



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

CESPK-RDC-S

8 May 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),<sup>1</sup> [SPK-2024-00785]

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.

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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.

## 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).

Aquatic Resource Name	Size (acres)	Size (linear feet)	Jurisdiction
C-1	1.959	5,344	Non-jurisdictional
C-2	2.609	5,390	Non-jurisdictional
C-3	0.211	491	Non-jurisdictional
AG-1	0.110	572	Non-jurisdictional
AG-2	0.567	5,138	Non-jurisdictional
AG-3	0.481	2,680	Non-jurisdictional
AG-4	0.639	2,528	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 61964 (September 8, 2023))

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

3. REVIEW AREA. The approximately 1,221-acre review area is located within the U.S. Geological Survey (USGS) San Joaquin 7.5-minute quadrangle in Sections 19, 23, and 24, Township 16 South, Ranges 16 East and 17 East, MDB&M, approximately 4 miles west of the unincorporated town of Helm in Fresno County, California. The approximate center of the review area is Latitude 36.52386°, -120.18862° (Enclosure 1). There are no previous jurisdictional determinations that overlap with the Review Area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The San Joaquin River is the nearest TNW to which aquatic resources within the review area are hydrologically connected. The San Joaquin River is located approximately 16.7 miles north of the review area in a straight-line distance, as estimated using the U.S. Army Corps of Engineers' Navigable Waters Layer in Google Earth. The San Joaquin River is designated as a TNW from its mouth upstream to Sycamore Road, located approximately seven miles downstream of U.S. Highway 99 in Fresno.

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

(i) From the northwestern corner of the review area, aquatic resources C-1, C-2, and C-3 flow north under W. Kamm Avenue and continue into the Beta Canal. The Beta Canal continues northwest for approximately 13.7 additional miles before reaching the Mendota Wildlife Area, where an unnamed distributary canal breaks off from the Beta Canal and flows into the Fresno Slough. The Fresno Slough flows northeast into the San Joaquin River (Enclosure 2).

(ii) From the northeast corner of the review area, AG-1 flows north under W. Kamm Avenue and continues flowing northward along S. Yuba Avenue for approximately 2.0 miles before emptying into the Fresno Slough. The Fresno Slough flows northeast into the San Joaquin River (Enclosure 2).

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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. 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 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): N/A.
- f. Adjacent Wetlands (a)(4): N/A.
- g. Additional Waters (a)(5): N/A.

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<sup>5</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.

## 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>6</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).

(i) **C-1** (1.959 acre/ 5,344 linear feet), **C-2** (2.609 acre/5,390 linear feet), and **C-3** (0.211 acre/491 linear feet) are concrete-lined canals that flow along the northern boundary of the review area. C-1 flows west under S. Yuba Avenue and into C-2 which continues flowing west into C-1. At the northwestern corner of the review area, C-1 flows under W. Kamm Avenue and continues north into the Beta Canal. Upstream (southeast) of the review area, the larger C-1/C-2/C-3 agricultural ditch system runs parallel to Crescent Ditch, described in Section 8(b)(ii), along most of its length. The C-1/C-2/C-3 tributary reach begins approximately 13.5 miles southeast of the review area, at a diversion point where flows from Crescent Ditch diverge from the main ditch into multiple agricultural ditches. The tributary reach ends approximately 11.5 miles northwest of the review area, where an unnamed canal flows into the Beta Canal. C-1, C-2, and C-3 are mapped on the USGS San Joaquin 7.5-minute topographic quadrangle and the USGS NHD. According to the *Aquatic Resources Delineation Report for the Rosemary Solar and Storage System Project, Fresno County, California*, dated October 2025 and prepared by [REDACTED] C-1, C-2, and C-3 are previous reaches of the San Luis Drain which stopped receiving water inputs in the 1980s. This office corroborated this statement, confirming that the C-1/C-2/C-3 canal segment is non-relatively permanent, by reviewing aerial imagery of the canal as far back as 1994. The Corps reviewed aerial imagery of the canal on 19 dates between 1994 and 2004 (4/20/1994, 6/3/2003, 10/4/2003, 12/31/2004, 4/27/2006, 5/24/2009, 9/24/2009, 4/25/2011, 8/26/2012, 4/5/2014, 3/18/2025, 3/31/2017, 8/7/2017, 2/16/2018, 8/23/2018, 2/7/2020, 4/21/2021, 11/10/2023, 2/19/2024) and did not observe flows within the C-1/C-2/C-3 tributary reach on any of the evaluated dates.

