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

CESPK-RDI-U 3 July 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-2005-50574]

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] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 RHA),[4] 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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[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] 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.

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) Feature 1 (0.23 acre), non-jurisdictional under Section 404 of the Clean Water Act.

2) Feature 2 (0.02 acre), non-jurisdictional under Section 404 of the Clean Water Act.

3) Feature 3 (372 linear feet/0.1 acre), 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 33-acre review area is located just west of the Interstate 15 and 1400 North intersection, Latitude 40.18686°, Longitude -111.878942°, Springville, Utah County, Utah (AJD MFR Enclosure 1). The review area historically was utilized for cattle grazing and some hay production. Hobble Creek up to 2008 flowed through the site from south to north and into Utah Lake. The entirety of this section of Hobble Creek was diverted/rerouted for the Lower Hobble Creek Wildlife Management Area wetland/restoration project. The abandoned section of Hobble Creek no longer flows through the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Utah Lake is the nearest TNW and the ordinary high water mark is located approximately 1,200 feet west of the survey area.[5]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The subject waters do not flow into Utah Lake, the nearest TNW.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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.[7] 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.

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[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.

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. 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" .[8] 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.

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.

[8] 51 FR 41217, November 13, 1986.

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).

- Feature 1 (0.23 acre) and Feature (0.02 acre) are palustrine emergent wetlands located within the abandoned section of Hobble Creek that lacks a continuous surface connection with Utah Lake, the nearest TNW. Feature 1 is a depressional wetland that borders the Condie Diversion/Berm that rerouted this section of Hobble Creek to the south and west in 2008. Feature 1 hydrology source is mainly groundwater and ponds long enough to support floating hydrophytic species, such as duckweed *Lemna sp.-OBL*). A berm separates the rerouted Hobble Creek and this feature, and downstream this wetland transitions to dryland within the abandoned channel. This section of channel does not have an ordinary high water mark and is approximately 1-2 feet higher in elevation. Feature 2 is also depressional with no indicators of recent flows to the north within the abandoned channel. Feature 2 is approximately 1,300 linear feet from the diversion and appears to be transitioning to dryland, evidenced by the dominance of ruderal facultative indicators species. This feature transitions to dryland due to a change in elevation. Therefore, Features 1 and 2 are not a)(7) adjacent wetland and are non-jurisdictional.

- Feature 3 (372 LF/0.1 acre) is a palustrine emergent wetland located within an abandoned roadside ditch that lacks a continuous surface connection with the nearest relatively permanent water, Spring Creek, which is located approximately 400 feet north. Feature 3 continues north of the review area and terminates in a section of ditch that increases in elevation and has no ordinary high water mark indicators. Also, this wetland feature appears to be drying based off of aerial photographs and the lack of new hydrophytic plant growth evidenced from a June 22, 2025 photograph, which was mainly dead Phragmites. Therefore, Feature 3 is a not an a)(7) adjacent wetland and non-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. Site visit April 24, 2025.

b. Google Earth 7.3.3.7692. 2015 June, 2017 June, 2018 September, 2019 July, 2020 May, 2021 August, 2022 May, 2023 June, and June 2024). Springville, Utah. Latitude 40.18686°, Longitude -111.878942°, eye alt 7,758 ft. Retrieved 6 March 2025.

c. LiDAR dated 2018 March - National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved 2 July 2025.

d. Aquatic Resource Delineation Abandoned Lower Hobble Creek, prepare by [redacted], dated June 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.

[redacted]

5 Encls
Enclosure 1: Vicinity Map
Enclosure 2: AR Maps
Enclosure 3: LiDAR
Enclosure 4: TNW and RPW Map
Enclosure 5: Aerials

