



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

CESPK-RDC-S

10 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),<sup>1</sup> [SPK-2024-00629].

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.

1. SUMMARY OF CONCLUSIONS.

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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.

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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00629]

a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

<b>Name of Aquatic Resource</b>	<b>Cowardin</b>	<b>Description</b>	<b>Waters of the U.S.</b>	<b>Navigable Waters of the U.S.</b>
ES 1	R6	Ephemeral Riverine	No	No
ES 2	R6	Ephemeral Riverine	No	No
ES 3	R6	Ephemeral Riverine	No	No
ES 4	R6	Ephemeral Riverine	No	No
ES 5	R6	Ephemeral Riverine	No	No
ES 5	R6	Ephemeral Riverine	No	No
ES 6	R6	Ephemeral Riverine	No	No
ES 7	R6	Ephemeral Riverine	No	No
ES 8	R6	Ephemeral Riverine	No	No
ES 9	R6	Ephemeral Riverine	No	No
ES 10	R6	Ephemeral Riverine	No	No
ES 11	R6	Ephemeral Riverine	No	No
ES 12	R6	Ephemeral Riverine	No	No
ES 13	R6	Ephemeral Riverine	No	No
ES 14	R6	Ephemeral Riverine	No	No
ES 15	R6	Ephemeral Riverine	No	No
ES 16	R6	Ephemeral Riverine	No	No
ES 17	R6	Ephemeral Riverine	No	No
ES 18	R6	Ephemeral Riverine	No	No
ES 19	R6	Ephemeral Riverine	No	No
ES 20	R6	Ephemeral Riverine	No	No
ES 21	R6	Ephemeral Riverine	No	No
ES 22	R6	Ephemeral Riverine	No	No
ES 23	R6	Ephemeral Riverine	No	No
ES 24	R6	Ephemeral Riverine	No	No
ES 25	R6	Ephemeral Riverine	No	No
ES 26	R6	Ephemeral Riverine	No	No
ES 27	R6	Ephemeral Riverine	No	No
ES 28	R6	Ephemeral Riverine	No	No
ES 29	R6	Ephemeral Riverine	No	No
ES 30	R6	Ephemeral Riverine	No	No
ES 31	R6	Ephemeral Riverine	No	No
ES 32	R6	Ephemeral Riverine	No	No



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ES 33	R6	Ephemeral Riverine	No	No
ES 34	R6	Ephemeral Riverine	No	No
ES 35	R6	Ephemeral Riverine	No	No
ES 36	R6	Ephemeral Riverine	No	No
ES 37	R6	Ephemeral Riverine	No	No
ES 38	R6	Ephemeral Riverine	No	No
ES 39	R6	Ephemeral Riverine	No	No
ES 40	R6	Ephemeral Riverine	No	No
ES 41	R6	Ephemeral Riverine	No	No
ES 42	R6	Ephemeral Riverine	No	No
ES 43	R6	Ephemeral Riverine	No	No
ES 44	R6	Ephemeral Riverine	No	No
ES 45	R6	Ephemeral Riverine	No	No
ES 46	R6	Ephemeral Riverine	No	No
ES 47	R6	Ephemeral Riverine	No	No
ES 48	R6	Ephemeral Riverine	No	No
ES 49	R6	Ephemeral Riverine	No	No
ES 50	R6	Ephemeral Riverine	No	No
ES 51	R6	Ephemeral Riverine	No	No

## 2. REFERENCES.

- a. “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”)
- b. “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The approximately 196-acre project area is located in Section 12, Township 18 South, Range 63 East, MDB&B, Latitude 36.406065°, Longitude -114.890254°, near the City of Las Vegas, Clark County, Nevada. The study area is located within the Mojave Desert in the Basin and Range region, within the 8th-level Hydrologic Unit Code (HUC) Muddy watershed (HUC8 15010012) and the 10th-level HUC Dry Lake Valley watershed (HUC10 1501001206). Creosote (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*) are the dominant vegetation. Other plant species within the project area include Mojave yucca (*Yucca schiedigera*), little-leaved rhatany (*Krameria erecta*), cheesebush (*Ambrosia salsola*), Nevada ephedra (*Ephedra nevadensis*), red brome (*Bromus rubens*), big galleta (*Hilaria rigida*), catclaw acacia (*Acacia greggii*), and honey mesquite (*Prosopis glandulosa*). Elevation ranges from about 2,068 to 2,280 feet above mean sea level, with drainage generally from

southwest to northeast direction. Annual precipitation in the area is approximately 2.5-3.0 inches per year.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW, Lake Meade, is located approximately 26-miles straight-line distance to the southeast of the review area from estimation using the Corps Navigable Waters layer in Google Earth<sup>5</sup>.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. All of the washes, ES 1-51, drain downstream to the Dry Lake playa approximately 1.4 to 2.76-miles north of the project area, but there was no observable connection from the playa to any TNW.

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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>7</sup> N/A.

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.

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<sup>5</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

<sup>6</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>7</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. 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 area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>8</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 streams (ES 1- 51) are features that do not meet the relatively permanent standard as (a)(3) tributaries. The flow regime of these features is characterized as ephemeral because flow derives from direct precipitation and does not appear to subsist for a lasting duration (e.g., less than 24 hours). The stream features (ES 1-51) totaling approximately 6.40 acres appear to include several higher order reaches (i.e., Strahler 4-5; ES 17-24) within an alluvial floodplain, in addition to a number of other low order reaches flowing from adjacent hills and established structures on-site (e.g., solar site and substation). These reaches drain in a northeast direction across the project area to the Dry Lake playa. Further, well-draining aridisols and insufficient precipitation preclude establishment of hydrophytic vegetation and other wetland conditions in the project area.