(ii) **AG-1** is a 0.110-acre/572 segment of an agricultural ditch, named Crescent Ditch. AG-1 has a defined OHWM high mark and is located near the northeastern

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<sup>6</sup> 88 FR 3004 (January 18, 2023)



corner of the review area. Crescent Ditch diverts water from the North Fork Kings River, approximately 21.0 miles upstream (southeast) of the review area, where the North Fork Kings River transitions into the Fresno Slough. From the review area, AG-1 (Crescent Ditch) flows below S. Yuba Avenue and continues flowing north along S. Yuba Avenue for approximately 2.0 miles before it empties back into the Fresno Slough. AG-1's tributary reach begins approximately 1.0 mile east of the review area, near the intersection of W. Conejo Avenue and S. Butte Avenue, where a distributary canal breaks off from the Crescent Ditch. The tributary reach ends approximately 1.0 mile north (downstream of the review area) where another agricultural ditch flows into the Crescent Ditch at the intersection of W. Mountain View Avenue and S. Yuba Avenue. This office evaluated aerial imagery of AG-1 on 4/5/2014, 3/18/2015, 3/31/2017, 8/7/2017, 2/16/2018, 8/23/2018, 2/7/2020, 4/21/2021, 11/10/2023, and 2/19/2024. The ditch contained flows on 3/31/2017 and 8/7/2017 (a high water year in California), but was dry on the remaining 8 dates, indicating that AG-1 is a non-relatively permanent tributary in normal years.

(iii) **AG-2** is a 0.110-acre/5,138 linear foot agricultural ditch with a defined OHWM. AG-2 does not carry a relatively permanent flow of water, nor is it tributary to an (a)(1) or (a)(2) water. AG-2 is mapped on the USGS San Joaquin 7.5-minute topographic quadrangle and the USGS NHD. AG-2 functions as a distributary of Canal C-3, with its upstream extent originating near the intersection of W. Kamm Avenue and S. Yuba Avenue, where C-3 flows westward beneath S. Yuba Avenue into both C-2 and AG-2. From there, AG-2 flows south along S. Yuba Avenue and terminates at the intersection of S. Yuba Avenue and W. Conejo Avenue with no further downstream connection. This office evaluated aerial imagery of AG-2 on 4/5/2014, 3/18/2015, 3/31/2017, 8/7/2017, 2/16/2018, 8/23/2018, 2/7/2020, 4/21/2021, 11/10/2023, and 2/19/2024. The ditch was dry on all 10 evaluated dates.

(iv) **AG-3** (0.481 acre/2,680 linear feet) and **AG-4** (0.639 acre/2,528 linear feet) are agricultural ditches with defined OHWMs that receive water from agricultural pumps. AG-3 originates at the southwestern corner of the review area and flows east into AG-4. AG-4 terminates within the review area, at the intersection of S. Colusa Avenue and W. Conejo Avenue. Neither ditch carries a relatively permanent flow of water or has a downstream connection to an (a)(1) or (a)(2) water. The ditches are not mapped on the USGS San Joaquin 7.5-minute topographic quadrangle or USGS NHD. This office evaluated aerial imagery of AG-3 and AG-4 on 4/5/2014, 3/18/2015, 3/31/2017, 8/7/2017, 2/16/2018, 8/23/2018, 2/7/2020, 4/21/2021, 11/10/2023, and 2/19/2024. The ditches were dry on all 10 evaluated dates.

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.

CESPK-RDC-S

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00785]

a. [REDACTED] *Aquatic Resources Delineation Report for the Rosemary Solar and Storage System Complex Project, Fresno County, California*. October 2024.

b. Google Earth Pro. Aerial imagery dates 4/20/1994, 6/3/2003, 10/4/2003, 12/31/2004, 4/27/2006, 5/24/2009, 9/24/2009, 4/25/2011, 8/26/2012, 4/5/2014, 3/18/2025, 3/31/2017, 8/7/2017, 2/16/2018, 8/23/2018, 2/7/2020, 4/21/2021, 11/10/2023, 2/19/2024. Accessed April 28, 2024.

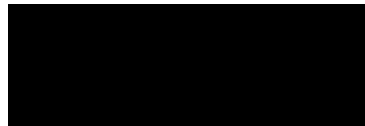
c. U.S. Army Corps of Engineers. Office evaluation. April 24, 2025 - April 28, 2025.

d. U.S. Geologic Survey (USGS). National Hydrography Dataset, 18030009 HUC8. Accessed on April 25, 2025. Retrieved from: <https://www.usgs.gov/nationalhydrography/national-hydrography-dataset>.

e. USGS Topographic Maps, San Joaquin, CA 1:24000. 2021. Accessed on April 25, 2025. Retrieved from: <https://ngmdb.usgs.gov/topoview/>.

