



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

CESPK-RDI-U

24 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-2022-00740]

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) Canal 2: jurisdictional, subject to Section 404 of the Clean Water Act

(2) Ditch 3: jurisdictional, subject to Section 404 of the Clean Water Act

(3) Ditch 5: 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 5-acre review area is located along the Weber River, near Wooden Shoe Lane, Latitude 40.707736°, Longitude -111.346106°, Peoa, Summit County, Utah (MFR Enclosure 1).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The GSL is a "navigable water" for purposes of the Clean Water Act (CWA) and is considered a "traditional navigable water" 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;
- 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. Ditch 3 is diverted from an irrigation ditch that runs south to north and sits outside of the review area to the east. Ditch 3 passes through the review area at two locations before tying into Canal 2. Canal 2 crosses through the review area at three locations before flowing into the Weber River, approximately 125 feet north of the review area. The Weber River is tributary to the GSL, a TNW. Ditch 5 is an irrigation side channel of Canal 2 and runs north for approximately 385 feet before terminating in uplands (MFR Enclosure 2).

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 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

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.

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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): N/A

e. Tributaries (a)(5): Canal 2 and Ditch 3 meet the definition of an (a)(5) tributary. Ditch 3 is a relatively permanent tributary that flows into Canal 2. Canal 2 is a relatively permanent tributary that flows into the Weber River followed by the GSL, a TNW. The flow regimes of these tributaries was determined based on a review of aerial images (MFR Enclosure 3).

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”).⁷ 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

⁷ 51 FR 41217, November 13, 1986.

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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). Ditch 5 is non-jurisdictional as it does not meet any category of waters of the United States. Approximately 235 linear feet of Ditch 5 sits within the review area. After exiting the review area, Ditch runs north for approximately 145 linear feet before terminating in the uplands with no downstream connection to a TNW, interstate water, or territorial seas (MFR Enclosure 3).

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. Aquatic resources delineation report titled “Aquatic Resources Delineation Report 5.1-Undeveloped Acres Wooden Shoe Lane Peoa, Summit County, Utah” prepared by [REDACTED] and dated December 19, 2022. 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 Western Mountains, Valleys, and Coast region.

b. Aquatic resources delineation report supplement titled “Supplemental Information to Support Approved Jurisdictional Determination Request” prepared by [REDACTED] and dated July 11, 2025.

c. Photographs: aerial images from Google Earth Pro 7.3.6.10201 dated October 2022, August 2020, and May 2017 (MFR Enclosure 4).

d. LiDAR: National layer in the National Regulatory Viewer for the South Pacific Division (MFR Enclosure 5)

10. OTHER SUPPORTING INFORMATION. N/A

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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

