



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

CESPK-RDC-S

16 JANUARY 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,¹ SPK-2024-00707, (MFR 1 of 1)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 (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
SWS-1	Non-jurisdictional	None
SWS-2	Jurisdictional	Section 404
SEEP-1	Jurisdictional	Section 404
SEEP-2	Jurisdictional	Section 404
SEEP-3	Jurisdictional	Section 404
SEEP-4	Jurisdictional	Section 404
SEEP-5	Jurisdictional	Section 404
SEEP-6	Jurisdictional	Section 404
SEEP-7	Jurisdictional	Section 404
SEEP-8	Jurisdictional	Section 404
ED-1	Non-jurisdictional	None
ED-2	Non-jurisdictional	None
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

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.

RD-1	Non-jurisdictional	None
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2. REFERENCES.

a. “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”)

b. “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 (September 8, 2023))

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

3. REVIEW AREA. The 121.1-acre review area is located in Section 13, Township 6 North, Range 10 East and Section 18, Township 6 North, Range 11 East, MDB&M, Sutter Creek, Amador County, California. The review area is situated north of Ridge Road and west of Independence Drive. The approximate center of the review area is located at Latitude 38.374649°, Longitude -120.813914° (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 downstream of aquatic resources within the review area is the Mokelumne River which is approximately 33.7 miles straight-line distance southwest of the review area. This distance was estimated using the Corps’ Navigable Waters layer in Google Earth. The Mokelumne River is a TNW subject to Section 10 of the Rivers and Harbors Act from the river mouth to Frandy Grage (located 3.5 miles upstream of New Hope Road).

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Aquatic resources within the review area flow into Stony Creek, a relatively permanent (a)(3) tributary. Stony Creek flows northwest from the review area for approximately 2.0 miles before emptying into Sutter Creek. From this junction, Sutter Creek flows west for approximately 10.3 miles before entering Dry Creek. Dry Creek flows southwest for approximately 30.3 miles before it enters the Mokelumne River near Thornton, California. A flowpath map from the review area to the Mokelumne River is included in Enclosure 3.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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

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

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):

ID-1 (1.062 acre/ 2,555 LF) and **ID-2** (0.108 acre/ 375 LF) are segments of Stony Creek, a relatively permanent (a)(3) tributary to the Mokelumne River. The ID-1 and ID-2 segments of Stony Creek are separated by a dirt farm road that runs north to south through the review area. Within the review area, ID-2 flows west into ID-1 through a culvert under the dirt farm road. The ID-1/ID-2 tributary segment of Stony Creek is a first-order tributary from its origin 0.16 miles/ 850 LF east of the review area up until its junction with ID-3 (described below), after which it becomes a second order-tributary. The second-order tributary reach ends approximately 1.0 miles/ 5,275 LF further west (downstream), where an unnamed second-order tributary flows into Stony Creek. Stony Creek is mapped as an intermittent stream on the USGS 2015 Jackson, CA 7.5-minute Topographic Quadrangle and on the 2015 Amador City, CA 7.5-minute Topographic Quadrangle. It is not mapped on the 2018 or 2022 Jackson, CA Topographic Quadrangles or the 2018 or 2022 Amador City, CA Topographic Quadrangles. Stony Creek is mapped as an ephemeral stream on the USGS NHD. The October 2024

██████████ (ARDR), prepared by ██████████, classifies ID-1 and ID-2 as intermittent tributaries that receive hydrologic input from groundwater and flow for much of the winter and into the spring. During a site visit conducted by ██████████ on August 8 and August 14, 2024, the ID-1 and ID-2 segments of Stony Creek were not flowing but contained some pools. This office corroborated the assertion that the tributary reaches of ID-1 and ID-2 are relatively permanent by reviewing Digital Globe aerial imagery on three dates (2/9/2016, 4/18/2016, 1/18/2022) taken during the wet season with a 30-day antecedent precipitation condition within the

"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.

⁷ 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.

“normal” range. The ID-1 and ID-2 tributary reaches of Stony Creek contained standing or flowing water on all of the evaluated dates. They also contained flows in aerial imagery dated April 3, 2020, when the region was in a moderate drought and the 30-day antecedent precipitation condition was “drier than normal.” These results indicate that ID-1 and ID-2’s tributary reaches contain standing or flowing water continuously for certain times of the year and for more than just a short duration in direct response to precipitation.

