



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

CESPK-RDI-U

October 24, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023)),¹ [SPK-2023-00169]

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

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

¹ While the Revised Definition of "Waters of the United States"; Conforming 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: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2023-00169]

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) Wash 1 (approximately 373 linear feet) is a jurisdictional water of the United States under CWA Section 404.

(2) Wash 2 (approximately 18,271 linear feet) is a jurisdictional water of the United States under CWA Section 404.

(3) Wash 4 (approximately 2,300 linear feet) is a jurisdictional water of the United States under CWA Section 404.

(4) All remaining washes within the review area (Wash 3 and Washes 5-30, totaling approximately 137,770 linear feet) are not waters of the United States and are non-jurisdictional features.

2. REFERENCES.

a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))

c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The approximately 4460-acre review area is located near State Route 160 and Tecopa Road, Latitude 36.0323°, Longitude -115.8271°, Clark County, Nevada (AJD MFR Enclosure 1). The review area is located approximately 2.2 miles from the Nevada/California boundary in a desert environment. The site contains numerous erosional/ ephemeral drainage features, and no other aquatic features are present (AJD MFR Enclosure 2). A preliminary jurisdictional determination was issued for this site on July 6, 2023.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Washes 1, 2, and 4 are considered interstate waters because their channel segments maintain the same stream order within the review area and off-site to the crossing of the state line (AJD MFR Enclosure 3). All other channels in the review area either dissipate or change stream order before reaching the state line.

CESPK-RDI-U

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2023-00169]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. All channel features in the review area flow generally southwest toward the Nevada/California border, approximately 2.2 miles from the review area. Washes 1, 2, and 4 are considered TNWs (interstate waters) because their channel segments maintain the same stream order within the review area and off-site to the state line crossing (AJD MFR Enclosure 3). All other channels in the review area either dissipate or change stream order before reaching the state line.

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 2023 Rule as amended, 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 2023 Rule as amended. 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. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A.

b. The Territorial Seas (a)(1)(ii): N/A.

c. Interstate Waters (a)(1)(iii): An approximately 373-foot segment of Wash 1 within the review area is a 3rd order stream, which continues off-site and crosses the

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.

Nevada/California boundary as a 3rd order stream. An approximately 18,271-foot segment of Wash 2 within the review area is a 5th order stream, which continues off-site and crosses the Nevada/California boundary as a 5th order stream. An approximately 2,300-foot segment of Wash 4 within the review area is a 6th order stream, which continues off-site and crosses the Nevada/California boundary as a 6th order stream (AJD MFR Enclosure 2).

d. Impoundments (a)(2): N/A.

e. Tributaries (a)(3): N/A.

f. Adjacent Wetlands (a)(4): N/A.

g. Additional Waters (a)(5): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁷ N/A.

b. 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 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). All other channel features on site that exhibit ordinary high water mark (OHWM) indicators, consisting of Wash 3 and Washes 5-30, totaling approximately 137,770 linear feet, are non-relatively permanent waters (AJD MFR Enclosure 2). None of these channels convey water seasonally or perennially and only flow in response to discrete precipitation events. In addition, these drainage features either dissipate or change stream order before reaching the state line and therefore are not interstate waters.

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.

⁷ 88 FR 3004 (January 18, 2023)

CESPK-RDI-U

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2023-00169]

- a. USACE office evaluations conducted July 6, 2023 and October 22, 2025.
- b. Aquatic Resources Delineation Update Report (SPK-2023-00169): Purple Sage Solar Project; dated May 3, 2024; prepared by [REDACTED].
- c. Google Earth 7.3.6.10201. Aerial images dated December 1985, September 1994, December 2005, September 2016, May 2019, July 2022, November 2023. Accessed July 6, 2023 and October 22, 2025.
- d. USACE, OMBIL Regulatory Module, 2023. Corpsmap. Accessed July 6, 2023 and October 22, 2025. (<https://orm.ops.usace.army.mil/>)

10. OTHER SUPPORTING INFORMATION. The review area also contains numerous erosional features that do not exhibit OHWM indicators and were therefore no included in the delineation maps. These features were evaluated by the consultant in the field and determined to lack OHWM indicators.

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.