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<sup>8</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. Desk evaluation was conducted in November and December 2024.

b. Maps, plans, plots or plat submitted by or on behalf of the applicant- Red Rock Project Aquatic Resources Survey Report by [REDACTED] dated October 2024.

c. USACE National Regulatory Viewer Soils Layer- Accessed December 3, 2024.

d. USACE Google Earth TNW Layers- Accessed December 3, 2024.

e. USGS National Map Viewer National Hydrography Dataset, Flowline, and DEM Layers-Accessed November 7, 2024.

f. USACE ERDC Antecedent Precipitation Tool, Lat/Long: 36.406065, -114.890254, Dates: January 3, 2022; July 28, 2022; August 28, 2022; November 5, 2022; November 16, 2022; February 9, 2023; March 24, 2023; and April 25, 2023- Accessed November 26, 2024.

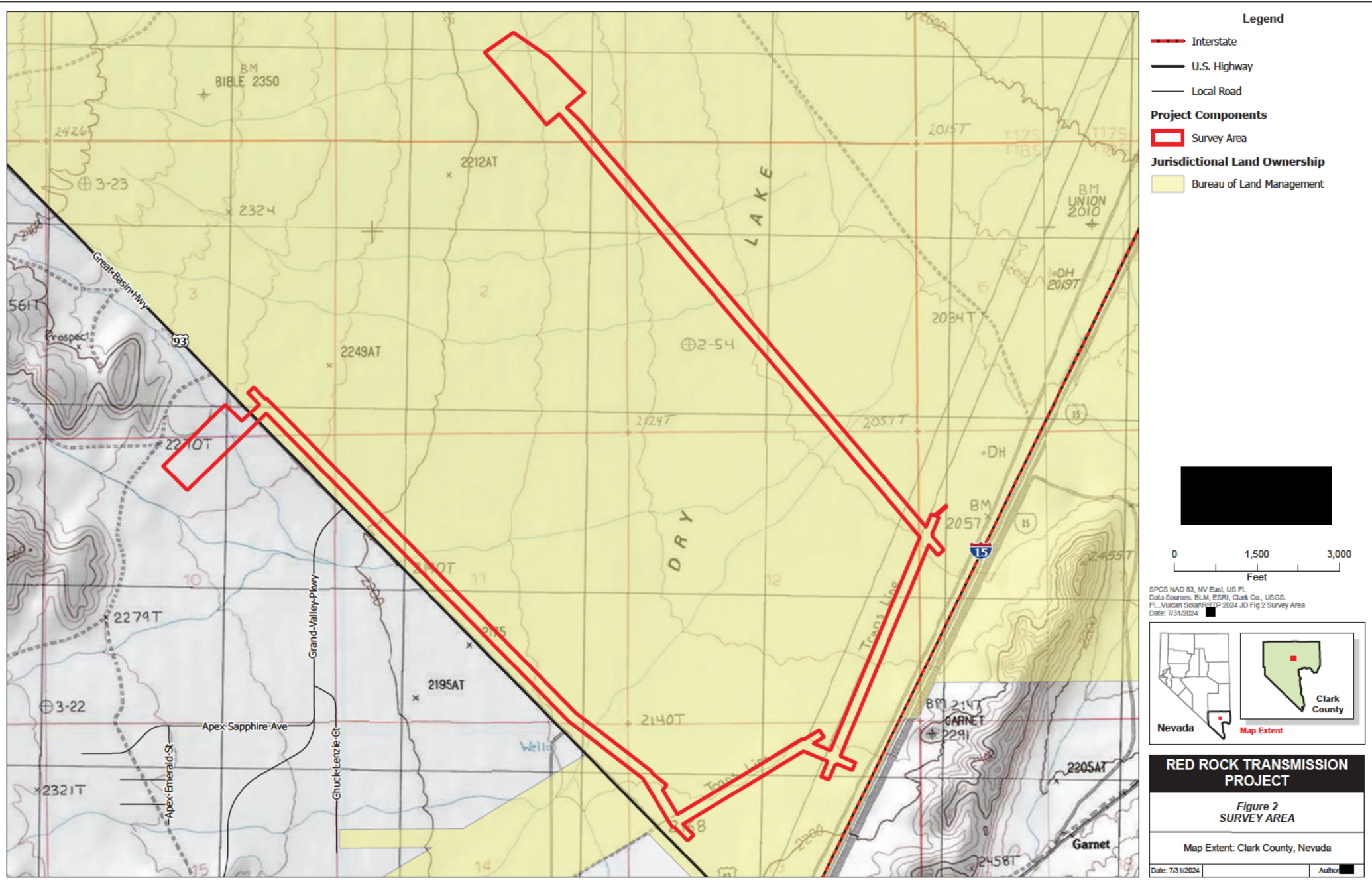
g. Digital Globe Aerial Photographs, Archive Dated January 3, 2022; July 28, 2022; August 28, 2022; November 5, 2022; November 16, 2022; February 9, 2023; March 24, 2023; and April 25, 2023.

