



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

**CESPK-RDC-S**

**30 MAY 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-2024-00121].

**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. 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) ID-1 is a drainage with an Ordinary High-Water Mark (OHWM) measuring approximately 498 linear feet and 0.056 acres within the review area and is jurisdictional under Section 404 of the Clean Water Act.

(2) P-1 is a pond measuring approximately 0.384 acres within the review area and is jurisdictional under Section 404 of the Clean Water Act.

(3) SW-1 is a seasonal wetland measuring approximately 0.230 acres within the review area and is jurisdictional under Section 404 of the Clean Water Act.

(4) D-1 is a constructed ditch with an OHWM measuring approximately 161 linear feet and 0.029 acres within the review area and is jurisdictional under Section 404 of the Clean Water Act.

## 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 19.95-acre review area is located off Latrobe Road in the unincorporated community of Latrobe, El Dorado County, California. The center of the review area is approximately Latitude 38.565620°, Longitude -120.985959° (Enclosure 1). Terrain within the review area is comprised of generally sloped land upslope of Latrobe Creek. There are no previous Jurisdictional Determinations identified within the review area.

## 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

The nearest TNW downstream of aquatic resources within the review area is the Cosumnes River which is approximately 39 miles southwest of the review area.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Aquatic resources within the review area flow south into Latrobe Creek, a relatively permanent (a)(3) tributary, through a culvert located under Latrobe Road. Latrobe Creek flows northwest along Latrobe Road for approximately 3.5 miles before emptying into Deer Creek near the intersection of Latrobe Road and Cothrin Ranch Road. Deer Creek flows southwest for approximately 30 miles before reaching the Cosumnes River. The Cosumnes River continues for approximately 5.5 miles before reaching the point where it becomes a Traditionally Navigable Water, just south of Twin Cities Road in Elk Grove, California (Enclosure 2, Figure 1).

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: N/A.

7. SECTION 404 JURISDICTIONAL WATERS:

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): **P-1** is a 0.384-acre pond that impounds an (a)(3) water at the time of assessment and contains relatively permanent standing water. P-1 was created sometime between 1959 and 1984 when a dam was placed across ID-1, a stream that was previously a direct tributary to Latrobe Creek. ID-1's jurisdictional status as a relatively permanent (a)(3) tributary is discussed in the section below. P-1 is also a tributary within the meaning of (a)(3) and is part of a reach of the tributary of the same stream order along with features labeled ID-1 and D-1, forming the relatively permanent tributary reach ID-1/P-1/D-1.

e. Tributaries (a)(3): The tributary reach is composed of the features mapped as **ID-1**, **P-1**, and **D-1** in Figure 2 of Enclosure 2. ID-1/P-1/D-1 is an approximately 1,400-foot-long (0.53 acre) relatively permanent tributary that originates in the northeast corner of the review area. ID-1/P-1/D-1 flows southwest through the review area before flowing into a seasonal wetland, SW-1. From SW-1, water drains through an approximately 30-foot-long culvert under Latrobe Road and then into Latrobe Creek. Latrobe Creek is a relatively permanent first order tributary to the Cosumnes River, 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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navigable water of the U.S. Please see Figure 2 of Enclosure 2 for a depiction of flows within the review area.

The flow characteristics at the farthest downstream limit of the ID-1/P-1/D-1 tributary reach (the southern end of D-1) observed via Digital Globe imagery and during an April 9, 2024, site visit did not display flowing or standing waters year-round or continuously during certain times of the year. However, these flow characteristics are not representative of the entire evaluated ID-1/P-1/D-1 tributary reach. D-1, which accounts for approximately 12% of the tributary reach, is the only non-relatively permanent segment of the tributary reach. The remaining 88% of the tributary reach, consisting of ID-1 and P-1, has flowing or standing water year-round or continuously during certain times of the year and more than just for a short duration in direct response to precipitation.