10. OTHER SUPPORTING INFORMATION. N/A.

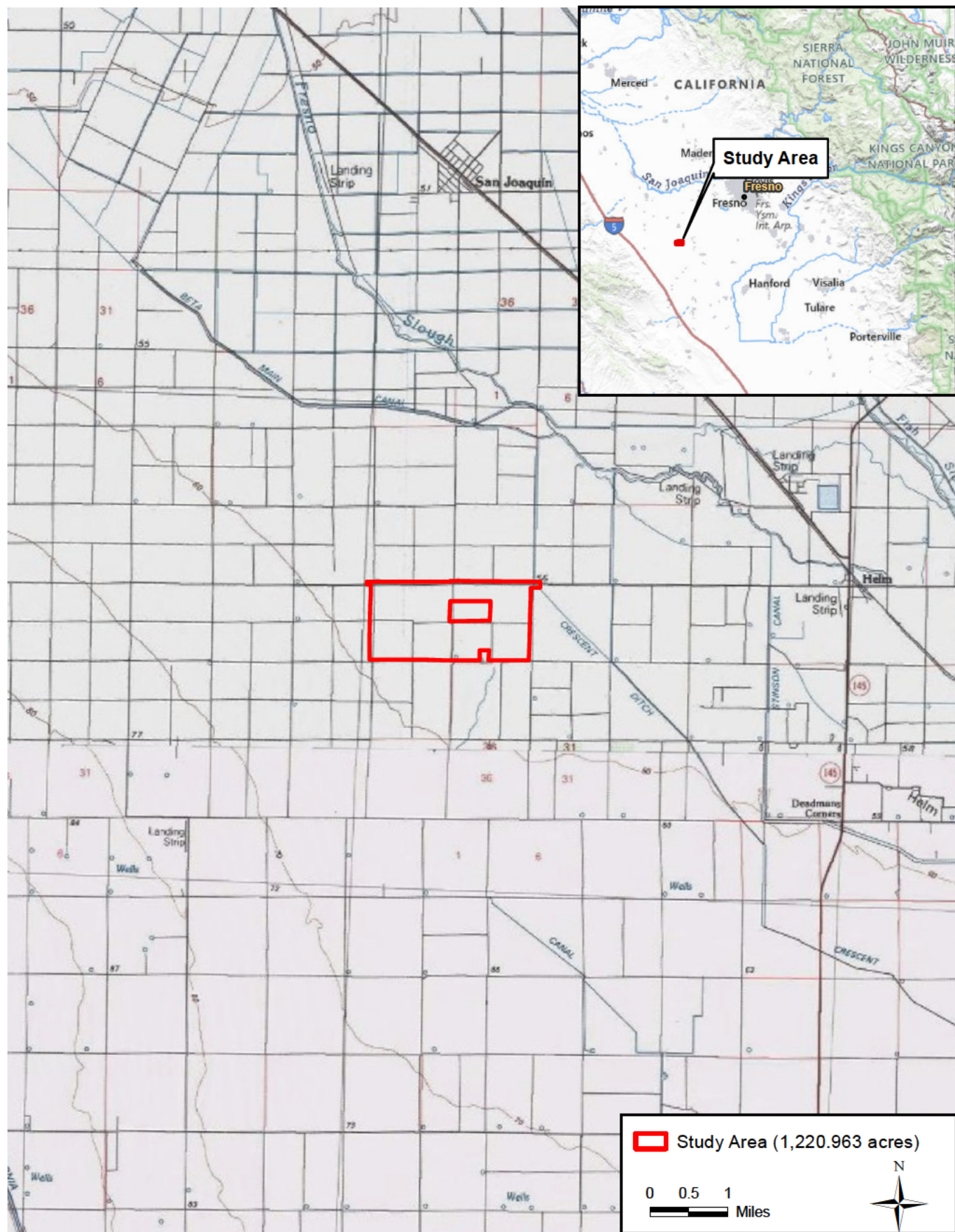
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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



