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

CESPK-RDC-S 9 December 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-2011-00758, (MFR 1 of 3)[2]

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.[3] 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.[4]

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

[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] When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.

on Section 10 of the Rivers and Harbors Act of 1899 (RHA),[5] the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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).

Name of Aquatic Resource	Jurisdictional/Non-Jurisdictional	Authority
SW-1	Non-jurisdictional	None
SW-2	Non-jurisdictional	None
SW-3	Non-jurisdictional	None
SWS-1	Jurisdictional	Section 404
SWS-2	Non-jurisdictional	None
SWS-3	Non-jurisdictional	None
SWS-4	Jurisdictional	Section 404
SWS-5	Jurisdictional	Section 404
SWS-6	Jurisdictional	Section 404
SWS-7	Jurisdictional	Section 404
SWS-8	Non-jurisdictional	None
SWS-9	Jurisdictional	Section 404
SWS-10	Non-jurisdictional	None
S-1	Jurisdictional	Section 404
S-2	Non-jurisdictional	None
S-3	Non-jurisdictional	None
S-4	Non-jurisdictional	None
ED-1	Non-jurisdictional	None
ED-2	Jurisdictional	Section 404

[5] 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.

ED-3	Non-jurisdictional	None
ED-4	Non-jurisdictional	None
ED-5	Non-jurisdictional	None
ED-6	Non-jurisdictional	None
ED-7	Non-jurisdictional	None
ID-1	Jurisdictional	Section 404
ID-2	Jurisdictional	Section 404
ID-3	Jurisdictional	Section 404
ID-4	Jurisdictional	Section 404
P-1	Jurisdictional	Section 404
P-2	Jurisdictional	Section 404
RD-1	Non-jurisdictional	None
RD-2	Non-jurisdictional	None
RD-3	Non-jurisdictional	None
RD-4	Non-jurisdictional	None
RD-5	Non-jurisdictional	None
RD-6	Non-jurisdictional	None
RD-7	Non-jurisdictional	None
RD-8	Non-jurisdictional	None
RD-9	Non-jurisdictional	None
RD-10	Non-jurisdictional	None
RD-11	Non-jurisdictional	None
RD-12	Non-jurisdictional	None
RD-13	Non-jurisdictional	None
RD-14	Non-jurisdictional	None
RD-15	Non-jurisdictional	None
RD-16	Jurisdictional	Section 404

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 314.0-acre total review area is located in El Dorado Hills, El Dorado County, California. MFR 1 of 3 covers aquatic resources within the Main Extent of the review area. The Main Extent covers approximately 305.0 acres and is located adjacent to and southwest of Green Valley Road in Sections 19 and 24, Township 10 North, Ranges 8 and 9 East, El Dorado Hills, El Dorado County, California. The approximate center of the Main Extent is located at Latitude 38.70409°, Longitude -121.04748° (Enclosures 1 and 2). A Preliminary Jurisdictional Determination, dated August 26, 2011, was completed by this office for a 296.0-acre portion of the review area located south of Green Valley Road. Since 2011, the review area has been expanded to include additional areas along either side of Green Valley Road, west of Silva Valley Parkway, and between Loch Way and Appian Way. The newly added portions of the review area are referred to as the Western Inset and the Southwestern Inset and are addressed in MFRs 2 and 3, respectively.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW, The American River, is located approximately 5.5 miles straight-line distance west of the review area's Main Extent. This distance was estimated using the Corps Navigable Waters layer in Google Earth. The American River is a TNW from its confluence with the Sacramento River to Folsom Lake, as determined on February 1, 2008.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Most aquatic resources within the review area's Main Extent flow north into Green Spring Creek which is tributary to the American River. Green Spring Creek flows east into New York Creek which flows north into Folsom Lake at New York Creek Cove. Water from Folsom Lake flows into the American River through the Folsom Dam. The American River is a TNW from the river mouth to Folsom Lake and is a TNW pursuant to 33 CFR 328.3(a)(1)(i). Four aquatic resources (SWS-1, S-3, ED-2, and ED-5) within the Main Extent flow west into Allegheny Creek. Allegheny Creek flows north into Green Spring Creek. Green Spring Creek flows northwest into New York Creek. New York Creek flows north into Folsom Lake. A flowpath map from the Main Extent of the review area to the American River is included in Enclosure 3.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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.

7. SECTION 404 JURISDICTIONAL WATERS: The following aquatic resources within the review area 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*.

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):

1) **ID-1** (0.051 acre/ 103 LF), **ID-2** (0.622 acre/ 901 LF), **ID-3** (0.055 acre/ 125 LF), **ID-4** (0.084 acre/ 199 LF), **P-1** (2.128 acre), and **P-2** (1.675 acre) are six separately mapped segments of Green Spring Creek, a relatively permanent (a)(3) tributary to the American River (a TNW). The **ID-1/ID-2/ID-3/ID-4/P-1/P-2** stretch of Green Spring Creek is part of a second-order tributary reach that originates approximately 2.7 miles southeast of the review area, near the intersection of Lambeth Drive and Mayfield Drive. The tributary reach ends approximately 1.6 miles downstream of the review area, where Allegheny Creek flows into Green Spring Creek. The total length of the tributary reach measures approximately 4.3 miles. Within the review area, flows travel northeast from ID-1 and through a culvert under a small footbridge into ID-2. Flows continue northeast through ID-2 and P-1 then enter another culvert into ID-3. Flows continue northeast from ID-3 into P-2 then ID-4. Green Spring Creek is mapped as an intermittent stream on the Clarksville, California U.S. Geological Survey (USGS) 7.5-minute Topographic Quadrangle and on the USGS National Hydrography Dataset (NHD). The [redacted] (AJD Memo), [redacted] and dated

[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.

April 8, 2024, characterizes Green Spring Creek as a relatively permanent water. We have corroborated this assertation by reviewing aerial imagery over multiple years. A review of Digital Globe aerial imagery from 14 dates across four years show that the ID-1/ID-2/ID-3/ID-4/P-1/P-2 tributary reach has flowing or standing water continuously during certain times of the year and for more than just a short duration in direct response to precipitation. The dates evaluated (5/20/2018, 1/12/2019, 1/31/2019, 5/13/2019, 1/31/2021, 2/5/2021, 2/27/2021, 3/12/2021, 1/13/2022, 1/22/2022, 3/2/2022, 4/15/2022, 12/21/2022, 5/1/2022) include imagery taken during the wet season and early dry season. The ID-1/ID-2/ID-3/ID-4/P-1/P-2 tributary reach contained flowing or standing water on all the evaluated dates, including on four dates (2/27/2021, 3/12/2021, 3/2/2022, 4/15/22) when the 3-month antecedent precipitation was drier than normal. The 3-month antecedent precipitation was within normal range on the remaining dates. The tributary also appears to maintain flows into the dry season as observed on 5/20/2018, 5/13/2019, and 5/1/2022.

2) **ED-2** is a 0.032-acre/ 359 LF segment of a first-order unnamed relatively permanent tributary to Allegheny Creek, an (a)(3) water with a downstream connection to the American River. The ED-2 tributary originates at the downstream end of a wetland swale situated in the southwestern corner of the Main Extent of the review area (SWS-1). The ED-2 tributary flows west from the review area for approximately 0.39 miles/ 2,074 LF before entering Allegheny Creek southeast of the intersection of Western Sierra Way and Willard Court. The total length of the ED-2 tributary is approximately 0.42 miles/ 2,400 LF. ED-2 is labeled as an ephemeral tributary on the USGS NHD and is not mapped on the USGS 7.5-minute Topographic Quadrangle. The April 8, 2024, AJD Memo categorizes ED-2 as a non-relatively permanent tributary. This office reviewed aerial photographs of the ED-2 tributary reach obtained from Digital Globe on 11 dates (5/20/2018, 1/12/2019, 1/31/2019, 5/13/2019, 1/31/2021, 2/5/2021, 2/27/2021, 3/12/2021, 1/22/2022, 5/1/2022, and 12/21/2022). The ED-2 tributary reach did not contain flowing or standing water on the 3 dates observed during the dry season (5/20/2018, 5/13/2019, and 5/1/2022). However, it contained standing or flowing water in aerial imagery on all 8 of the wet season dates, indicating that the tributary has flowing or standing water continuously for certain times of the year and for more than just a short duration in direct response to precipitation. Notably, the ED-2 tributary contains standing or flowing water on dates that other non-relatively permanent tributaries within the review area (described in Section 8.b) appear dry.

3) **RD-16** is a 0.001-acre/ 10 LF segment of an unnamed relatively permanent tributary to Green Spring Creek. RD-16 is located on the south side of Green Valley Road. The RD-16 tributary reach begins at a culvert exit on the south side of Green Valley Road that directs flows from RD-14 and RD-15 (described in Section 8.a.). The RD-16 tributary ends approximately 0.06 miles/ 300 LF southwest of the review

area where it drains into Green Spring Creek. The RD-16 tributary is not mapped on the USGS NHD or the USGS 7.5-minute Topographic Quadrangle. This office reviewed Digital Globe aerial imagery of the RD-16 tributary on 6 dates taken during the wet season under 'normal' 3-month antecedent precipitation conditions (1/12/2019, 1/31/21, 2/5/2021, 1/13/2022, 1/22/2022, and 12/21/2022). The tributary reach contained flowing water on 5 of the 6 observed dates. These results indicate that the tributary has flowing or standing water continuously for certain times of the year and for more than just a short duration in direct response to precipitation.

f. Adjacent Wetlands (a)(4):

1) **SWS-1** is a 0.039-acre wetland that directly abuts the ED-2 tributary described in Section 7.e. SWS-1 is therefore an adjacent wetland with a continuous surface connection to a relatively permanent (a)(3) water.

2) Features labeled **SWS-5** (0.073 acre) and **SWS-6** (0.405 acre) are considered one wetland. The SWS-5/SWS-6 wetland historically existed as a single wetland that is now separated by an approximately 10-foot-wide dirt road that was created through the wetland sometime between 1993 and 2002. Google Earth Pro aerial imagery indicates that a shallow subsurface connection still exists between SWS-5 and SWS-6 due to the visibility of ground saturation at the man-made barrier located between the two features. LiDAR and Digital Elevation Model data indicates that the landscape slopes slightly downwards from SWS-5 towards SWS-6 which likely causes water to move laterally from SWS-5 to SWS-6. The SWS-5/SWS-6 wetland directly abuts the ID-1/ID-2/ID-3/ ID-4/P-1/P-2 tributary and is therefore an adjacent wetland with a continuous surface connection to a relatively permanent water.

3) **SWS-4** (0.238 acre) and **S-1** (0.009 acre) are contiguous mapped wetland polygons. The SWS-4/S-1 wetland is located in the southeast corner of the review area and directly abuts an unnamed relatively permanent first-order tributary to Green Spring Creek. The SWS-4/S-1 wetland is situated at the head of the unnamed first-order tributary. The unnamed tributary is a relatively permanent (a)(3) tributary that flows northwest from the review area for approximately 0.42 miles/ 2,230 LF before discharging into Green Spring Creek, where the tributary reach ends. Water is present in the unnamed tributary on Digital Globe aerial imagery dated 1/31/2021, 2/5/2021, 2/27/2021, 3/12/2021, 1/13/2022, 1/22/2022, 12/21/2022. The SWS-4/S-1 wetland is therefore an adjacent wetland with a continuous surface connection to a relatively permanent water.

4) **SWS-7** (0.017 acre) and **SWS-9** (0.115) directly abut the relatively permanent ID-1/ID-2/ID-3/ID-4/P-1/P-2 tributary reach described in Section 7.e. SWS-9 is situated

on the northeastern side of the tributary and SWS-7 is situated on the southwestern side of the tributary. Both wetlands are adjacent, having a continuous surface connection, to the relatively permanent tributary.

