APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): July 19, 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Kennecott Tailings Impoundment Expansion, SPK-2009-01213-UO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Utah** County/parish/borough: **Salt Lake** City: **Salt Lake City**
Center coordinates of site (lat/long in degree decimal format): Lat. **40.7579121367849°**, Long. **-112.069021496984°**
Universal Transverse Mercator: **12 409764.72 4512433.2**
Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Great Salt Lake**
Name of watershed or Hydrologic Unit Code (HUC): **Jordan. Utah., 16020204**
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form: **SPK-2009-01213 JD1, JD2, JD3, Clarification Canal/Toe Ditch, Adamson Spring,**

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: **June 14, 2012**
☒ Field Determination. Date(s): **September 6, 2011, November 22, 2010**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☒ Wetlands adjacent to TNWs
      ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet, wide, and/or **0.48** acres.
      Wetlands: **11.48** acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
      Elevation of established OHWM (if known):

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain:

SECTION III: CWA ANALYSIS

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: **Great Salt Lake**

Summarize rationale supporting determination: **The Great Salt Lake was determined to be a navigable water in two federal court cases (US vs Utah 1931 and Utah vs US 1971).**

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": **The wetlands near the Jones Spring Analysis Area, identified as jurisdictional wetlands in the attached Figure 9, are part of a larger wetland complex that is adjacent and abutting the Great Salt Lake. Unlike the wetlands within the Jones Spring area that were determined to be non-jurisdictional, (see the Clarification Canal/Toe Ditch JD datasheet) the 11.48 acres of wetlands and 0.48-acre of non-wetlands covered in this datasheet are located at the same approximate elevation as the native wetlands. This area appears to have a naturally high water table which provides sufficient hydrology during the growing season. These wetlands are similar in vegetation and hydrology to other wetlands in the area. Although historically it appears that this was one large wetland area connected to the Great Salt Lake, there have since been human impacts that segmented the large wetland into smaller wetland areas, including I-80, several slag piles, roads as well as berms constructed to contain water contaminated from historic mining activities in the area. However, these wetlands meet the definition of wetlands adjacent to a TNW, according to the definition of adjacency which is defined in 33 CFR 328.3(c) as "bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are 'adjacent wetlands.'" Therefore, the barriers between the Jones Spring wetlands and the Great Salt Lake do not sever jurisdiction. These wetlands, although they are approximately 1.75 miles from the Great Salt Lake are part of the larger wetland complex adjacent to the Lake south of I-80. According to information provided by the applicant, an EPA prescribed action requires that these wetlands all drain into the Smelter Return Canal, which then flows to Pump Station 4 (see Figure 2) and into the Industrial Process Water System. This system is used to process ore and transport tailings material back to the decant pond in the North Impoundment. Under normal circumstances, if operations ceased at Pump Station 4 the wetlands in the Jones Spring area and the Smelter Return Canal would continue to collect water. Since their main sources of hydrology are high groundwater and surface discharge from springs, these wetlands would likely continue to be three-parameter wetlands and the Smelter Return Canal, which appears to be constructed in uplands, would retain water and have an OHWM after operations ceased. In addition to being adjacent to a TNW, the Jones Spring wetlands also have potential flow paths that could connect them with the Great Salt Lake after operations ceased. Without active pumping at Pump Station 4, any flows from the Jones Spring wetlands would flow into the Smelter Return Canal and from there flow into areas to the north which connect to Outfall 008 (see Figures 2 and 3). According to the UPDES Surface Water Discharge Permit (UT0000051) Statement of Basis, the applicant can discharge surface water and artesian groundwater from Outfall 008. Discharges from Outfall 008 can also routed to Outfall 012 which then discharges directly into the Great Salt Lake in accordance with the UPDES permit. The applicant is also permitted to discharge surface water through Outfall 004, which flows under I-80 and directly to the Great Salt Lake. The UPDES permit sets daily effluent limitations for each outfall, which demonstrates a significant chemical nexus from each of their respective drainage areas to the Great Salt Lake. The Jones Spring wetlands are connected to this drainage area by way of the Smelter Return Canal (See Figure 3)**

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: **70 acres**
Drainage area: **70 acres**
Average annual rainfall: **16.5** inches
Average annual snowfall: **62** inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **1** tributaries before entering TNW.

