



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

CESPK-RDI-N

1 NOVEMBER 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) ,<sup>1</sup> [SPK-2023-00124]

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.<sup>2</sup> 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.<sup>3</sup>

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),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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) Chalk Creek is a non-relatively permanent, non-jurisdictional channel with an OWHM measuring approximately 1,500 linear feet within the project area.

## 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)

d. CESPK-RD, Memorandum for the Record, Navigable- in- Fact Determination for the Truckee River and Pyramid Lake, SPK-2007-01872 (11 June 2008)

3. REVIEW AREA. The approximately 0.26-acre review area is located along Chalk Creek near Robb Drive and Blue Canyon Drive, with an approximate center point at Latitude 39.536818°, Longitude -119.88105°, Washoe County, Nevada. The Review Area does not have previous Jurisdictional Determinations but has previous permitting history. On 22 August 2001 a Nationwide Permit 39 verification was issued to relocate an "ephemeral unnamed drainage" for the construction of a residential, commercial, and institutional development. That relocated "ephemeral unnamed drainage" would become the modern-day Chalk Creek which is currently being evaluated. On 20 September 2023 a Nationwide Permit 3 and 13 verification was issued to perform bank stabilization and maintenance activities of Chalk Creek.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW to which Chalk Creek is connected to is the Truckee River (see Reference 2.d).

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Chalk Creek is a 2<sup>nd</sup> order stream within the review area (Enclosure 1). It continues flowing offsite south for approximately 6,000 linear feet until it intersects with another 2<sup>nd</sup> order stream. The resulting 3<sup>rd</sup> order stream then flows for approximately 4,700 linear feet into the Truckee River.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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.<sup>6</sup> 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.

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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<sup>5</sup> 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.

<sup>6</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

a. 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).<sup>7</sup> 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 2<sup>nd</sup> order portion of Chalk Creek is a non-relatively permanent tributary and, as such, it is not a water of the United States pursuant to 33 CFR 328.3, as amended. Information supporting this determination is reviewing aerial imagery of the 2<sup>nd</sup> order Chalk Creek during the 2023-2024 wet season where standing or flowing water could only be identified one time within a few days of a large precipitation event. No other times were standing or flowing water visible on aerial imagery indicating 2<sup>nd</sup> order Chalk Creek only flows in short duration as a direct response to precipitation and is non-relatively permanent.

<b>Table 1. Aerial Imagery and APT for 2<sup>nd</sup> Order Portion of Chalk Creek</b>			
Date	Dry or Wet Season	APT Condition	Visible standing or flowing water?
03 NOV 2023	Wet	Normal Conditions - 13	No
24 NOV 2023	Wet	Normal Conditions - 13	No
26 NOV 2023	Wet	Normal Conditions - 13	No
28 NOV 2023	Wet	Normal Conditions - 13	No
15 JAN 2024	Wet	Normal Conditions - 10	No
25 JAN 2024	Wet	Normal Conditions - 10	No
18 FEB 2024	Wet	Normal Conditions - 11	No
19 FEB 2024	Wet	Normal Conditions - 11	No
25 FEB 2024	Wet	Normal Conditions - 14	No
10 MAR2024	Wet	Wetter than Normal - 15	Yes
22 MAR2024	Wet	Wetter than Normal - 15	No

<sup>7</sup> 88 FR 3004 (January 18, 2023)

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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. Office evaluation conducted on 31 October 2024 utilizing the following data:
- b. "Chalk Creek Channel Stabilization and Restoration Project – Ephemeral Channel Characterization" [REDACTED] dated 28 October 2024
- c. U.S. Army Corps of Engineers ERDC Antecedent Precipitation Tool, Lat/Long: 39.5216, -110.8769, Dates: 03NOV23, 24NOV23, 26NOV23, 28NOV23, 15JAN24, 25JAN24, 18FEB24, 19FEB24, 25FEB24, 10MAR24, 22MAR24. Accessed 01 November 2024
- d. Worldview. 2024. "WV01, 03NOV23 016079821-10." *Panchromatic*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024
- e. Worldview. 2024. "WV01, 24NOV23 016113892-10." *Panchromatic*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024
- f. Worldview. 2024. "GEO1, 26NOV23 016116353-10." *Pan Sharpened Natural Color*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024
- g. Worldview. 2024. "GEO1, 28NOV23 016120290-10." *Pan Sharpened Natural Color*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024
- h. Worldview. 2024. "WV02, 15JAN24 016191394-10." *Pan Sharpened Natural Color*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024
- i. Worldview. 2024. "GEO01, 25JAN24 016206314-10." *Pan Sharpened Natural Color*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024
- j. Worldview. 2024. "GEO01, 18FEB24 016238817-10." *Panchromatic*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024
- k. Worldview. 2024. "GEO01, 19FEB24 016239988-10." *Pan Sharpened Natural Color*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024
- l. Worldview. 2024. "WV02, 25FEB24 016250738-10." *Pan Sharpened Natural Color*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024
- m. Worldview. 2024. "WV01, 10MAR24 016279747-10." *Panchromatic*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024