10. OTHER SUPPORTING INFORMATION. Red Rock Project Aquatic Resources Survey Report by [REDACTED] dated October 2024.

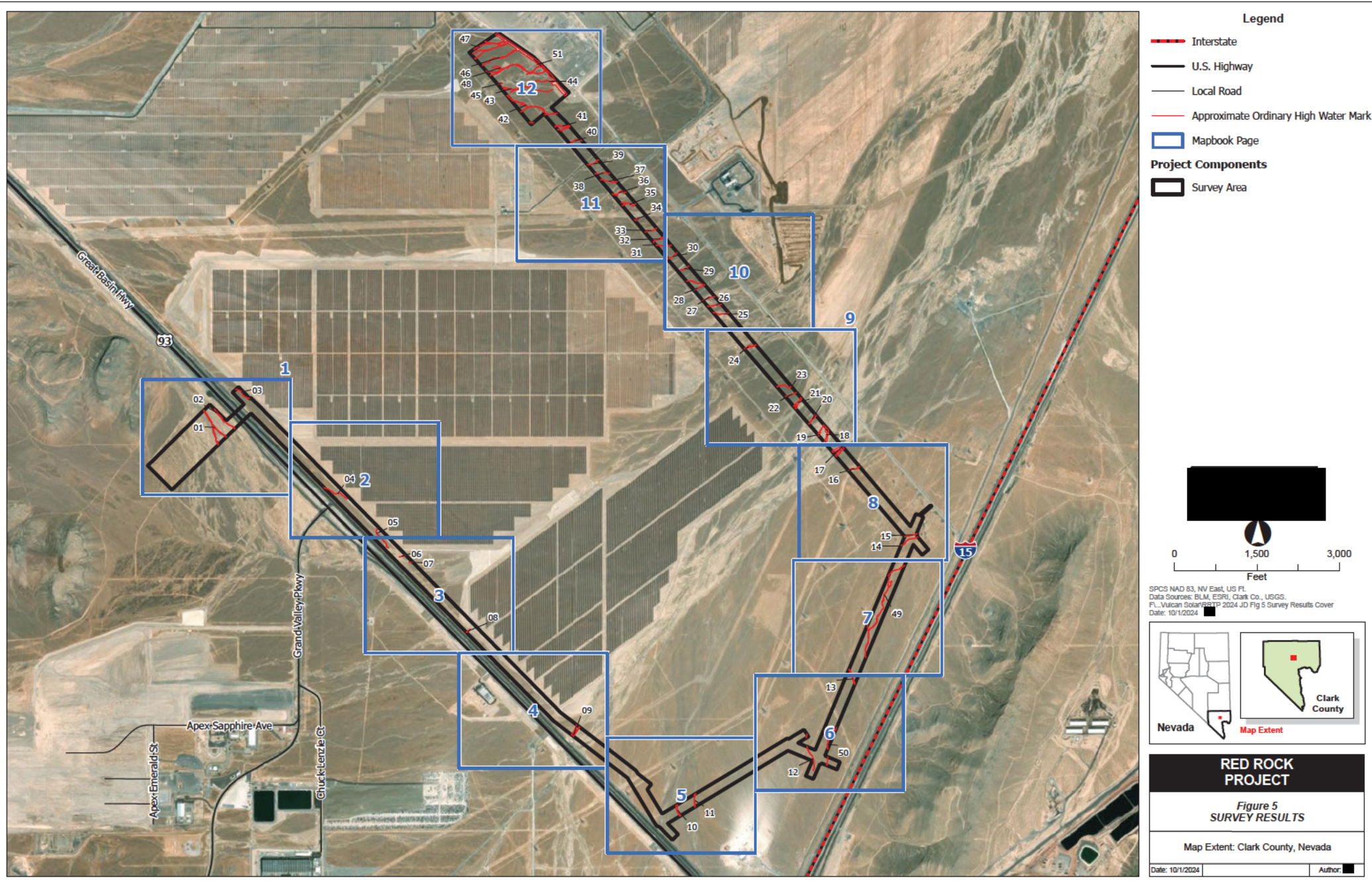
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

2 Encls

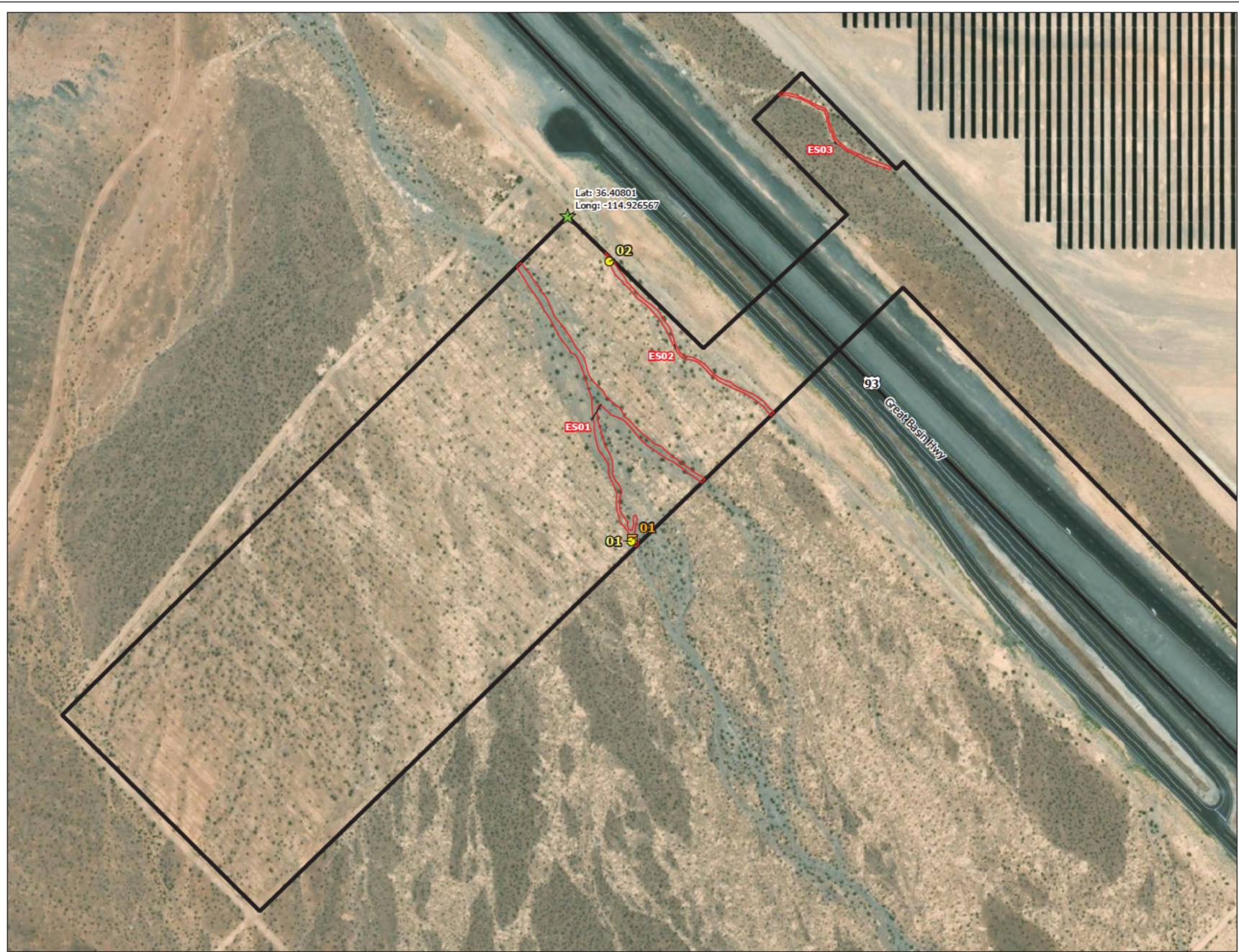
1. Vicinity Map
2. Aquatic Resources Survey Report Map











