



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

CESPK-RDI-U

2 June 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),<sup>1</sup> [SPK-2024-00387]

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> 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 Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Utah due to litigation.

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<sup>1</sup> While the Supreme Court's decision in *Sackett* 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.

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## 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).

(1) Ditch 1, non-jurisdictional under Section 404 of the Clean Water Act.

(2) Ditch 2, non-jurisdictional under Section 404 of the Clean Water Act.

(3) Ditch 3, non-jurisdictional under Section 404 of the Clean Water Act.

(4) Ditch 4, non-jurisdictional under Section 404 of the Clean Water Act.

(5) Ditch 5, non-jurisdictional under Section 404 of the Clean Water Act.

(6) Ditch 6, non-jurisdictional under Section 404 of the Clean Water Act.

(7) Ditch 7, non-jurisdictional under Section 404 of the Clean Water Act.

(8) Ditch 8, non-jurisdictional under Section 404 of the Clean Water Act.

## 2. REFERENCES.

a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)

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

3. REVIEW AREA. The approximately 75-acre review area is located between I-15 and Highway 89, at center point Latitude 41.31852°, Longitude -112.02309°, Pleasant View, Weber County, Utah (AJD MFR Enclosure 1).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Great Salt Lake, which is a water of the United States pursuant to 33 C.F.R. §328.3(a)(1) and 40 C.F.R. §230.3(s)(1), the "traditional navigable waters." Waters are traditional navigable waters if they meet one of the following criteria:

- a. Are subject to section 9 or 10 of the Rivers and Harbors Appropriations Act of 1899;
- b. Have been determined by a federal court to be navigable-in-fact under Federal law;
- c. Are waters currently being used for commercial navigation, including commercial waterborne recreation (for example, boat rentals, guided fishing trips, or water ski tournaments);
- d. Have historically been used for commercial navigation, including commercial waterborne recreation; or
- e. Are susceptible to being used in the future for commercial navigation, including commercial waterborne recreation.

The Great Salt Lake meets Criteria b, above, having been found navigable-in-fact under Federal law in *Utah v. United States*, 403 U.S. 9 (1971). Thus, the Great Salt Lake (GSL) is a "traditional navigable water" and is regulated by the Corps under Section 404 of the CWA.<sup>5</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Ditches 1-4 and 8 discharge directly into Ditch 5. Ditches 6 and 7 discharge into an off-site ditch which flows for approximately 1,350 feet downstream before merging with Ditch 5 and entering a 25-foot pipe culvert, outside of the review area. The culvert discharges into an unnamed relatively permanent tributary ditch (RPW), an (a)(5) water. The open ditch flows for approximately 5.48 miles (28,953 feet) with 19 otherwise culverted sections, the longest being 425 feet, before merging with First Salt Creek (RPW), an (a)(5) water, then merging with the Willard Bay Reservoir toe ditch (RPW), an (a)(5) water. Water flows west for approximately 8,340 feet before flowing under a 70-foot canal where it enters the Harold Crane Waterfowl Management Area (WFMA), an (a)(4) water. Water flows through the WFMA for approximately 12,900 aerial feet (2.44 miles) before discharging into Willard Bay ((a)(4) water), then the Bear River Bay ((a)(4) water), before finally flowing into the GSL, the nearest TNW (AJD MFR Enclosure 2).

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<sup>5</sup> 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.

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6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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.<sup>7</sup>

7. SECTION 404 JURISDICTIONAL WATERS: None of the aquatic resources within the review area were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*.

- a. TNWs (a)(1): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

#### 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. There are no aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).<sup>8</sup>

b. There are no aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance.

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<sup>6</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.

<sup>7</sup> 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.

<sup>8</sup> 51 FR 41217, November 13, 1986.

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c. There are no aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA.

d. There are no aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.).

e. There are no aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.”

f. Eight aquatic resources totaling 1.42 acres/6,969 linear feet within the review area were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water)(AJD MFR Enclosure 3).