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n. Worldview. 2024. "WV03\_VNIR, 22MAR24 200004864944." *Pan Sharpened Natural Color*. Westminster, CO: Digital Globe, Inc., accessed 01 November 2024

o. USGS. 2024. National Hydrography Dataset Plus High Resolution for Hydrologic Unit 4 – 1605, <https://www.usgs.gov/national-hydrography/nhdplus-high-resolution>, accessed 01 November 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.

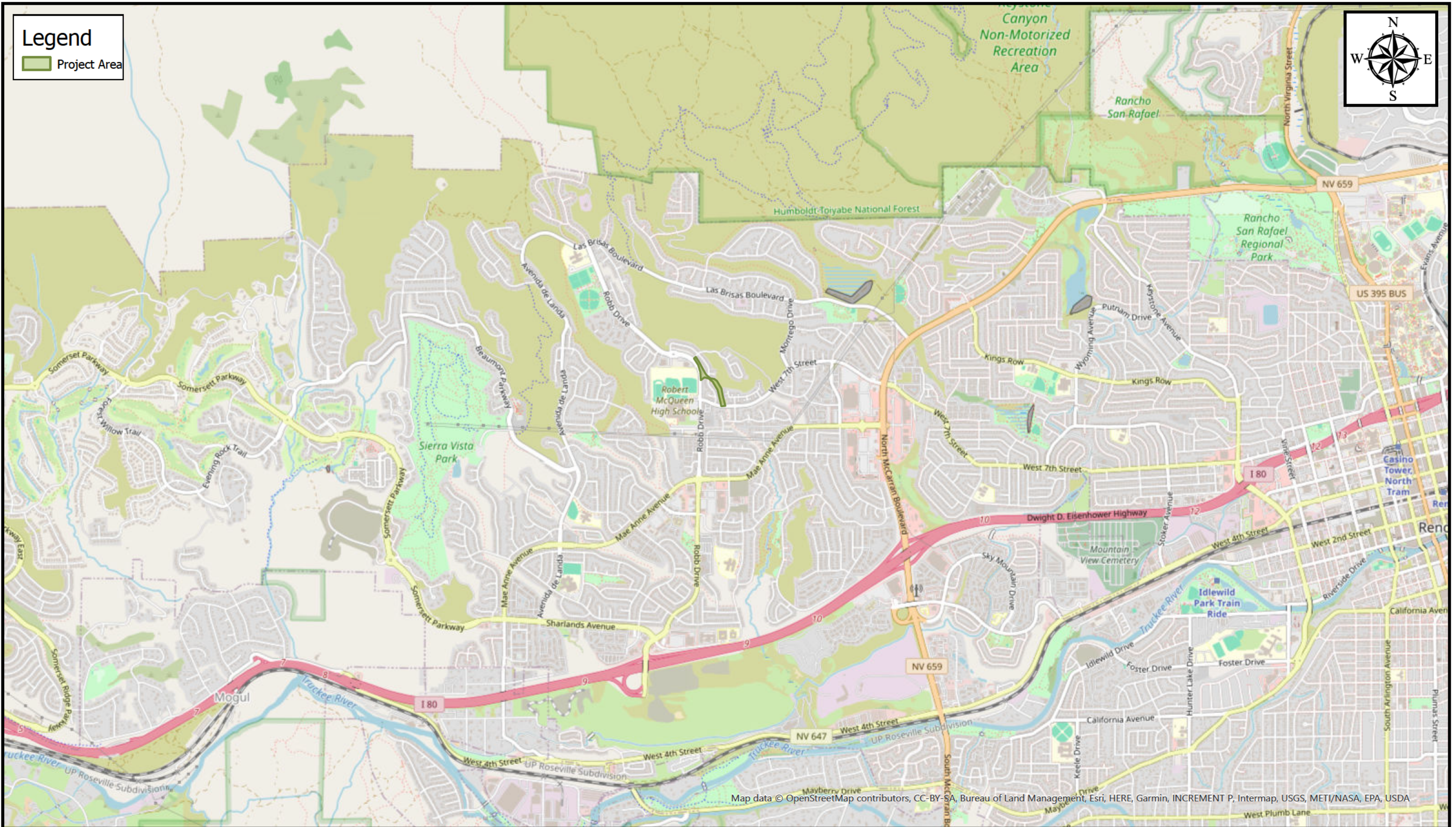


Encl



**Legend**

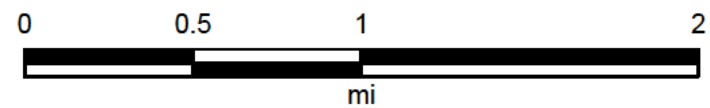
 Project Area



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SPK-2023-00124



Map Center: 119.879463°W 39.534229°N

Date: 11/1/2024

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



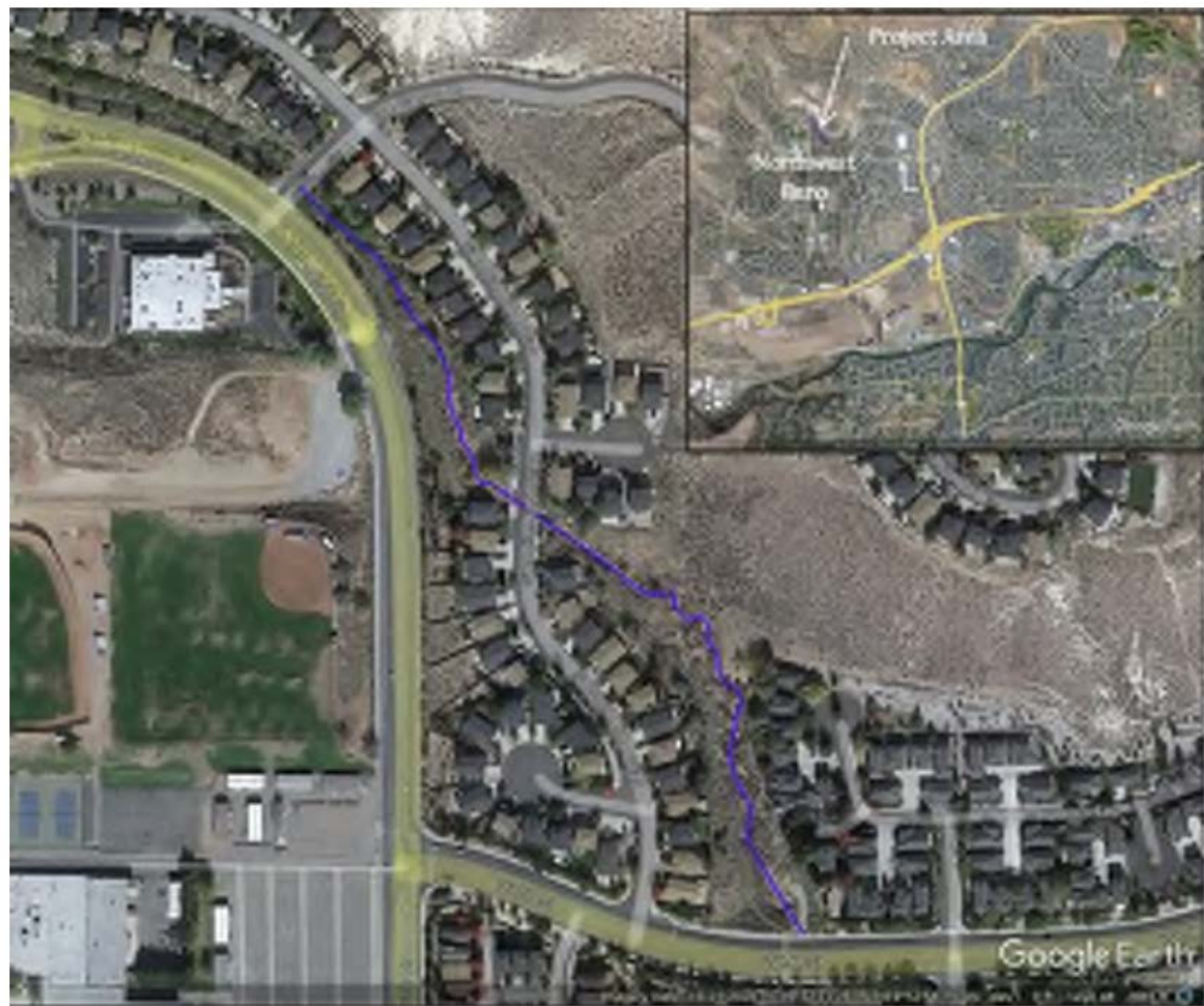


Figure 1 Chalk Creek Sapphire Ridge Project Location