ID-3 (0.036 acre/282 LF) is an unnamed first-order tributary that flows into the ID-1 segment of Stony Creek. The ID-3 tributary reach originates approximately 0.38 miles/ 2,000 LF southeast of the review area at an excavated pond on the west side of Industry Boulevard. The tributary reach ends within the review area where ID-3 flows into the ID-1 segment of Stony Creek. The total length of the ID-3 tributary reach measures approximately 0.44 miles/ 2,350 LF. The ID-3 tributary is mapped as an intermittent stream on the U.S. Geological Survey (USGS) 2015 and 2012 7.5-minute Topographic Quadrangle for Jackson, CA. It is not mapped on the 2018 or 2022 Jackson, CA Topographic Quadrangles. The ID-3 tributary is mapped as an ephemeral stream on the USGS National Hydrography Dataset (NHD). The October 2024 ARDR classifies ID-3 as an intermittent tributary that receives hydrologic input from groundwater and flows for much of the winter and into the spring. The area of the ID-3 tributary reach is covered by dense vegetation, preventing the flow regime to be accurately evaluated through review of aerial imagery. This office conducted a site visit on December 3, 2024, and observed flows within the ID-3 tributary reach. The site visit took place during the beginning of the wet season under “normal” 30-day antecedent precipitation conditions, eight days after the most recent precipitation event. Under these conditions, we would expect to observe a seasonally flowing, relatively permanent stream to have water in it, but would expect a tributary that flows only in direct response to precipitation to be dry. These observations indicate that the ID-3 tributary reach is relatively permanent and flows for more than just a short duration in direct response to precipitation.

f. Adjacent Wetlands (a)(4):

Wetland polygons **SWS-2, SEEP-1, SEEP-2, SEEP-3, SEEP-4, SEEP-5, and SEEP-6**, directly abut the ID-1/ID-2 tributary segment of Stony Creek. These wetlands are therefore adjacent wetlands with a continuous surface connection to a relatively permanent (a)(3) water. The individual acreages of each wetland polygon are included in the following table:

Feature ID	Acreage
SWS-2	0.018
SEEP-1	0.045
SEEP-2	0.117
SEEP-3	0.035

SEEP-4	0.023
SEEP-5	0.075
SEEP-6	0.313

SEEP-7 (0.005 acre) and **SEEP-8** (0.013 acre) are wetland polygons that are bisected by a small, non-relatively permanent tributary (ED-6, described in Section 8.b). SEEP-7 is located on the north side of ED-6 and SEEP-8 is located on the south side of ED-6. Both SEEP-7 and SEEP-8 have a continuous surface connection to the ID-1 tributary segment of Stony Creek through the discrete feature ED-6. The total distance between the wetland seeps and the (a)(3) tributary is approximately 70 LF/ 0.01 miles.

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).⁸ 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).

ED-1, ED-3, ED-4, ED-5, ED-6, and ED-7 are first-order non-relatively permanent tributaries to Stony Creek. The ED-1, ED-4, and ED-5 tributaries are situated on the north side of Stony Creek and flow south directly into the (a)(3) water. ED-3 is located on the north side of Stony Creek and is connected to the creek through the flowpath wetland SEEP-6 which directly abuts Stony Creek. ED-6 is located on the south side of Stony Creek and flows north into the creek. ED-7 is located on the southeast side of Stony Creek and flows southwest into the creek. Portions of each of the tributaries are deeply incised, while other sections in low-gradient areas are as short stretches of scoured, unvegetated drainage. The ARDR describes the tributaries as ephemeral drainages that convey stormwater runoff for short periods of time directly after precipitation events and do not convey groundwater. We corroborated this assertion by reviewing Digital Globe aerial imagery of the tributaries on 4 dates taken during the wet season when the 30-day antecedent precipitation was within a ‘normal’ or ‘wetter

⁸ 88 FR 3004 (January 18, 2023)

than normal' range (2/9/2016, 3/17/2016, 4/18/2016, and 1/18/2022). The tributaries all appeared dry on 2/9/2016, 4/18/2016 and 1/18/2022. The ED-3 and ED-4 tributaries appeared to contain small pools of water on 3/17/2016. However, this date was preceded by recent rainfall events over the 3-4 days prior and fell within a 'wetter than normal' 30-day antecedent precipitation range. The area of each individual feature is included in the following table:

