



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

CESPK-RDI-U

24 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-2024-00099]

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 this state 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) Wash 1 (2,929 linear feet/ 0.51 acre) is a non-relatively-permanent tributary and is non-jurisdictional under Section 404.

(2) Wash 2 (2,929 linear feet/ 0.12 acre) is a non-relatively-permanent tributary and is non-jurisdictional under Section 404.

(3) Wash 3 (1,820 linear feet/ 0.01 acre) is a non-relatively-permanent tributary and is non-jurisdictional under Section 404

(4) Wash 3a (36 linear feet/ 0.001 acre) is a non-relatively-permanent tributary and is non-jurisdictional under Section 404.

(5) Wash 4 (314 linear feet/ 0.02 acre) is a non-relatively-permanent tributary and is non-jurisdictional under Section 404.

(6) West Detention Basin (1.74 acre) is a man-made stock pond/flood control feature and is non-jurisdictional under Section 404.

(7) East Detention Basin (0.66 acre) is a man-made flood control feature and is non-jurisdictional under Section 404.

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 82.1-acre project site consists of two areas located on the northwestern and eastern limits of the town of Diamond Valley, Latitude 37.25304°, Longitude -113.6095°, Washington County, Utah (AJD MFR Enclosure 1). The review area is located in an arid desert environment at an elevation of

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approximately 4,550 feet and includes several small ephemeral channels and two detention basins. No previous jurisdictional determinations were found in ORM for this site. The delineation maps are attached as AJD MFR Enclosure 2.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Virgin River is located approximately 11 straight-line miles southeast of the review area. In 2011, the Corps conducted a review of the Virgin River and completed a memorandum for record documenting that it is an interstate water as defined under 33 CFR 328.3, and that portions of the river meet the definition a Navigable-in-Fact TNW (NIF-TNW). This is based on well-documented examples of fee-based commercial water-related recreation, such as canoeing, rafting, swimming, kayaking, sport fishing, and irrigation, to include foreign and out of state users.

The non-relatively permanent tributaries within the subject AJD review area are located within the Santa Clara River watershed. The Virgin River meets the definition of a NIF-TNW at its confluence with the Santa Clara River.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The review area contains several ephemeral drainages and two associated detention basins. Washes 3, 3a, and 4 flow into the Eastern Detention Basin. Wash 2 flows west from the Eastern Detention Basin and into the Western Detention Basin, which also captures flow from Wash 5 coming in from the north. No clear outflow from the Western Detention Basin was identified, though water would flow west and into Wash 1 during extreme flood events, based on surrounding topography. Wash 1 flows from north to south through the review area and becomes discontinuous, then entirely undiscernible within approximately 0.6 mile of the southern review area boundary. Any flow that could continue farther would flow generally south through multiple drainage features and into The Santa Clara River, which flows generally southeast for several miles to its confluence with the Virgin River (AJD MFR Enclosure 3). From that point, the Virgin River flows generally southwest for approximately 12 river miles, where it crosses the Utah/Arizona 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

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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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.
- 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. Based on historic aerial images, the Western Detention Basin (1.74

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.

⁷ 51 FR 41217, November 13, 1986.

acres) was constructed before 1953 originally as an irrigation/stock pond feature. Due to subsequent residential development in the area, the basin is now serving more as part of an active storm water management/flood control system. The basin was excavated in uplands and no indication of any previously existing aquatic features can be found within the footprint on topographic maps and aerial photos dating back to 1953. No clear outflow from the Western Detention Basin was identified, though water would flow west from the basin toward Wash 1 if overtopped during an extreme flood event. This basin detains flow from ephemeral drainages from the north (Wash 5, non-RPW) and east (Wash 2, non-RPW).

The Eastern Detention Basin (0.66 acre) was constructed between 1967 and 1972 as a flood control feature to protect residential developments to the west. This basin was constructed on an ephemeral drainage channel (Wash 4, non-RPW) and detains flow from a relatively small watershed to the east. Washes 3 and 3a drain into this basin from the southeast. The basin is dry throughout the year and only holds water temporarily after discrete precipitation events. No clear outflow from the Eastern Detention Basin was identified, though water would flow west from the basin toward Wash 2 if the basin was overtopped during an extreme flood event.