APPROVED JURISDICTION DETERMINATION  
SECTION 404 CLEAN WATER ACT  
U.S. Army Corps of Engineers, Sacramento District  
Application No. SPK-2024-00629

Boundary of Area Surveyed for  
Jurisdictional Waters of  
the United States

Approximate Ordinary High Water Mark

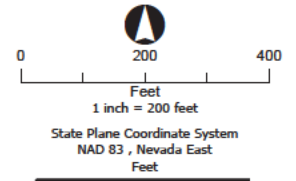
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wetlands occur within survey area)

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Site Visit by Corps (Y/N) - N  
Date - N/A  
Determination Issues -  
Project Manager -

**Legend**

★ Control Point  
● Photo Location  
□ OHWM Data Sheet Point  
— U.S. Highway  
— Local Road

Page Number: 1 of 12



**RED ROCK  
PROJECT**

*Figure 5  
SURVEY RESULTS*

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author:   
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Determination Issues -  
Project Manager -

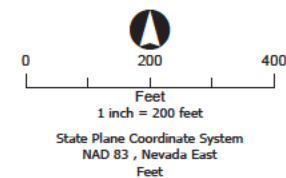
Legend

Photo Location

U.S. Highway

Local Road

Page Number: 2 of 12



**RED ROCK  
PROJECT**

*Figure 5  
SURVEY RESULTS*

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author:  
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Approximate Ordinary High Water Mark

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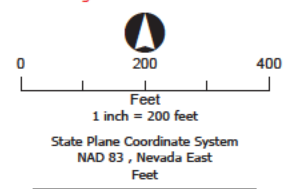
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Determination Issues -  
Project Manager -

