



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

CESPK-RDI-U

06 MARCH 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-2011-01263] [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 Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended,

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.

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.

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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- (1) Channel 2, non-jurisdictional under Section 404 of the Clean Water Act.
- (2) Channel 3A, non-jurisdictional under Section 404 of the Clean Water Act.
- (3) Channel 3B, non-jurisdictional under Section 404 of the Clean Water Act.
- (4) Channel 4B, non-jurisdictional under Section 404 of the Clean Water Act.
- (5) Channel 4C, non-jurisdictional under Section 404 of the Clean Water Act.
- (6) Channel 11, non-jurisdictional under Section 404 of the Clean Water Act.
- (7) Channel 17, non-jurisdictional under Section 404 of the Clean Water Act.
- (8) Channel 22, non-jurisdictional under Section 404 of the Clean Water Act.
- (9) Channel 30, non-jurisdictional under Section 404 of the Clean Water Act.
- (10) Crowley Creek A, non-jurisdictional under Section 404 of the Clean Water Act.
- (11) Crowley Creek D, non-jurisdictional under Section 404 of the Clean Water Act.
- (12) Crowley Creek E, non-jurisdictional under Section 404 of the Clean Water Act.
- (13) Pole Creek, non-jurisdictional under Section 404 of the Clean Water Act.
- (14) Thacker Creek, non-jurisdictional under Section 404 of the Clean Water Act.
- (15) Wetland 1, non-jurisdictional under Section 404 of the Clean Water Act.
- (16) Wetland 2, non-jurisdictional under Section 404 of the Clean Water Act.
- (17) Wetland 3, non-jurisdictional under Section 404 of the Clean Water Act.
- (18) Wetland 20, non-jurisdictional under Section 404 of the Clean Water Act.
- (19) Wetland 21, non-jurisdictional under Section 404 of the Clean Water Act.
- (20) Wetland 22, non-jurisdictional under Section 404 of the Clean Water Act.

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- (21) 22/23 PEM1, non-jurisdictional under Section 404 of the Clean Water Act.
- (22) 22/23 R4SB, non-jurisdictional under Section 404 of the Clean Water Act.
- (23) WM 23 PEM1C, non-jurisdictional under Section 404 of the Clean Water Act.
- (24) WM 23 R4SB, non-jurisdictional under Section 404 of the Clean Water Act.
- (25) 2011 Wetland 1, non-jurisdictional under Section 404 of the Clean Water Act.
- (26) 2011 Wetland 2, non-jurisdictional under Section 404 of the Clean Water 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 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The approximately 18,082.7-acre review area is located at Thacker Pass, in proximity to the Double H Mountains, the Montana Mountain Range, and is flanked by the King’s River and Quinn River Valleys, Latitude 41.707373°, Longitude -118.060169°, Humboldt County, Nevada (AJD MFR Enclosure 1). The review area lies within the USGS Upper Quinn subbasin (Hydrologic Unit Code [HUC] 8 #16040201) hydrographic unit. The Quinn River and its tributary, the Kings River, are the principal rivers in this subbasin. Within this subbasin, the review area is within the Crowley Creek-Quinn River watershed (HUC10 #1604020106) and the Kings River watershed (HUC 10 #1604020110), which constitute the lower portion of the Upper Quinn subbasin. Approximately 12 percent of the current Survey Area drains west toward the Kings River, and the remaining 88 percent of the Survey Area drains towards the Quinn River.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The aquatic resources within the review area are not connected to a TNW, interstate water, or the territorial seas.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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.

- 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.

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.

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.

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

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).

