



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

CESPK-RDC-D

20 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-2024-00727

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.² 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.³

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

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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a. Provided below is a list of each individual feature within the review area as well as the size and jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

(1) Depressional Ponding 030 (Depnd030), 1.037 acres, Non-Jurisdictional

(2) Depnd031, 0.784 acre, Non-Jurisdictional

(3) Depnd032, 0.579 acre, Non-Jurisdictional

(4) Depnd033, 0.143 acre, Non-Jurisdictional

(5) Seasonal Wetland 1 (SW-1), 0.021 acre, Non-Jurisdictional

(6) Basin 2, 0.022 acre, Non-Jurisdictional

(7) Basin 3, 0.083 acre, Non-Jurisdictional

(8) Basin 5, 0.103 acre, Non-Jurisdictional

(9) Basin 7, 0.159 acre, Non-Jurisdictional

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)

d. *Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of Continuous Surface Connection" Under the Definitions of "Waters of the United States" Under the Clean Water Act* (Memorandum to the Field) (March 12, 2025)

3. REVIEW AREA. The review area is approximately 234 acres in size and encompasses the former 230-acre Roddy Ranch Golf Course (Enclosure 1). The site is located at property address 1 Tour Way, Latitude 37.92580°, Longitude -121.78925°, City of Antioch, CA 94531. The property is characterized by annual grasslands and

ruderal vegetation with sparse oak and ornamental trees. Around the periphery of and within the abandoned golf course and irrigation ponds, seasonal and perennial standing water supports hydrophytic vegetation.

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 do not have a connection to a TNW; however, the geographically nearest TNW to the review area is Dutch Slough.⁵

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Although there is no connection, an artificial irrigation ditch is located approximately 0.18 mile north of the aquatic resources within the review area, which is identified as freshwater emergent wetland in the National Wetland Inventory (NWI) (Enclosure 2), that flows northeast into Sand Creek, a relatively permanent tributary of Marsh Creek. Marsh Creek is another relatively permanent tributary that empties into Dutch Slough near the Big Break shoreline.

Deer Creek, identified in the NWI as an intermittent stream, is also a tributary of Marsh Creek and flows approximately 0.8 mile south of the review area boundary. However, aquatic resources onsite are hydrologically separated from Deer Creek by a pronounced ridgeline.

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

7. SECTION 404 JURISDICTIONAL WATERS: There are no aquatic resources within the review area that were found to meet the definition of waters of the United States in

⁵ 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.

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.

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accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. There are no aquatic resources or other features excluded from 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).

b. The following 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.

Depnd030, 031, and 032 are intrastate ponds that were constructed for irrigation and aesthetic purposes by the former golf course. These ponds are concrete-edged and were previously plastic-lined. Depnd030 and 031 contain water year-round while 032 is dry by mid-spring. The ponds exhibit an Ordinary High Water Mark and do not meet the Corps' definition of a wetland, supporting their classification as ponds. However, the basins are entirely self-contained with no visible features serving as a continuous surface connection to Sand Creek, which is located over a mile away. Therefore, these ponds do not meet the definition of a Water of the U.S. under the 2023 Rule as Amended.

Basins 2, 3, 5, and 7, as well as Depnd033, are manmade water quality basins that exhibit wetland features meeting the Corps' three-part test. Of these, Depnd033 and Basins 2 and 3 are seasonal, while Basins 5 and 7 are permanent wetlands. SW-1 is a seasonal wetland feature that occurs at a topographic depression between Deer Valley Road and Tour Way, likely formed from grading of the soil to construct the roads. Of these wetland features, none appear on the NWI and none exhibit a "continuous surface connection (CSC) to a requisite covered water making it difficult to determine where the water ends and wetland begins", as required by the Memorandum to the Field between the Corps and EPA for a wetland to meet the criteria for a paragraph (a)(4) adjacent wetland. Basins 5 and 7 have drainage features visible on LiDAR imagery (Enclosure 3) that extend northeast offsite, however these features do not reach the irrigation ditch to the North, and even if they did, the Memorandum to the Field is clear that such features do not constitute a CSC. Therefore, the wetlands do not meet the definition of a Water of the U.S. under the 2023 Rule as Amended.

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.

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a. U.S. Fish and Wildlife Service. National Wetlands Inventory Wetlands Mapper. Latitude 37.92853°, Longitude -121.79384°. Accessed March 17, 2025.

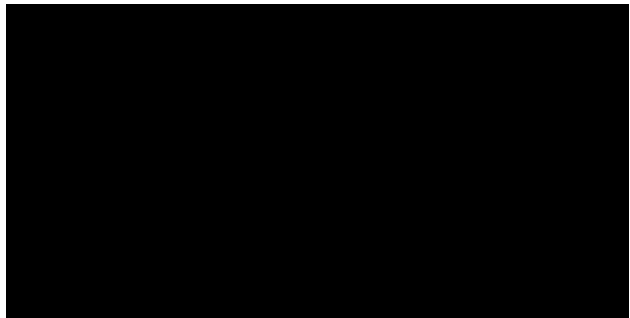
b. U.S. Geologic Survey 3D Elevation Program. January 02, 2025. Latitude 37.92853°, Longitude -121.79384°. Accessed March 17, 2025.

