



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

CESPK-RDI-U

29 October 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-1997-50745] (MFR 1 of 1)

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.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-1997-50745]

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) Wetland A, Jurisdictional under Section 404 of the Clean Water Act.

(2) Wetland B, Jurisdictional under Section 404 of the Clean Water Act.

(3) Ditch A, 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 3.52 acre review area is located within Box Elder County parcel 03-236-0034, Latitude 41.483953°, Longitude -112.055997°, Brigham City, Box Elder 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 (GSL). The Subject Site is located approximately 3.7 river miles from the GSL.

The GSL is a "navigable water" for purposes of the Clean Water Act (CWA) and is considered as "traditional navigable waters" and therefore jurisdictional under 33 C.F.R. §328.3(a)(1) and 40 C.F.R. §230.3(s)(1). 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;

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-1997-50745]

- 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 GSL 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 GSL is a “traditional navigable water” and is regulated by the Corps under Section 404 of the CWA.

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

There is no flow path for Wetland A since upland berms were created with the construction of Ditch A (a storm water ditch) which was authorized as a component of the original Department of the Army (DA) permit (DA # 199750745) for the Point Perry Development . These berms resulted in the segmentation of the original extent, and impoundment of, Wetland A.

However, the remaining subject aquatic resources have a tributary flow through a wetland complex which connects to the Black Slough, which drains into the Bear River Bay of the Great Salt Lake (AJD MFR Enclosure 3).

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ 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

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.

⁶ 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.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-1997-50745]

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): Wetland A. The 0.35 acre Wetland A is a saline wet meadow wetland. Wetland A within the survey area was historically connected to a larger wet meadow wetland to the west, as demonstrated by the April 2000 Bear River Bird Refuge Jurisdictional Wetland Delineation map (AJD MFR Enclosure 2, page 2) and by the 1997 and 2003 aerial photos. The wetland was bisected after the authorized stormwater ditch was constructed sometime in 2003-04. As demonstrated by the available historical aerial photograph record in normal precipitation years, Wetland A becomes partially seasonally open water because of the impounding nature of the stormwater ditch berm. But for the ditch’s berms, the wetland within the review area would be directly abutting a relatively permanent water with seasonal flow which feeds into a wetland complex into the Black Slough (TNW) to the GSL (AJD MFR Enclosure 2).

e. Tributaries (a)(5): There is 0.243 acre (814 linear feet) of a tributary that is a relatively permanent water (RPW) within the review area.

Ditch A – is an excavated ditch authorized under the original Point Perry Development permit that runs along the northern and western Project Area boundaries. Ditch A was constructed through wetlands and conveys water off-site to the south. Ditch A is tributary through a wetland complex that directly abuts the Black Slough, an RPW. Water then flows south in the Black Slough into the Bear River Bay of the Great Salt Lake, a TNW.

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

g. Adjacent wetlands (a)(7): A total of 0.473 acre of emergent marsh wetland within the study area meets the (a)(7) category of “waters of the United States” per the pre-2015 regulatory regime.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-1997-50745]

The area identified as Wetland B is adjacent (i.e. directly abutting a RPW ditch that connects with Ditch A). This wetland meets the (a)(7) category “waters of the United States” per the pre-2015 regulatory regime since it is directly abutting, and has a continuous surface connection to, Ditch A, which is a relatively permanent (a)(5) tributary to the Great Salt Lake.

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”).⁷ N/A

b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* 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. 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.). 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.” 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. The Corps visited the site on October 09, 2025 to verify the findings of the aquatic resources delineation report.

⁷ 51 FR 41217, November 13, 1986.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-1997-50745]

b. Aquatic Resources Delineation Report “Cross Country Pointe Perry Property – Approximately 3.52 acres” prepared by [REDACTED], dated July 2025. The consultant prepared the wetland delineation report in accordance with the U.S. Army Corps of 1987 Wetland Delineation Manual and the USACE Regional Supplement for the Arid West Region. The Corps agrees with the extent of aquatic resources identified on site and the contents of the report, with the exception of [REDACTED] determination that Wetland A is isolated and not subject to CWA jurisdiction. The Corps finds that Wetland A is subject to CWA jurisdiction, since it is an (a)(4) water (i.e. an impoundment of an aquatic resource previously subject to Clean Water Act jurisdiction).

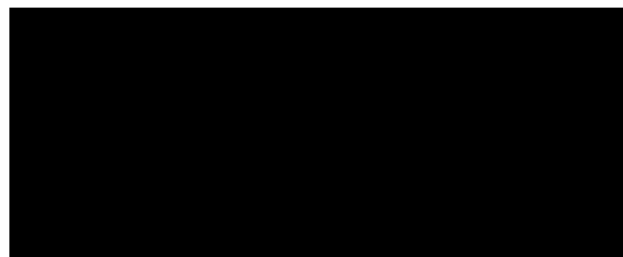
c. National Hydrography Dataset Flowlines – Large Scale from National Layers in the National Regulatory Viewer for the South Pacific Division. Retrieved October 27, 2025 (AJD MFR Enclosure 3)

d. Photos included in [REDACTED] report, Corps photolog dated 09 October 2025), and GoogleEarth (July 1997, July 2022, August, 2004, April 2005, December 2005, August 2011, June 2014, June 2017, and August 2025). Box Elder County, Latitude 41.483953°, Longitude -112.055997°. Retrieved October 09, 2025, from <http://www.earth.google.com> (AJD MFR Enclosure 4)

e. LiDAR – National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved October 27, 2025 (AJD MFR Enclosure 5).

