



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

CESPK-RDI-N

25 April 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),<sup>1</sup> [SPK-2024-00156]

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.

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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.

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## 1. SUMMARY OF CONCLUSIONS.

- a. Wetland A is a non-jurisdictional 17.29-acre isolated wetland that does not have a continuous surface connection to a paragraph (a)(1) water or to a relatively permanent paragraph (a)(2) impoundment or paragraph (a)(3) tributary.
- b. Wetland B is a non-jurisdictional 39.75-acre isolated wetland that does not have a continuous surface connection to a paragraph (a)(1) water or to a relatively permanent paragraph (a)(2) impoundment or paragraph (a)(3) tributary.
- c. Wetland C is a non-jurisdictional 0.4-acre isolated wetland that does not have a continuous surface connection to a paragraph (a)(1) water or to a relatively permanent paragraph (a)(2) impoundment or paragraph (a)(3) tributary.
- d. Wetland D is a non-jurisdictional 74.54-acre isolated wetland that does not have a continuous surface connection to a paragraph (a)(1) water or to a relatively permanent paragraph (a)(2) impoundment or paragraph (a)(3) tributary.
- e. Wetland E is a non-jurisdictional 83.17-acre isolated wetland that does not have a continuous surface connection to a paragraph (a)(1) water or to a relatively permanent paragraph (a)(2) impoundment or paragraph (a)(3) tributary.
- f. Stream 1 is a non-jurisdictional 2002-foot intrastate stream that does not connect to a paragraph (a)(1) or (a)(2) water.

## 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 400-acre review area is located adjacent to the north and eastern boundaries of Swan Lake within Lemmon Valley, Latitude 39.66667, Longitude -119.83057, Washoe County, Nevada (*Enclosure 1*).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Aquatic resources within the review area terminate into Swan Lake which does not have any hydrologic or downstream connectivity to a TNW. The nearest TNW is the Truckee

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River which is approximately 9.5-miles due south of the review area (*Enclosure 2*). The review area is located within the following HUC-12: 180800030901, whereas the Truckee River, at its closest point to the review area, is located within the following HUC-12: 160501020506.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Aquatic resources in the Review Area have no downstream connection to any TNW, the Territorial Seas, or Interstate Waters as defined by 33 CFR § 328.3(a)(1). Aquatic resources within the review area flow west, northwest, or southwest and terminate in Swan Lake which is adjacent to the review area. As such, there is no flow path from the review area to any TNWs, Territorial Seas, or Interstate Waters.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: There are no 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.

7. SECTION 404 JURISDICTIONAL WATERS: There are no aquatic resources within the Review Area that 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*.

- 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

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<sup>5</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.

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## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

| Waters Name | Size  | Unit | Cowardin Code |
|-------------|-------|------|---------------|
| Wetland A   | 17.27 | ACRE | PSS           |
| Wetland B   | 39.75 | ACRE | L2            |
| Wetland C   | 0.4   | ACRE | PSS           |
| Wetland D   | 74.54 | ACRE | PSS           |
| Wetland E   | 83.17 | ACRE | PSS           |
| Stream 1    | 2002  | FOOT | R4            |

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. A desktop review and investigation were performed on April 22, 2024, utilizing the following information:
- b. [REDACTED]  
Aquatic Resources Delineation Report"
- c. USGS National Hydrography Dataset (NHD), 2023. Accessed April 23, 2024. (<https://hydro.nationalmap.gov/arcgis/rest/services/nhd/MapServer>)
- d. Digital Globe, 2023. Historic Aerial Imagery, 2020-2023. Accessed April 23, 2024. (<https://evwhs.digitalglobe.com>)
- e. Google Earth, 2023. Historic Aerial Imagery, 2023. Accessed April 23, 2024.
- f. USGS 3D Elevation Program (3DEP) for 1/3 Arc Second resolution, 2022. Accessed April 23, 2024. (<https://www.sciencebase.gov/catalog/item/4f70aa9fe4b058caae3f8de5>)
- g. USGS Watershed Boundary Dataset (WBD) for 2-digit Hydrologic Unit – 16 & 18. Accessed April 23, 2024. (<https://www.sciencebase.gov/catalog/item/51361e87e4b03b8ec4025c22>)
- h. USACE National Regulatory Viewers, South Pacific Division, Nevada. Accessed April 23, 2024. (<https://arcportal-ucop-corps.usace.army.mil/s0portal/apps/experiencebuilder/experience/?id=3daa5a6e0b43416db33b181f2eebb751&page=Main&views=Geospatial-Viewers>)