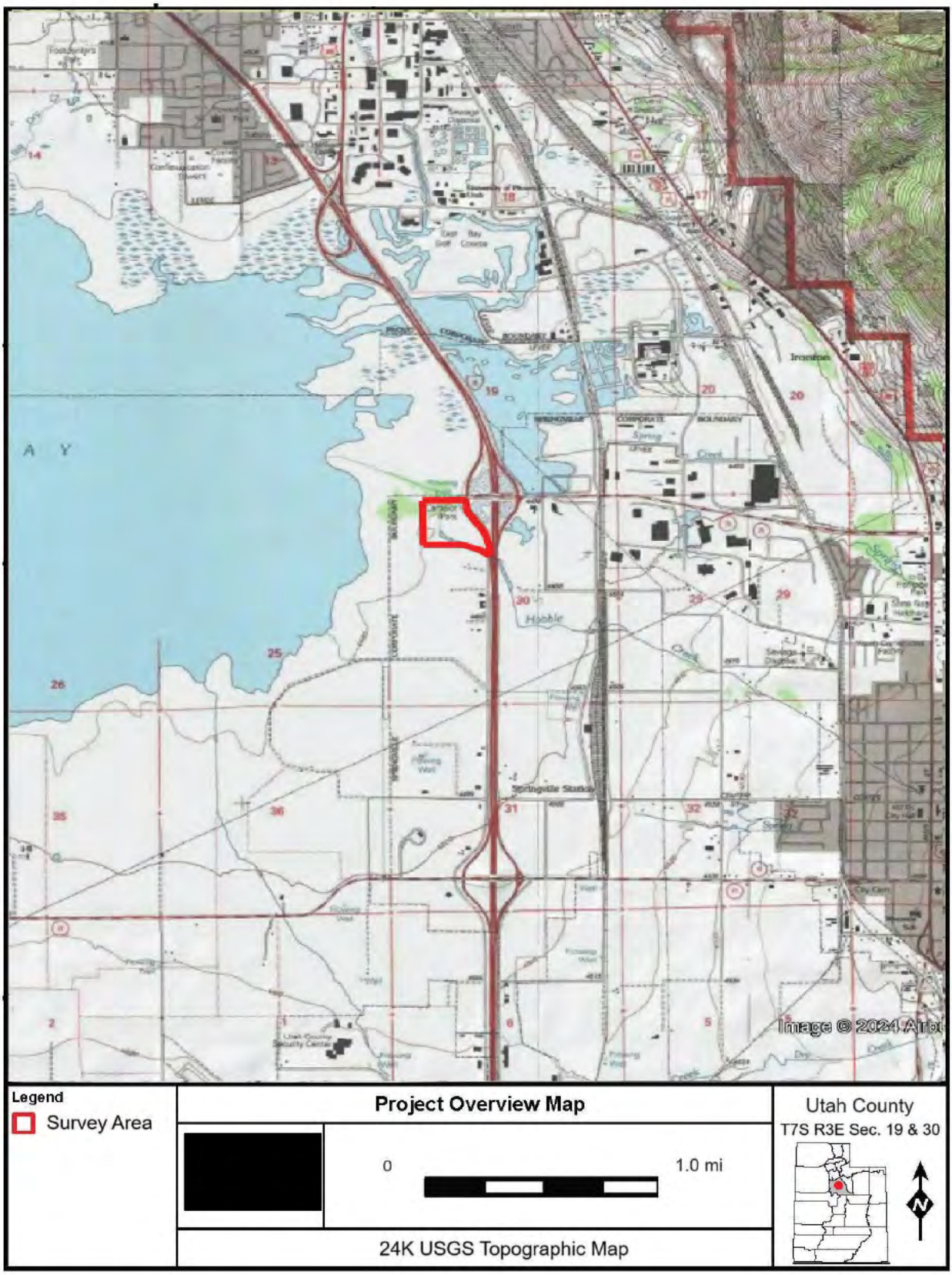


Figure 1. Project Location and Overview Map.

