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

CESPK-RDI-U 27 August 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023) ,[1] SPK-2009-01213-UO

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] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[4] the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

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[1] While the Supreme Court’s decision in *Sackett* 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.

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) Wetland 130, non-jurisdictional under Section 404 of the CWA.

(2) Wetland 133, jurisdictional under Section 404 of the CWA.

(3) Wetland 134, non-jurisdictional under Section 404 of the CWA.

(4) Wetland 135, non-jurisdictional under Section 404 of the CWA.

(5) Wetland 136, non-jurisdictional under Section 404 of the CWA.

(6) Wetland 137, non-jurisdictional under Section 404 of the CWA.

(7) Wetland 138, jurisdictional under Section 404 of the CWA.

(8) Wetland 139, non-jurisdictional under Section 404 of the CWA.

(9) Wetland 140, (C-7 Ditch), jurisdictional under Section 404 of the CWA.

(10) Wetland 141, (C-7 Ditch), jurisdictional under Section 404 of the CWA.

(11) Wetland 142, jurisdictional under Section 404 of the CWA.

(12) Wetland 143, jurisdictional under Section 404 of the CWA.

(13) Wetland 144, jurisdictional under Section 404 of the CWA.

(14) Wetland 145, jurisdictional under Section 404 of the CWA.

(15) Wetland 146, jurisdictional under Section 404 of the CWA.

(16) Wetland 147, jurisdictional under Section 404 of the CWA.

(17) Wetland 148, jurisdictional under Section 404 of the CWA.

(18) Wetland 149, jurisdictional under Section 404 of the CWA.

(19) Wetland 150, jurisdictional under Section 404 of the CWA.

(20) Wetland 151, jurisdictional under Section 404 of the CWA.

(21) Wetland 154, non-jurisdictional under Section 404 of the CWA.

(22) Wetland 155, non-jurisdictional under Section 404 of the CWA.

(23) Wetland 156, non-jurisdictional under Section 404 of the CWA.

(24) Wetland 157, non-jurisdictional under Section 404 of the CWA.

(25) Wetland 170, non-jurisdictional under Section 404 of the CWA.

(26) Wetland 172, non-jurisdictional under Section 404 of the CWA.

(27) Wetland 175, non-jurisdictional under Section 404 of the CWA.

(28) Wetland 176, non-jurisdictional under Section 404 of the CWA.

(29) Wetland 190, non-jurisdictional under Section 404 of the CWA.

(30) Wetland 225, non-jurisdictional under Section 404 of the CWA.

(31) Wetland 228, non-jurisdictional under Section 404 of the CWA.

(32) Wetland 229, non-jurisdictional under Section 404 of the CWA.

2. REFERENCES.

a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

c. Assistant Administrator for Water, U.S. Environmental Protection Agency and Assistant Secretary of the Army (Civil Works), memorandum (Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States), December 2, 2008.

d. *Sackett v. EPA*, 598 U.S. _, 143 S. Ct. 1322 (2023).

3. REVIEW AREA. The approximately 213-acre review area is located on the east side of the Clarification Canal on the southeast side of the existing tailings impoundment. Latitude 40.730753°, Longitude -112.084026°, Salt Lake County, Utah (AJD MFR Enclosure 1).

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

The nearest TNW is the Great Salt Lake (GSL). The GSL is a “navigable water” for purposes of the Clean Water Act (CWA) and is considered as "traditional navigable waters" and therefore jurisdictional under 33 C.F.R. §328.3(a)(1) and 40 C.F.R. §230.3(s)(1). Waters are traditional navigable waters if they meet one of the following criteria:

a. Are subject to section 9 or 10 of the Rivers and Harbors Appropriations Act of 1899;

b. Have been determined by a Federal court to be navigable-in-fact under Federal law;

c. Are waters currently being used for commercial navigation, including commercial waterborne recreation (for example, boat rentals, guided fishing trips, or water ski tournaments);

d. Have historically been used for commercial navigation, including commercial waterborne recreation; or

e. Are susceptible to being used in the future for commercial navigation, including commercial waterborne recreation.

The GSL meets Criteria 2, above, having been found navigable-in-fact under Federal law in *Utah v. United States,* 403 U.S. 9 (1971). Thus, the GSL is a "traditional navigable water" and is regulated by the Corps under Section 404 of the CWA.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The wetlands flow through an upland swale for 205 feet, then through a culvert for 25 feet, and then into the C-7 Ditch. The C-7 Ditch is a relatively permanent tributary to the GSL. It flows north as depicted on the “Rio Tinto Kennecott Flow-Path Map” included in the administrative record. The C-7 Ditch continues on a northwestern path until it reaches the GSL, the nearest TNW, approximately 7 river-miles to the northwest of the study area (AJD MFR Enclosure 2).

6. SECTION 10 JURISDICTIONAL WATERS[5]: 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.[6]

[5] 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

7. SECTION 404 JURISDICTIONAL WATERS: The following aquatic resources within the review area (AJD MFR Enclosure 3) meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*.

a. TNWs (a)(1): None

b. Interstate Waters (a)(2): None

c. Other Waters (a)(3): None

d. Impoundments (a)(4): None

e. Tributaries (a)(5): There are 5.69 acres (7,762 linear feet) of tributaries that are relatively permanent waters (RPWs) within the review area.

C-7 Ditch – Approximately 5.69 acres (7,762 linear feet) of the C-7 Ditch occur within the study area. The C-7 Ditch is a relatively permanent tributary to the Great Salt Lake that meets the (a)(5) category "waters of the United States" in the pre-2015 regulatory regime. A review of aerial records between 1994 and 2023 with photos taken during different times of year, show water flow year-round. The portion of C-7 Ditch within the review area is approximately 7,762 linear feet in length and varies in width between 10 and 30 feet measured from the ordinary high water mark from one bank to the other. The C-7 Ditch is comprised of two sections within the study area measuring 1.85 acres (2,895 linear feet) and 3.84 acres (4,867 linear feet) respectively, for a total of 5.69 acres (7,762 linear feet).

The C-7 Ditch enters the review area from the southeast corner and continues north on the east side of the review area. The C-7 Ditch then flows into the GSL, the nearest TNW, approximately 7 river-miles north of the study area.

The C-7 Canal was identified in the "Wetlands & Waters of the U.S. Jurisdictional Assessment for the Tailings Impoundment Area Salt Lake County, Utah" aquatic resources report dated February 4, 2022 as Wetlands 140 and 141. This nomenclature was provided by the applicant. References to Wetlands 140 and 141 have been deleted and maps have been revised to further clarify naming of aquatic resources within the study area.

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"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.

[6] 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.

f. The territorial seas (a)(6): None

g. Adjacent wetlands (a)(7): There are adjacent wetlands having a continuous surface connection to a TNW within the review area:

A total of 25.97 acres of palustrine emergent wetlands within the study area meet the (a)(7) category of “waters of the United States” per the pre-2015 regulatory regime.

