



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

CESPK-RDI-U

27 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-2024-00048

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. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

- 1) ST-01 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 282 linear feet within the project area.
- 2) ST-02 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 5,283 linear feet within the project area.
- 3) ST-02A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 184 linear feet within the project area.
- 4) ST-03 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 643 linear feet within the project area.
- 5) ST-04 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 807 linear feet within the project area.
- 6) ST-05 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 2,210 linear feet within the project area.
- 7) ST-06 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 9,375 linear feet within the project area.
- 8) ST-06A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 739 linear feet within the project area.
- 9) ST-07 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 3,098 linear feet within the project area.
- 10) ST-07A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,801 linear feet within the project area.
- 11) ST-08 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,598 linear feet within the project area.
- 12) ST-09 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,783 linear feet within the project area.

- 13) ST-09A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,430 linear feet within the project area.
- 14) ST-10 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 5,880 linear feet within the project area.
- 15) ST-11 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 407 linear feet within the project area.
- 16) ST-12 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,772 linear feet within the project area.
- 17) ST-13 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 5,084 linear feet within the project area.
- 18) ST-14 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 6,110 linear feet within the project area.
- 19) ST-14A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 177 linear feet within the project area.
- 20) ST-14B is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 2,389 linear feet within the project area.
- 21) ST-15 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 196 linear feet within the project area.
- 22) ST-16 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 4,421 linear feet within the project area.
- 23) ST-17 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 2,725 linear feet within the project area.
- 24) ST-18 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 5,528 linear feet within the project area.
- 25) ST-18A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,641 linear feet within the project area.
- 26) ST-18B is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,409 linear feet within the project area.

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- 27) ST-18C is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 602 linear feet within the project area.
- 28) ST-18D is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 631 linear feet within the project area.
- 29) ST-18E is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 281 linear feet within the project area.
- 30) ST-18F is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,375 linear feet within the project area.
- 31) ST-18G is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,236 linear feet within the project area.
- 32) ST-18H is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,042 linear feet within the project area.
- 33) ST-18I is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 577 linear feet within the project area.
- 34) ST-19 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 3,950 linear feet within the project area.
- 35) ST-20 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 8,550 linear feet within the project area.
- 36) ST20A- is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 988 linear feet within the project area.
- 37) ST-20B is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 679 linear feet within the project area.
- 38) ST-20C is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 753 linear feet within the project area.
- 39) ST-20D is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,275 linear feet within the project area.
- 40) ST-21 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 6,562 linear feet within the project area.

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- 41) ST-21A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 2,513 linear feet within the project area.
- 42) ST-21B is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 505 linear feet within the project area.
- 43) ST-21C is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 777 linear feet within the project area.
- 44) ST-21D is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 625 linear feet within the project area.
- 45) ST-22 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 3,797 linear feet within the project area.
- 46) ST-22A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 1,827 linear feet within the project area.
- 47) ST-23 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 4,697 linear feet within the project area.
- 48) ST-23A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 801 linear feet within the project area.
- 49) ST-24 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 598 linear feet within the project area.
- 50) ST-24A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 336 linear feet within the project area.
- 51) ST-24B is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 348 linear feet within the project area.
- 52) ST-25 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 632 linear feet within the project area.
- 53) ST-26 is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 2,430 linear feet within the project area.
- 54) ST-26A is a non-relatively permanent, non-jurisdictional channel with an OHWM mark measuring approximately 490 linear feet within the project area.

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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 3,090-acre review area is located approximately 21 miles northeast of Fernley, with an approximate center point at Latitude 39.8759°, Longitude -119.0558°, Churchill County, Nevada. The site lies within an arid climate near the foot of the Truckee Range and contains numerous channels and erosional features that convey surface runoff from discrete, infrequent precipitation events. The watershed is a closed drainage basin that terminates in a dry lakebed (Fernley Sink) with the lowest point approximately 15 miles southwest of the site.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Pyramid Lake, which is approximately 19 miles directly west of the study area. Pyramid Lake is a terminal lake of a different watershed and has no connections to the study area channels. A navigable-in-fact determination was made for both Pyramid Lake and the Truckee River on June 11, 2008 (SPK-2007-01872).