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U.S. Highway

Local Road

Page Number: 3 of 12



**RED ROCK  
PROJECT**

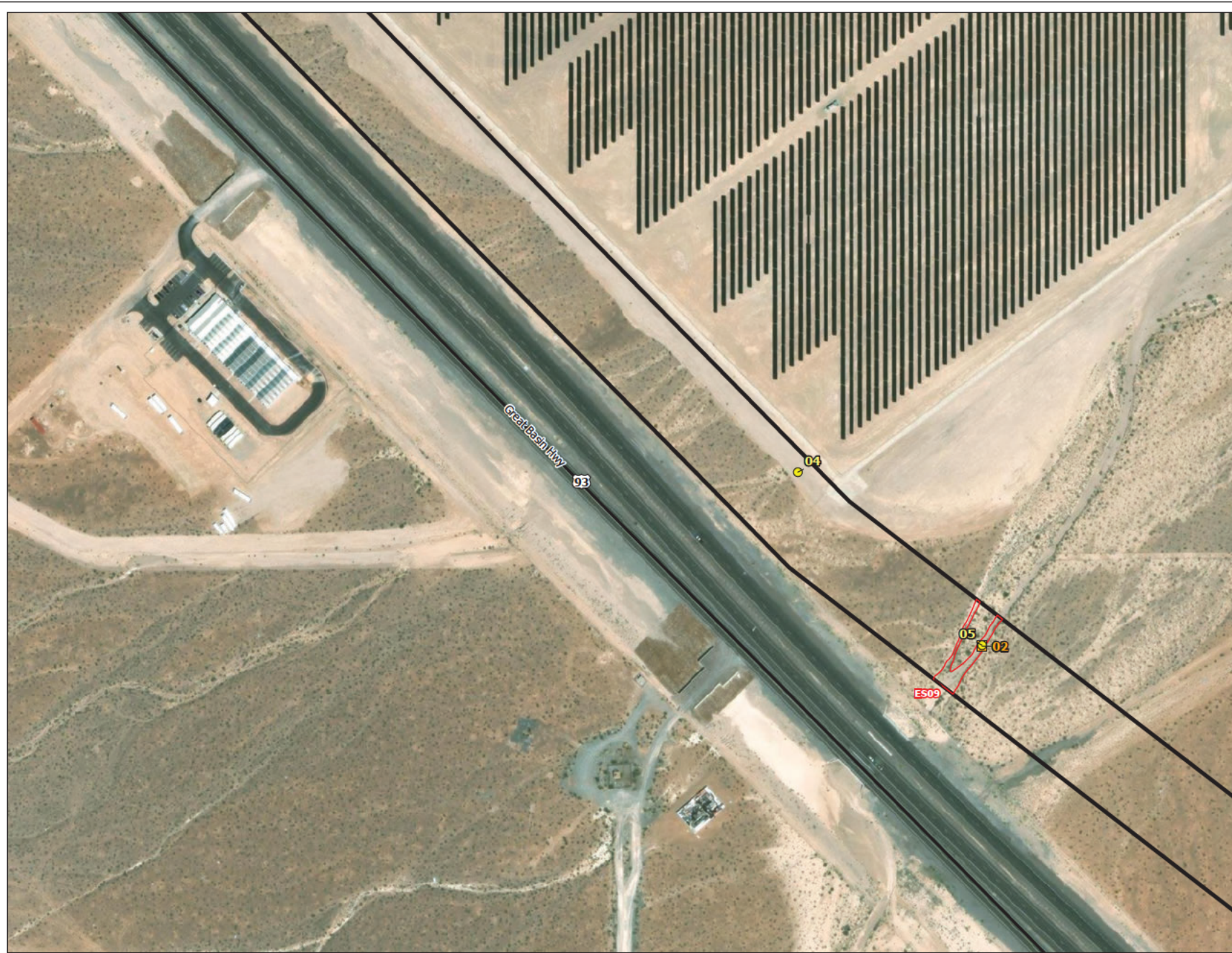
*Figure 5*  
**SURVEY RESULTS**

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author:

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Determination Issues -  
Project Manager -

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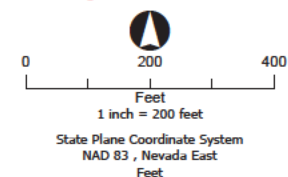
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OHWM Data Sheet Point

U.S. Highway

Local Road

Page Number: 4 of 12



**RED ROCK  
PROJECT**

*Figure 5*  
**SURVEY RESULTS**

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author: **PL\_RRTPRRTP 2024 JD Fig 5 Survey Results Pages**



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U.S. Army Corps of Engineers, Sacramento District  
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Boundary of Area Surveyed for  
Jurisdictional Waters of  
the United States

Approximate Ordinary High Water Mark

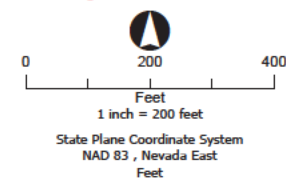
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Site Visit by Corps (Y/N) - N  
Date - N/A  
Determination Issues -  
Project Manager -

