



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

CESPK-RDC-S

14 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) ,¹ [SPK-2024-00155].

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.

1. SUMMARY OF CONCLUSIONS.

a. The following table lists each individual feature within the review area and the jurisdictional status of each one (i.e., identifies whether each feature is/is not a water of the United States and/or a navigable water of the United States). None of the features within the review area are waters of the U.S. or navigable waters of the U.S.

Name of Aquatic Resource	Cowardin	Description	Waters of the U.S.	Navigable Waters of the U.S.
E7	R6	Ephemeral Riverine	No	No
E8	R6	Ephemeral Riverine	No	No
E9	R6	Ephemeral Riverine	No	No
E10	R6	Ephemeral Riverine	No	No
E11	R6	Ephemeral Riverine	No	No
E12	R6	Ephemeral Riverine	No	No
E13	R6	Ephemeral Riverine	No	No
E14	R6	Ephemeral Riverine	No	No
E15	R6	Ephemeral Riverine	No	No
E16	R6	Ephemeral Riverine	No	No
E17	R6	Ephemeral Riverine	No	No
E18	R6	Ephemeral Riverine	No	No
E19	R6	Ephemeral Riverine	No	No

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 1,520-acre project area is located in Section 3, Township 18 North, Range 23 West, MDB&B, Latitude 39.458982°, Longitude -119.402436°, near the City of Stagecoach, Storey County, Nevada (AJD MFR Enclosure 1). The project site is located adjacent to the USA Parkway, in the Sierra Nevada-Influenced Semiarid Hills and Basins terrain of the Central Basin and Range region. Elevations in the project area range from 5,400' to 6,200'. Upland vegetation consists of sagebrush, juniper, and scattered stands of high elevation pines. The lower elevation plant community consists of sagebrush, rubber rabbitbrush, and cheatgrass. Parts of the project area have been used for mining of mineral. Other disturbances also include off-road vehicle traffic and wild horse presence.

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

The nearest TNW, the Carson River, is located approximately 10-miles straight-line distance to the south of the review area from estimation using the Corps Navigable Waters layer in Google Earth.⁵

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. About 9.5 miles below the review area, the stream system appears to terminate flow just outside the city of Silver Springs, Nevada and this location is approximately 1.0 miles west of the nearest section of the Carson River (TNW) near Lahontan State Recreation Area.

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.

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 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.

- 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.

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). The streams (i.e., E7-19) are features that do not meet the relatively permanent waters standard as (a)(3) tributaries. The flow regime of these features is characterized as ephemeral because their flow derives from direct precipitation within the project vicinity. The E7-19 features totaling 5.1 acres are located in steep valleys draining downhill, where there is no upstream water and seasonal snowpack does not persist.

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) Desk evaluation was conducted through March and April 2024.

⁸ 88 FR 3004 (January 18, 2023)

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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00155]

b) Maps, plans, plots or plat submitted by or on behalf of the applicant - Aquatic Resources Delineation Report [REDACTED] dated January 2024 (Enclosure 1).

c) National Wetlands Inventory map- Retrieved 25 April 2024.

d) USACE Google Earth Layers accessed March 29, 2024 (Enclosure 3).

e) Digital Globe Aerial Photographs, Archive Dated September 25, 2018; April 26, 2020; May 8, 2021; September 9, 2022; March 4, 2024; April 3, 2024 (Enclosure 4).

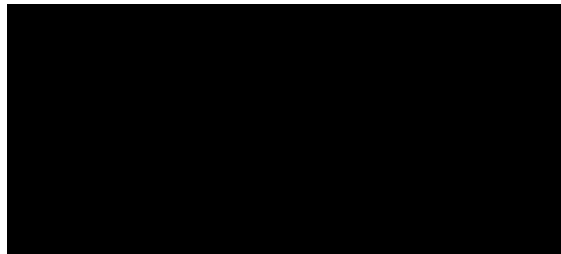
f) USACE ERDC Antecedent Precipitation Tool- Aquatic Resources Delineation Report [REDACTED] dated January 2024 (Enclosure 5).

g) USGS National Map Viewer National Hydrography Dataset, 3DEP LiDAR and Flow Path Layers, accessed March 28, 2024 (Enclosure 3).

h) Other photographs- Aquatic Resources Delineation Report [REDACTED] [REDACTED] dated January 2024 (Enclosure 2).

10. OTHER SUPPORTING INFORMATION. Aquatic Resources Delineation Report [REDACTED] dated January 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.



