



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

CESPK-RDI-U

11 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-2025-00153]

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.

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.

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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) AQ-1, non-jurisdictional under Section 404 of the CWA.
- (2) AQ-2, non-jurisdictional under Section 404 of the CWA.
- (3) AQ-3, non-jurisdictional under Section 404 of the CWA.
- (4) AQ-4, non-jurisdictional under Section 404 of the CWA.
- (5) AQ-5, non-jurisdictional under Section 404 of the CWA.
- (6) AQ-6, non-jurisdictional under Section 404 of the CWA.
- (7) AQ-7, non-jurisdictional under Section 404 of the CWA.
- (8) AQ-8, non-jurisdictional under Section 404 of the CWA.
- (9) AQ-9, non-jurisdictional under Section 404 of the CWA.
- (10) AQ-10, non-jurisdictional under Section 404 of the CWA.
- (11) AQ-11, non-jurisdictional under Section 404 of the CWA.
- (12) AQ-12, non-jurisdictional under Section 404 of the CWA.
- (13) AQ-13, non-jurisdictional under Section 404 of the 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)

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3. REVIEW AREA. The approximately 4,042-acre review area is located at the center point Latitude 39.57436°, Longitude -112.68625°, Sugarville, Millard 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 aquatic resources within the review area are located in an isolated watershed with no downstream TNW, interstate water, or the territorial seas. The nearest TNW, Yuba Lake, is located approximately 37.5 aerial miles upstream, therefore, there is no downstream connection to a TNW.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A. There is no flowpath from the subject aquatic resources to a TNW, interstate water, or the territorial seas as all the aquatic resources within the review area are isolated.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 or other features within the review area (AJD MFR Enclosure 2) that 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.

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 "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.

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”).⁶

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

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. All aquatic resources within the review area, AQ-1 to AQ-13, totaling 251.6 acres 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*. The aquatic resources are isolated with no potential flowpath to downstream waters as supported by aerial imagery (AJD MFR Enclosure 3). Therefore, there is no continuous surface connection to a jurisdictional water.

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. [REDACTED] – Aquatic Resource Evaluation and AJD Support Documentation prepared by [REDACTED] dated 26 February 2025.

b. GoogleEarth. (30 May 2013, 11 April 2020, 05 July 2024). Sugarville, Millard County, Utah. Latitude 39.57436°, Longitude -112.68625°. Retrieved 10 July 2025, from <http://www.earth.google.com>.

⁶ 51 FR 41217, November 13, 1986.

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10. OTHER SUPPORTING INFORMATION. The 4,042-acre review area is located in a desert basin within the Lower Sevier watershed, north of Delta, Utah. The review area has remained undeveloped and has been sparsely used for livestock grazing and agriculture. The review area stays generally dry. When there is surface water runoff, the water settles in depressional areas and does not connect to downstream waters.

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.