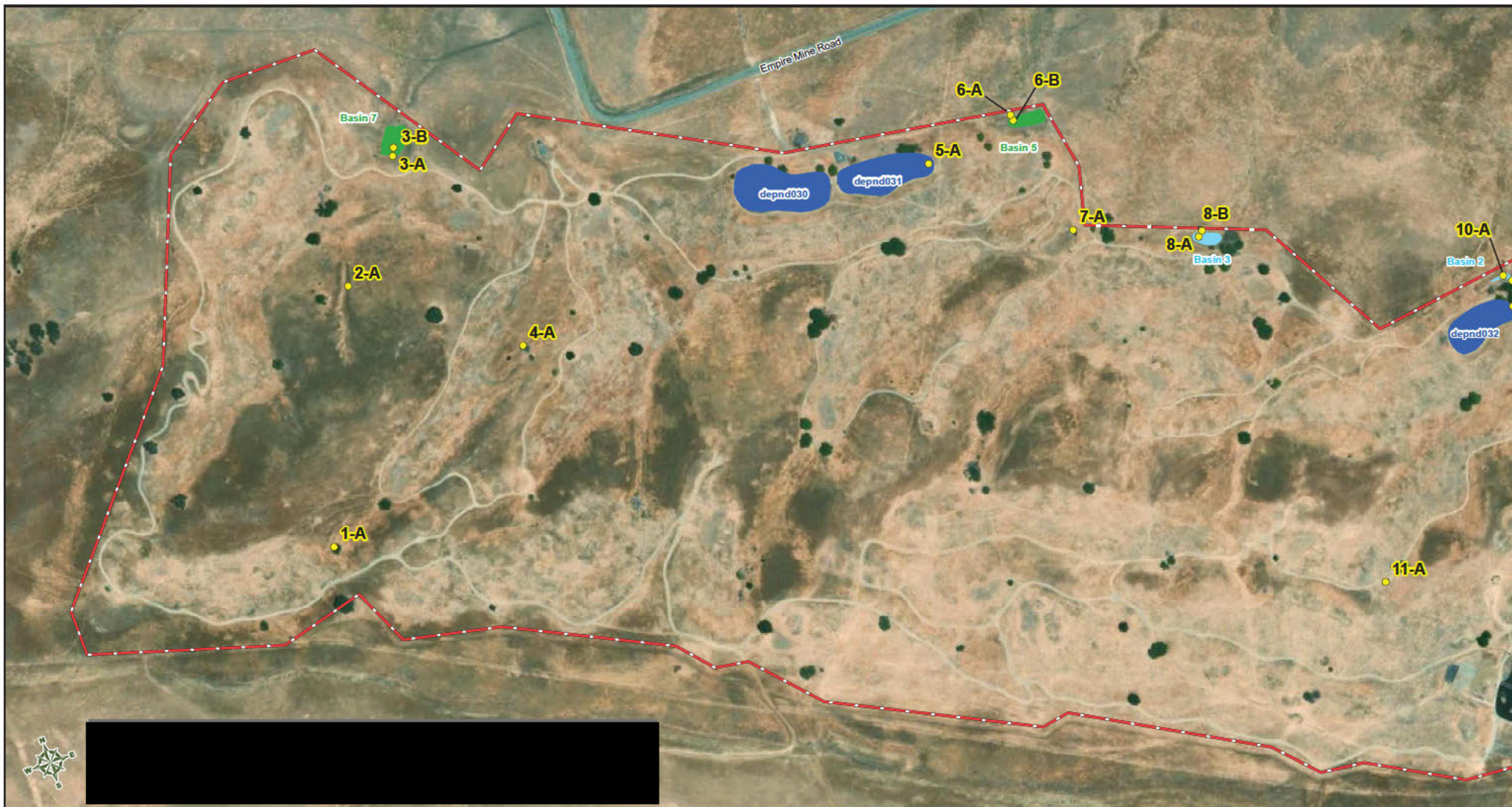
10. OTHER SUPPORTING INFORMATION. N/A

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.

3 Encls

1. Delineation Map
2. NWI Map
3. LiDAR Imagery





September 2024

Legend

| | |
|----------------------|--|
| Study Area Boundary | Regulated by State and covered by HCP/NCCP (0.532 acres) |
| Data Point Locations | Seasonal Wetland (Basin 2, Basin 3, Pond 33, SW-1) (0.269 acres in study area) |
| | Permanent Wetland (Basin 5, Basin 7) (0.263 acres) |
| | Non-Regulated Features |
| | Irrigation Ponds (plastic-lined with vertical concrete edges) |

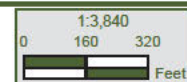
All aquatic features on site (except for SW-1) were constructed during golf course construction to serve as irrigation ponds and water quality basins. The seasonal wetland at the intersection of Deer Valley Way and Tour Way is shown in its entirety for context.