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10. OTHER SUPPORTING INFORMATION. The information included in the project's aquatic resources delineation report adequately delineated all aquatic resources within the review area and provided sufficient information to demonstrate that all aquatic resources within the review area lack a downstream connection to an (a)(1) or (a)(2) waterbody.

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.

Enclosures:

1. Vicinity Map
2. Nearest TNW

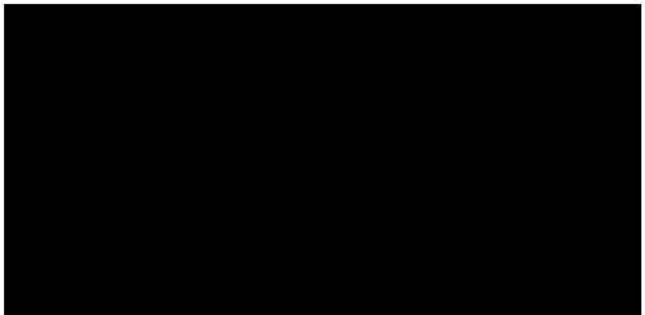




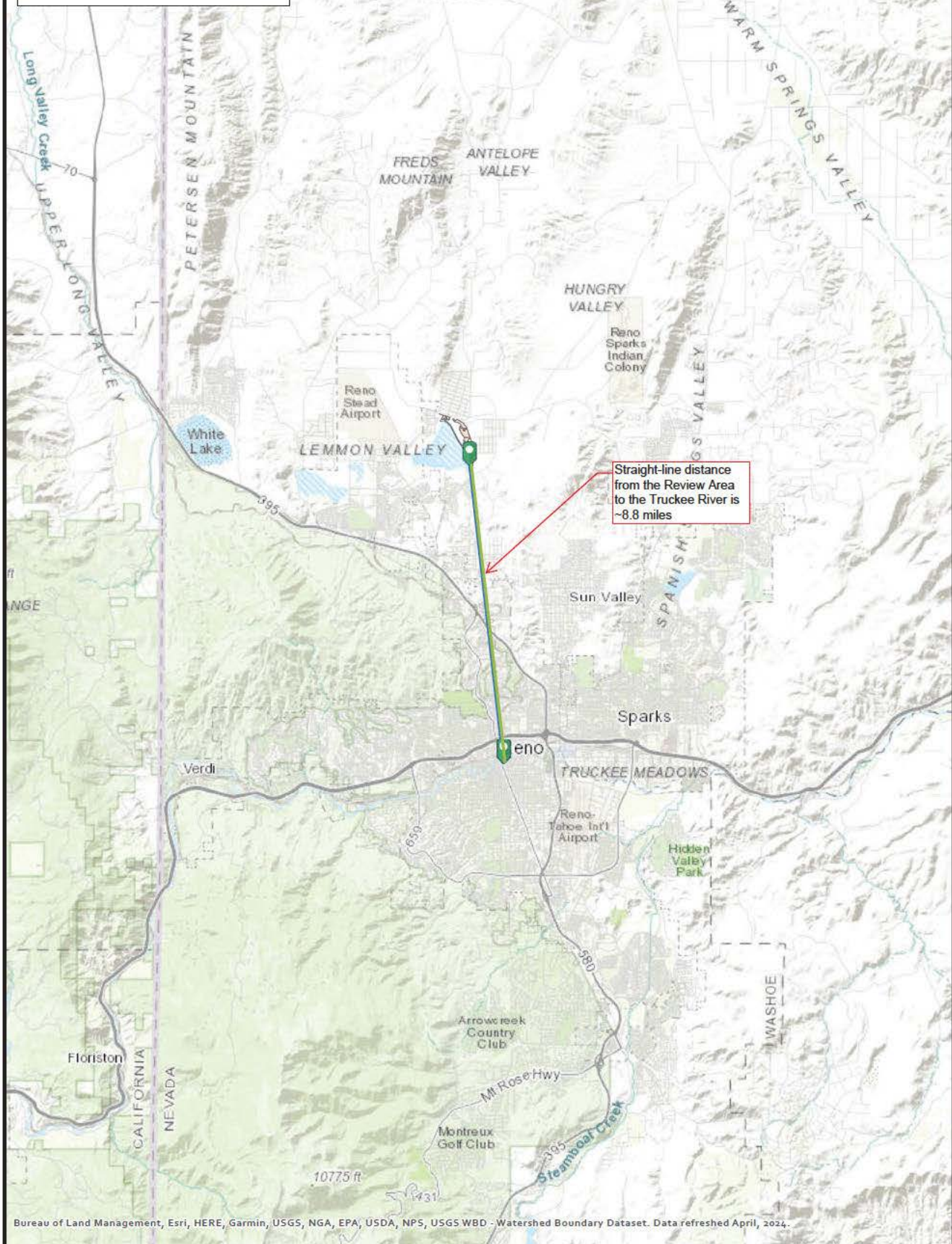


Figure 2. Survey Area



# Legend

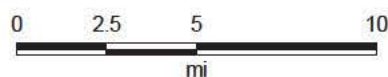
- Straight-line distance to Truckee River
- 2024 - Stream and Channel Boundaries
- 2024 - Project Wetland Boundaries



Bureau of Land Management, Esri, HERE, Garmin, USGS, NGA, EPA, USDA, NPS, USGS WBD - Watershed Boundary Dataset. Data refreshed April, 2024.



This map shows the Review Area and its relationship to the Truckee River, the nearest TNW.



