



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

CESPK-RDC-D

12 September 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-2024-00316]

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. SUMMARY OF CONCLUSIONS.

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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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).

Name of Aquatic Resource	Cowardin	Description	Waters of the U.S.	Navigable Waters of the U.S.
D-1	R4	Ditch	Yes	No
SW-1	PEM	Seasonal Wetland	No	No
SW-2	PEM	Seasonal Wetland	No	No
SW-3	PEM	Seasonal Wetland	No	No
SW-4	PEM	Seasonal Wetland	Yes	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 No. 173 (September 8, 2023))

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

3. REVIEW AREA. The approximately 14.5-acre review area is located immediately south of Dunisch Road and west of West Stockton Boulevard, Latitude: 38.4266680°, Longitude -121.4016115°, in the City of Elk Grove, Sacramento County, California.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Sacramento River, which is approximately 6 miles west of the review area.⁵

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER: SW-4, a paragraph (a)(4) water, has a continuous surface connection (csc) to a paragraph (a)(3) ditch (D-1), which flows into

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.

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a stormwater system confluence, and detention basin, before discharging into Laguna Creek, an (a)(3) relatively permanent tributary to the Sacramento River.

6. SECTION 10 JURISDICTIONAL WATERS⁶: There are no Section 10 waters within the review area

7. SECTION 404 JURISDICTIONAL WATERS: The following aquatic resources within the review area 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*: D-1, and SW-4.

The geographical extent of aquatic resources was initially delineated by [REDACTED]. According to [REDACTED], their aquatic resources delineation was performed in accordance with the Corps' 1987 Wetlands Delineation Manual, the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region, A Field Guide to the Identification of the Ordinary High-Water Mark (OHWM) in the Arid West Region of the Western United States, and the Sacramento District's Minimum Standards for Acceptance of Preliminary Wetlands Delineations. U.S. Army Corps of Engineer regulations (33 CFR 328) were used to determine the presence of Waters of the United States other than wetlands. The most recent National Wetland Plant List was used to determine the wetland indicator status of plants observed in the study area. The Corps concurs with the extent of wetlands and other waters as mapped by [REDACTED] and portrayed on their October 2023 Aquatic Resource Delineation (ARD) map (Enclosure 1).

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): **(D-1)**, this roadside ditch is approximately 270 linear feet (LF) and located along the northern boundary of the review area abutting a paved road, a residential development, SW-4, and uplands which can be seen in the enclosed map of the review area (Enclosure 1). This ditch exhibits an Ordinary High-Water Mark

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.

(OHWM) and meets the definition of a paragraph (a)(3) tributary under the Waters Rule, as amended. Site photos taken during the wet season show wetland matting, and vegetative communities within the ditch that provides evidence of the relative permanence of the ditch (Enclosure 2, Photo 6). A drop-inlet culvert associated with an underground stormwater drainage system function as the low point within the ditch where water drains towards (Enclosure 3, Photo 7). [REDACTED], [REDACTED] traced the drainage path of water once it leaves the site to confirm where and how storm water is discharged (Enclosure 4). Once water from the site enters the storm water system via the drop inlet located within the roadside ditch, it is comingled with storm water from the approximately 56.4-acre residential development area. Storm water from the site travels for about 3,000 feet in the storm water system (which also intercepts storm water via multiple drop inlets in the residential area) before discharging to a storm water detention basin adjacent to Guttridge Park (Enclosure 5). This basin is just east of the confluence of Laguna Creek and Elk Grove Creek and was constructed to manage municipal storm water. A review of aerial photography indicates that water from the basin is discharged to the northeast into an engineered wetland channel or bioswale to the north of Laguna Creek and eventually flows west and into Laguna Creek.

f. Adjacent Wetlands (a)(4): **SW-4**, this 1.7-acre wetland feature exhibits a csc with a paragraph (a)(3) tributary that meets the relatively permanent standard. SW-4 drains east towards D-1, a paragraph (a)(3) water, via an approximately 25-foot culvert located at the northeastern edge of the wetland feature (Enclosure 6). Based on the conclusion from the Corps' July 2024, implementation memorandum with the EPA, Memorandum on NAP-2023-01223, which describes how a 70-foot pipe under a roadway may serve as a continuous surface connection between a wetland and a relatively permanent tributary this wetland feature meets the definition of a paragraph (a)(4) water under the Waters Rule, as amended.