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. All aquatic features on site are non-relatively permanent waters that ultimately flow south from the southern review area boundary and into a closed drainage area of the Fernley Sink, a mostly dry salt flat/lakebed (Enclosures 1 and 2). The extreme western portion of the review area contains several channels (ST-01 through ST-05) on the other side of a small divide that flow off site to the northwest, then to the northeast, and finally southeast, meeting up with the other channels on site as they join this primary drainage channel flowing south. Any surface flow from the study area evaporates and/or dissipates into the ground at or before reaching the sink, except during extreme precipitation events or seasons of abnormally high snowpack. Available aerial imagery shows periods of dry conditions and periods of standing water in the sink, and it is unknown if OHWM indicators are present. Pyramid Lake, the nearest TNW, lies within a different watershed and has no connections to the study area channels.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ There are no Section 10 waters within the review area.

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.
- 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.

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 "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.

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 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 54 individual aquatic features identified as ST-01 through ST-26A (Enclosure 3), totaling 114,549.4 linear feet, are non-relatively permanent tributaries and, as such, are not waters of the U.S. pursuant to 33 CFR 328.3, as amended. See attached table for detailed information on individual features (Enclosure 4).

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. [REDACTED]. September 2024. “Wetland Delineation, Sierra Solar Project Churchill County, Nevada”.
- b. Google Earth 7.3.3.7692. Aerial Imagery. (1993 December, 2006 May, 2010 August, 2012 December, 2013 August, 2015 July, 2020 April, 2023 July, and 2024 May). Churchill County, Nevada. Latitude 39.874455°, Longitude -119.059579°, eye alt 15,000 ft. Accessed 17 September 2024.
- c. Digital Globe, 2024. Aerial Imagery (2022 September, 2023 August, and 2024 April). Churchill County, Nevada, Latitude 39.8745°, Longitude -119.0596°; Fernley Wildlife Mgmt. Area, Nevada. Latitude 39.6557°, Longitude -119.1258°. Accessed 17 September 2024 (<https://evwhs.digitalglobe/myDigitalGlobe.com>).
- d. LiDAR - National Layer in the National Regulatory Viewer for the South Pacific Division. Accessed 17 September 2024.

⁷ 88 FR 3004 (January 18, 2023)

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e. USACE, OMBIL Regulatory Module, 2023. Corpsmap. Accessed 17 September 2024. (<https://orm.ops.usace.army.mil/>).

f. USACE 17, 26 September 2024 Office Evaluation.

10. OTHER SUPPORTING INFORMATION. The aquatic resources delineation report included detailed descriptions, photographs, and cross-section drawings to characterize the channels on site as clearly lacking relatively permanent flow. Other erosional and relict features were documented on site and determined to be lacking OHWM indicators.