Wetland 133 (0.47 acre) is an adjacent wetland that has a continuous surface connection with the C-7 Ditch via an approximately 20-foot long buried culvert. Based on data gathered during the USACE site inspection, LiDAR, and elevation profiles, this wetland occurs in lower laying areas separated from the C-7 Ditch by upland areas that have been used for various activities such as pipe laydown yards; multiple roads and borrow areas; grazing, and historical dumping areas for nearby towns such as Magna. The wetland formed in a depressional area that was previously impacted by the construction and operation of the tailings facility. Although non-abutting, this wetland meets the (a)(7) category “waters of the United States” per the pre-2015 regulatory regime since it has a continuous surface connection to the C-7 Ditch, an (a)(5) water via a culvert connection.

Wetland 138 (21.32 acres) is an adjacent wetland that has a continuous surface connection with the C-7 Ditch via a discrete non-jurisdictional upland swale, which measures approximately 205 feet long. The upland swale connects wetland 138 to the C-7 Ditch via a 25-foot long buried culvert. The combined distance of the continuous surface connection is 230 feet. LiDAR and elevation profiles (AJD MFR Enclosure 4) show the upland swale as a shallow concave channel extending from Wetland 138 to the culvert that discharges into the C-7 Ditch. The swale was determined to be an upland due to the dominance of non-hydrophytic vegetation, which was comprised mostly of meadow fescue [(Festuca pratensis) FACU] and a few tamarix trees [(Tamarix sp.) FAC]. Although non-abutting, this wetland meets the (a)(7) category “waters of the United States” per the pre-2015 regulatory regime since it has a continuous surface connection to the C-7 Ditch, an (a)(5) water. The total length of connecting features in this case is relatively short, approximately 230 feet, similar to the relatively short features which constituted continuous surface connections in Guidance Memo SWG-2023-00284, and Guidance Memo NAP-2023-01223, and distinct from the long connecting features in Guidance Memo NWK-2022-00809 that did not constitute a continuous surface connection.

The areas identified as Wetland 142 (0.04 acres), Wetland 143 (0.71 acres), Wetland 144 (1.29 acres), Wetland 145 (0.18 acres), Wetland 146 (0.04 acres), Wetland 147 (0.04 acres), Wetland 148 (0.03 acres), Wetland 149 (0.26 acres), Wetland 150 (0.09 acres), and Wetland 151 (1.50 acres) are adjacent (i.e. directly abutting) the C-7 Ditch. These wetlands meet the (a)(7) category “waters of the United States” per the pre-2015

regulatory regime since they are directly abutting and have a continuous surface connection to the C-7 Ditch, an (a)(5) water.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

g. There are no aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters")

h. There are no aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance.

i. There are no aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA.

j. There are no aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.).

k. There are no aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in "*SWANCC*," would have been jurisdictional based solely on the "Migratory Bird Rule."

l. There are aquatic resources totaling 23.31 acres of 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 pre-2015 regulatory regime consistent with the Supreme Court's decision in Sackett (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Wetland 130 (0.24 acre), 225 (1.21 acre), 228 (0.05 acre), and 229 (0.09 acre): These non-adjacent wetlands are located between the C-7 Ditch and the settling pond on the north end of the study area and are not part of the Kennecott's water treatment system. The settling pond was determined to be a non-jurisdictional feature in the AJD verified by the Corps on 19 May 2022 since it is part of an artificial industrial processed water system. The jurisdictional status of the settling pond is not being re-evaluated as part of the subject AJD. The "Wetlands & Waters of the U.S. Jurisdictional Assessment for the Tailings Impoundment Area Salt Lake County, Utah" aquatic resources report indicates the main source of hydrology for wetlands within the study area is ground-water discharge and ponded water input from precipitation. A potential connection between Wetlands 130, 225, 228, and 229 with the C-7 Ditch was evaluated under the one wetland concept but dismissed. Wetland and non-wetland components can be easily identifiable and mapped separately and are not closely associated to act as a single ecological feature. A review of historic aerial photos shows that these wetlands formed

in depressional areas filled between 1985 and 1997 for the construction of the settling pond. Because these wetlands do not have a continuous surface connection to ditch C-7, Wetlands 130, 225, 228, and 229 are not adjacent wetland pursuant to 33 CFR 328.3(a)(7) and are not jurisdictional under Section 404 of the Clean Water Act.

Wetland 134 (16.67 acres), 154 (0.42 acre), 157 (0.01 acre), 172 (0.35 acre), 176 (0.02 acre), and 190 (1.31 acres): These non-adjacent wetlands are located south of an access road (identified as W 1600 S on the map). These wetlands are located on the east side of the clarification canal, separated by an artificial berm and are not part of the closed artificial industrial processed water system. The clarification canal and adjacent wetlands were determined to be non-jurisdictional features in the AJD verified by the Corps on 19 May 2022 since the Clarification Canal and wetlands are part of a closed artificial industrial processed water system. The jurisdictional status of the Clarification Canal is not being re-evaluated as part of the subject AJD. The “Wetlands & Waters of the U.S. Jurisdictional Assessment for the Tailings Impoundment Area Salt Lake County, Utah” aquatic resources report indicates the main source of hydrology for wetlands within the study area is ground-water discharge. A potential connection between Wetlands 134, 154, 157, 172, 176, and 190 with the C-7 Ditch was evaluated under the one wetland concept but dismissed. Wetland and non-wetland components can be easily identifiable and mapped separately and are not closely associated to act as a single ecological feature. A review of historic aerial photos shows the area where these wetlands are located has been consistently excavated and filled throughout the years. This wetland formed in depressional areas that were previously impacted by the construction and operation of the tailings facility. A potential connection between Wetlands 134, 154, 157, 172, 176, and 190 and the Clarification Canal was also evaluated under the one wetland concept but dismissed as the wetland and non-wetland components do not act as a single ecological feature. The non-jurisdictional wetland fringe along the banks of the Clarification Canal (outside of this AJD study area) is higher in elevation than Wetlands 134, 154, 157, 172, 176, 190. In addition, the Clarification Canal is lined with Bonneville clay. Due to low permeability, the Bonneville clay acts as a liner or hydraulic barrier preventing any seepage from the Clarification Canal into these wetlands. Because these wetlands do not have a continuous surface connection to ditch C-7, Wetlands 134, 154, 157, 172, 176, and 190 are not adjacent wetland pursuant to 33 CFR 328.3(a)(7) and are not jurisdictional under Section 404 of the Clean Water Act.

Wetland 135 (0.76 acre) is a non-adjacent wetland located north of West 1600 South access road at the center of the study area. Based on data gathered during the Corps site inspection, LiDAR, and elevation profiles, these wetlands occur in lower laying areas separated from the C-7 Ditch by uplands that have been used for various activities such as pipe laydown yards; multiple roads and borrow areas; grazing, and historical dumping areas for nearby towns such as Magna. The “Wetlands & Waters of the U.S. Jurisdictional Assessment for the Tailings Impoundment Area Salt Lake County, Utah” aquatic resources report indicates the main source of hydrology for

wetlands within the study area is ground-water discharge and ponded water input from precipitation. A potential connection between Wetland 135 with the C-7 Ditch was evaluated under the one wetland concept but dismissed. Wetland and non-wetland components can be easily identifiable and mapped separately and are not closely associated to act as a single ecological feature. A review of historic aerial photos shows this wetland is located in an area that was filled between 1971 and 1977. The wetland formed in a depressional area and has been impacted throughout the years by the construction and operation of the tailings facility. Because this wetland does not have a continuous surface connection to ditch C-7, Wetland 135 is not an adjacent wetland pursuant to 33 CFR 328.3(a)(7) and is not jurisdictional under Section 404 of the Clean Water Act.