A total of 0.72-acre (29,803.45 linear feet) of relatively permanent tributaries are present within the review area (AJD MFR Enclosure 2). Channel 3B (0.09-acre/7,464.35 linear feet), Channel 17 (0.22-acre/9,705.18 linear feet), Channel 30 (0.21-acre, 6,979.34 linear feet), Crowley Creek A (0.08-acre/1,795.02 linear feet), and Thatcher Creek (0.12-acre/3,859.56 linear feet) are relatively permanent tributaries. Channel 3B, Channel 17, and Channel 30 terminate within the review area. This is evidenced by aerial imagery and data from the National Hydrography Dataset (AJD MFR Enclosure 3). Thacker Creek flows south and then west out of the review area. Aerial imagery, NWI, and NHD show that Thacker Creek terminates approximately 1 mile from Kings River, and Crowley Creek terminates approximately 1.2 miles and 2.7 miles from the Quinn River (AJD MFR Enclosure 2). Thacker Creek and its tributaries and Crowley Creek and its tributaries do not have a connection to TNW, interstate water or territorial sea, and all wetlands within the review area that abut these features similarly do not connect to a TNW, interstates water or territorial sea. As such, these features are non-jurisdictional under Section 404 of the Clean Water Act.

A total of 11.27-acre (91,758.38 linear feet) of non-relatively permanent tributaries are present within the review area. Channel 2 (0.06-acre/2,408.68 linear feet), Channel 3A (0.6-acre/1,091.63 linear feet), Channel 4B (0.88-acre/15,331.21 linear feet), Channel 4C (0.65-acre/16,539.37 linear feet), Channel 11 (0.05 acre/2,946.53 linear feet), Channel 22 (0.43-acre/9,375.28 linear feet), Crowley Creek D (5.01-acre/15,593.24 linear feet), Crowley Creek E (3.39-acre/12,319.88 linear feet), and Pole Creek (0.74-acre/16,152.56-acre) are non-relatively permanent tributaries that only flow in response to precipitation events. These features therefore do not meet one or more

⁸ 88 FR 3004 (January 18, 2023)

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categories of waters of the United States under the 2023 Rule as amended, and as such are non-jurisdictional under Section 404 of the Clean Water Act.

A total of 5.27-acres of non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water are present within the review area. Wetland 1 (0.13-acre), Wetland 2 (0.12-acre), Wetland 3 (0.18-acre), Wetland 20 (0.10-acre), Wetland 21 (3.24-acre), Wetland 22 (0.33-acre), 22/23 PEM1 (0.06-acre), 22/23 R4SB (0.54-acre), WM 23 PEM1C (0.01-acre), WM 23 R4SB (0.36-acre), 2011 Wetland 1 (0.18-acre), and 2011 Wetland 2 (0.02-acre) are non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water. Wetland 1 and Wetland 2 abut Channel 30, a tributary of Thacker Creek. Wetland 3 abuts Channel 3 B, a tributary of Thacker Creek. Wetland 20 abuts Channel 4C, a tributary of Crowley Creek. Wetland 21 abuts Pole Creek. Thatcher Creek and its tributaries are isolated, and Crowley Creek and its tributaries are isolated. Therefore, wetlands that abut these features do not have a continuous surface connection to a jurisdictional water. Wetland 22, 22/23 PEM1, 22/23 R4SB, 2011 Wetland 1, and 2011 Wetland 2 do not abut any features within the review area and therefore do not have a connection to a TNW, interstate water or territorial sea and are non-jurisdictional under Section 404 of the Clean Water Act.

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. Approved Jurisdictional Determinations, dated October 11, 2012, July 28, 2017, and February 08, 2019.

b. Google Earth. Aerial imagery, 2000-2023. Accessed March 06, 2025.

c. Aquatic Resources Reverification Report-Thacker Pass Project. Prepared by Cedar Creek Associates, Inc, dated November 2023. The report was prepared in accordance with the U.S Army Corps of Engineers 1987 Wetland Delineation Manual and the USACE Regional Supplement for the Arid West Region.

d. National Hydrography Data Set, United States Army Corps of Engineers National Regulatory Viewer. Retrieved May 07, 2024.

10. OTHER SUPPORTING INFORMATION. The review area was previously subject to three approved jurisdictional determinations, issued on October 11, 2012, July 28, 2017, and February 08, 2019. The Corps determined that the aquatic resources within the review area were intrastate, isolated aquatic resources with no apparent interstate or foreign commerce connection and where therefore not subject to jurisdiction under Section 404 of the Clean Water Act.