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 33CFR 328.3(b).[7]

1) **RD-2, RD-3, RD-4, RD-10, RD-11, RD-12, RD-13, RD-14,** and **RD-15** are non-relatively permanent roadside ditches excavated wholly in and draining only dry land. The roadside ditches are non-relatively permanent because they have flowing or standing water for only a short duration in direct response to precipitation. A review of aerial photos obtained from Digital Globe and taken during the wet season (1/12/2019, 1/31/2019, 2/5/2021, 1/13/2022, 1/22/2022, and 12/21/2022) do not show any flowing or standing water in the ditches. The 3-month antecedent precipitation was within normal range for all of the evaluated dates. The ditches are excluded from USACE jurisdiction under paragraph (b)(3). The following table provides the individual acreages and linear footage of each roadside ditch feature:

Feature ID	Linear Feet	Acreage
RD-2	18	<0.001
RD-3	37	0.001
RD-4	15	<0.001
RD-5	14	0.001
RD-10	49	0.002
RD-11	147	0.003
RD-12	40	0.001
RD-13	301	0.007
RD-14	6	<0.001
RD-15	136	0.003

[7] 88 FR 3004 (January 18, 2023)

2) RD-2 and RD-3 are located at the intersection of Green Valley Road and Malcom Dixon Drive. RD-2 and RD-3 direct stormwater runoff from the adjacent roadway and uplands through culverts located under Green Valley Road. Flows from RD-2 enter a 6-inch culvert located at the northwest corner of the intersection and exit into RD-4 on the south side of Green Valley Road. Flows from RD-3 enter a 6-inch culvert located at the northeast corner of the intersection and exit into RD-5 on the south side of Green Valley Road. Flows from both culverts drain into Green Spring Creek. A review of historic aerial imagery shows that the ditches were likely constructed sometime between 1952 and 1966 when Malcom Dixon Road was created, and a segment of Green Valley Road was relocated slightly north from its original alignment (what is now Old Green Valley Road).

3) RD-10 is located at the intersection of Lexi Way and Green Valley Road. A review of historic aerial imagery shows that the ditch was likely constructed sometime between 1966 and 1984 when Lexi Way was built off Green Valley Road. RD-10 directs stormwater runoff from the adjacent roadway and uplands and does not appear to have a downstream connection to an (a)(1), (a)(2), or (a)(3) water.

4) RD-11 is located on the northern side of Green Valley Road approximately 0.17 miles/ 915 LF east of RD-10. RD-11 flows northeast into a culvert that discharges into RD-12 on the southern side of Green Valley Road. RD-12 flows east along Green Valley Road for 40 LF and ends at a culvert entrance located under a private driveway. The culvert appears to exit on the other side of the driveway, emptying into the surrounding landscape without a downstream connection to an (a)(1), (a)(2), or (a)(3) water. RD-11 and RD-12 were likely constructed between 1952 and 1966 when Green Valley Road was relocated north of its original alignment.

5) RD-13 is located east of the intersection or Green Valley Road and Old Green Valley Road. The ditch runs northeast along Green Valley Road then enters a culvert located under Old Green Valley Road. The culvert exits into non-relatively permanent tributary that discharges into Green Spring Creek on the south side of Old Green Valley Road. RD-13 was likely constructed between 1952 and 1966 when Green Valley Road was relocated north of its original alignment.

6) RD-14 and RD-15 are located along Green Valley Road, in the northeastern corner of the review area. RD-14 flows along the northern side of Green Valley Road and into a culvert located under a private driveway. The culvert exits into RD-15 on the other side of the driveway. RD-15 flows southwest and then enters a culvert under Green Valley Road. The culvert exits into a tributary (RD-16) on the southern side of Green Valley Road. RD-14 and RD-15 were likely constructed between 1952 and 1966 when the section of Green Valley Road was relocated north of its original location.

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).

1) **ED-1** (0.014 acre/ 239 LF) and **ED-4** (0.042 acre/ 414 LF) are segments of a non-relatively permanent first-order tributary to Green Spring Creek. The ED-1/ED-4 tributary flows north of the review area for 0.32 miles/ 1,710 LF before entering Green Spring Creek. The ED-1/ED-4 tributary is mapped as an ephemeral stream on the USGS NHD and is not mapped on the USGS 7.5-minute Topographic Quadrangle. The April 8, 2024, AJD Memo categorizes the ED-1/ED-4 tributary as a non-relatively permanent water. We have corroborated this assertation by reviewing aerial imagery of the tributary reach obtained from Digital Globe on 6 dates taken during the wet season under 'normal' 3-month antecedent precipitation conditions (1/12/2019, 1/31/2019, 1/31/2021, 2/5/2021, 1/22/2022, 12/21/2022). The ED-1/ED-4 tributary reach did not contain flowing or standing water on any of the observed dates, indicating that the tributary does not flow continuously for certain times of the year and likely contains flows for only a short duration in direct response to precipitation.

2) **ED-3** (0.011 acre/ 100 LF) and **ED-6** (0.052 acre/ 363 LF) are segments of a non-relatively permanent first-order tributary to Green Spring Creek. The SWS-2, S-4, and SWS-5/SWS-6 wetlands are flowpath wetlands situated along the ED-3/ED-6 tributary, as described in Section 7.f. The ED-3/ED-6 tributary is mapped as an ephemeral stream on the USGS NHD and is not mapped on the USGS 7.5-minute Topographic Quadrangle. The April 8, 2024, AJD Memo categorizes the ED-3/ED-6 tributary as a non-relatively permanent water. We have corroborated this assertation by reviewing aerial imagery of the tributary reach obtained from Digital Globe on 7 dates taken during the wet season under 'normal' 3-month antecedent precipitation conditions (1/12/2019, 1/31/2019, 1/31/2021, 2/5/2021, 1/13/2022, 1/22/2022, 12/21/2022). The ED-1/ED-4 tributary reach contained water on only one of the observed dates (1/13/2022). On this date, the 30-day rolling total inches of precipitation was slightly higher than that of the 30-year normal range. The lack of visible water within the ED-3/ED-6 tributary on most dates indicates that the tributary does not flow continuously for certain times of the year and likely contains flows for only a short duration in direct response to precipitation.

3) **ED-5** is a 0.032/acre/ 274 LF segment of a non-relatively permanent first-order tributary located at the southern border of the review area's Main Extent. The ED-5 tributary reach begins approximately 0.07 miles/380 LF southeast of the review area. ED-5 flows northwest through the review area and then continues southwest from the review area for approximately 0.54 miles/ 2,864 LF before combining with another

unnamed first-order tributary at a junction located north of a court at the end of Raphael. This is where the ED-5 tributary reach ends. The ED-5 tributary is mapped as an ephemeral stream on the USGS NHD and is not mapped on the USGS 7.5-minute Topographic Quadrangle. The April 8, 2024, AJD Memo categorizes the ED-5 tributary as a non-relatively permanent water. We have corroborated this assertation by reviewing aerial imagery of the tributary reach obtained from Digital Globe on the same 7 dates as the above paragraph. The ED-5 tributary did not contain flowing or standing water on any of the observed dates, indicating that the tributary does not flow continuously for certain times of the year and likely contains flows for only a short duration in direct response to precipitation.

4) **ED-7** is a 0.063/acre/ 427 LF segment of a non-relatively permanent first-order tributary to Green Spring Creek. ED-7 extends approximately 0.13 miles/ 690 LF east of the review area and is situated between wetlands SWS-10 and SWS-7. SWS-10 sits at the head of the ED-7 tributary, and SWS-7 is located at the downstream end of the tributary. The ED-7 tributary is mapped as an ephemeral stream on the USGS NHD and is not mapped on the USGS 7.5-minute Topographic Quadrangle. The April 8, 2024, AJD Memo categorizes the ED-7 tributary as a non-relatively permanent water. We have corroborated this assertation by reviewing aerial imagery of the tributary reach obtained from Digital Globe on the 7 dates taken during the wet season under 'normal' 3-month antecedent precipitation conditions (1/12/2019, 1/31/2019, 1/31/2021, 2/5/2021, 1/13/2022, 1/22/2022, 12/21/2022). The ED-7 tributary did not contain flowing or standing water on any of the observed dates, indicating that the tributary does not flow continuously for certain times of the year and likely contains flows for only a short duration in direct response to precipitation.

5) **RD-1** is a 0.001-acre/10 LF segment of a non-relatively permanent tributary located on the north side of Green Valley Road. The RD-1 tributary reach begins at a culvert exit located on the south side of Malcom Dixon Road, approximately 0.06 miles/ 310 LF north of the review area. Within the review area, flows from RD-1 enter an 18-inch culvert on the north side of Green Valley Road and exit the culvert on the south side of the road. From the culvert exit, the tributary continues south for approximately 0.02 miles/ 85 LF before entering Green Spring Creek. The total length of the RD-1 tributary reach measures approximately 0.09 miles/ 460 LF. The RD-1 tributary is not mapped on the USGS NHD or the USGS 7.5-minute Topographic Quadrangle. This office reviewed aerial imagery of the tributary reach obtained from Digital Globe on the six dates taken during the wet season under 'normal' 3-month antecedent precipitation conditions (1/12/2019, 1/31/2019, 2/5/2021, 1/13/2022, 1/22/2022, and 12/21/2022). The ED-7 tributary did not contain flowing or standing water on any of the observed dates, indicating that the tributary does not flow continuously for certain times of the year and likely contains flows for only a short duration in direct response to precipitation.

6) **RD-6, RD-7, RD-8,** and **RD-9** are segments of a non-relatively permanent unnamed tributary adjacent to Green Valley Road. The RD-6/RD-7/RD-8/RD-9 tributary reach originates outside of the review area at an excavated pond located approximately 0.05 miles/ 290 LF upstream (east) of RD-9. A review of historic aerial imagery shows that the pond was constructed sometime between 1966 and 1984. The tributary directs stormwater flows from the surrounding uplands and occasional overflow from the pond located at the tributary's origin. Within the review area, flows travel west from RD-9 through RD-8 and RD-7. Flows from RD-7 enter a culvert on the north side of Green Valley Road and discharge into RD-6 on the south side of Green Valley Road. Beyond the review area, the tributary continues west for approximately 0.10 miles/ 485 LF before entering Green Spring Creek. The RD-6/RD-7/RD-8/RD-9 tributary is non-relatively permanent because it contains flowing or standing water for only a short duration in direct response to precipitation. A review of 5 aerial photographs obtained from Digital Globe and taken during the wet season with a 3-month antecedent precipitation within normal range (1/12/2019, 1/31/2021, 2/5/2021, 1/13/2022, 12/21/2022) do not show any flowing or standing water in the tributary. Other relatively permanent tributaries within the review area contain flowing or standing water during these dates.

7) **SW-1** (0.006 acre)**, SW-2** (0.019 acre)**,** and **SW-3** (0.001 acre) are wetlands that are not adjacent to an (a)(1), (a)(2), or (a)(3) water. The three wetlands are situated near the ID-1/ID-2/ID-3/ID-4/P-1/P-2 tributary reach of Green Spring Creek, but they do not abut the tributary reach, nor do they have a continuous surface connection to the tributary through a discrete physical feature.