Ditches 1-8 are non-relatively permanent waters and therefore are not jurisdictional under Section 404 of the CWA. The ditches are earthen channels that historically carried irrigation water to and through the review area for the purpose of flood irrigating pasture. Water flow into the ditches can be controlled east of the review area at two points and was permanently shut off to the review area in late 2023. Based on a site visit on May 8, 2025 during growing season, the Corps did not observe water flow through any of the ditches and confirmed that water was shut off to the review area (AJD MFR Enclosure 4). The ditches were dry and there were no indications of other hydrology within the review area. Since irrigation water was permanently shut off to Ditches 1-8 and they otherwise do not carry relatively permanent water flow, they are not jurisdictional under Section 404 of the CWA regardless of whether they flow into a TNW downstream.

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. Antecedent Precipitation Tool. Version 2.9.0. (08 May 2025). Latitude 41.31852°N, Longitude -112.02309°W. Retrieved 20 May 2025.

b. Aquatic Resource Delineation Report [REDACTED] Project prepared by [REDACTED] [REDACTED] dated 05 June 2024. The consultant prepared the delineation report in accordance with the U.S. Army Corps of Engineers 1987 Wetland Delineation manual and the USACE Regional Supplement for the Arid West Region.

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c. USACE site visit and Mapped Photo Log (Site Visit Photos), 08 May 2025.

d. WGS 1984 Web Mercator Auxiliary Sphere in the National Regulatory Viewer for the South Pacific Division. Retrieved 16 March 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.