Feature ID	Acreage	Linear Feet
ED-1	0.002	98
ED-3	0.056	1034
ED-4	0.071	1698
ED-5	0.007	155
ED-6	0.010	162
ED-7	0.011	165

ED-2 (0.025 acre/ 631 LF) is comprised of two non-relatively permanent first-order tributary reaches and a non-relatively permanent second-order tributary reach that flows south into SWS-2 which directly abuts the ID-1 segment of Stony Creek. The ARDR describes ED-2 as an ephemeral drainage that conveys stormwater runoff for short periods of time directly after precipitation events. We corroborated this assertion by reviewing Digital Globe aerial imagery of the three separate tributary reaches contained within the mapped ED-2 feature on 4 dates taken during the wet season (2/9/2016, 3/17/2016, 4/18/2016, and 1/18/2022). The three tributary reaches appeared dry on all of the observed dates, including on 3/17/2016 when the 30-day antecedent precipitation condition was 'wetter than normal.' These results indicate that the flow regime of ED-2 is non-relatively permanent.

RD-1 is 0.78-acre/ 1,308 LF roadside ditch located on the east side of the dirt farm road that runs north to south through the study area. RD-1 runs parallel to the road and conveys stormwater runoff southeast from the adjacent road to a small, non-relatively permanent tributary (ED-1) which flows into the ID-2 tributary segment of Stony Creek. RD-1 was likely constructed sometime between 1946 and 1959 when the farm dirt road was built. RD-1 exhibits indicators of an OHWM including scour marks and changes in vegetation. The ARDR categorizes RD-1 as an ephemeral feature. We corroborated the assertion that the flow regime of RD-1 is non-relatively permanent by reviewing Digital Globe aerial imagery of the feature on 4 dates taken during the wet season when the 30-day antecedent precipitation was within a 'normal' or 'wetter than normal' range (2/9/2016, 3/17/2016, 4/18/2016, and 1/18/2022). The only date on which RD-1 contained standing or flowing water occurred on 3/17/2026. On this date, the 30-day antecedent precipitation condition was 'wetter than normal' and the project area had received rainfall over the previous 3-4 days. On the remaining 3 dates, which had a 30-day antecedent precipitation condition within the 'normal' range (2/9/2016, 4/18/2016 and 1/18/2022), RD-1 did not contain standing or flowing water. These observations

indicate that RD-1 is a non-relatively permanent feature that only flows for short durations in direct response to precipitation.

SWS-1 is a 0.021-acre seasonal wetland that is situated at the head of RD-1 and is connected to the ID-2 tributary segment of Stony Creek via the roadside ditch and ED-1. The total distance between SWS-1 and the relatively permanent tributary is 1,308 LF/ 0.25 miles. SWS-1 is not an adjacent wetland because the connection from SWS-1 to the (a)(3) tributary, which occurs through the discrete features RD-1 and ED-1, is too long to provide a continuous physical connection. Notably, the connection through the discrete features is relatively longer than that of the subject wetland described in the November 21, 2024, Memorandum on NWK-2024-00392 in which the subject wetland was determined to be non-adjacent despite a 725 LF connection to a jurisdictional water.

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]
[REDACTED]. Prepared for [REDACTED]
[REDACTED] Published on 24 October 2024.

b. [REDACTED]
[REDACTED] Delineation Map. 2 December 2024.

c. Maxar. Digital Globe aerial imagery dates: February 9, 2016; March 17, 2016; April 18, 2016; April 3, 2020; and January 18, 2022. Retrieved from: <https://evwhs.digitalglobe.com/myDigitalGlobe/login>.

d. U.S. Army Corps of Engineers. Field Visit. 3 December 2024.

e. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army. *Joint Memorandum on NWK-2024-01223*. 25 June 2024.

f. U.S. Geologic Survey. National Hydrography Dataset, 18040012 HUC8. Accessed on 22 November 2024. Retrieved from: <https://www.usgs.gov/national-hydrography/national-hydrography-dataset>

g. U.S. Geologic Survey. Topographic Maps, Amador City, CA 1:24000. 2015, 2018, and 2022. Accessed on 22 November 2024. Retrieved from: <https://ngmdb.usgs.gov/topoview/>.