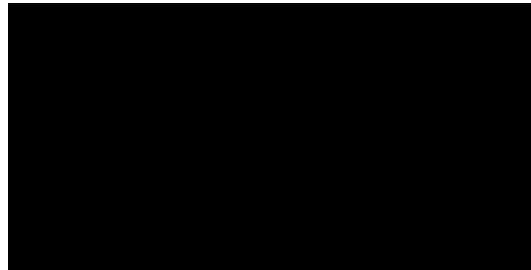
Enclosure 1: Location map

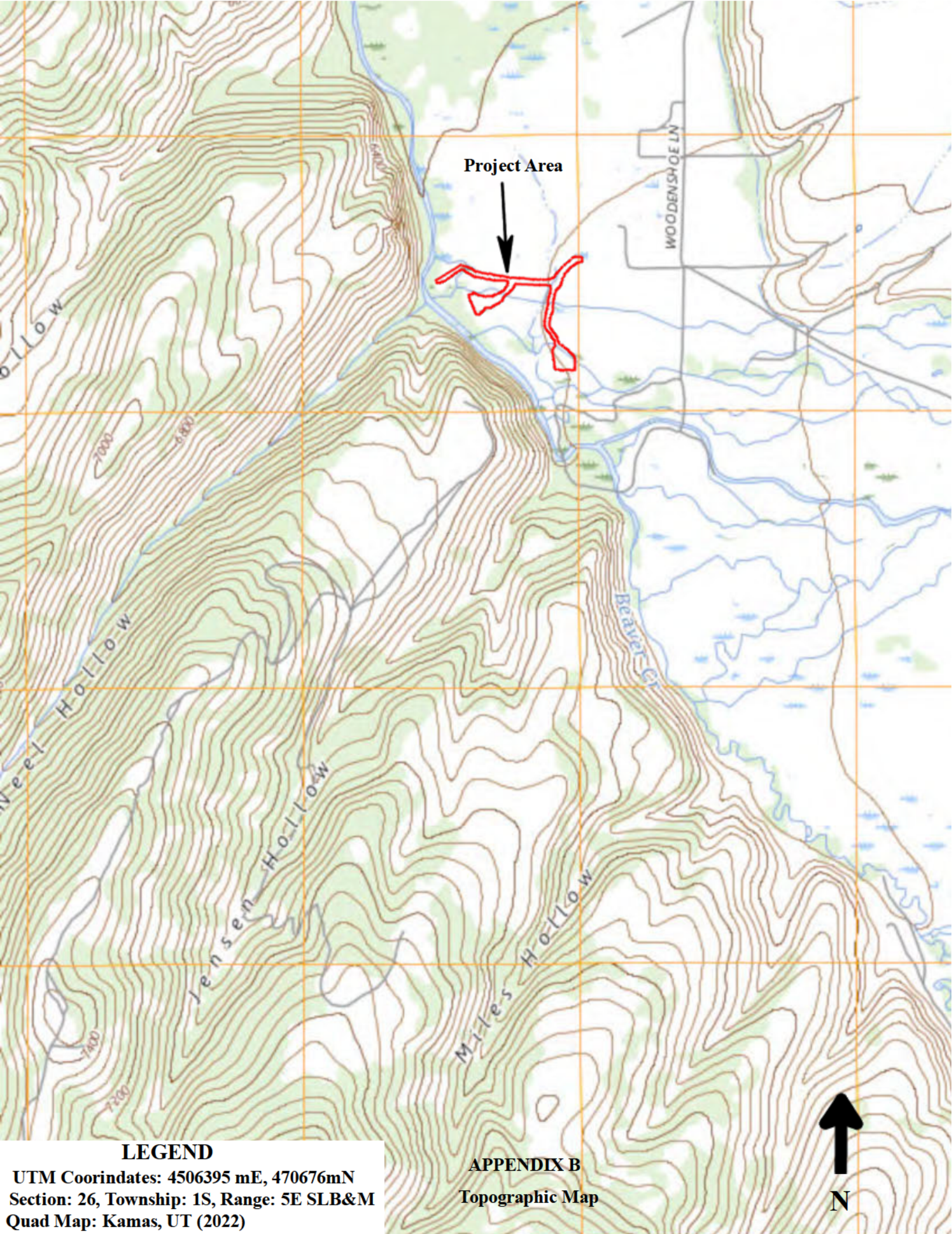
Enclosure 2: Flow path map

Enclosure 3: AR map

Enclosure 4: Aerial images

Enclosure 5: LiDAR image





Project Area

WOODSHOE LN

ollow

Jensen Hollow

Jensen Hollow

Miles Hollow