AJD MFR
ENCLOSURE 1

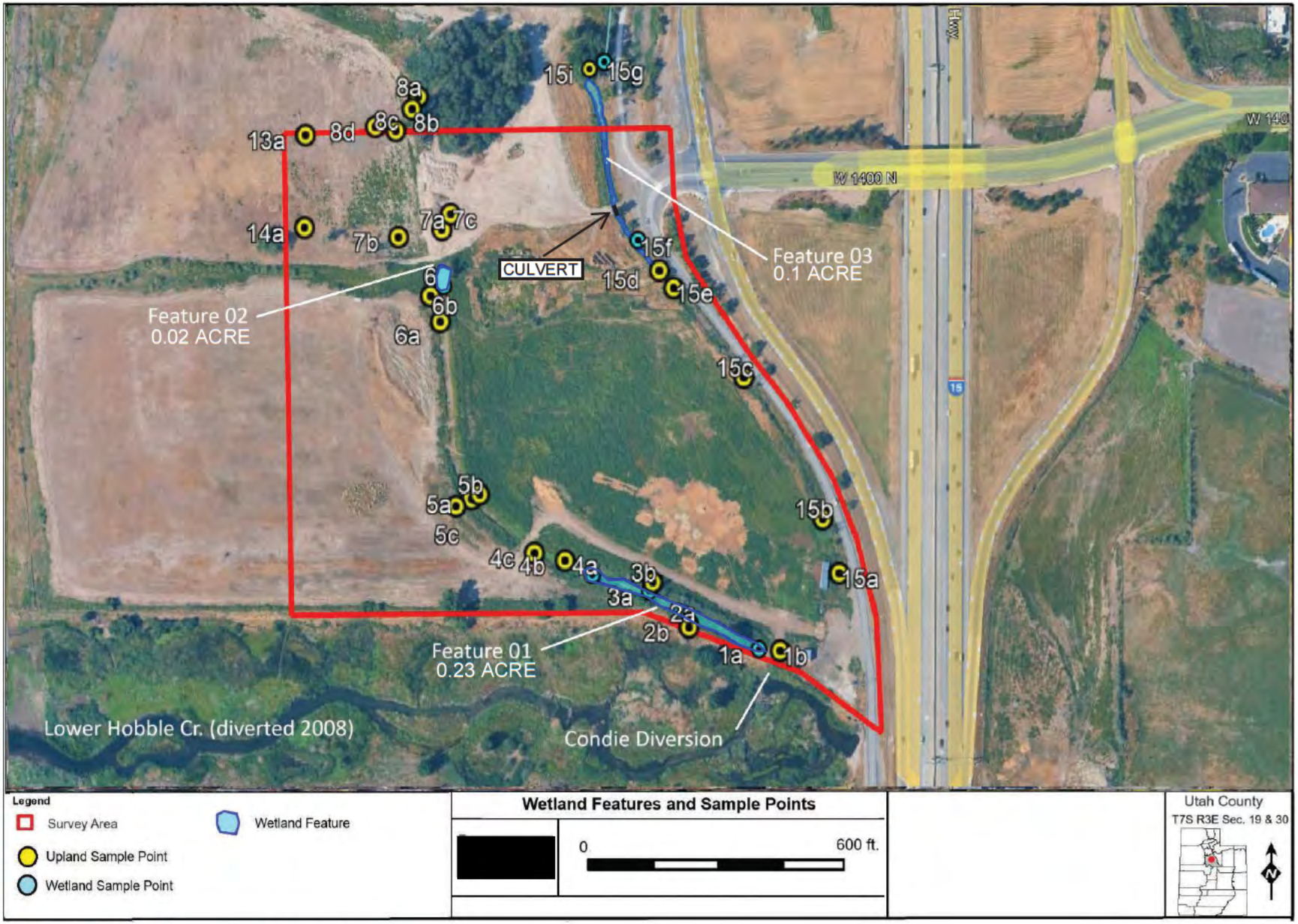