CESPK-RDC-S

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00707]

h. U.S. Geologic Survey. Topographic Map, Jackson, CA 1:24000. 2015, 2018, and 2022. Accessed on 22 November 2024. Retrieved from: <https://ngmdb.usgs.gov/topoview/>.

10. OTHER SUPPORTING INFORMATION. N/A.

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

[REDACTED]

3 Encls

1. Vicinity Map
2. Aquatic Resources Delineation Map
3. Review Area to TNW Flowpath Map

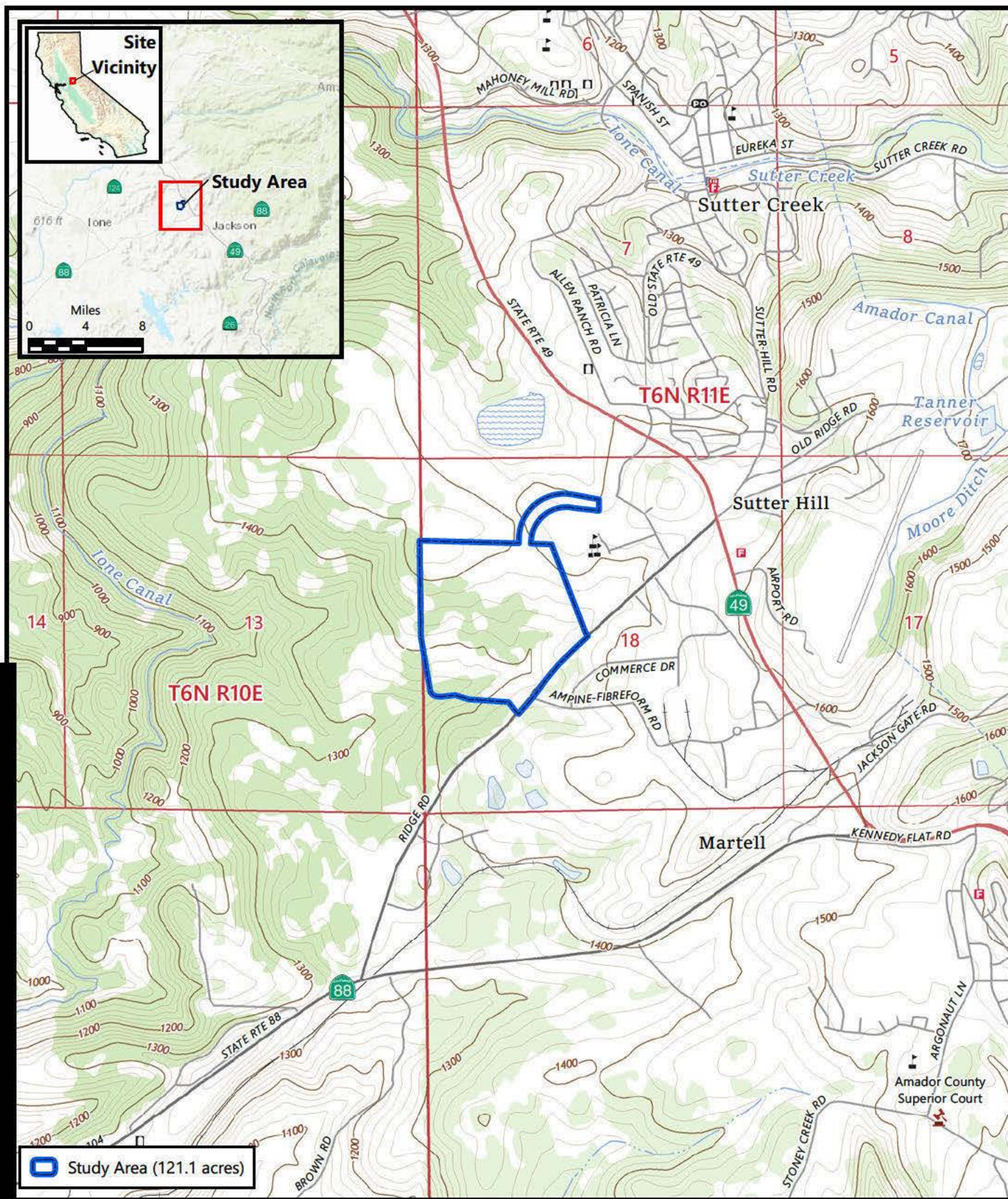
MFR Enclosures

MFR Enclosure 1 – Vicinity Map

MFR Enclosure 2 – Aquatic Resources Delineation Map

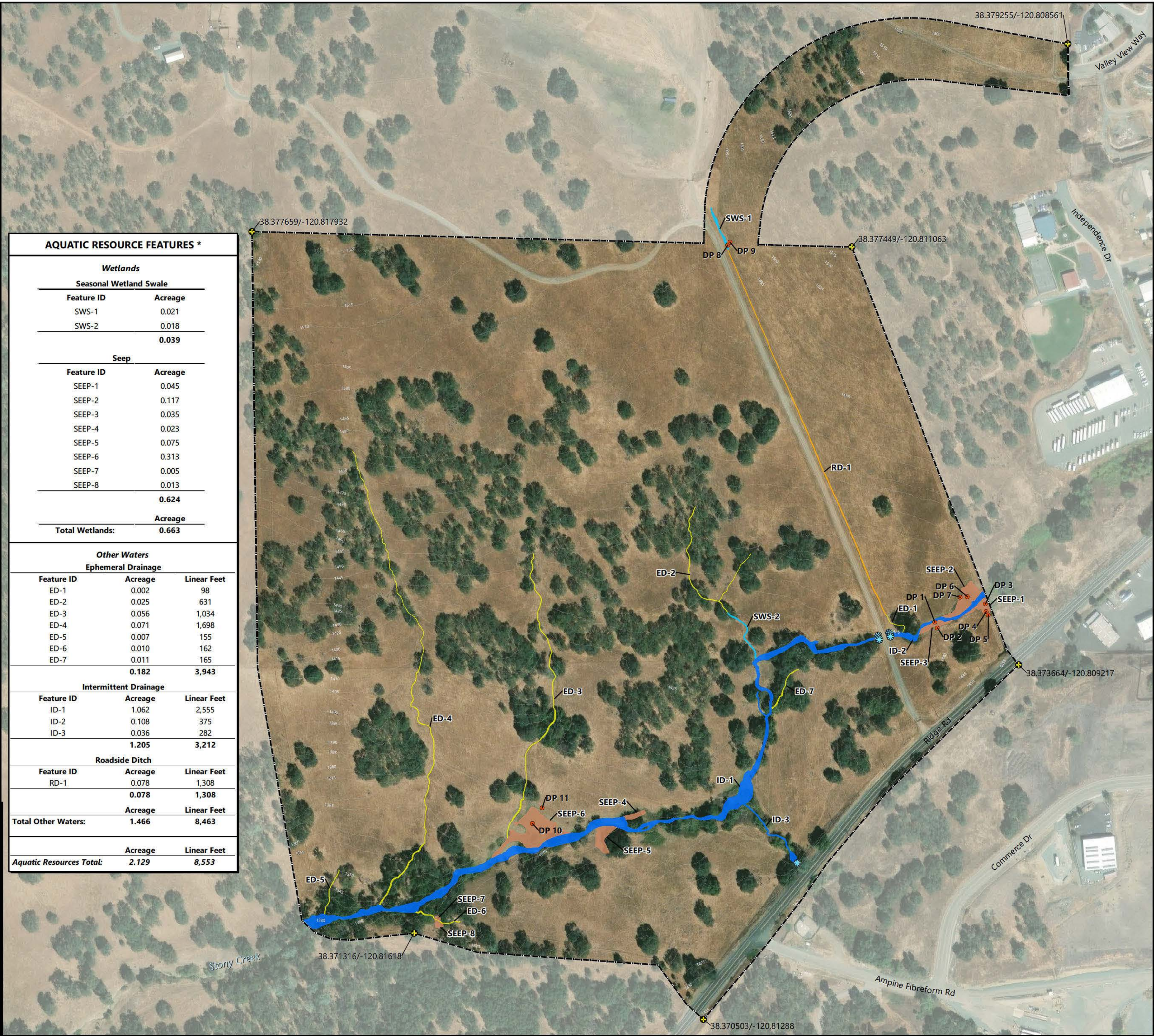
MFR Enclosure 3 – Review Area to TNW Flowpath Map