Wetland 136 (0.07 acre) and Wetland 137 (0.70 acre): These non-adjacent wetlands are located between Wetland 138, an (a)(7) water and the C-7 Ditch, an (a)(5) water. Based on data gathered during the Corps site inspection, LiDAR, and elevation profiles, these wetlands occur in lower laying areas separated from the C-7 Ditch by uplands that have been used for various activities such as pipe laydown yards; multiple roads and borrow areas; grazing, and historical dumping areas for nearby towns such as Magna. The "Wetlands & Waters of the U.S. Jurisdictional Assessment for the Tailings Impoundment Area Salt Lake County, Utah" aquatic resources report indicates the main source of hydrology for wetlands within the study area is ground-water discharge and ponded water input from precipitation. Potential connections between these wetlands to Wetland 138 and the C-7 Ditch were evaluated under the one wetland concept but dismissed. Wetland and non-wetland components can be easily identifiable and mapped separately and are not closely associated to act as a single ecological feature. A review of historic aerial photos shows the area where these wetlands are located has been consistently excavated and filled throughout the years. The wetlands formed in depressional areas impacted by the construction and operation of the tailings facility. Because these wetlands do not have a continuous surface connection to Ditch C-7, Wetlands 136 and 137 are not adjacent wetlands pursuant to 33 CFR 328.3(a)(7) and not jurisdictional under Section 404 of the Clean Water Act.

Wetlands 139 (0.48 acre) and 170 (0.11 acre): The aquatic resources delineation report indicates Wetlands 139 and 170 are connected to the C-7 Ditch via a buried culvert. However, this is not the case. Based on data gathered during the Corps site inspection, LiDAR, and elevation profiles, these wetlands are separated from the C-7 Ditch by upland areas that have been used for various activities such as pipe laydown yards; multiple roads and borrow areas; grazing, and historical dumping areas for nearby towns such as Magna. Potential connections between these wetlands to wetland 138, wetland 175, and the C-7 Ditch were evaluated under the one wetland concept but dismissed. Wetland and non-wetland components can be easily identifiable and mapped separately and are not closely associated to act as a single ecological feature. A review of historic aerial photos shows the area where these wetlands are located has been consistently excavated and filled throughout the years. The wetlands formed in a

depressional area that was previously impacted by the construction and operation of the tailings facility. Because these wetlands do not have a continuous surface connection to Ditch C-7, Wetlands 139 and 170 are not adjacent wetlands pursuant to 33 CFR 328.3(a)(7) and not jurisdictional under Section 404 of the Clean Water Act.

Wetland 155 (0.05 acre) and 156 (0.11 acre). These non-adjacent wetlands are located south of an emergency spillway (outfall no. 2) from the tailings impoundment that is permitted to discharge into the C-7 Ditch in case of emergency and a settling pond to the north that has was determined to be a non-jurisdictional feature in the AJD verified by Corps on 19 May 2022. The jurisdictional status of the settling pond was not being re-evaluated as part of the subject AJD. The “Wetlands & Waters of the U.S. Jurisdictional Assessment for the Tailings Impoundment Area Salt Lake County, Utah” aquatic resources report indicates the main source of hydrology for wetlands within the study area is ground-water discharge and ponded water input from precipitation. A potential connection between Wetlands 155 and 156 with the C-7 Ditch was evaluated under the one wetland concept but dismissed. Wetland and non-wetland components can be easily identifiable and mapped separately and are not closely associated to act as a single ecological feature. A review of historic aerial photos shows the area where these wetlands are located was filled between 1985 and 1997 for the construction of the settling pond. These wetlands formed in depressional areas that were previously impacted by the construction and operation of the tailings facility. Because these wetlands do not have a continuous surface connection to Ditch C-7, Wetlands 155 and 156 are not adjacent wetlands pursuant to 33 CFR 328.3(a)(7) and not jurisdictional under Section 404 of the Clean Water Act.

Wetland 175 (0.65 acre). This non-adjacent wetland is located north of an access road on the east side of the clarification canal and is separated by an artificial berm, and is not part of the water treatment system. The clarification canal was determined to be a non-jurisdictional feature in the AJD verified by the Corps on 19 May 2022. The jurisdictional status of the clarification canal is not being re-evaluated as part of the subject AJD. The “Wetlands & Waters of the U.S. Jurisdictional Assessment for the Tailings Impoundment Area Salt Lake County, Utah” aquatic resources report indicates the main source of hydrology for wetlands within the study area is ground-water discharge and ponded water input from precipitation. Potential connections between Wetland 175 to Wetlands 138, 139 and 170 and the C-7 Ditch were evaluated under the one wetland concept but dismissed. Wetland and non-wetland components can be easily identifiable and mapped separately and are not closely associated to act as a single ecological feature. A review of historic aerial photos shows the area where this wetland is located has been consistently excavated and filled throughout the years. The wetland formed in depressional areas impacted by the construction and operation of the tailings facility. A potential connection between Wetland 175 and the Clarification Canal was also evaluated under the one wetland concept but dismissed as the wetland and non-wetland components do not act as a single ecological feature. The non-jurisdictional wetland fringe along the banks of the Clarification Canal (outside of this

AJD study area) is elevated above Wetland 175. In addition, the Clarification Canal is lined with Bonneville clay. Due to low permeability, the Bonneville clay acts as a liner or hydraulic barrier preventing any seepage from the Clarification Canal into these wetlands. Because this wetland does not have a continuous surface connection to Ditch C-7, Wetland 175 is not an adjacent wetland pursuant to 33 CFR 328.3(a)(7) and not jurisdictional under Section 404 of the Clean Water Act.

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. The Corps visited the site on 3 November 2023 to confirm the finding of the aquatic resources delineation report. The office evaluation was finalized on 6 February 2024.

b. Aquatic Resources Delineation Report “Wetlands & Waters of the U.S. Jurisdictional Assessment for the Tailings Impoundment Area Salt Lake County, Utah” prepared by [redacted], dated 22 December 2021.

USACE did not agree with the following information found in the Aquatic Resources Delineation Report:

-The report identified the swale connecting Wetland 138 to the C-7 Ditch as wetland 294 based on the wetland parameters of soils, vegetation, and hydrology; however, additional information provided by Rio Tinto Kennecott and the Corps’ site inspection on 3 November 2023 confirmed Wetland 294 was incorrectly identified as a wetland in the report and should be labeled as an upland swale.