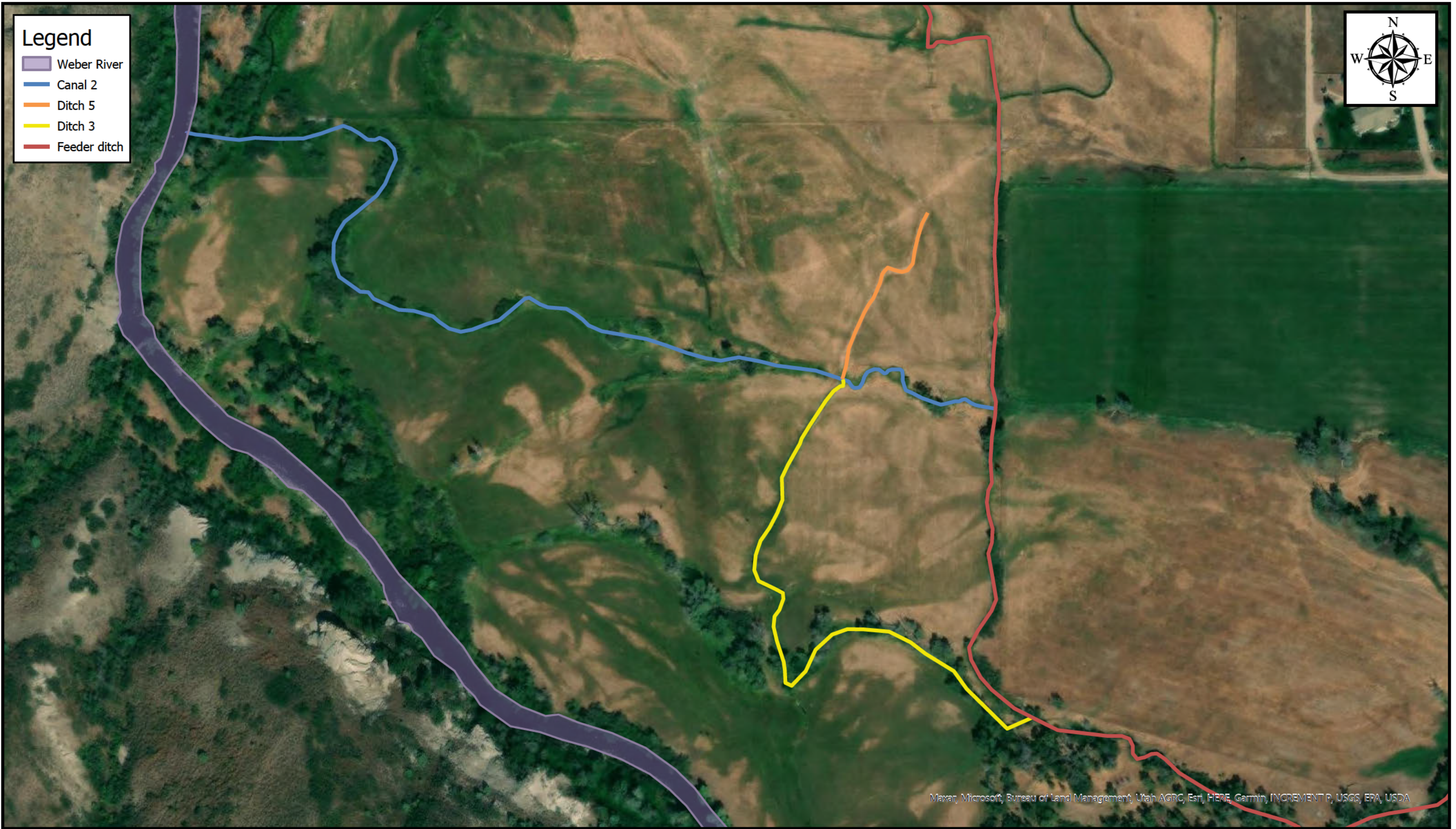
Beaver Creek

LEGEND

UTM Coordinates: 4506395 mE, 470676mN
Section: 26, Township: 1S, Range: 5E SLB&M
Quad Map: Kamas, UT (2022)

APPENDIX B
Topographic Map





Legend

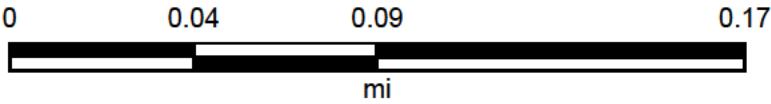
- Weber River
- Canal 2
- Ditch 5
- Ditch 3
- Feeder ditch



