

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

CESPK-RDC-S

10 June 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-2024-00177].

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.

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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.
E1	R6	Ephemeral Riverine	No	No
E2	R6	Ephemeral Riverine	No	No
E3	R6	Ephemeral Riverine	No	No
E4	R6	Ephemeral Riverine	No	No
E5	R6	Ephemeral Riverine	No	No
E6	R6	Ephemeral Riverine	No	No
NC-1	R6	Ephemeral Riverine	No	No
NC-2	R6	Ephemeral Riverine	No	No
NC-3	R6	Ephemeral Riverine	No	No
NC-4	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 1,200-acre project area is located in Section 3, Township 19 North, Range 22 East, MDB&B, Latitude 39.543283°, Longitude - 119.503010°, near the unincorporated community of Clark, Storey County, Nevada (AJD MFR Enclosure 1). The review area is in the Sierra Nevada Influenced Semiarid Hills and Basins terrain of the Central Basin and Range region. Elevations in the project area range from 4,500' to 5,400'. The project site vegetation community is predominantly semiarid shrub consisting of rubber rabbitbrush, cheatgrass, and tumble mustard.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW, the Truckee River, is located approximately 1.5-miles straight-line

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distance to the north 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. Six of the streams, E1-6, flow to the nearest section of the Truckee River (TNW) via channels just northeast of the project area. The flow path of the other four streams in the project area, NC1-4, appear to be severed by roads. These crossings lack culverts or bridges.

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.

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.

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- 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., E1-6, NC1-4) 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 E1-6 features total 1.1 acres and the NC1-4 features total 1.73 acres. These streams flow 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 May 2024.

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

⁸ 88 FR 3004 (January 18, 2023)

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c. National Wetlands Inventory map- Retrieved 29 March 2024 (Enclosure 2).

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

e. NRCS Soil Map- Retrieved April 8, 2024 (Enclosure 4).

f. USACE ERDC Antecedent Precipitation Tool- Retrieved May 17, 2024 (Enclosure 5).

g. USGS National Map Viewer National Hydrography Dataset, 3DEP LiDAR and Flow Path Layers, accessed March 28, 2024 (Enclosure 6).

h. Digital Globe Aerial Photographs, Archive Dated May 8, 2020; May 8, 2021; January 21, 2022; October 8, 2023 (Enclosure 7).

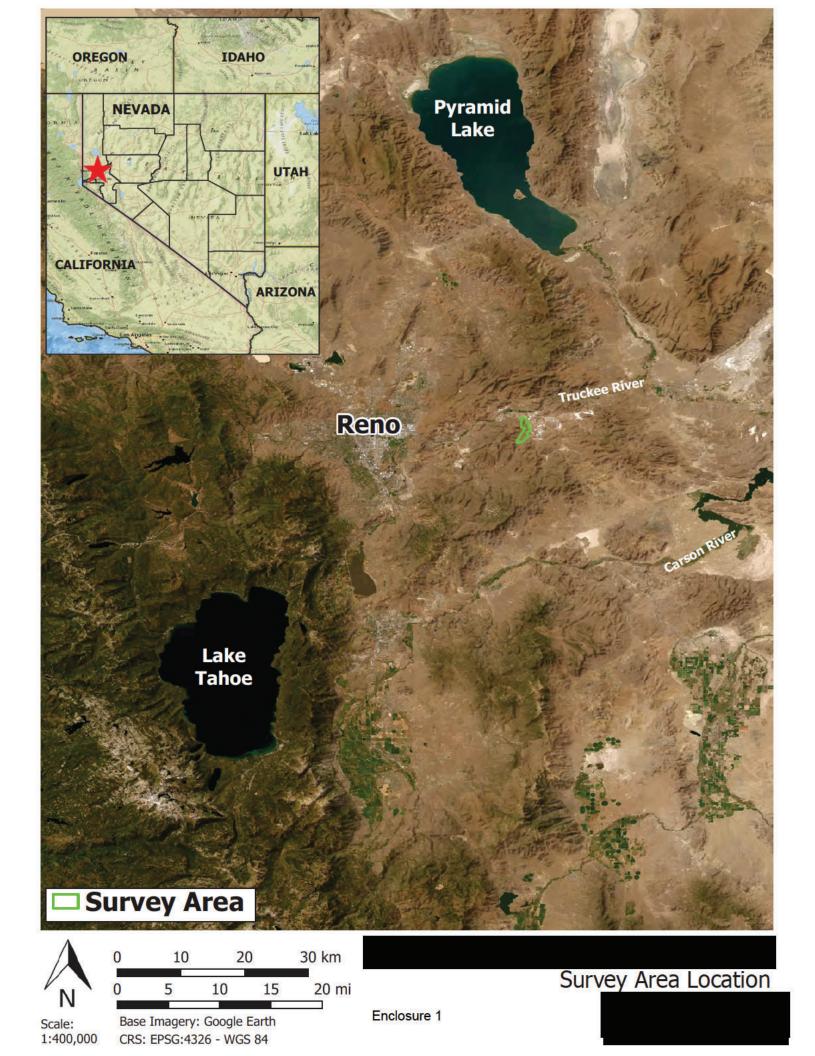
i. Other photographs- Aquatic Resources Delineation Report dated January 2024 (Enclosure 1).

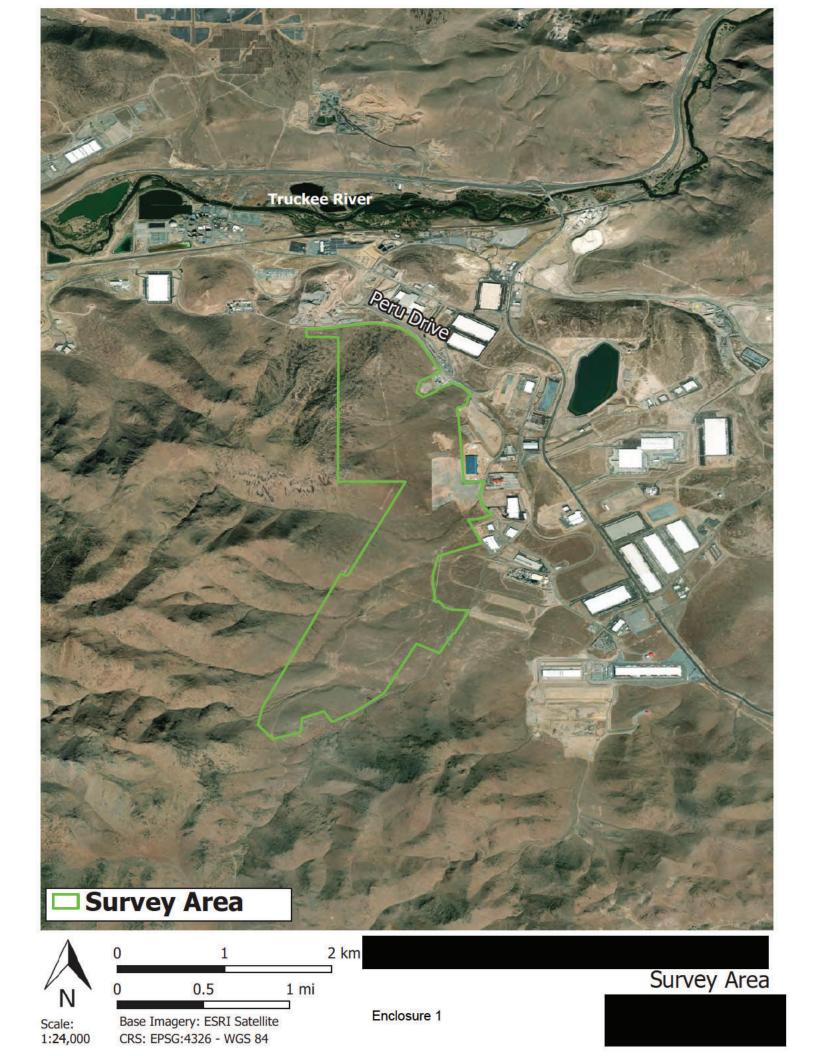
10. OTHER SUPPORTING INFORMATION. Aquatic Resources Delineation Report dated January 2024 (Enclosure 1).