-The report indicates there is a breach along the C-7 Ditch that provides a continuous surface connection to Wetland 138. No breach along the C-7 Ditch was observed during the 3 November 2023 Corps site visit, confirming that Wetland 138 does not abut the C-7 Ditch. A review of historic aerial photos shows the area where this wetland is located has been consistently excavated and filled throughout the years and formed in a depressional area.

c. Photos included in the [redacted] Aquatic Resources Delineation Report. Corps photolog dated 3 November 2023. GoogleEarth 7.3.3.7692. (15 July 1997, 30 September 1997, 27 July 2002, 2 November 2002, 18 August 2003, 31 August 2003, 24 August 2004, 17 April 2005, , 31 December 2005, 12 July 2006, 31 July 2006, 30 December 2006, 27 April 2007, 22 June 2009, 17 June 2010, 14 September 2011, 4 June 2013, 16 June 2015, 8 July 2016, 17 June 2017, 10 September 2018, 18 July 2019, 31 May 2020, 16 June 2020, 11 September 2020, 14 January 2021, 28 August 2021, 24 May 2022, 20 June 2022, and 29 May 2023). Plain City, Weber County, Utah.

Latitude 40.7357031°N, longitude -112.083453°W, eye alt 8035 ft. Retrieved 3 November 2023, from http://www.earth.google.com.

d. LiDAR - National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved 3 November 2023.

e. National Hydrography Dataset Flowlines – Large Scale from National Layers in the National Regulatory Viewer for the South Pacific Division. Retrieved 6 December 2023.

f. Previous determination(s):

i. SPK-2009-01213: Approved Jurisdictional Determination (AJD) verified on 9 February 2010.

ii. SPK-2009-01213 AJD verified on 19 July 2012.

iii. SPK-2009-01213 AJD verified on 24 December 2013.

iv. SPK-2013-00514 Preliminary JD verified on 10 February 2014.

v. SPK-2021-00209 Preliminary JD verified on 5 October 2021.

vi. SPK-2009-01213 AJD and PJD verified on 19 May 2022.

10. OTHER SUPPORTING INFORMATION.

Policy Memorandums: Memorandums on draft AJDs NAP-2023-01223 AJD MFR Enclosures 5), and SWG-2023-00284 (AJD MFR Enclosures 6), issued jointly by the U.S. Environmental Protection Agency (EPA) and the Office of the Assistant Secretary of the Army for Civil Works (OASACW) on June 25, 2024. These memos provide policy guidance regarding meeting the continuous surface connection requirement for adjacent wetlands under *Sackett*. During the coordination process for this draft AJD, EPA HQ and OASACW determined that the circumstances related to non-abutting Wetlands 133 and 138 of this draft approved JD are factually similar to those found in draft AJDs NAP-2023-01223 and SWG-2023-00284 and elevation for non-abutting wetlands 133 and 138 may be unnecessary. For this reason, on 27 August 2024, the Sacramento District reconsidered this draft approved JD and found that asserting jurisdiction of non-abutting wetlands 133 and 138 is consistent with the policy guidance in the joint memo for draft AJDs NAP-2023-01223 and SWG-2023-00284. Wetland 133 has a continuous surface connection to the C-7 Ditch, a relatively permanent (a)(5) tributary to the GSL, via an approximately 20-foot long buried culvert. Wetland 138 has a continuous surface connection to the C-7 Ditch, via a 205-foot long upland swale and an 25-foot long culvert (230-foot long total).

The aquatic resources delineated by [redacted] were evaluated by the Corps for hydrologic connections between the study area and the nearest TNW using NHD, aerial records, LiDAR data, and topographic maps. Based on this analysis, the Corps determined that the study area supports approximately 49.28 acres of aquatic resources. Of these aquatic resources, 25.97 acres are waters of the U.S. including:

a. 5.69 acres (7,762 linear feet) of tributaries, (a)(5) waters, consisting of the C-7 Ditch.

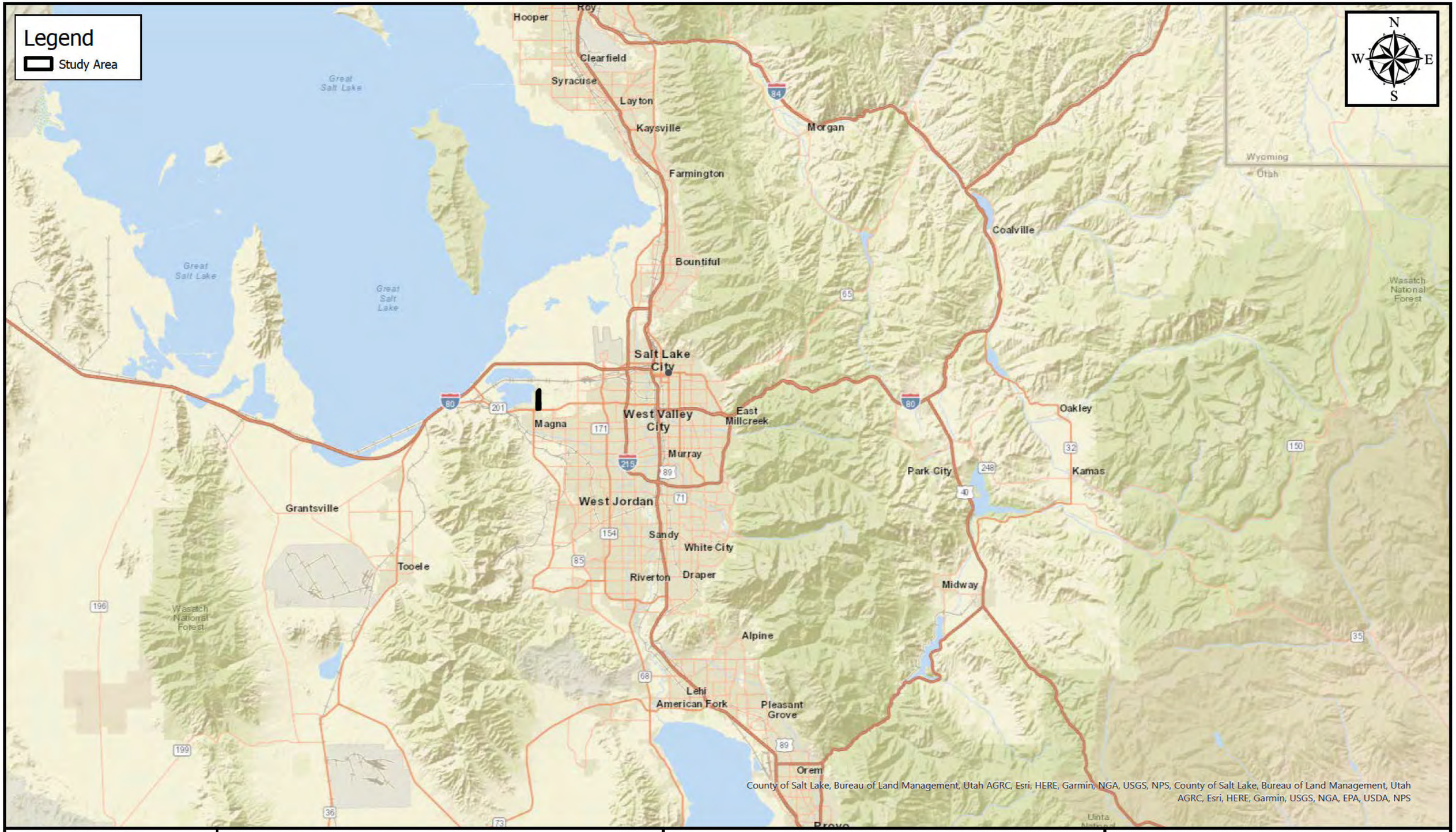
b. 25.97 acres of wetlands, (a)(7) waters, consisting of Wetlands 133, 138, 142, 143, 144, 145, 146, 147, 148, 149, 150, and 151.