- 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 wetlands that do not have a continuous surface connection to a jurisdictional water). The review area contains a total of 7,205 linear feet (1.23 acres) of non-relatively permanent waters, consisting of Wash 1 (2,929 lf, 0.95 ac), Wash 2 (1,761 lf, 0.12 ac), Wash 3 (1,820 lf, 0.1 ac), Wash 3a (36 lf, 0.001 ac), Wash 4 (314 lf, 0.02 ac), and Wash 5 (345 lf, 0.04 ac).

The northern portion of Wash 1 within the review area generally retains its natural characteristics, while the southern portion has been straightened and channelized. Wash 1 flows south off site where OHWM indicators become discontinuous.

Wash 2 is wholly contained within the review area and is a constructed channel following the topographic contours along the hillside between the Eastern and Western Detention Basins. OHWM indicators are discontinuous throughout Wash 2.

The upper portion of Wash 3 within the review area retains its natural characteristics, while the lower portion has been relocated to follow the topographic contours along the hillside. An unpaved access road is located in a portion of Wash 3. Only a short segment of Wash 3a is located in the review area before converging with Wash 3.

Wash 4 within the review area is a natural drainage feature until its impoundment by the Eastern Detention Basin.

The short segment of Wash 5 within the review area is part of a channelized, relocated drainage from the north that flows through the residential development and terminates at the Western Detention Basin.

The drainage area for each of these features is relatively small and the hydrology source for all features on site is discrete precipitation events. Washes 1-5 are non-relatively permanent tributaries and not subject to CWA jurisdiction.

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. Office evaluations conducted January 28, 2025 and November 20, 2025.
- b. Preliminary Aquatic Resources Delineation Report- Diamond Valley Review Area, dated February 7, 2025, prepared by [REDACTED]. The consultant prepared the wetland delineation report in accordance with the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and the USACE Regional Supplement for the Arid West Region. The Corps reviewed and requested additional information on the applicant's June 2022 and October 2023 delineation reports. Through coordination and multiple revisions, the Corps accepted the February 2025 delineation for the site.

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c. Aerial Imagery- Google Earth 7.3.6.9796. (July 3, 1993, August 24, 2004, May 10, 2023). Diamond Valley, Utah, Latitude 37.2527°, Longitude -113.6121°, eye alt 15,000 ft. Retrieved February 7, 2025 and November 20, 2025.

d. Historical Aerial Imagery- HistoricAerials.com. 1953, 1967, 1972. Retrieved November 20, 2025, from <https://www.historicaerials.com/viewer>.

e. USACE, OMBIL Regulatory Module, 2023. Corpsmap. Accessed February 7, 2025 and November 20, 2025 (<https://orm.ops.usace.army.mil/>).

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.