MFR Enclosure 1 – Vicinity Map



Source: United States Geological Survey, 2021-2022
 "Amador City, CA (2021)" and "Jackson, CA (2022)" 7.5-Minute Topographic Quadrangles
 Section 18, Township 6 North, Range 11 East, MDBM and
 Section 13, Township 6 North, Range 10 East, MDBM
 Latitude (NAD83): 38.374649°, Longitude (NAD83): -120.813914°

MFR Enclosure 2 – Aquatic Resources Delineation Map

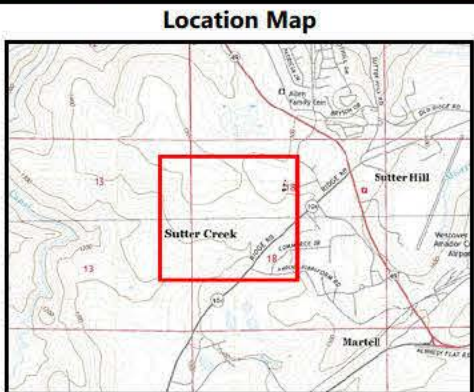
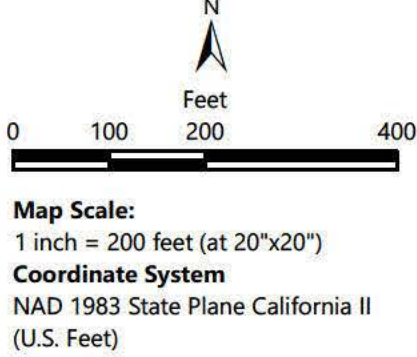


Aquatic Resource Features *		
Wetlands		
Seasonal Wetland Swale		
Feature ID	Acreage	
SWS-1	0.021	
SWS-2	0.018	
	0.039	
Seep		
Feature ID	Acreage	
SEEP-1	0.045	
SEEP-2	0.117	
SEEP-3	0.035	
SEEP-4	0.023	
SEEP-5	0.075	
SEEP-6	0.313	
SEEP-7	0.005	
SEEP-8	0.013	
	0.624	
	Acreage	
Total Wetlands:	0.663	
Other Waters		
Ephemeral Drainage		
Feature ID	Acreage	Linear Feet
ED-1	0.002	98
ED-2	0.025	631
ED-3	0.056	1,034
ED-4	0.071	1,698
ED-5	0.007	155
ED-6	0.010	162
ED-7	0.011	165
	0.182	3,943
Intermittent Drainage		
Feature ID	Acreage	Linear Feet
ID-1	1.062	2,555
ID-2	0.108	375
ID-3	0.036	282
	1.205	3,212
Roadside Ditch		
Feature ID	Acreage	Linear Feet
RD-1	0.078	1,308
	0.078	1,308
	Acreage	Linear Feet
Total Other Waters:	1.466	8,463
	Acreage	Linear Feet
Aquatic Resources Total:	2.129	8,553

Prepared For:

Sources
Aerial: Maxar, 6 September 2023
Boundary: Morton & Pitalo
Topographic Contours: From USGS DEM, 2022

Delineation Performed by:
Map Prepared by:
Date Map Prepared: 2 December 2024
Made in accordance with the
Updated Map and Drawing Standards for the
South Pacific Division Regulatory Program,
as amended on February 10, 2016
* Small summation errors may occur due to rounding



- Study Area (121.1 acres)
- Reference Point
- Data Point
- Culvert
- 5' Contour (NAVD88 U.S. Feet)