Wetlands 130, 134, 135, 136, 137, 139, 154, 155, 156, 157, 170, 172, 175, 176, 190, 225, 228, and 229, totaling 23.31 acres, were determined to be non-jurisdictional aquatic resources under Section 404 of the Clean Water Act since they lack a continuous surface water connection to the GSL.

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.

4 Encls
Encl 1. Location Map
Encl 2. Flow Path
Encl 3. AR Map and Table 1
Encl 4. LiDAR and Elevation Profiles

[redacted]




**SPK-2009-01213**

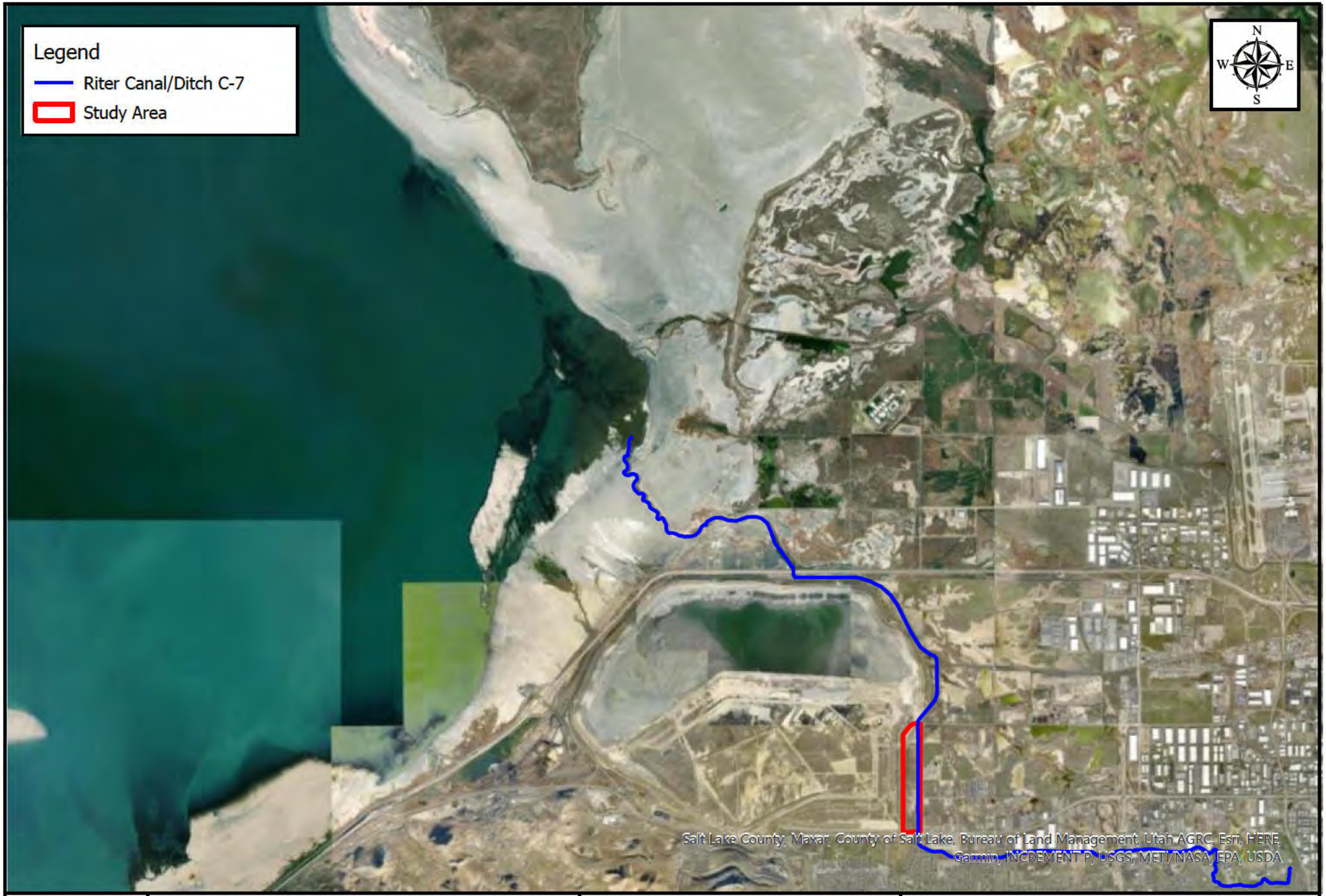
0 5 10 20
mi

Map Center: 111.79894°W 40.710723°N

Map Created by: [redacted]

Date: 12/6/2023

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere




**Rio Tinto Kennecott Flow-path Map**

0 1 2 4

mi

Map Center: 112.150394°W 40.795428°N

Map Created by [redacted]

Date: 11/29/2023

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

# SPK-2009-01213 - Aquatic Resources Map


| Area (Ac) | Length (LF) | Aquatic Resource Type |
|---|---|---|
| 5.69 | 7,762 | C-7 Ditch |
| 49.28 | N/A | Total Wetalnds (adjacent and non-Adjacent) |
| 4.18 | N/A | Total Adjacent Wetlands |
| 45.1 | N/A | Total Non-Adjacent wetlands: Includes Wetlands 133 and 138 with Continous Surface Connection (CSC) |
| 21.79 | N/A | Non-Adjacent Wetlands 133 and 138 (CSC) |

Salt Lake County, Maxar, County of Salt Lake, Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA

**SPK-2009-01213**

0 0.1 0.2 0.4

mi

Map Center: 112.084505°W 40.729892°N

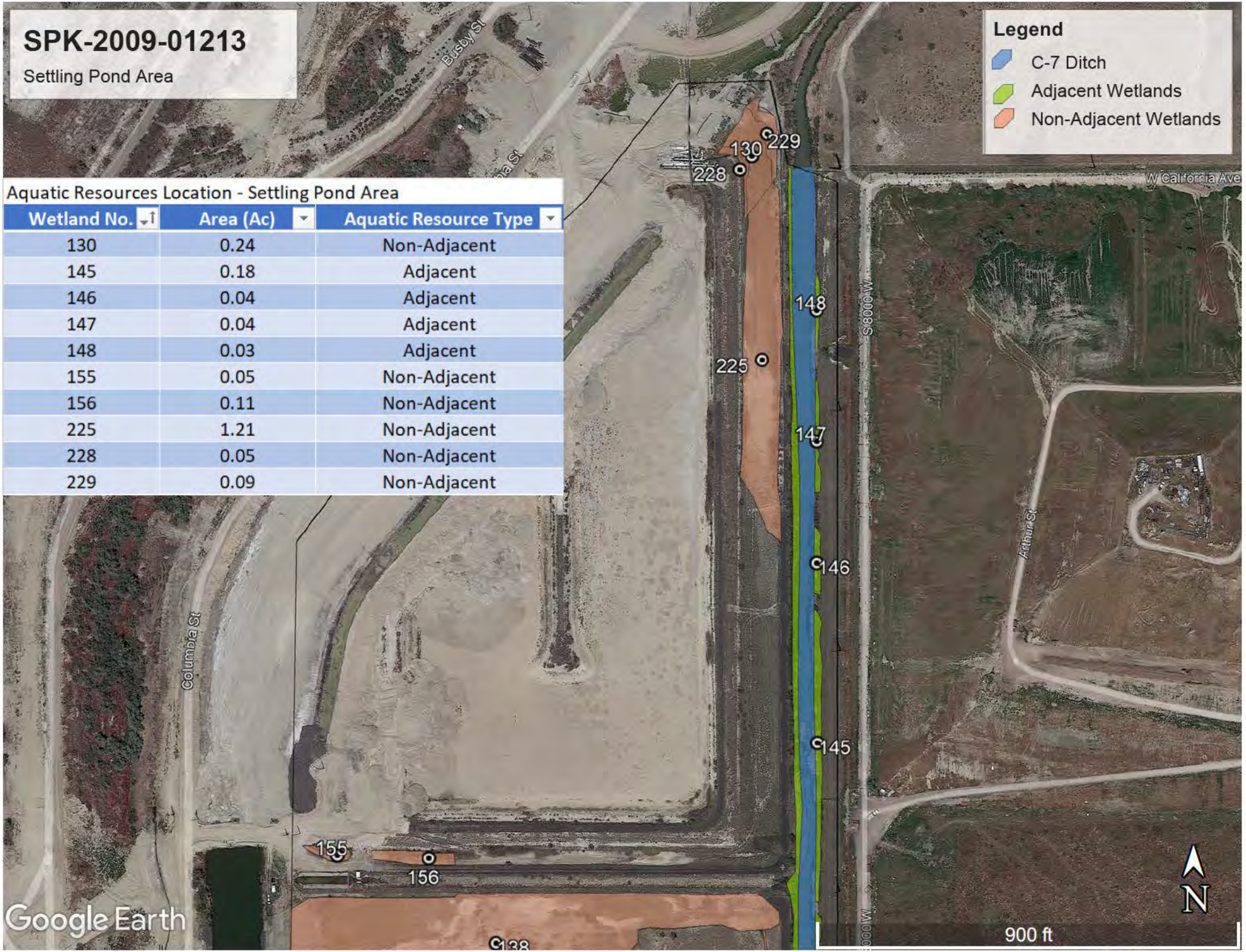
Map Created by: [redacted]