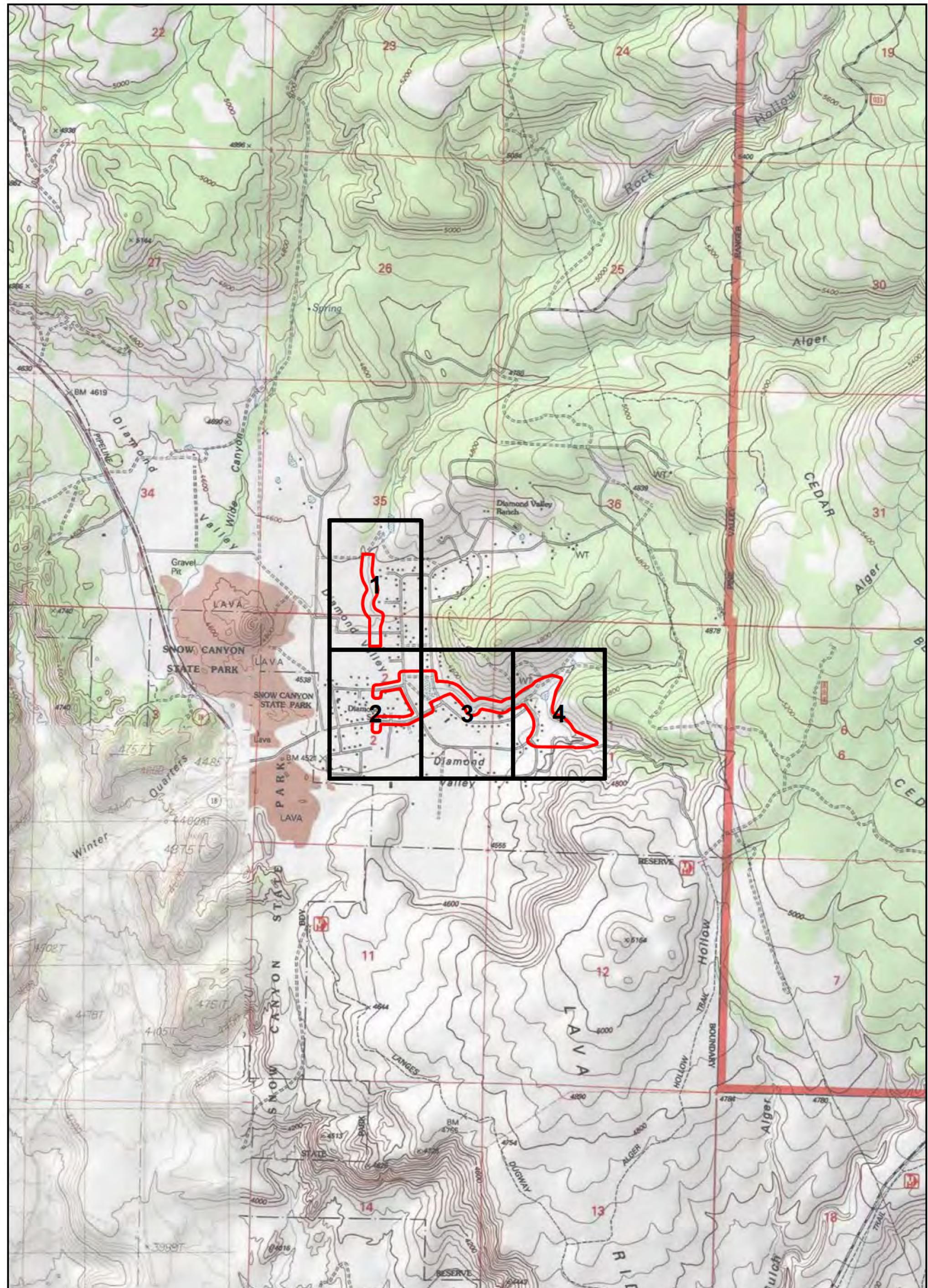
3 Enclosures

AJD MFR Encl 1- Vicinity Map

AJD MFR Encl 2- Delineation Maps

AJD MFR Encl 3- Flow Path Map





Santa Clara Watershed EA
Diamond Valley
Review Area

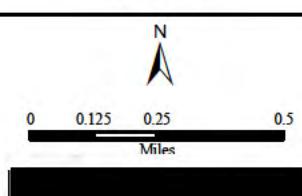
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Date: 10/12/2023