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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 ENCL

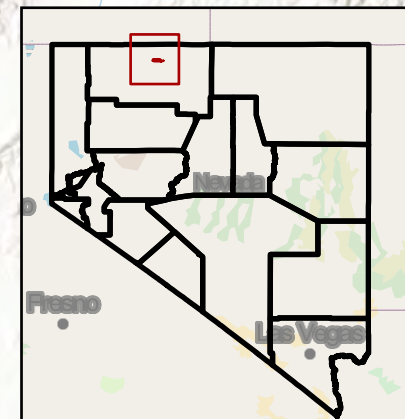
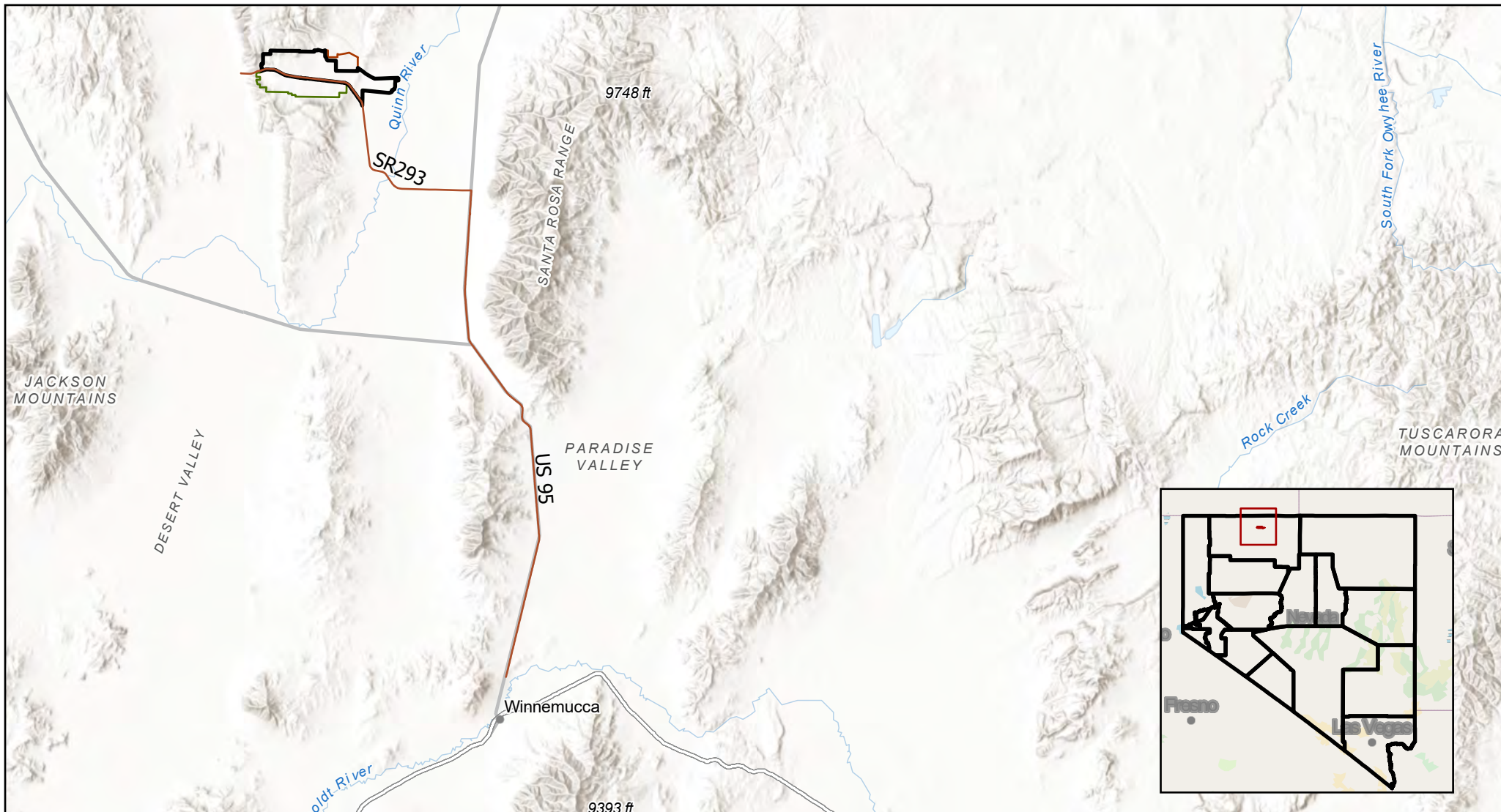
Enclosure 1: Location Map



