



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

CESPK-RDC-N

7 November 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-2014-00729

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.

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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).

Water Name	Area/length (acre/feet)	Jurisdictional
HC-M	13,591 ft	No
HC-M-I	26,814 ft	No
HC-M-E	10,814 ft	No
HC-T1	7,737 ft	No
HC-T2	6,596 ft	No
HC-T3	5,985 ft	No
HC-T3A	5,768 ft	No
HC-T4	4,766 ft	No
HC-T4A	2,426 ft	No
HC-T5	9,369 ft	No
HC-M-W	1.87 ac	No
26-48-02-322	0.01 ac	No
26-48-02-423A	0.61 ac	No
26-48-02-423B	0.31 ac	No
26-48-03-134	0.01 ac	No
26-48-03-143	0.02 ac	No
26-48-03-213	2.17 ac	No
26-48-03-221	0.04 ac	No
26-48-03-321	0.02 ac	No
26-48-03-413A	0.07 ac	No
26-48-03-413B	0.07 ac	No
26-48-03-443	0.27 ac	No
26-48-03-444	0.19 ac	No
26-48-10-142	0.12 ac	No
26-48-10-232	0.03 ac	No
26-48-10-433	0.54 ac	No
26-48-10-441	0.02 ac	No
26-48-10-442	0.03 ac	No
26-48-10-444	0.02 ac	No
26-48-11-142	0.02 ac	No
26-48-11-144A/26-48-11-144B	0.38 ac	No
26-48-11-312	0.14 ac	No
26-48-11-422	0.21 ac	No

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26-48-13-323/26-48-13-324/26-48-13-342/26-48-13-431/26-48-24-221	20.9 ac	No
26-48-13-432	0.43 ac	No

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 overall project is approximately 6,293 acres (See Data Source 9.a.). The centroid coordinates for the review area are Latitude 40.12121°, Longitude -116.51165°, within Eureka County, Nevada (See Figure 1 enclosed).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Rye Patch Reservoir is located at approximately Latitude 40.659°, Longitude -118.330°, approximately 100 straight-line miles west of the review area. On April 10, 2024, it was determined that Rye Patch Reservoir is a traditional navigable water pursuant to the Clean Water Act and 33 CFR 328.3(a)(1)(i) (SPK-2007-01874).

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The requestor did not provide information concerning the flowpath outside of the review area. (Data Source 9.a). To characterize the flowpath outside of the review area, we have used the National Hydrography Dataset (NHD) (Data Source 9.g), USGS topographic maps (Data Source 9.b and 9.c.), and aerial imagery available through Google Earth (Data Source 9.d - 9.f). The following are within the HUC 160401040202, Willow Spring-Willow Creek:

a. Tributary HC-M is approximately 13,591 linear feet and starts at Latitude 40.158442, Longitude -116.54452. HC-M end at Latitude 40.12818, Longitude -116.52584 where it confluences with HC-T1 and becomes HC-M-I. HC-M-I then connects to HC-M-E. The USGS topo map shows HC-M, HC-M-I, and HC-M-E as Horse Creek. NHD and the topo map show Horse Creek flowing into Pine Creek. Pine Creek flows into the Humboldt River, which flows into Rye Patch Reservoir. From where HC-M starts until where HC-T3 flows into HC-M, NHD shows approximately 6,058 linear feet of HC-M as ephemeral. While the remainder of Horse Creek (HC-M, HC-M-I, HC-M-E) is shown as intermittent on NHD, according to surface flow monitoring completed by the consultant, located at HOR-10, water was only observed

in Horse Creek on two monthly sample dates in April and May of 2023 during the 11-year monitoring period between May 2013 to December of 2023. Based upon available aerial imagery (Data Source 9.d – 9.f), water cannot be observed within the stream.

b. Tributary HC-M-I is approximately 28,065 linear feet and begins at Latitude 40.12818, Longitude -116.52584. HC-M-I ends at Latitude 40.10861, Longitude -116.438543, where it flows into HC-M-E.

c. Tributary HC-M-E is approximately 10,814 linear feet and starts at Latitude 40.10861, Longitude -116.438543. HC-M-E ends at Latitude 40.11592, Longitude -116.40288 where it continues outside of the study area and flows into Pine Creek.

d. Tributary HC-T3 is composed of two, first order streams that join together and connect to HC-M. HC-T3 starts at Latitude 40.15308, Longitude -116.55551. HC-T3 and HC-T3A confluence at Latitude 40.14514, Longitude -116.543267. HC-T3 flows into HC-M. HC-T3 is approximately 5,985 linear feet. NHD shows HC-T3 as ephemeral.