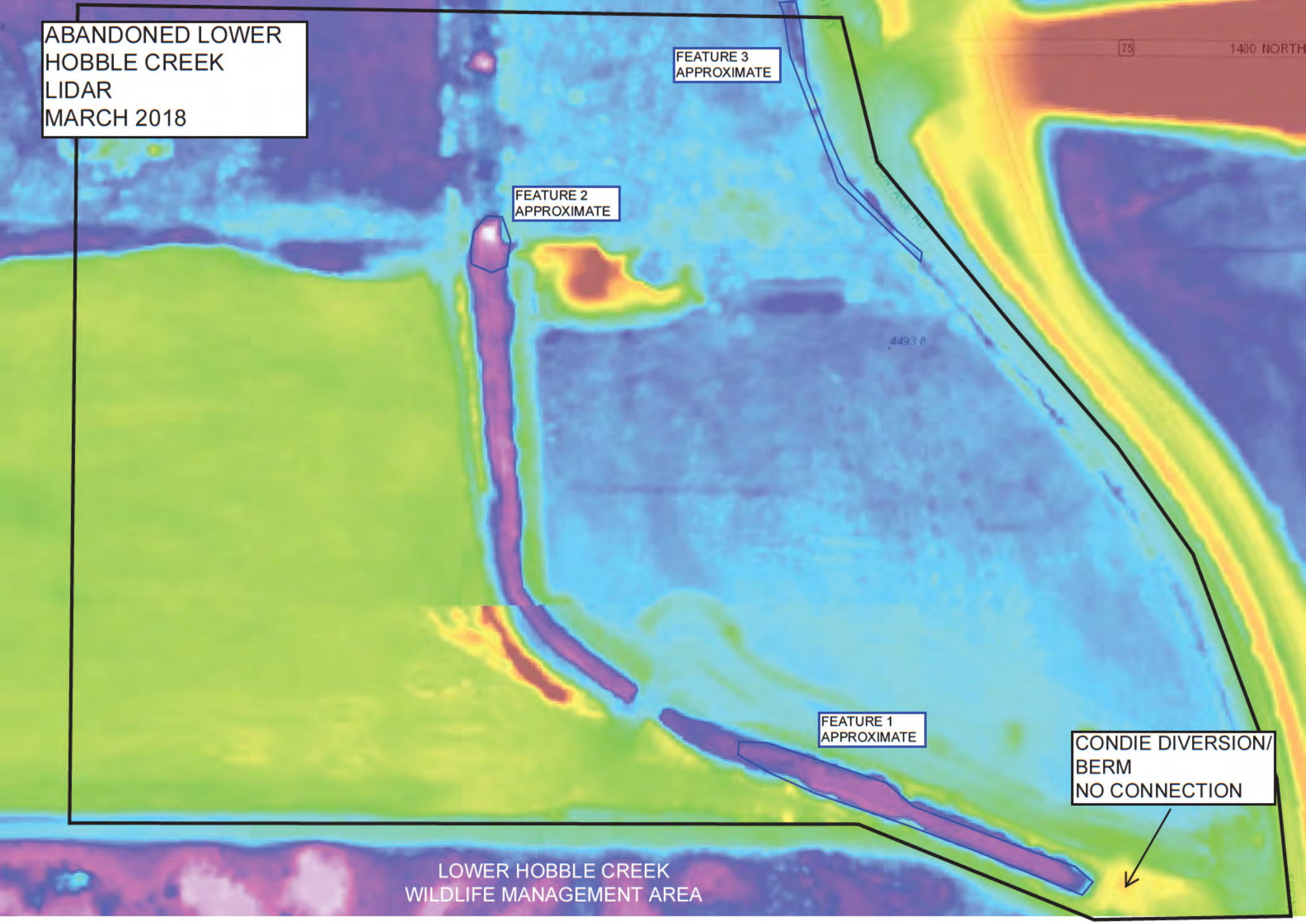
