

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 10, 2012.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Western Lithium, SPK-2011-01263-UO.
Name of water being evaluated on this JD form: Features 1-10 and Wetlands 1-5

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: NV County: Humboldt City: _____

Center coordinates of site (lat/long in degree decimal format): Lat: 41.707373° N, Long: -118.060169 W

Universal Transverse Mercator: _____

Name of nearest waterbody: Quinn River.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None.

Name of watershed or Hydrologic Unit Code (HUC): 16040201.

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. List other JDs: _____

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

Office (Desk) Determination. Date: September 6, 2012.

Field Determination. Date(s): _____.

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 no** "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 waters² (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 _____ width (ft) and/or _____ acres.

Wetlands: _____ acres.

c. Limits (boundaries) of jurisdiction based on: **Pick List and **Pick List****

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: **Within the 3,708-acre review site there are two isolated, non-jurisdictional streams that carry ephemeral flows, Feature 3 is a 1st order tributary to Thacker Creek and Feature 4 is a 1st order tributary to Crowley Creek (See attached Figure 4). There are also 5 isolated, non-jurisdictional wetlands totaling 0.43-acre within the project**

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.

area. Feature 3 is a 2.5-foot wide channel that originates within the project area from several other drainage features, including Features 1 and 2, that lack an OHWM. Flows in Feature 3 are ephemeral but are sufficient to have evidence of an OHWM for 878 feet within the project area. Feature 3 flows westward, out of the project area where it connects with a complex of springs that then perennially flow into Thacker Creek. Thacker Creek flows for several miles until it reaches an irrigation pond, see Figure 6. From there the water is stored and used to irrigate a nearby field, see Figure 6 and Photos 1 and 2. There are no indications that that flows connect to Kings River, the closest potential jurisdictional water which is approximately 2 miles away from the Irrigation Pond. Additionally, there is no known connection to interstate commerce from Feature 3. Feature 3 may have had a pre-agriculture connection to the Kings River; however, based on the evidence provided by the applicant and through aerial photos and USGS Mapping, that connection is speculative.

Feature 4 is a 1st order tributary of Crowley Creek, which it connects to approximately 4 miles east of the project area, and has indicators of an OHWM. Feature 4 is approximately 2.5 feet wide and the main drainage carries perennial flows out of the project area. USGS Mapping and aerial photos suggest that Crowley Creek splits into several diverging branches; information (see Figure 8) from the December 14, 2011 delineation report indicate that the main channel of Crowley Creek ends in a pasture approximately 7 miles from the eastern boundary of the project area. Figure 8 and Photograph 9 suggest that water is lost to the substrate through the 7-mile long channel before ending in the pasture. The last indication of an OHWM on Crowley Creek is 2.5-3 miles from the Quinn River, the closest potential jurisdictional water. Additionally, there is no known connection to interstate commerce from Feature 4. Feature 4 may have had a pre-agriculture connection to the Quinn River; however, based on the evidence provided by the applicant and through aerial photos and USGS Mapping, that connection is speculative.

Features 1,2, and 5-10 on Figure 4, all lack any indicators of OHWM and are not jurisdictional.

Additionally, there are 5 wetland areas totaling 0.43-acre within the project area (Figure 4). Wetlands 1 (0.14-acre), 2 (0.03-acre), and 4 (0.07-acre) are all located more than 1,000 feet from one of the mapped features that lack an OHWM and more than 1 mile from Feature 4. Wetland 3 (0.15-acre) is located near Feature 9 which lacks an OHWM but appears to be an upland swale connection to Feature 4. Wetland 5 (0.04-acre) is located within the channel of Feature 4 and is directly connected to that feature. Since Feature 4 is an isolated channel with no connection to waters of the US, then Wetlands 1-5 are also isolated features that are not jurisdictional.

SECTION III: CWA ANALYSIS

- A. TNWs AND WETLANDS ADJACENT TO TNWs: NOT APPLICABLE
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS: NOT APPLICABLE
- C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: NOT APPLICABLE
- 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):⁴
- 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 _____ width (ft).
- Other non-wetland waters: _____ acres.
Identify type(s) of waters: _____.
- Wetlands: _____ acres.