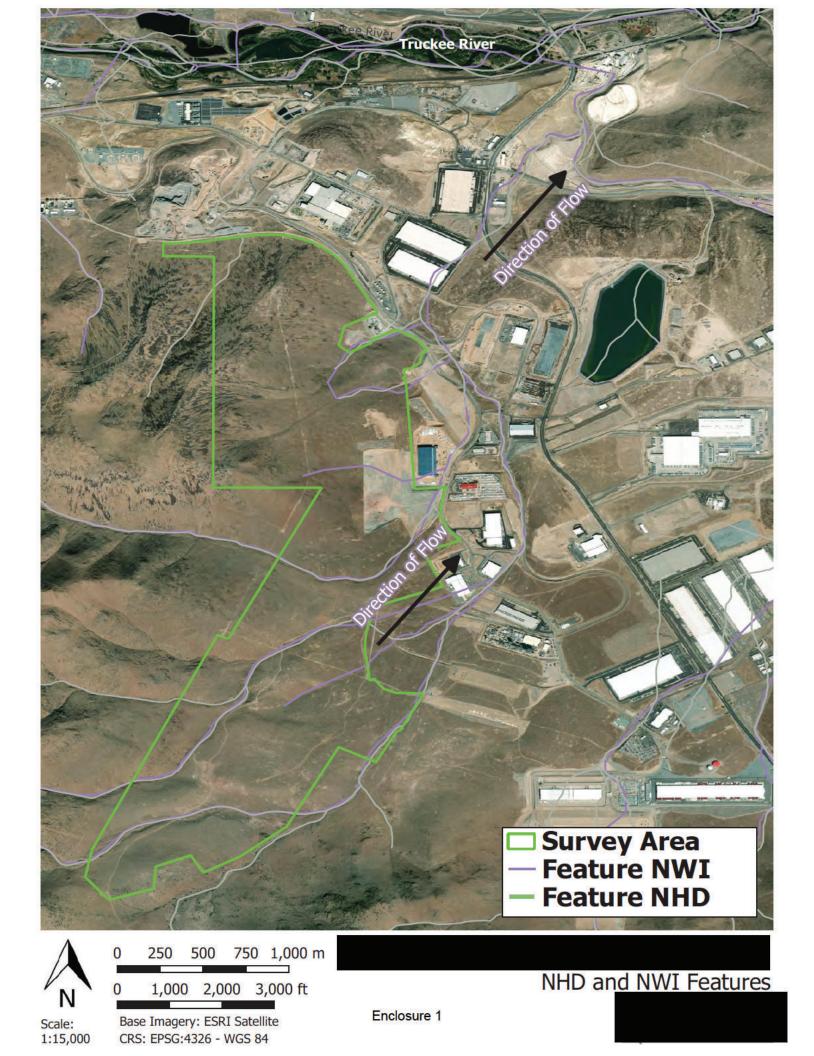
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

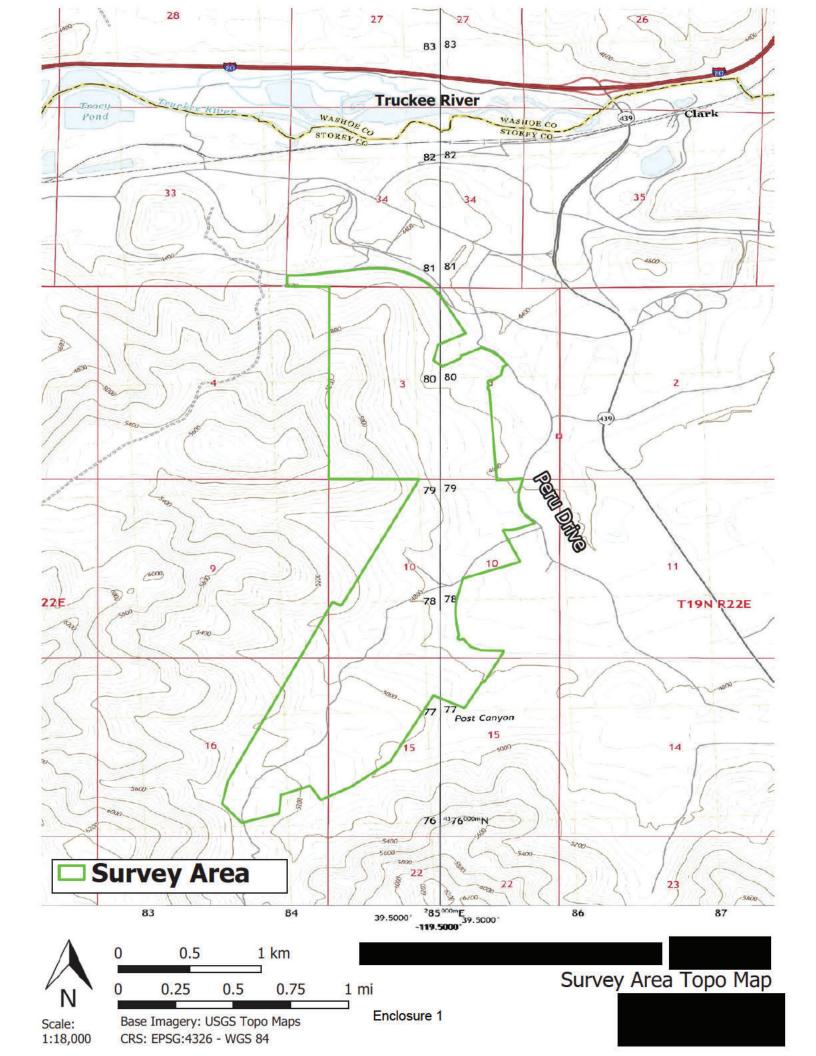


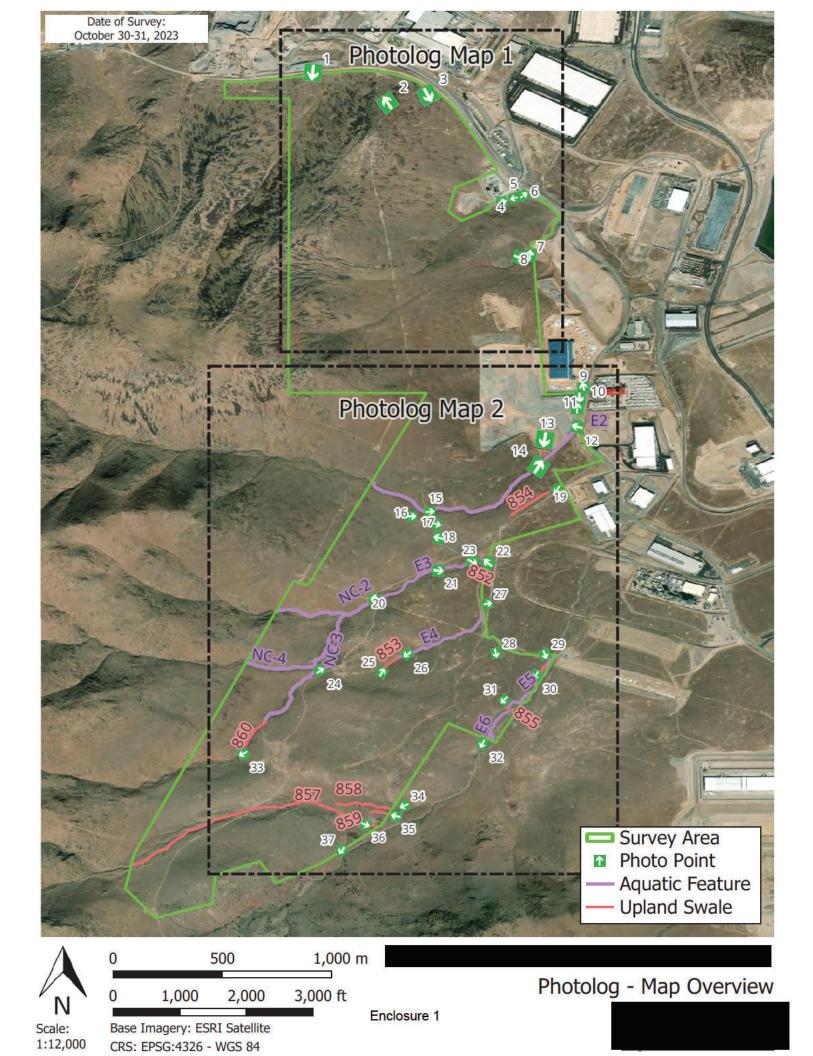
7 Encls Enclosure 1 Location Map Enclosure 2 National Wetlands Inventory Enclosure 3 USACE Google Earth Enclosure 4 NRCS Soil Map Enclosure 5 Antecedent Precipitation Tool Reports Enclosure 6 USGS National Map Enclosure 7 Digital Globe Imagery

