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

CESPK-RDI-U 1 JUL 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) ,[1] [SPK-1996-50498][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] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[5] 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

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[1] 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.
[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, interstate water, or territorial seas 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.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable [in this state OR for this party] due to litigation.

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) Salt Playa, jurisdictional, Section 404 CWA

(2) Saline Wet Meadow, jurisdictional, Section 404 CWA

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 22.65-acre project site is located at 6885 West 2100 South, Latitude 40.7243274111174°, Longitude -112.055067966705°, West Valley City, Salt Lake 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 Great Salt Lake (GSL).[6]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. There is no flow path from the subject aquatic resources since they are impounded by a road (2100 South) along their

[6] 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.

northern boundaries. However, the remaining portion of the historic playa drains north into Lee Creek approximately 0.55 mile to the north of the survey area. Lee Creek then flows north/northwest for approximately 2.18 river miles and merges with the C-7 Canal that flows through the Rio Tinto Kennecott Copper property. The C-7 Canal/Lee Creek flow north for approximately 7 river miles into the GSL (AJD MFR Enclosure 3).

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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.[8] 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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. TNWs (a)(1): N/A

b. Interstate Waters (a)(2): N/A

c. Other Waters (a)(3): N/A

d. Impoundments (a)(4): Playa. The 5.48 acre-playa within the survey area was historically connected to the larger playa to the north, as demonstrated by the 1943 and 1950 aerial photos. Based on the historical aerial photo record, the playa within the survey area inundates most years, even when the larger playa to the north appears dry

[7] 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] 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.

in average/below average precipitation years. The playa was bisected sometime after 1950 by the construction of the 2100 South roadway. As demonstrated by the available historical aerial photograph record in normal precipitation years, the playa area north of the 2100 South roadway floods up to the northern road embankment and continues to function as a playa and maintain its tributary connection to the GSL via Lee Creek. Hydrology to the northern portion of playa is direct precipitation and likely back flow from Lee Creek due to bottlenecking (narrowing) of Lee Creek Channel downstream of playa/Lee Creek confluence. But for the road embankment, the playa within the review area would be tributary to the GSL, as well.

Further, an unauthorized road and stormwater detention basin (impoundment) were constructed within approximately 0.25 acre of the playa adjacent to the south side of 2100 South sometime between June 2020 and September 2020 (AJD MFR Enclosure 2). However, if the road was constructed under a non-notifying nationwide permit 14, it is in non-compliance since no culverts were constructed to maintain flows, per General Condition 9, management of water flows. An unauthorized or non-compliance activity cannot sever CWA jurisdiction. As such, the entire western playa within the survey area still constitutes an impoundment.

e. Tributaries (a)(5): N/A

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7): The 2.98 acres of saline wet meadow wetlands directly abut the impounded playa [an (a)(4) water] on the south side of the 2100 South roadway.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe 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").[9] Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A

b. Describe aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A

[9] 51 FR 41217, November 13, 1986.

c. Describe 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. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A

d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A

e. Describe 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." Include the size of the aquatic resource or feature, and how it was determined to be an "isolated water" in accordance with *SWANCC*. N/A

f. 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 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). N/A

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. Google Earth Aerial Imagery 2002 thru 2025. Only photos within or just above the 30-yr average for precipitation were used.

b. USGS Earth Explorer Aerial Imagery 1943 and 1950. https://earthexplorer.usgs.gov/

c. March 30, 2015, Aquatic Resource Delineation, completed by [redacted]

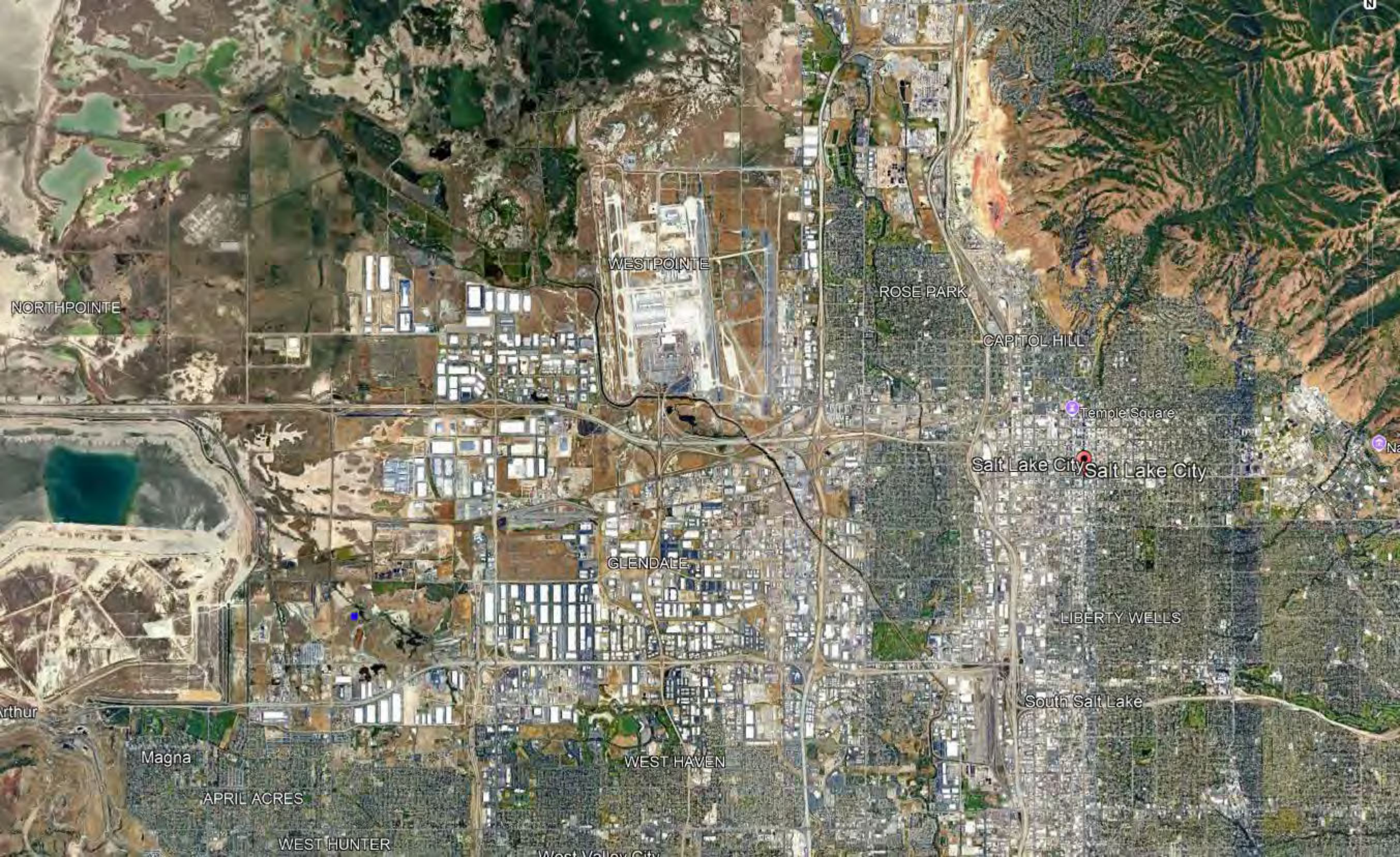
d. April 16, 2023, Jurisdictional Assessment Report Teancum Properties/Oman Properties Lot, completed by [redacted] The Corps did not agree with the jurisdictional determination recommended by Kagel Environmental.