Maxar, Microsoft, Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA



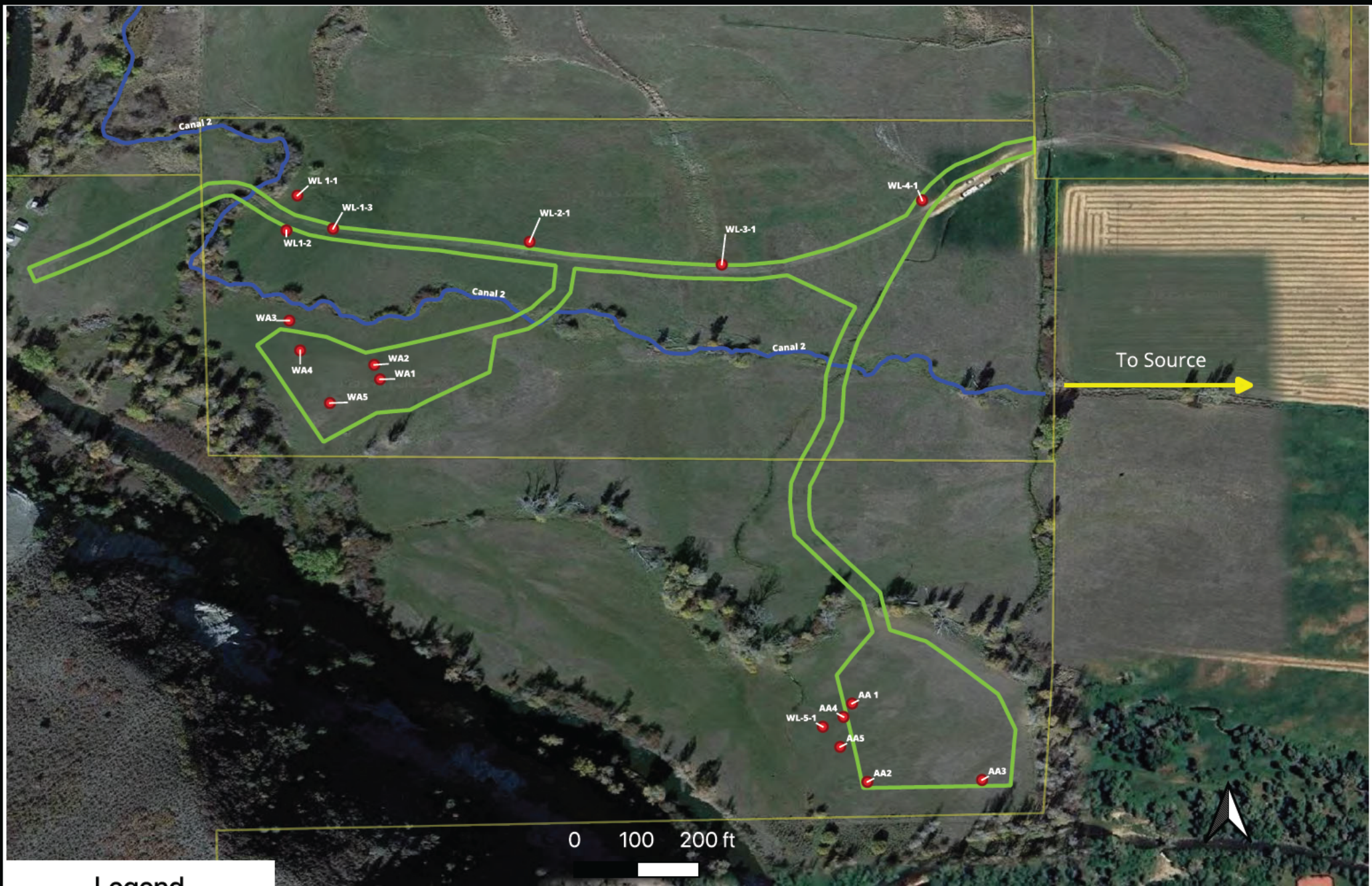
SPK-2022-00740



Map Center: 111.345565°W 40.707762°N

Map Created by: [REDACTED]
Date: 10/21/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere



Legend

-  Parcel Lines
-  Project Area
-  Datapoints (upland)
-  Canal/Ditch 2 (WOUS)

PEOA CROSSING
Woodenshoe Lane
Peoa, Summit County, Utah
AQUATIC RESOURCES DELINEATION MAP (Amended)
Appendix A

Project No.: SPK-2022-00740
Investigator: 
Date: 07/10/2024
Revision: 08/27/2025
USACE Revision: 10/23/2025
Image Date: 11/06/2024

10/2022
1985 2023



Google Earth

1985 8/2020 2023

Navigation controls including a compass, a hand icon for panning, a pegman icon for street view, and a vertical zoom slider.