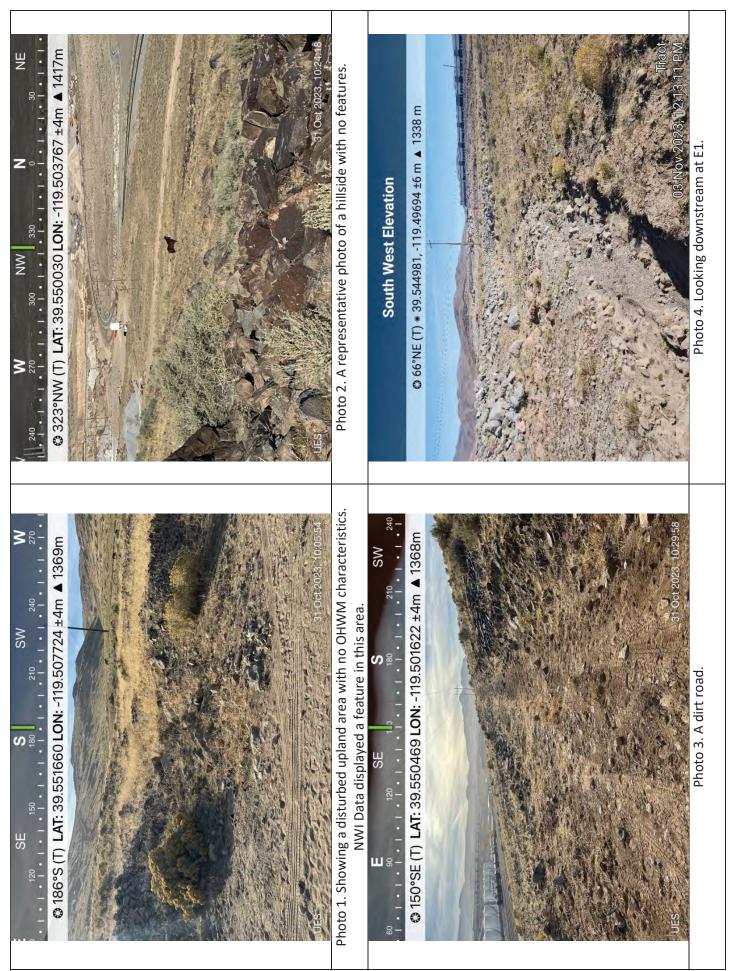


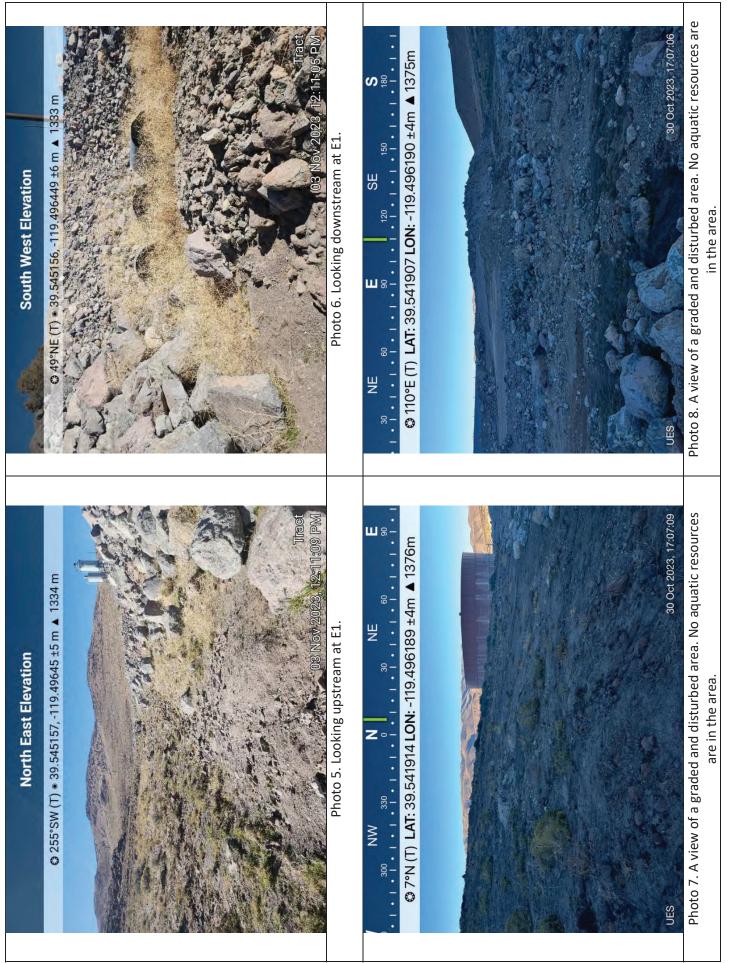


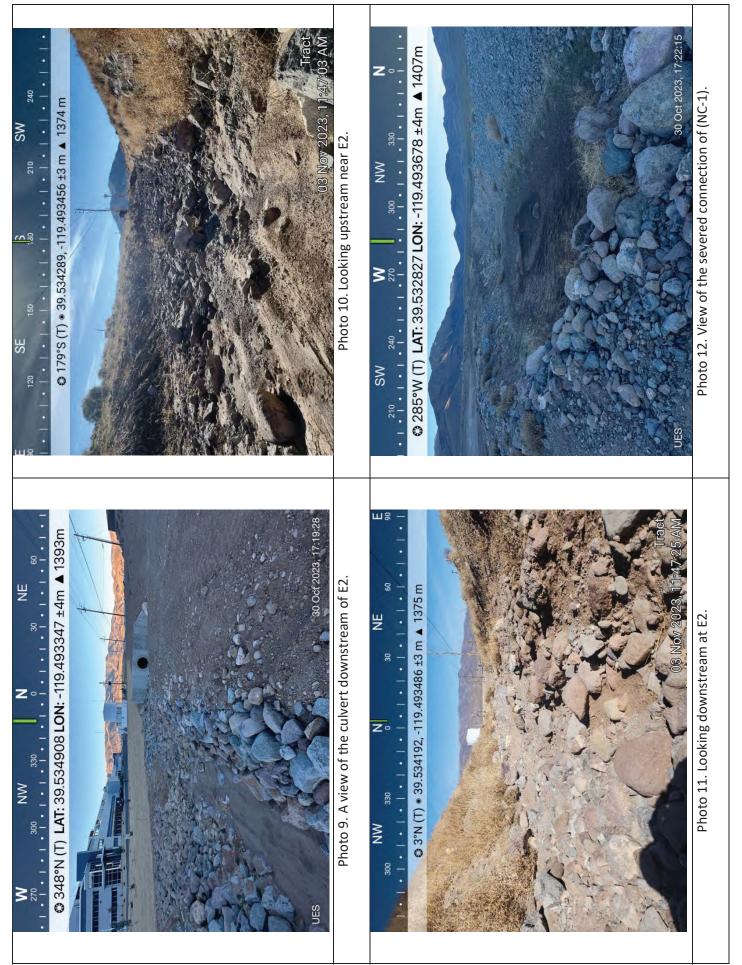


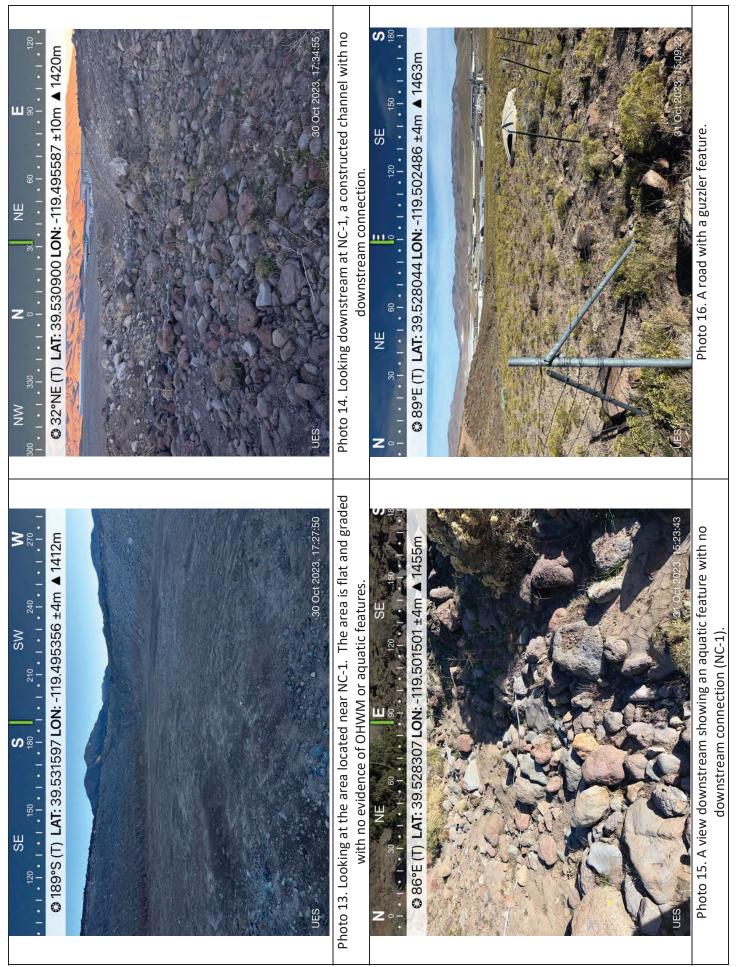


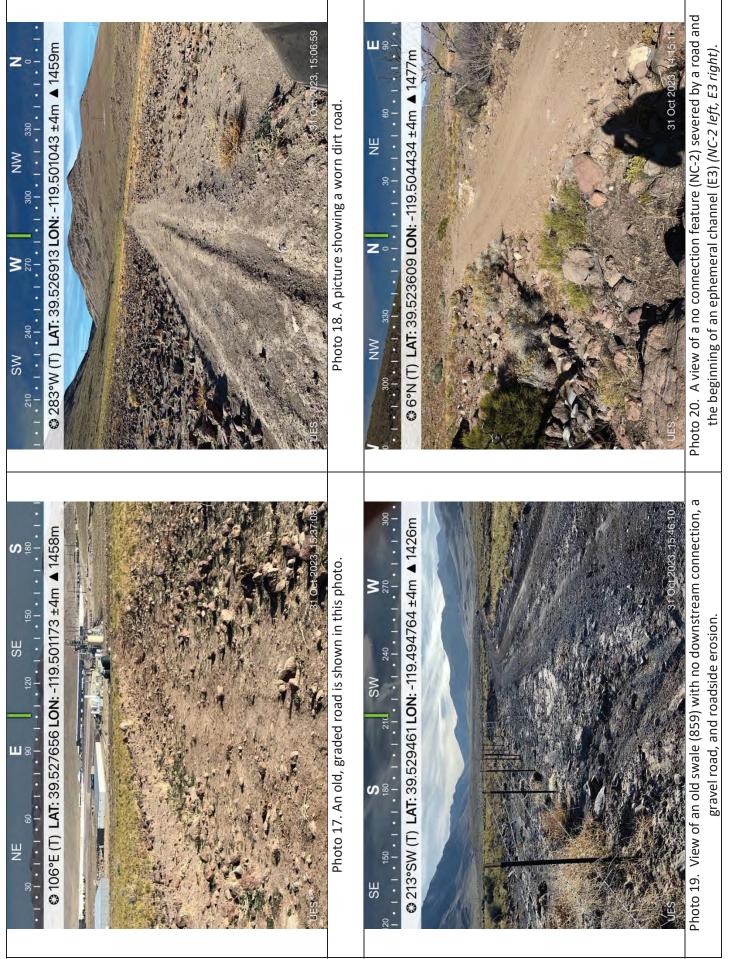


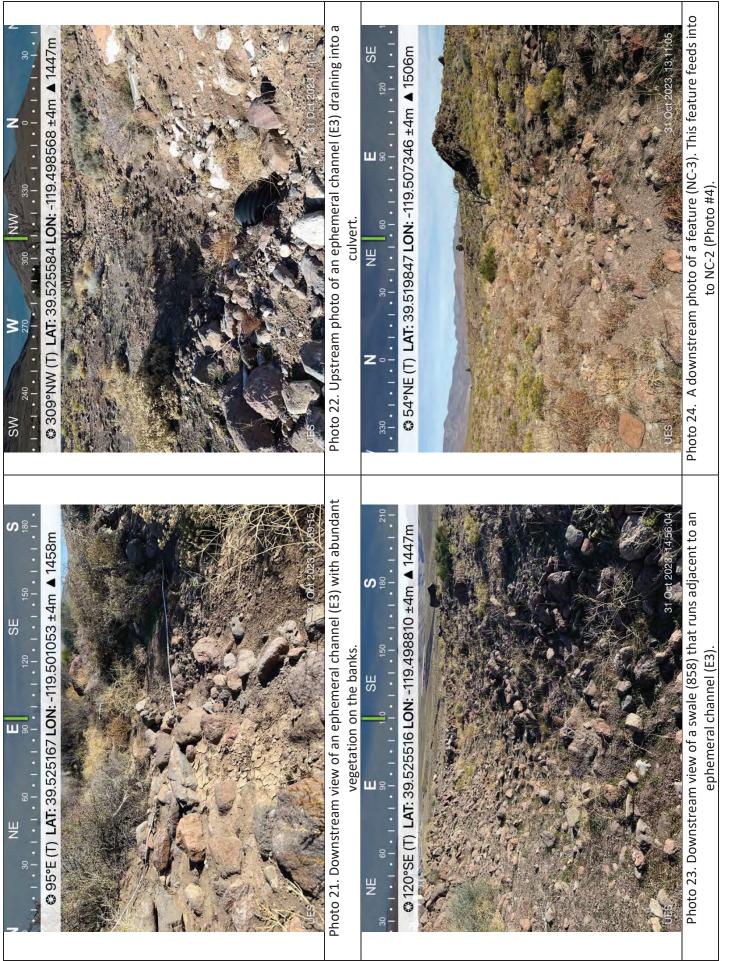


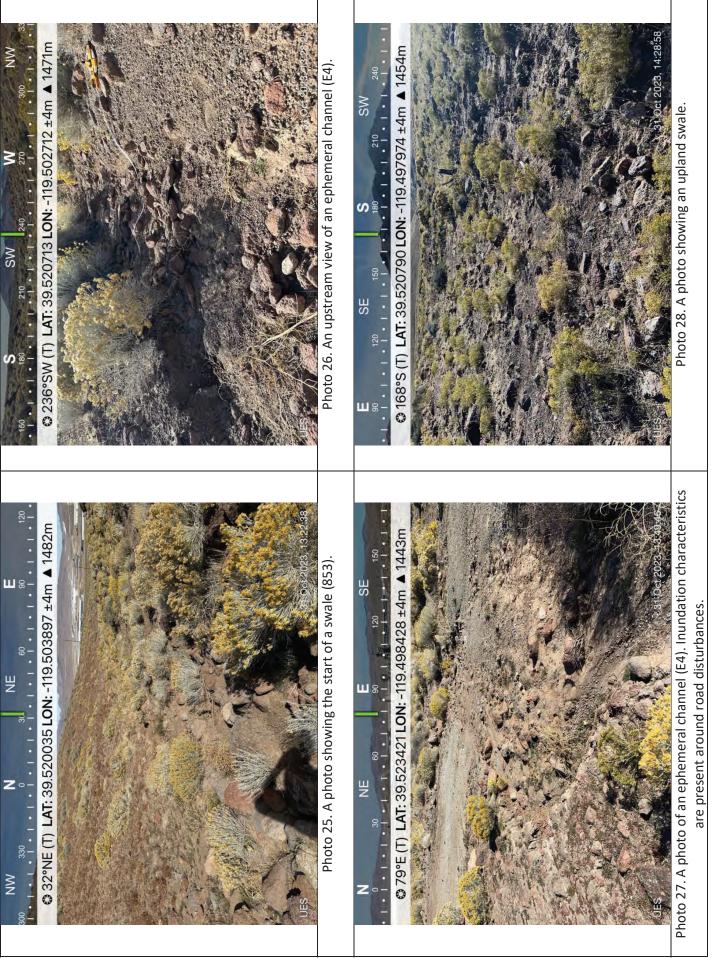


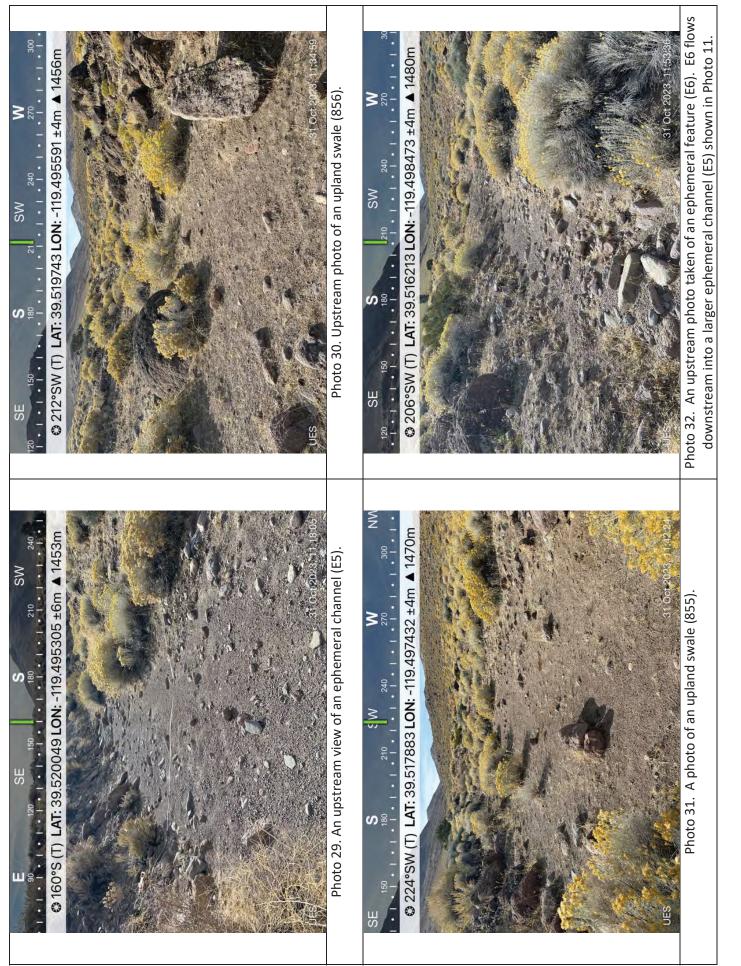


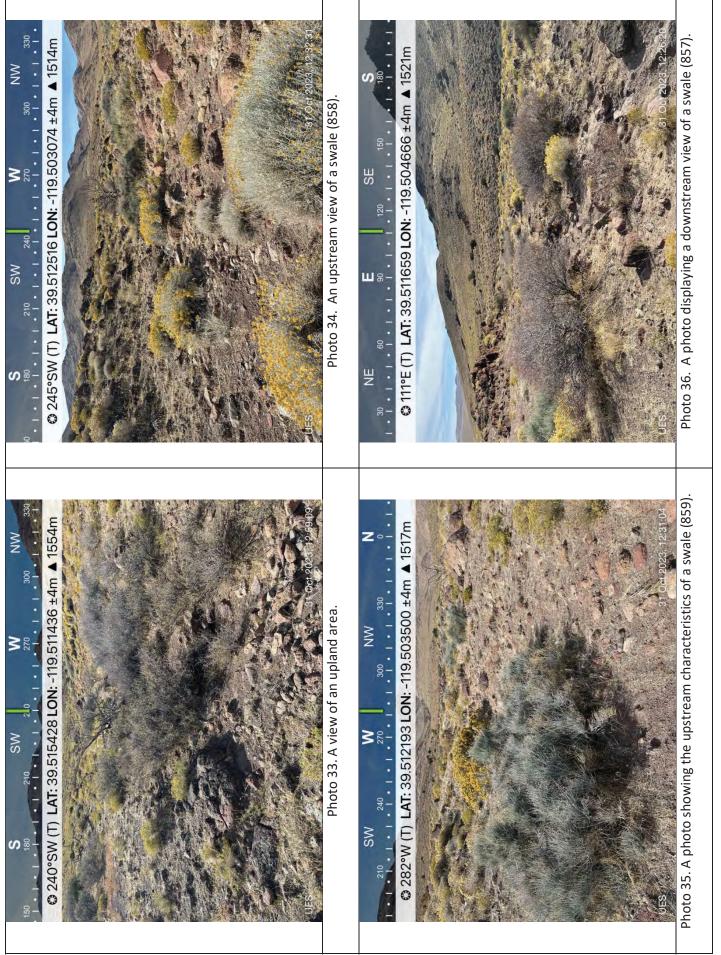


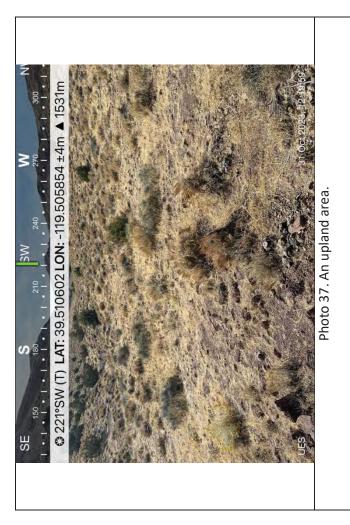






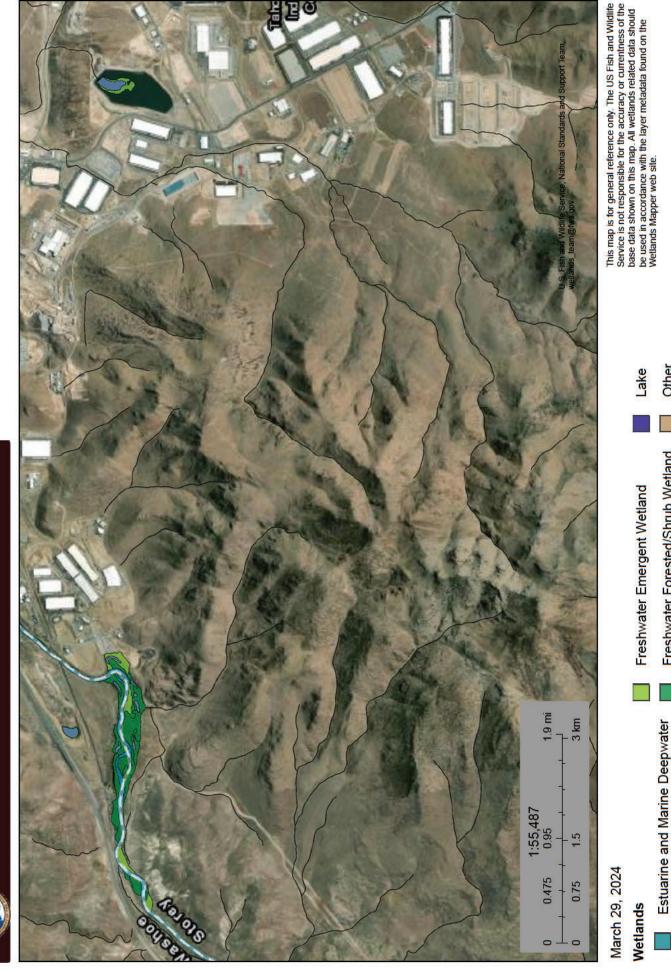








SPK-2024-00177



National Wetlands Inventory (NWI) This page was produced by the NWI mapper

Riverine

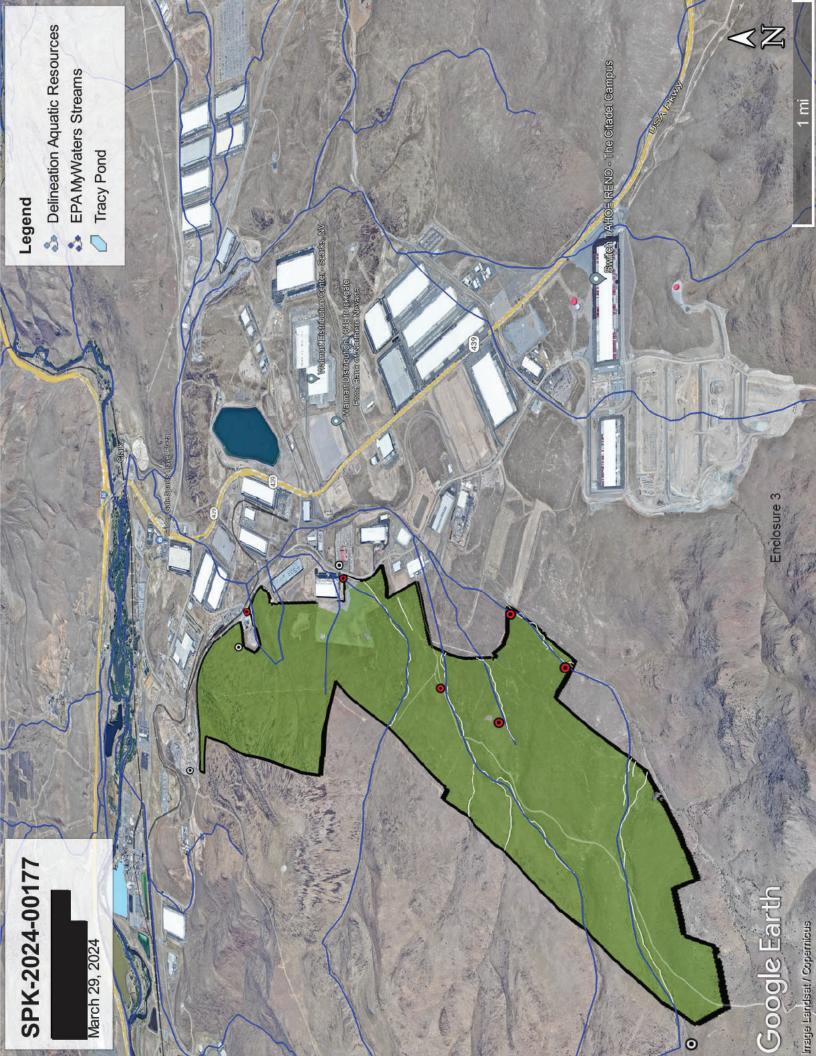
Enclosure 2