5 Encls

Enclosure 1: Location Map

Enclosure 2: Aquatic Resources Delineation Map

Enclosure 3; Flowpath Map

Enclosure 4: Digital Globe Imagery

Enclosure 5: Antecedent Precipitation Tool Reports

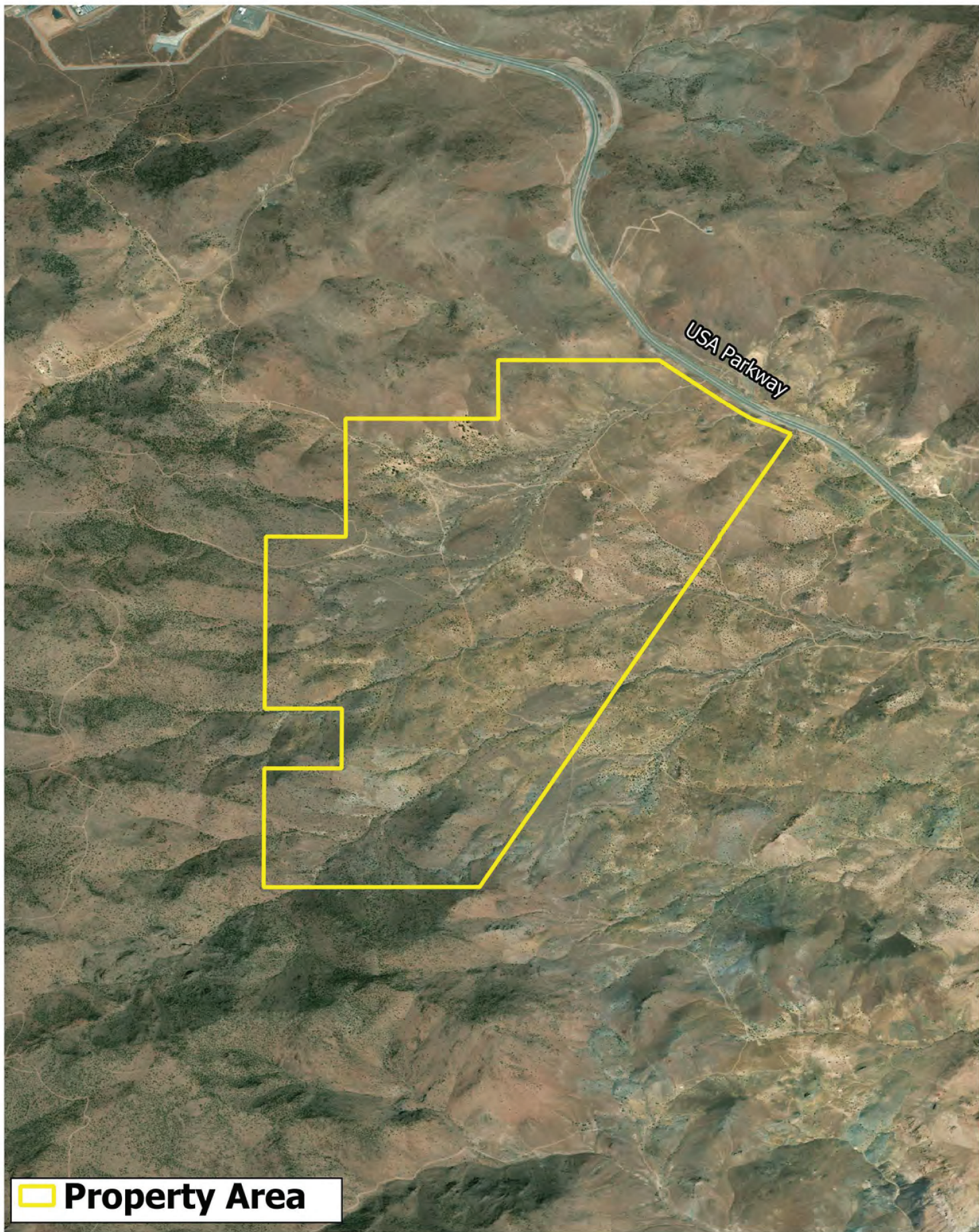


Scale:
1:400,000

Base Imagery: Google Earth
CRS: EPSG:4326 - WGS 84

Enclosure 1

Property Location



 **Property Area**



Scale:
1:18,000

0 0.5 1 km



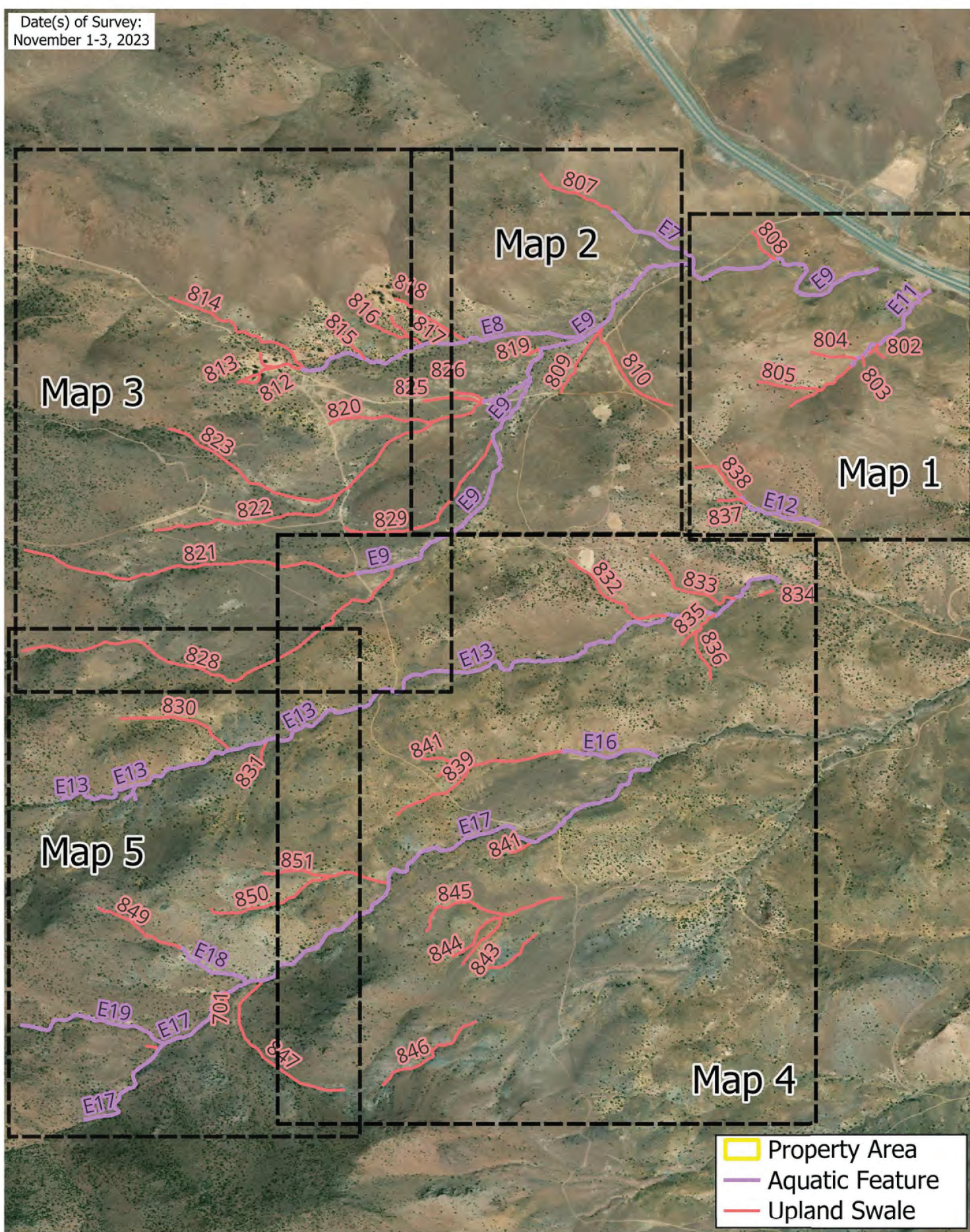