8) **SWS-2** (0.016 acre), **SWS-8** (0.278 acre), and **S-4** (0.005 acre) are wetlands that are connected by short segments of non-relatively permanent tributary. The three wetlands are part of the same non-relatively permanent tributary reach that flows through the SWS-5/SWS-6 wetland and into the relatively permanent ID-1/ID-2/ID-3/ID-4/P-1/P-2 tributary described in Section 7.e. Each of the three wetland features is connected to the ID-1/ID-2/ID-3/ID-4/P-1/P-2 tributary through the SWS-5/SWS-6 wetland and at least one discrete feature. SWS-8 is connected to SWS-2 via ED-3, a 100 LF non-relatively permanent tributary. SWS-2 and S-4 are both connected to the SWS-5/SWS-6 wetland via ED-6, a non-relatively permanent tributary. The distance from SWS-2 to the SWS-5/SWS-6 wetland via ED-6 measures approximately 316 LF. The distance from S-4 to SWS-5/SWS-6 via ED-6 measures approximately 113 LF. The non-relatively permanent tributaries ED-3 and ED-6 exhibit a distinct bed and bank and ordinary high-water mark. The total distance between SWS-8 and the relatively permanent tributary, including the length of ED-3, SWS-2, ED-6, and the SWS-5/SWS-6 wetland, is approximately 1,465 LF/ 0.28 miles. The total distance between SWS-2 and the relatively permanent tributary, including the length of ED-6 and

the SWS-5/SWS-6 wetland, is approximately 1,265 LF/ 0.24 miles. The total distance between S-4 and the relatively permanent tributary, including the length of ED-6 and the SWS-5/SWS-6 wetland, is approximately 1,058 LF/ 0.20 miles. Although the length of the non-relatively permanent tributaries connecting the three wetlands to SWS-5/SWS-6 is relatively short, the overall distances between SWS-2 (1265 LF), S-4 (1058 LF), and SWS-8 (1465 LF) and Green Spring Creek is too long to provide a continuous physical connection. Notably, these distances exceed the distance between the subject wetlands and the requisite water (725 LF) evaluated in the November 21, 2024, Memorandum on NWK-2024-00392 in which the subject wetland was determined to be non-jurisdictional. SWS-2, SWS-8, and S-4 are therefore not adjacent wetlands and lack a continuous surface connection to Green Spring Creek.

9) **SWS-3** (0.054-acre) and **S-2** (0.016) are contiguous wetland polygons. The SWS-3/S-2 wetland is connected to Green Spring Creek via the non-relatively permanent tributary ED-1/ED-4. The SWS-3/S-2 wetland is a flowpath wetland situated at the end of the ED-1 segment of the tributary and the head of the ED-4 tributary segment. The total distance between the SWS-3/S-2 wetland and Green Spring Creek is approximately 2,125 LF/ 0.40 miles. SWS-3/ S-2 is not an adjacent wetland because the discrete feature (ED-4) that connects the wetland to the (a)(3) tributary is relatively long. Notably, the discrete feature connection is relatively longer than those noted in the June 25, 2024, Memorandums on SWG-2023-00284 (115 LF) and NAP-2023-01223 (350 LF) and the November 20, 2024 Memorandum on POH-2023-00187 (490 LF) in which the subject wetlands were determined to be jurisdictional. The connection from SWS-3/S-2 to Green Spring Creek is also notably longer than that noted in the November 21, 2024, Memorandum on NWK-2024-00392 (725 LF) in which the subject wetlands were determined to be non-jurisdictional.

10) **S-3** is a 0.264-acre wetland seep that is connected to Allegheny Creek via the first-order tributary ED-5 and a second-order unnamed tributary. The ED-5 tributary is non-relatively permanent, as described above. The unnamed second-order tributary reach is located on private property outside of the review area. Its flow regime is indeterminable through review of aerial imagery because the tributary reach is located in an area of dense vegetative cover. Regardless of the second-order tributary's flow regime, the total distance along ED-5 itself (0.54 miles/ 2,865 LF) is too long to provide a continuous physical connection between S-3 and a jurisdictional water. Notably, the discrete feature connection is relatively longer than those noted in the June 25, 2024, Memorandums on SWG-2023-00284 (115 LF) and NAP-2023-01223 (350 LF) and the November 20, 2024, Memorandum on POH-2023-00187 (490 LF) in which the subject wetlands were determined to be jurisdictional. The connection from S-3 to the subject water is also notably longer than that noted in the November 21, 2024, Memorandum on NWK-2024-00392 (725 LF) in which the subject wetlands were determined to be non-jurisdictional.

11) **SWS-10** is a 0.906-acre wetland situated at the head of the non-relatively permanent tributary ED-7. SWS-10 has a continuous surface connection to the relatively permanent tributary ID-1/ID-2/ID-3/ID-4/P-1/P-2 via ED-7 and SWS-7. SWS-10 flows into ED-7 which flows in SWS-7 which abuts the relatively permanent tributary. The total distance between SWS-10 and the relatively permanent tributary is approximately 1,177 LF/ 0.22 miles. SWS-10 is not an adjacent wetland because the connection from SWS-10 to the (a)(3) tributary, which occurs through ED-7 and SWS-7, is relatively long. Notably, the connection through the two discrete features is relatively longer than those noted in the June 25, 2024, Memorandums on SWG-2023-00284 (115 LF) and NAP-2023-01223 (350 LF) and the November 20, 2024 Memorandum on POH-2023-00187 (490 LF) in which the subject wetlands were determined to be jurisdictional. The connection from SWS-10 to Green Spring Creek is also notably longer than that noted in the November 21, 2024, Memorandum on NWK-2024-00392 (725 LF) in which the subject wetlands were determined to be non-jurisdictional.

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]. January 19, 2024. [redacted]

b. Digital Globe Imagery Dates: May 20, 2018; January 12, 2019; January 31, 2019; May 13, 2019; January 31, 2021; February 5, 2021; February 27, 2021; March 12, 2021; January 13, 2022; January 22, 2022; March 2, 2022; April 15, 2022; May 1, 2022; December 21, 2022.

c. Google Earth Pro 7.3.3.7692. Imagery dates: May 8, 1993; April 30, 2002; April 17, 2014; April 16, 2015; August 16, 2018; June 16, 2020. Accessed August 29, 2024.

d. Historic Aerials. NETRonline. 2024 Nationwide Environmental Title Research, LLC. Imagery years: 1952, 1966, 1984. Accessed August 27, 2024. Retrieved from: https://www.historicaerials.com/viewer.

e. Joint Memorandum on NAP-2023-01223. USEPA and Office of the Assistant Secretary of the Army. June 25, 2024.

f. Joint Memorandum on NWK-2024-00392. United States Environmental Protection Agency and Office of the Assistant Secretary of the Army. November 21, 2024.

g. Joint Memorandum on POH-2023-00187. USEPA and Office of the Assistant Secretary of the Army. November 20, 2024.

h. Joint Memorandum on SWG-2023-00284 USEPA Agency and Office of the Assistant Secretary of the Army. June 25, 2024.

i. [redacted]

j. [redacted]

k. U.S. Army Corps of Engineers. August 7, 2024. Field Visit.

l. U.S. Army Corps of Engineers ERDC Antecedent Precipitation Tool. Dates: May 20, 2018; January 12, 2019; January 31, 2019; May 13, 2019; January 31, 2021; February 5, 2021; February 27, 2021; March 12, 2021; January 13, 2022; January22, 2022; March 2, 2022; April 15, 2022; May 1, 2022; December 21, 2022. Accessed August 28, 2024, and September 3, 2024.

m. U.S. Geologic Survey. National Hydrography Dataset, 18020111 HUC8. Accessed July 9, 2024. Retrieved from https://www.usgs.gov/national-hydrography/national-hydrography-dataset.

n. U.S. Geologic Survey. National Hydrography Dataset, 180201129 HUC8. Accessed July 9, 2024. Retrieved from https://www.usgs.gov/national-hydrography/national-hydrography-dataset.

o. U.S. Geologic Survey. Topographic Map, Clarksville, CA 1:24000. 2021. Accessed 7, 2024. Retrieved from: https://ngmdb.usgs.gov/topoview/.

10. OTHER SUPPORTING INFORMATION. The U.S. Army Corps of Engineers' Antecedent Precipitation Tool (APT) was used to provide context for Digital Globe imagery dates used to evaluate the flow regime of aquatic resources within the review area. Dates with a 3-month antecedent precipitation in the 'normal' range were utilized to evaluate the flow regime of tributary features. Additional dates with a 3-month antecedent precipitation in the 'drier than normal' range (2/27/2021, 3/12/2021, 3/22/2022, and 4/15/2022), or with severe or extreme drought conditions, were used as further evidence to justify the relatively permanent flow regime of the ID-1/ID-2/ID-3/ID-4/P-1/P-2 tributary reach and the ID-5/ID-6 tributary reach. This is

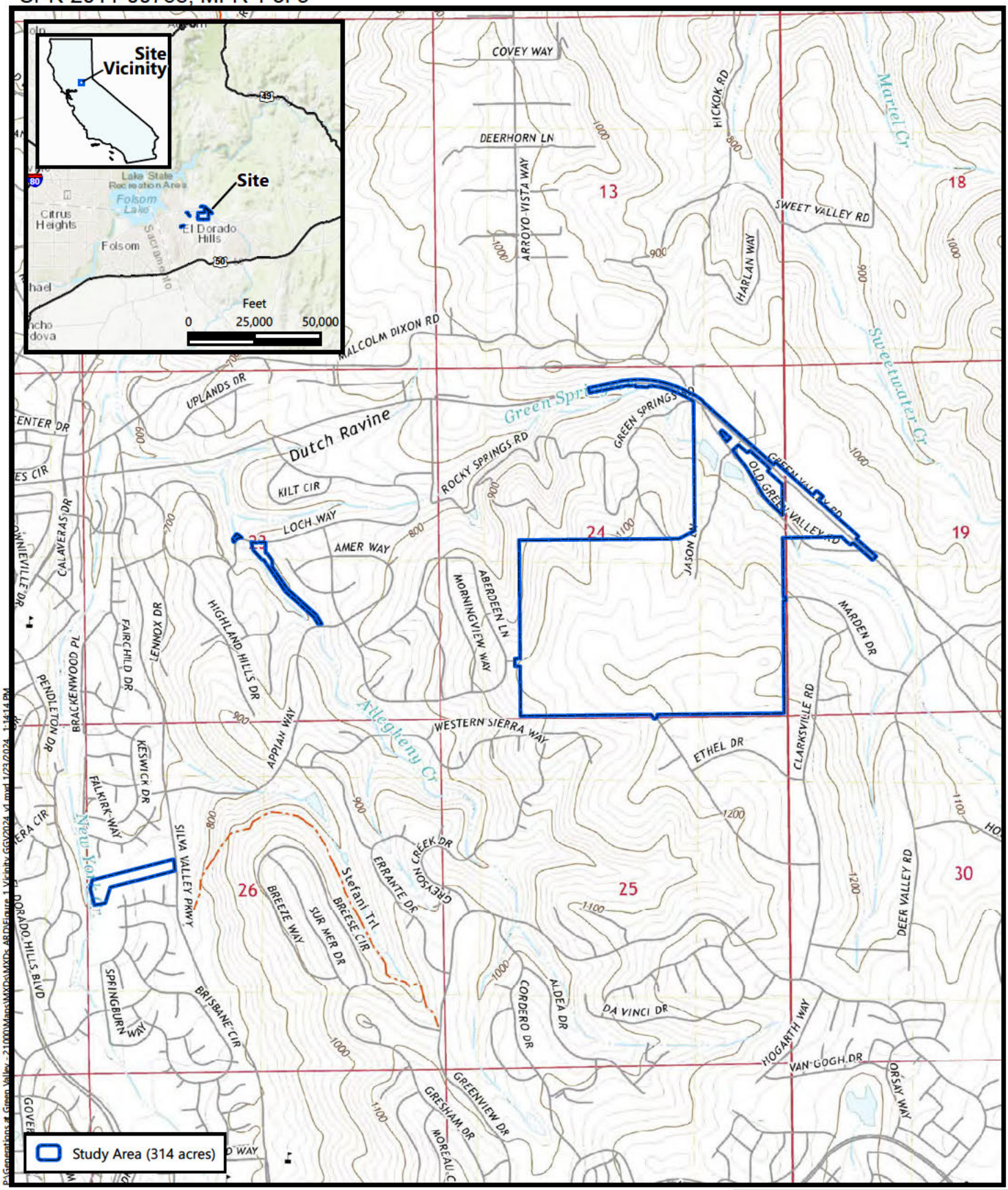
because we would not expect aquatic resources that hold water for only short durations following precipitation to flow under these conditions, yet the two tributary reaches both contained standing or flowing water on these dates.

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.