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.



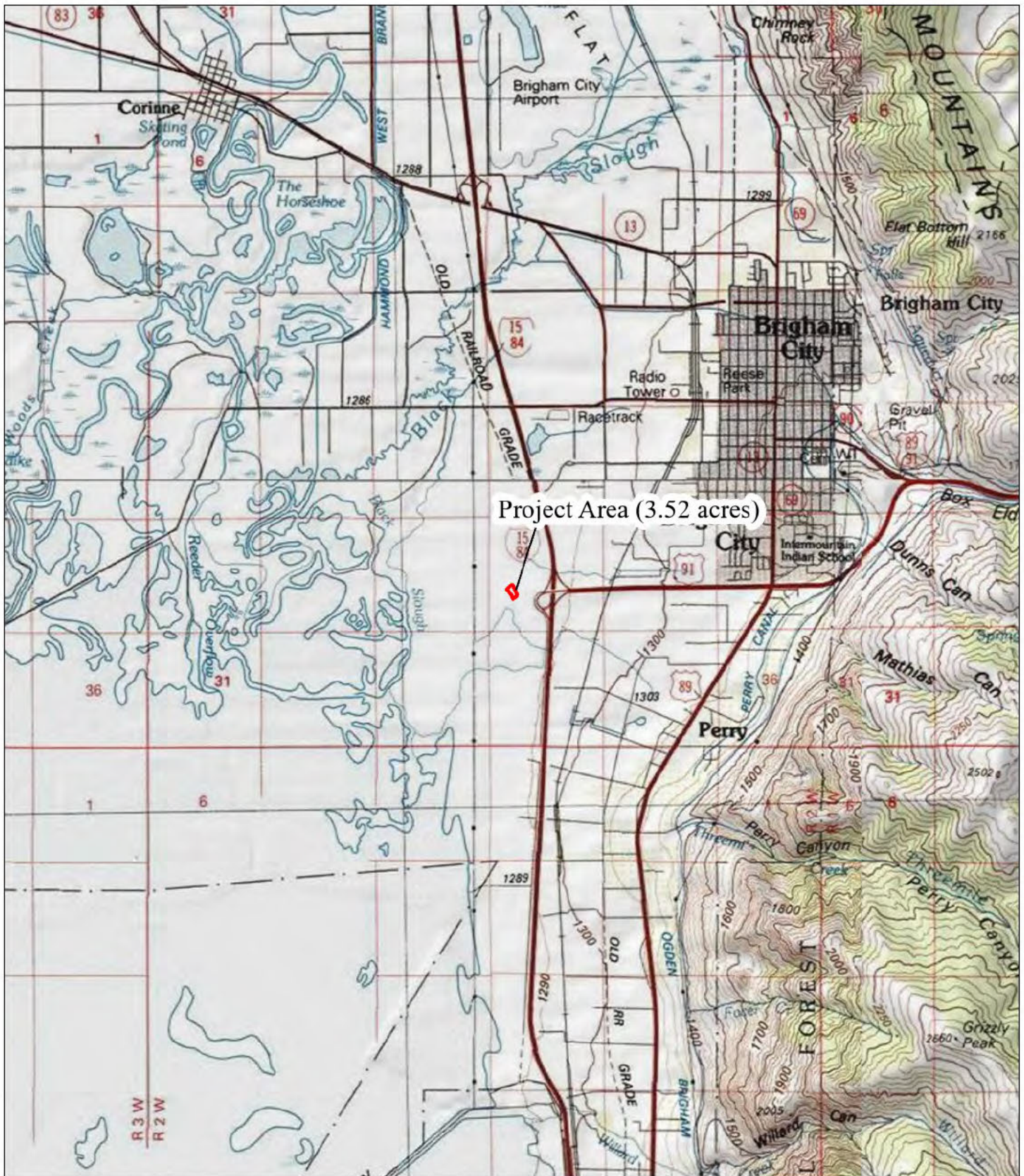
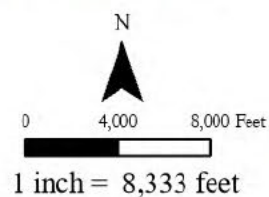