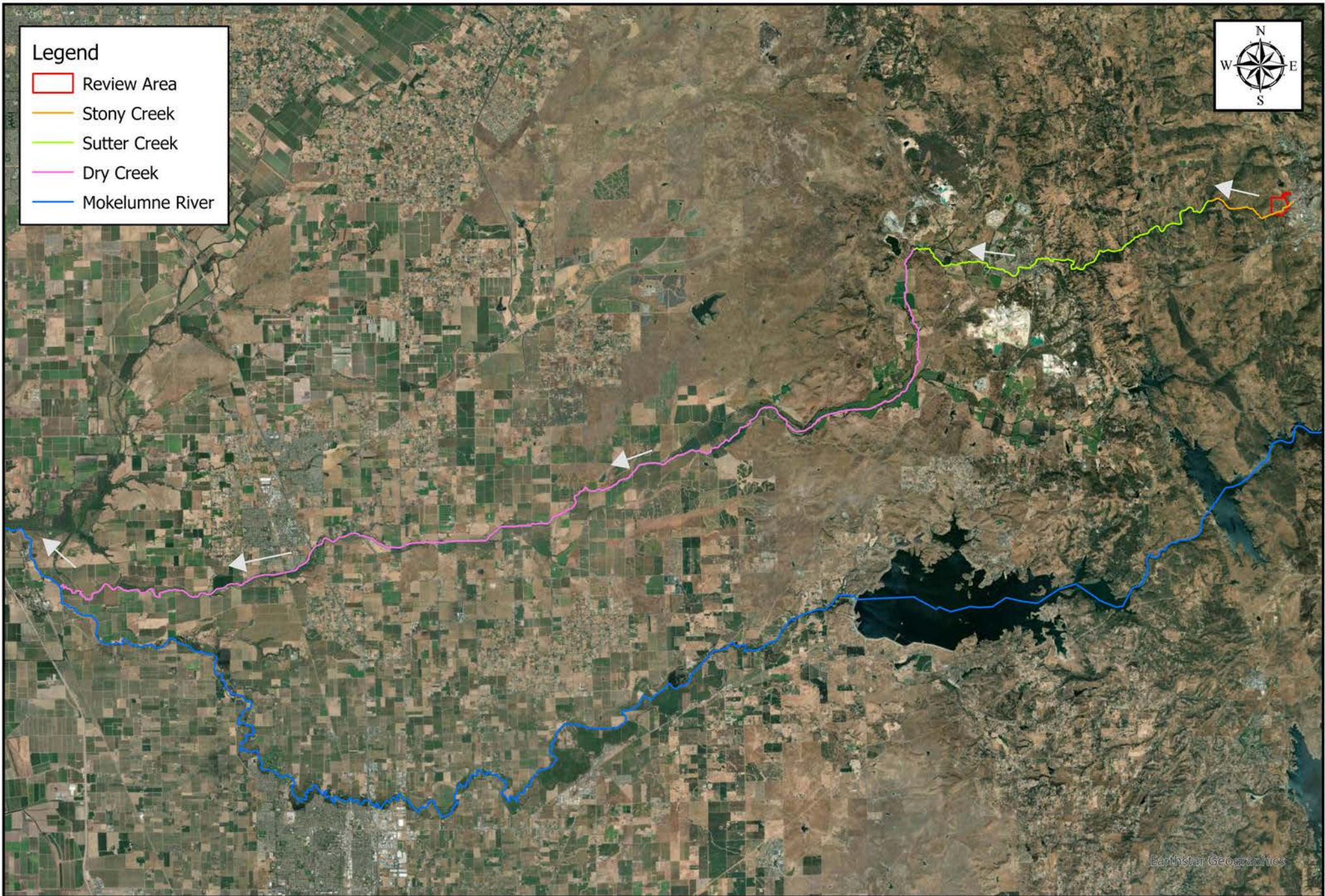
- Aquatic Resources (2.129 acres) *
- Wetlands (0.663 acre)
- Seasonal Wetland Swale (0.039 acre)
 - Seep (0.624 acre)
- Other Waters (1.466 acres)
- Ephemeral Drainage (0.182 acre)
 - Intermittent Drainage (1.205 acres)
 - Roadside Ditch (0.078 acre)

Aquatic Resources Delineation
Sutter Creek, Amador County, California

MFR Enclosure 3 – Review Area to TNW Flowpath Map

Legend

-  Review Area
-  Stony Creek
-  Sutter Creek
-  Dry Creek
-  Mokelumne River



Earthstar Geographics



Sutter Creek Ranch Specific Plan - Phase 1A: Review Area to TNW Flowpath Map


SPK-2024-00707

0 5,000,000 20,000



Feet

Map Center: 121.116265°W 38.282907°N

Map created by: 

Date: 12/11/2024

Coordinate System: NAD 1983 StatePlane California II
FIPS 0402 Feet