3 Encls

1. Site Vicinity Map
2. Aquatic Resources Delineation Map
3. Main Extent to TNW Flowpath Maps

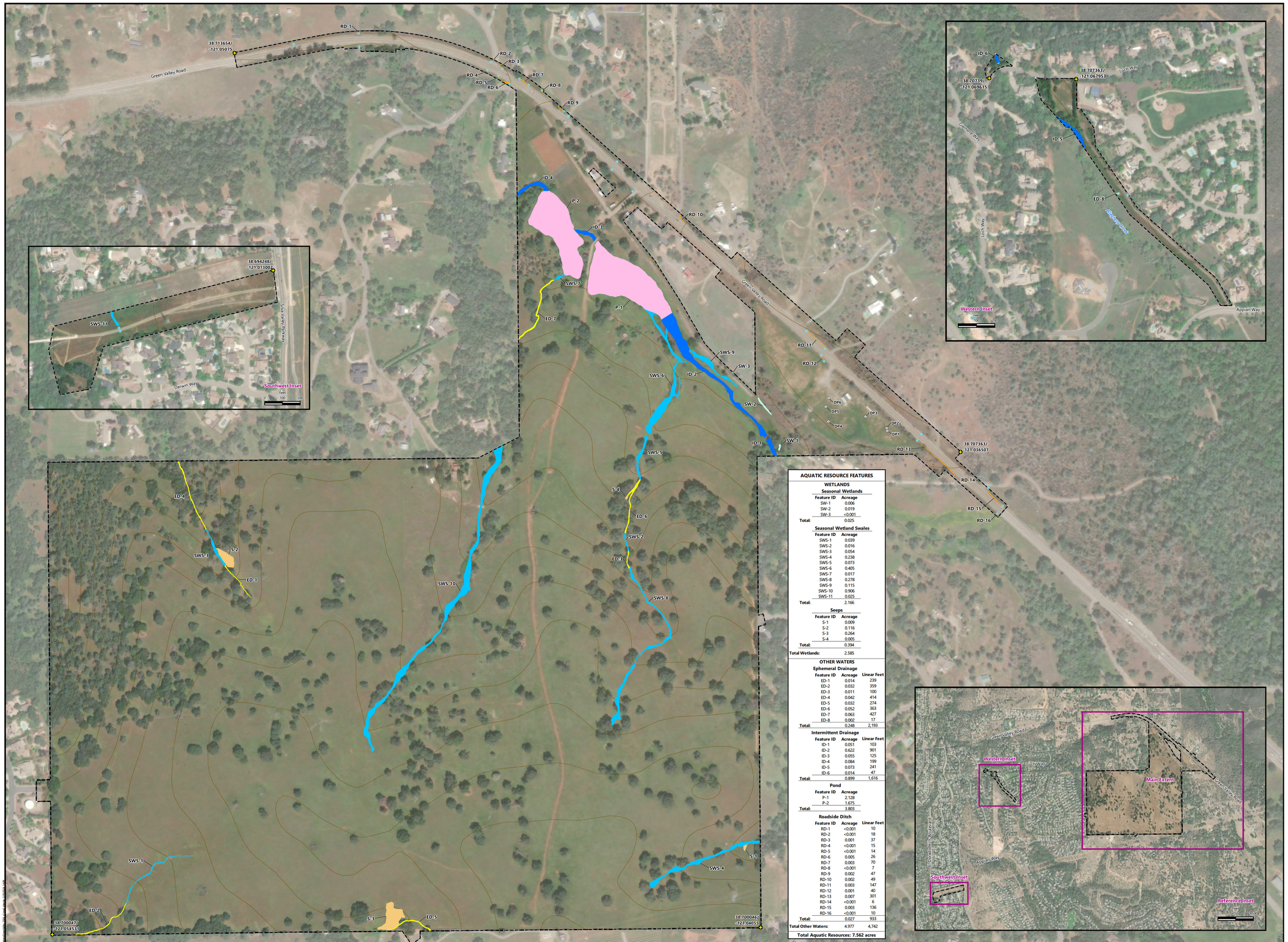
Enclosure 1
SPK-2011-00758, MFR 1 of 3



Source: United States Geologic Survey, 2021.
"Clarksville, California" 7.5-Minute Topographic Quadrangle
Sections 23-26, Township 10 North, Range 8 East, and
Section 19, Township 10 North, Range 9 East, MDB&M
Latitude 38.703809, Longitude -121.052900

[redacted]

Enclosure 2



AQUATIC RESOURCE FEATURES

WETLANDS

Seasonal Wetlands

Feature ID	Acreage
SW-1	0.006
SW-2	0.019
SW-3	<0.001
Total:	0.025

Seasonal Wetland Swales

Feature ID	Acreage
SWS-1	0.039
SWS-2	0.016
SWS-3	0.054
SWS-4	0.238
SWS-5	0.073
SWS-6	0.405
SWS-7	0.017
SWS-8	0.278
SWS-9	0.115
SWS-10	0.906
SWS-11	0.025
Total:	2.166

Seeps

Feature ID	Acreage
S-1	0.009
S-2	0.116
S-3	0.264
S-4	0.005
Total:	0.394
Total Wetlands:	2.585

OTHER WATERS

Ephemeral Drainage

Feature ID	Acreage	Linear Feet
ED-1	0.014	239
ED-2	0.032	359
ED-3	0.011	100
ED-4	0.042	414
ED-5	0.032	274
ED-6	0.052	363
ED-7	0.063	427
ED-8	0.002	17
Total:	0.248	2,193

Intermittent Drainage

Feature ID	Acreage	Linear Feet
ID-1	0.051	103
ID-2	0.622	901
ID-3	0.055	125
ID-4	0.084	199
ID-5	0.073	241
ID-6	0.014	47
Total:	0.899	1,616

Pond

Feature ID	Acreage
P-1	2.128
P-2	1.675
Total:	3.803

Roadside Ditch

Feature ID	Acreage	Linear Feet
RD-1	<0.001	10
RD-2	<0.001	18
RD-3	0.001	37
RD-4	<0.001	15
RD-5	<0.001	14
RD-6	0.005	26
RD-7	0.003	70
RD-8	<0.001	7
RD-9	0.002	47
RD-10	0.002	49
RD-11	0.003	147
RD-12	0.001	40
RD-13	0.007	301
RD-14	<0.001	6
RD-15	0.003	136
RD-16	<0.001	10
Total:	0.027	933
Total Other Waters:	4.977	4,742

Total Aquatic Resources: 7.562 acres

Notes:
Main Extent, Western Inset, and Southwest Inset Map Scale: 1 inch = 1,800 feet
Reference Inset Scale: 1 inch = 200 feet
Coordinate System: NAD 1983 State Plane California II
Datum: NAD83 (North American Datum 1983)
Projection: Lambert Conformal Conic
Vertical Data: NAVD88 (North American Vertical Datum 1988)
Aerial Base: Maxar
Aerial Base Flown: 1 May 2022
Topographic Contours: USGS NED 1/3 arc-second Contours for Sacramento W, California. 1 October 2018

Delineation Performed by: [redacted]
Original Delineation Verification Date: 26 August 2011
Original Identification Number: SPK-2011-00758
Map Prepared by: [redacted]
Date Map Prepared: 19 January 2024
Definitions:
NAD = North American Datum
NAVD = North American Vertical Datum
NED = National Elevation Datase
USGS = United States Geological Survey

Main Extent, Western Inset, and Southwest Inset Map Scale
Reference Inset Scale

Prepared For:
[redacted]

Study Area (314 acres)
Reference Point
Data Point
Culvert
Ground Surface Elevation, 10 foot contour

Aquatic Resources (7.562 acres)
Wetlands (2.585 acres)
Seasonal Wetland (0.025 acre)
Seasonal Wetland Swale (2.166 acres)
Seep (0.394 acre)

Other Waters (4.977 acres)
Ephemeral Drainage (0.248 acre)
Intermittent Drainage (0.899 acre)
Pond (3.803 acres)
Roadside Ditch (0.027 acre)

Aquatic Resources Delineation

Generations at Green Valley Road
El Dorado County, California

[redacted]

Enclosure 3

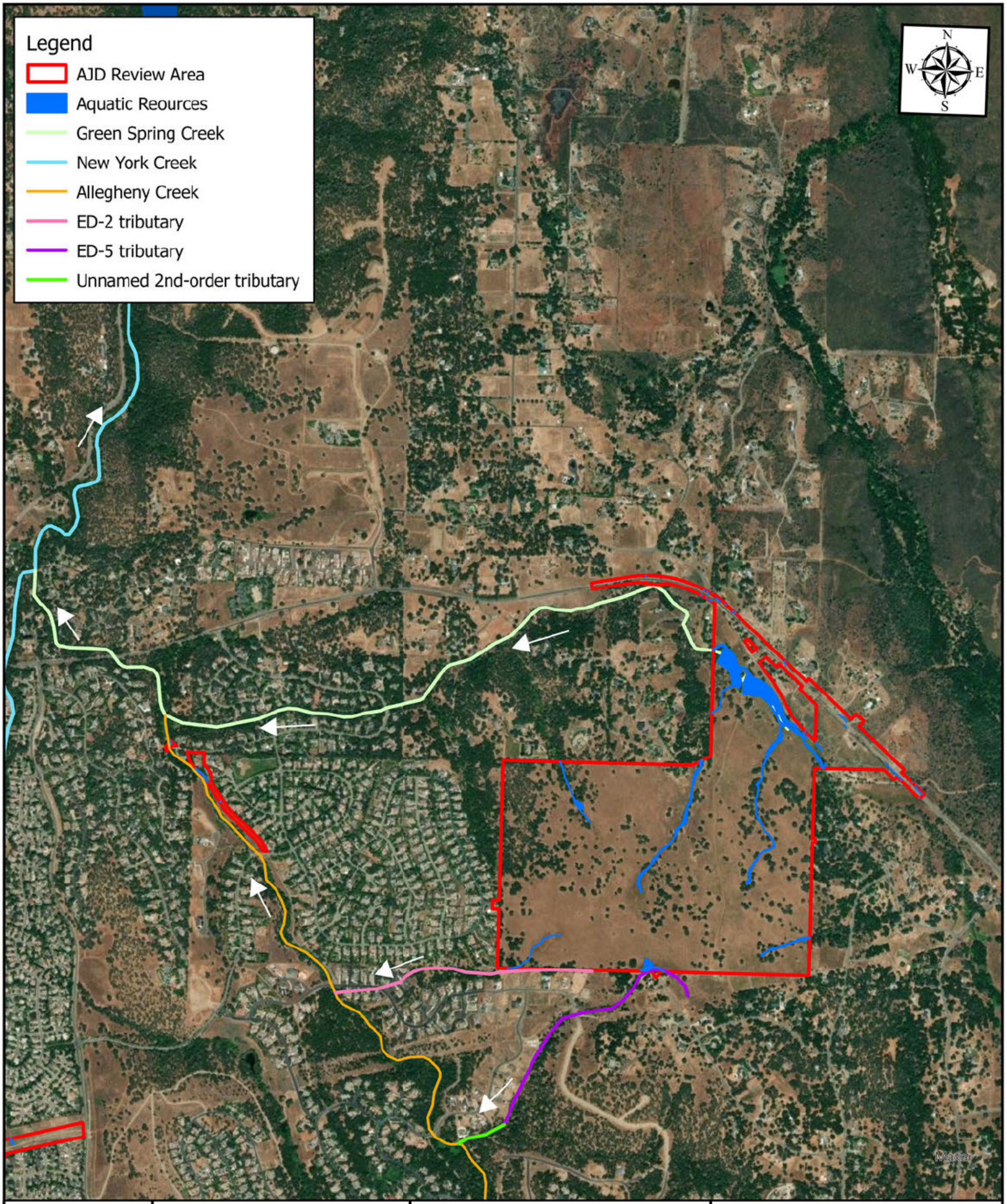


Figure 1. Review Area Main Extent Flowpath Map

SPK-2011-00758

0 500 1,000 2,000

Feet

Map Center: 121.054681°W 38.712913°N

Map created by: [redacted]