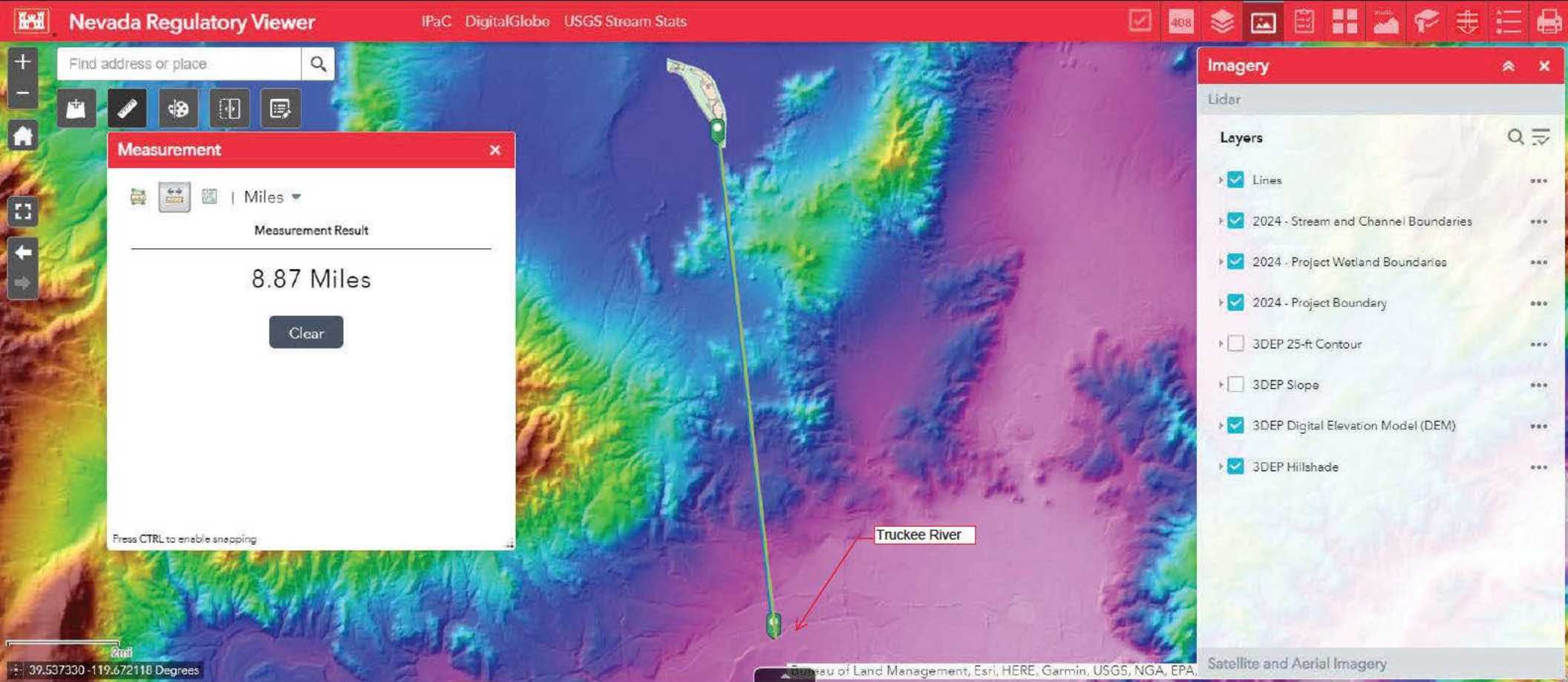
Map Center: 119.825102°W 39.607195°N

Date: 4/23/2024

Enclosure 2

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere












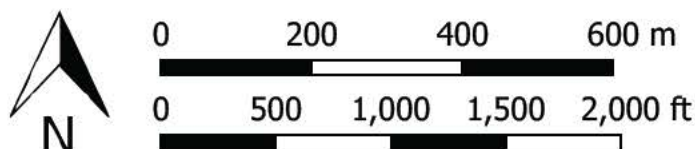
| Wetland        | Acres  |
|----------------|--------|
| A              | 17.270 |
| B              | 39.750 |
| C              | 0.4    |
| D              | 74.540 |
| E              | 83.170 |
| Total: 215.130 |        |

| Stream | Acres | Linear Feet |
|--------|-------|-------------|
| 1      | 1.100 | 2,002       |

Swan Lake

Lemmon Dr

|  |             |
|--|-------------|
|  | Survey Area |
|  | Wetland A   |
|  | Wetland B   |
|  | Wetland C   |
|  | Wetland D   |
|  | Wetland E   |
|  | Stream 1    |
|  | Channel     |



# RTC Washoe Lemmon Drive Aquatic Resources Map - Overview

Map Made:  
December 20, 2023

1 inch = 1,083 feet  
Base Imagery: ESRI  
CRS: EPSG:3857 - WGS 84



| Wetland               | Acres  |
|-----------------------|--------|
| A                     | 17.270 |
| B                     | 39.750 |
| C                     | 0.4    |
| D                     | 74.540 |
| E                     | 83.170 |
| <b>Total: 215.130</b> |        |

Date of Drone Survey:  
October 17, 2023

| Stream | Acres | Linear Feet |
|--------|-------|-------------|
| 1      | 1.100 | 2,002       |