Project waters are **1-2** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **1-2** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]: **Without active pumping at Pump Station 4, any flows from the Smelter Return Canal flow into areas to the north which connect to Outfall 008 (see Figures 2 and 3). According to the UPDES Surface Water Discharge Permit (UT0000051) Statement of Basis, the applicant can discharge surface water and artesian groundwater from Outfall 008. Discharges from Outfall 008 can also routed to Outfall 012 which then discharges directly into the Great Salt Lake in accordance with the UPDES permit. The applicant is also permitted to discharge surface water through Outfall 004, which flows under I-80 and directly to the Great Salt Lake. The UPDES permit sets daily effluent limitations for each outfall, which demonstrates a significant chemical nexus from each of their respective drainage areas to the Great Salt Lake.**
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☒ Artificial (man-made). Explain: **Apparently constructed in wetlands**
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: **5** feet
Average depth: **4** feet
Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):
☒ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☒ Other. Explain: **man-made drainage ditch**

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **Stable**
Presence of run/riffle/pool complexes. Explain: **None**
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): **1 or less** %

(c) Flow:
Tributary provides for: **Perennial**
Estimate average number of flow events in review area/year: **1**
Describe flow regime: **Year-round**

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Other information on duration and volume:

Surface flow is: **Discrete and confined.** Characteristics:

Subsurface flow: **Unknown**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):
- ☒ clear, natural line impressed on the bank
- ☐ changes in the character of soil
- ☐ shelving
- ☐ vegetation matted down, bent, or absent
- ☐ leaf litter disturbed or washed away
- ☐ sediment deposition
- ☐ water staining
- ☐ other (list):
- ☐ the presence of litter and debris
- ☐ destruction of terrestrial vegetation
- ☐ the presence of wrack line
- ☐ sediment sorting
- ☐ scour
- ☒ multiple observed or predicted flow events
- ☒ abrupt change in plant community

☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other (list):

☐ Mean High Water Mark indicated by:
- ☐ survey to available datum;
- ☐ physical markings;
- ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: **Smelter Canal is a man-made drainage ditch to convey excess artesian groundwater and industrial process water.**
Identify specific pollutants, if known: **See UPDES Permit 0000051**

(iv) Biological Characteristics. Channel supports (check all that apply):
☐ Riparian corridor. Characteristics (type, average width):
☒ Wetland fringe. Characteristics: **Some Phragmites sp. wetlands surrounding sections of the ditch.**
☐ Habitat for:
- ☐ Federally Listed species. Explain findings:
- ☐ Fish/spawn areas. Explain findings:
- ☐ Other environmentally-sensitive species. Explain findings:
- ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Wetland size: acres
Wetland type. Explain:
Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain:

Surface flow is**: Pick List**
Characteristics:

Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain:
☐ Ecological connection. Explain:
☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List**.
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):
☐ Riparian buffer. Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
☐ Habitat for:
☐ Federally Listed species. Explain findings:
☐ Fish/spawn areas. Explain findings:
☐ Other environmentally-sensitive species. Explain findings:
☐ Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet, wide, Or acres.
   - ☒ Wetlands adjacent to TNWs: **11.48** acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: **The Smelter Return Canal has water year-round from a combination of artesian groundwater and industrial process water.**
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet wide.
   - ☒ Other non-wetland waters: **0.48** acres.
     Identify type(s) of waters: **Man-made drainage canal.**

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet, wide.
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **The Jones Spring wetlands, in addition to being adjacent to a TNW as described above, are also directly abutting a perennial RPW (Smelter Return Canal). The design of the surface water system at the Jones Spring wetlands are such that all surface water flows into the Smelter Return Canal and into the industrial process water system via Pump Station 4. However, as described above, under normal circumstances when the pumping has ceased the flow would stop and the water would flow into Outfalls 008 or 004 which discharge into the Great Salt Lake. The UPDES permit Statement of Basis identifies the daily effluent limits that the applicant is permitted to discharge which demonstrates a chemical significant nexus.**

     - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

[8]See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.[9]

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain:
☐ Other factors. Explain:

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet, wide.
☐ Other non-wetland waters: acres.
Identify type(s) of waters:
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
☐ Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, wide.
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource:
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, wide.
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource:
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; UT-SALTAIR**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name: **UT-SALTAIR**
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):
  or ☒ Other (Name & Date): **In 2012 Supplemental Delineation Report**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The wetlands near the Jones Spring Analysis Area, identified as jurisdictional wetlands in the attached Figure 9, are part of a larger wetland complex that is adjacent and abutting the Great Salt Lake. Unlike the wetlands within the Jones Spring area that were determined to be non-jurisdictional, (see the Clarification Canal/Toe Ditch JD datasheet) the 11.48 acres of wetlands and 0.48-acre of non-wetlands covered in this datasheet are located at the same approximate elevation as the native wetlands. This area appears to have a naturally high water table which provides sufficient hydrology during the growing season. These wetlands are similar in vegetation and hydrology to other wetlands in the area. Although historically it appears that this was one large wetland area connected to the Great Salt Lake, there have since been human impacts that segmented the large wetland into smaller wetland areas, including I-80, several slag piles, roads as well as berms constructed to contain water contaminated from historic mining activities in the area. However, these wetlands meet the definition of wetlands adjacent to a TNW, according to the definition of adjacency which is defined in 33 CFR 328.3(c) as "bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are 'adjacent wetlands.'" Therefore, the barriers between the Jones Spring wetlands and the Great Salt Lake do not sever jurisdiction. These wetlands, although they are approximately 1.75 miles from the Great Salt Lake are part of the larger wetland complex adjacent to the Lake south of I-80. According to information provided by the applicant, an EPA prescribed action requires that these wetlands all drain into the Smelter Return Canal, which then flows to Pump Station 4 (see Figure 2) and into the Industrial Process Water System. This system is used to process ore and transport tailings material back to the decant pond in the North Impoundment. Under normal circumstances, if operations ceased at Pump Station 4 the wetlands in the Jones Spring area and the Smelter Return Canal would continue to collect water. Since their main sources of hydrology are high groundwater and surface discharge from springs, these wetlands would likely continue to be three-parameter wetlands and the Smelter Return Canal, which appears to be constructed in uplands, would retain water and have an OHWM after operations ceased. In addition to being adjacent to a TNW, the Jones Spring wetlands also have potential flow paths that could connect them with the Great Salt Lake after operations ceased. Without active pumping at Pump Station 4, any flows from the Jones Spring wetlands would flow into the Smelter Return Canal and from there flow into areas to the north which connect to Outfall 008 (see Figures 2 and 3). According to the UPDES Surface Water Discharge Permit (UT0000051) Statement of Basis, the applicant can discharge surface water and artesian groundwater from Outfall 008. Discharges from Outfall 008 can also routed to Outfall 012 which then discharges directly into the Great Salt Lake in accordance with the UPDES permit. The applicant is also permitted to discharge surface water through Outfall 004, which flows under I-80 and directly to the Great Salt Lake. The UPDES permit sets daily effluent limitations for each outfall, which demonstrates a significant chemical nexus from each of their respective drainage areas to the Great Salt Lake. The Jones Spring wetlands are connected to this drainage area by way of the Smelter Return Canal (See Figure 3)

The following is from the Clarfication Canal and Toe Ditch JD Form which includes the non-jurisdictional wetlands depicted on Figure 1: The Historic Toe Ditch Wetlands near Jones Spring, the Toe Ditch and the Clarification Canal are part of Kennecott Utah Copper's (KUC) industrial process water system. A system of drains and channels that are pumped uphill to the Copperton Concentrator, approximately 9 miles to the south. The industrial process water system is used to process ore and to transport tailings, the waste product of mineral extraction, to the decant pond located on top of the North Tailing Impoundment. From the decant pond, the water either evaporates, is pumped to the clarification canal, percolates through the tailings impoundment and is capturedby the toe drain, or is pumped from the decant pond to Outall 012 which discharges to the Great Salt Lake, the closest TNW. Although the Historic Toe Ditch Wetlands near Jones Spring, the Clarification Canal and the Toe Ditch, along with the wetland associated with them, potentially drain to the Great Salt Lake the Toe Ditch and Clarification Canal were constructed as part of a permitted discharge (SPK-1994-50301) to construct the North Impoundment in 1996 or were constructed as part of the