Enclosure 2: Aquatic Resources Map

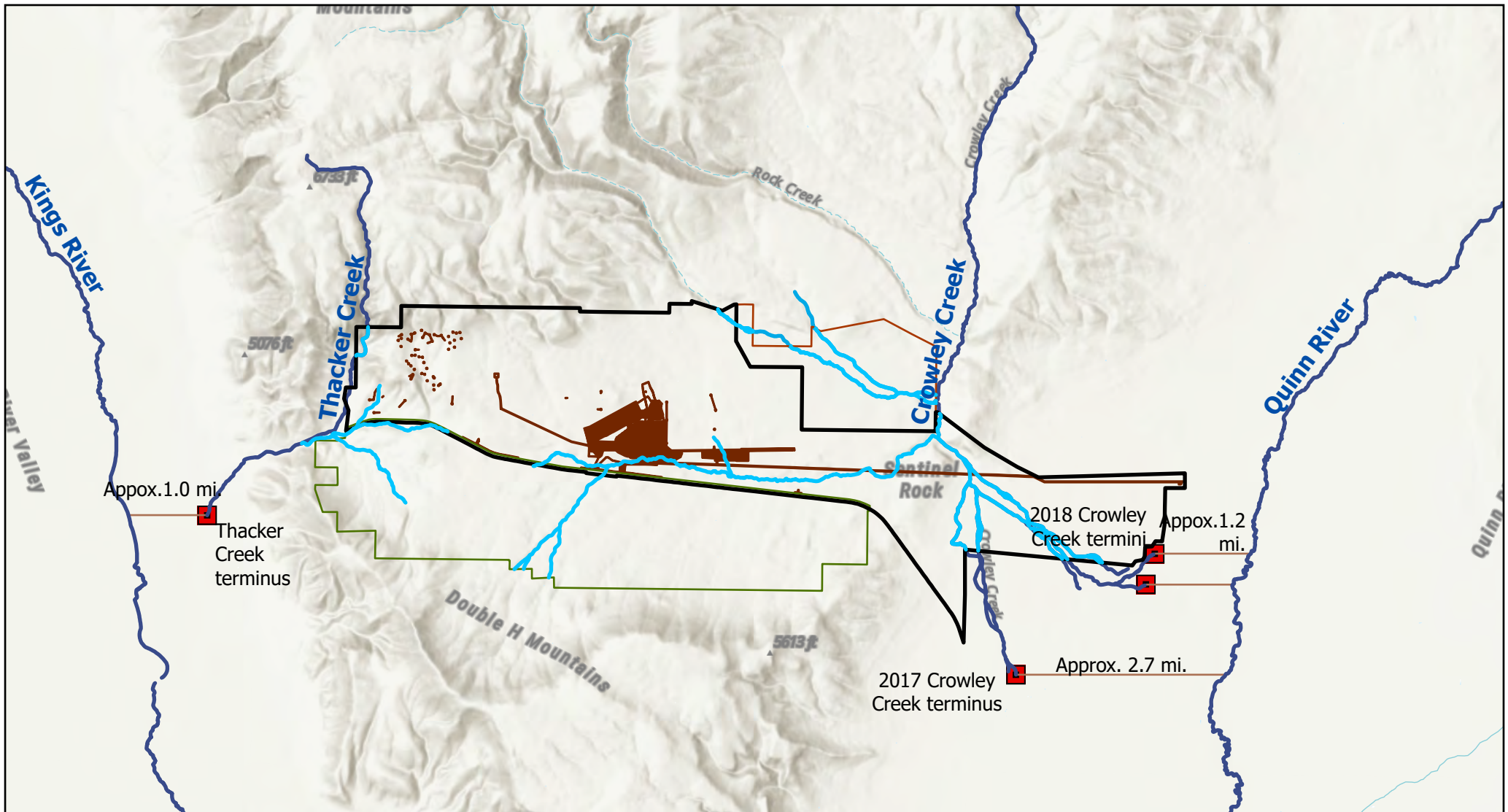
Enclosure 3: Flow Path Map

ASHLEY BERNARD

REGULATORY PROJECT MANAGER



	Legend <div style="display: flex; justify-content: space-around;"> <div> — Road Access Mine Plan of Operations </div> <div> North Exploration Area South Exploration Area </div> </div>		Survey Area Location
	Coordinate System: NAD 1983 UTM Zone 11N Feet <div style="display: flex; align-items: center;"> <div style="flex-grow: 1; border-bottom: 1px solid black; position: relative;"> <div