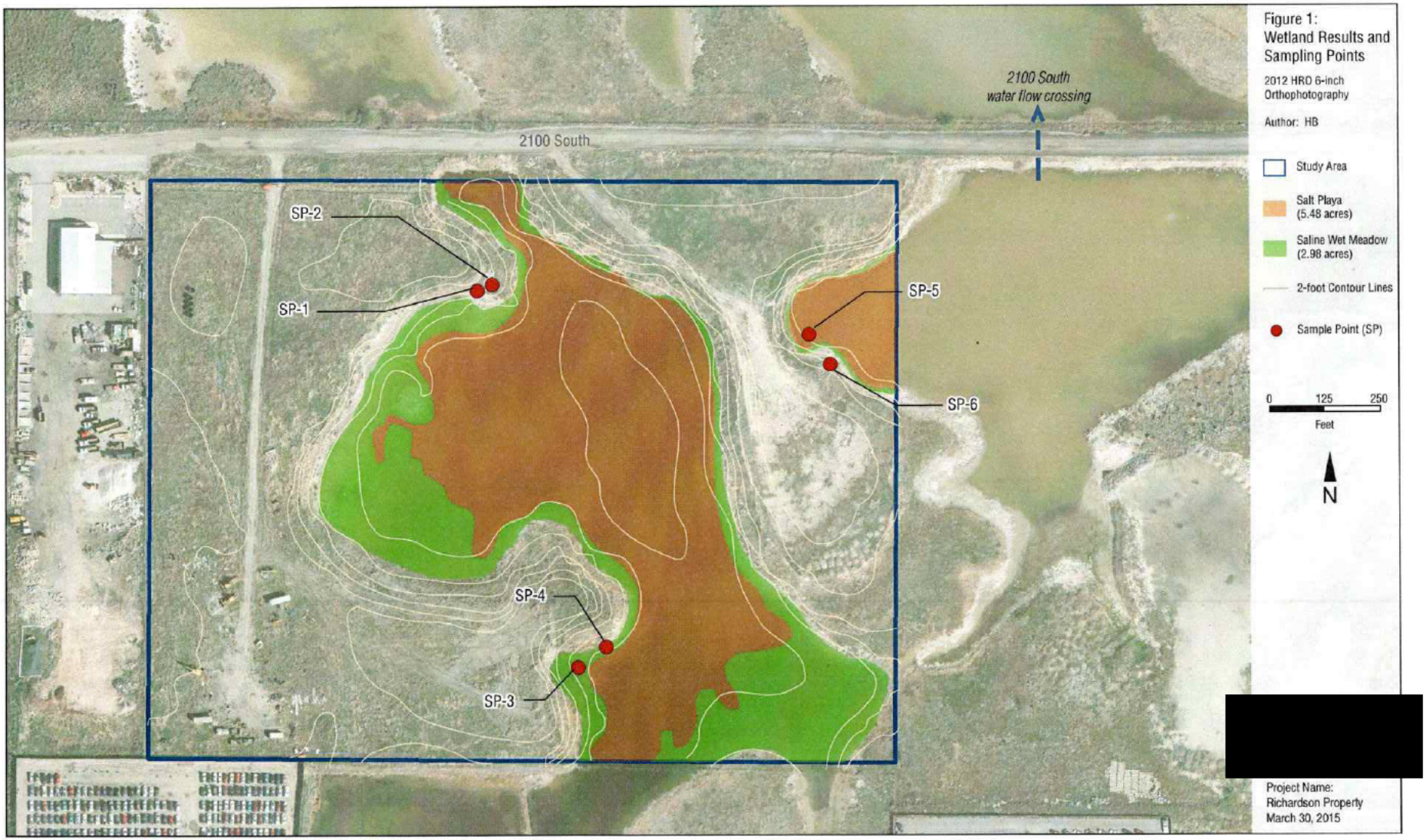
e. 2023 LiDAR data- 3DEPElevation: USGS one meter x41y451 UT Wasatch-L4

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.