Date: 02/09/2024

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

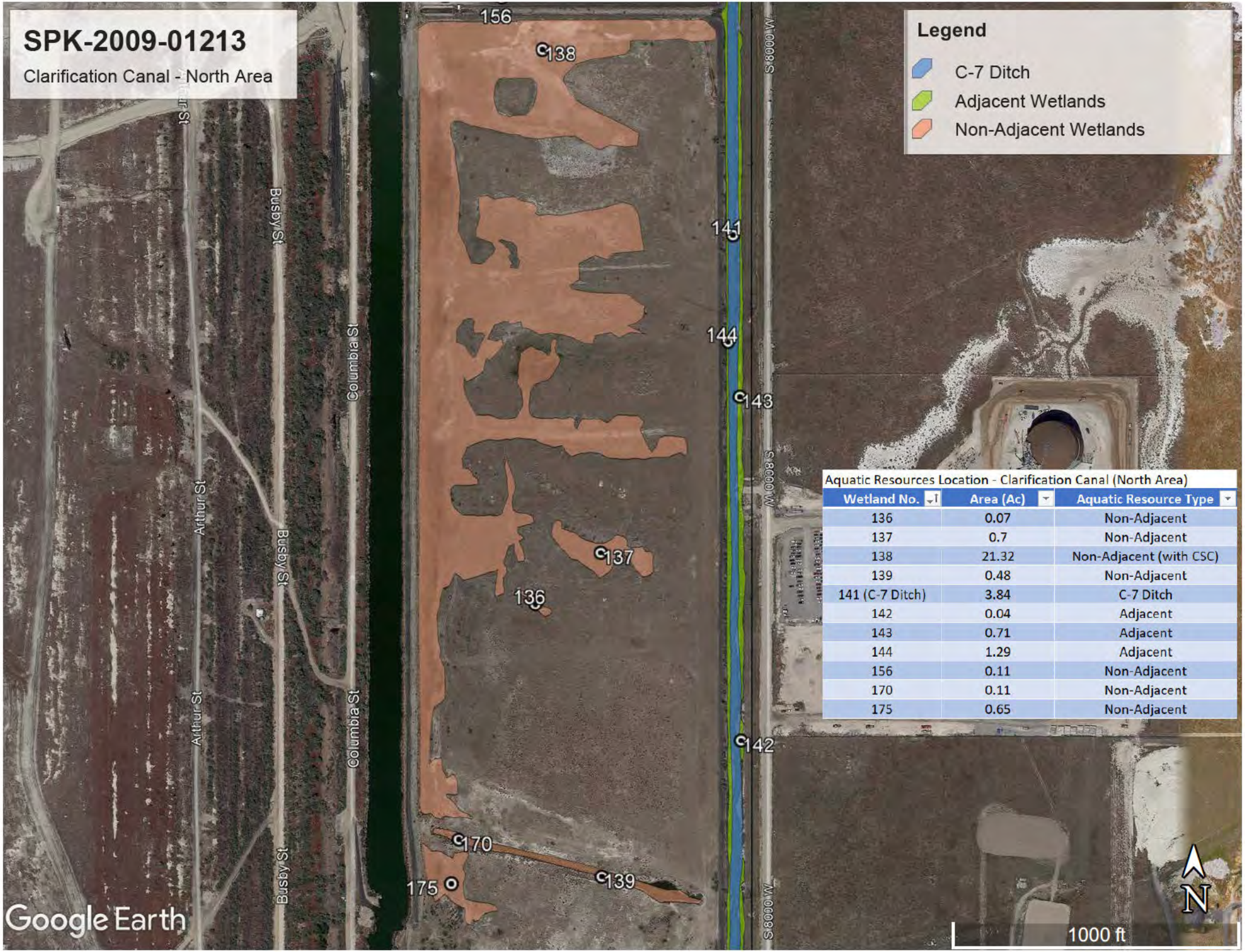
# SPK-2009-01213

Settling Pond Area



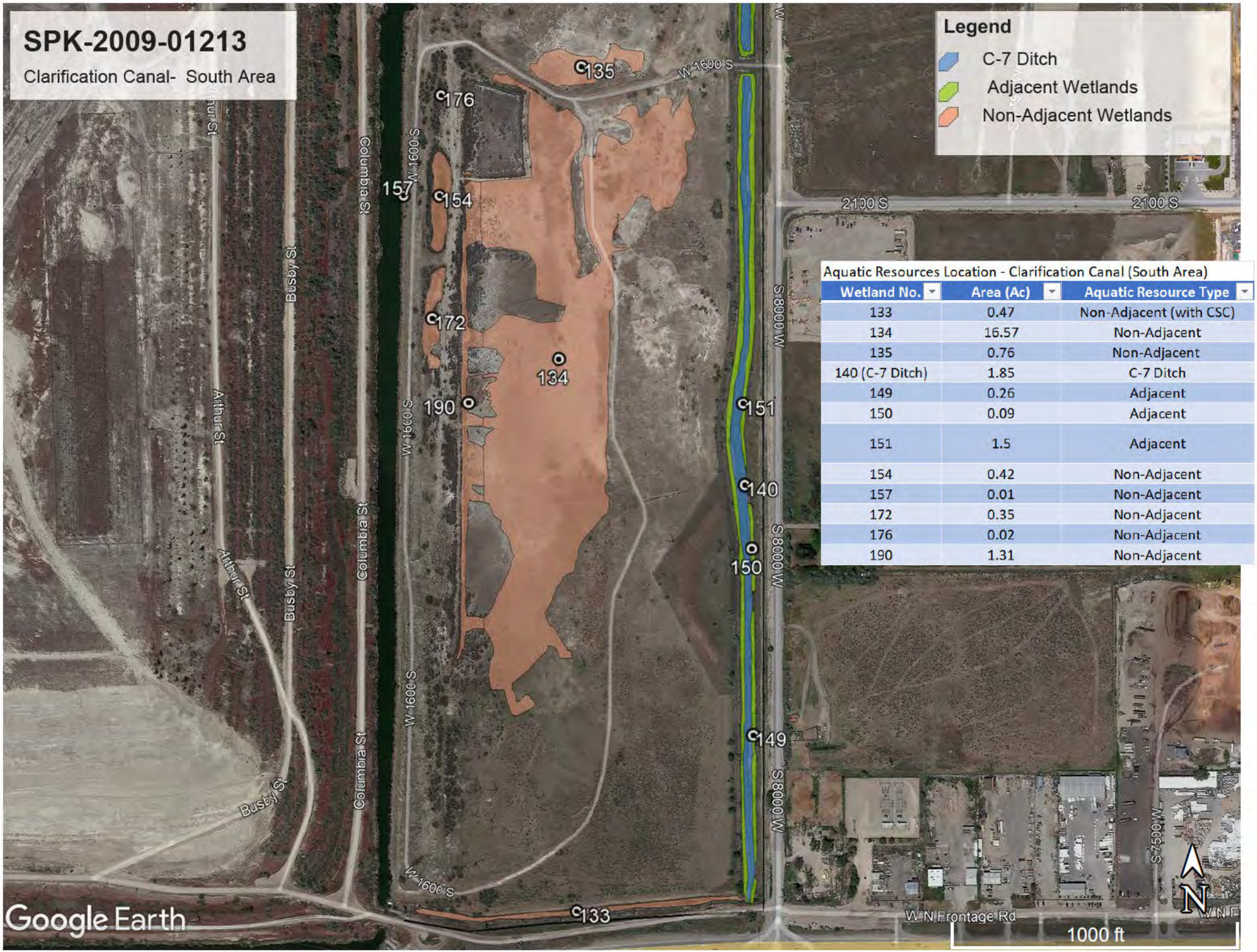

Aquatic Resources Location - Settling Pond Area

| Wetland No. | Area (Ac) | Aquatic Resource Type |
|---|---|---|
| 130 | 0.24 | Non-Adjacent |
| 145 | 0.18 | Adjacent |
| 146 | 0.04 | Adjacent |
| 147 | 0.04 | Adjacent |
| 148 | 0.03 | Adjacent |
| 155 | 0.05 | Non-Adjacent |
| 156 | 0.11 | Non-Adjacent |
| 225 | 1.21 | Non-Adjacent |
| 228 | 0.05 | Non-Adjacent |
| 229 | 0.09 | Non-Adjacent |




Aquatic Resources Location - Clarification Canal (North Area)

| Wetland No. | Area (Ac) | Aquatic Resource Type |
|---|---|---|
| 136 | 0.07 | Non-Adjacent |
| 137 | 0.7 | Non-Adjacent |
| 138 | 21.32 | Non-Adjacent (with CSC) |
| 139 | 0.48 | Non-Adjacent |
| 141 (C-7 Ditch) | 3.84 | C-7 Ditch |
| 142 | 0.04 | Adjacent |
| 143 | 0.71 | Adjacent |
| 144 | 1.29 | Adjacent |
| 156 | 0.11 | Non-Adjacent |
| 170 | 0.11 | Non-Adjacent |
| 175 | 0.65 | Non-Adjacent |




Aquatic Resources Location - Clarification Canal (South Area)

| Wetland No. | Area (Ac) | Aquatic Resource Type |
|---|---|---|
| 133 | 0.47 | Non-Adjacent (with CSC) |
| 134 | 16.57 | Non-Adjacent |
| 135 | 0.76 | Non-Adjacent |
| 140 (C-7 Ditch) | 1.85 | C-7 Ditch |
| 149 | 0.26 | Adjacent |
| 150 | 0.09 | Adjacent |
| 151 | 1.5 | Adjacent |
| 154 | 0.42 | Non-Adjacent |
| 157 | 0.01 | Non-Adjacent |
| 172 | 0.35 | Non-Adjacent |
| 176 | 0.02 | Non-Adjacent |
| 190 | 1.31 | Non-Adjacent |

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arcportal-ucop-corps.usace.army.mil/s0portal/apps/experiencebuilder/experience/?id=b5aef0ef98ee4c1abfb10d1ddccf72f2&page=Utah

_USACE | ORM2 Home Page | Regional Suppleme... | National Regulator... | Sacramento District... | Digital Globe | Historic Utah Buildi... | LanguageTool - Onl... | Stream Alteration | Utah SHPO e106 | Web Soil Survey - H... | National Wetland Pl... | All Bookmarks

Arizona | California | Colorado | New Mexico | Texas | Nevada | Utah | Tools | Report an Issue | SPD

Utah Regulatory Viewer | IPaC | DigitalGlobe | USGS Stream Stats

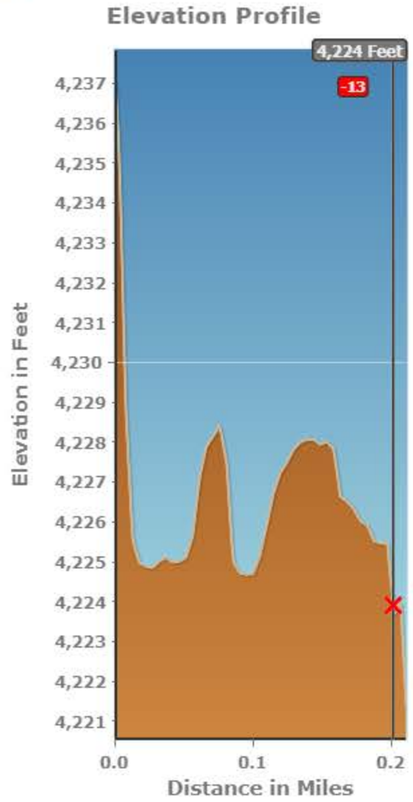
Find address or place

Elevation Profile

Measure | Profile Result

Hover over or touch the Elevations Profile chart to display elevations and show location on map.