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).⁷

⁷ 88 FR 3004 (January 18, 2023)

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). **SW-1, SW-2, and SW-3** do not meet the definition of Waters of the U.S. Although the wetlands meet the Corps definition of a wetland as defined in 33 CFR §328.3(c)(16), these wetlands do not exhibit a continuous surface connection with a paragraph (a)(1) water, relatively permanent (a)(2) impoundment, or (a)(3) tributary that meets the relatively permanent standard. As shown in the enclosed LiDAR map, the southwest portion of the review area is lower in elevation than adjacent areas to the west between the review area and Elk Grove Creek (Enclosure 7). During the consultants site visit, the landowner of the residential parcel west of the review area confirmed that overall drainage is north, toward Dunisch Road. Site photos provided by the consultant depicted vegetative transitions between the wetland feature and the uplands (Enclosure 8, Photo 3 and 4). Imagery analysis using Digital Globe imagery, LiDAR, and site photos provide evidence that these features do not have a continuous surface connection to a relatively permanent water. Therefore, SW-1, SW-2, and SW-3 are not jurisdictional as they do not meet the definition of an (a)(4) wetland under the 2023 rule due to the lack of a continuous surface connection with a jurisdictional resource.

9. DATA SOURCES.

- a. [REDACTED] 2023. [REDACTED] *Aquatic Resources Delineation Report*. Dated October 2023.
- b. Google Earth Pro 7.3.3.7786 (July 21, 2020). Taken January 26, 2024. Sacramento, California. Latitude 38.426604°, Longitude -121.401143°. Accessed June 6, 2024.
- c. USGS National Map 3D Digital Elevation Program (3DEP). ArcGIS Pro. Latitude 38.426604°, Longitude -121.401143°. Accessed June 7, 2024.
- d. Digital Globe. Taken February 08, 2022. G-EGD. Latitude 38.426604°, Longitude -121.401143°. Accessed May 06, 2024.
- e. Digital Globe. Taken January 13, 2022. G-EGD. Latitude 38.426604°, Longitude -121.401143°. Accessed May 06, 2024.
- f. Digital Globe. Taken March 04, 2021. G-EGD. Latitude 38.426604°, Longitude -121.401143°. Accessed May 06, 2024.

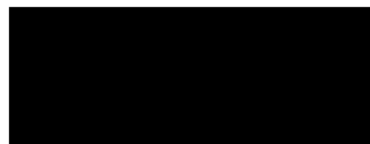
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- g. Digital Globe. Taken January February 14, 2017. G-EGD. Latitude 38.426604°, Longitude -121.401143°. Accessed May 06, 2024.