0 0.5 1 mi



Base Imagery: ESRI Satellite
CRS: EPSG:4326 - WGS 84

Enclosure 1

Property Area



Scale:
1:10,000

0 200 400 600 m

0 1,000 2,000 ft

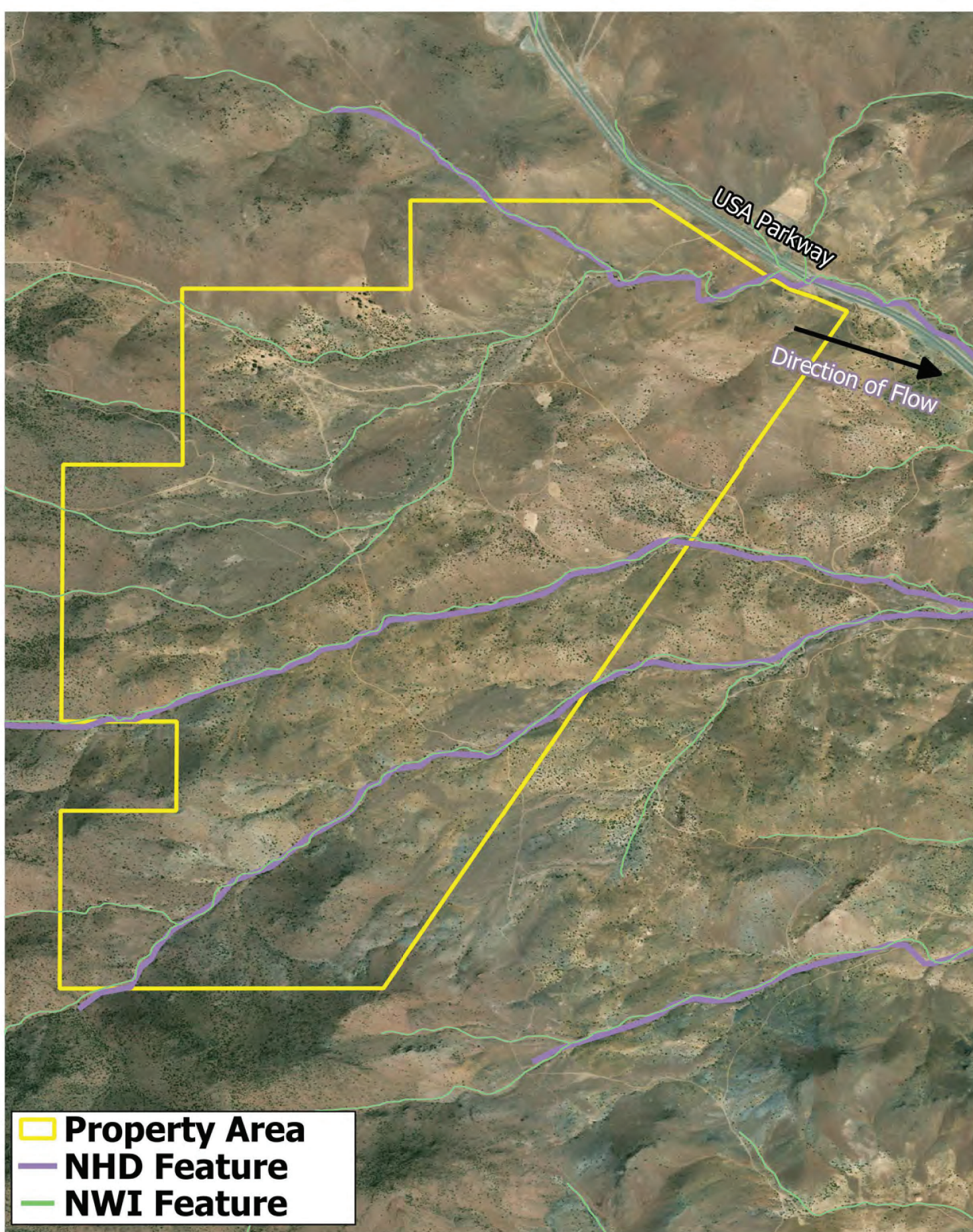
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Base Imagery: ESRI

CRS: EPSG:4326 - WGS 84

Enclosure 2

Photolog Overview



Scale:
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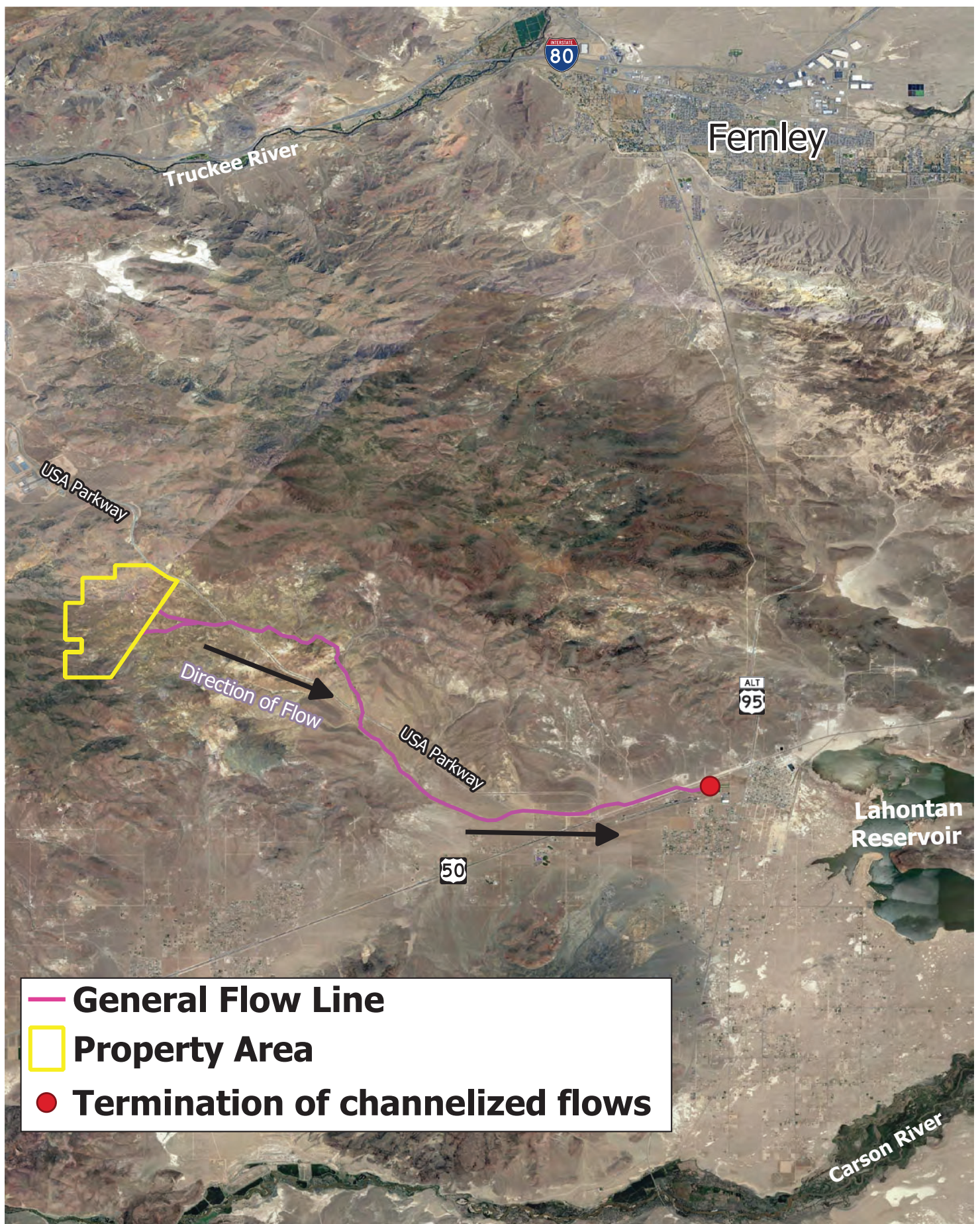
0 250 500 750 1,000 m