Encls

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








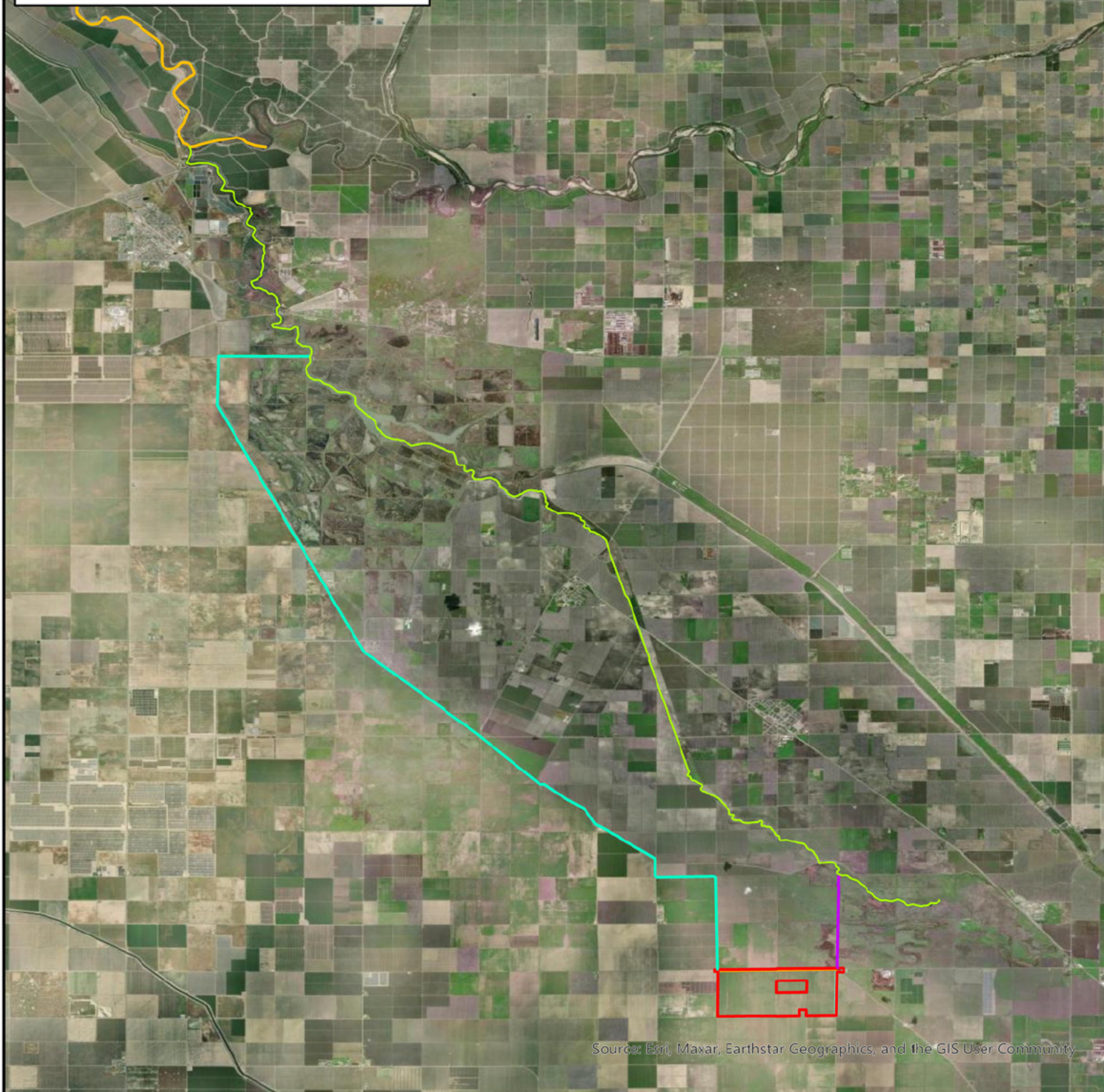


**Figure 1-1**  
**Study Area USGS Map**



## Legend

-  AJD Review Area
-  AG-1 Flowpath to Fresno Slough
-  C-1/C-2/C-3 Flowpath to Fresno Slough
-  Fresno Slough
-  San Joaquin River



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community




## Review Area Flowpath to TNW

SPK-2024-00785

0 5,000 10,000 20,000  
Feet

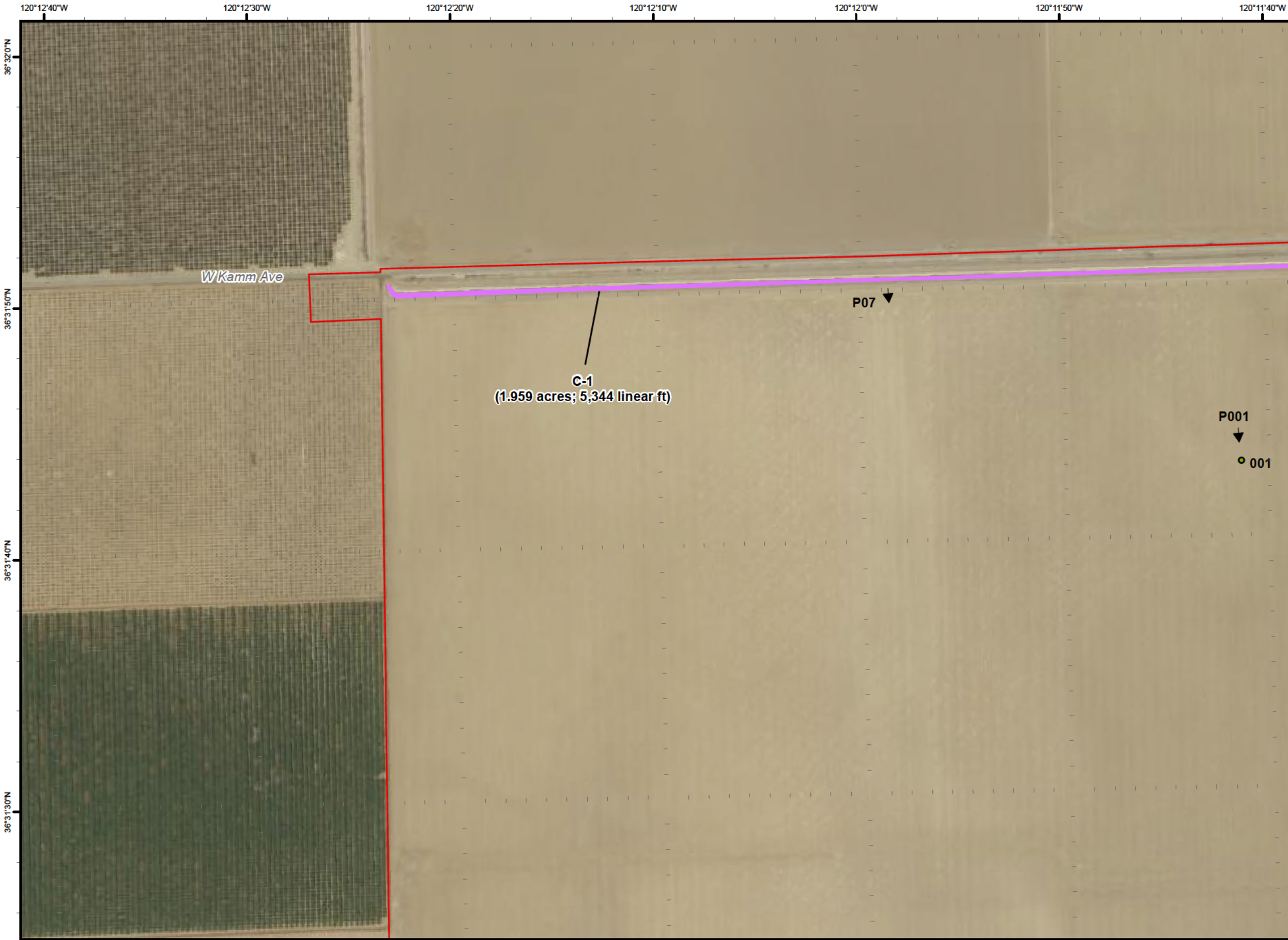
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Date: 5/5/2025

