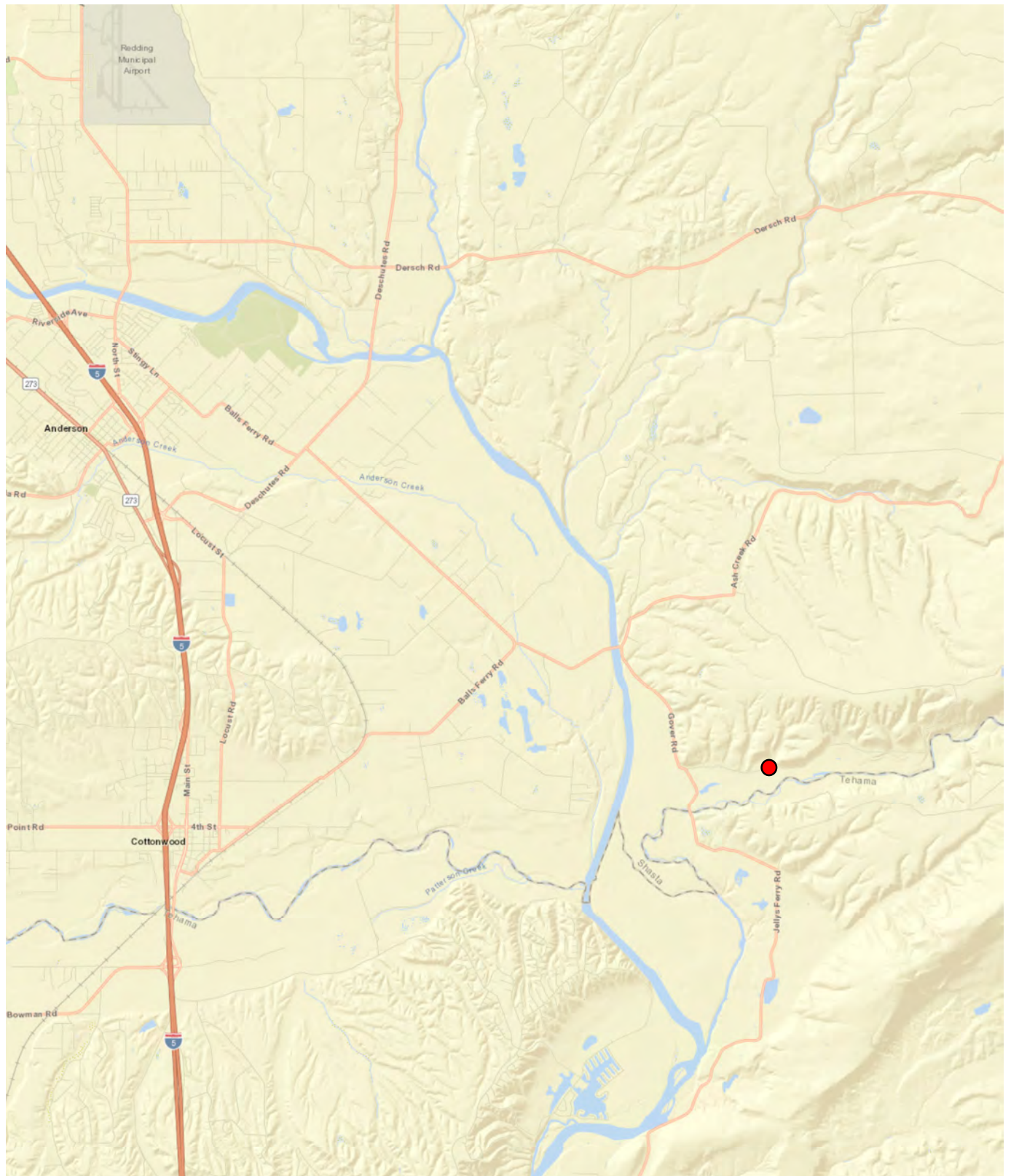
f. USACE ERDC Antecedent Precipitation Tool, Dates August 18, 2019, December 7, 2020, July 15, 2021, April 28, 2023, May 16, 2023, accessed March 11, 2024

10. OTHER SUPPORTING INFORMATION. USGS Stream Stats accessed March 7, 2024.

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.

A handwritten signature in black ink, appearing to read 'W. Ness', with a stylized, wavy line extending from the end.