39.674186,  
-119.845595



Stream 1

Lemmon Dr

A

Channel 2

39.671885,  
-119.841880



B

Swan Lake

- Survey Area
- Wetland A
- Wetland B
- Wetland C
- Wetland D
- Wetland E
- Stream 1
- Channel
- Wetlands Data Points (Atkins)
- Reference Point



0 30 60 90 m

0 100 200 300 ft

RTC Washoe Lemmon Drive  
Aquatic Resources Map - Wetland A

Map Made:  
December 20, 2023

1 inch =  
233 feet

Base Imagery: 2023 UES Orthomosaic Drone Imagery  
CRS: EPSG:3857 - WGS 84



| Wetland               | Acres  |
|-----------------------|--------|
| A                     | 17.270 |
| B                     | 39.750 |
| C                     | 0.4    |
| D                     | 74.540 |
| E                     | 83.170 |
| <b>Total: 215.130</b> |        |

| Stream | Acres | Linear Feet |
|--------|-------|-------------|
| 1      | 1.100 | 2,002       |

Date of Drone Survey:  
October 17, 2023

Lemmon Dr

39.672848,  
-119.840197

C

D

39.670979,  
-119.838541

|                 |   |
|-----------------|---|
| Survey Area     |  |
| Wetland A       |  |
| Wetland B       |  |
| Wetland C       |  |
| Wetland D       |  |
| Wetland E       |  |
| Stream 1        |  |
| Channel         |  |
| Reference Point |  |