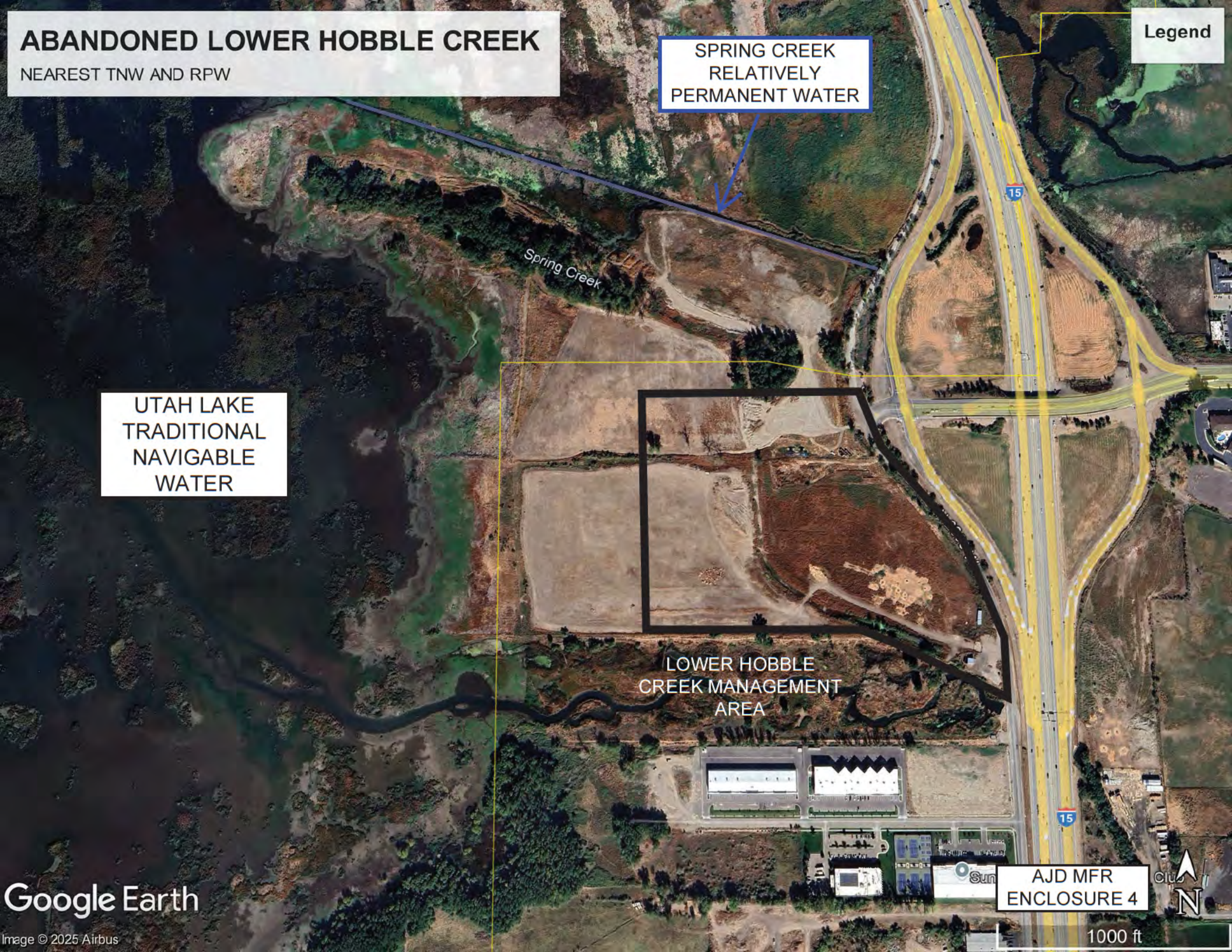