Image © 2025 Maxar Technologies

Google Earth

6/2017

N

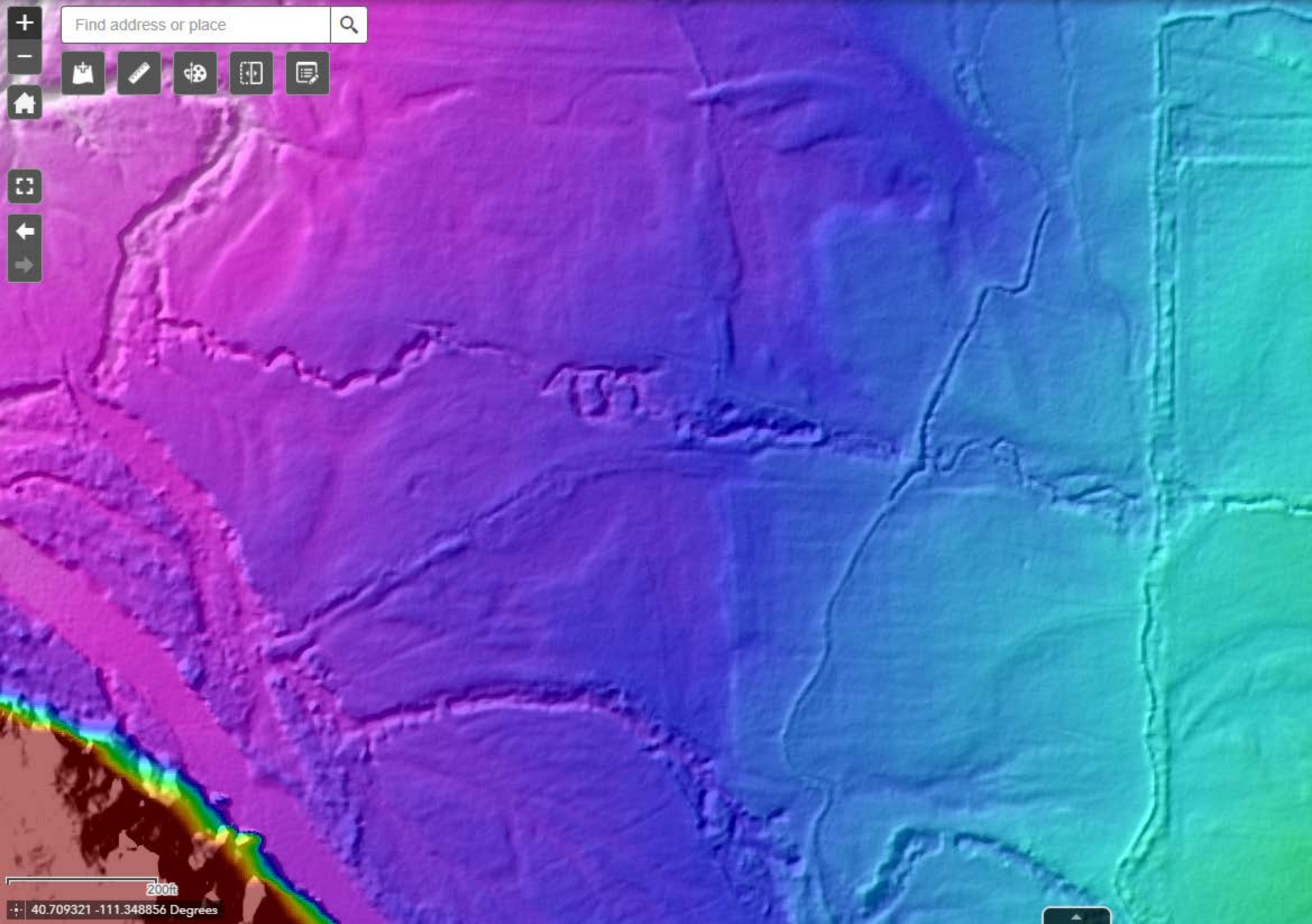
Google Earth

Imagery Date: 6/22/2017 lat 40.709022° lon -111.343115° elev 6251 ft eye alt 8358 ft

1985



Find address or place



200ft

40.709321 -111.348856 Degrees