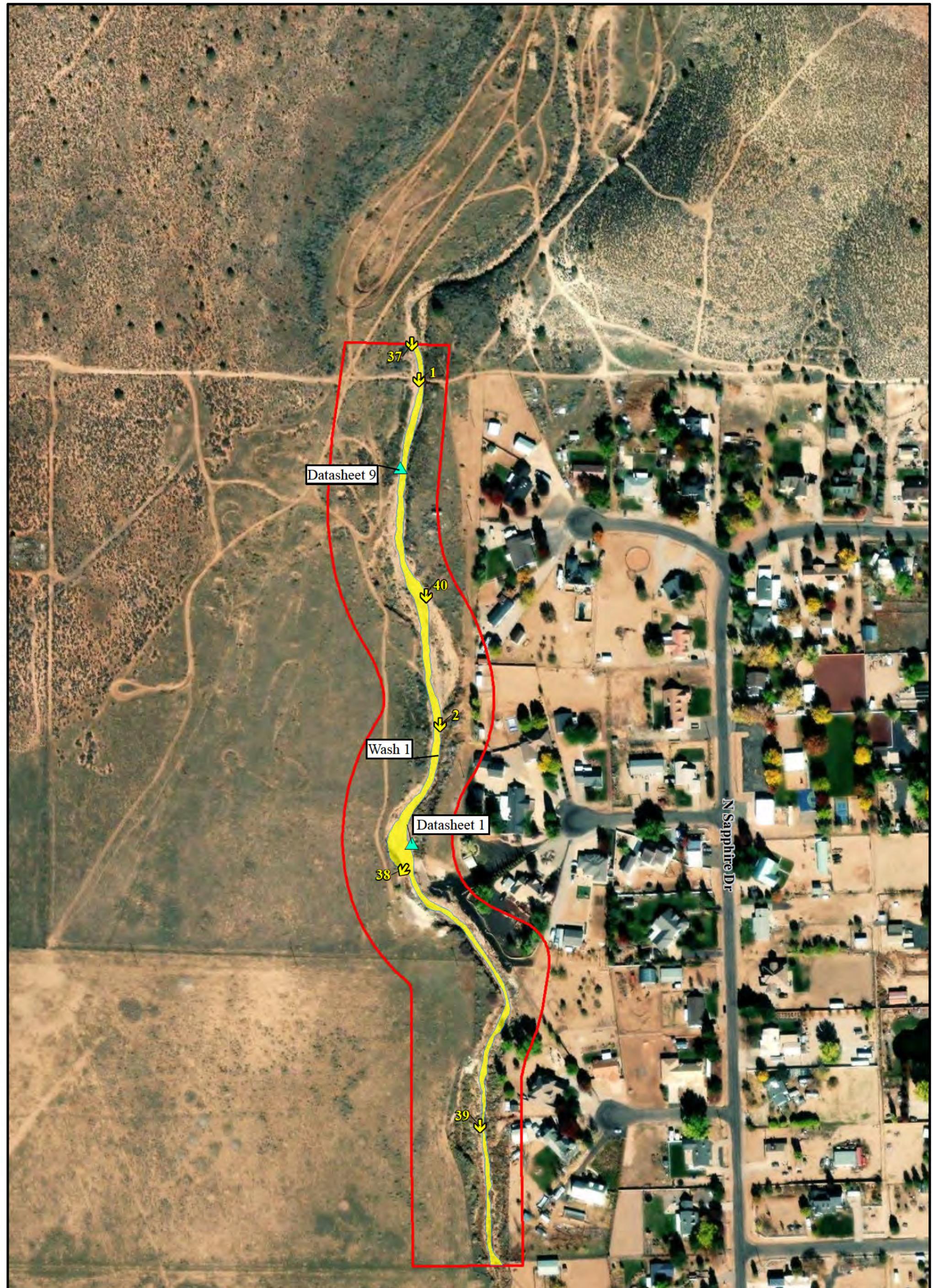
Aquatic Resources Detail Map (Index)

Legend

Review Area

Sheet





Santa Clara Watershed EA
Diamond Valley
Review Area

Drawn By: [REDACTED]
Date: 2/7/2025

Aquatic Resources Detail Map (Sheet 1 of 4)



0 200 400
Feet

Legend

Review Area

 Photo Location

Photo Location



Santa Clara Watershed EA
Diamond Valley
Review Area

Drawn By: [REDACTED]
Date: 2/7/2025

Aquatic Resources Detail Map (Sheet 2 of 4)



Legend

Review Area

Photo Location

▲ OHWM Data Plot

ID	Lat	Long	Feet	Ac
Western Detention Basin	37.252939	-113.612053	N/A	1.74
Eastern Detention Basin	37.252607	-113.602673	N/A	0.66
Wash 1	37.250350	-113.600470	2929	0.95
Wash 2	37.249609	-113.598584	1761	0.12
Wash 3	37.294549	-113.654708	1820	0.1
Wash 3a	37.252492	-113.609656	36	0
Wash 4	37.253390	-113.601832	314	0.02
Wash 5	37.253685	-113.612203	345	0.04