⁴ 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.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

- 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).
- 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): 10,582 linear feet 2.5 width (ft).
- Lakes/ponds: _____ acres.
- Other non-wetland waters: _____ acres. List type of aquatic resource: _____.
- Wetlands: 0.43 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 _____ width (ft).
- Lakes/ponds: _____ acres.
- Other non-wetland waters: _____ acres. List type of aquatic resource: _____.
- Wetlands: _____ acres.

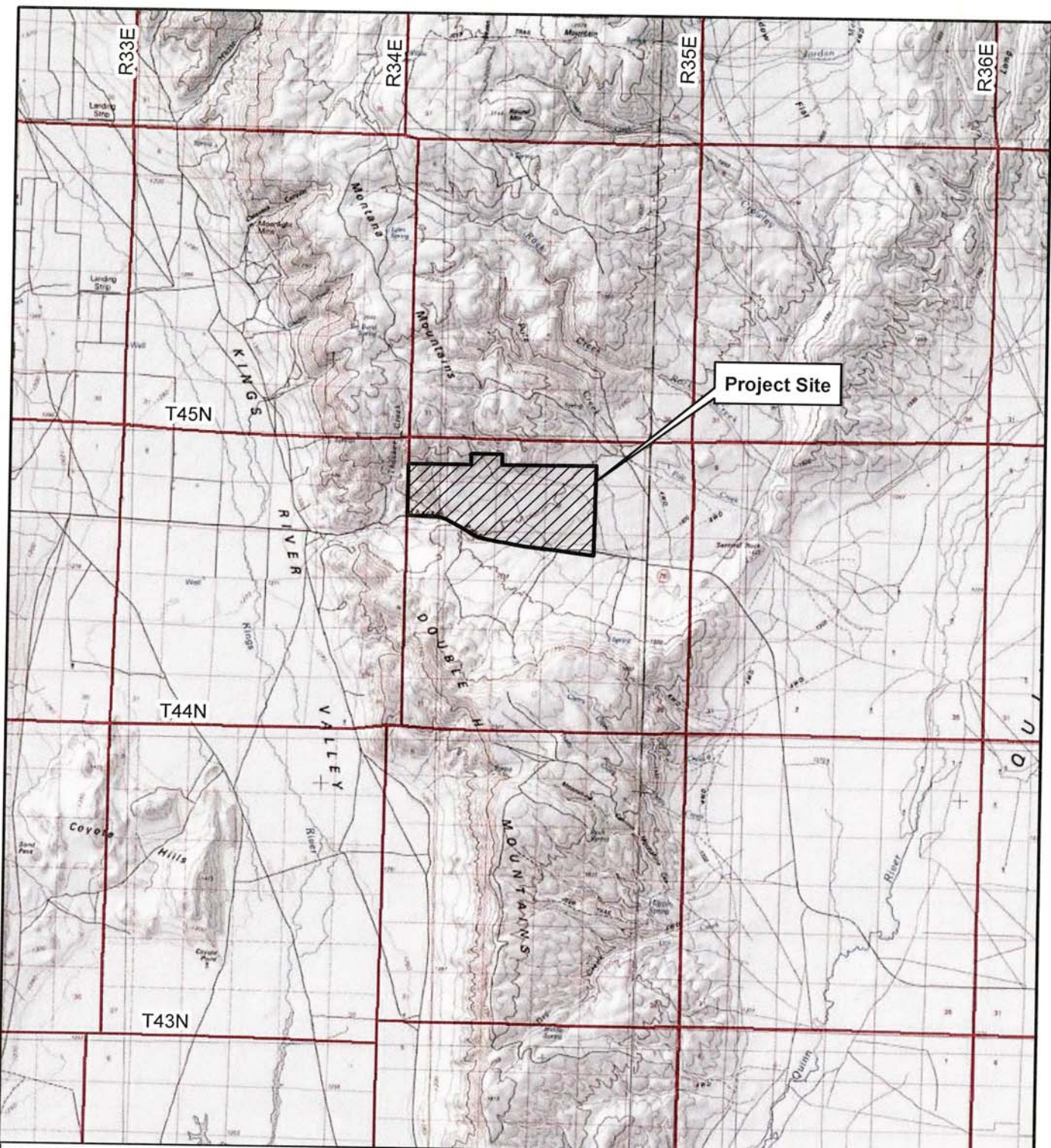
SECTION IV: DATA SOURCES.