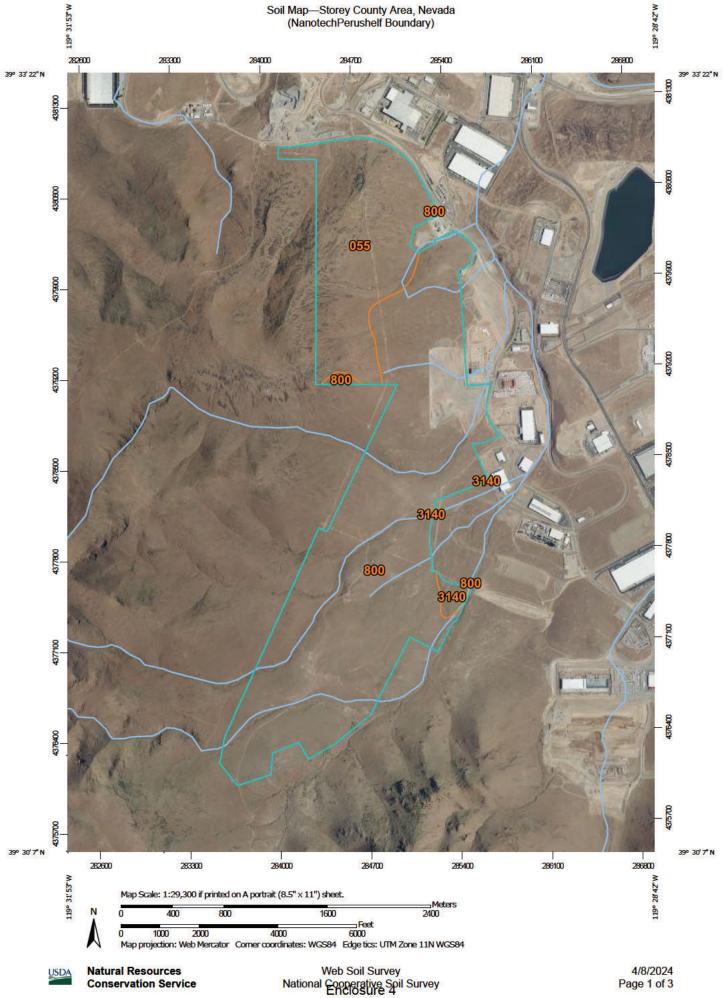
Freshwater Pond

Estuarine and Marine Wetland

Other

Freshwater Forested/Shrub Wetland





Conservation Service

Soil Map—Storey County Area, Nevada (NanotechPerushelf Boundary)

The soil surveys that comprise your AOI were mapped at	1.24,000.	Please rely on the par scale on each map sheet for map measurements.	Source of Map: Natural Resources Conservation Service	Web Soil Survey URL: Conrelinate System: Web Mercator (FDSG:3857)		Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts	distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more	accurate calculations of distance or area are required.	