Profile Information | Clear




60ft

40.734210 -112.081818 Degrees

County of Salt Lake, Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT

Friday, November 3, 2023

2:33 PM
11/3/2023

Utah | South Pacific Division Reg

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Find address or place

Elevation Profile

Measure | Profile Result

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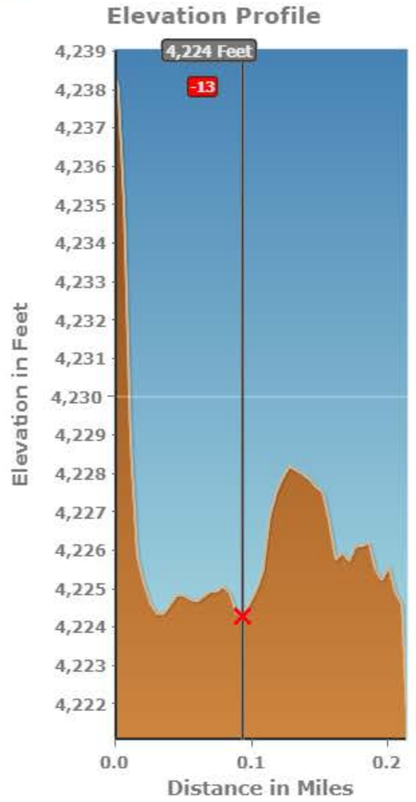
Profile Information | Clear




60ft

40.735486 -112.082953 Degrees

County of Salt Lake, Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT

2:31 PM
11/3/2023

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Arizona | California | Colorado | New Mexico | Texas | Nevada | Utah | Tools | Report an Issue | SPD

Utah Regulatory Viewer | IPaC | DigitalGlobe | USGS Stream Stats

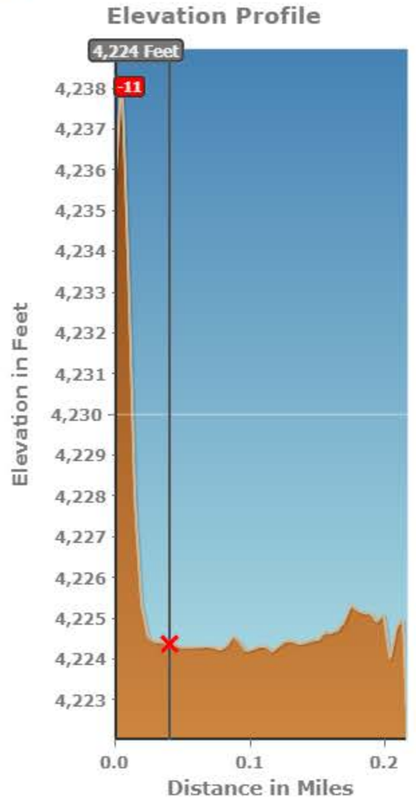
Find address or place

Elevation Profile

Measure | Profile Result

Hover over or touch the Elevations Profile chart to display elevations and show location on map.

Profile Information | Clear




60ft

40.734958 -112.082352 Degrees

County of Salt Lake, Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT

2:30 PM
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Utah Regulatory Viewer | IPaC | DigitalGlobe | USGS Stream Stats

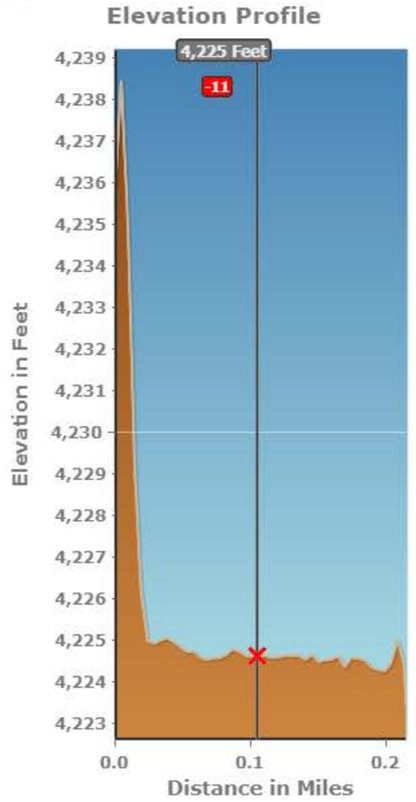
Find address or place

Elevation Profile

Measure | Profile Result

Hover over or touch the Elevations Profile chart to display elevations and show location on map.

Profile Information | Clear




60ft

40.734956 -112.082148 Degrees

County of Salt Lake, Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT

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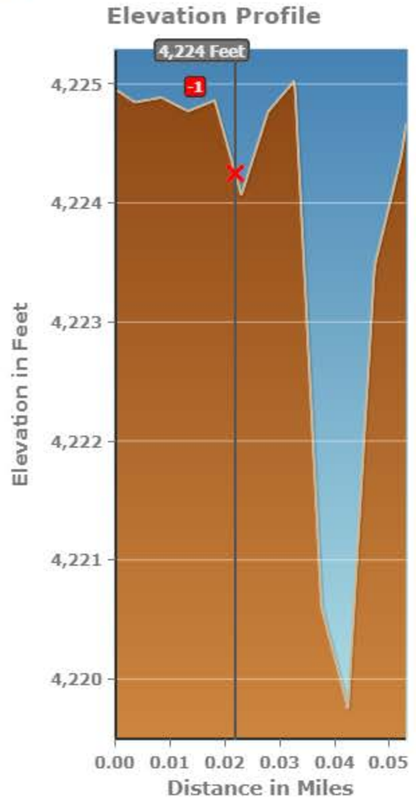
2 layer(s) selected

Elevation Profile

Measure | Profile Result

Hover over or touch the Elevations Profile chart to display elevations and show location on map.

Profile Information | Clear




40ft

40.735822 -112.081934 Degrees

SGS National Map 3D Elevation Program (3DEP). J

Type here to search

2:16 PM
11/3/2023

South Pacific Division Regulator

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IPaC | DigitalGlobe | USGS Stream Stats | Arizona SHPO Consultation Toolkit | ADEQ eMaps

Find address or place

2 layer(s) selected

40ft

40.735306 -112.082067 Degrees

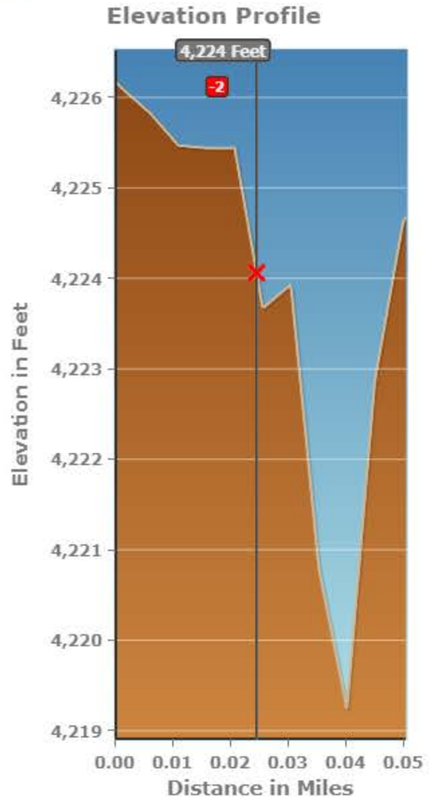
SGS National Map 3D Elevation Program (3DEP). J

## Elevation Profile

Measure | Profile Result

Hover over or touch the Elevations Profile chart to display elevations and show location on map.

Profile Information | Clear

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