e. Tributary HC-T3A starts at Latitude 40.154585, Longitude -116.5647. HC-T3A flows into HC-T3 at Latitude 40.14514, Longitude -116.543267. HC-T3A is approximately 5,768 linear feet. NHD shows HC-T3A as ephemeral.

f. Tributary HC-T2 is approximately 6,596 linear feet and begins at Latitude 40.139194, Longitude -116.5562 and ends at Latitude 40.13703, Longitude -116.53407, where it flows into HC-M. NHD shows HC-T2 as ephemeral.

g. Tributary HC-T4A is approximately 2,426 linear feet and begins at Latitude 40.13582, Longitude -116.55872. HC-T4A ends at Latitude 40.13070, Longitude -116.55451 where it flows into HC-T4 which flows into HC-M. NHD shows HC-T4A as ephemeral.

h. Tributary HC-T4 is approximately 4,766 linear feet and begins at Latitude 40.12881, Longitude -116.56082. HC-T4 ends at Latitude 40.13214, Longitude -116.53088 where it flows into HC-M. NHD shows HC-T4 as ephemeral.

i. Tributary HC-T5 is approximately 9,369 linear feet and begins at Latitude 40.12404, Longitude -116.55793. HC-T5 ends at Latitude 40.12856, Longitude -116.52653 where it flows into HC-M. NHD shows HC-T5 as ephemeral.

j. Tributary HC-T1 is approximately 7,736 linear feet and begins at Latitude 40.14679, Longitude -116.52620. HC-T1 ends at 40.12812, Longitude -116.52579,

where it flows into HC-M-I. NHD shows HC-T1 as an ephemeral stream. Based upon Data Source 9.d – 9.f, water cannot be seen within the stream.

k. 26-48-03-221 is a wetland that directly abuts towards the beginning of HC-M and is approximately 0.04 acre.

l. 26-48-03-213 is approximately 2.16 acres and directly abuts to HC-M.

m. 26-48-03-444 is approximately 0.18 acre and is separated from HC-M by a mining road.

n. 26-48-03-134 is approximately 0.01 acre. Based on available imagery 26-48-03-134 is isolated.

o. 26-048-03-321 is approximately 0.2 acre and has a continuous surface connection to 26-048-03-413A and 26-48-03-413B. 26-48-03413B has a continuous surface connection to HC-T3.

p. 26-48-03-143 is approximately 143 and does not have a continuous surface connection based on (Data Source 9.d – 9.f).

q. 26-48-03-443 is approximately 0.27 acre and directly abuts HC-T3.

r. 26-48-11-142 is approximately 0.02 acre. Based upon available imagery (Data Source 9.d – 9.f), 26-48-11-142 is isolated.

s. 26-48-02-322 is approximately 0.01 acre. Based upon available imagery (Data Source 9.d – 9.f), 26-48-02-322 is isolated.

t. 26-48-11-144A/26-48-11-144B is approximately 0.38 acre. Based upon available imagery (Data Source 9.d – 9.f), 26-48-11-144A/26-48-11-144B is isolated.

u. 26-48-11-422 is approximately 0.21 acre. Based upon available imagery (Data Source 9.d – 9.f), 26-48-11-422 is isolated.

v. 26-48-02-423B is approximately 0.31 acre. Based upon available imagery (Data Source 9.d – 9.f), 26-48-02-423B is isolated.

w. 26-48-02-423A is approximately 0.61 acre and directly abuts HC-T1.

x. 26-48-10-142 is approximately 0.12 acre. Based upon available imagery (Data Source 9.d – 9.f), 26-48-10-142 is isolated.

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y. 26-48-10-232 is approximately 0.03 acre. Based upon available imagery (Data Source 9.d – 9.f), 26-48-10-232 is isolated.

z. 26-48-11-312 is approximately 0.14 acre and directly abuts HC-T2.

aa. 26-48-10-433 is approximately 0.53 acre and directly abuts HC-T4.

bb. 26-48-10-442 is approximately 0.02 acre and has a continuous surface connection to 26-48-10-444 which also has a continuous surface connection to HC-T4.

cc. 26-48-10-444 is approximately 0.02 acre and has a continuous surface connection to HC-T4.

dd. 26-48-13-323 / 26-48-13-324 / 26-48-13-342 / 26-48-13-431 / 26-48-24-221 is approximately 20.89 acres and directly abuts HC-M-I.

ee. 26-48-13-432 is approximately 0.42 acre. Based upon available imagery (Data Source 9.d – 9.f), 26-48-13-432 is isolated.

ff. HC-M-W is approximately 1.87 acres and is located along the edges of HC-M-I and HC-M-E.