During the April 9, 2024, site visit, Corps staff observed surface flows within the ID-1 and P-1 portions of the tributary reach. No surface flows were present in the D-1 portion of the tributary reach (Enclosure 3). The site visit took place during the end of the wet season, four days after the most recent rainfall, when the region was in mild drought. The 3-month antecedent precipitation was within the range of normal (Enclosure 5). We would expect to observe a seasonally flowing, relatively permanent stream to have water in it, but would expect a tributary that flows only in direct response to precipitation to be dry under these conditions. During the site visit, [REDACTED], the property owner, told staff from this office that ID-1 typically dries up during May each year, indicating that the feature flows throughout most of the wet season.

An analysis of aerial imagery dated January 18, 2022, and February 13, 2023, depict standing water within P-1, further indicating that the pond portion within the ID-1/P-1/D-1 tributary reach holds standing water throughout most of the year. January 18, 2023, was during the wet season, when the 3-month antecedent precipitation was within the range of normal and the region was in a severe drought. We would not expect a seasonal tributary to flow during a severe drought. P-1 clearly contains standing water on this date, indicating that the pond is a relatively permanent feature that has flowing or standing water year-round or continuously during certain times of the year and for more than just a short duration in direct response to precipitation. February 13, 2023, was within the wet season during a period of severe wetness. The 3-month antecedent precipitation was within the normal range. We would expect a seasonal stream to be flowing under these conditions. Please note that aerial imagery was only sufficient for determining the relatively permanent status of P-1 and was not sufficient for determining the flow regime of ID-1 or D-1, given the narrow and small size of these aquatic resources. The flow regimes for ID-1 and D-1 were verified during the site visit conducted on April 9, 2024. Additionally, the *Goin Property Project Aquatic Resources Delineation Report* (ARD Report), prepared by [REDACTED], notes that ID-1 was flowing during a field visit conducted by their staff on February 8, 2022. This

date was 29 days from the last significant precipitation event and is within the wet season when the region was in extreme drought and the 3-month antecedent precipitation was drier than normal. We would not expect to observe a non-relatively permanent stream to be flowing under these conditions. See the enclosed Digital Globe imagery and corresponding Antecedent Precipitation Tool (APT) reports used during our analysis (Enclosures 4 and 5). The ARD Report also notes that ID-1 supports hydrophytic vegetation within the active floodplain and describes the feature as an intermittent drainage fed by waters from a seasonally perched groundwater table and supplemented by precipitation and stormwater runoff.

f. Adjacent Wetlands (a)(4): **SW-1** is a 0.230-acre seasonal wetland located within the review area and is adjacent to Latrobe Creek, a relatively permanent (a)(3) tributary. Staff from this office observed standing or flowing water within Latrobe Creek during site visits conducted on February 21, 2024; March 7, 2024; and April 9, 2024, indicating the presence of standing or flowing water continuously during certain times of the year and more than just for a short duration in direct response to precipitation. SW-1 drains through a 30-foot-long by 15-inch-wide corrugated metal pipe culvert that flows under Latrobe Road and discharges into Latrobe Creek. Latrobe Creek is a relatively permanent tributary to Deer Creek, which is in turn tributary to the Cosumnes River, a navigable water of the U.S. The culvert pipe in which water from SW-1 drains into provides a continuous surface connection between the wetland and Latrobe Creek, a relatively permanent (a)(3) tributary. Additionally, SW-1 abuts the relatively permanent (a)(3) tributary ID-1/P-1/D-1 described above. For more details, please see pages 1-3 of the enclosed February 21, 2024, site visit photolog (Enclosure 6) and pages 1-2 of the enclosed March 7, 2024, site visit photolog (Enclosure 7).

g. Additional Waters (a)(5): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES: There are no aquatic resources 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.

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. U.S. Army Corps of Engineers. February 21, 2024. Field Visit.
- b. U.S. Army Corps of Engineers. March 7, 2024. Field Visit.
- c. U.S. Army Corps of Engineers. April 9, 2024. Field Visit.

