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

CESPK-RDI-U 5 NOVEMBER 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-1997-50530]

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) Wetland 1: 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 2-acre review area is located near 7017 South Bowman Way, Latitude 41.141064°, Longitude -111.965186°, South Weber, Davis 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. No flowpath exists between Wetland 1 and a TNW, interstate water, or territorial sea. Wetland 1 drains towards a graded residential subdivision that appears to be comprised entirely by uplands and has no discrete drainage feature (MFR Enclosure 2). A 2015 verification that no permit is required was issued by this office for the graded residential subdivision. An unauthorized activity investigation was subsequently opened for this subdivision as it appeared to have filled wetlands without a permit. The investigation was then closed upon identification of the no permit required verification letter.

6. SECTION 10 JURISDICTIONAL WATERS[5]: 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 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

[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.

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").[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

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

[7] 51 FR 41217, November 13, 1986.

wetlands that do not have a continuous surface connection to a jurisdictional water). Wetland 1 is a wide swale identified in aerial imagery and on the 1999 wetland delineation. This area was not sampled in the 2024 aquatic resources delineation associated with this AJD request. Because this area was not sampled, was previously delineated as wetland, appears to receive hydrology on recent aerial images, and would not be subject to Clean Water Act jurisdiction, it is presumed to meet wetland criteria for the processing of this request (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 “Canyon Meadows Subdivision Lots 1, 2, 50, 51, 52, 53, 56, 57, and 58 Aquatic Resources and Wetlands Delineation Technical Report” prepared by [redacted] and dated November 2024. 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. Photographs: Aerial images dated May 2025, June 2024, and June 2022. Davis County, Latitude 40.710173°, Longitude -111.342995°. Retrieved 16 October 2025, from http://www.earth.google.com (MFR Enclosure 4).

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]

4 Encls
Enclosure 1: Location map
Enclosure 2: Flowpath map
Enclosure 3: AR map
Enclosure 4: Aerial images

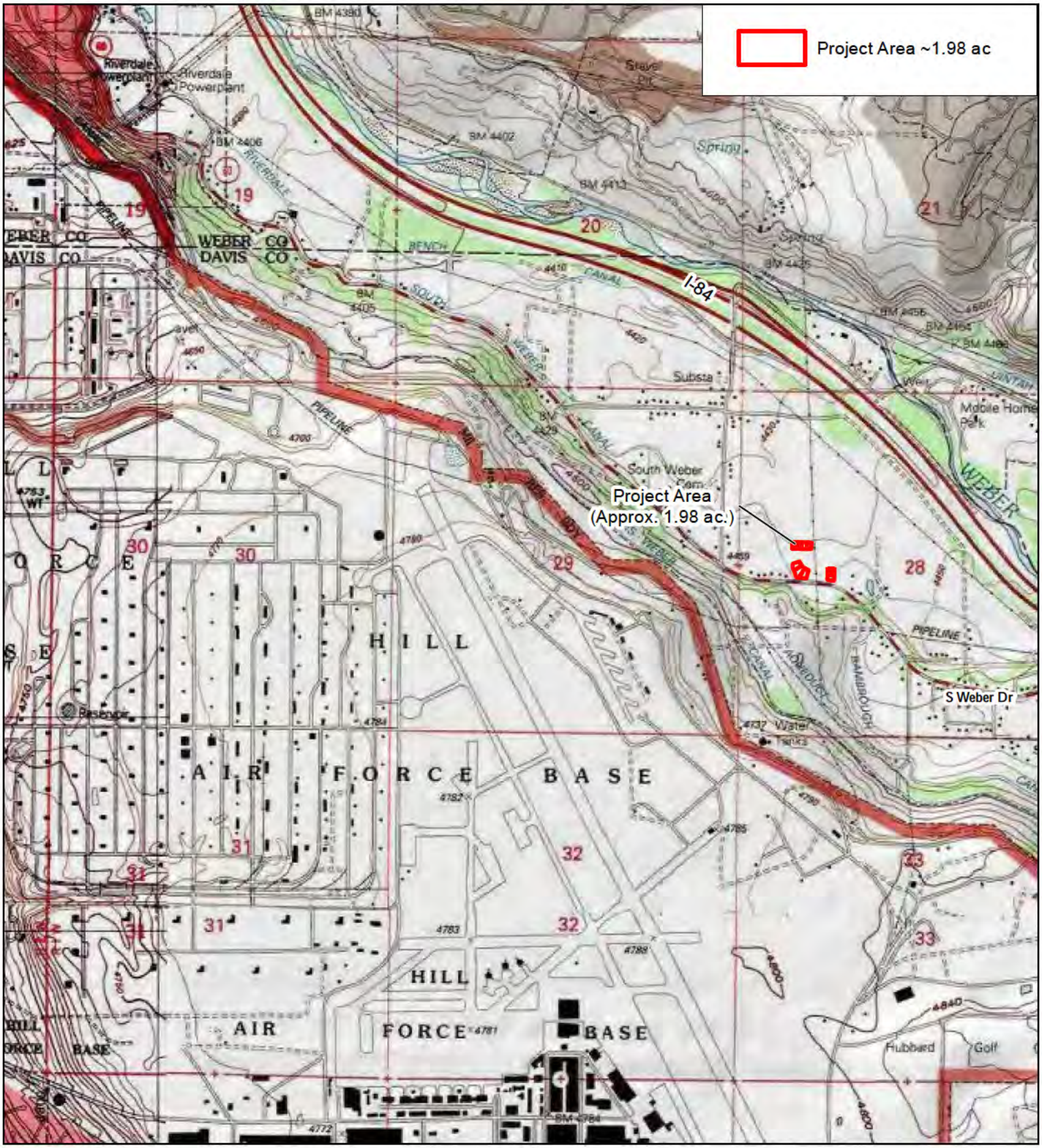

Figure 2a: Project Area Location Map
1:24,000 Scale Topographic Base

Map Date: 11/26/2024
Created By: [redacted]
USGS 7.5' Quad: Ogden

0 1,000 2,000 Feet

1 in = 2,000 feet
at 1:24k Scale

N
W E
S

[redacted]