style="position: absolute; left: 0; bottom: 0; right: 0; border-top: 1px solid black;"></div> </div> <div style="margin-left: 5px;">0 5 10 20 Mi</div> </div>		Figure 1



Legend

- | | | |
|-------------------------|-------------------------|-------------------|
| Mine Plan of Operations | Surface Dist. 2023 | Distance to River |
| North Exploration Area | Major Streams | Stream End Point |
| South Exploration Area | Delineated Streams 2018 | |

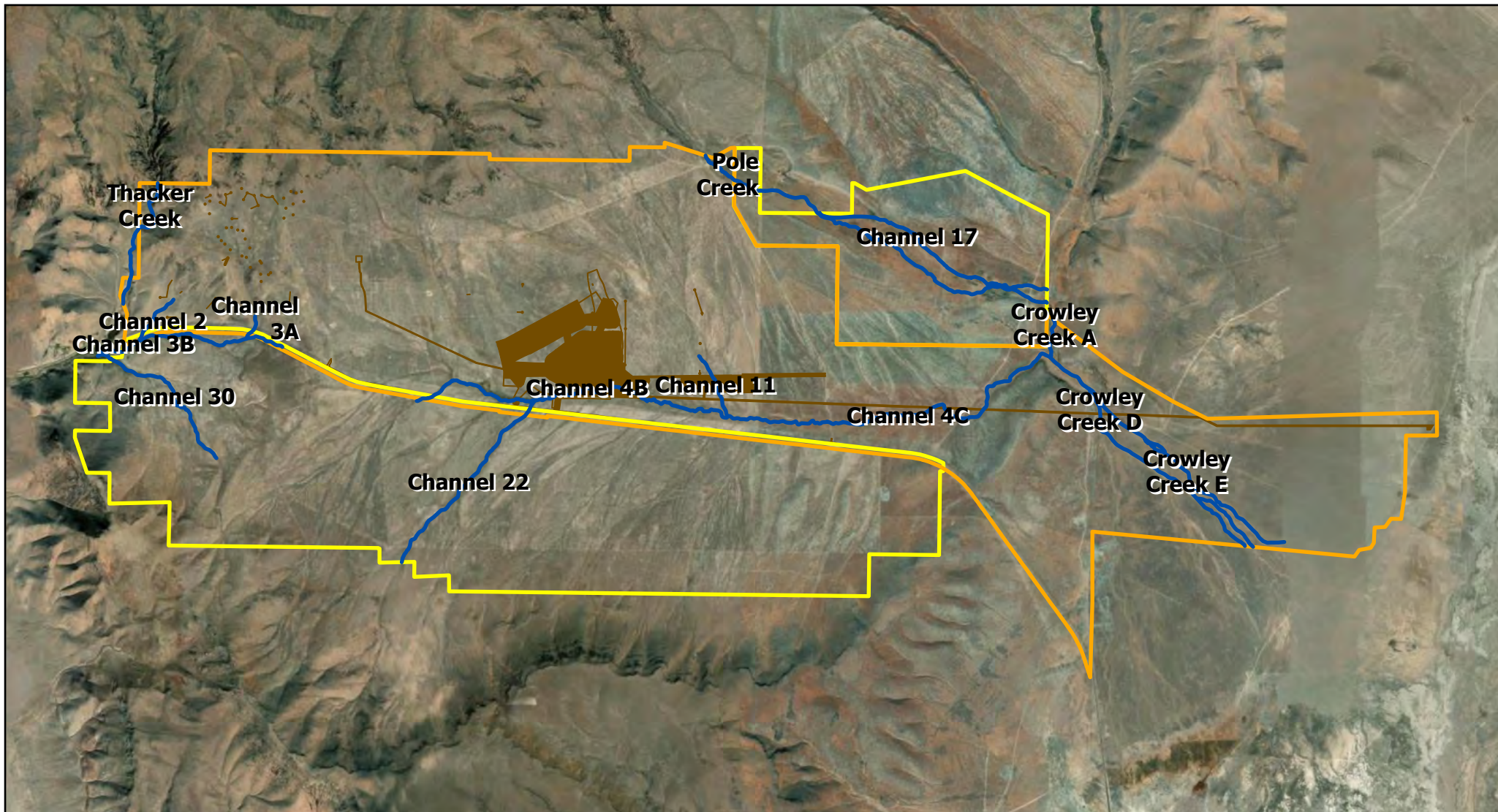
Coordinate System: NAD 1983 UTM Zone 11N Feet