5 Encls
Enclosure 1 Vicinity Map
Enclosure 2 Delineation Map
Enclosure 3 Flow Path Map
Enclosure 4 Historic Aerial Photos
Enclosure 5 Antecedent Precipitation
Enclosure 6 LiDAR data

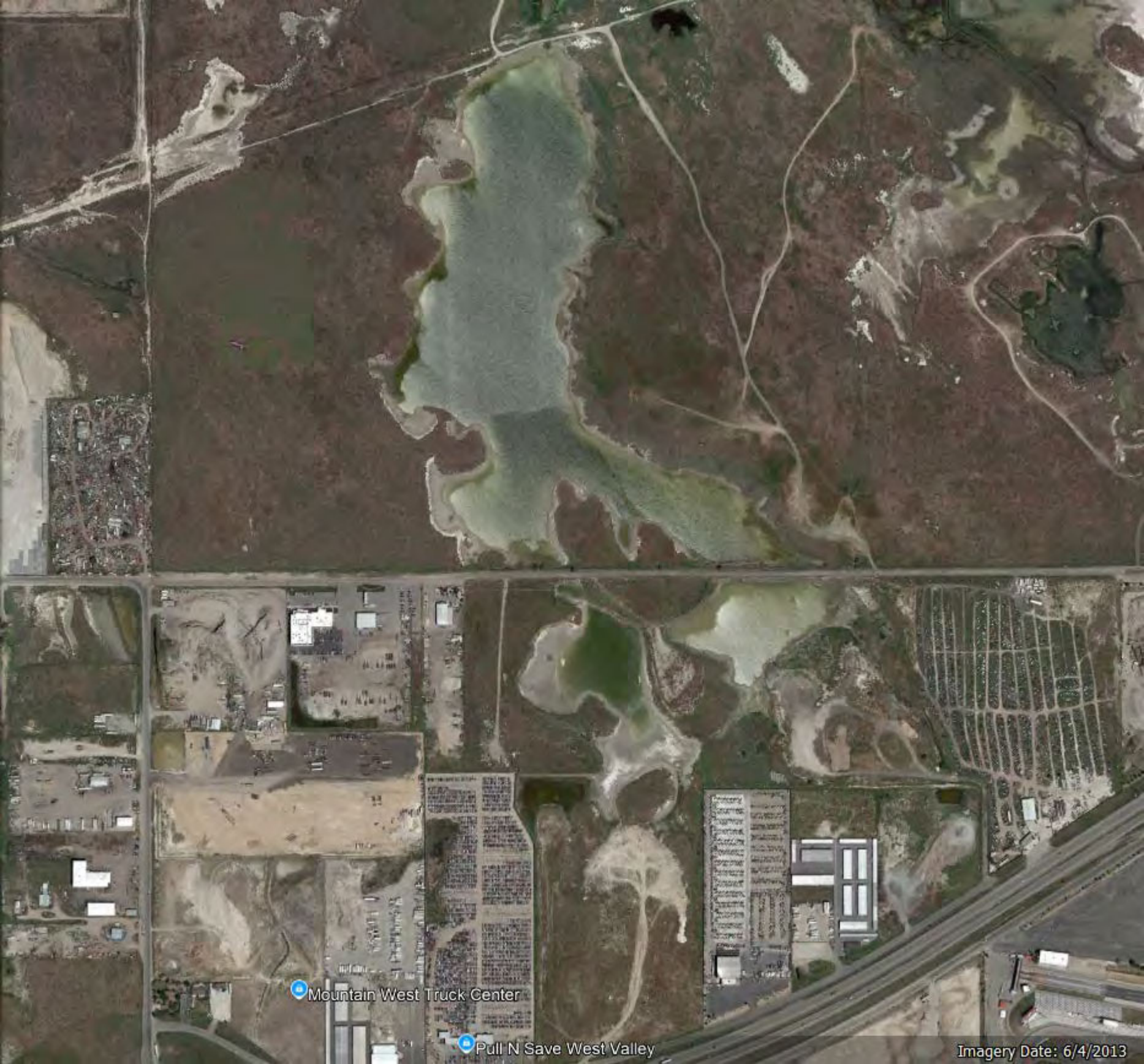

WESTPOINTE
NORTHPOINTE
ROSE PARK
CAPITOL HILL
Temple Square
Salt Lake City
Salt Lake City
GLENDALE
LIBERTY WELLS
South Salt Lake
Magna
WEST HAVEN
APRIL ACRES
WEST HUNTER


2100 South
2100 South
water flow crossing
SP-1
SP-2
SP-3
SP-4
SP-5
SP-6
Figure 1:
Wetland Results and
Sampling Points
2012 HRD 6-inch
Orthophotography
Author: HB
Study Area
Salt Playa
(5.48 acres)
Saline Wet Meadow
(2.98 acres)
2-foot Contour Lines
Sample Point (SP)
0
125
250
Feet
N
[redacted]
Project Name:
Richardson Property
March 30, 2015


NORTHPOINTE
Lee Creek Natural Area
Salt Lake City Model Plane Airport
ATHENS
EL DORADO
Arthur
Image © 2025 Airbus
Google Earth
Imagery Date: 5/26/2025 lat 40.760397° lon -112.090632° elev 4235 ft eye alt 49706 ft


Mountain West Truck Center
Pull N Save West Valley
Image © 2025 Airbus
Imagery Date: 6/12/2024