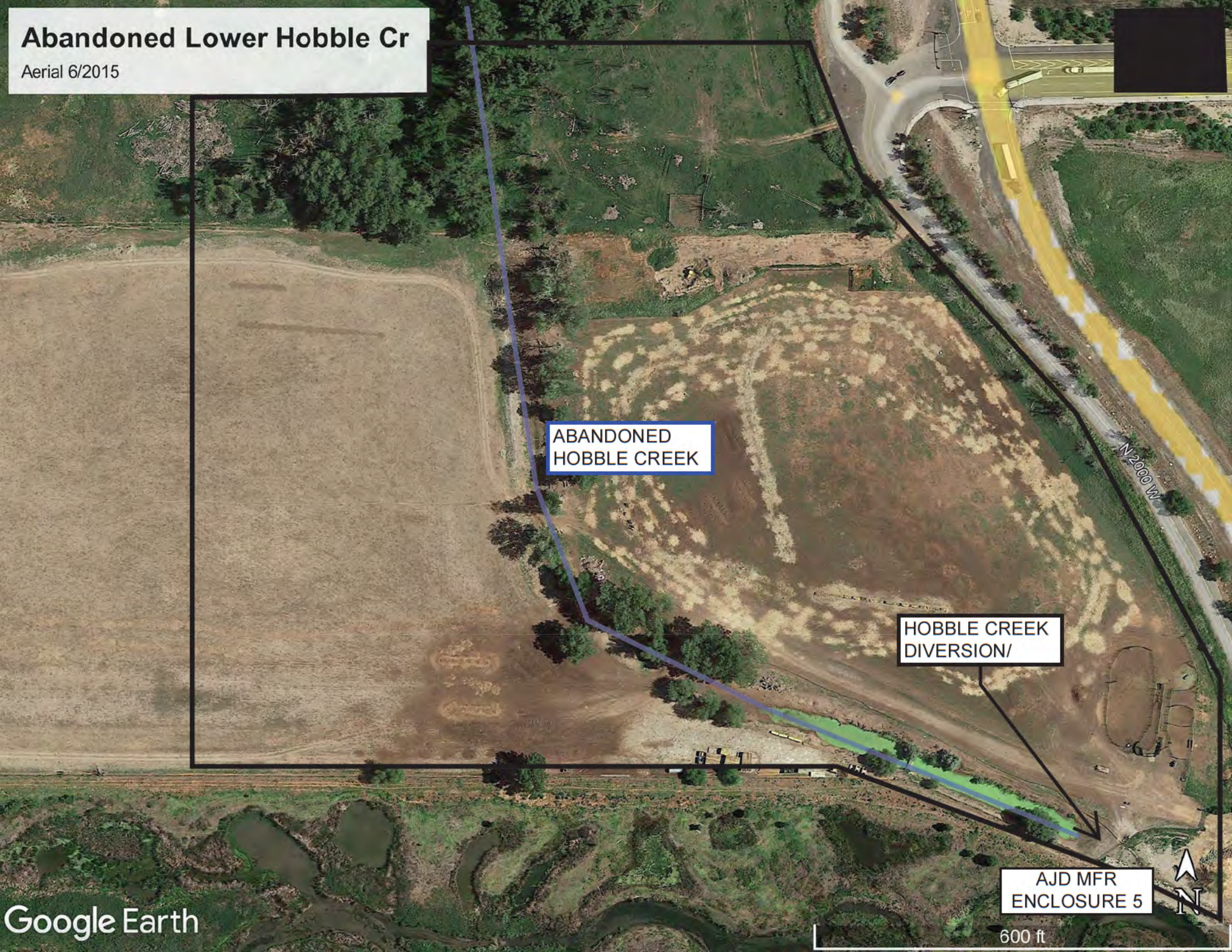
Figure 3 – Aquatic Resources Delineation Map