0 0.75 1.5 3 Mi



2023 Survey Area and
Verified Isolated Channels

Figure 2

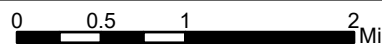


Legend

- 2023 Channels
- North Exploration Area
- South Exploration Area
- Mine Plan of Operations
- Surface Disturbance 2023

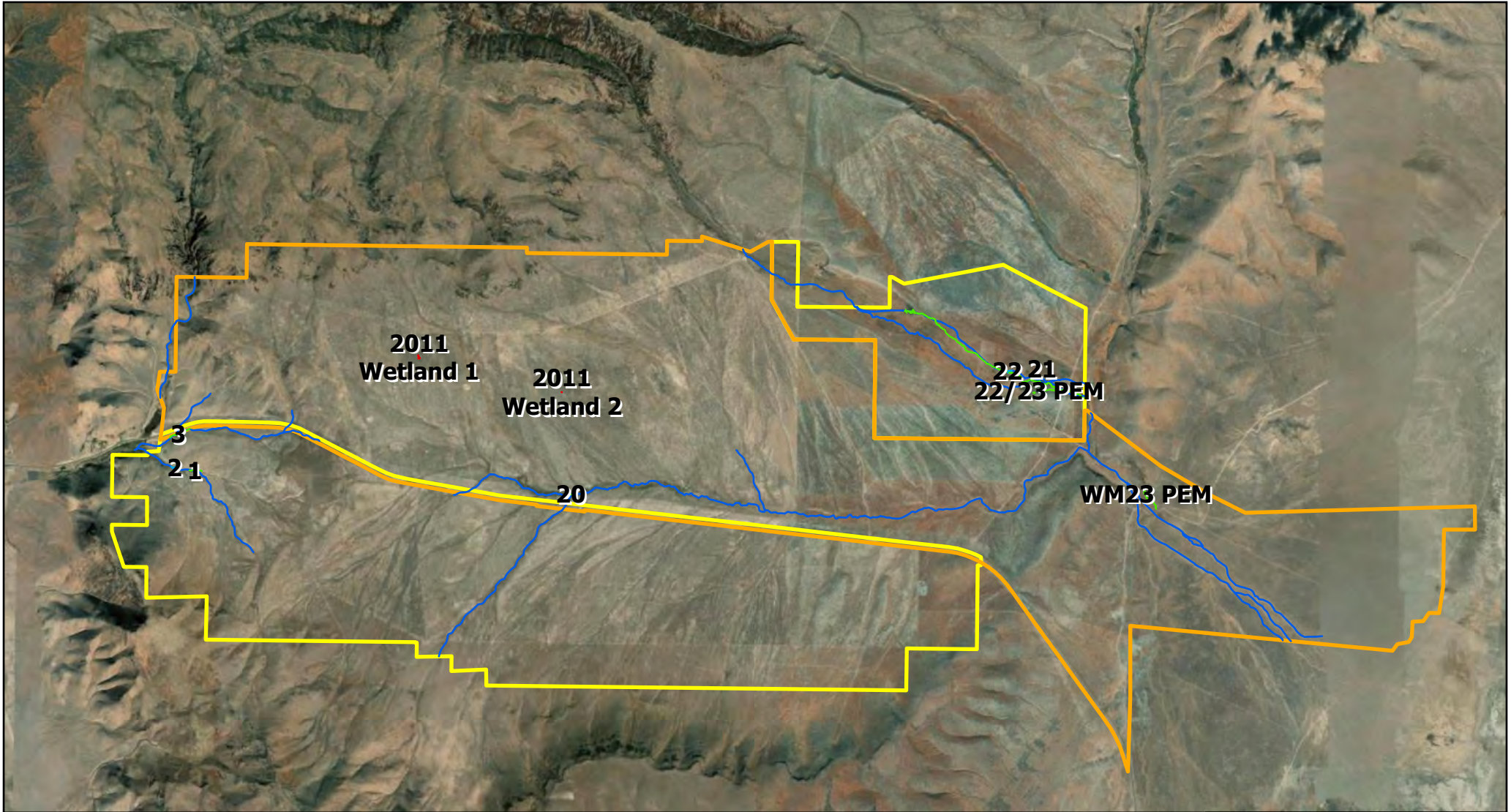




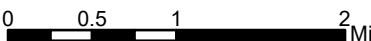
Coordinate System: NAD 1983 UTM Zone 11N Feet