6. SECTION 10 JURISDICTIONAL WATERS⁵: None within the review area.

7. SECTION 404 JURISDICTIONAL WATERS:

a. Traditional Navigable Waters (TNWs) (a)(1)(i): None.

b. The Territorial Seas (a)(1)(ii): None.

c. Interstate Waters (a)(1)(iii): None.

d. Impoundments (a)(2): None.

e. Tributaries (a)(3): None.

f. Adjacent Wetlands (a)(4): None.

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.

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g. Additional Waters (a)(5): None.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES:

a. There are no 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).

b. HC-M, HC-M-I, HC-M-E, HC-T1, HC-T2, HC-T3, HC-T3A, HC-T4, HC-T4A, and HC-T5 are non-jurisdictional because they do not meet one or more of the categories of waters of the United States under the 2023 Rule as amended. HC-M, HC-M-I, HC-M-E, HC-T1, HC-T2, HC-T3, HC-T3A, HC-T4, HC-T4A, and HC-T5 were reviewed as potential (a)(3) tributaries. None met the relatively permanent standard. See Table 1 for lengths.

1) The aquatic resources, 26-48-02-322, 26-48-02-423A, 26-48-02-423B, 26-48-03-134, 26-48-03-143, 26-48-03-213, 26-48-03-221, 26-48-03-321, 26-48-03-413A, 26-48-03-413B, 26-48-03-443, 26-48-03-444, 26-48-10-142, 26-48-10-232, 26-48-10-433, 26-48-10-441, 26-48-10-442, 26-48-10-444, 26-48-11-142, 26-48-11-144A/26-48-11-144B, 26-48-11-312, 26-48-11-422, 26-48-13-323/26-48-13-324/26-48-13-342/26-48-13-431/26-48-24-221, and 26-48-13-432 are non-jurisdictional because they do not meet one or more of the categories of waters of the United States under the 2023 Rule as amended. The aquatic resources, 26-48-02-322, 26-48-02-423A, 26-48-02-423B, 26-48-03-134, 26-48-03-143, 26-48-03-213, 26-48-03-221, 26-48-03-321, 26-48-03-413A, 26-48-03-413B, 26-48-03-443, 26-48-03-444, 26-48-10-142, 26-48-10-232, 26-48-10-433, 26-48-10-441, 26-48-10-442, 26-48-10-444, 26-48-11-142, 26-48-11-144A/26-48-11-144B, 26-48-11-312, 26-48-11-422, 26-48-13-323/26-48-13-324/26-48-13-342/26-48-13-431/26-48-24-221, and 26-48-13-432 were reviewed as potential (a)(4) adjacent wetlands. None were found to have a continuous surface connect or directly abut to an (a)(1) or relatively permanent water. See Table 1 for areas.

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], 2024. “Nevada Gold Mines Horse Creek Subwatershed Survey Area approximately 6,293-acres Survey Area, Eureka County, Nevada.” Dated 20 March 2024 and received 21 March 2024.

b. USGS. 2021. “Cortez Quadrangle Nevada 7.5-Minute Series.” Accessed November 4, 2025, at <https://ngmdb.usgs.gov/topoview/viewer/#14/40.1394/-116.5264>.

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c. USGS. 1987. "Crescent Valley Nevada 30X60 Minutes Series (Topographic)." Accessed November 4, 2025, at <https://ngmdb.usgs.gov/topoview/viewer/#14/40.1394/-116.5264>.

d. Google Earth Pro 7.3.6.10201. 2024. Aerial Imagery within Eureka County, NV - 40.1189, -116.51497; eye alt 8746 ft. 10 October. Accessed 4 November 2025. <http://www.earth.google.com>.

e. Google Earth Pro 7.3.6.10201. 2014. Aerial Imagery within Eureka County, NV - 40.1189, -116.51497; eye alt 8746 ft. 31 May. Accessed 4 November 2025. <http://www.earth.google.com>

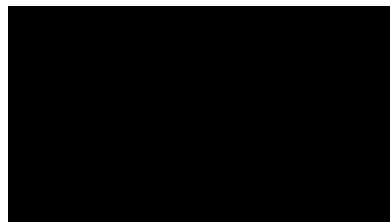
f. Google Earth Pro 7.3.6.10201. 2010. Aerial Imagery within Eureka County, NV - 40.1189, -116.51497; eye alt 8746 ft. 11 September. Accessed 4 November 2025. <http://www.earth.google.com>

g. USGS. 2018. "National Hydrography Dataset Plus High Resolution (NHDPlus HR) for 4-digit Hydrologic Unit -1809." Reston, VA: U.S. Geological Survey, Dept. of the Interior, 9 August. Accessed 4 November 2025 at <https://apps.nationalmap.gov/downloader/>.