0 1,000 2,000 3,000 ft

Base Imagery: ESRI Satellite
CRS: EPSG:4326 - WGS 84

Enclosure 3

NWI and NHD Features



Scale:
1:84,000

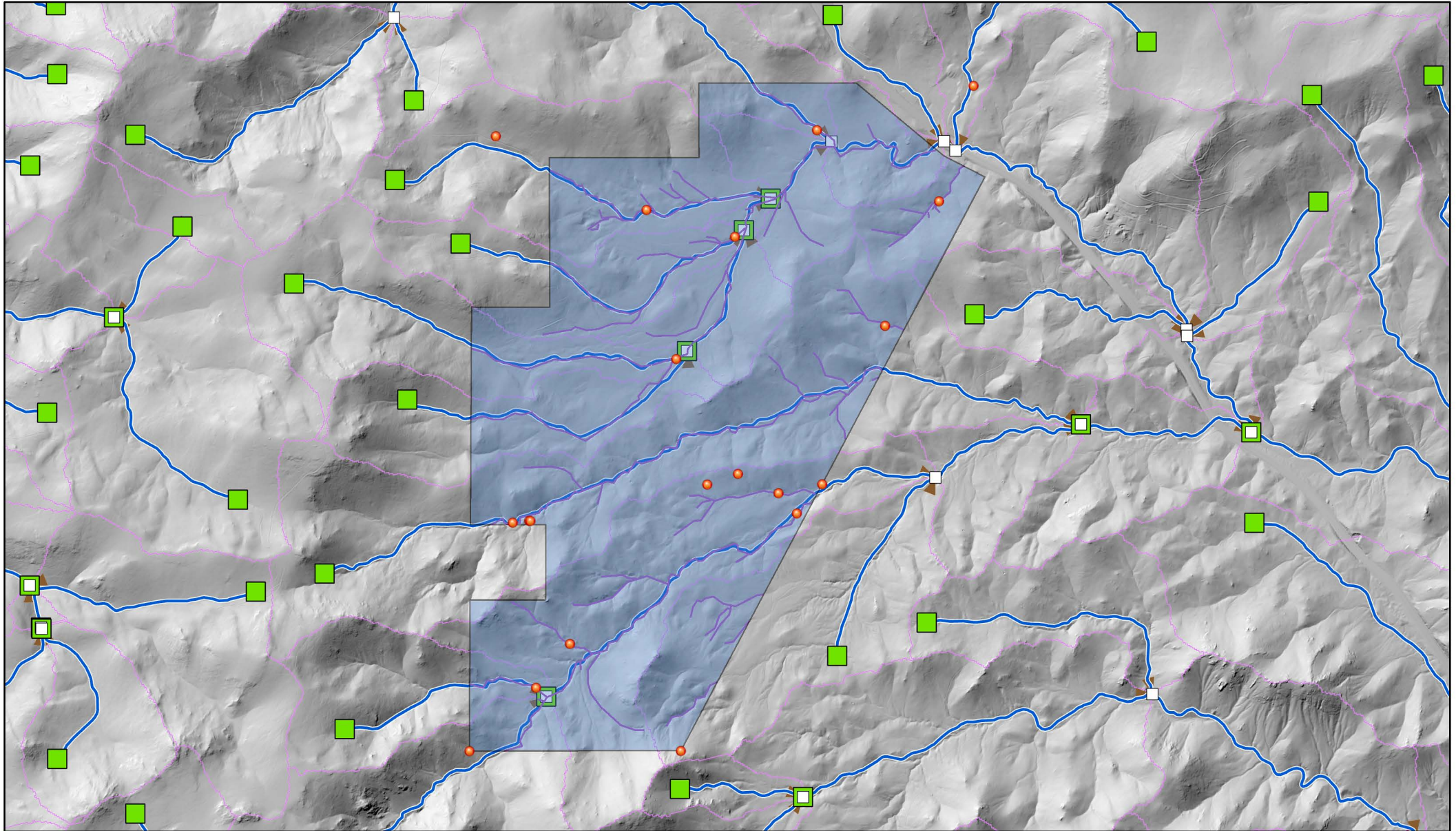


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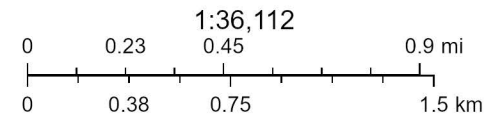
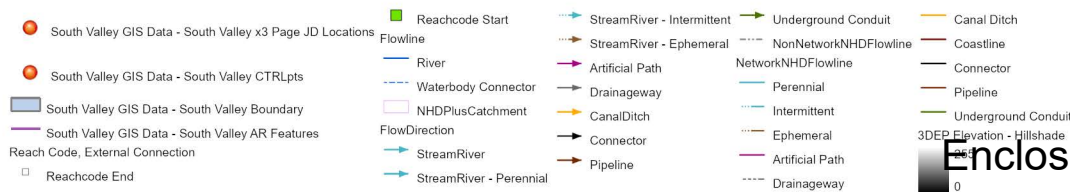
Enclosure 3
Map Made: 1/15/2024 HM