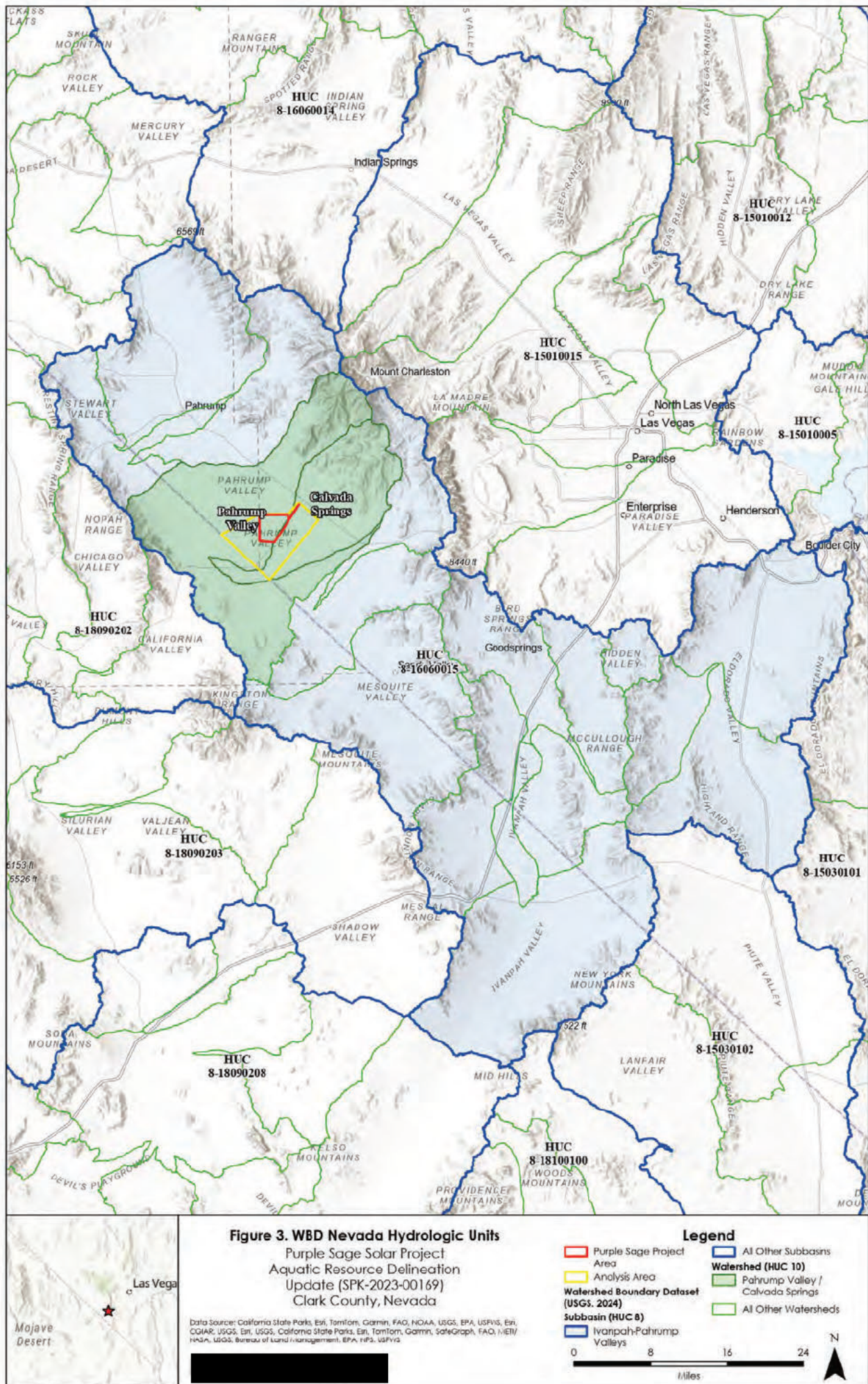
3 Enclosures

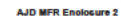
AJD MFR Encl 1- Vicinity Map

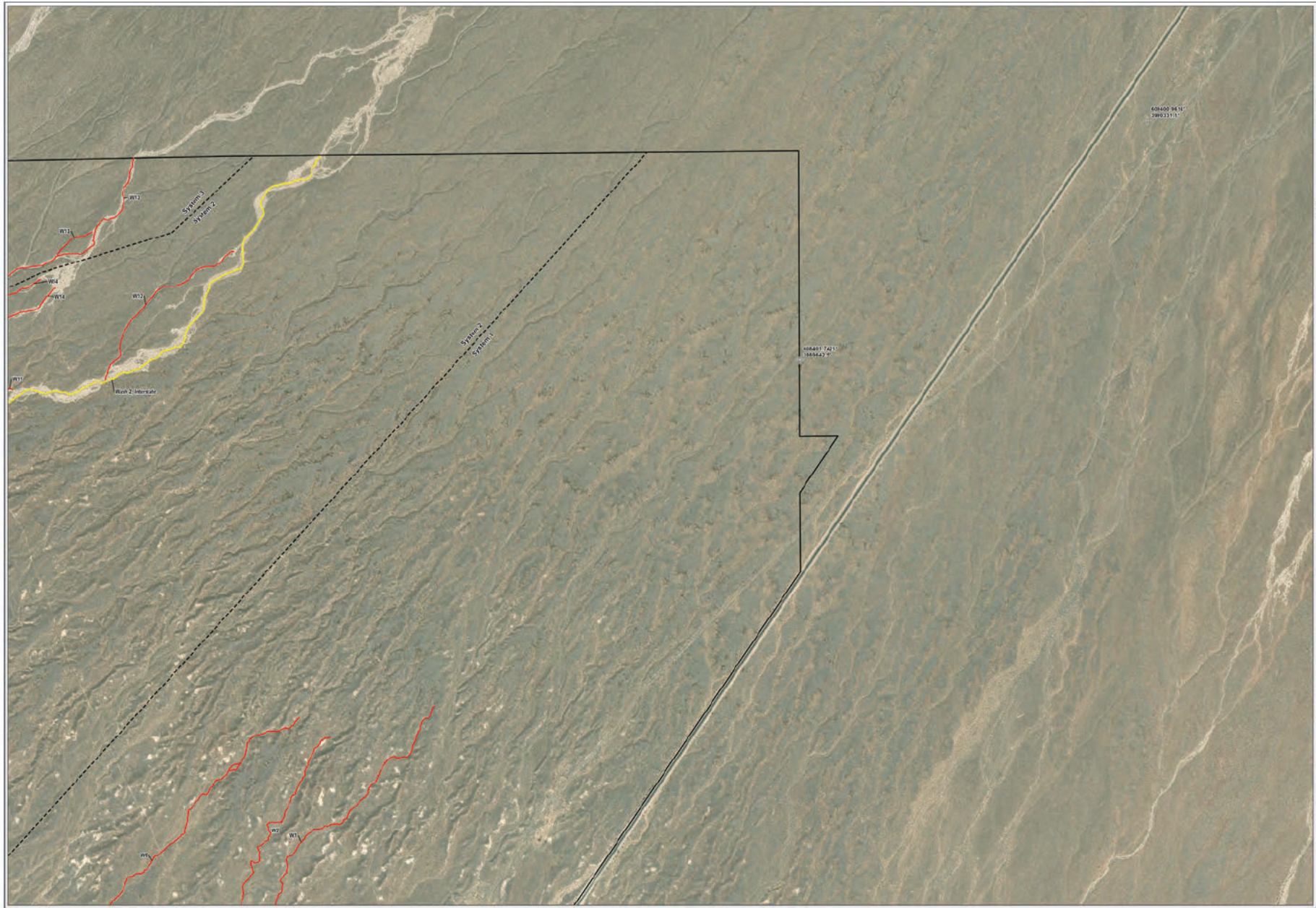
AJD MFR Encl 2- Delineation Maps

AJD MFR Encl 3- Interstate Waters









UPPER 10 ALTERNATIVE DETERMINATION
REGIONAL WATER ACT
1000 State of California, Los Angeles County
Department No. 1000
Sheet 2 of 2



Project Area
Data Point

Chart Drawing No.
Sheet 2 of 2
1000 State of California, Los Angeles County
Department No. 1000
Sheet 2 of 2

Scale: 1" = 1000'
North Arrow
1" = 1000'