This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.	Soil Survey Area: Storey County Area. Nevada		Soil map units are labeled (as space allows) for map scales		Date(s) aerial images were photographed: Jun 10, 2022—Jun 14, 2022	The orthophoto or other base map on which the soil lines were	compiled and digitized probably differs from the background imagend on these mans. As a result some minor	shifting of map unit boundaries may be evident.							
Spoil Area	Stony Spot	Very Stony Spot	Wet Spot	Other	Special Line Features	Water Features	Streams and Canals	Transportation	Interstate Highways	US Routes	Major Roads	Local Roads	puno	Aerial Photography										
av	0	8	\$	4	1	Water	2	Transp	ŧ ł	2	8	2	Background	H										
		2	2																					
Area of Interest (AOI)	Area of Interest (AOI)	Soil Man Llnit Dolynons	Soil Map Unit Lines	Soil Map Unit Points		Special Point Features	Borrow Pit	Clay Spot	Closed Depression	Gravel Pit	Gravelly Spot	Landfill	Lava Flow	Marsh or swamp	Mine or Quarry	Miscellaneous Water	Perennial Water	Rock Outcrop	Saline Spot	Sandy Spot	Severely Eroded Spot	Sinkhole	Slide or Slip	Sodic Spot

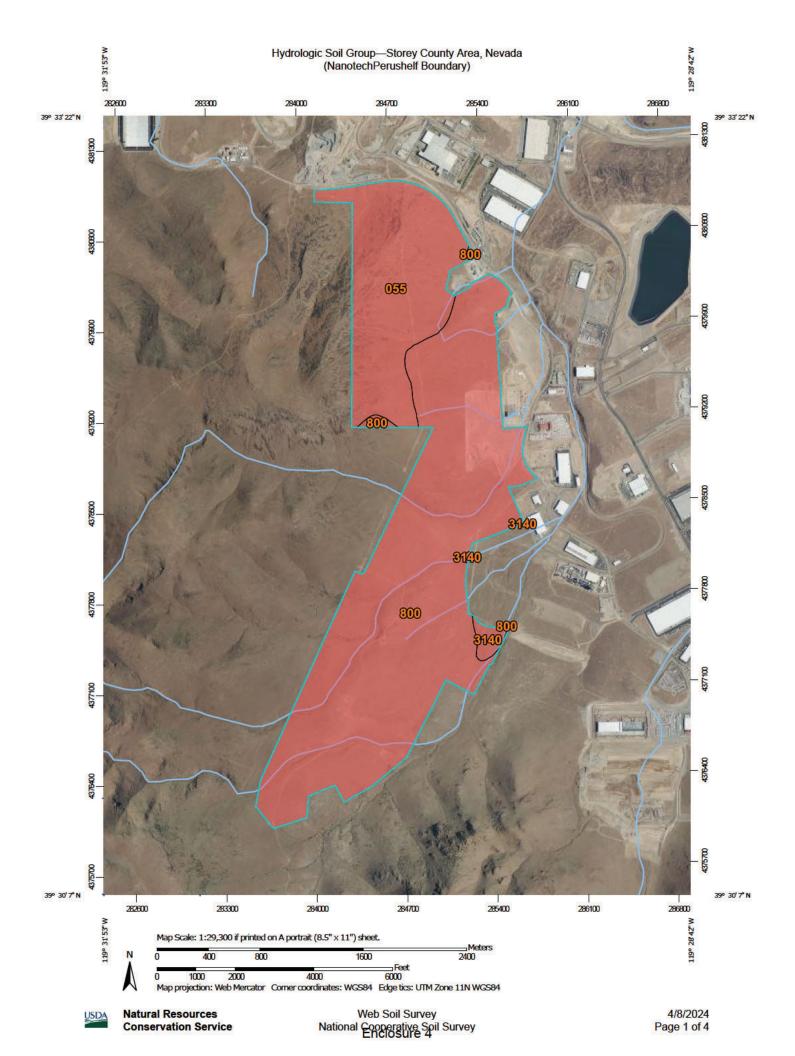
Web Soil Survey National Coppergine Soil Survey

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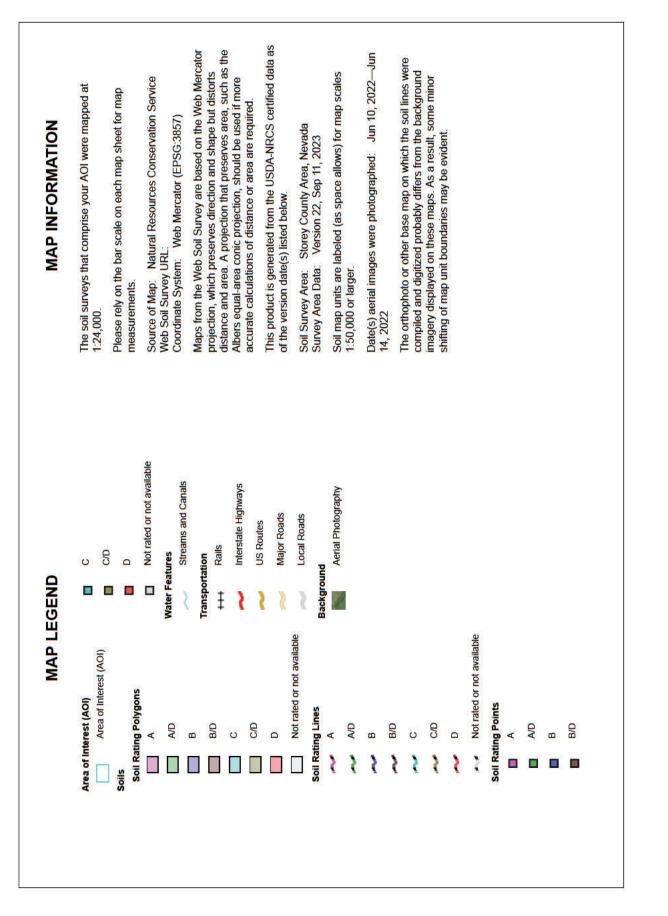


Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
055	Old Camp-Aldax-Rock outcrop association	309.4	25.8%
800	Grumblen-Ceejay Dorkiss association	878.7	73.1%
3140	Fulstone-Reno complex, 2 to 30 percent slopes	13.4	1.1%
Totals for Area of Interest		1,201.5	100.0%



Hydrologic Soil Group—Storey County Area, Nevada (NanotechPerushelf Boundary)





Web Soil Survey National Encoorgine Spil Survey

Hydrologic Soil Group

		r		
Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
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800	Grumblen-Ceejay Dorkiss association	D	878.7	73.1%
3140	Fulstone-Reno complex, 2 to 30 percent slopes		13.4	1.1%
Totals for Area of Intere	st		1,201.5	100.0%

Description

Hydrologic soil groups are based on estimates of runoff potential. Soils are assigned to one of four groups according to the rate of water infiltration when the soils are not protected by vegetation, are thoroughly wet, and receive precipitation from long-duration storms.

The soils in the United States are assigned to four groups (A, B, C, and D) and three dual classes (A/D, B/D, and C/D). The groups are defined as follows:

Group A. Soils having a high infiltration rate (low runoff potential) when thoroughly wet. These consist mainly of deep, well drained to excessively drained sands or gravelly sands. These soils have a high rate of water transmission.

Group B. Soils having a moderate infiltration rate when thoroughly wet. These consist chiefly of moderately deep or deep, moderately well drained or well drained soils that have moderately fine texture to moderately coarse texture. These soils have a moderate rate of water transmission.

Group C. Soils having a slow infiltration rate when thoroughly wet. These consist chiefly of soils having a layer that impedes the downward movement of water or soils of moderately fine texture or fine texture. These soils have a slow rate of water transmission.

Group D. Soils having a very slow infiltration rate (high runoff potential) when thoroughly wet. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table, soils that have a claypan or clay layer at or near the surface, and soils that are shallow over nearly impervious material. These soils have a very slow rate of water transmission.

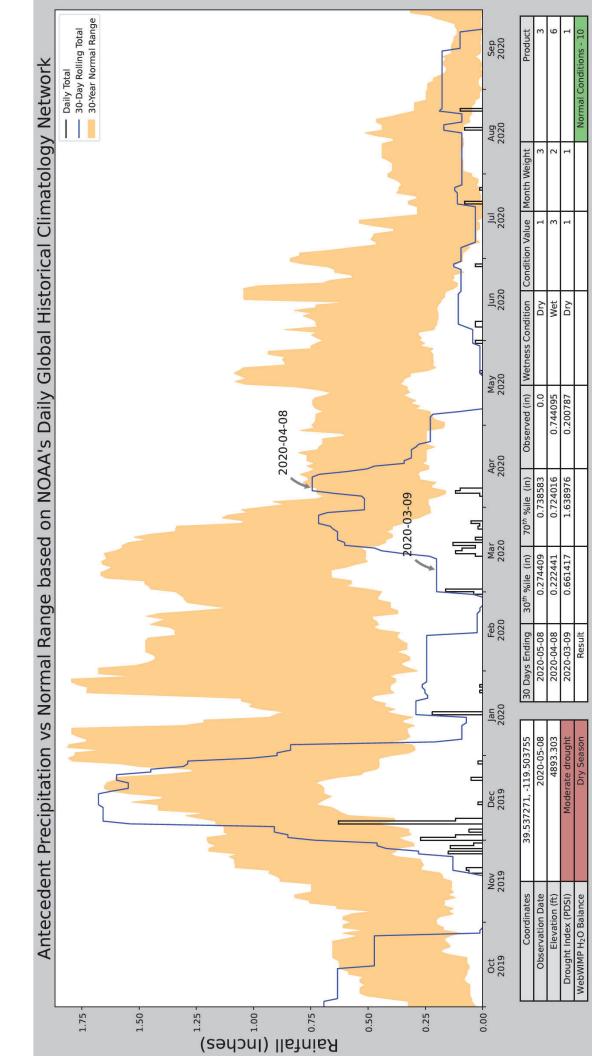
If a soil is assigned to a dual hydrologic group (A/D, B/D, or C/D), the first letter is for drained areas and the second is for undrained areas. Only the soils that in their natural condition are in group D are assigned to dual classes.

USDA

Rating Options

Aggregation Method: Dominant Condition Component Percent Cutoff: None Specified Tie-break Rule: Higher



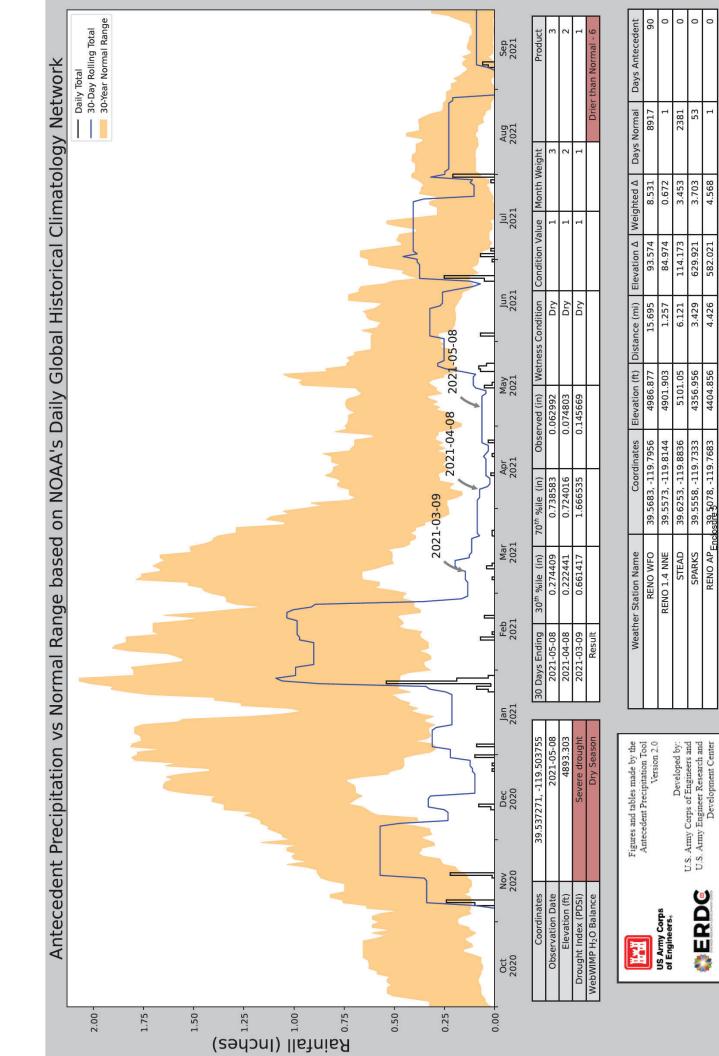


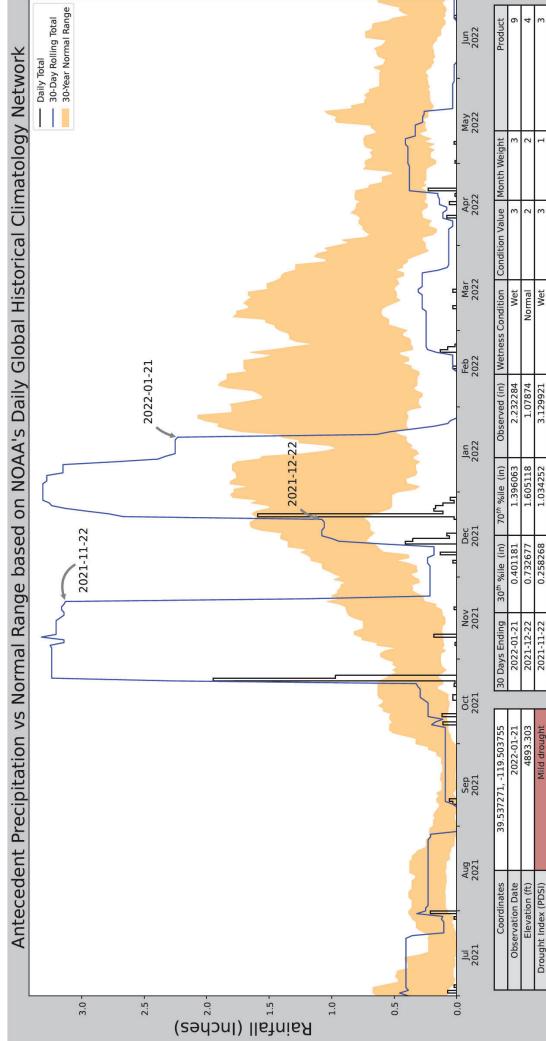
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	Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted D	Days Normal	Coordinates Elevation (ft) Distance (mi) Elevation Δ Weighted Δ Days Normal Days Antecedent
	RENO WFO	39.5683, -119.7956	4986.877	15.695	93.574	8.531	8551	06
	RENO 1.4 NNE	39.5573, -119.8144	4901.903	1.257	84.974	0.672	1.	0
	STEAD	39.6253, -119.8836	5101.05	6.121	114.173	3.453	2683	0
	SPARKS	39.5558, -119.7333	4356.956	3.429	629.921	3.703	86	0
	RENO AP	RENO AP	4404.856	4.426	582.021	4.568	31	0