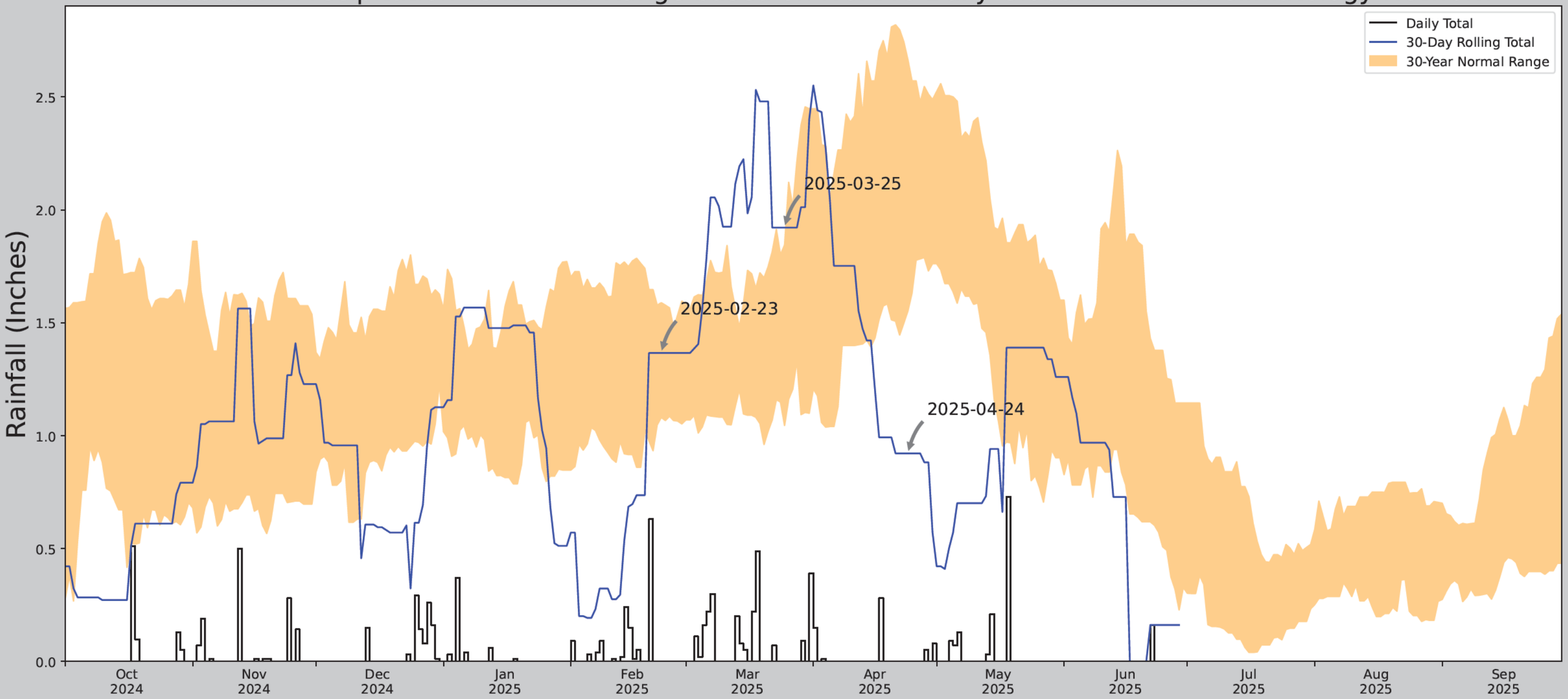

Mountain West Truck Center
Pull N Save West Valley
Image © 2025 Airbus
Imagery Date: 5/29/2023


Mountain West Truck Center
Pull N Save West Valley
Imagery Date: 6/4/2013


Mountain West Truck Center
Pull N Save West Valley
Imagery Date: 6/16/2015


Image © 2025 Maxar Technologies
Mountain West Truck Center
Pull N Save West Valley
Imagery Date: 5/3/2002

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	40.72427, -112.05415
Observation Date	2025-04-24
Elevation (ft)	4239.857
Drought Index (PDSI)	Moderate drought
WebWIMP H_2O Balance	Wet Season

30 Days Ending	30^{th} %ile (in)	70^{th} %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2025-04-24	1.551969	2.664961	0.92126	Dry	1	3	3
2025-03-25	1.044882	1.844095	1.92126	Wet	3	2	6
2025-02-23	1.080709	1.588583	1.366142	Normal	2	1	2
Result							Normal Conditions - 11

Figures and tables made by the
Antecedent Precipitation Tool
Version 2.9

US Army Corps of Engineers.
ERDC

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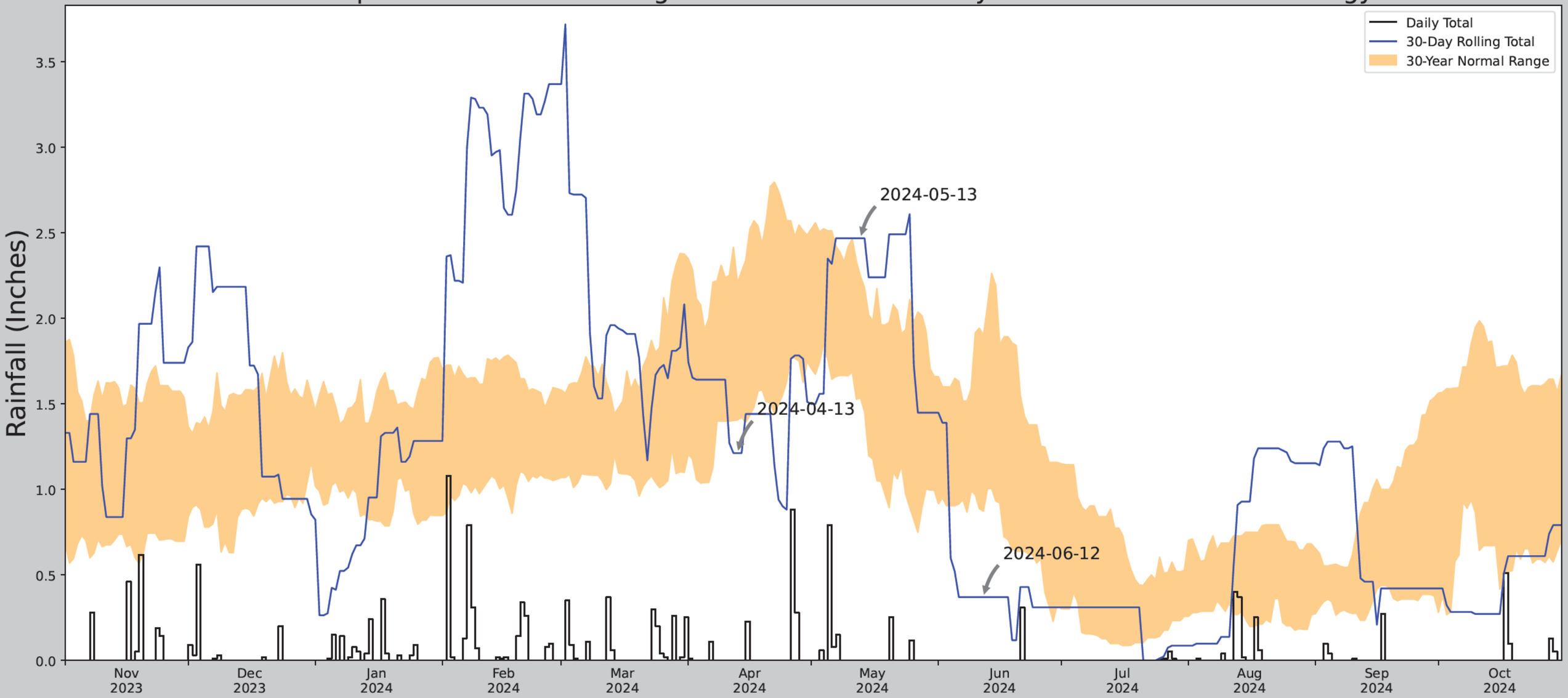
U.S. Army Corps of Engineers and
U.S. Army Engineer Research and
Development Center

