



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

CESPK-RDI-N

22 APRIL 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-2025-00024].

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. The review area is comprised of 32 streams and one playa with Ordinary High-Water Marks (OHWM) that flow into a dry lakebed that has no connection to a TNW, interstate water, or the territorial seas and as such are not subject to Section 10 or Section 404 jurisdiction.

Aquatic Resource Name	Size (linear feet)	Cowardin Code	Jurisdiction
S-1	803.91	R6	None
S-2	12,819.48	R6	None
S-3	144.21	R6	None
S-4	4,787.24	R6	None
S-5	384.94	R6	None
S-6	321.38	R6	None
S-7	5,532.02	R6	None
S-8	1,398.63	R6	None
S-9	2,863.95	R6	None
S-10	319.86	R6	None
S-11	696.56	R6	None
S-12	783.34	R6	None
S-13	2,101.22	R6	None
S-14	604.66	R6	None
S-15	506.11	R6	None
S-16	286.5	R6	None
S-17	297.64	R6	None
S-18	219.12	R6	None
S-19	208.46	R6	None
S-20	308.28	R6	None
S-21	166.45	R6	None
S-22	116.81	R6	None
S-23	214.65	R6	None
S-24	187.63	R6	None
S-25	357.6	R6	None
S-26	3,186.86	R6	None
S-27	319.95	R6	None
S-28	1,403.88	R6	None
S-29	3,206.62	R6	None
S-30	2,733.85	R6	None
S-31	3,868.83	R6	None
S-32	2,148.37	R6	None
Playa Area 1	0.096 acres	R6	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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The approximately 2,682-acre review area is located within the Lower Illipah Creek HUC10 watershed, south of U.S. Highway 50 and approximately 15 miles west of Ely, Nevada. The approximately center of the review area is located at Latitude: 39.264179, and Longitude: -115.176417, White Pine County, Nevada. The review area does not overlap with previous jurisdictional determinations.



Figure 1. Review Area Location

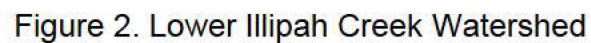
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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The review area is entirely located within an endorheic basin that does not contain an (a)(1) water. The nearest (a)(1) water would be approximately 60 miles east of the review area to unidentified interstate waters that would cross the Nevada-Utah state line. Aquatic resources have no hydrologic connection to those waters or any (a)(1) water.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Aquatic resources in the review area generally flow east to west and ultimately collected in Jake's Lake, a dry lakebed, where water will either evaporate and/or drain into the ground. Jake's Lake has no downstream connectivity to any (a)(1) water.

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⁵ 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

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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 10.⁶ 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.

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

"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.

⁶ 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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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).

(i) S-1 through S-32 are intrastate streams with OHWMs that are not tributaries of (a)(1) or (a)(2) waters and as such are not jurisdictional.

(ii) Playa Area 1 is a playa with an OHWM that is not a tributary of (a)(1) or (a)(2) waters and is not a Lake/Pond with a continuous surface connection to a (a)(1) through (a)(3) water and as such is not 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. Office evaluation conducted on 10 April 2025 utilizing the following information:

b. *“Aquatic Resources Delineation Report – Pantheon Solar”* prepared by Phoenix Biological Consulting dated 15 November 2024.

c. USGS 3D Elevation Program Bare Earth DEM, accessed on 10 April 2025

d. USGS National Hydrography Dataset Plus High Resolution for Hydrologic Unit 4 – 1606 accessed on 10 April 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.