Flow Line to TNW

The National Map Advanced Viewer



4/26/2024, 1:33:47 PM



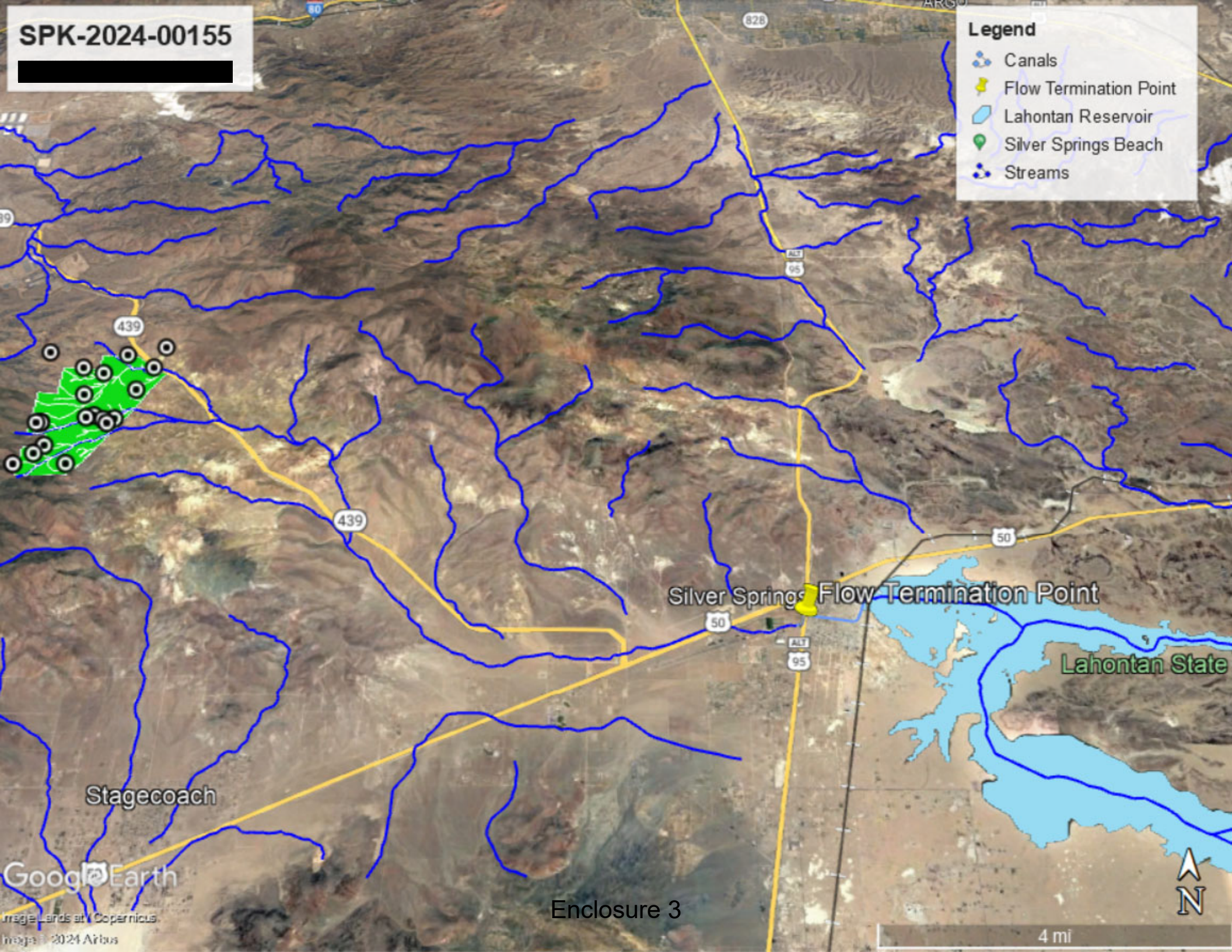
USGS TNM – National Hydrography Dataset Plus High Resolution (NHDPlus HR). Data refreshed October, 2022., USGS TNM / NGTOC – 3D National Hydrographic Program (3DHP). Data refreshed March 2024., USGS National Map 3D Elevation Program (3DEP). April 15, 2024., USGS The National Map:

Enclosure 3

SPK-2024-00155

Legend

- Canals
- Flow Termination Point
- Lahontan Reservoir
- Silver Springs Beach
- Streams