Coordinate System: GCS North  
American 1983



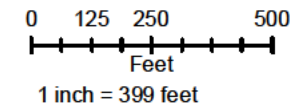
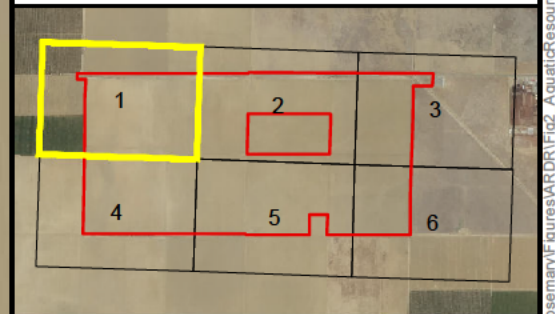


Rosemary Solar and  
Storage System Project Complex  
10/18/2024

- Study Area (1,220.963)
- Photo Points
- Non-Wetland Data Points

**Aquatic Resources**

- Agricultural Ditch (1.797 acres;  
10,918 linear ft)
- Canal (4.779 acres; 11,225  
linear ft)



Source: [REDACTED]  
Imagery Source: NAIP  
Datum/Projection: California State Plane IV US Ft  
Page: 1 of 6

[REDACTED]  
Delineation Date: November 9, 2023



Rosemary Solar and Storage System Project Complex  
10/18/2024

Study Area (1,220.963

Photo Points

Non-Wetland Data Points

Aquatic Resources

Agricultural Ditch (1.797 acres; 10,918 linear ft)

Canal (4.779 acres; 11,225 linear ft)