William Ness
Chief, California South Section



● Site Location

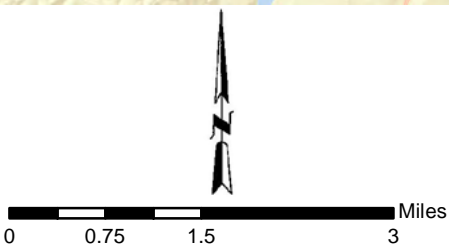
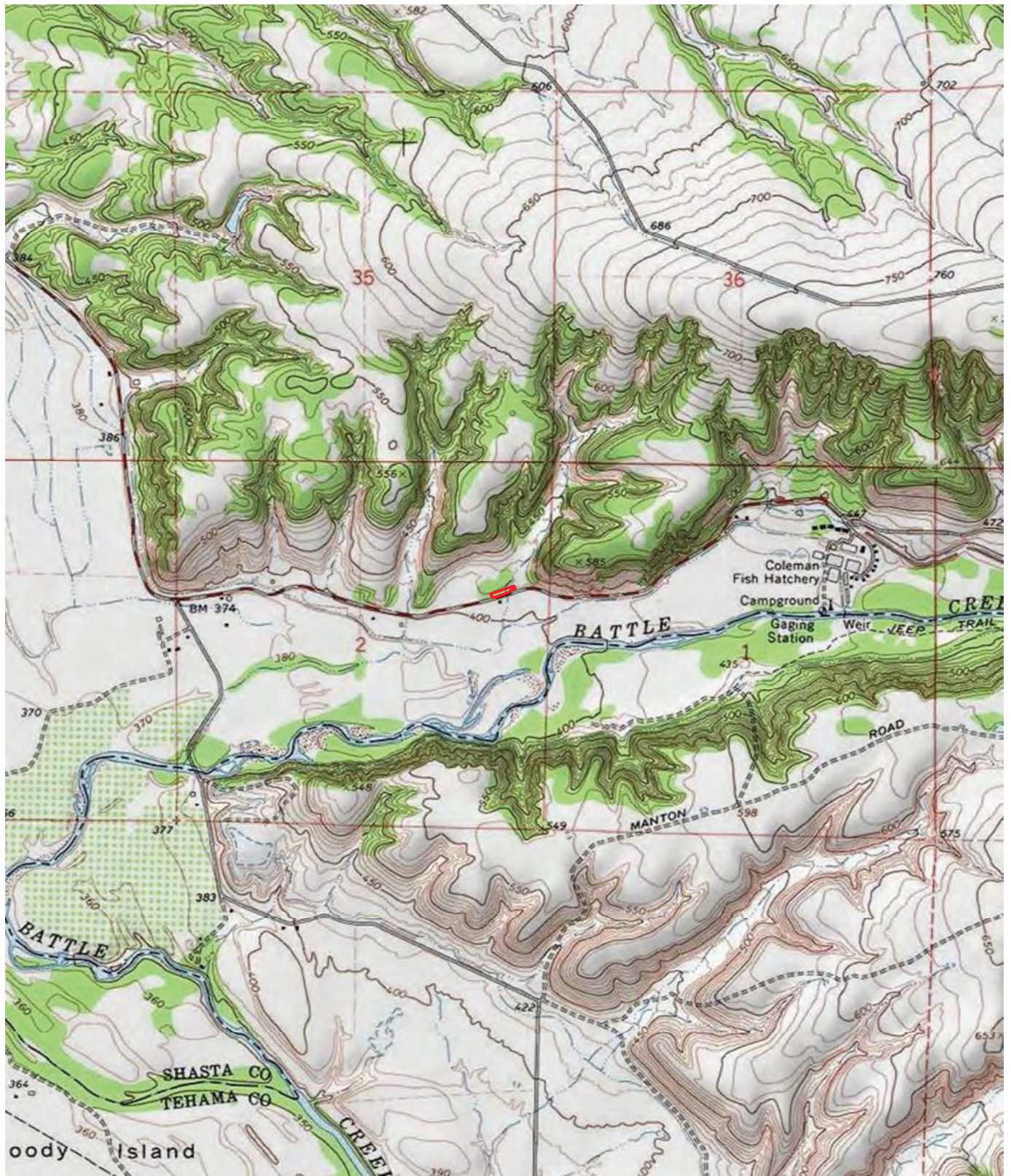



FIGURE 1
GENERAL SITE LOCATION
COLEMAN FISH HATCHERY
BRIDGE REPLACEMENT
SHASTA COUNTY, CALIFORNIA

SOURCE: USGS 7.5' TOPOGRAPHIC MAP, BALLS FERRY QUADRANGLE

P:\GIS\72206\ColemanHatcheryBridge\Figures\72206_GeneralSiteLocation.mxd



 Survey Boundary (0.463 Acres)



0 1,000 2,000 4,000 Feet

SOURCE: USGS 7.5' TOPOGRAPHIC MAP, BALLS FERRY QUADRANGLE

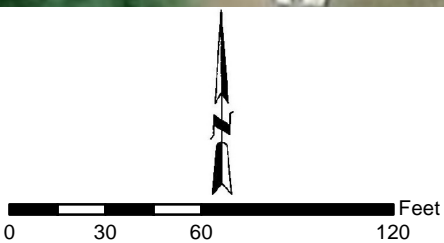
FIGURE 1
USGS TOPOGRAPHIC MAP
COLEMAN FISH HATCHERY
BRIDGE REPLACEMENT
SHASTA COUNTY, CALIFORNIA



● Data Point

--- Transect Line

□ Survey Boundary




SOURCE: MAXAR 2021 AERIAL PHOTOGRAPH

FIGURE 4
DATA POINTS
COLEMAN FISH HATCHERY
BRIDGE REPLACEMENT
SHASTA COUNTY, CALIFORNIA



— Ordinary High Water Mark (65 Linear Feet)