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d. *Goin Property Project Aquatic Resources Delineation Report*. [REDACTED]

[REDACTED] February 2024.

e. Digital Globe. *Goin Property (SPK-2024-00121), Digital Globe Aerial Imagery Map Book*. Generated by U.S. Army Corps of Engineers. February 15, 2024.

f. Google Earth Pro. Imagery dates: February 2, 2018; February 5, 2021; June 3, 2021; May 17, 2023; Imagery. 1:400 Accessed March 14, 2024.

g. USACE ERDC Antecedent Precipitation Tool, Dates: January 18, 2022; May 1, 2022; February 13, 2023; June 23, 2023.

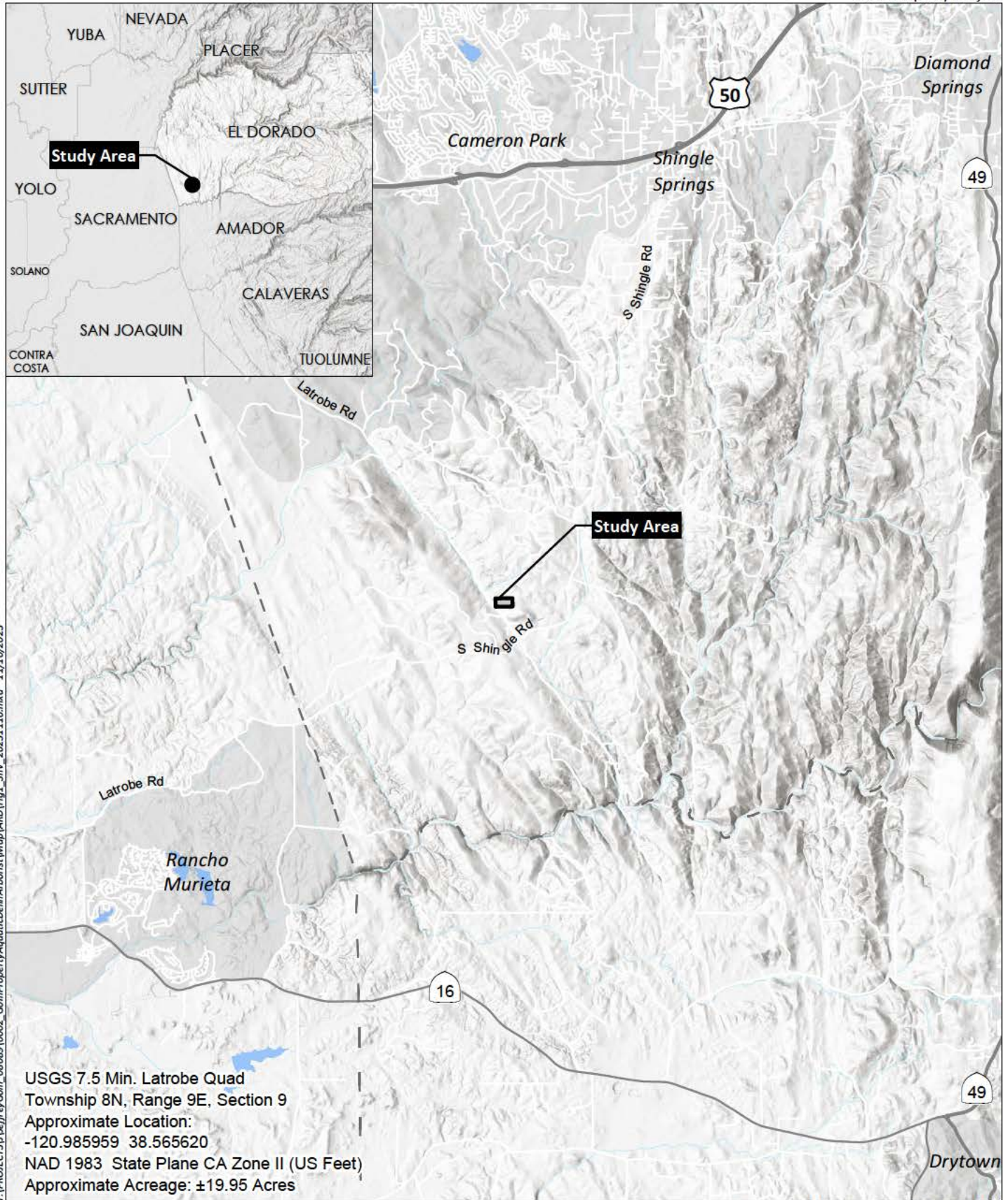
10. OTHER SUPPORTING INFORMATION. P-1 can also be categorized as an (a)(3) tributary because it is situated within the same tributary reach as ID-1 and D-1. Together, the three features make up the ID-1/P-1/D-1 tributary reach. Water from ID-1 flows through P-1, D-1, and SW-1 before entering Latrobe Creek through the culvert under Latrobe Road (Enclosure 2, Figure 2).