1

2

3

4

5

6

0 125 250 500  
Feet  
1 inch = 399 feet

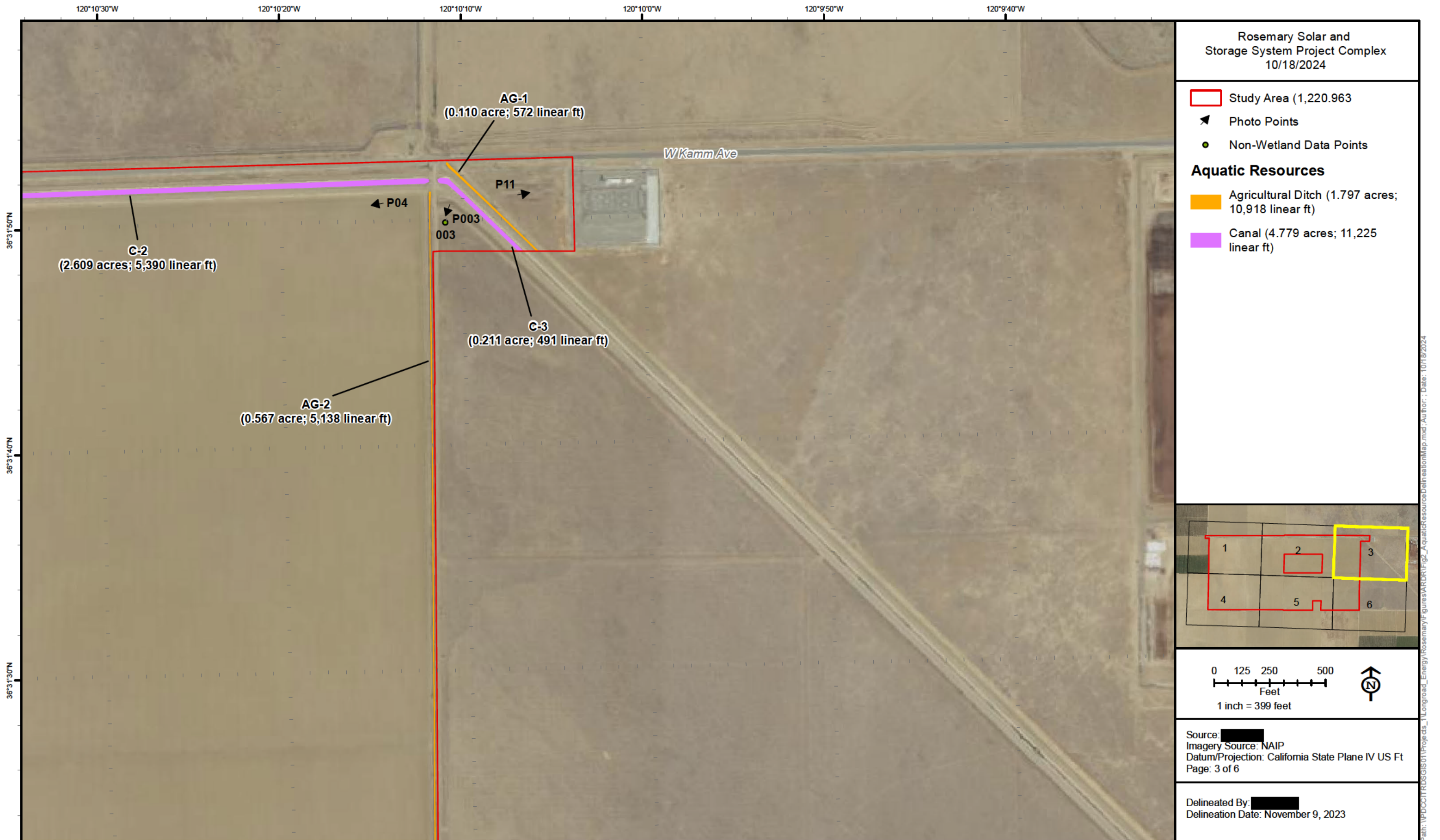
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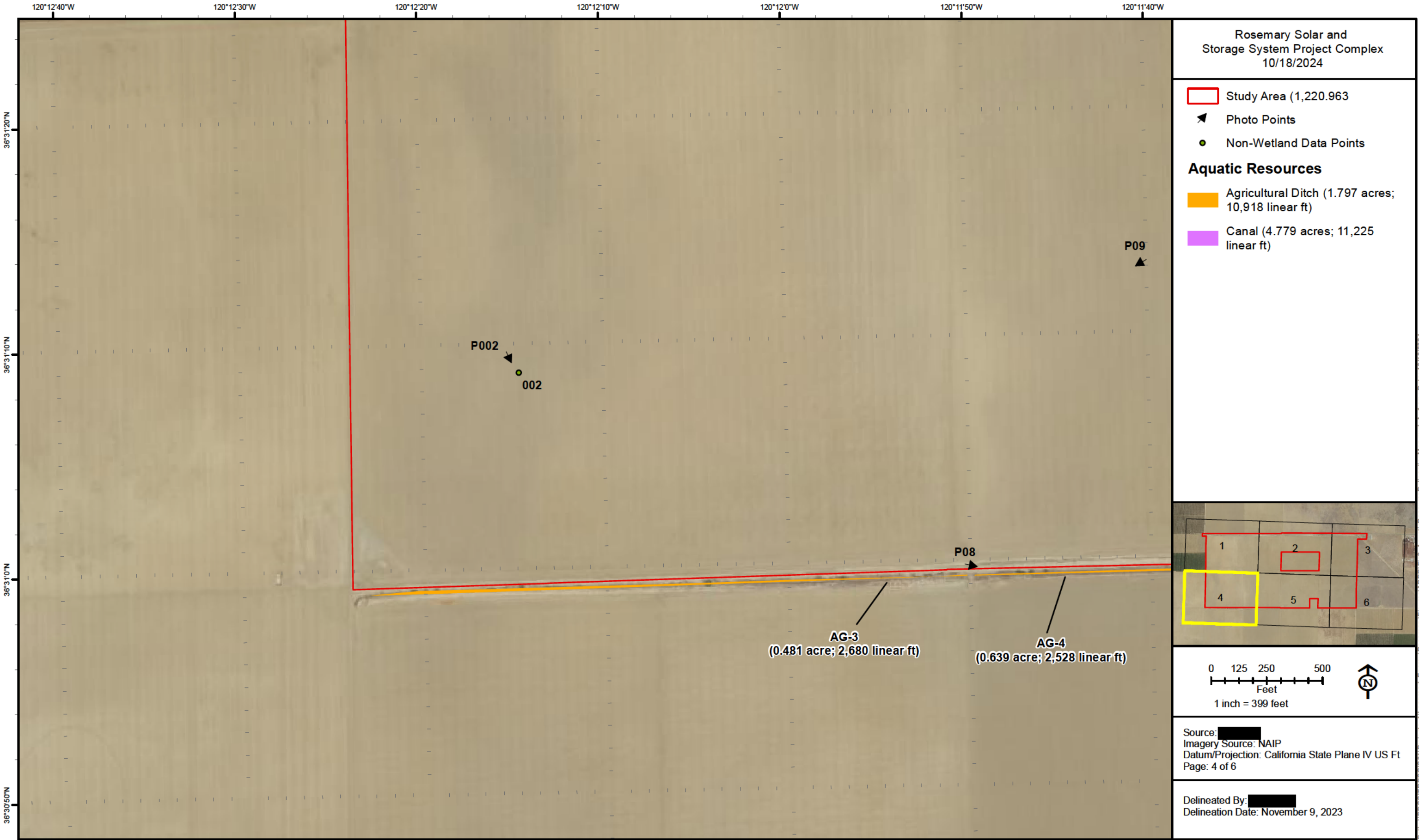
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Page: 2 of 6