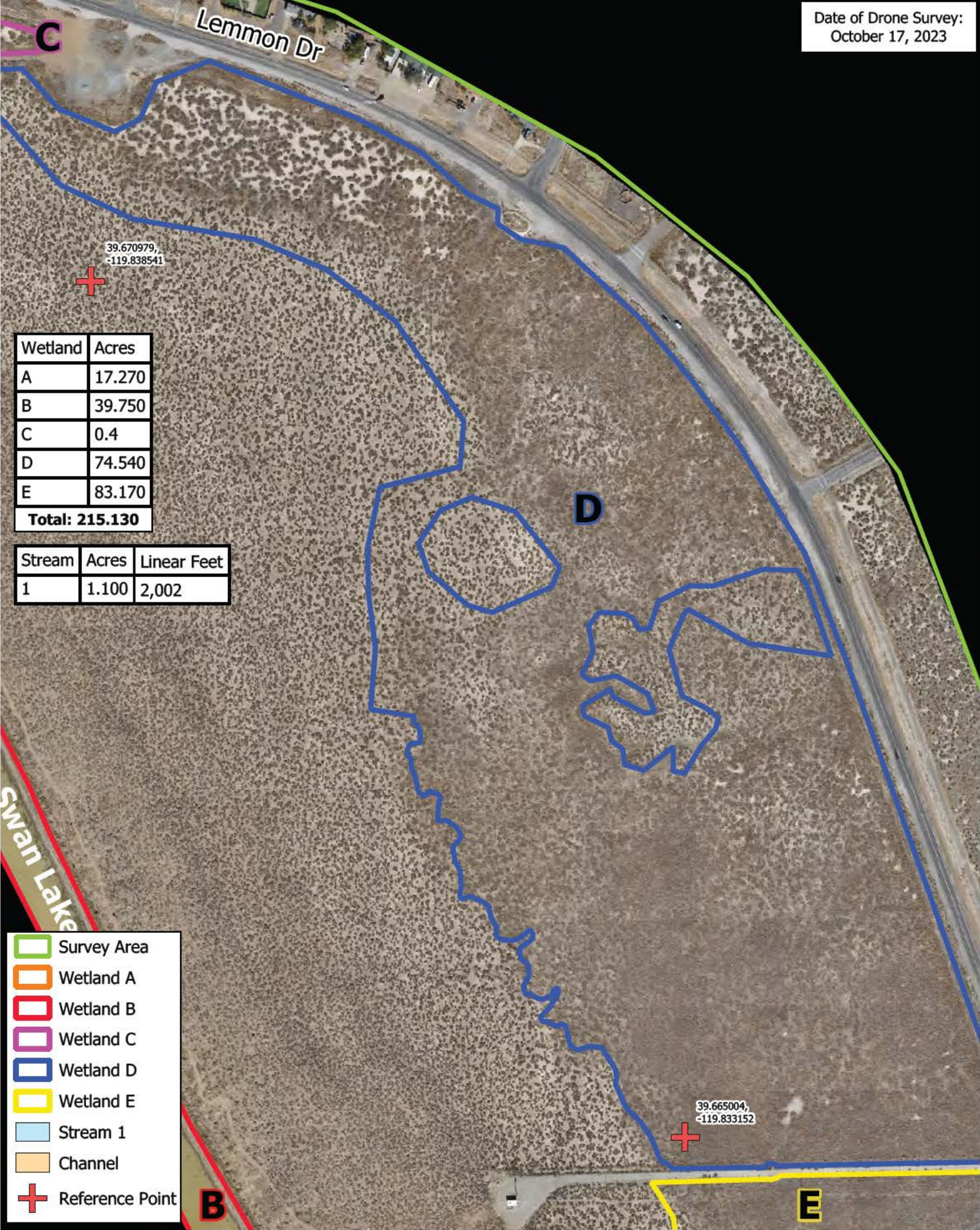


# RTC Washoe Lemmon Drive Aquatic Resources Map - Wetland C

Map Made:  
December 20, 2023

1 inch = 150 feet  
Base Imagery: 2023 UES Orthomosaic Drone Imagery  
CRS: EPSG:3857 - WGS 84