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
SALT LAKE CITY INTL AP	40.7706, -111.965	4227.034	5.659	12.823	2.619	11353	89
SALT LAKE CITY 1.8 SE	40.744, -111.864	4347.113	5.596	120.079	3.19	0	1

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	40.76004, -112.09064
Observation Date	2024-06-12
Elevation (ft)	4252.453
Drought Index (PDSI)	Incipient drought
WebWIMP H_2O Balance	Dry Season

30 Days Ending	30^{th} %ile (in)	70^{th} %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2024-06-12	0.873622	1.900787	0.370079	Dry	1	3	3
2024-05-13	1.536221	2.24685	2.468504	Wet	3	2	6
2024-04-13	1.406299	2.206693	1.212598	Dry	1	1	1
Result							Normal Conditions - 10

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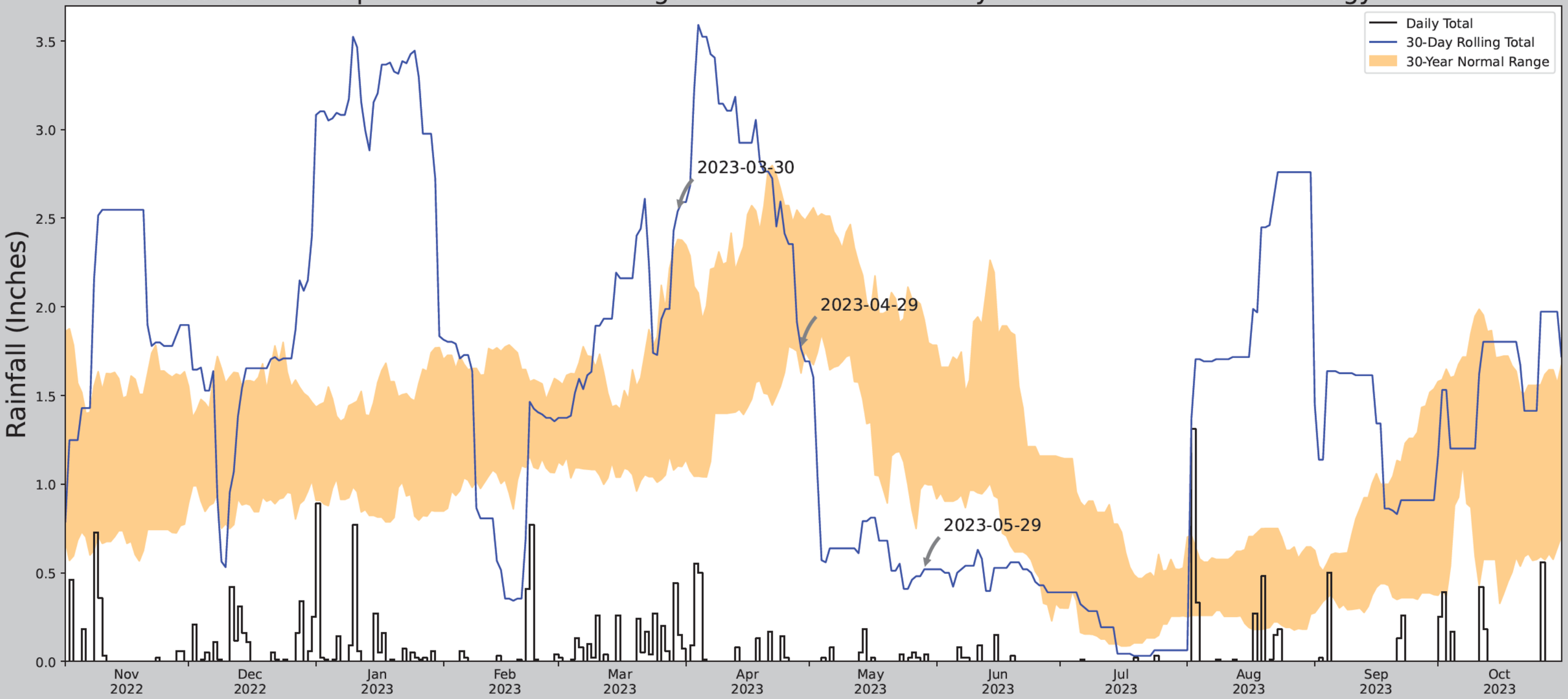
Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
SALT LAKE CITY INTL AP	40.7706, -111.965	4227.034	6.615	25.419	3.145	11352	90