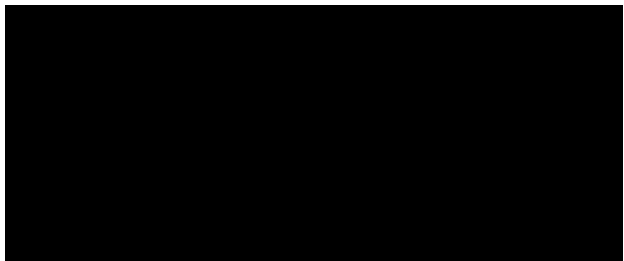
4 Encls

Encl 1 – Location

Encl 2 – Flow path

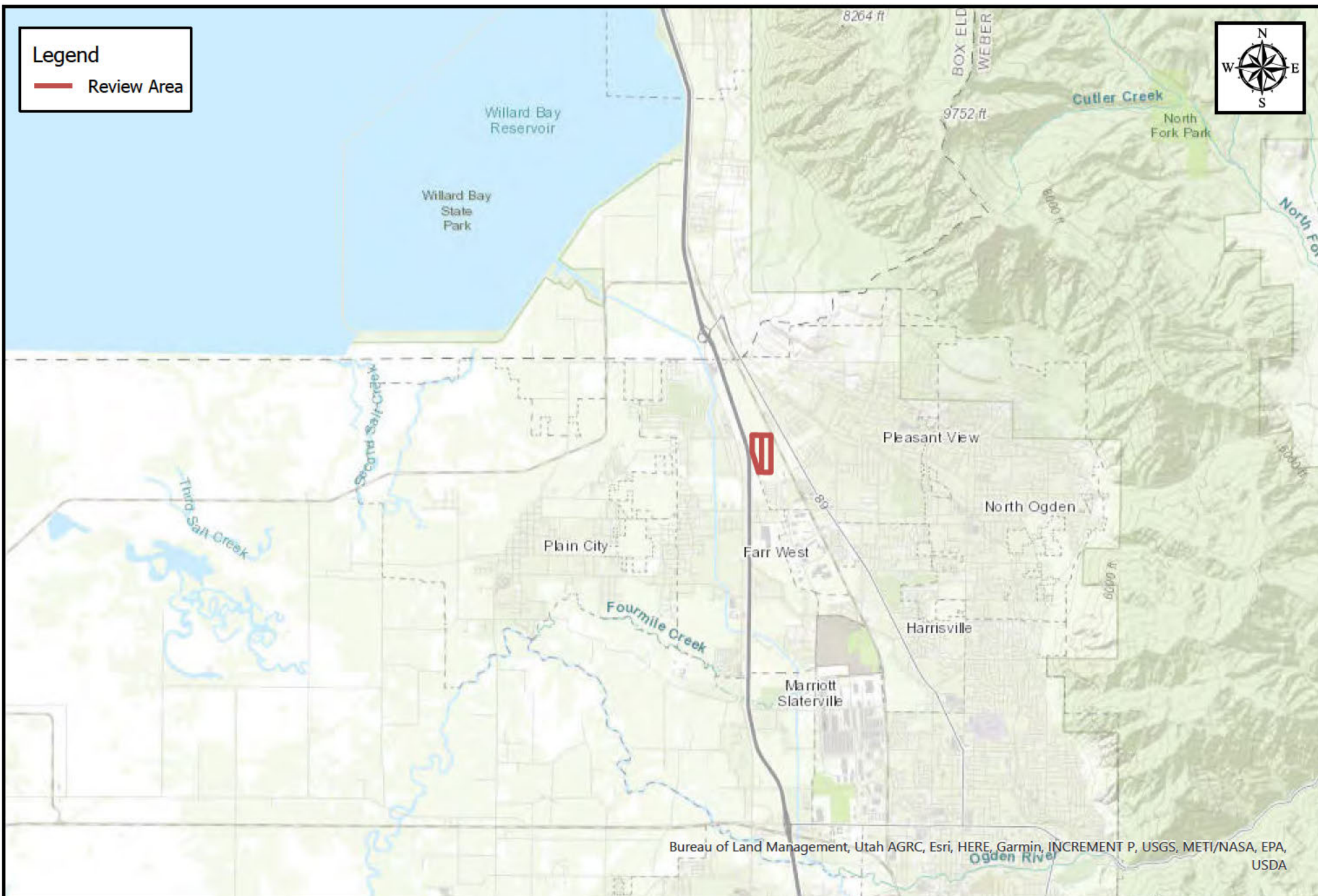
Encl 3 – Aquatic resources

Encl 4 – Site visit photos

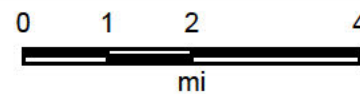


Legend

— Review Area



SPK-2024-00387 Location Map



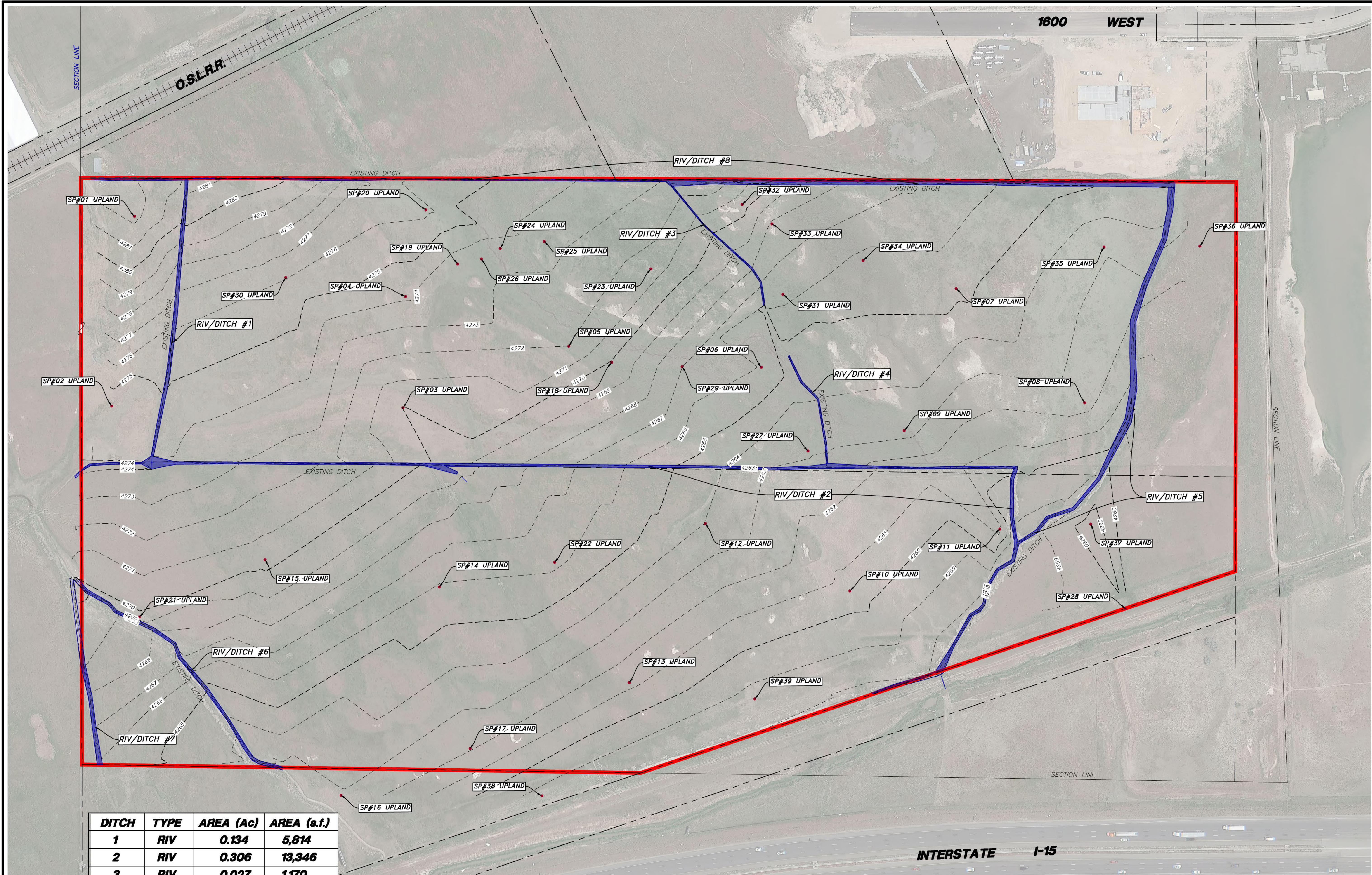
Map Center: 112.048313°W 41.317814°N

Map Created by: [REDACTED]

Date: 5/8/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere






DITCH	TYPE	AREA (Ac)	AREA (s.f.)
1	RIV	0.134	5,814
2	RIV	0.306	13,346
3	RIV	0.027	1,170
4	RIV	0.025	1,071
5	RIV	0.325	14,161
6	RIV	0.107	4,645
7	RIV	0.057	2,464
8	RIV	0.435	18,944

**TOTAL RIV/DITCH WETLANDS: 1.415 Acres (61,658 s.f.)**  
**TOTAL UPLANDS: 74.415 Acres (3,241,504 s.f.)**  
**TOTAL PROJECT AREA: 75.830 Acres (3,303,162 s.f.)**

**LEGEND**

- STUDY AREA
- SOIL PIT
- OPEN DITCH
- SECTION LINE
- PROPERTY LINE
- RAILROAD
- FENCE LINE (WIRE)

SCALE: Horiz. 1" = 100'  
0 100 200  
Scale in Feet

Drawn By:  Date: 04/19/24

Designed By: \_\_\_\_\_


Checked By: \_\_\_\_\_

Approved By: \_\_\_\_\_

Scale: 1" = 200'

Drawing File: 23-S-41v23.dwg

JOB NUMBER: 23-S-41

UPLANDS SURVEY FOR 

**PLEASANT VIEW WEST**  
Pleasant View, Weber County, Utah  
A Part of the Northwest Quarter of Section 25,  
Township 7 North, Range 2 West, S.L.B.&M.

Sheet

**1**

of

**1**

Sheets

No.

Date

By

Revision