Figure 1. Project Location Map

Base Layer: USGS Topo

Project Area



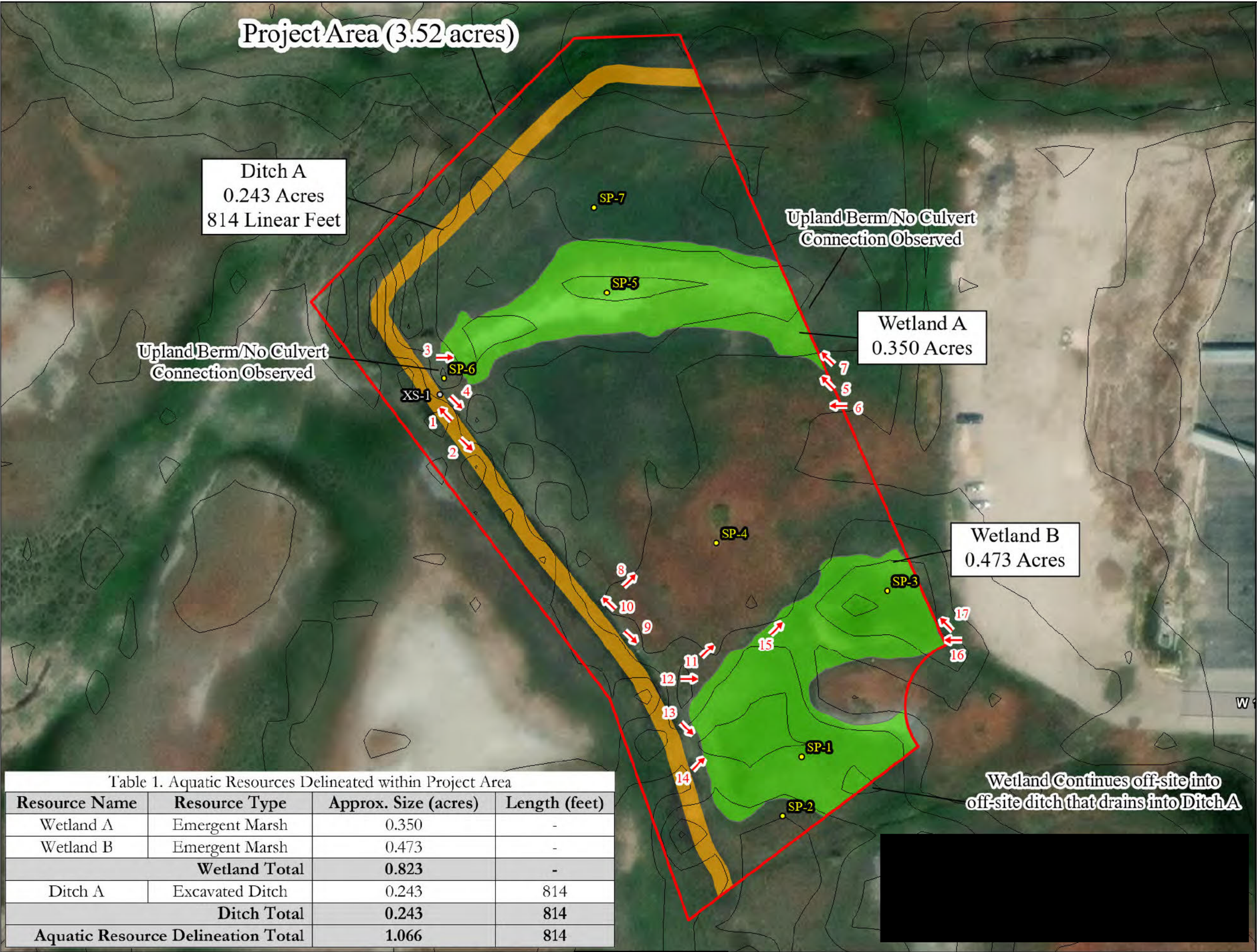
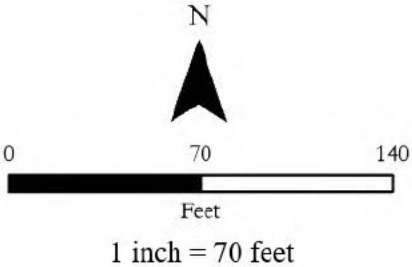


Figure 3
Aquatic Resource
Delineation Map

- Project Area
- Wetland
- Ditch
- Sample Points
- OHWM Sample Point
- Contour Lines
- Photo View Direction

Map Date: 7/14/2025
Map By: [Redacted]
Delineation Date: 7/8/2025 by [Redacted]
Aerial Imagery: Maxar 05/2023



Name: NAD 1983 StatePlane Utah North FIPS 4301 Feet
Datum: North American 1983
Projection: Lambert Conformal Conic

Table 1. Aquatic Resources Delineated within Project Area			
Resource Name	Resource Type	Approx. Size (acres)	Length (feet)
Wetland A	Emergent Marsh	0.350	-
Wetland B	Emergent Marsh	0.473	-
Wetland Total		0.823	-
Ditch A	Excavated Ditch	0.243	814
Ditch Total		0.243	814
Aquatic Resource Delineation Total		1.066	814