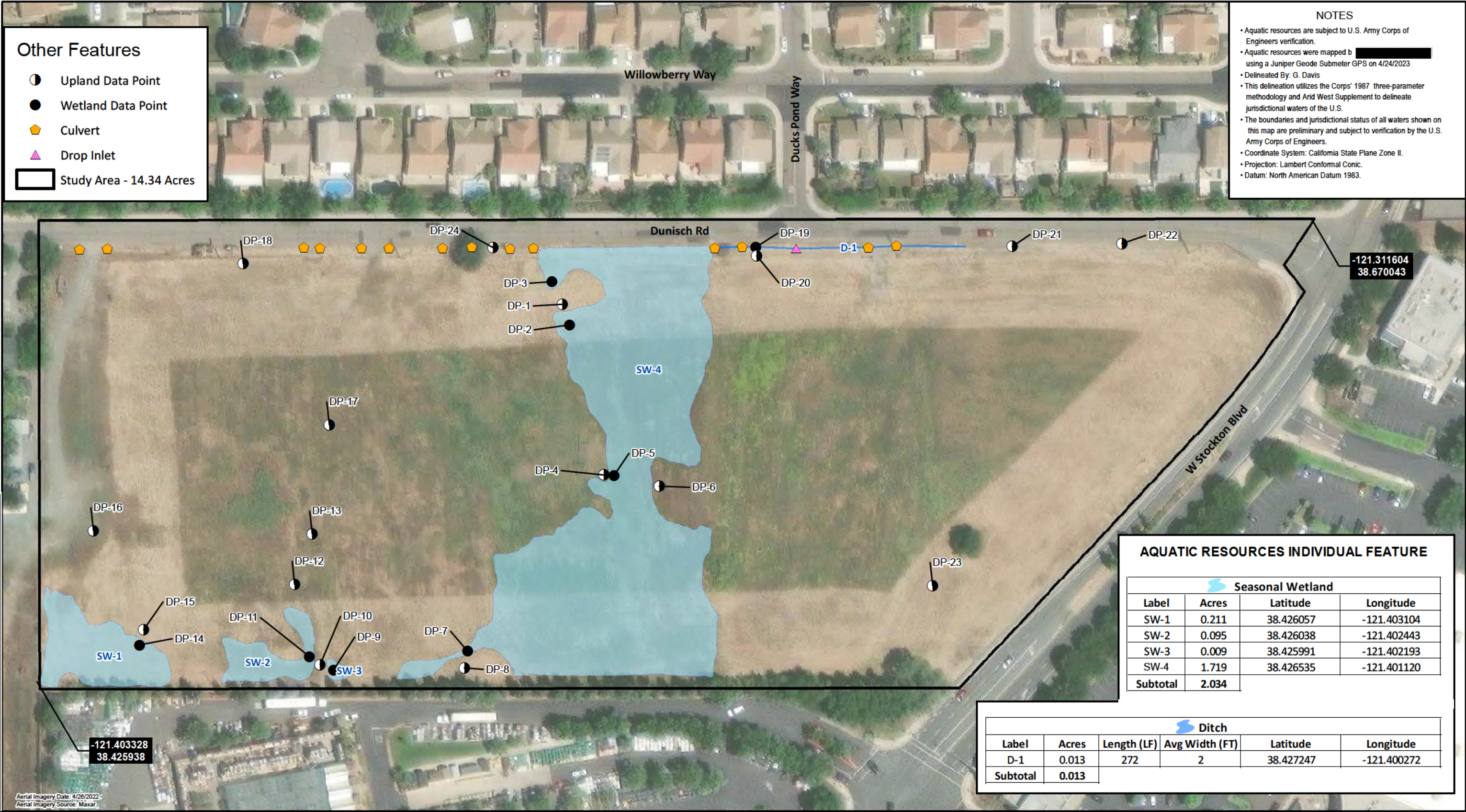
10. OTHER SUPPORTING INFORMATION. N/A.

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.



8 Encls

- 1 – Delineation Map
- 2 – D-1 Site Photos
- 3 – D-1 Drop Inlet Photo
- 4 – Project Vicinity Stormwater System
- 5 – Flow into Laguna Creek
- 6 – CSC of SW4
- 7 – LiDAR Map of site
- 8 – Site Photos of SW-1-3



Other Features

Upland Data Point

Wetland Data Point

Culvert

Drop Inlet

Study Area - 14.34 Acres

NOTES

Aquatic resources are subject to U.S. Army Corps of Engineers verification.

Aquatic resources were mapped b [REDACTED] using a Juniper Geode Submeter GPS on 4/24/2023

Delineated By: G. Davis

This delineation utilizes the Corps' 1987 three-parameter methodology and Arid West Supplement to delineate jurisdictional waters of the U.S.

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.

Coordinate System: California State Plane Zone II.

Projection: Lambert Conformal Conic.

Datum: North American Datum 1983.

AQUATIC RESOURCES INDIVIDUAL FEATURE					
Seasonal Wetland					
Label	Acres	Latitude	Longitude		
SW-1	0.211	38.426057	-121.403104		
SW-2	0.095	38.426038	-121.402443		
SW-3	0.009	38.425991	-121.402193		
SW-4	1.719	38.426535	-121.401120		
Subtotal	2.034				

Ditch					
Label	Acres	Length (LF)	Avg Width (FT)	Latitude	Longitude
D-1	0.013	272	2	38.427247	-121.400272
Subtotal	0.013				