⁷ 88 FR 3004 (January 18, 2023)



EXHIBIT 10-1: AQUATIC RESOURCES

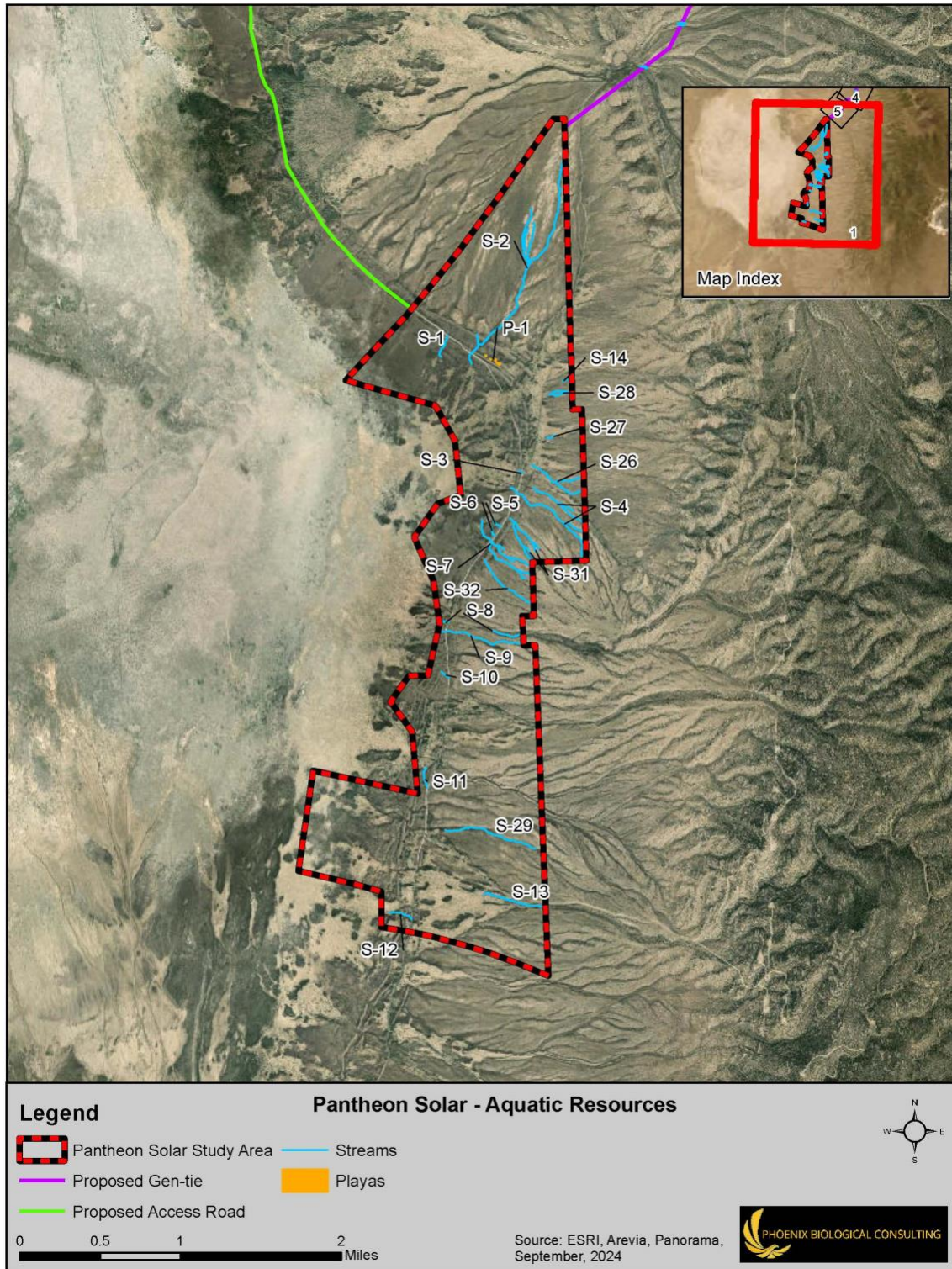