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):

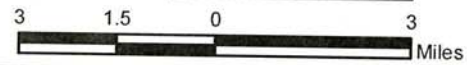
- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Wetland Delineation Report, JBR, December 14, 2011.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data 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: In Delineation Report
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- National wetlands inventory map(s). Cite name: _____.
- State/Local wetland inventory map(s): _____
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): In Delineation Report
or Other (Name & Date): In 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: _____.

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BASE MAP: National Geographic Topographic Map



WESTERN ^{WLC} LITHIUM KINGS VALLEY LITHIUM PROJECT

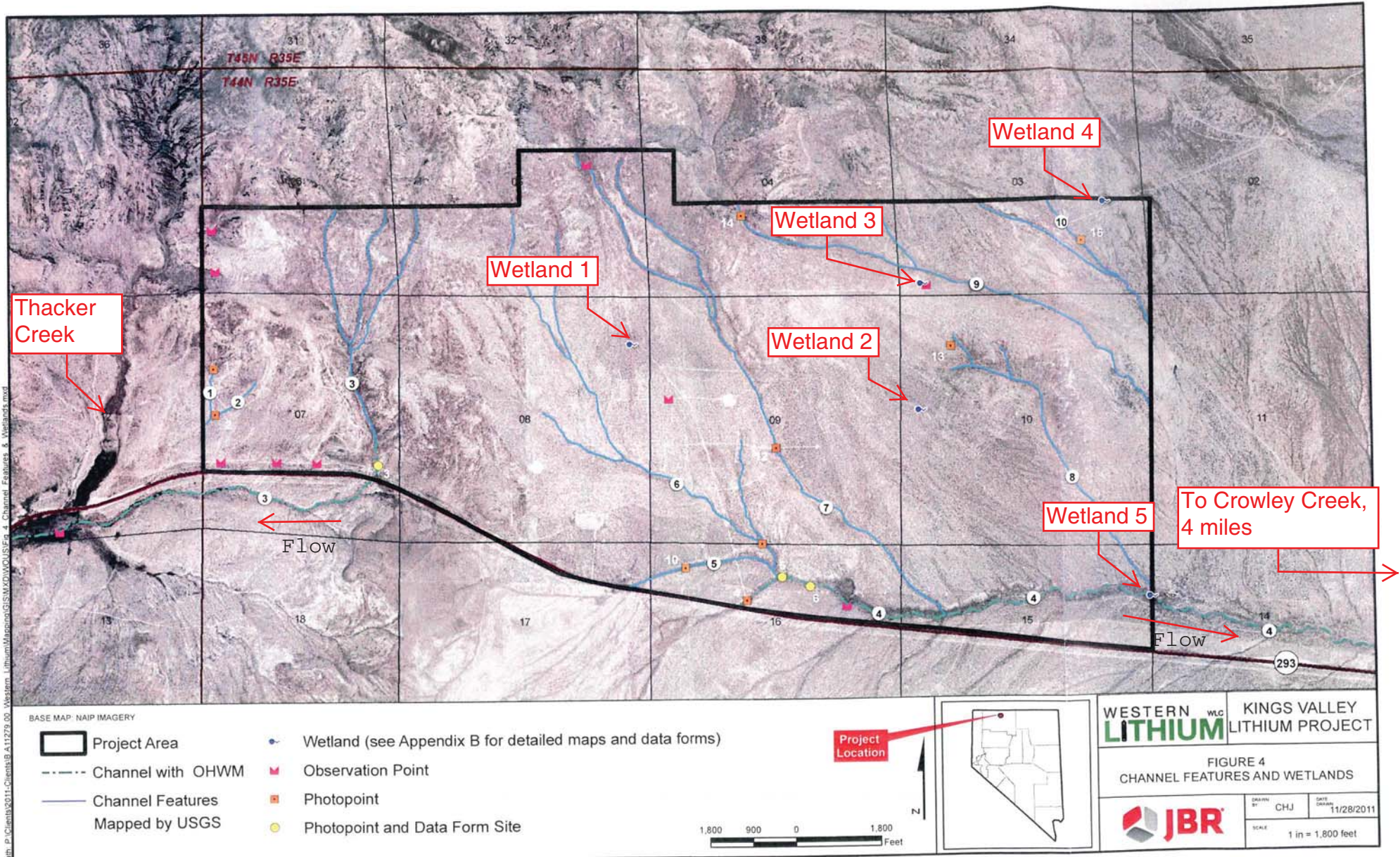
FIGURE 1
PROJECT LOCATION

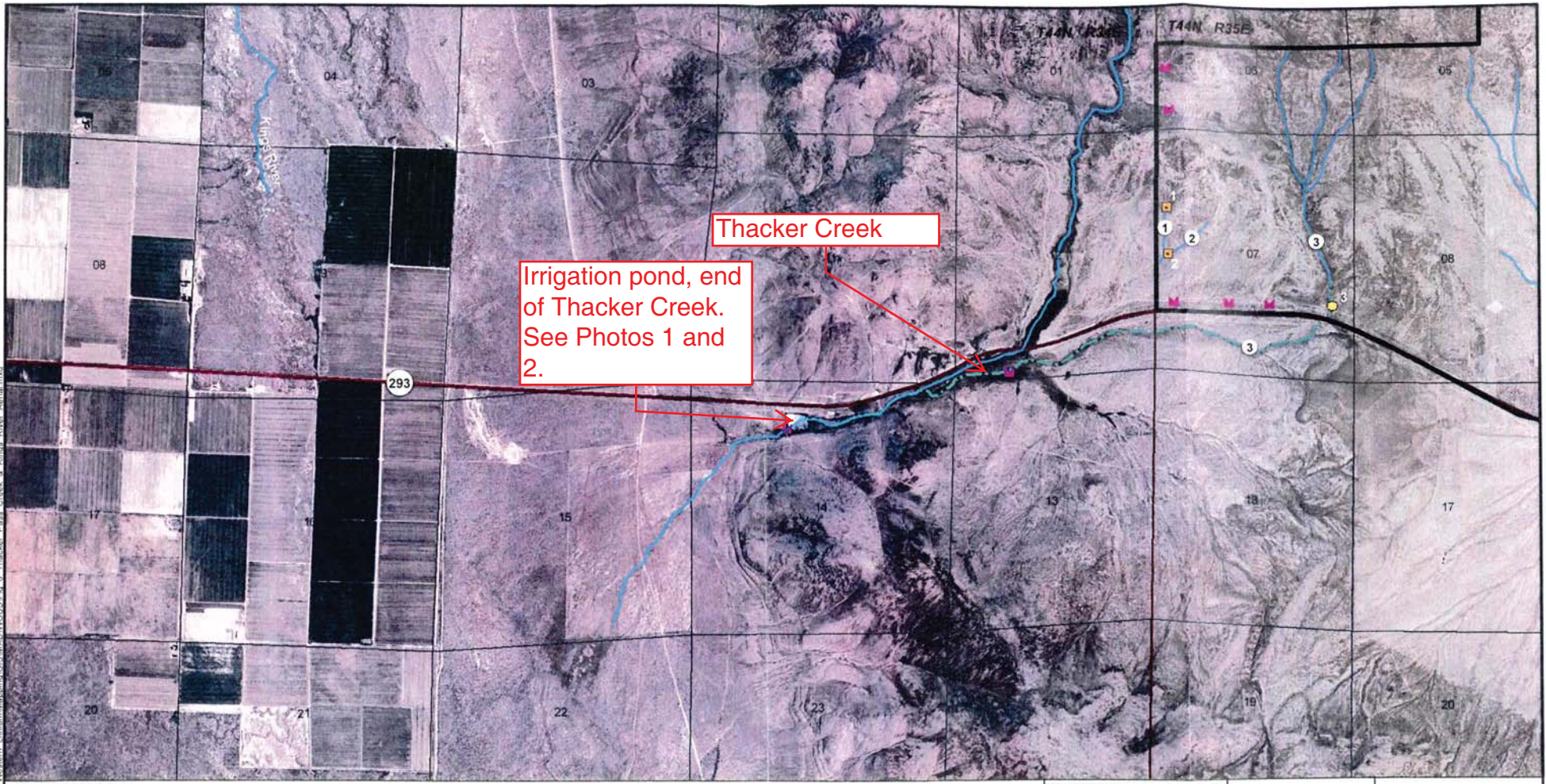


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SCALE 1 in = 3 miles

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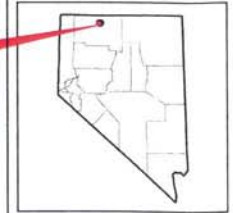
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BASE MAP NAIP IMAGERY