Santa Clara Watershed EA
Diamond Valley
Review Area

Drawn By: [REDACTED]
Date: 2/7/2025

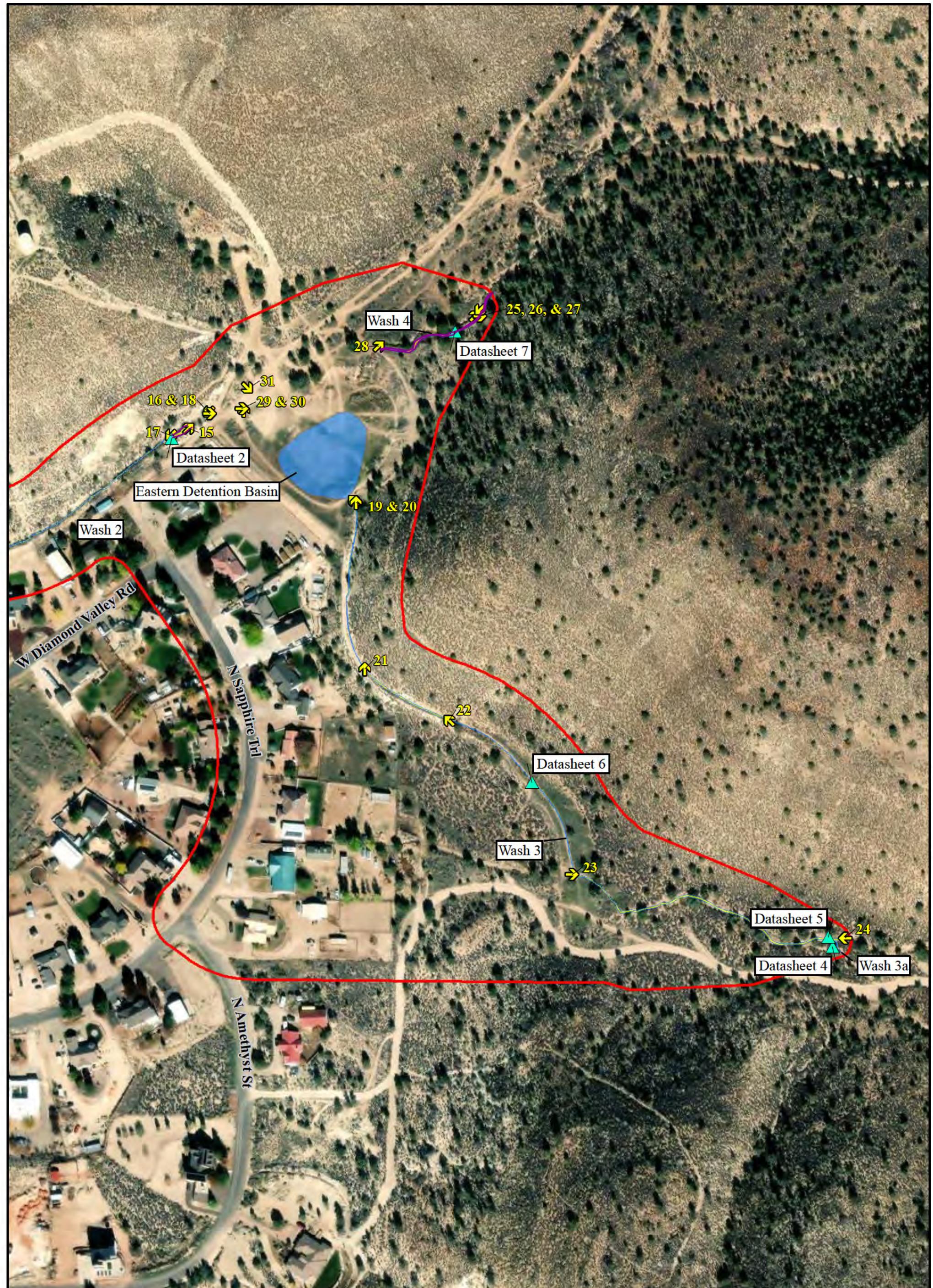
Aquatic Resources Detail Map (Sheet 3 of 4)



A horizontal scale bar with arrows at both ends, labeled '0' on the left, '200' in the middle, and '400' on the right. Below the bar, the word 'Foot' is written.

Legend

-  Review Area
-  Photo Location
-  OHWM Data Plot
-  Ordinary High Water Mark



Santa Clara Watershed EA
Diamond Valley
Review Area

Drawn By: [REDACTED]
Date: 2/7/2025

Aquatic Resources Detail Map (Sheet 4 of 4)



Legend

Review Area

 Photo Location

OHWM Data Plot

Flow Path