Delineated By: [REDACTED]  
Delineation Date: November 9, 2023

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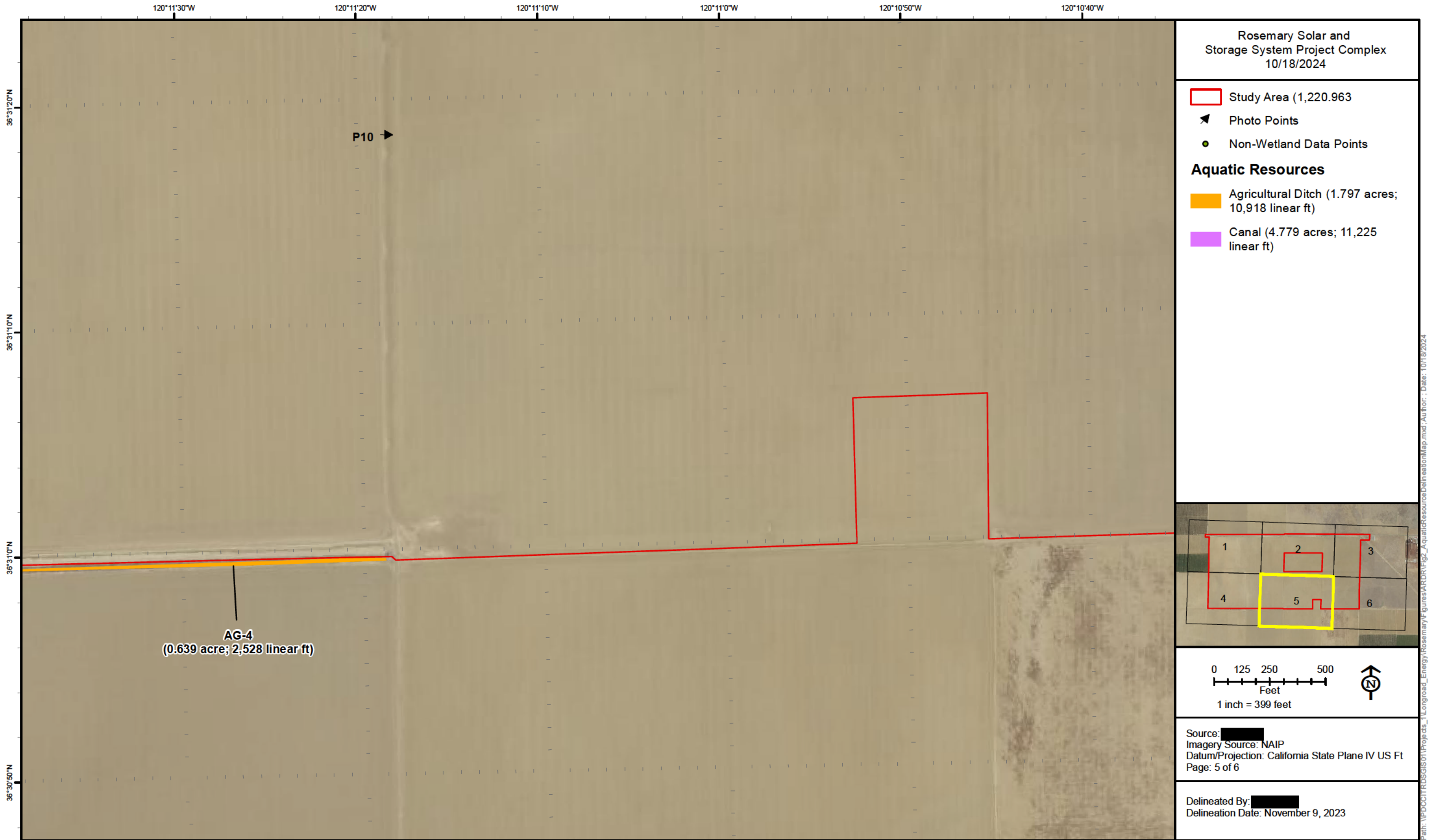