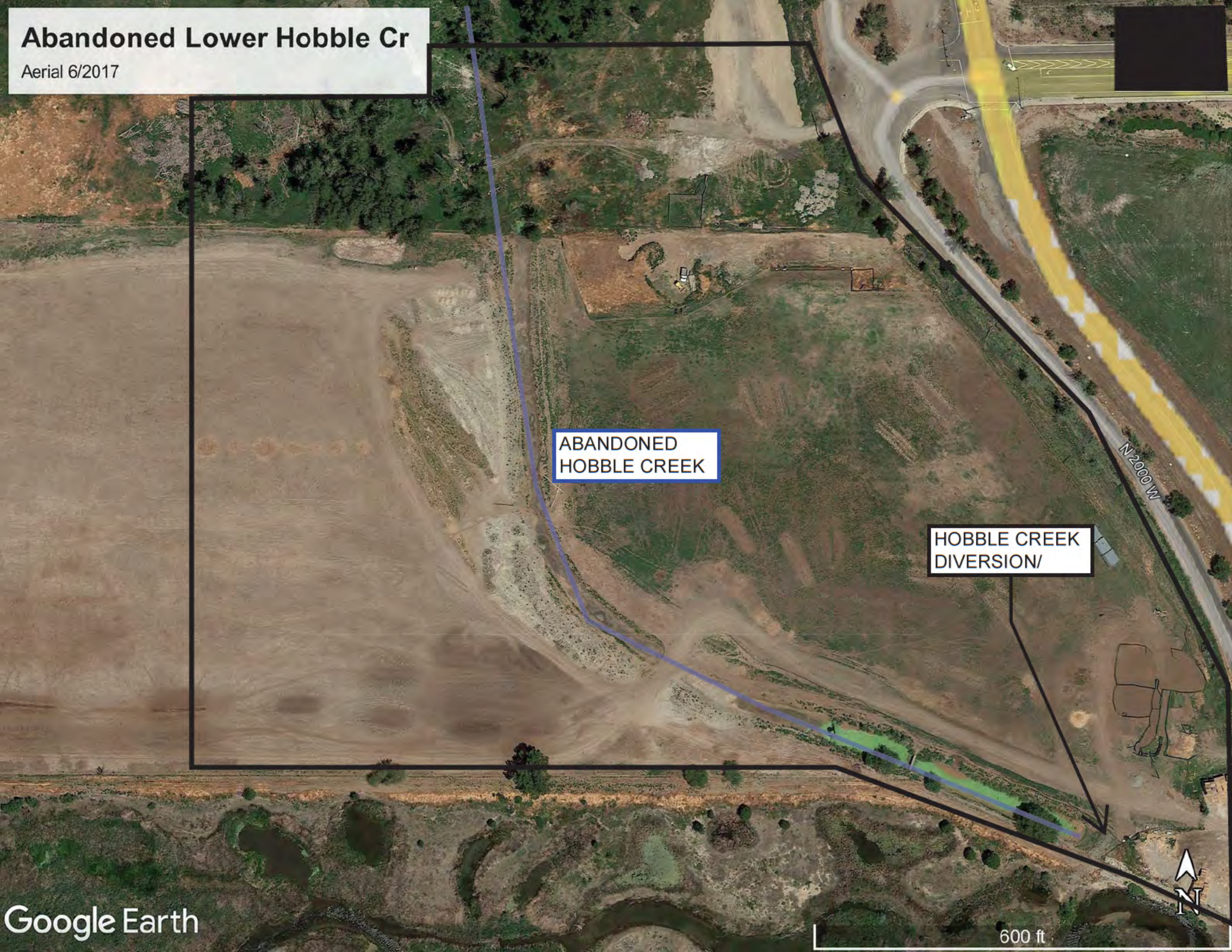
AJD MFR
ENCLOSURE 2



AJD MFR
ENCLOSURE 3


ABANDONED LOWER HOBBLE CREEK
NEAREST TNW AND RPW
SPRING CREEK RELATIVELY PERMANENT WATER
Spring Creek
UTAH LAKE TRADITIONAL NAVIGABLE WATER
LOWER HOBBLE CREEK MANAGEMENT AREA
Legend
15
15
AJD MFR ENCLOSURE 4
N
1000 ft
Google Earth
Image © 2025 Airbus


Abandoned Lower Hobble Cr
Aerial 6/2015
ABANDONED
HOBBLE CREEK
HOBBLE CREEK
DIVERSION/
N 2000 W
AJD MFR
ENCLOSURE 5
N
600 ft
Google Earth


Abandoned Lower Hobble Cr
Aerial 6/2017
ABANDONED
HOBBLE CREEK
HOBBLE CREEK
DIVERSION/
N 2000 W
N
600 ft
Google Earth


Abandoned Lower Hobble Cr
Aerial 9/2018
ABANDONED
HOBBLE CREEK
HOBBLE CREEK
DIVERSION/
N 2000 W
N
600 ft
Google Earth


Abandoned Lower Hobble Cr
Aerial 7/2019
ABANDONED
HOBBLE CREEK
HOBBLE CREEK
DIVERSION/
N 2000 W
N
600 ft
Google Earth


Abandoned Lower Hobble Cr
Aerial 5/2020
ABANDONED
HOBBLE CREEK
HOBBLE CREEK
DIVERSION/
N 2000 W
Google Earth
Image © 2025 Maxar Technologies
N
600 ft


Abandoned Lower Hobble Cr
Aerial 8/2021
ABANDONED
HOBBLE CREEK
HOBBLE CREEK
DIVERSION/
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600 ft
Google Earth


Abandoned Lower Hobble Cr
Aerial 5/2022
ABANDONED
HOBBLE CREEK
HOBBLE CREEK
DIVERSION/
N 2000 W
N
600 ft
Google Earth


Abandoned Lower Hobble Cr
Aerial 6/2023
ABANDONED
HOBBLE CREEK
HOBBLE CREEK
DIVERSION/
N 2000 W
Google Earth
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Abandoned Lower Hobble Cr
Aerial 6/2024
ABANDONED
HOBBLE CREEK
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