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	40.76004, -112.09064
Observation Date	2023-05-29
Elevation (ft)	4252.453
Drought Index (PDSI)	Moderate wetness
WebWIMP H_2O Balance	Dry Season

30 Days Ending	30^{th} %ile (in)	70^{th} %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2023-05-29	1.003937	1.925984	0.519685	Dry	1	3	3
2023-04-29	1.625984	2.511811	1.76378	Normal	2	2	4
2023-03-30	1.102756	2.379921	2.53937	Wet	3	1	3
Result							Normal Conditions - 10

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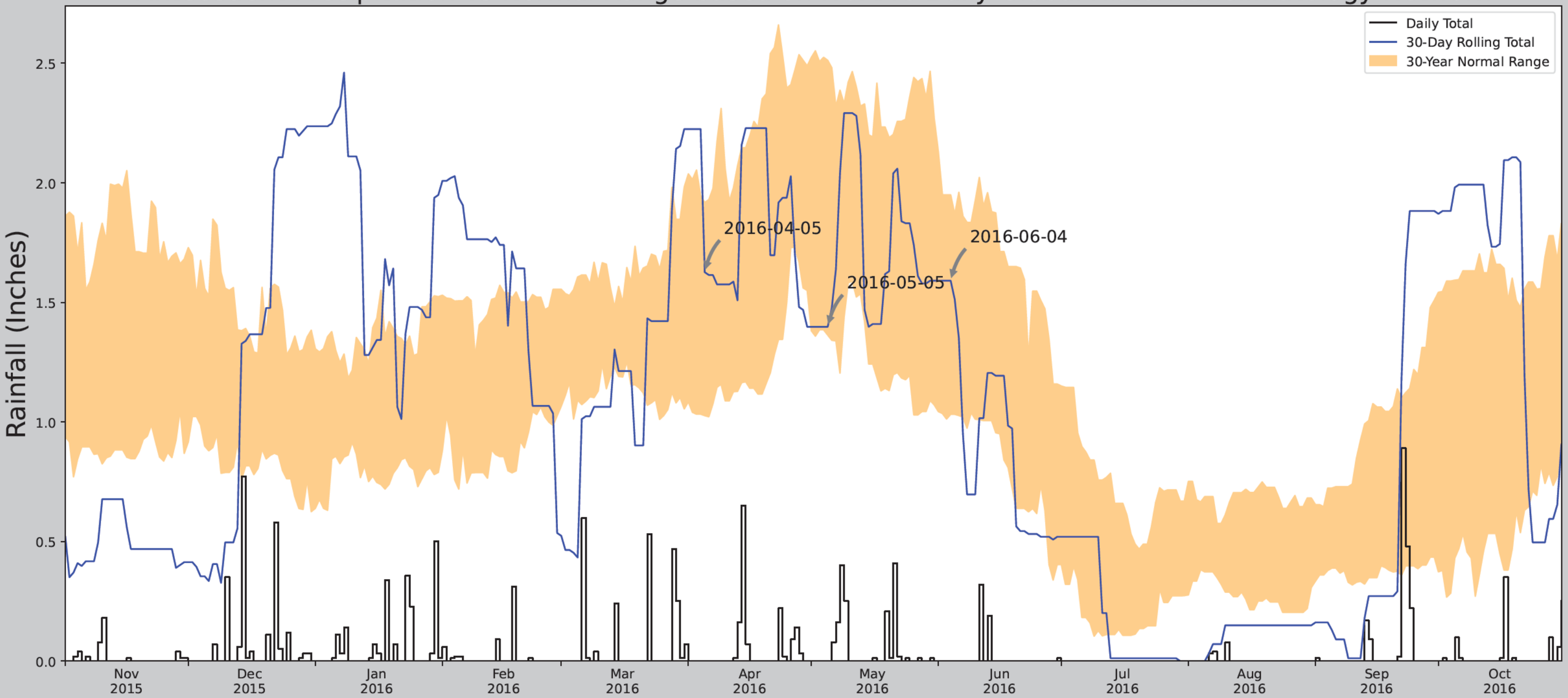
Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
SALT LAKE CITY INTL AP	40.7706, -111.965	4227.034	6.615	25.419	3.145	11353	90

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	40.72427, -112.05415
Observation Date	2016-06-04
Elevation (ft)	4239.857
Drought Index (PDSI)	Mild drought
WebWIMP H_2O Balance	Dry Season

30 Days Ending	30^{th} %ile (in)	70^{th} %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2016-06-04	1.031496	1.949606	1.590551	Normal	2	3	6
2016-05-05	1.363386	2.511811	1.397638	Normal	2	2	4
2016-04-05	1.026378	1.917323	1.625984	Normal	2	1	2
Result							Normal Conditions - 12