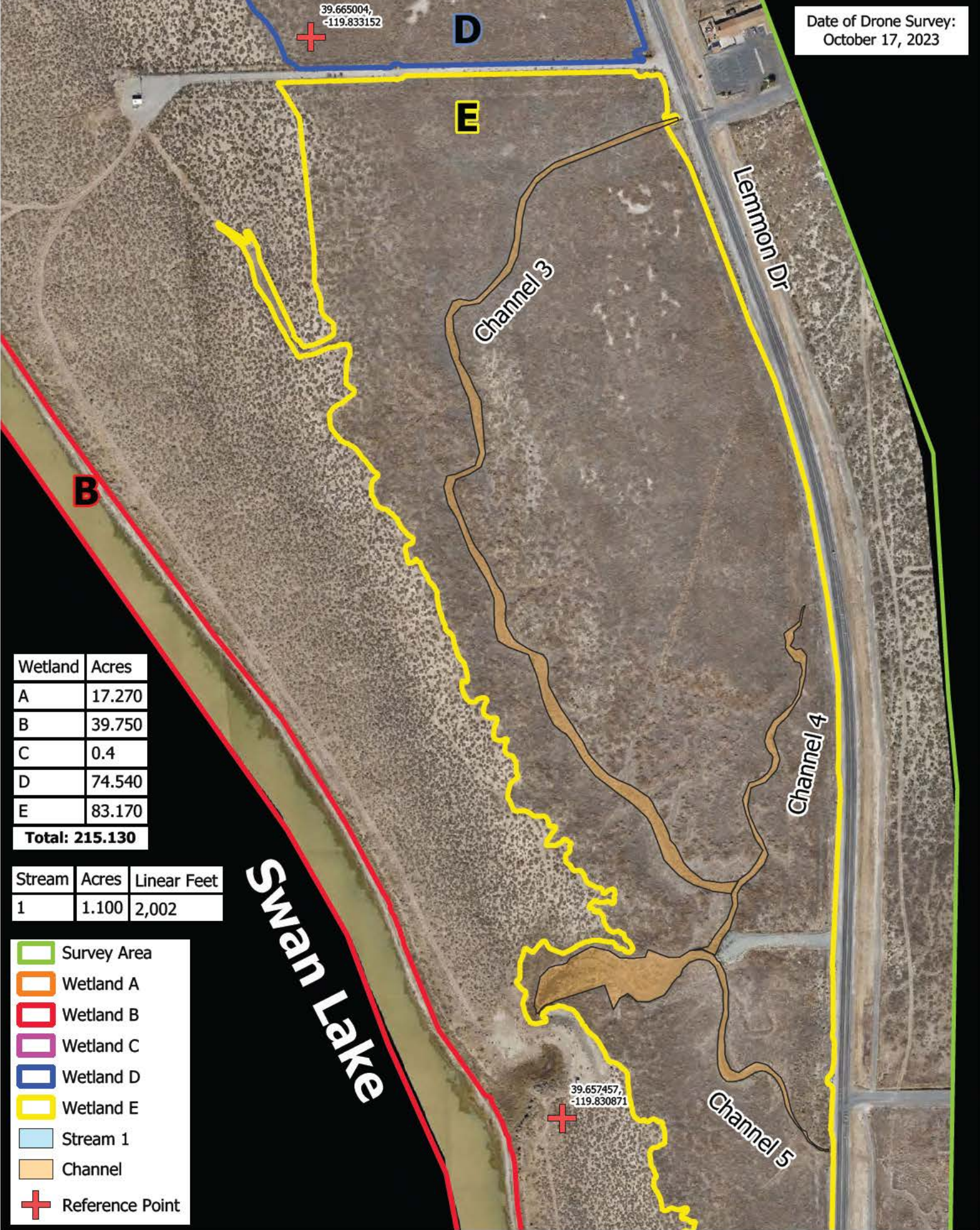


# RTC Washoe Lemmon Drive Aquatic Resources Map - Wetland D

Map Made:  
December 20, 2023



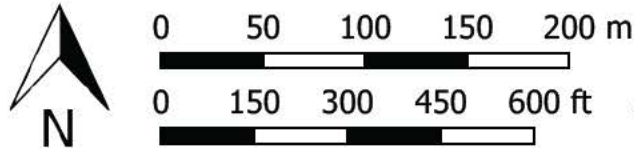
Date of Drone Survey:  
October 17, 2023



| Wetland        | Acres  |
|----------------|--------|
| A              | 17.270 |
| B              | 39.750 |
| C              | 0.4    |
| D              | 74.540 |
| E              | 83.170 |
| Total: 215.130 |        |

| Stream | Acres | Linear Feet |
|--------|-------|-------------|
| 1      | 1.100 | 2,002       |

- Survey Area
- Wetland A
- Wetland B
- Wetland C
- Wetland D
- Wetland E
- Stream 1
- Channel
- Reference Point



# RTC Washoe Lemmon Drive Aquatic Resources Map - Wetland E North

Map Made:  
December 20, 2023



Date of Drone Survey:  
October 17, 2023

Swan Lake

B

E

Channel 4

Channel 5

Lemmon Dr

39.657457,  
-119.830871

39.652500,  
-119.829437

| Wetland | Acres  |
|---------|--------|
| A       | 17.270 |
| B       | 39.750 |
| C       | 0.4    |
| D       | 74.540 |
| E       | 83.170 |

**Total: 215.130**

| Stream | Acres | Linear Feet |
|--------|-------|-------------|
| 1      | 1.100 | 2,002       |

|  |                 |
|--|-----------------|
|  | Survey Area     |
|  | Wetland A       |
|  | Wetland B       |
|  | Wetland C       |
|  | Wetland D       |
|  | Wetland E       |
|  | Stream 1        |
|  | Channel         |
|  | Reference Point |



0 50 100 150 200 m

0 150 300 450 600 ft

1 inch =  
400 Feet

Base Imagery: 2023 UES Orthomosaic Drone Imagery  
CRS: EPSG:3857 - WGS 84

## RTC Washoe Lemmon Drive Aquatic Resources Map - Wetland E South

Map Made:  
December 20, 2023