Date: 11/18/2024

Coordinate System: NAD 1983 StatePlane California II FIPS 0402 Feet

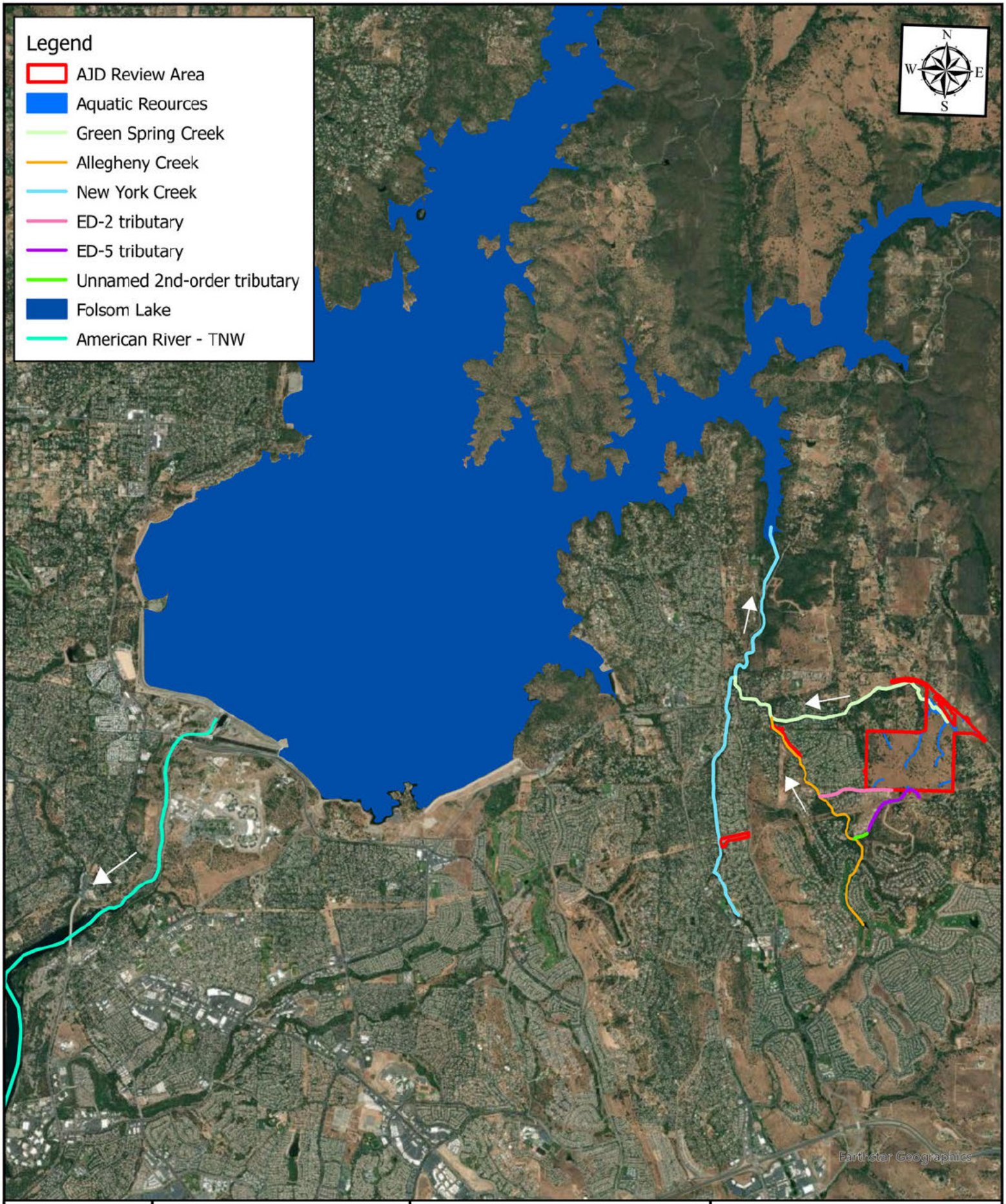


Figure 2. Review Area Main Extent - Downstream Connection to TNW

SPK-2011-00758

0 2,500 5,000 10,000

Feet

Map Center: 121.113081°W 38.722289°N

Map created by: [redacted]

Date: 11/18/2024

Coordinate System: NAD 1983 StatePlane California II FIPS 0402 Feet

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

CESPK-RDC-S 9 December 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-2011-00758, (MFR 2 of 3)[2]

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.[3] 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.[4]

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

[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] When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.

Section 10 of the Rivers and Harbors Act of 1899 (RHA),[5] the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

a. Provide a list of each individual feature within the review area and the jurisdictional status of each one.

1) **ID-5,** jurisdictional under Section 404 of the Clean Water Act.

2) **ID-6,** jurisdictional under Section 404 of the Clean Water Act.

3) **ED-8,** non-jurisdictional under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

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 61694 (September 8, 2023))

c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The 314.0-acre total review area is located in El Dorado Hills, El Dorado County, California. MFR 2 of 3 covers aquatic resources located between Loch Way and Appian Way in a 2.7-acre portion of the review area referred to as the Western Inset. The Western Inset is located in Section 23, Township 10 North, Range 8 East, El Dorado Hills, El Dorado County, California. The approximate center of the Western Inset is located at Latitude 38.70556°, Longitude -121.06702° (Enclosures 1 and 2).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW, the American River, is located approximately 4.8 miles straight-line distance west of aquatic resources in the Western Inset of the review area. This distance was estimated using the Corps Navigable Waters layer in Google Earth. The

[5] 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.

American River is a TNW from its confluence with the Sacramento River to Folsom Lake, as determined on February 1, 2008.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Aquatic resources within the review area's Western Inset flow into Allegheny Creek which is tributary to Green Spring Creek. Green Spring Creek flows northwest into New York Creek. New York Creek flows north into Folsom Lake at New York Creek Cove. Water from Folsom Lake flows into the American River through the Folsom Dam. The American River is a TNW from the river mouth to Folsom Lake and is a TNW pursuant to 33 CFR 328.3(a)(1)(i). A flowpath map from the review area to the American River is included in Enclosure 3.

6. SECTION 10 JURISDICTIONAL WATERS[6]: There are no aquatic resources or other features within the Western Inset of the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899.

7. SECTION 404 JURISDICTIONAL WATERS: The following aquatic resources within the Western Inset of the review area 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*.

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): **ID-5** (0.073 acre/ 241 LF) and **ID-6** (0.014 acre/ 47 LF) are segments of Allegheny Creek, a relatively permanent (a)(3) tributary to the American River. The **ID-5/ID-6** tributary reach is a third-order tributary reach that originates approximately 1.2 miles southeast of the Western Inset, where two unnamed second-order tributary reaches join. The ID-5/ID-6 tributary reach ends approximately 1.97 downstream of the Western Inset, where the third-order tributary reach enters Folsom Lake at New York Creek Cove. The tributary reach measures approximately 3.5 miles in total. Allegheny Creek is mapped as an intermittent stream on the

[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.

Clarksville, California USGS 7.5-minute Topographic Quadrangle and the USGS National Hydrography Dataset (NHD). Allegheny Creek flows into Green Spring Creek. Green Spring Creek flows into New York Creek, which is tributary to Folsom Lake and eventually, the American River.

The [redacted] (AJD Memo), prepared by [redacted] and dated April 8, 2024, characterizes Allegheny Creek as a relatively permanent water. We have corroborated this assertation by reviewing aerial imagery showing water in the ID-5/ID-6 tributary reach on numerous dates through the winter, spring, and occasionally into the early dry season. This office reviewed aerial photographs of the ID-5/ID-6 tributary reach obtained from Digital Globe on 12 dates (5/20/2018, 1/12/2019, 1/31/2019, 5/13/2019, 1/31/2021, 2/5/2021, 2/27/2021, 3/12/2021, 1/13/2022, 1/22/2022, 5/1/2022, 12/21/2022). The ID-5/ID-6 tributary reach contained standing or flowing water on 11 of the 12 observed dates, indicating that the tributary reach has flowing or standing water continuously for certain times of the year, including occasionally into the early dry season (on 5/20/2018 and 5/13/2019), and for more than just a short duration in direct response to precipitation. The only date on which flowing or standing water was not observed within the ID-5/ID-6 tributary reach occurred during a period of extreme drought and during the early dry season (5/1/2022). The 3-month antecedent precipitation was within normal or drier than normal range for the 11 dates in which flows were observed in the tributary.

f. Adjacent Wetlands (a)(4): N/A.

g. Additional Waters (a)(5): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).[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

[7] 88 FR 3004 (January 18, 2023)

non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

1) **ED-8** is a segment of a non-relatively permanent constructed tributary measuring 0.002 acre/ 17 linear feet. The ED-8 tributary reach does not meet the conditions of paragraph a(3) and is not jurisdictional. Google Earth aerial imagery indicates that the ED-8 tributary was constructed sometime between 1998 and 2002, when the subdivision adjacent to the Western Inset was built. A majority of the ED-8 tributary reach, which is located outside of the Western Inset, is situated between two private residences located on the southwest side of Calais Way. The tributary appears to direct urban and stormwater runoff from the surrounding residences into Allegheny Creek. The ED-8 tributary reach originates approximately 0.05 miles/275 LF west of Western Inset boundary. The tributary flows through a culvert that spans the private residences' backyard fence and a recreational gravel trail that runs parallel to the subdivision. After exiting the culvert, the tributary flows east and enters Allegheny Creek approximately 0.01 miles/ 70 LF west of the Western Inset boundary. The total tributary reach measures approximately 0.08 miles/ 410 LF in total. The ED-8 tributary is not mapped on the USGS NHD or the USGS 7.5-minute quadrangle.

The April 8, 2024, AJD Memo characterizes ED-8 as a non-relatively permanent water. We have corroborated this assertation by reviewing aerial imagery of the ED-8 tributary reach obtained from Digital Globe on 7 dates taken during the wet season under 'normal' 3-month antecedent precipitation conditions (1/12/2019, 1/31/2019, 1/31/2021, 2/5/2021, 1/13/2022, 1/22/2022, 12/21/2022). The ED-8 tributary reach did not contain flowing or standing water on any of the observed dates, indicating that the tributary does not flow continuously for certain times of the year and likely contains flows for only a short duration in direct response to precipitation.

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. Aquatic Resources Delineation – [redacted] January 19, 2024. [redacted]

b. Digital Globe. Imagery dates: May 20, 2018; January 12, 2019; January 31, 2019; May 13, 2019; January 31, 2021; February 5, 2021; February 27, 2021; March 12, 2021; January 13, 2022; January 22, 2022; May 1, 2022; December 21, 2022.

c. Google Earth Pro. 7.3.6.9796. Imagery dates: August 15, 1998, and May 5, 2002. Accessed October 31, 2024.

d. U.S. Army Corps of Engineers ERDC Antecedent Precipitation Tool. Dates: May 20, 2018; January 12, 2019; January 31, 2019; May 13, 2019; January 31, 2021; February 5, 2021; February 27, 2021; March 12, 2021; January 13, 2022; January 22, 2022; May 1, 2022; December 21, 2022.

e. U.S. Geologic Survey. National Hydrography Dataset, 18020111 HUC8. Accessed July 9, 2024. Retrieved from https://www.usgs.gov/national-hydrography/national-hydrography-dataset.

f. U.S. Geologic Survey. National Hydrography Dataset, 18020129 HUC8. Accessed June 28, 2024. Retrieved from https://www.usgs.gov/national-hydrography/national-hydrography-dataset.

g. U.S. Geologic Survey. Topographic Map, Clarksville, CA: 1:24000. 2021. Accessed August 7, 2024. Retrieved from: https://ngmdb.usgs.gov/topoview/.