**Legend**

★ Control Point  
● Photo Location  
— U.S. Highway  
— Local Road

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**RED ROCK  
PROJECT**

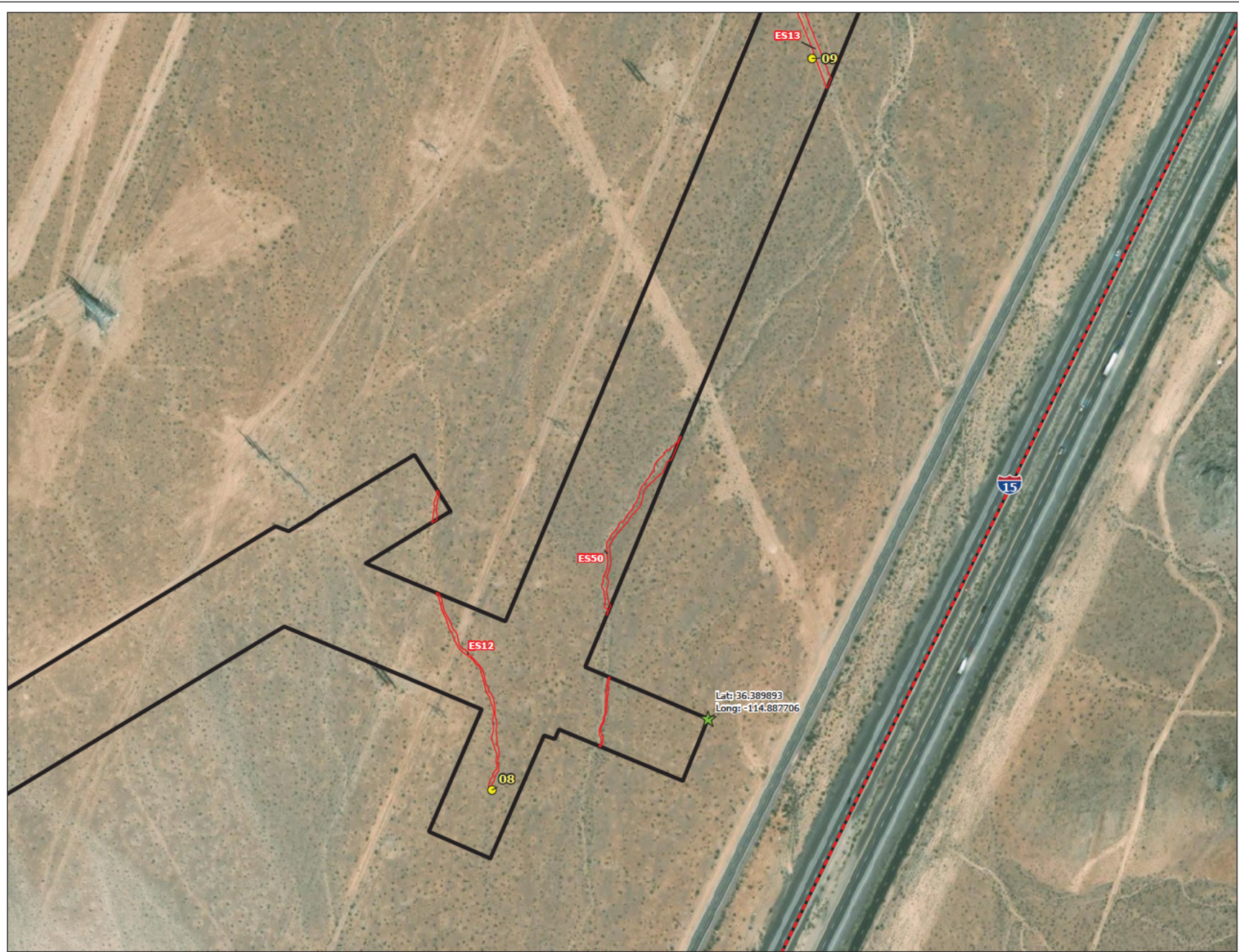
*Figure 5*  
**SURVEY RESULTS**

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author:  
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Enclosure 2





APPROVED JURISDICTION DETERMINATION  
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Boundary of Area Surveyed for  
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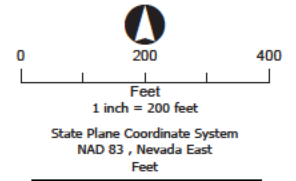
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Determination Issues -  
Project Manager -

**Legend**

★ Control Point  
● Photo Location  
--- Interstate

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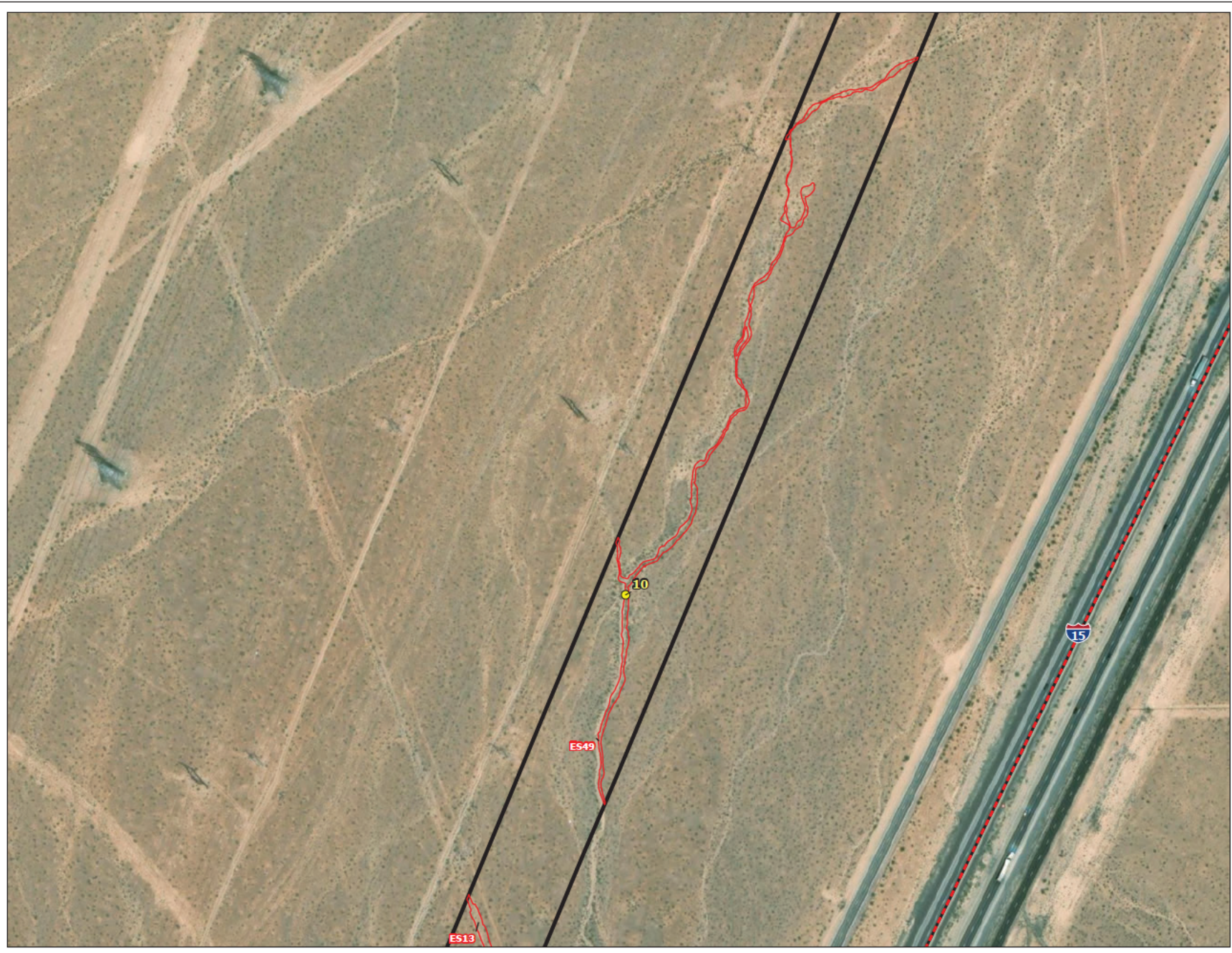
**RED ROCK  
PROJECT**

*Figure 5  
SURVEY RESULTS*

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author:  
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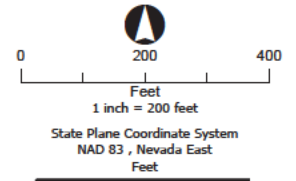
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Determination Issues -  
Project Manager -