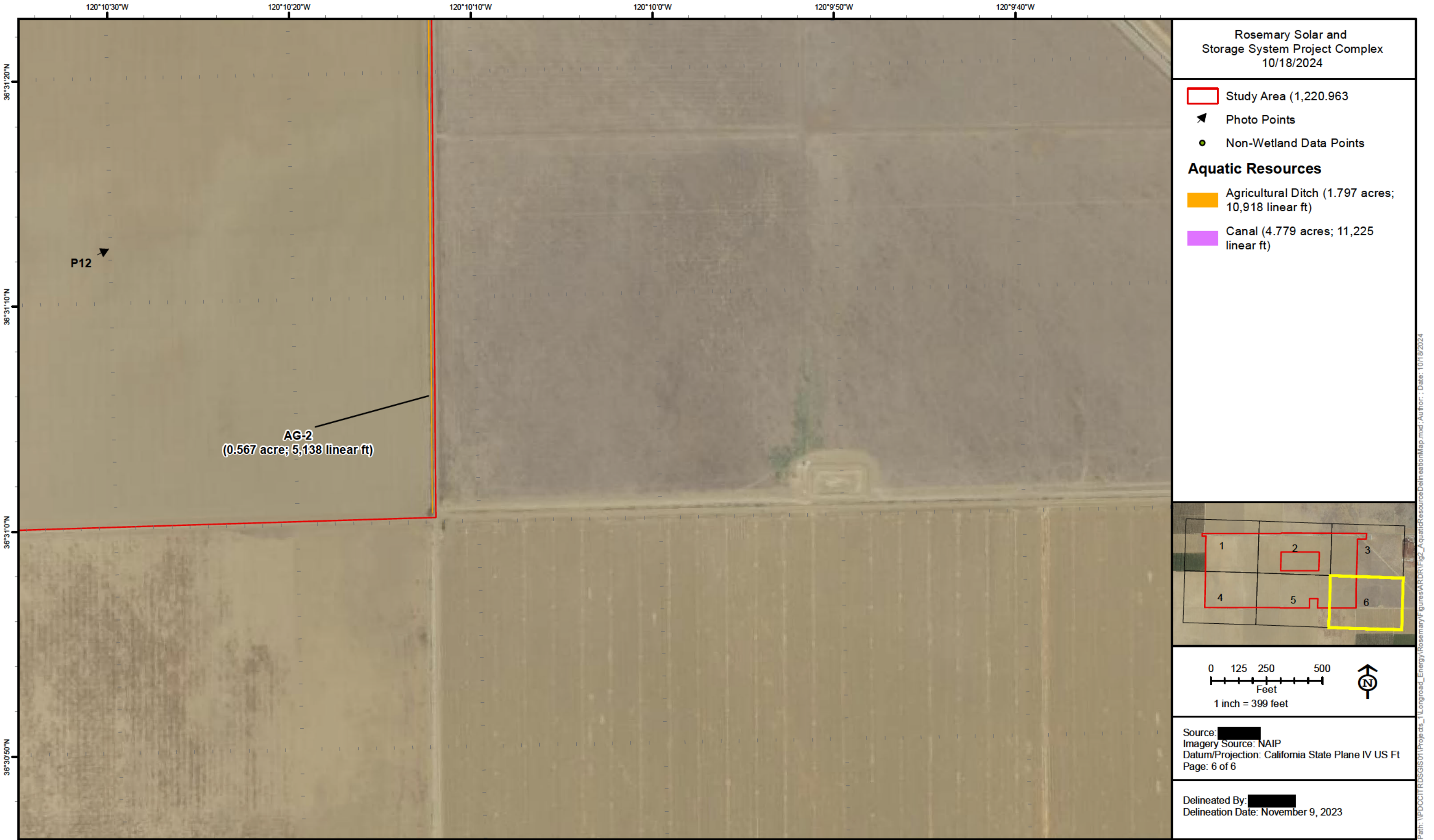




**Appendix A**  
**Aquatic Resources Delineation Map**

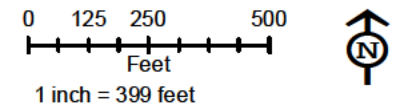
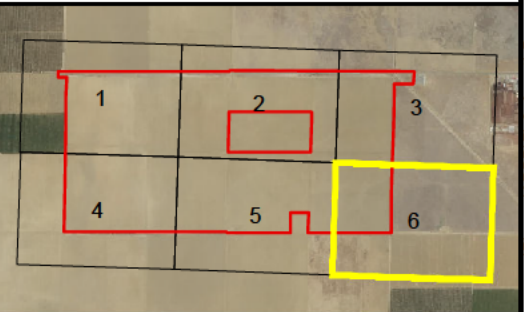






Rosemary Solar and  
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10/18/2024

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Source: [REDACTED]  
Imagery Source: NAIP  
Datum/Projection: California State Plane IV US Ft  
Page: 6 of 6

Delineated By: [REDACTED]  
Delineation Date: November 9, 2023