Figures and tables made by the Antecedent Precipitation Tool Version 2.9

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ERDC

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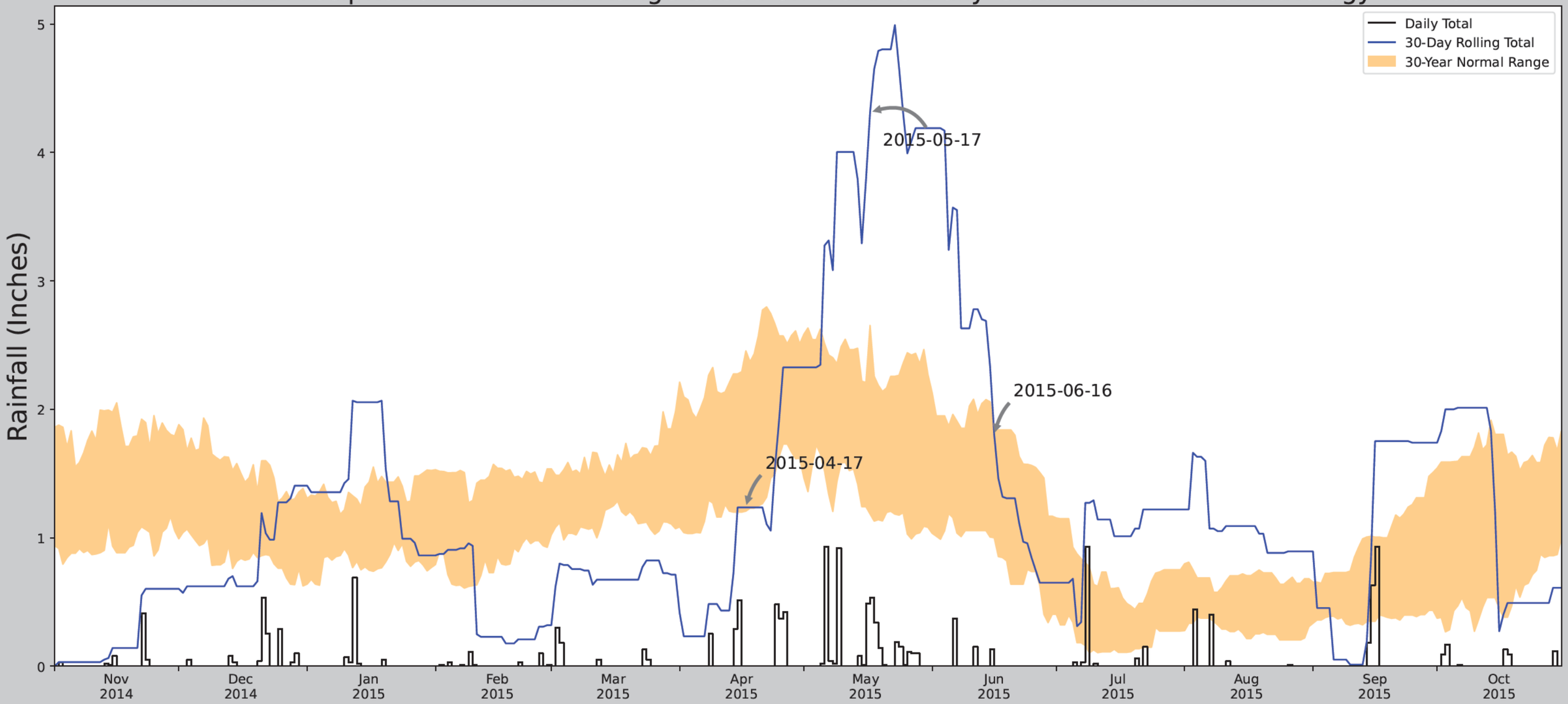
Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
SALT LAKE CITY INTL AP	40.7706, -111.965	4227.034	5.659	12.823	2.619	11352	90

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	40.72427, -112.05415
Observation Date	2015-06-16
Elevation (ft)	4239.857
Drought Index (PDSI)	Severe drought
WebWIMP H_2O Balance	Dry Season

30 Days Ending	30^{th} %ile (in)	70^{th} %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2015-06-16	0.999606	1.840158	1.799213	Normal	2	3	6
2015-05-17	1.185433	2.653543	4.311024	Wet	3	2	6
2015-04-17	1.20748	2.454724	1.236221	Normal	2	1	2
Result							Normal Conditions - 14

Figures and tables made by the
Antecedent Precipitation Tool
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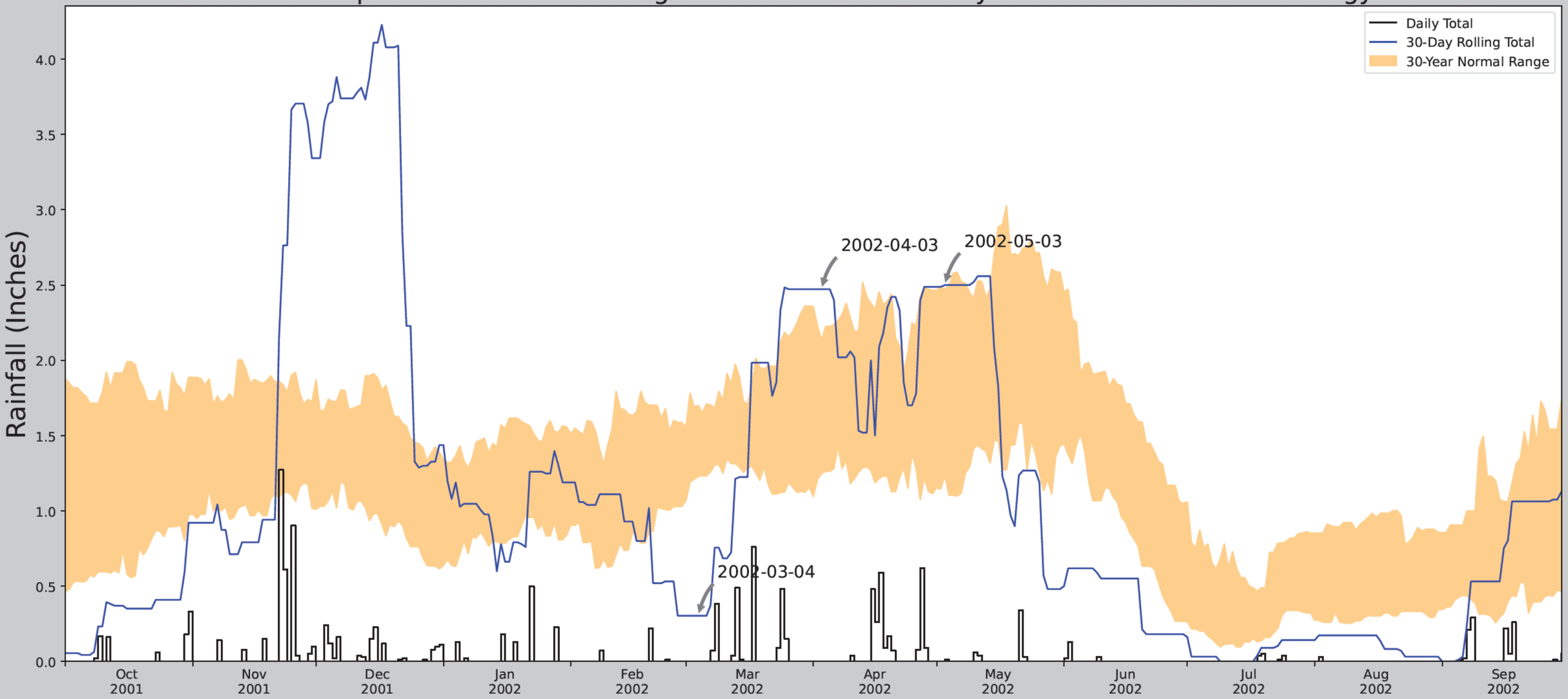
Development Center