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Photo Location

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RED ROCK  
PROJECT

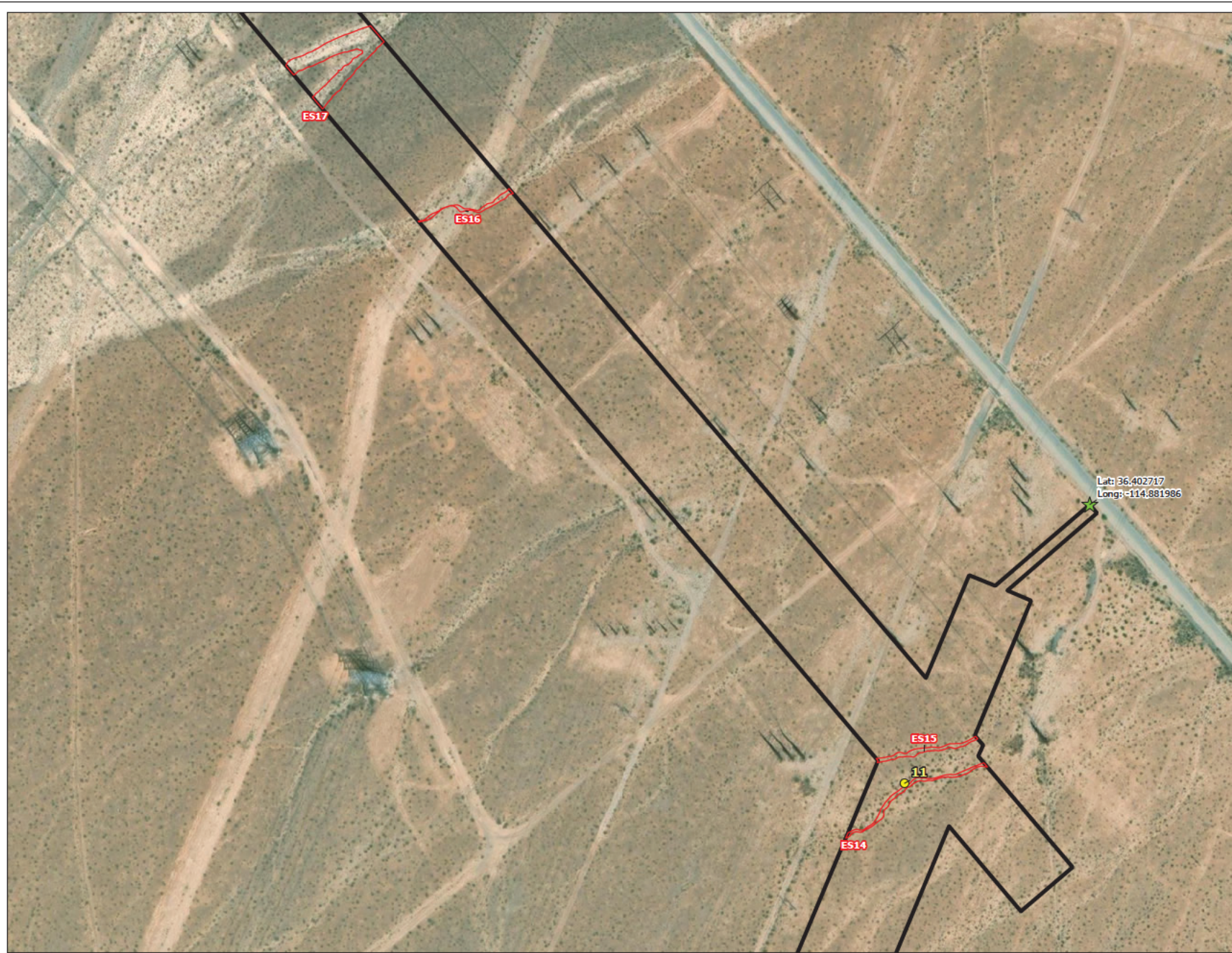
Figure 5  
SURVEY RESULTS

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author:

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Wetlands (If legend is blank no  
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Scale - See scale bar  
Photography Date - 4/25/2023  
Site Visit by Corps (Y/N) - N  
Date - N/A  
Determination Issues -  
Project Manager -

**Legend**

★ Control Point  
● Photo Location

Page Number: 8 of 12

0 200 400  
Feet  
1 inch = 200 feet  
State Plane Coordinate System  
NAD 83 , Nevada East  
Feet

**RED ROCK  
PROJECT**

*Figure 5*  
**SURVEY RESULTS**

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author:   
PL\_RRTPRRTP 2024 JD Fig 5 Survey Results Pages



APPROVED JURISDICTION DETERMINATION  
SECTION 404 CLEAN WATER ACT

U.S. Army Corps of Engineers, Sacramento District  
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Boundary of Area Surveyed for  
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Approximate Ordinary High Water Mark

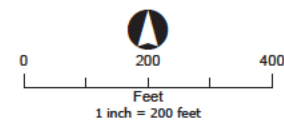
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(If legend is blank no  
wetlands occur within survey area)

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Site Visit by Corps (Y/N) - N  
Date - N/A  
Determination Issues -  
Project Manager -