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 ENCLSOSURES

Enclosure 1: FEMA Floodplain Map

Enclosure 2: Flow Map

Enclosure 3: Delineation Maps







Enclosure 4: Aquatic Resources Table

**NV Energy
Sierra Solar Project**

**Figure 5
Wetlands Delineation
Overview**

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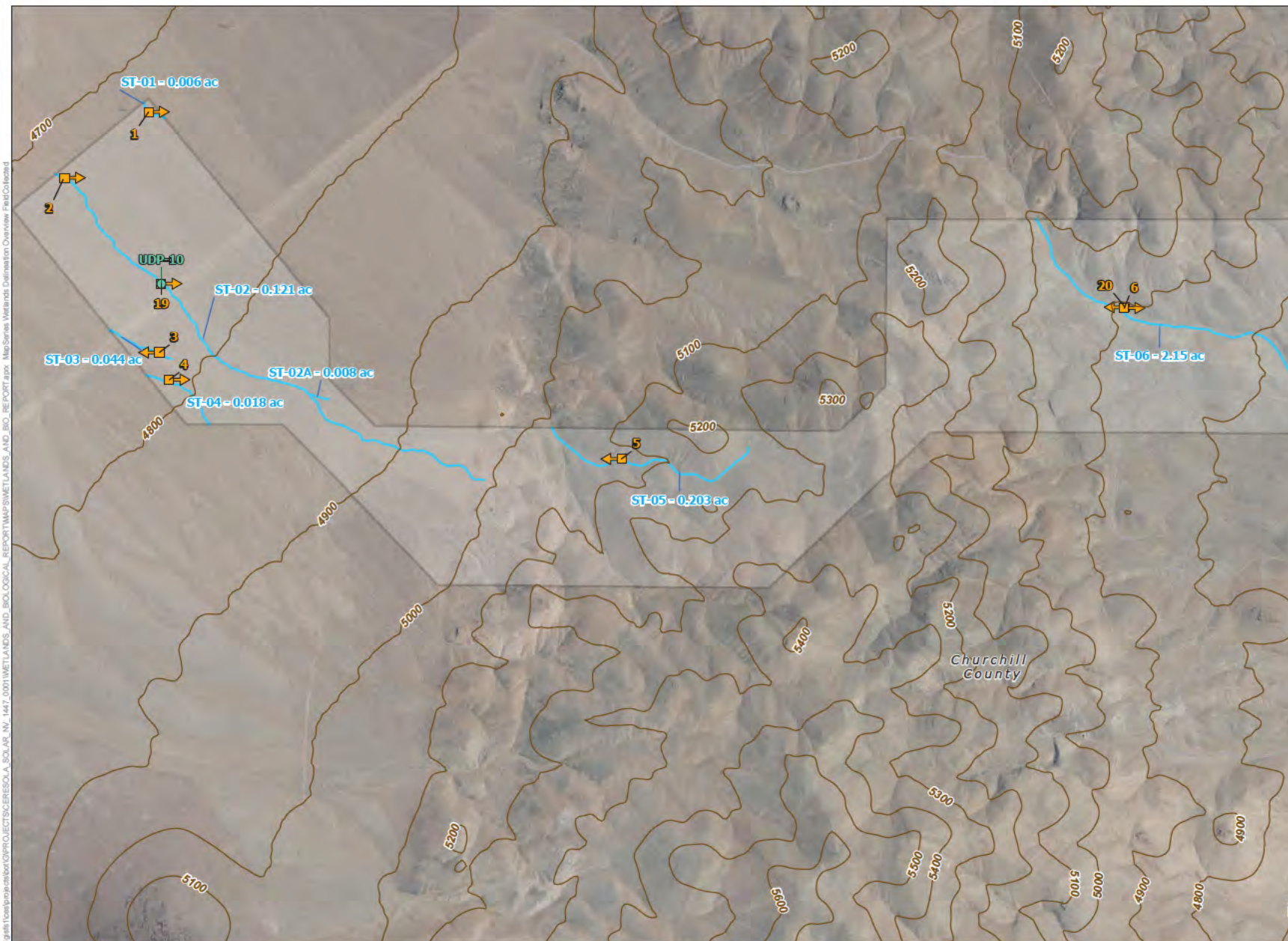
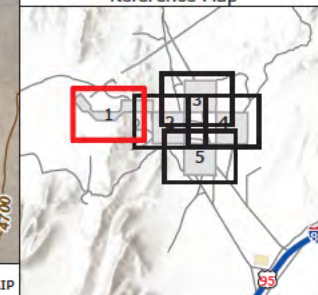
CHURCHILL COUNTY, NV

-  Study Area (3,090 ac)
-  Local Road
- Wetlands Delineation**
 -  Ephemeral Stream/River
 -  Low Flow Crossing
 -  Upland Point
 -  Photo Point

Updated: 9/24/2024

NOT FOR CONSTRUCTION

Reference Map



\\nv0701g\gis\workspace\project\collecting\GIS\SCA_Air_M_1442_0001\WETLANDS_AND_BIOLOGICAL_REPORT\MAP\WETLANDS_AND_BIOLOGICAL_REPORT.aprx Map Series: Wetlands Delineation Overview: First Colored