Stagecoach

Silver Springs Flow Termination Point

Lahontan State

Google Earth

Imagery Landsat Copernicus
Imagery 2024 Airbus

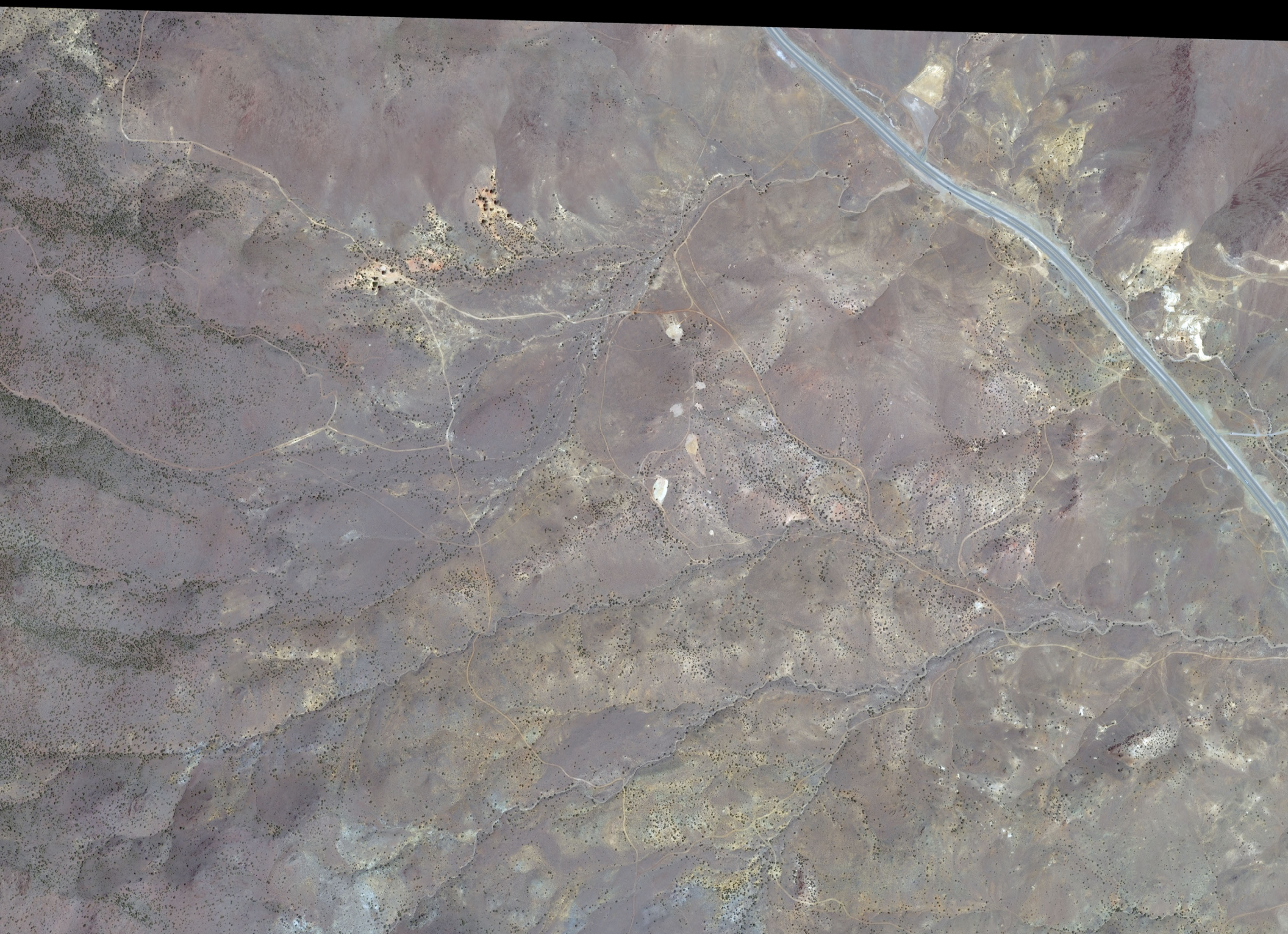
Enclosure 3

4 mi



Enclosure 4

18 SEPT 25



Enclosure 4

20APR26



Enclosure 4

21MAY08





24MAR04



Enclosure 4

24APR03



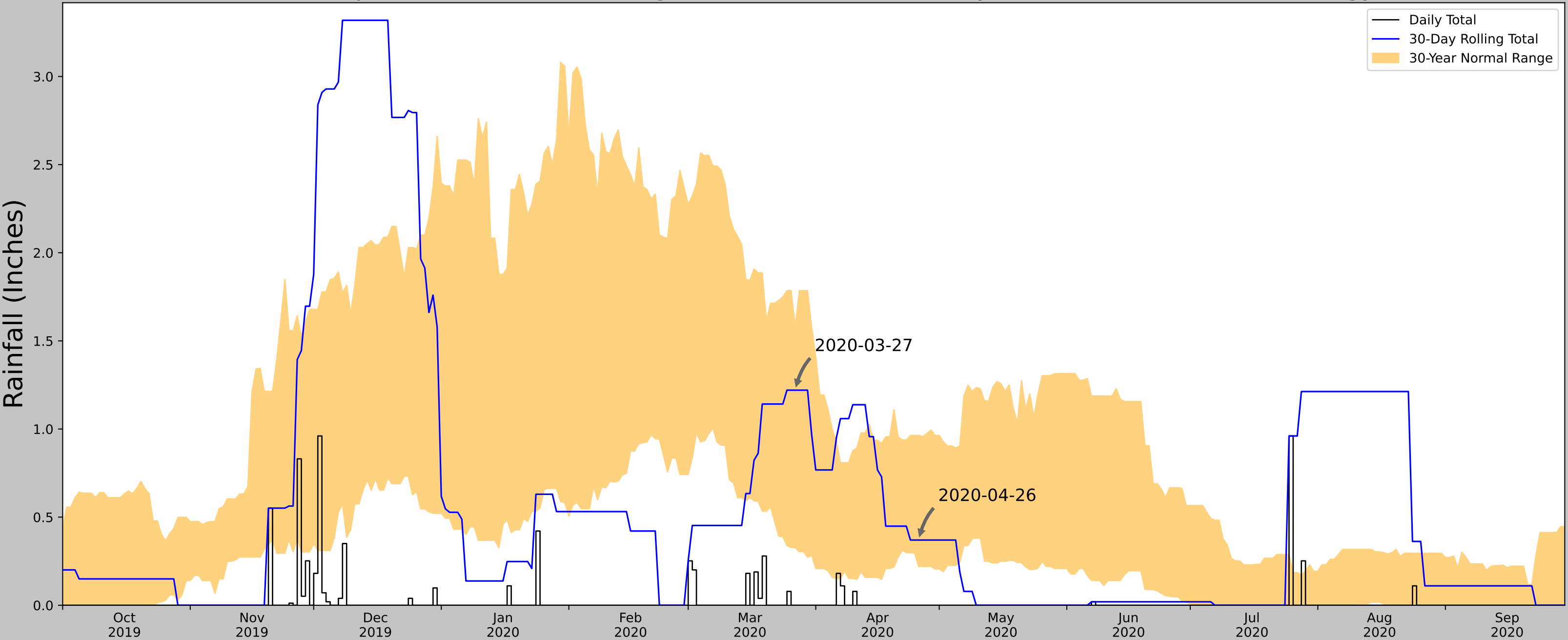
24APR03



Enclosure 4


24APR03

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	39.462337, -119.400964
Observation Date	2020-04-26
Elevation (ft)	5799.627
Drought Index (PDSI)	Moderate drought
WebWIMP H ₂ O Balance	Dry Season


30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2020-04-26	0.220472	0.963386	0.370079	Normal	2	3	6
2020-03-27	0.327165	1.579134	1.220472	Normal	2	2	4
2020-02-26	0.835827	2.302362	0.0	Dry	1	1	1
Result							Normal Conditions - 11



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Figures and tables made by the
Antecedent Precipitation Tool
Version 2.0

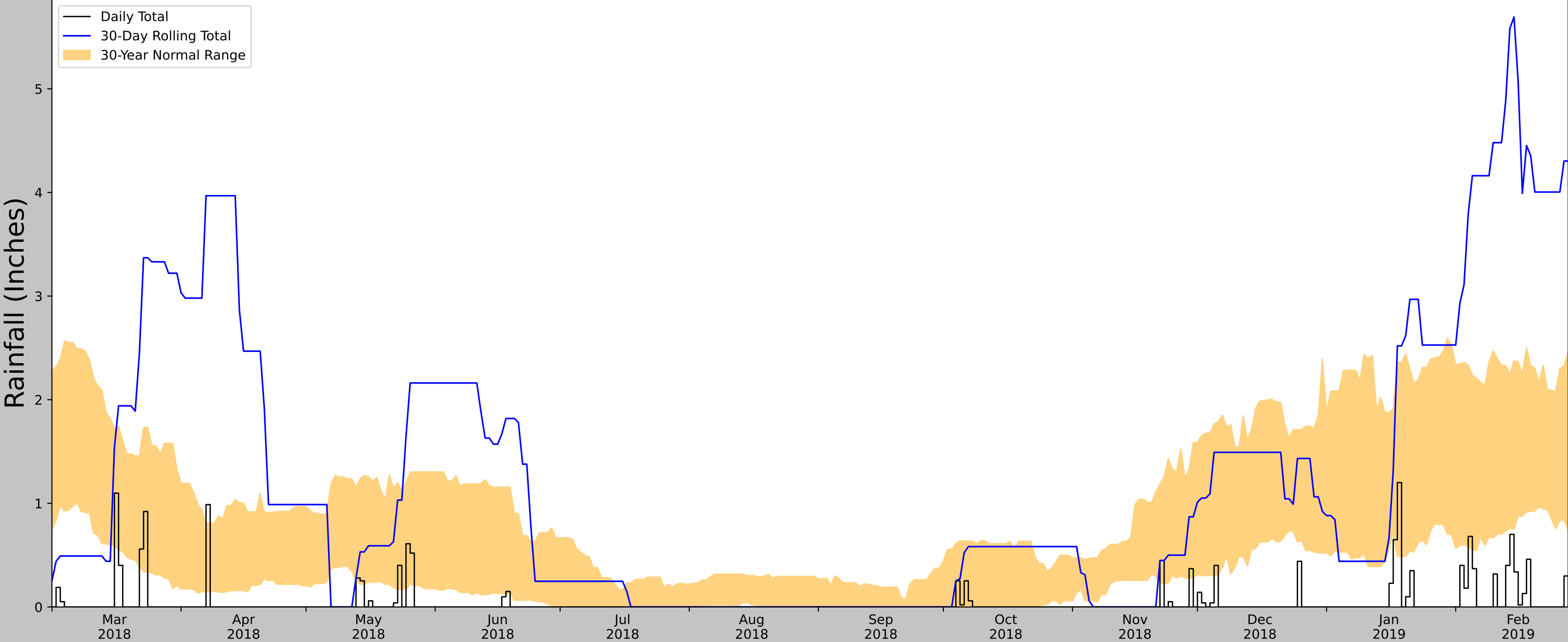
Developed by:
U.S. Army Corps of Engineers and
U.S. Army Engineer Research and
Development Center