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

ERDC ERDC US Army Corps of Engineers. 3

Figures and tables made by the Antecedent Precipitation Tool Version 2.0





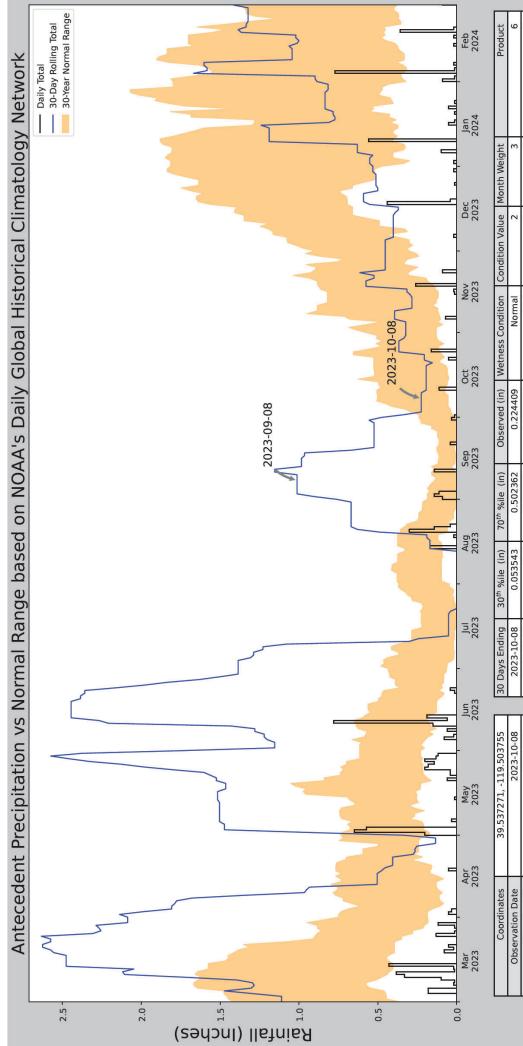
Γ	Result						Wetter	Wetter than Normal - 16
٦		-	-			-		
	Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted A	Days Normal	Coordinates Elevation (ft) Distance (mi) Elevation Δ Weighted Δ Days Normal Days Antecedent
	RENO WFO	39.5683, -119.7956	4986.877	15.695	93.574	8.531	9282	06
	RENO 1.4 NNE	39.5573, -119.8144	4901.903	1.257	84.974	0.672	1	0
	STEAD	39.6253, -119.8836	5101.05	6.121	114.173	3.453	2020	0
	SPARKS	39.5558, -119.7333	4356.956	3.429	629.921	3.703	49	0
	RENO AP	RENO AP Enclos3면 5078, -119.7683	4404.856	4.426	582.021	4.568	1	0

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Developed by: U.S. Army Corps of Engineers and U.S. Army Engineer Research and Development Center Figures and tables made by the Antecedent Precipitation Tool Version 2.0

ERDe US Army Corps of Engineers。 3

Mild drought Wet Season Drought Index (PDSI) WebWIMP H₂O Balance

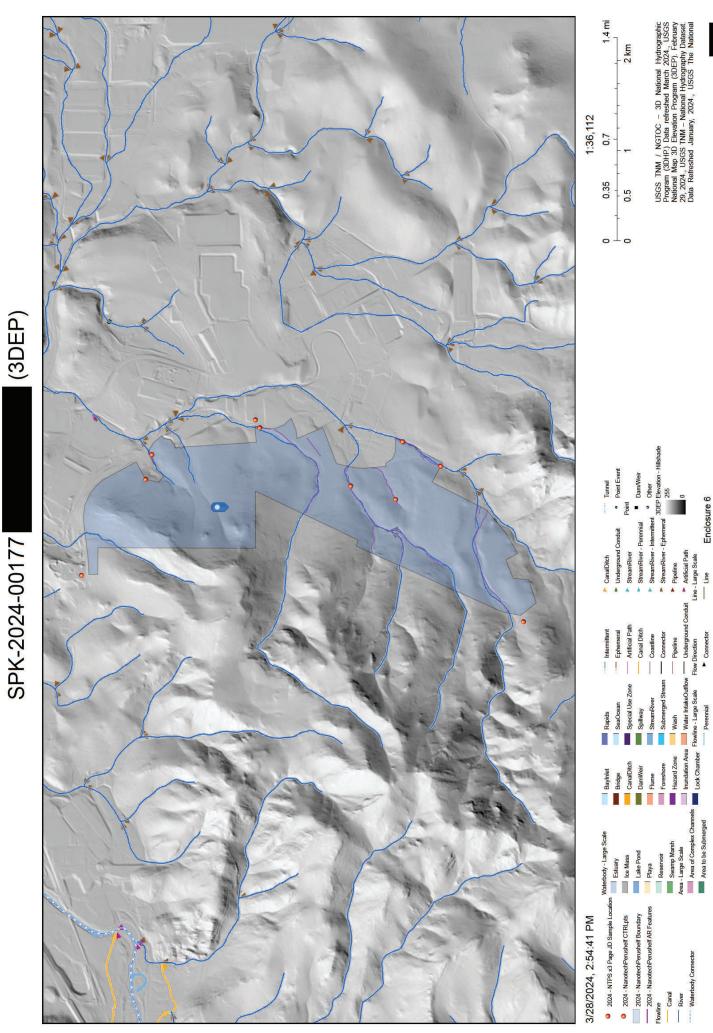


				ц	90	0	0	0	0
٥	9	1	Normal Conditions - 13	Days Antecedent	5				
ñ	2	1	Norm	Days Normal	10012	1	1290	48	1
7	3	1		Elevation Δ Weighted Δ	8.531	0.672	3.453	3.703	4.568
				Elevation A	93.574	84.974	114.173	629.921	582.021
Normal	Wet	Dry		Elevation (ft) Distance (mi)	15.695	1.257	6.121	3.429	4.426
0.224409	1.011811	0.0			4986.877	4901.903	5101.05	4356.956	4404.856
0.502362	0.137008	0.374016		Coordinates	39.5683, -119.7956	39.5573, -119.8144	39.6253, -119.8836	39.5558, -119.7333	RENO AP Enclosed 5078, -119.7683
0.03343	0.0	0.096063		r Station Name	RENO WFO	RENO 1.4 NNE	STEAD	SPARKS	RENO AP Encl
2023-10-08	2023-09-08	2023-08-09	Result	Weather Stat					
073-T0-08	4893.303	e wetness	Jry Season	lade by the	Version 2.0		eloped by:	gineers and search and	ent Center

Dry Season	WebWIMP H ₂ O Balance
Extreme wetness	Drought Index (PDSI)
4893.303	Elevation (ft)
2023-10-08	Observation Date
39.537271, -119.503755	Coordinates

	Figures and tables made by the Antecedent Precipitation Tool	Weather Station Name	Coordinates	Elevation (ft)	Coordinates Elevation (ft) Distance (mi) Elevation	Elevation /
	Version 2.0	RENO WFO	39.5683, -119.7956	4986.877	15.695	93.574
		RENO 1.4 NNE	39.5573, -119.8144	4901.903	1.257	84.97
0 1 1	Developed by:	STEAD	39.6253, -119.8836	5101.05	6.121	114.17
S'D	U.S. Army Engineer Research and U.S. Army Engineer Research and	SPARKS	39.5558, -119.7333	4356.956	3.429	629.92
	Development Center	RENO AP End	RENO AP Enclosed 5078, -119.7683	4404.856	4.426	582.02





2021 USGS

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