NV Energy
Sierra Solar Project

Figure 5
Wetlands Delineation
Overview

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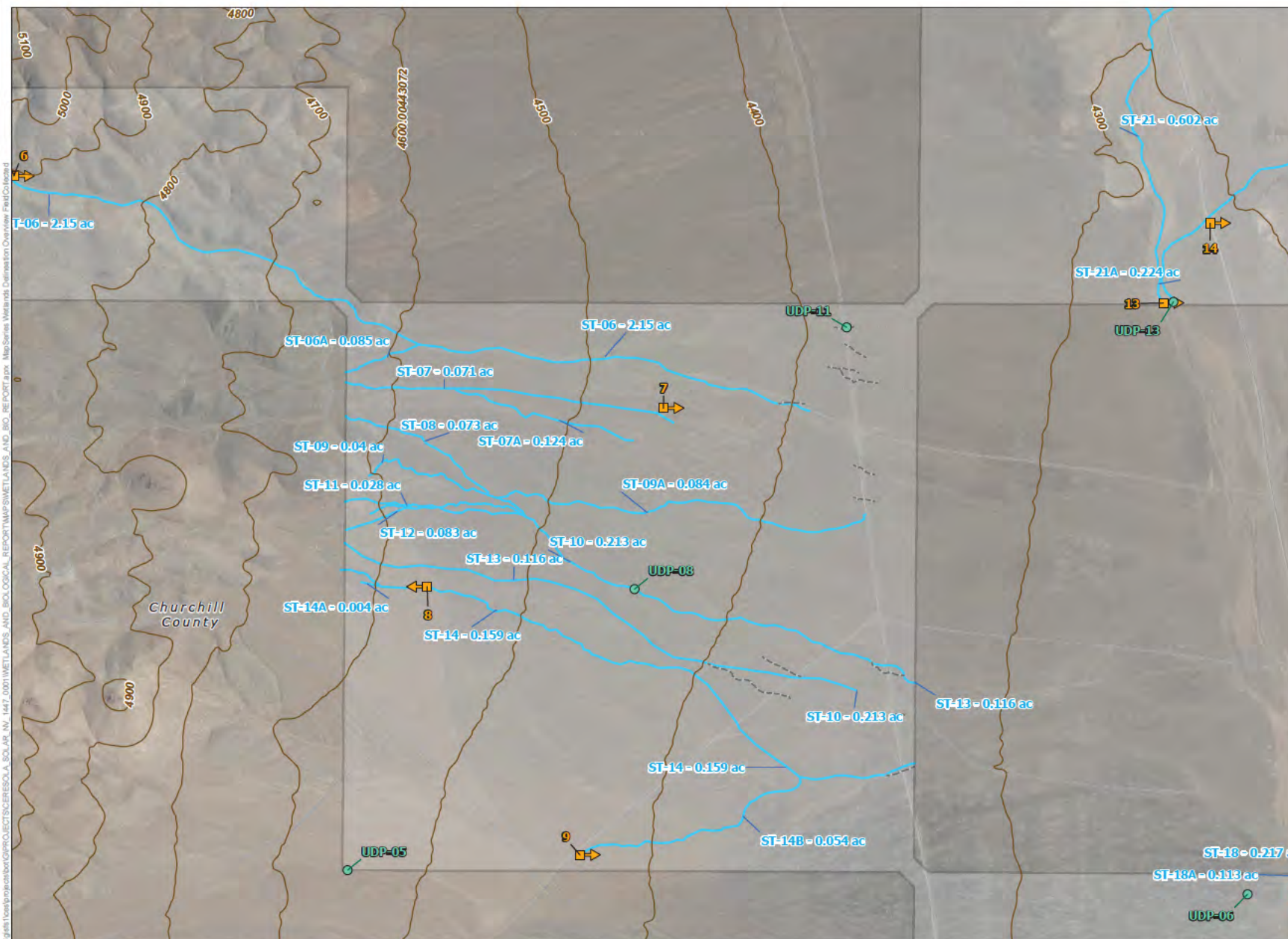
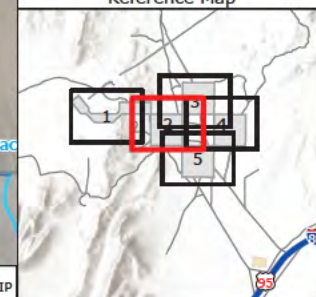
CHURCHILL COUNTY, NV