SPK-1997-50530

0 0.04 0.07 0.14

mi

Map Center: 111.964656°W 41.140023°N

Author Name

Date: 10/16/2025

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

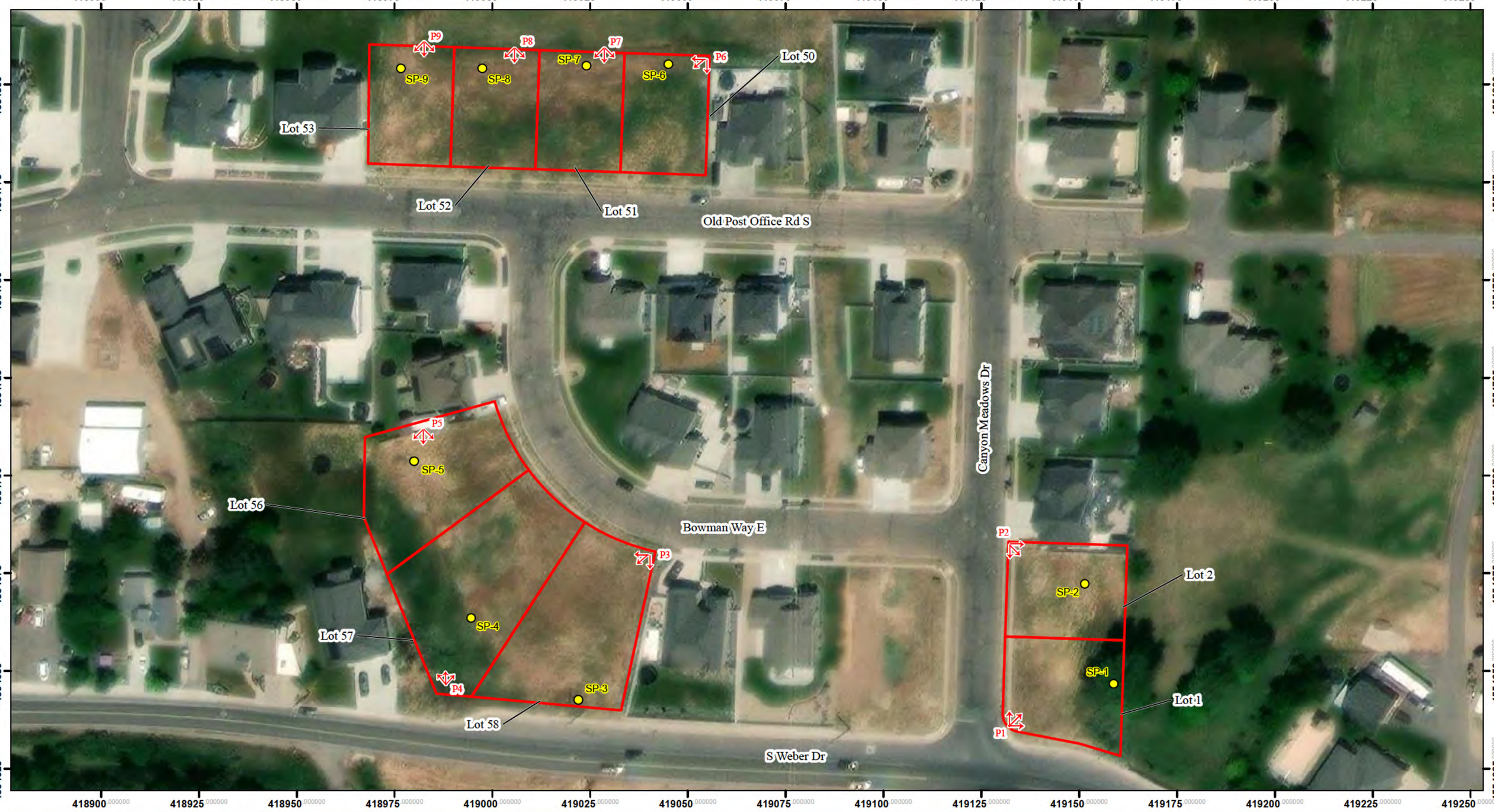

Figure 3: Aquatic Resources and Wetlands Delineation Survey Map

USACE Revision: 10/31/2025
Canyon Meadows Subdivision Lots 1, 2, 50, 51, 52, 53, 56, 57, and 58
South Weber, Davis County, Utah
Map Date: 9/23/2024
Created By: [redacted]
Aerial Imagery: Maxar 6/2022
UTM Grid Coordinates: Zone 12N

→ Photo Point View Direction

Wetland Delineation Sample Point

Project Area

0 75 150 Feet

1 inch = 75 feet

N W E S

[redacted]


5/2025
Porter Photography
Image © 2025 Airbus
1985
Google Earth
Imagery Date: 5/26/2025 lat 41.139848° lon -111.964348° elev 4451 ft eye alt 5498 ft


6/2024
Porter Photography
Image © 2025 Airbus
Google Earth
1985
Imagery Date: 6/17/2024 lat 41.139848° lon -111.964348° elev 4451 ft eye alt 5498 ft


6/2022
Porter Photography
Image © 2025 Maxar Technologies
Google Earth
1985
Imagery Date: 6/9/2022 lat 41.139848° lon -111.964348° elev 4451 ft eye alt 5498 ft