 Riverine Area (0.013 Acres)

 Survey Boundary (0.463 Acres)

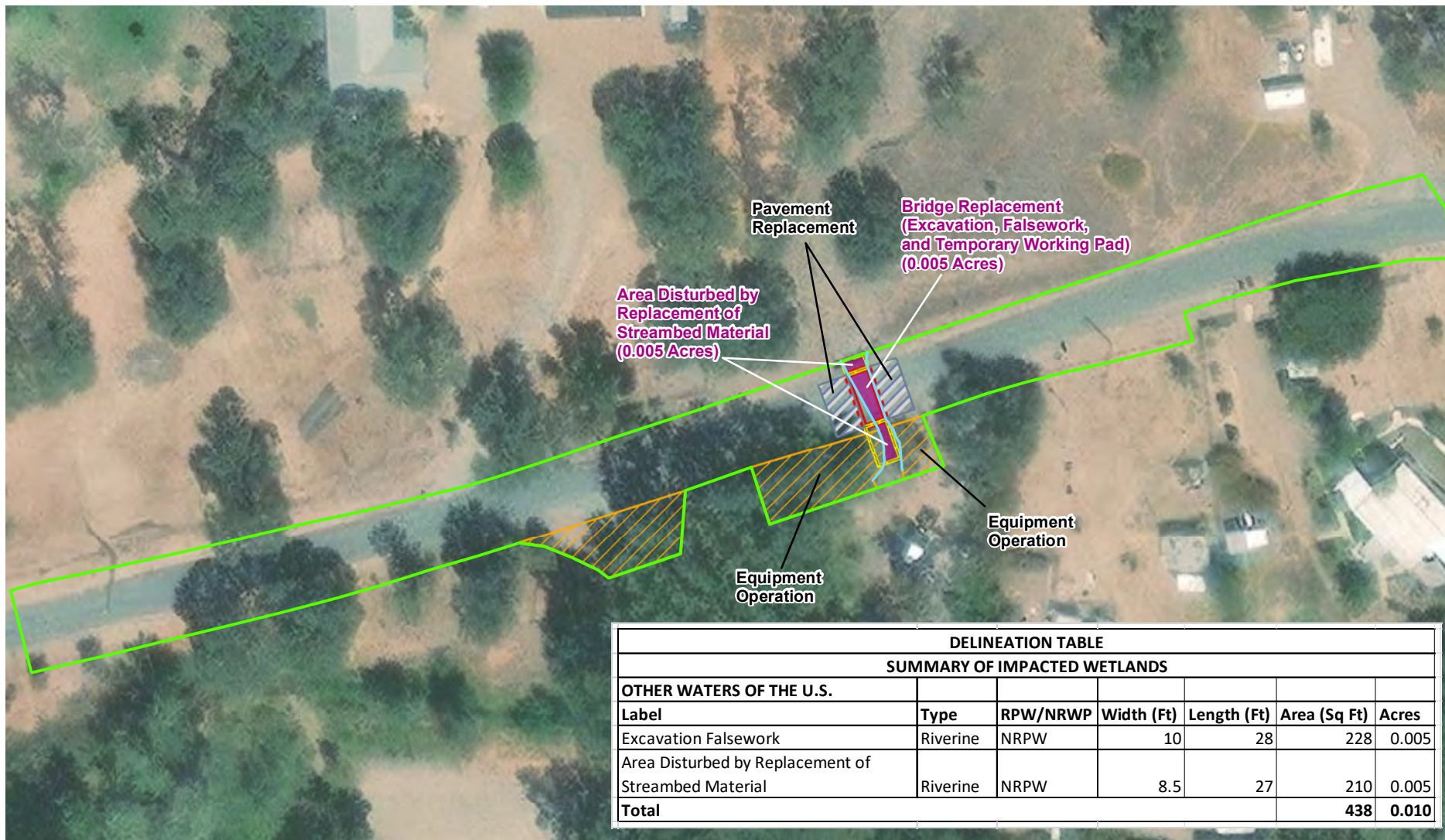


SOURCE: MAXAR 2021 AERIAL PHOTOGRAPH

0 30 60 120 Feet



**AQUATIC RESOURCES
COLEMAN FISH HATCHERY
BRIDGE REPLACEMENT
SHASTA COUNTY, CALIFORNIA**



— OHWM

Project Area

Pavement Replacement - 825 sq ft

Excavation Falsework - 317 sq ft

Vegetation Impacts (Understory)- 4,153 sq ft

Area Disturbed by Replacement of Streambed Material - 327 sq ft

Impacted Waters of the U.S. (0.010 Acres)



SOURCE: MAXAR 2021 AERIAL PHOTOGRAPH

0 37.5 75 150 Feet



FIGURE 2
WORK AREAS AND IMPACTS
TO WATERS OF THE U.S.
COLEMAN FISH HATCHERY
BRIDGE REPLACEMENT
SHASTA COUNTY, CALIFORNIA