historic tailings impoundment prior to the Clean Water Act. The wetlands associated with the Toe Ditch and Clarification Canal and historic Toe Ditch receive hydrology only through rainfall and from the industrial process water system. They are all at a higher elevation (approx. 30-50'higher) than any surrounding jurisdictional features or any natural water source. If the tailings operation ceased the normal condition of the Toe Ditch, Clarification Canal, and Historic Toe Ditch wetlands would be to only receive nominal hydrology from rainfall. Once water levels within the Tailings Impoundment decreased these features would lose hydrology and would revert to being uplands. Therefore, the normal circumstances of these areas are upland and not jurisdictional waters

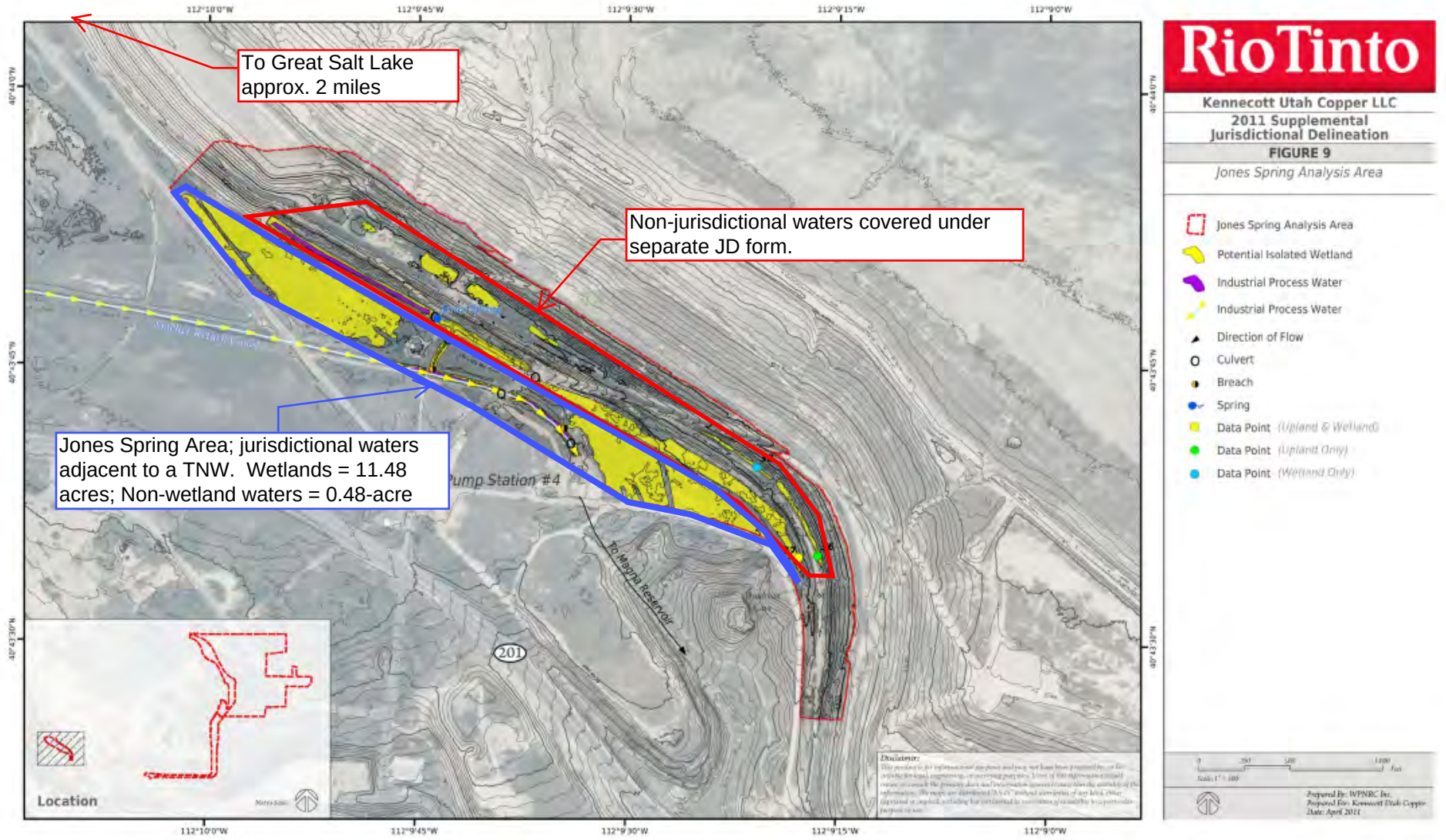

Figure 1. Jones Spring wetland delineation map

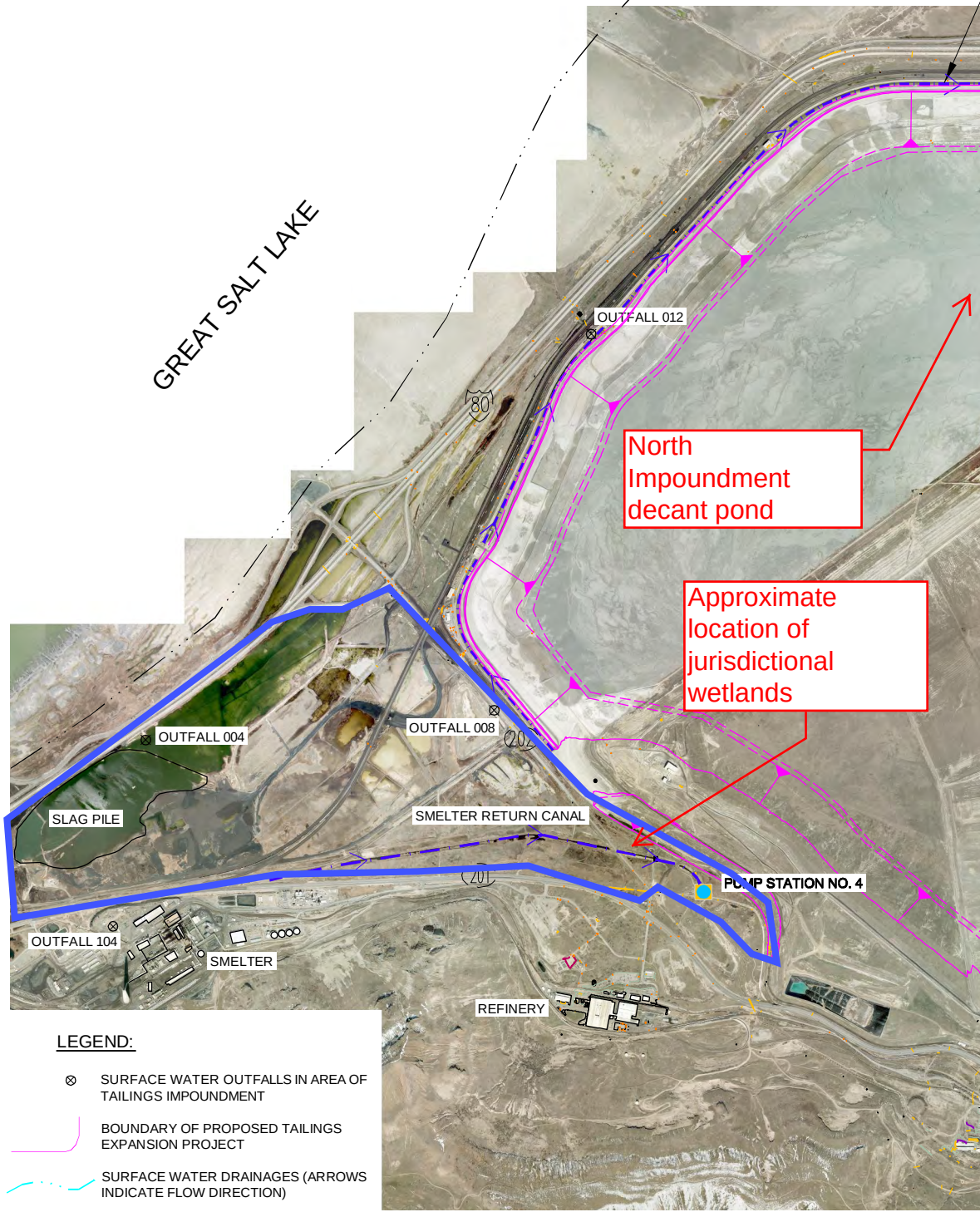

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Fig 2. Map from Surface Water Technical Report; Nov.9, 2011