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.



7 Encls

1. Review Area Vicinity Map
2. Flow Path Maps
3. April 9, 2024, Site Visit Photo Log
4. Digital Globe Aerial Imagery
5. APT Reports
6. February 21, 2024, Site Visit Photo Log
7. March 7, 2024, Site Visit Photo Log



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Source: Base Map Layers (Esri, USGS, NGA, NASA)

# Vicinity Map

Figure 1

**AQUATIC RESOURCES INDIVIDUAL FEATURE TABLE**

Seasonal Wetlands			
Label	Acres	Latitude	Longitude
SW-1	0.223	38.565028	-120.988489
<b>Subtotal</b>	<b>0.223</b>		

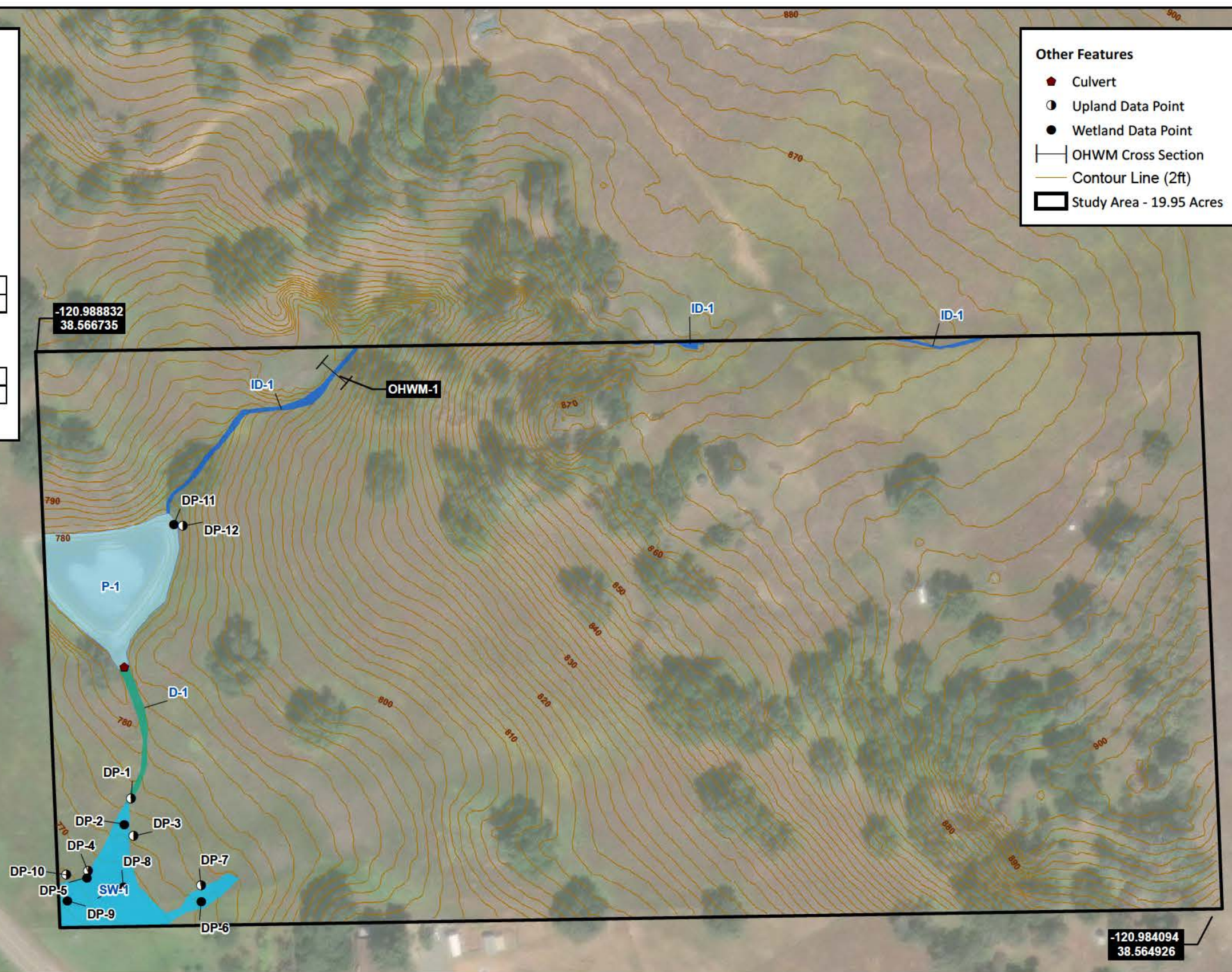
Pond			
Label	Acres	Latitude	Longitude
P-1	0.384	38.566005	-120.988519
<b>Subtotal</b>	<b>0.384</b>		