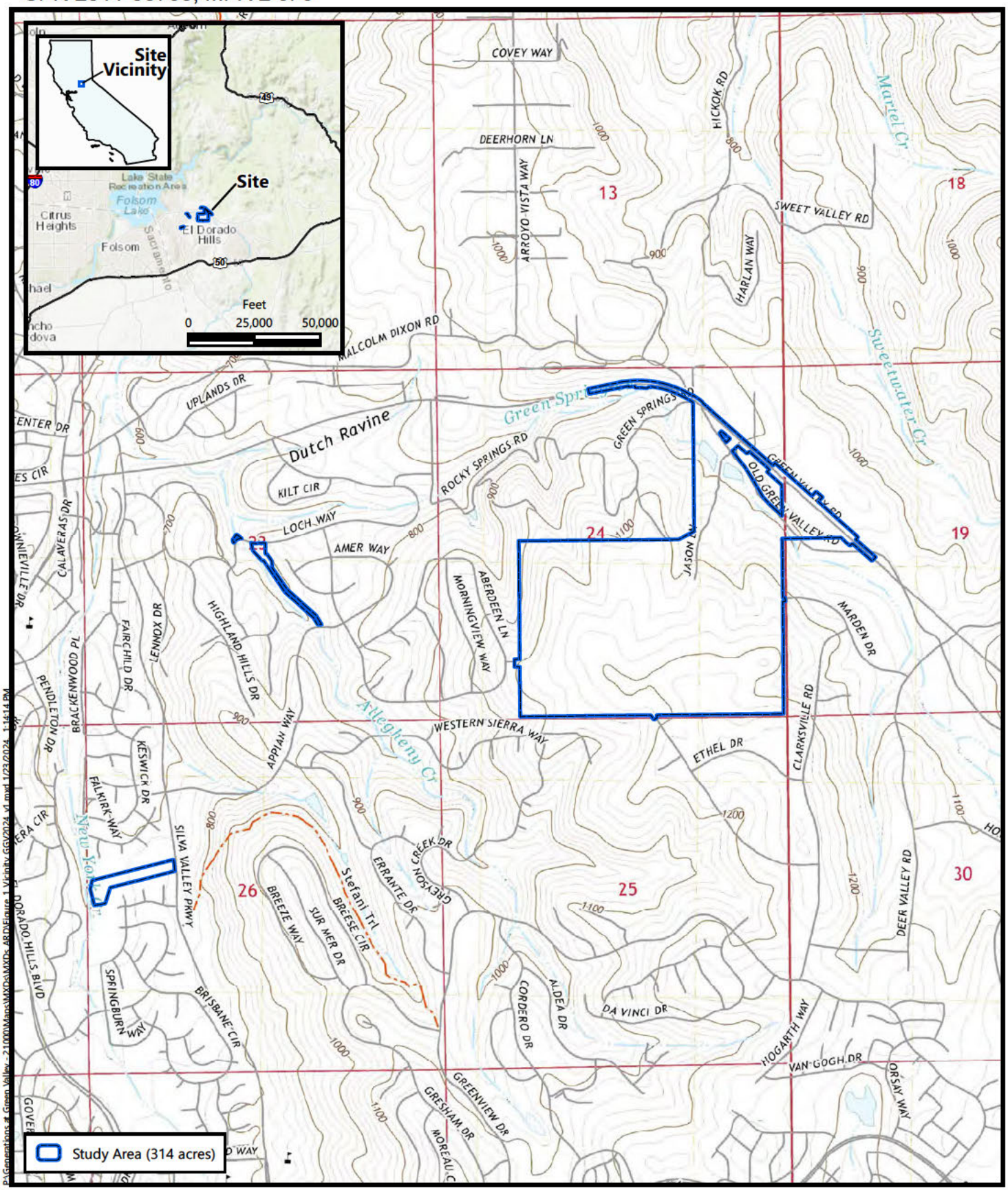
10. OTHER SUPPORTING INFORMATION. The U.S. Army Corps of Engineers' Antecedent Precipitation Tool (APT) was used to provide context for Digital Globe imagery dates used to evaluate the flow regime of aquatic resources within the review area.

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.

[redacted]

3 Encls
1. Site Vicinity Map
2. Aquatic Resources Delineation Map
3. Western Inset to TNW Flowpath Maps

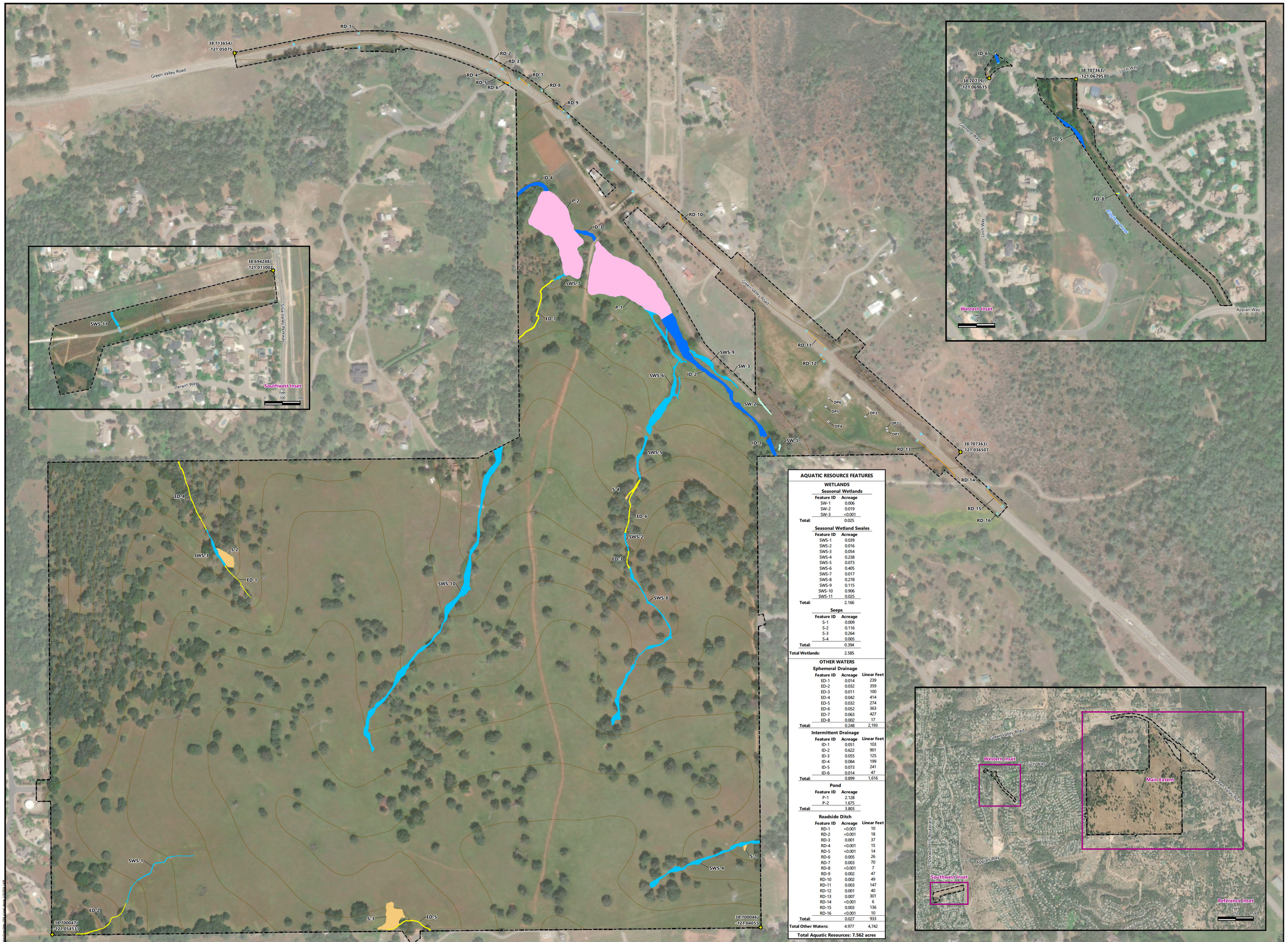
Enclosure 1
SPK-2011-00758, MFR 2 of 3



Source: United States Geologic Survey, 2021.
"Clarksville, California" 7.5-Minute Topographic Quadrangle
Sections 23-26, Township 10 North, Range 8 East, and
Section 19, Township 10 North, Range 9 East, MDB&M
Latitude 38.703809, Longitude -121.052900

[redacted]

Enclosure 2



AQUATIC RESOURCE FEATURES

WETLANDS

Seasonal Wetlands

Feature ID	Acreage
SW-1	0.006
SW-2	0.019
SW-3	<0.001
Total:	0.025

Seasonal Wetland Swales

Feature ID	Acreage
SWS-1	0.039
SWS-2	0.016
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SWS-9	0.115
SWS-10	0.906
SWS-11	0.025
Total:	2.166

Seeps

Feature ID	Acreage
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S-2	0.116
S-3	0.264
S-4	0.005
Total:	0.394
Total Wetlands:	2.585

OTHER WATERS

Ephemeral Drainage

Feature ID	Acreage	Linear Feet
ED-1	0.014	239
ED-2	0.032	359
ED-3	0.011	100
ED-4	0.042	414
ED-5	0.032	274
ED-6	0.052	363
ED-7	0.063	427
ED-8	0.002	17
Total:	0.248	2,193

Intermittent Drainage

Feature ID	Acreage	Linear Feet
ID-1	0.051	103
ID-2	0.622	901
ID-3	0.055	125
ID-4	0.084	199
ID-5	0.073	241
ID-6	0.014	47
Total:	0.899	1,616

Pond

Feature ID	Acreage
P-1	2.128
P-2	1.675
Total:	3.803

Roadside Ditch

Feature ID	Acreage	Linear Feet
RD-1	<0.001	10
RD-2	<0.001	18
RD-3	0.001	37
RD-4	<0.001	15
RD-5	<0.001	14
RD-6	0.005	26
RD-7	0.003	70
RD-8	<0.001	7
RD-9	0.002	47
RD-10	0.002	49
RD-11	0.003	147
RD-12	0.001	40
RD-13	0.007	301
RD-14	<0.001	6
RD-15	0.003	136
RD-16	<0.001	10
Total:	0.027	933
Total Other Waters:	4.977	4,742

Total Aquatic Resources: 7.562 acres

Notes:
Main Extent, Western Inset, and Southwest Inset Map Scale: 1 inch = 1,800 feet
Reference Inset Scale: 1 inch = 200 feet
Coordinate System: NAD 1983 State Plane California II
Datum: NAD83 (North American Datum 1983)
Projection: Lambert Conformal Conic
Vertical Data: NAVD88 (North American Vertical Datum 1988)
Aerial Base: Maxar
Aerial Base Flown: 1 May 2022
Topographic Contours: USGS NED 1/3 arc-second Contours for Sacramento W, California. 1 October 2018

Delineation Performed by: [redacted]
Original Delineation Verification Date: 26 August 2011
Original Identification Number: SPK-2011-00758
Map Prepared by: [redacted]
Date Map Prepared: 19 January 2024
Definitions:
NAD = North American Datum
NAVD = North American Vertical Datum
NED = National Elevation Datase
USGS = United States Geological Survey

N
0 100 200 Feet
Main Extent, Western Inset, and Southwest Inset Map Scale

0 750 1,500 Feet
Reference Inset Scale

Prepared For:
[redacted]

Study Area (314 acres)
Reference Point
Data Point
Culvert
Ground Surface Elevation, 10 foot contour

Aquatic Resources (7.562 acres)
Wetlands (2.585 acres)
Seasonal Wetland (0.025 acre)
Seasonal Wetland Swale (2.166 acres)
Seep (0.394 acre)

Other Waters (4.977 acres)
Ephemeral Drainage (0.248 acre)
Intermittent Drainage (0.899 acre)
Pond (3.803 acres)
Roadside Ditch (0.027 acre)

Aquatic Resources Delineation
Generations at Green Valley Road
El Dorado County, California
[redacted]