EXHIBIT 10-2: AQUATIC RESOURCES



EXHIBIT 10-3: AQUATIC RESOURCES

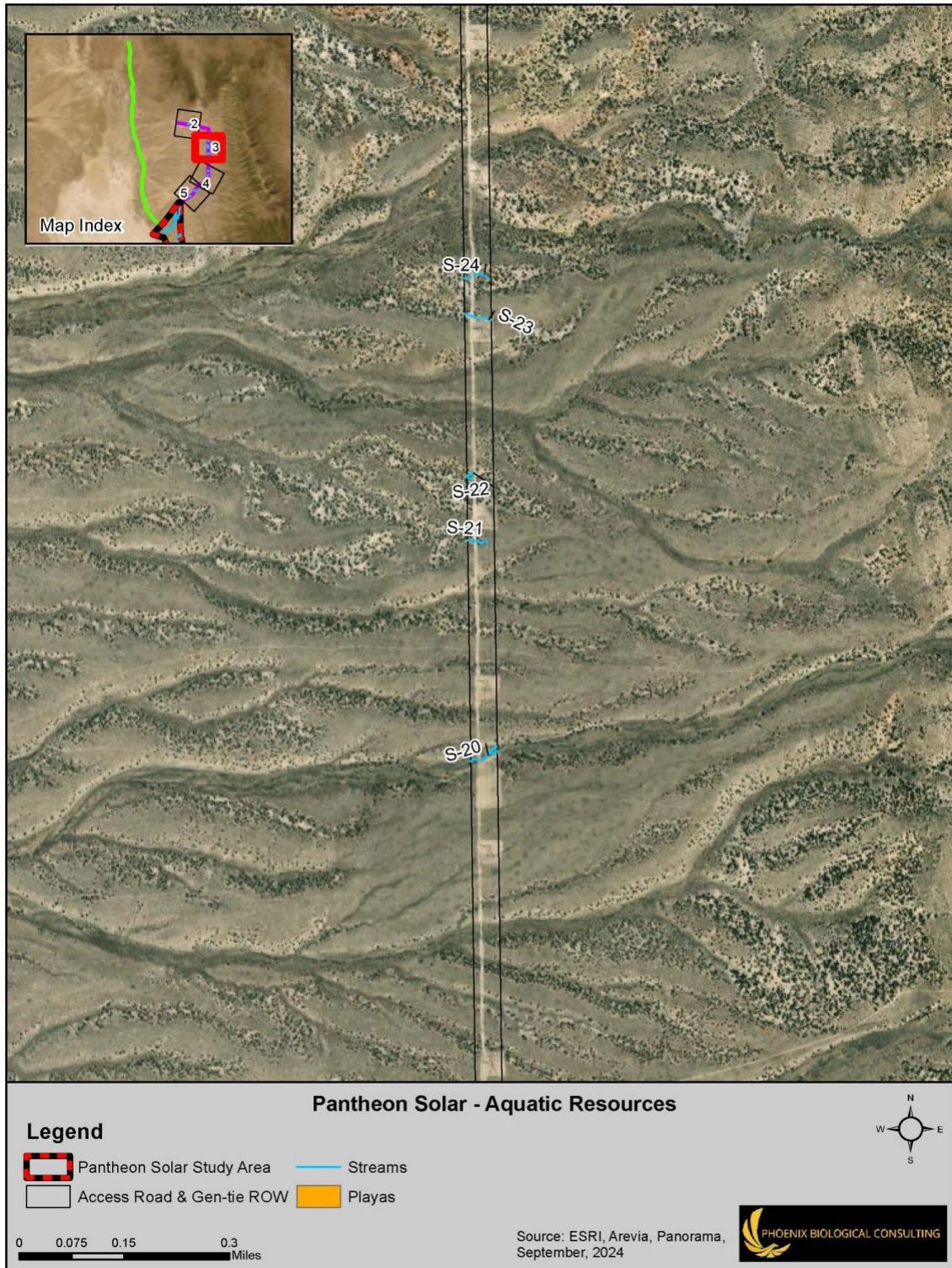