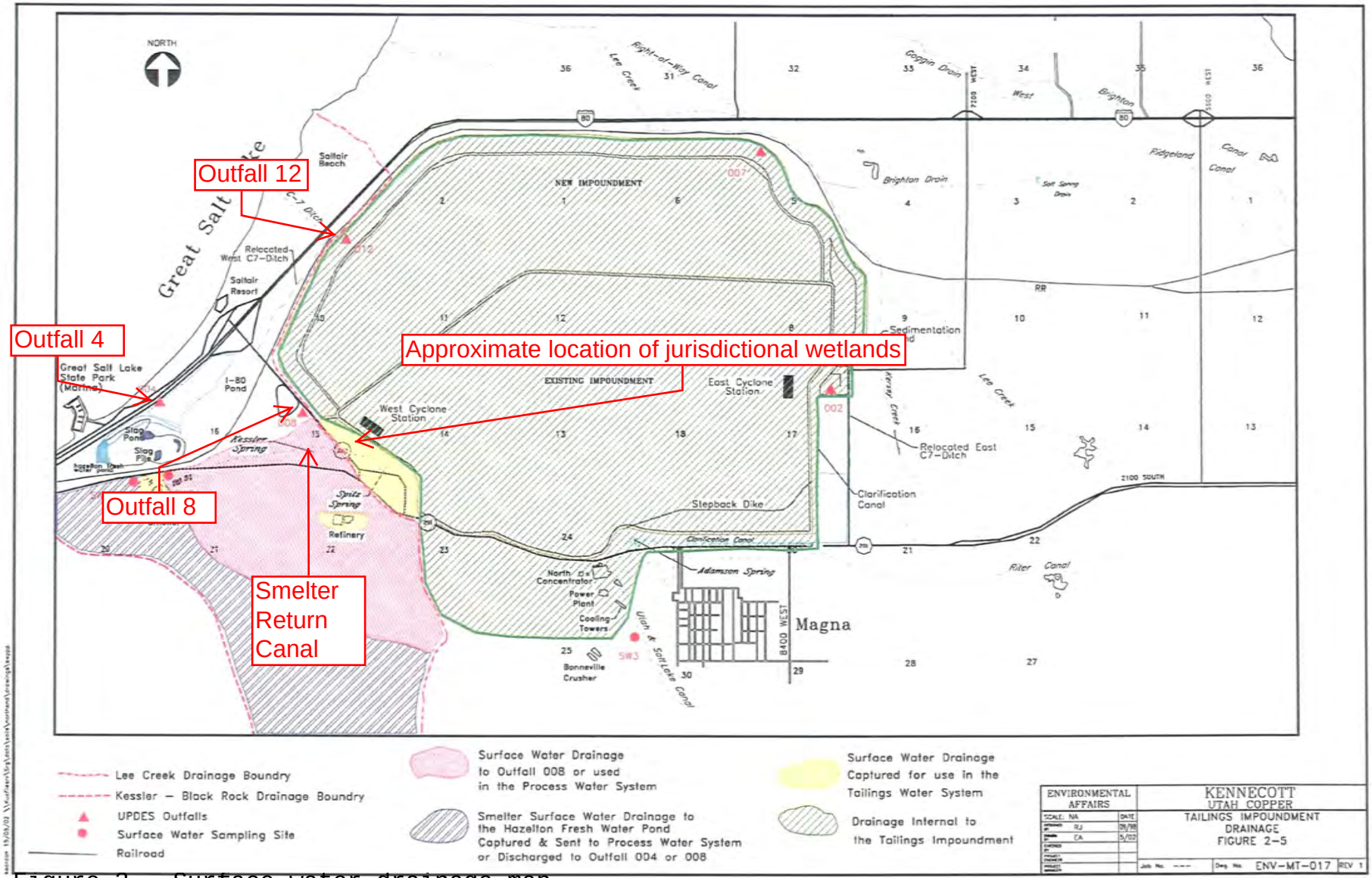

Figure 3. Surface water drainage map.