Enclosure 3

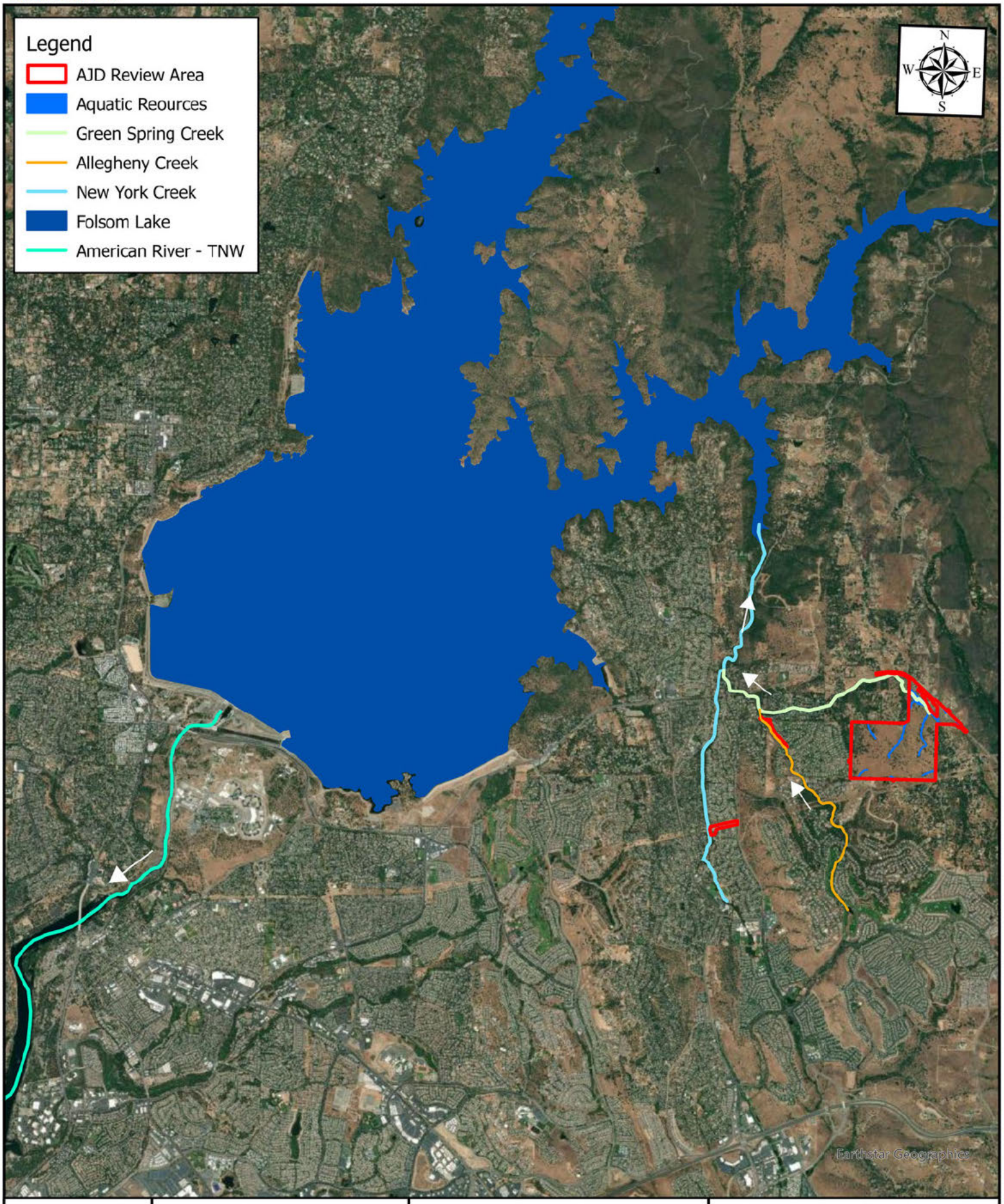

Figure 2. Review Area Western Inset - Downstream Connection to TNW

SPK-2011-00758

0 2,500 5,000 10,000

Feet

Map Center: 121.11259°W 38.721798°N

Map created by: [redacted]

Date: 11/19/2024

Coordinate System: NAD 1983 StatePlane California II FIPS 0402 Feet

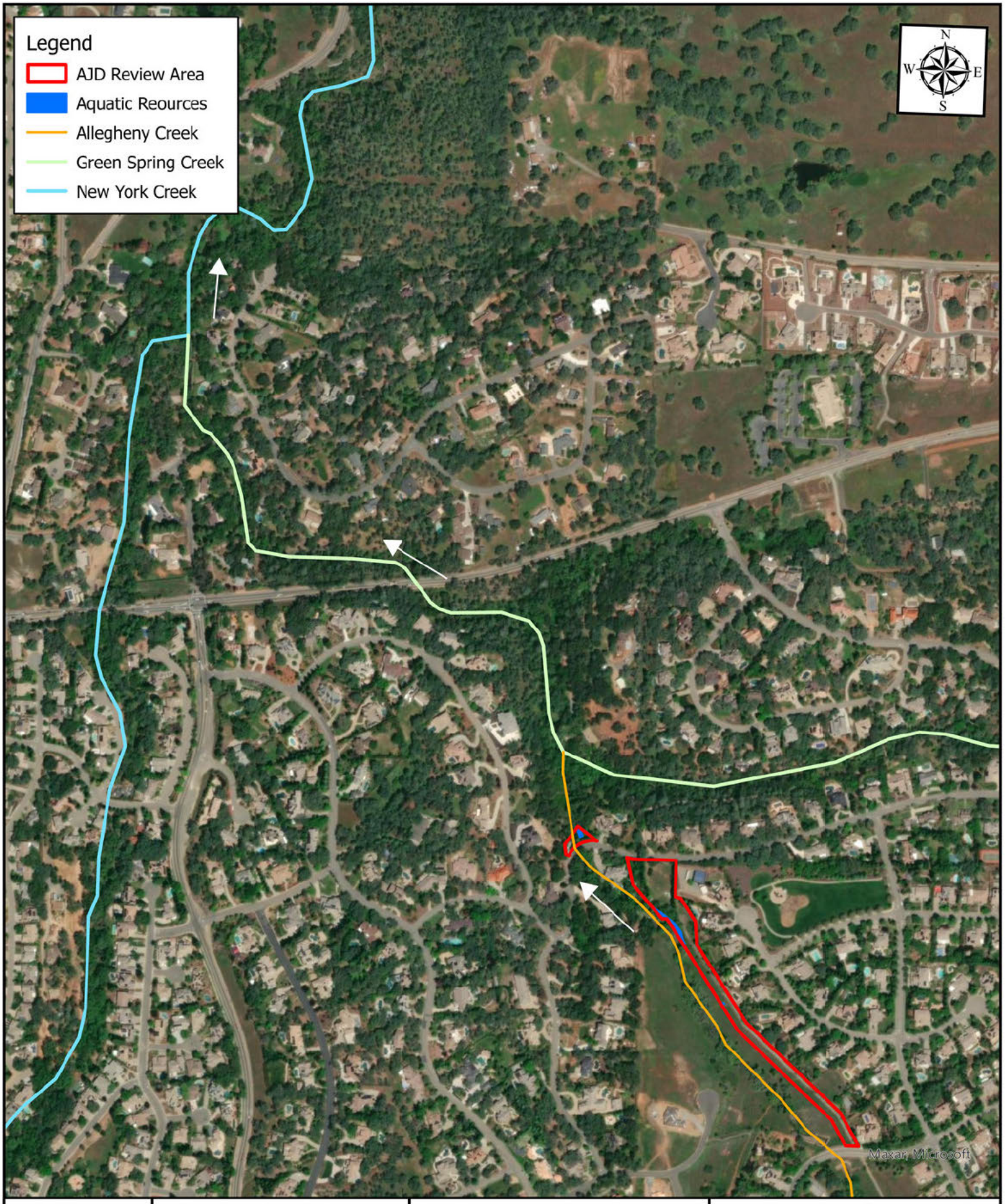

Figure 1. Review Area Western Inset Flowpath Map

SPK-2011-00758

0 265 530 1,060

Feet

Map Center: 121.070751°W 38.710464°N

Map created by: [redacted]

Date: 11/19/2024

Coordinate System: NAD 1983 StatePlane California II FIPS 0402 Feet

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

CESPK-RDC-S 9 December 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-2011-00758, (MFR 3 of 3)[2]

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.[3] 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.[4]

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

[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] When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.

Section 10 of the Rivers and Harbors Act of 1899 (RHA),[5] the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

a. Provide a list of each individual feature within the review area and the jurisdictional status of each one.

1) **SWS-11,** non-jurisdictional under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

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 61694 (September 8, 2023))

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

3. REVIEW AREA. The 314.0-acre total review area is located in El Dorado Hills, El Dorado County, California. MFR 3 of 3 covers aquatic resources located just west of Silva Valley Parkway in a 6.3-acre portion of the review area referred to as the Southwest Inset. The Southwest Inset is located in Section 26, Township 10 North, Range 8 East, El Dorado Hills, El Dorado County, California. The approximate center of the Southwest Inset is located at Latitude 38.69357°, Longitude -121.07543° (Enclosures 1 and 2).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW, the American River, is located approximately 4.4 miles straight-line distance west of aquatic resources in the Southwest Inset. This distance was estimated using the Corps Navigable Waters layer in Google Earth. The American River is a TNW from its confluence with the Sacramento River to Folsom Lake, as determined on February 1, 2008.

[5] 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.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The subject aquatic resource is geographically situated near New York Creek. New York Creek flows north into Folsom Lake at New York Cove. Water from Folsom Lake flows into the American River through the Folsom Dam. The American River is a TNW from the river mouth to Folsom Lake and is a TNW pursuant to 33 CFR 328.3(a)(1)(i). A flowpath map from the review area to the American River is included in Enclosure 3.

6. SECTION 10 JURISDICTIONAL WATERS[6]: There are no aquatic resources or other features within the Western Inset of the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899.

7. SECTION 404 JURISDICTIONAL WATERS: None of the aquatic resources within the review area 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.

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

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

[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.

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).

1) **SWS-11** is a 0.025-acre seasonal wetland that is not adjacent to an (a)(1), (a)(2), or (a)(3) water. SWS-11 is situated approximately 0.08 miles/ 420 LF east of New York Creek in a greenbelt area located between Silva Valley Parkway and Tam Oshanter Drive. The wetland drains into a 10-inch culvert pipe under a recreational bike path located at the southern end of the wetland boundary. On the south side of the bike path, flows appear to exit the culvert and diffuse to sheet flow over the landscape. This office conducted a site visit on August 7, 2024, and confirmed that the culvert does not connect to a discrete feature that provides a continuous surface connection to New York Creek.

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] January 19, 2024. [redacted].

b. Digital Globe. Imagery Dates: May 20, 2018; January 12, 2019; January 13, 2022; December 21, 2022.

c. [redacted]

d. [redacted] April 8, 2024. [redacted]

e. U.S. Army Corps of Engineers. August 7, 2024. Field Visit.

[7] 88 FR 3004 (January 18, 2023)

f. U.S. Geological Survey. National Hydrography Dataset, 18020111 HUC8. Accessed July 9, 2024. Retrieved from https://www.usgs.gov/national-hydrography/national-hydrography-dataset.