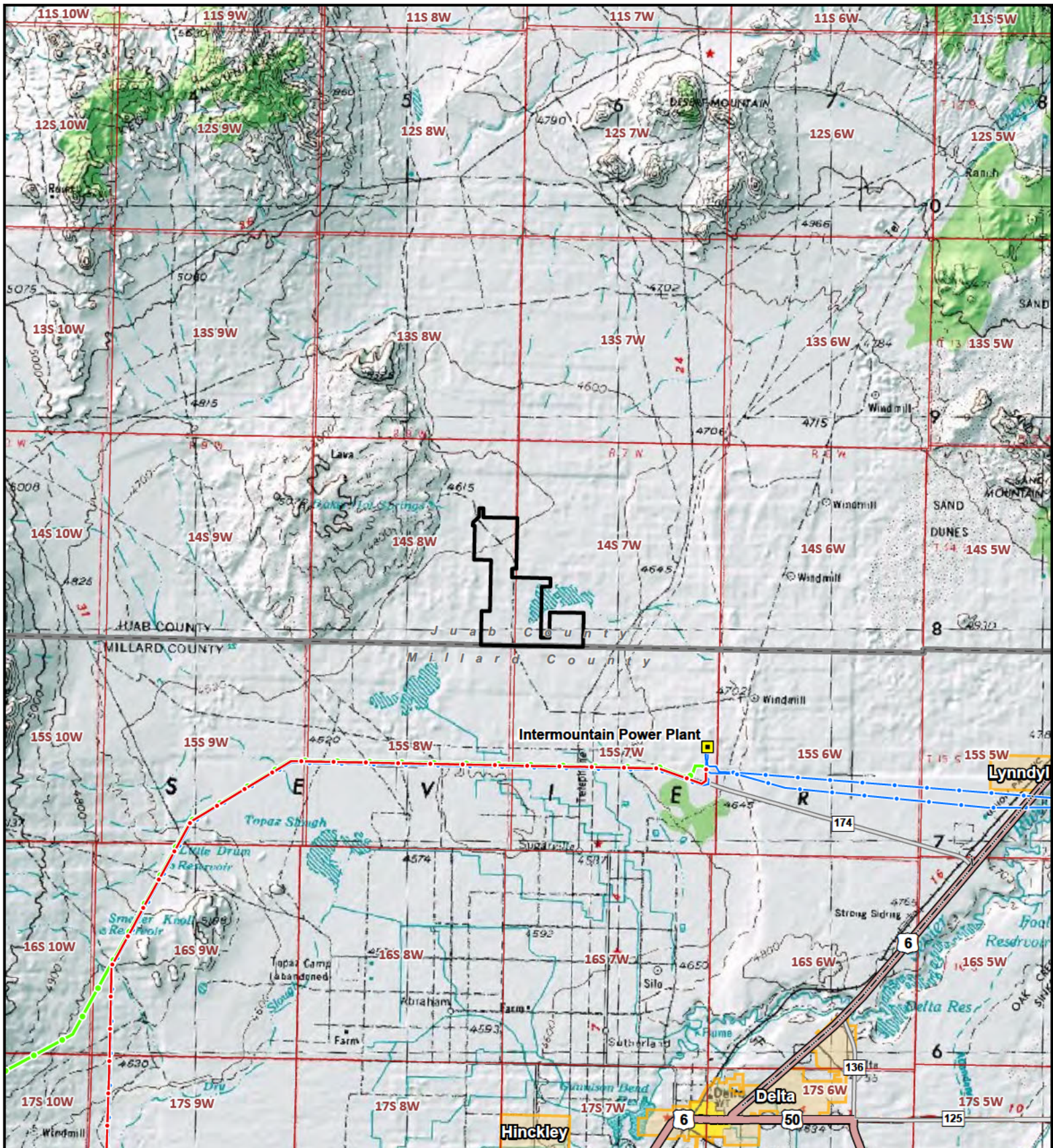
3 Encls

Encl 1 – Location

Encl 2 – AR Map

Encl 3 – Aerial Imagery





Project Features

Planned Solar Project

Reference Features

- Natural Gas Power Plant
- Natural Gas Pipeline
- 500 kV Transmission
- 345 kV Transmission
- 230 kV Transmission