**Legend**

- Photo Location
- OHWM Data Sheet Point

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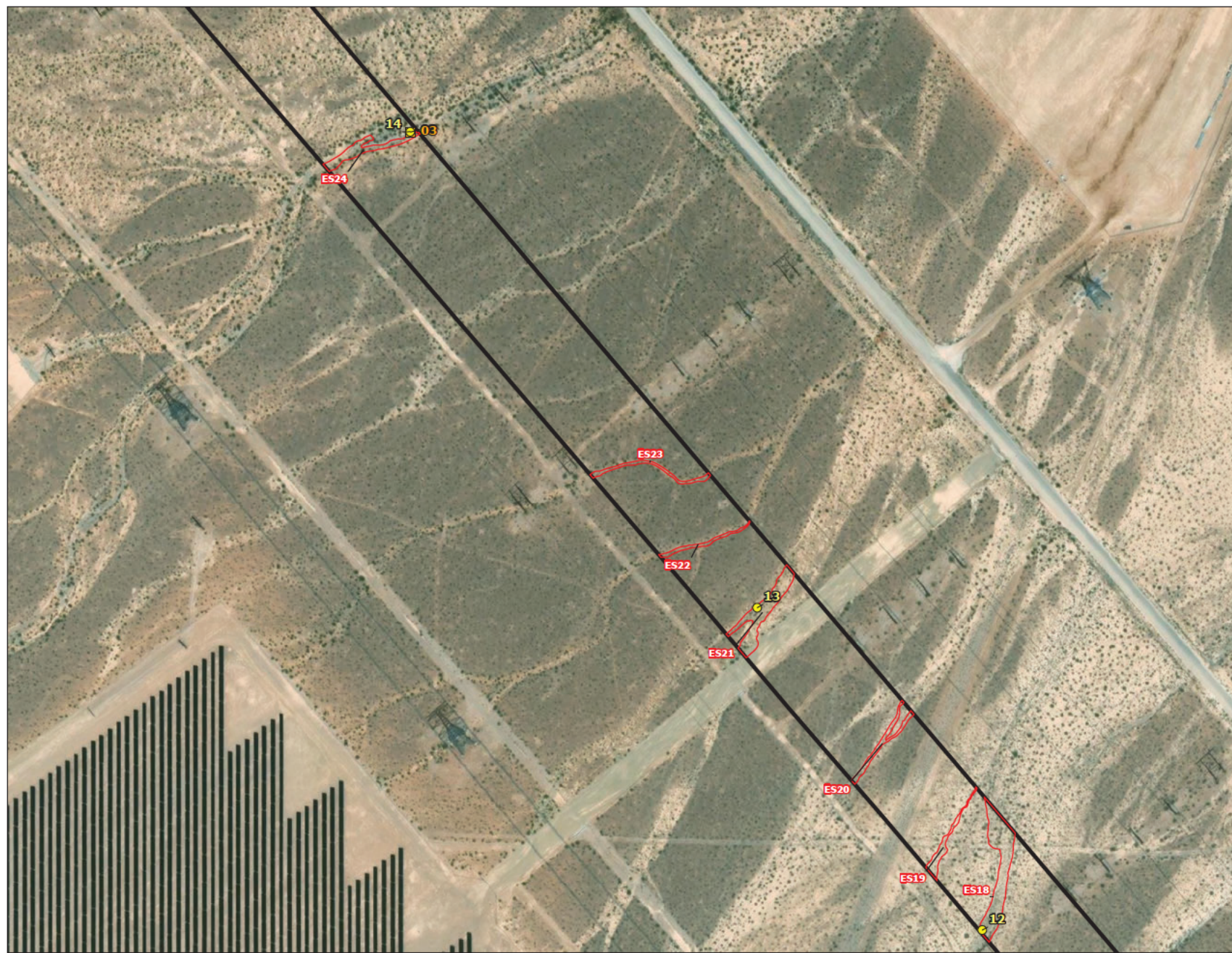
State Plane Coordinate System  
NAD 83, Nevada East  
Feet

**RED ROCK  
PROJECT**

**Figure 5  
SURVEY RESULTS**

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- Boundary of Area Surveyed for Jurisdictional Waters of the United States
- Approximate Ordinary High Water Mark
- Wetlands (If legend is blank no wetlands occur within survey area)

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**Legend**  
● Photo Location

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0 200 400  
Feet  
1 inch = 200 feet  
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NAD 83 , Nevada East  
Feet

RED ROCK PROJECT

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SECTION 404 CLEAN WATER ACT  
U.S. Army Corps of Engineers, Sacramento District  
Application No. SPK-2024-00629

Boundary of Area Surveyed for  
Jurisdictional Waters of  
the United States

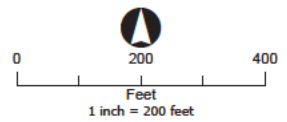
Approximate Ordinary High Water Mark

Wetlands (If legend is blank no  
wetlands occur within survey area)

Scale - See scale bar  
Photography Date - 4/25/2023  
Site Visit by Corps (Y/N) - N  
Date - N/A  
Determination Issues -  
Project Manager -

**Legend**  
● Photo Location

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State Plane Coordinate System  
NAD 83 , Nevada East  
Feet

**RED ROCK  
PROJECT**

*Figure 5*  
**SURVEY RESULTS**

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author: **PL\_RRTPPRRTP 2024 JD Fig 5 Survey Results Pages**





**APPROVED JURISDICTION DETERMINATION  
SECTION 404 CLEAN WATER ACT**  
U.S. Army Corps of Engineers, Sacramento District  
Application No. SPK-2024-00629

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- Legend**
- ★ Control Point  
● Photo Location

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0 200 400  
Feet  
1 inch = 200 feet  
State Plane Coordinate System  
NAD 83 , Nevada East  
Feet

**RED ROCK  
PROJECT**

*Figure 5*  
**SURVEY RESULTS**

Map Extent: Clark County, Arizona

Date: 10/1/2024 Author: **[REDACTED]**  
PL\_RRTPPRRTP 2024 JD Fig 5 Survey Results Pages