EXHIBIT 10-4: AQUATIC RESOURCES

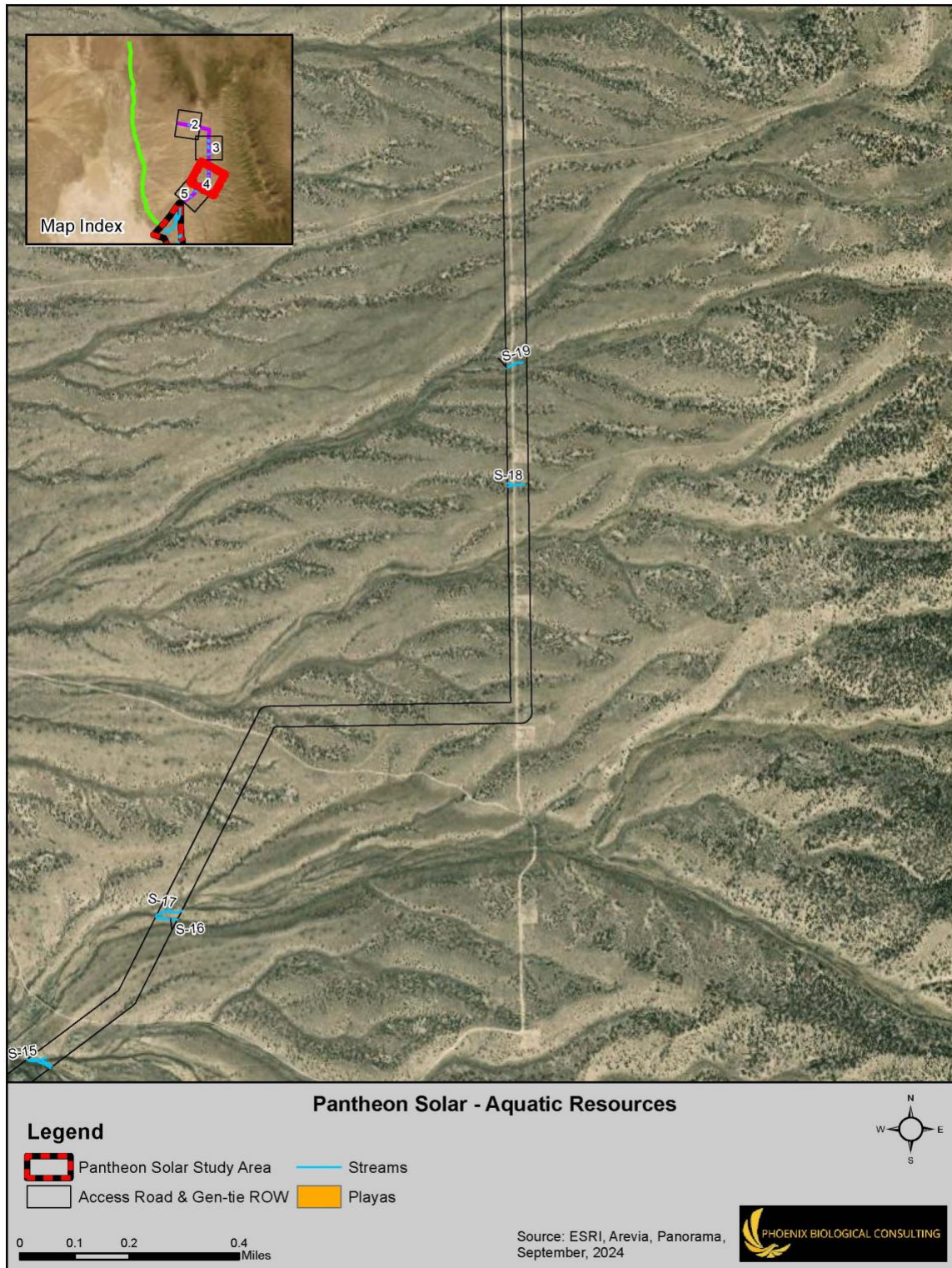


EXHIBIT 10-5: AQUATIC RESOURCES