Intermittent Drainage					
Label	Acres	Length (Ft)	Avg Width (Ft)	Latitude	Longitude
ID-1	0.056	498	5	38.566550	-120.987331
<b>Subtotal:</b>	<b>0.056</b>	<b>498</b>			

Ditch					
Label	Acres	Length (Ft)	Avg Width (Ft)	Latitude	Longitude
D-1	0.029	161	7	38.565545	-120.988427
<b>Subtotal:</b>	<b>0.029</b>	<b>161</b>			

**Other Features**

- ◆ Culvert
- Upland Data Point
- Wetland Data Point
- OHWM Cross Section
- Contour Line (2ft)
- Study Area - 19.95 Acres



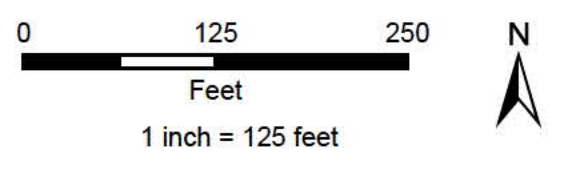
Latrobe Rd

**NOTES**

- The boundaries and jurisdictional status of all waters shown on this map are preliminary and subject to verification by the U.S. Army Corps of Engineers.
- Delineation conducted P. Martin on 2/8/2022 and 11/9/2023
- Aquatic resources were mapped by HELIX using a Juniper Geode GNSS submeter GPS unit.
- This delineation utilizes the USACE 1987 three-parameter methodology and Arid West Supplement to delineate jurisdictional waters of the U.S.
- The Hydrologic Unit Code for this site is 18040013.
- Topographic contour interval is 2 feet.
- Coordinate System: State Plane Zone II.
- Projection: Lambert Conic Conformable.
- Datum: North American Datum 1983.

Aerial Imagery Date: 5/1/2022  
Aerial Imagery Source: DigitalGlobe

USACE REGULATORY FILE #: VERIFIED BY: TBD DATE OF VERIFICATION: TBD		
REVISIONS		
DATE	DESCRIPTION	BY



**AQUATIC RESOURCES DELINEATION MAP**

Goin Property  
El Dorado County, California  
November 14, 2023

**APPENDIX B**