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NOT FOR CONSTRUCTION

Reference Map



1:10,320

NAD 1983 StatePlane Nevada West FIPS 2703 Feet

0 500 1,000 2,000 Feet

SOURCE: ESRI, USGS, US CENSUS, BTS, NAIP

NV Energy Sierra Solar Project

Figure 5 Wetlands Delineation Overview

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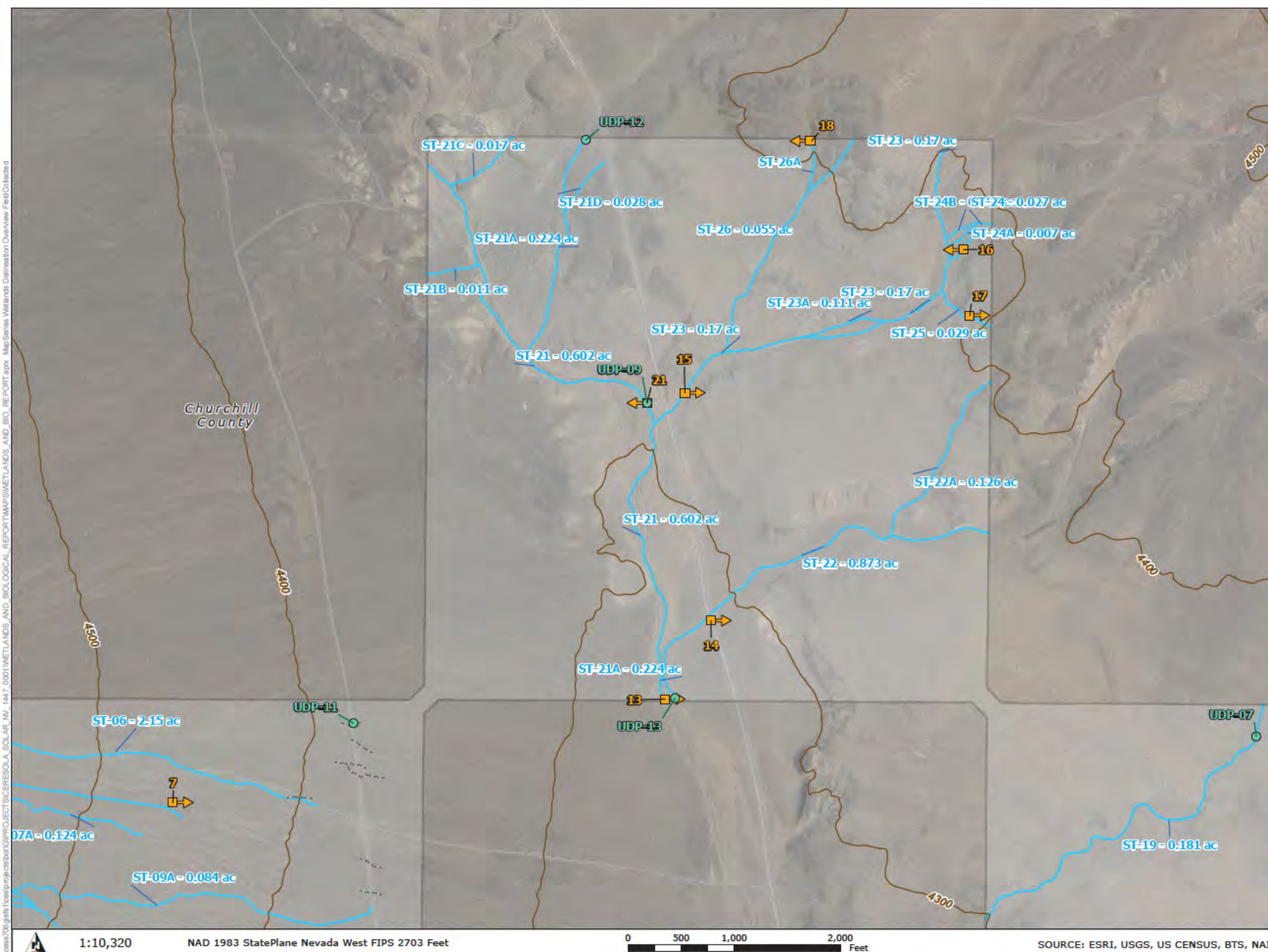
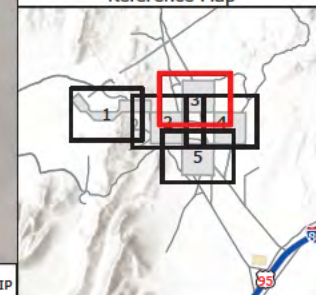
CHURCHILL COUNTY, NV