10. OTHER SUPPORTING INFORMATION. Surface flow within Horse Creek has been monitored from May 2013 to December 2023. Surface water flows at the monitoring sites were recorded by [REDACTED] on a monthly basis. During the approximately 11 years of recording only two dates (April and May of 2023) recorded flows at the monitoring locations within Horse Creek. Based upon USGS topo maps, tributaries located above HC-M-I, are not shown. While HC-M-I and HC-M-E are shown as intermittent on NHD and USGS topo maps, no available aerial imagery shows water present within Horse Creek. While some of the wetlands directly abut tributaries within the review area, none of the tributaries within the review area were found to be relatively permanent 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.

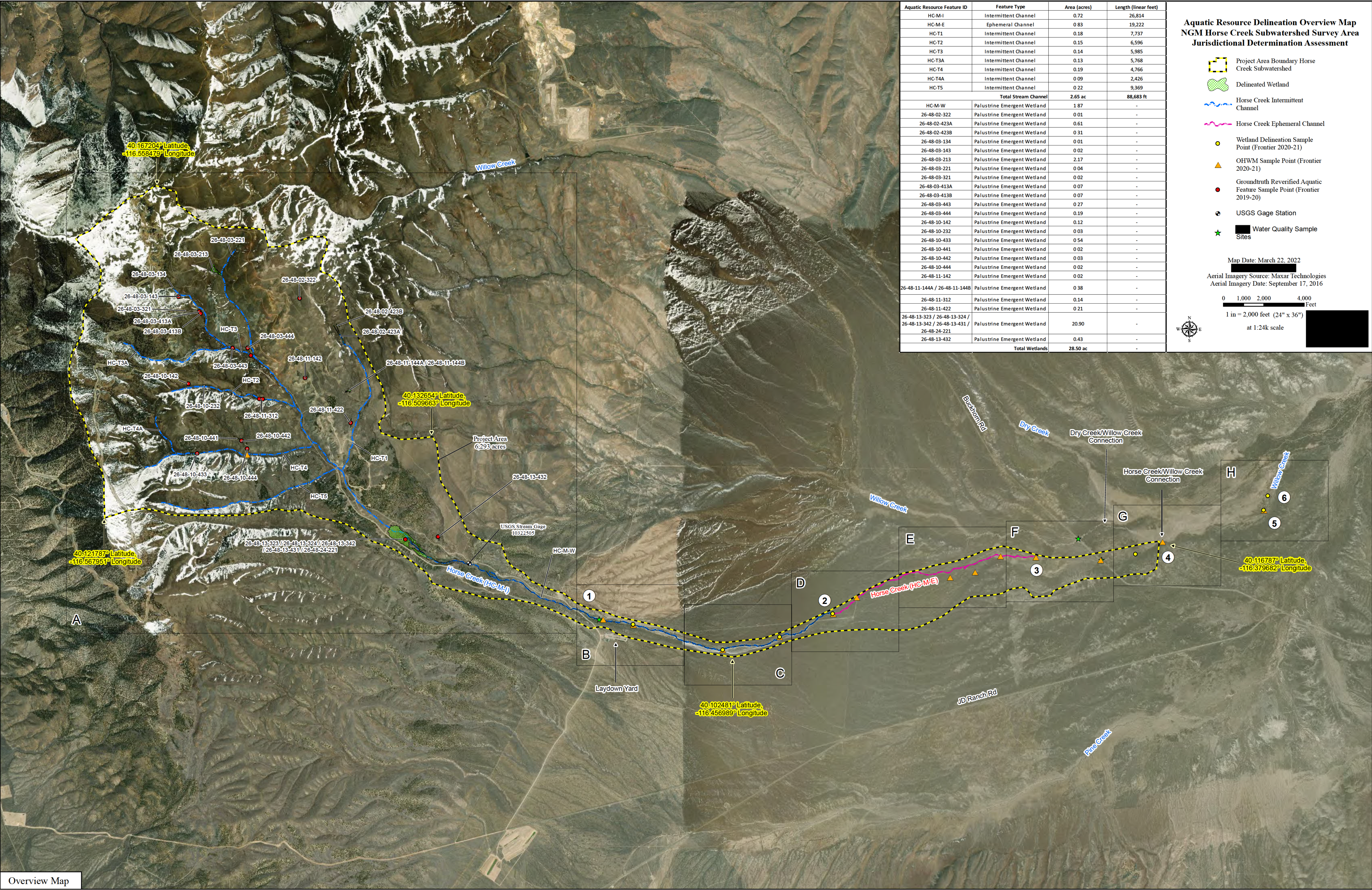
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[REDACTED]



Overview Map

Flow path

Legend

- Feature 1
- Humboldt River