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3 Encls
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2. Aquatic Resources Delineation Map
3. Southwest Inset to TNW Flowpath Maps

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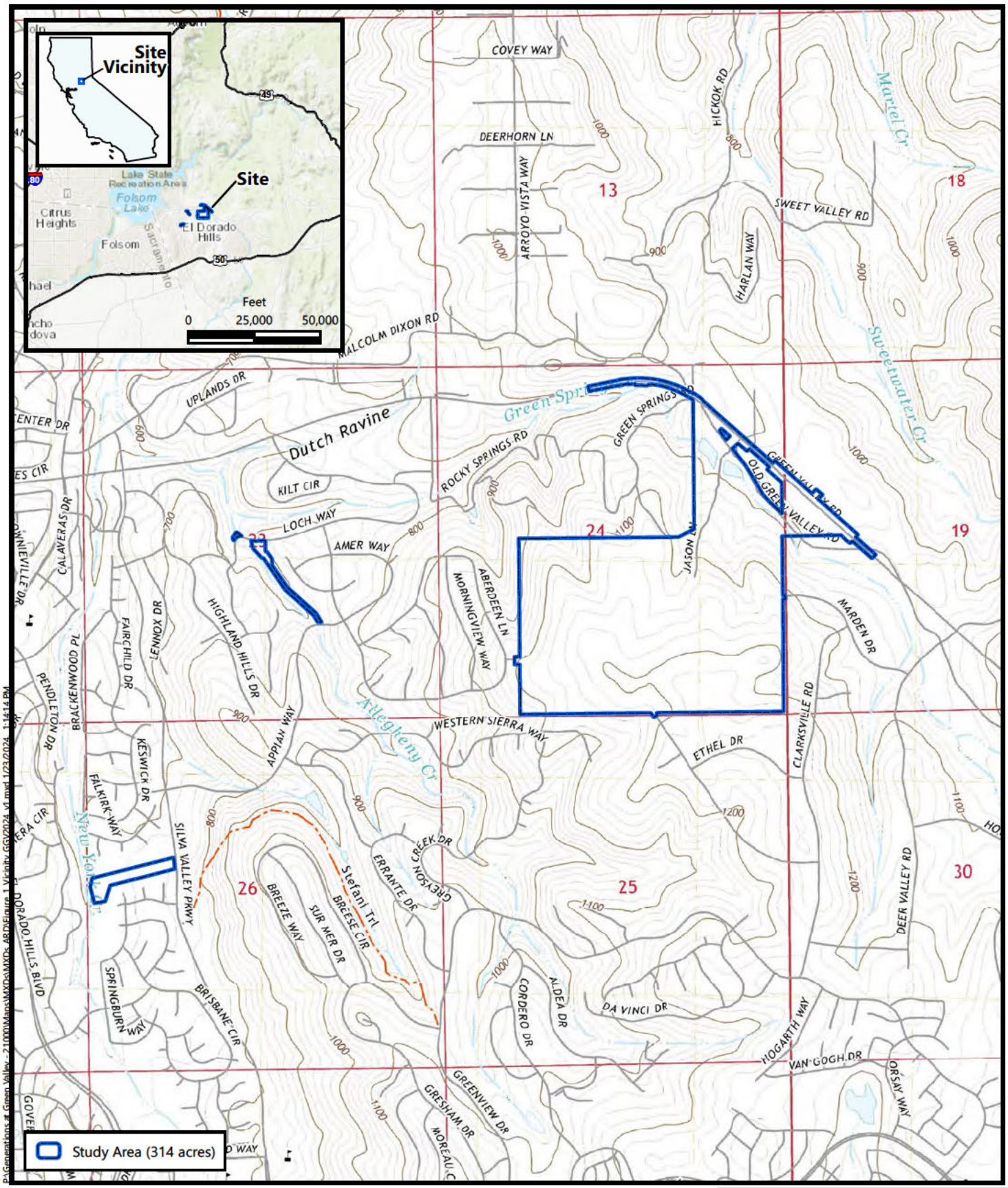
SPK-2011-00758, MFR 3 of 3



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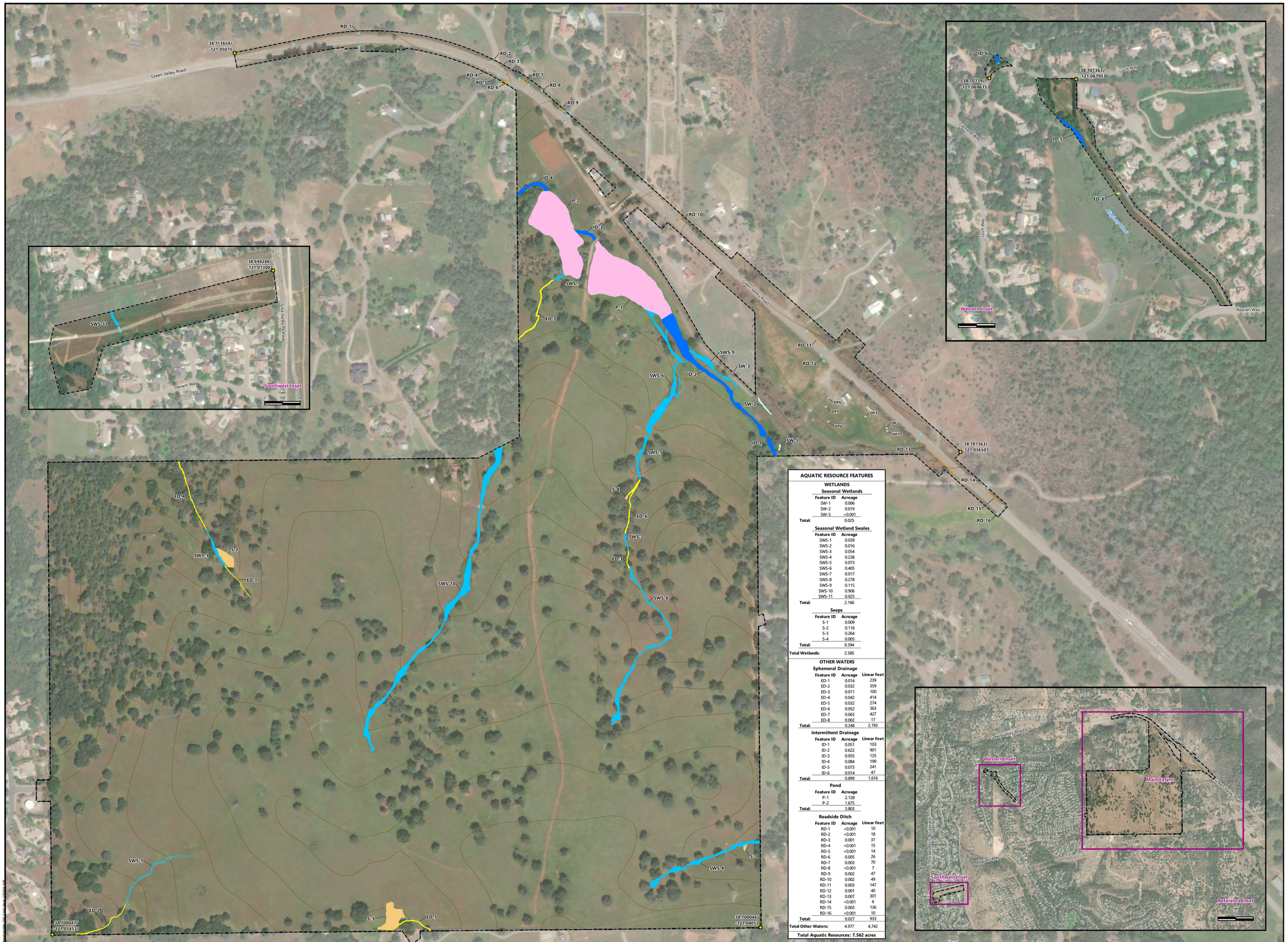
Enclosure 2



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Aerial Base Flown: 1 May 2022
Topographic Contours: USGS NED 1/3 arc-second Contours for Sacramento W, California. 1 October 2018

Delineation Performed by: [redacted]
Original Delineation Verification Date: 26 August 2011
Original Identification Number: SPK-2011-00758
Map Prepared by: [redacted]
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Prepared For:
[redacted]

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Data Point
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Ground Surface Elevation, 10 foot contour

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Roadside Ditch (0.027 acre)

Aquatic Resources Delineation

Generations at Green Valley Road
El Dorado County, California

[redacted]

Enclosure 3

Figure 1. Review Area Southwest Inset Flowpath Map

SPK-2011-00758

0 175 350 700

Feet

Map Center: 121.076622°W 38.694461°N

Map created by: [redacted]

Date: 11/19/2024

Coordinate System: NAD 1983 StatePlane California II FIPS 0402 Feet

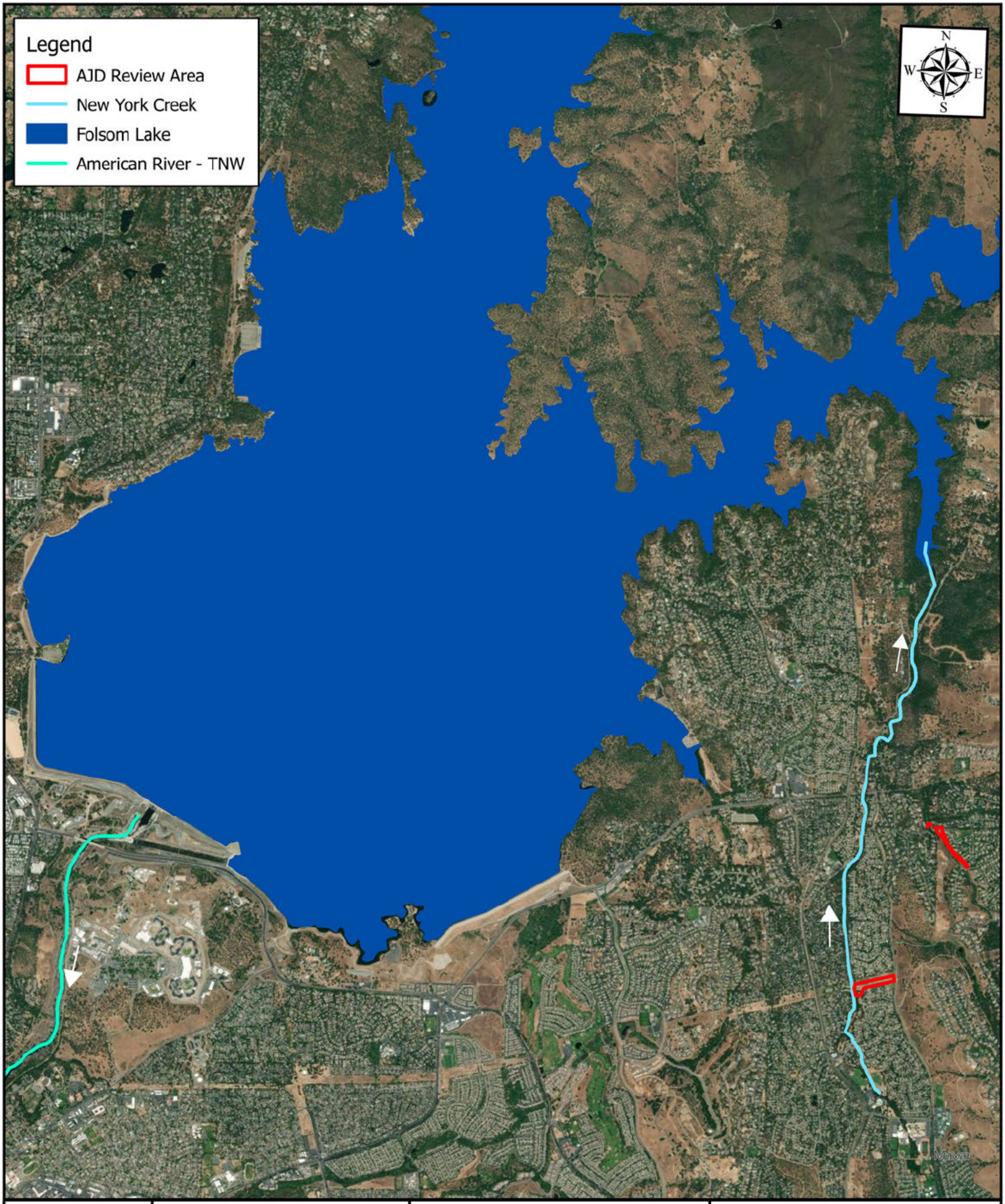

Figure 2. Review Area Southwest Inset - Downstream Connection to TNW

SPK-2011-00758

0 1,500 3,000 6,000

Feet

Map Center: 121.118047°W 38.726332°N

Map created by: [redacted]

Date: 11/19/2024

Coordinate System: NAD 1983 StatePlane California II FIPS 0402 Feet