Channel Reverified in
2023

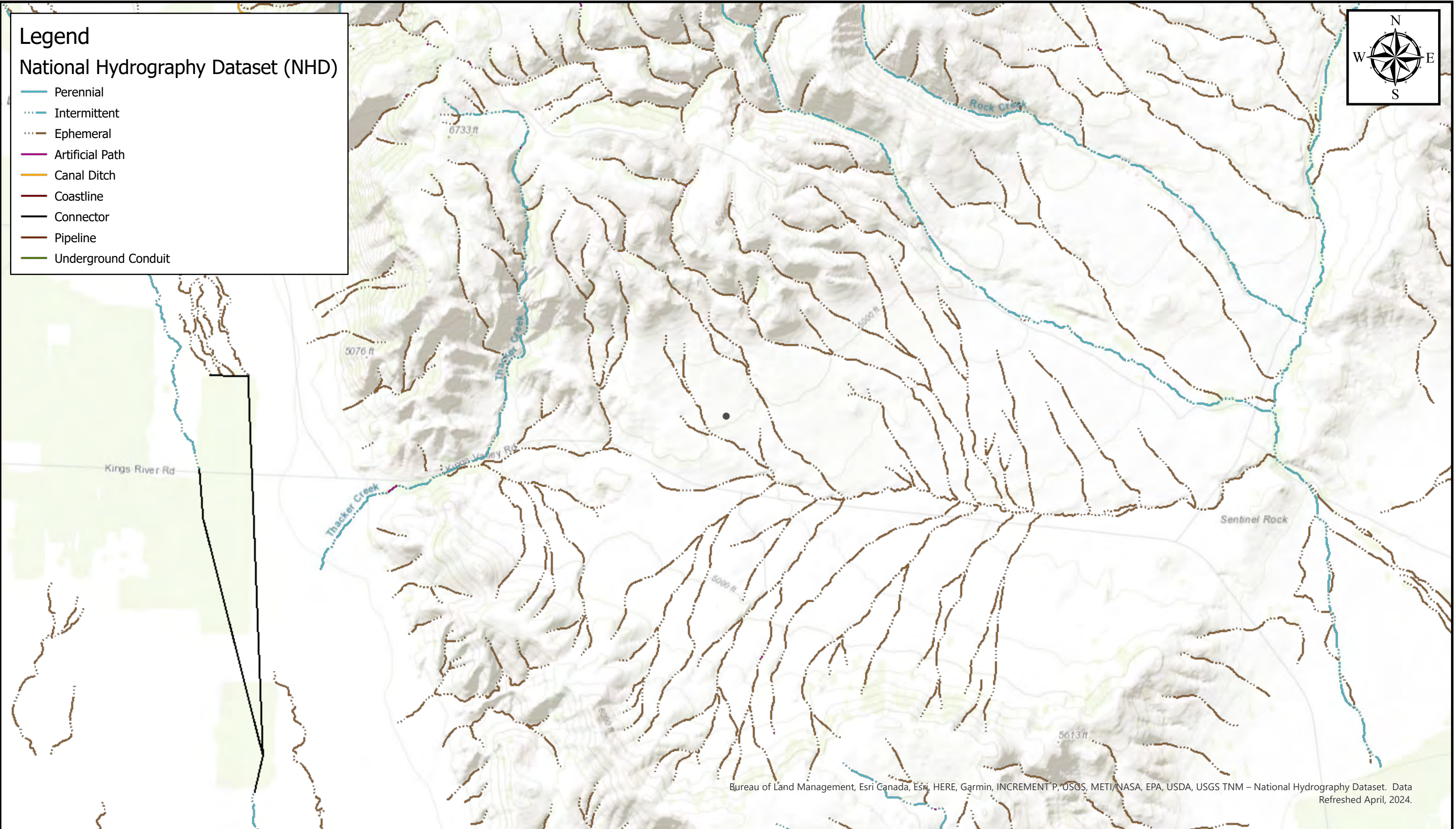
Figure



	<p>Legend</p> <table border="0"> <tr> <td>■ Riverine</td> <td> Mine Plan of Operations</td> </tr> <tr> <td>■ Temporary</td> <td> North Exploration Area</td> </tr> <tr> <td>■ Wet Meadow</td> <td> South Exploration Area</td> </tr> <tr> <td>— 2023 Channels</td> <td></td> </tr> </table>	■ Riverine	 Mine Plan of Operations	■ Temporary	 North Exploration Area	■ Wet Meadow	 South Exploration Area	— 2023 Channels			<p>Wetlands Reverified in 2023 - Overview</p>
	■ Riverine	 Mine Plan of Operations									
■ Temporary	 North Exploration Area										
■ Wet Meadow	 South Exploration Area										
— 2023 Channels											
<p>Coordinate System: NAD 1983 UTM Zone 11N Feet</p>		<p>Figure F-0</p>									

Legend
National Hydrography Dataset (NHD)

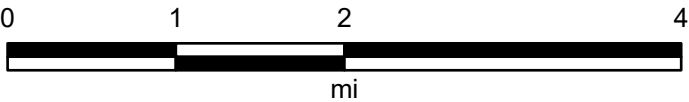
- Perennial
- Intermittent
- Ephemeral
- Artificial Path
- Canal Ditch
- Coastline
- Connector
- Pipeline
- Underground Conduit



Bureau of Land Management, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA, USGS TNM – National Hydrography Dataset. Data Refreshed April, 2024.



SPK-2011-01263



Map Center: 118.060169°W 41.707373°N

Map Created by: Sarah West
Date: 5/7/2024

Coordinate S

AJD MFR Enclosure 3