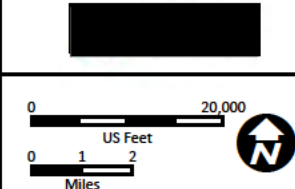
US Highway

State Highway

County Boundary

Township

Municipal Boundary



January 14, 2025

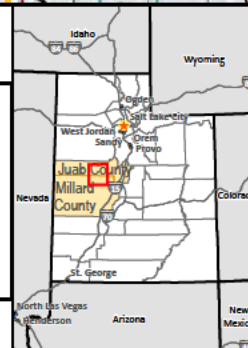
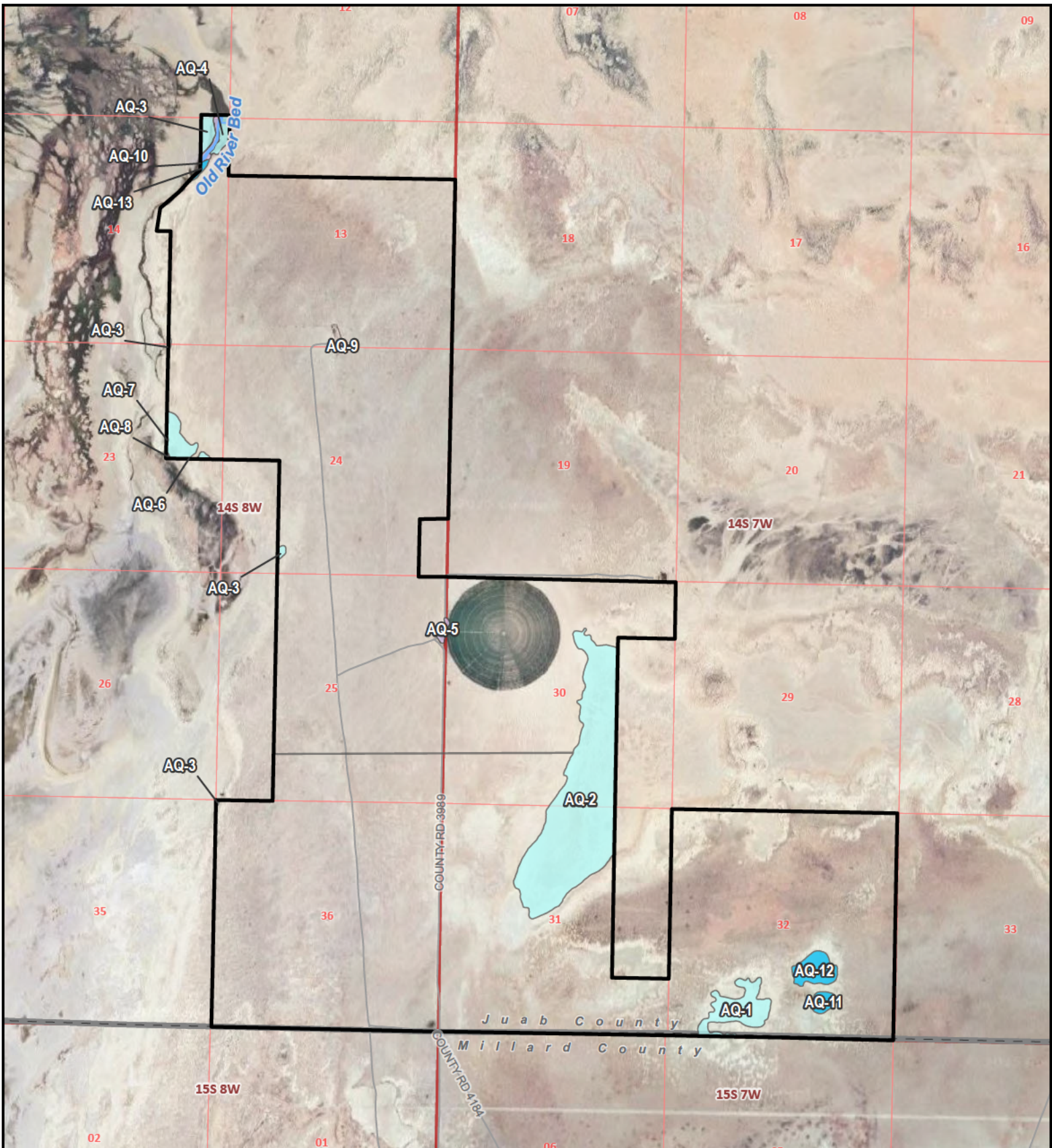


Figure 1
Project Location

Project

Juab County, Utah



Project Features

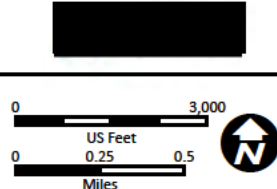
Planned Solar Project

Reference Features

Local Road
 County Boundary
 Section
 Township

NWI/NHD

Flowline (NHD)
 Waterbody (NHD)
 Freshwater Emergent Wetland (NWI)
 Freshwater Pond (NWI)
 Lake (NWI)
 Riverine (NWI)



1:36,000
 1 inch = 3,000 feet
 when printed at 8.5x11

January 14, 2025

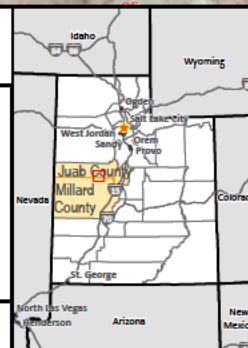


Figure 5
NWI/NHD

Project

Juab County, Utah