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Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
VIRGINIA CITY	39.3128, -119.6483	6339.895	16.769	540.268	16.606	10411	81
Little Valley	39.25, -119.88	6509.843	13.129	169.948	8.139	15	0
DAYTON 3.5 NNE	39.3057, -119.5516	4421.916	5.193	1917.979	12.297	287	0
RENO 11.6 SSE	39.3868, -119.7291	4685.04	6.692	1654.855	14.086	23	0
RENO 11.6 SSE	39.387, -119.729	4685.04	6.699	1654.855	14.1	46	0
DAYTON 1.7 SW	39.2374, -119.5891	4356.956	6.096	1982.939	14.831	1	0
NEW WASHOE CITY 2.4 WNW	39.3165, -119.8112	5050.853	8.712	1289.042	15.151	27	7
RENO 10.0 S	39.3954, -119.79	5100.066	9.481	1239.829	16.021	6	0
CARSON CITY 4.4 N	39.2113, -119.74	4860.893	8.558	1479.002	16.508	24	2
RENO WFO	39.5683, -119.7956	4986.877	19.324	1353.018	34.842	247	0
RENO WFO	39.5678, -119.7683	4404.856	14.919	1935.039	35.582	265	0

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	39.462337, -119.400964
Observation Date	2018-09-25
Elevation (ft)	5799.627
Drought Index (PDSI)	Moderate drought
WebWIMP H ₂ O Balance	Dry Season


30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2018-09-25	0.0	0.262992	0.0	Normal	2	3	6
2018-08-26	0.0	0.294882	0.0	Normal	2	2	4
2018-07-27	0.0	0.220472	0.0	Normal	2	1	2
Result							Normal Conditions - 12



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Figures and tables made by the
Antecedent Precipitation Tool
Version 2.0

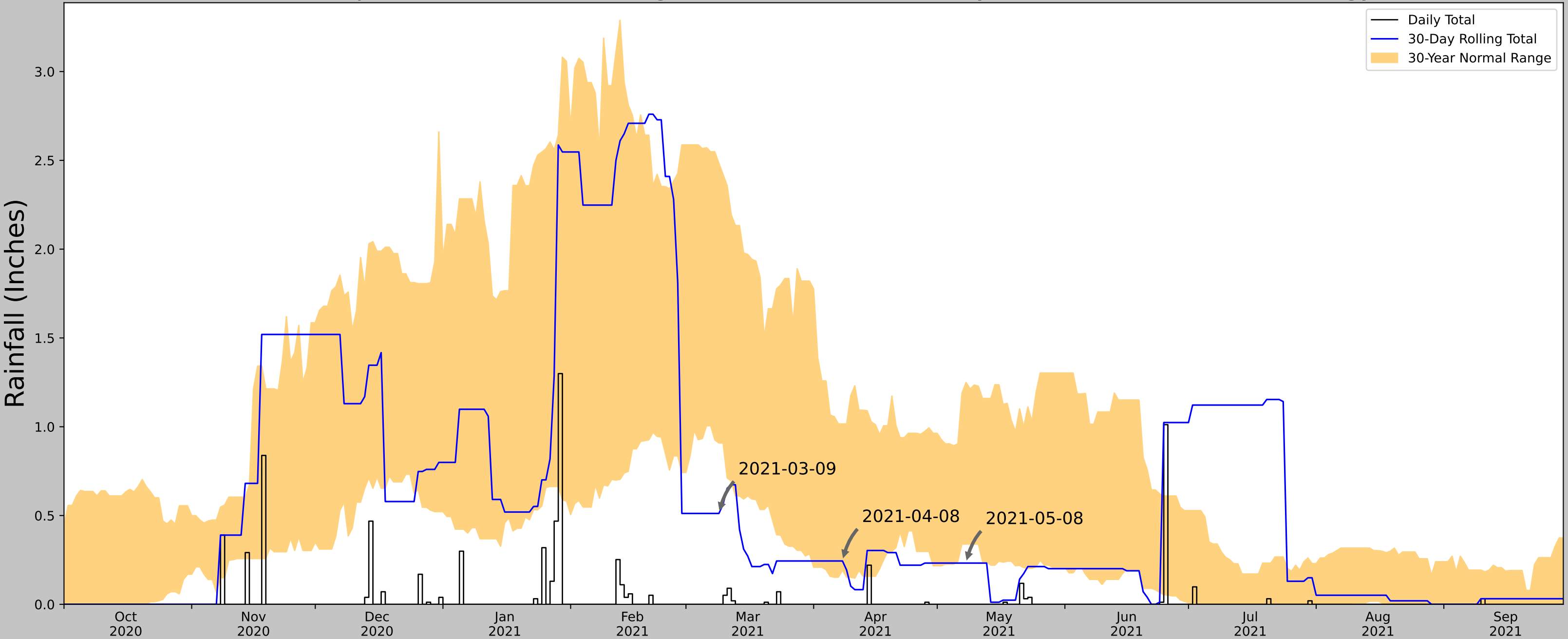
Developed by:
U.S. Army Corps of Engineers and
U.S. Army Engineer Research and
Development Center



ERDC
ENGINEER RESEARCH & DEVELOPMENT CENTER


Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
VIRGINIA CITY	39.3128, -119.6483	6339.895	16.769	540.268	16.606	10449	88
Little Valley	39.25, -119.88	6509.843	13.129	169.948	8.139	15	0
DAYTON 3.5 NNE	39.3057, -119.5516	4421.916	5.193	1917.979	12.297	287	0
RENO 11.6 SSE	39.3868, -119.7291	4685.04	6.692	1654.855	14.086	23	0
RENO 11.6 SSE	39.387, -119.729	4685.04	6.699	1654.855	14.1	46	0
DAYTON 1.7 SW	39.2374, -119.5891	4356.956	6.096	1982.939	14.831	1	0
NEW WASHOE CITY 2.4 WNW	39.3165, -119.8112	5050.853	8.712	1289.042	15.151	0	2
RENO 10.0 S	39.3954, -119.79	5100.066	9.481	1239.829	16.021	6	0
CARSON CITY 4.4 N	39.2113, -119.74	4860.893	8.558	1479.002	16.508	12	0
RENO WFO	39.5683, -119.7956	4986.877	19.324	1353.018	34.842	247	0
RENO WFO	39.5678, -119.7683	4404.856	14.919	1935.039	35.582	267	0

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	39.462337, -119.400964
Observation Date	2021-05-08
Elevation (ft)	5799.627
Drought Index (PDSI)	Severe drought
WebWIMP H ₂ O Balance	Dry Season


30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2021-05-08	0.338976	1.249213	0.232283	Dry	1	3	3
2021-04-08	0.192126	1.016142	0.244094	Normal	2	2	4
2021-03-09	0.908268	2.483858	0.511811	Dry	1	1	1
Result							Drier than Normal - 8