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
SALT LAKE CITY INTL AP	40.7706, -111.965	4227.034	5.659	12.823	2.619	11353	90

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	40.72427, -112.05415
Observation Date	2002-05-03
Elevation (ft)	4239.857
Drought Index (PDSI)	Moderate drought
WebWIMP H_2O Balance	Dry Season

30 Days Ending	30th %ile (in)	70th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2002-05-03	1.236614	2.475591	2.5	Wet	3	3	9
2002-04-03	1.248819	2.13189	2.472441	Wet	3	2	6
2002-03-04	1.22874	1.700394	0.30315	Dry	1	1	1
Result							Wetter than Normal - 16

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Version 2.9

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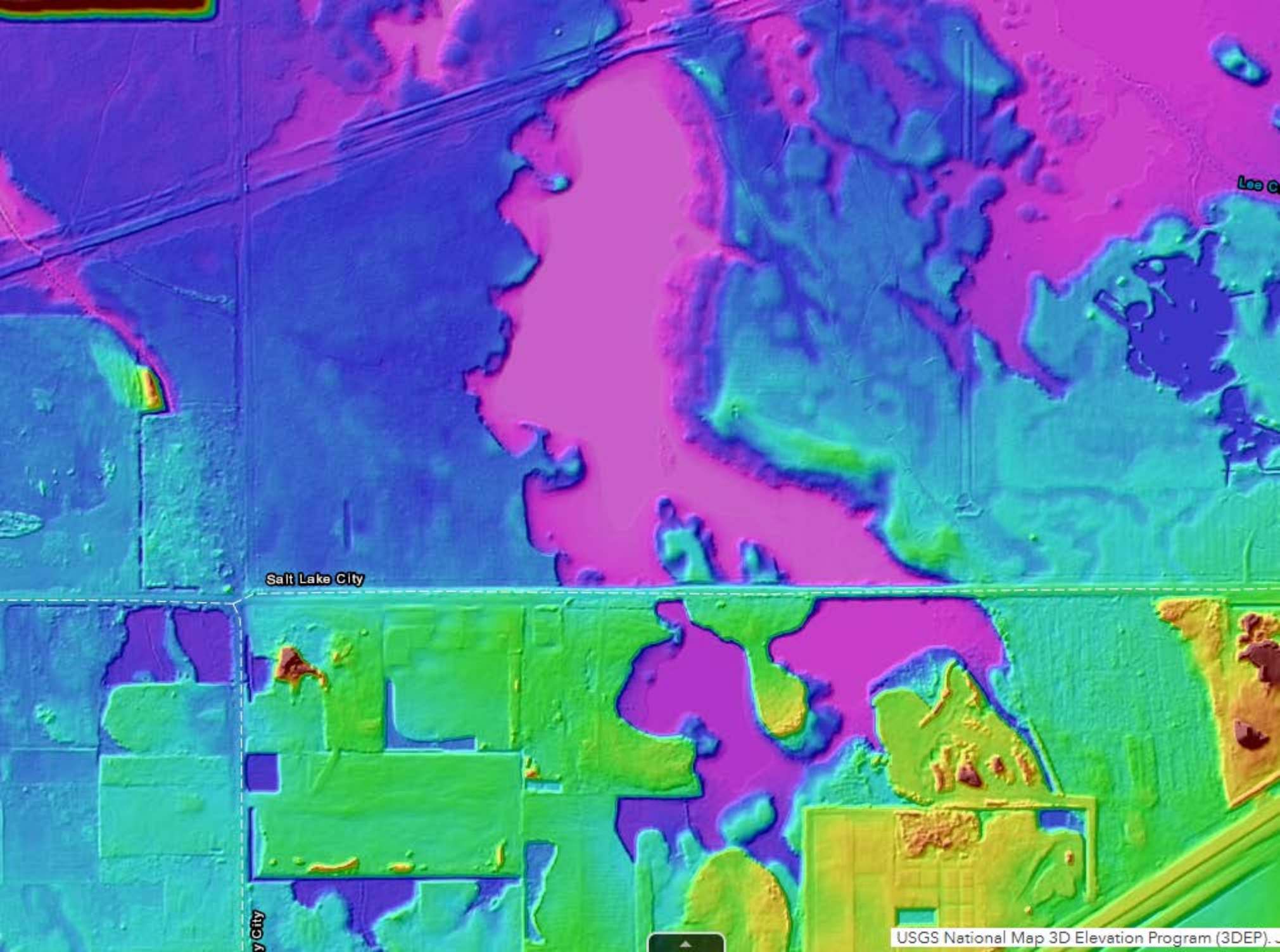
Development Center

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
SALT LAKE CITY INTL AP	40.7706, -111.965	4227.034	5.659	12.823	2.619	11353	90


Salt Lake City
USGS National Map 3D Elevation Program (3DEP).