Sources: 2020 Aerial Imagery Database

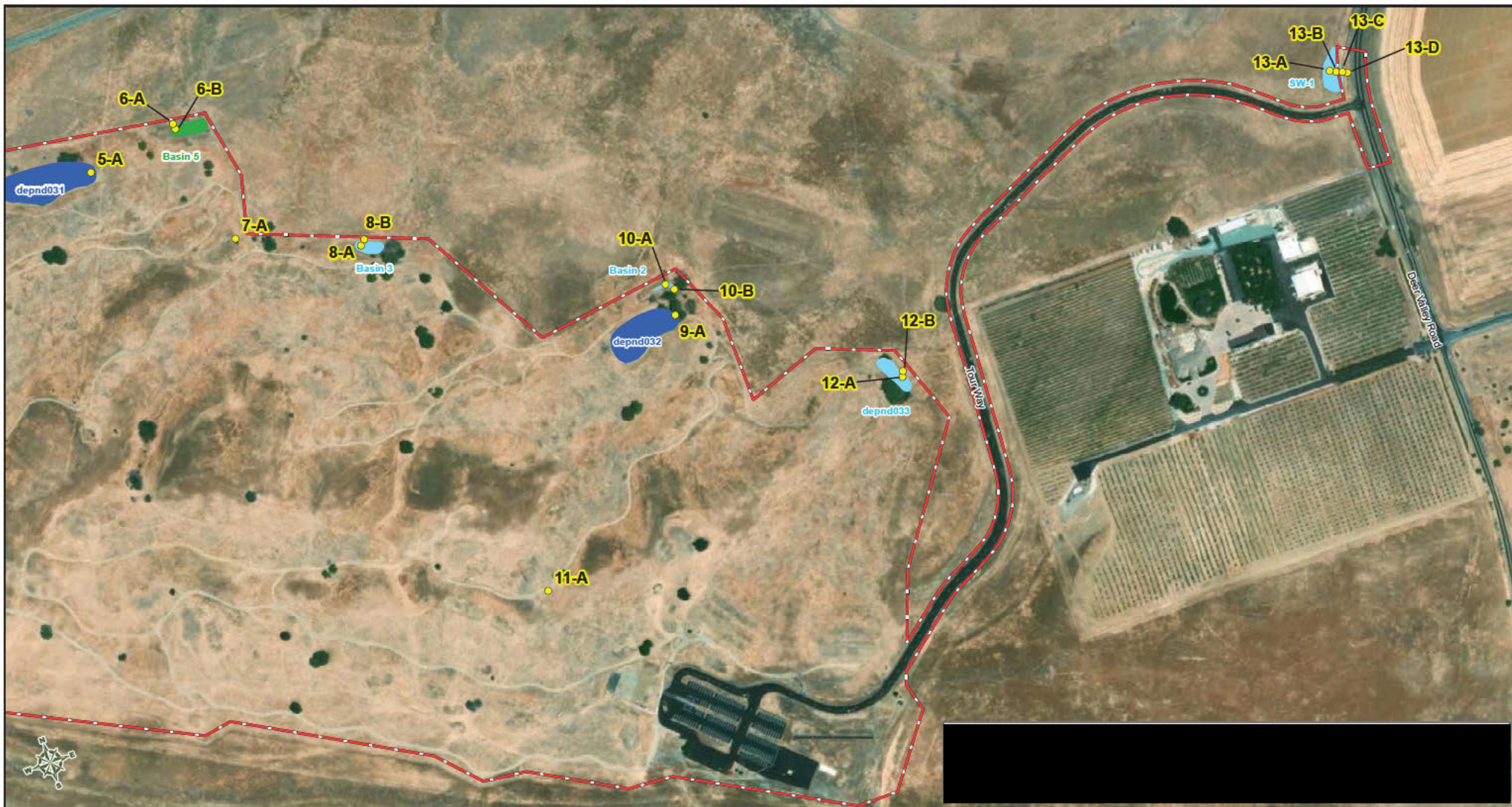
Figure 6 (Sheet 1 of 2)

Regulated Aquatic Resources in the Study Area

Former Roddy Ranch Golf Course Habitat Restoration and Public Access Project



Contra Costa County, California



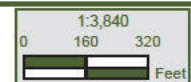
September 2024

| Legend | |
|----------------------|--|
| Study Area Boundary | Regulated by State and covered by HCP/NCCP (0.532 acres) |
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All aquatic features on site (except for SW-1) were constructed during golf course construction to serve as irrigation ponds and water quality basins. The seasonal wetland at the intersection of Deer Valley Way and Tour Way is shown in its entirety for context.

Source: 2020 Aerial Imagery Database

Figure 6 (Sheet 2 of 2)
Regulated Aquatic Resources in the Study Area
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Contra Costa County, California