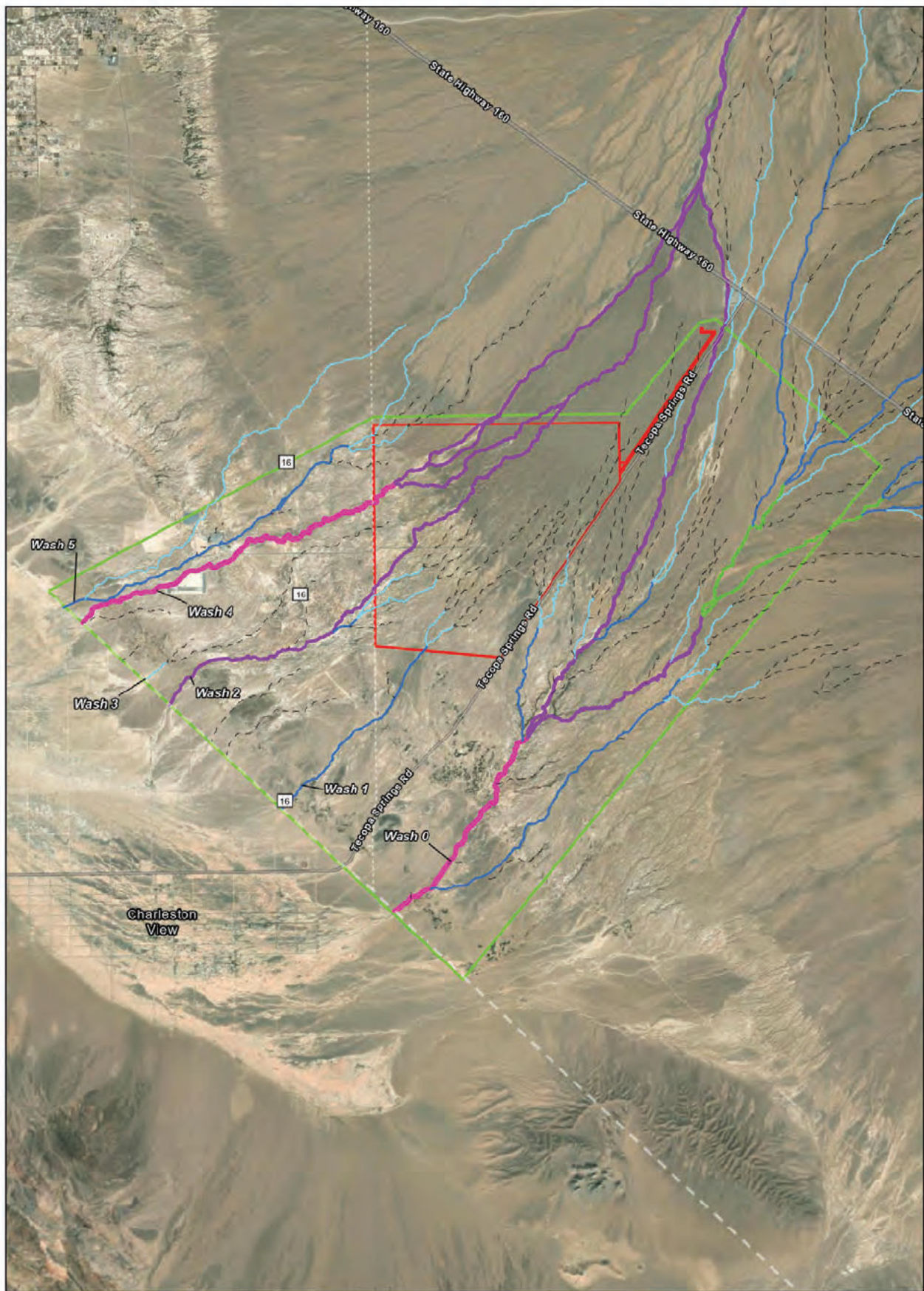


Figure 8. Modified Stream Order Results
 Purple Sage Solar Project
 Aquatic Resource Delineation
 Update (SPK-2023-00169)
 Clark County, Nevada

Data Source: California State Parks, Biri, TomTom, Garmin, FAO, NOAA, USGS, EPA, USFWS, California State Parks, Biri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc., I/IETN/ASA, USGS, Bureau of Land Management, EPA, NPS, USFS, USFWS, Barista Geographics, Biri, USFS