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Reference Map









**NV Energy
Sierra Solar Project**

**Figure 5
Wetlands Delineation
Overview**

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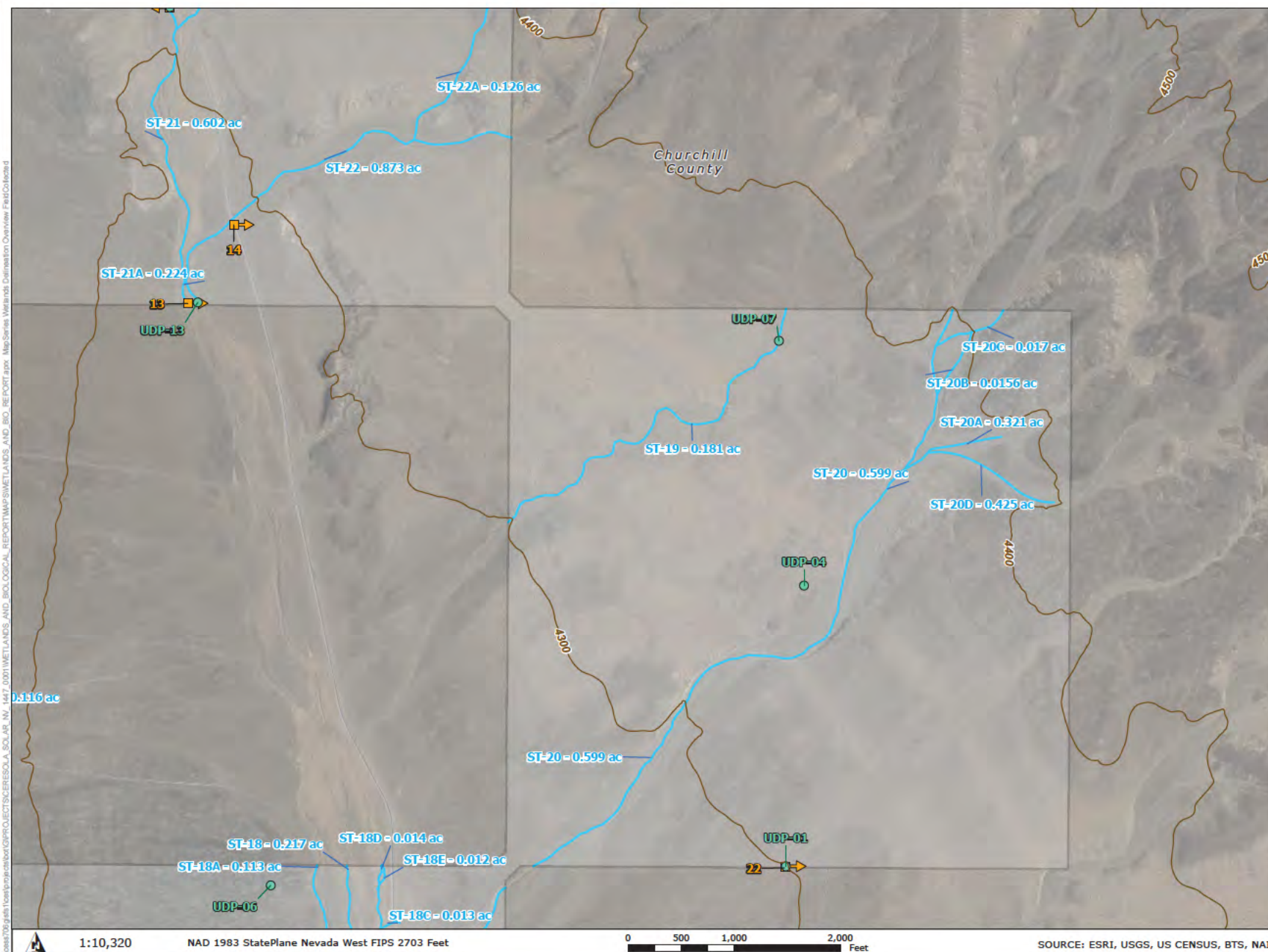
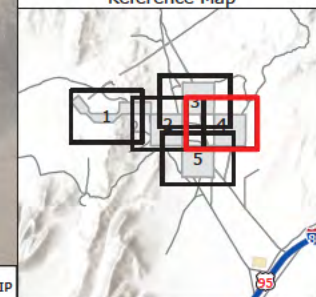
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NV Energy Sierra Solar Project

Figure 5 Wetlands Delineation Overview

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CHURCHILL COUNTY, NV

- Study Area (3,090 ac)
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Updated: 9/24/2024

NOT FOR CONSTRUCTION

Reference Map