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Figures and tables made by the
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Version 2.0

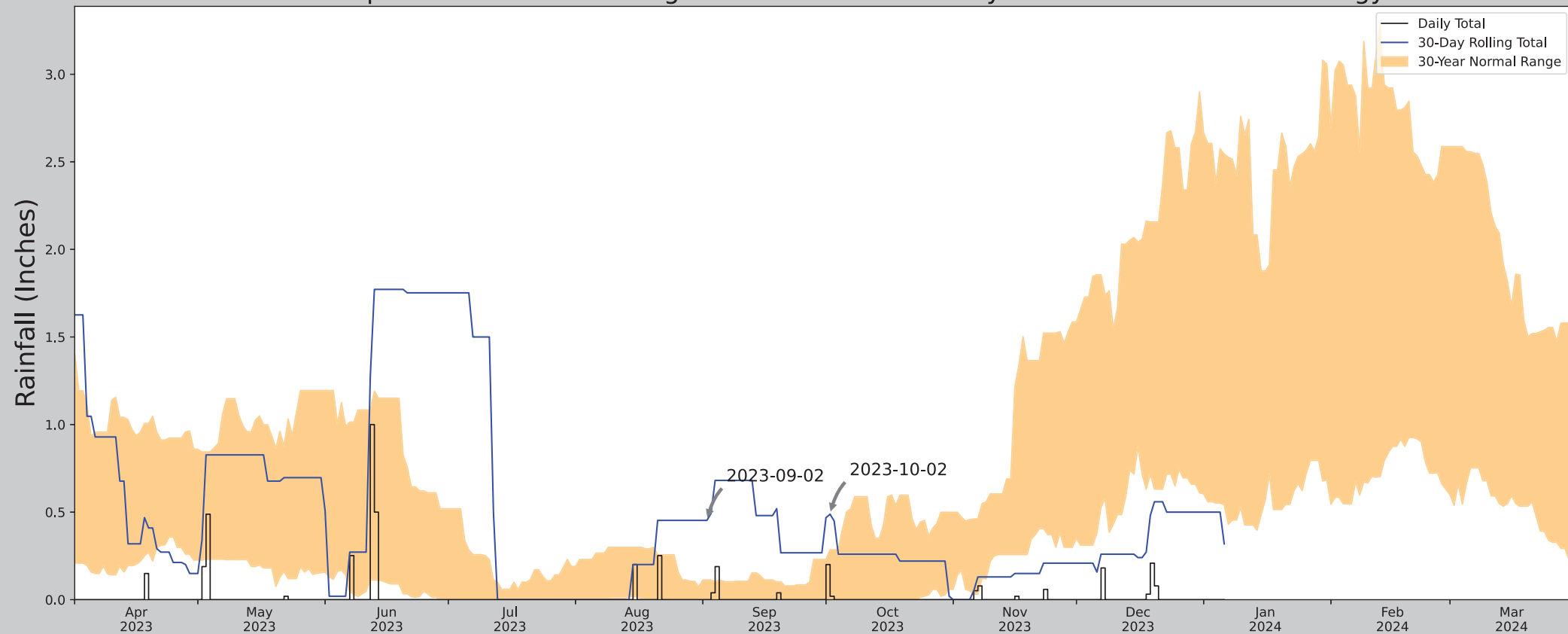
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U.S. Army Engineer Research and
Development Center



ERDC
ENGINEER RESEARCH & DEVELOPMENT CENTER

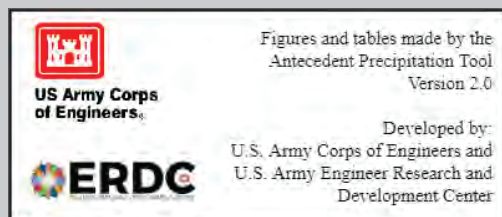
Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
VIRGINIA CITY	39.3128, -119.6483	6339.895	16.769	540.268	16.606	10452	85
Little Valley	39.25, -119.88	6509.843	13.129	169.948	8.139	15	0
DAYTON 3.5 NNE	39.3057, -119.5516	4421.916	5.193	1917.979	12.297	287	0
RENO 11.6 SSE	39.3868, -119.7291	4685.04	6.692	1654.855	14.086	23	0
RENO 11.6 SSE	39.387, -119.729	4685.04	6.699	1654.855	14.1	46	0
DAYTON 1.7 SW	39.2374, -119.5891	4356.956	6.096	1982.939	14.831	1	0
NEW WASHOE CITY 2.4 WNW	39.3165, -119.8112	5050.853	8.712	1289.042	15.151	44	2
RENO 10.0 S	39.3954, -119.79	5100.066	9.481	1239.829	16.021	6	0
CARSON CITY 4.4 N	39.2113, -119.74	4860.893	8.558	1479.002	16.508	28	3
RENO WFO	39.5683, -119.7956	4986.877	19.324	1353.018	34.842	247	0
RENO WFO	39.5678, -119.7683	4404.856	14.919	1935.039	35.582	204	0

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	39.458982, -119.402436
Observation Date	2023-11-01
Elevation (ft)	5611.184
Drought Index (PDSI)	Severe wetness
WebWIMP H ₂ O Balance	Dry Season

30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2023-11-01	0.059055	0.499213	0.0	Dry	1	3	3
2023-10-02	0.0	0.285039	0.488189	Wet	3	2	6
2023-09-02	0.0	0.112598	0.452756	Wet	3	1	3
Result							Normal Conditions - 12



Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
VIRGINIA CITY	39.3128, -119.6483	6339.895	16.565	728.711	19.525	10441	76
Little Valley	39.25, -119.88	6509.843	13.129	169.948	8.139	15	0
DAYTON 3.5 NNE	39.3057, -119.5516	4421.916	5.193	1917.979	12.297	287	0
RENO 11.6 SSE	39.3868, -119.7291	4685.04	6.692	1654.855	14.086	23	0
RENO 11.6 SSE	39.387, -119.729	4685.04	6.699	1654.855	14.1	46	0
DAYTON 1.7 SW	39.2374, -119.5891	4356.956	6.096	1982.939	14.831	1	0
NEW WASHOE CITY 2.4 WNW	39.3165, -119.8112	5050.853	8.712	1289.042	15.151	53	0
DAYTON 3.9 NE	39.3021, -119.5282	4352.034	6.463	1987.861	15.756	51	14
RENO 10.0 S	39.3954, -119.79	5100.066	9.481	1239.829	16.021	6	0
CARSON CITY 4.4 N	39.2113, -119.74	4860.893	8.558	1479.002	16.508	52	0
RENO WFO	39.5683, -119.7956	4986.877	19.324	1353.018	34.842	247	0
RENO AP	39.5078, -119.7683	4404.856	14.919	1935.039	35.582	130	0