- Project Area
- Channel with OHWM
- Channel Features Mapped by USGS
- Photopoint
- Observation Point
- Photopoint and Data Form Site

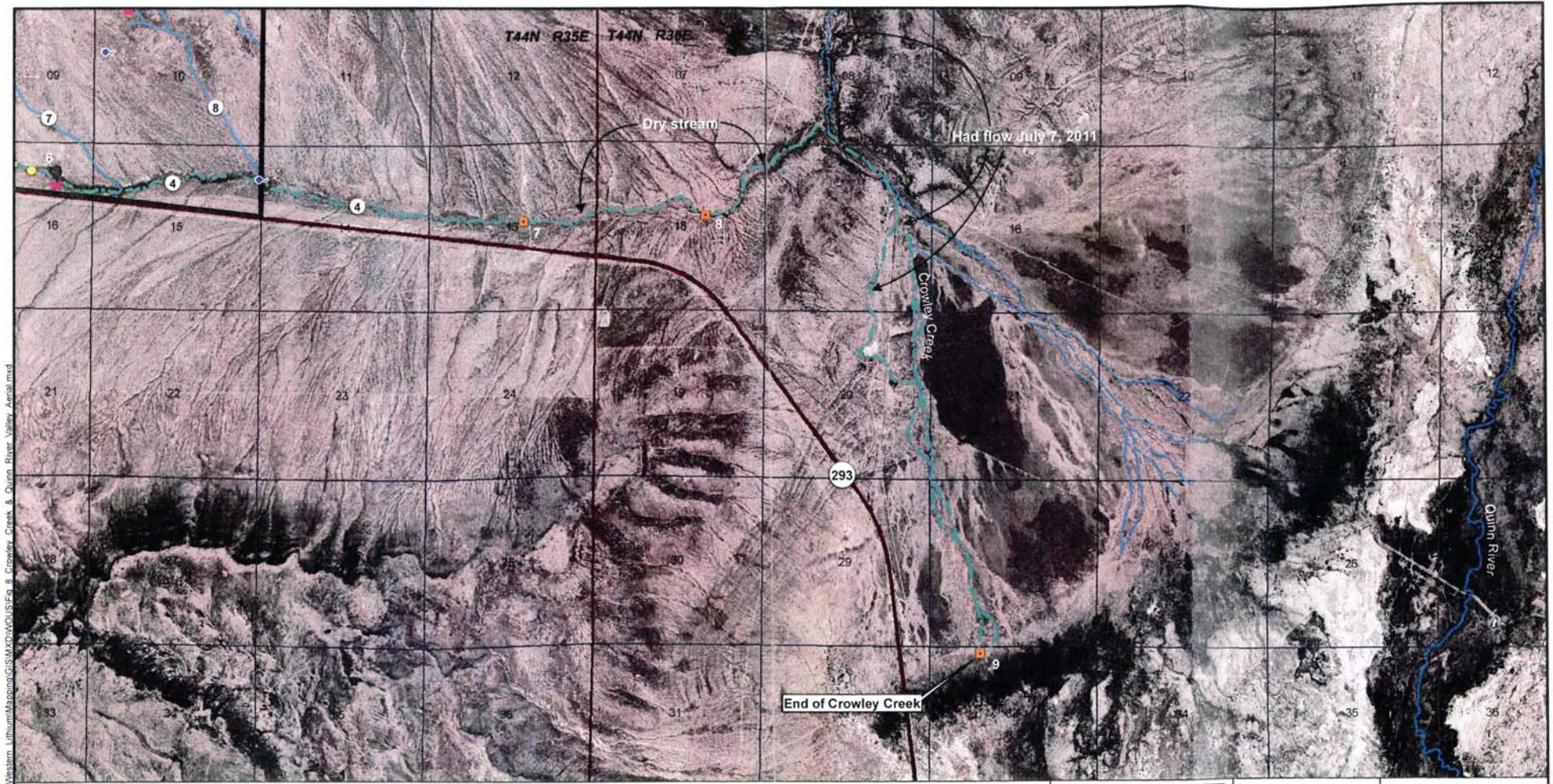


Project Location



WESTERN w.l.c. LITHIUM	KINGS VALLEY LITHIUM PROJECT						
FIGURE 6 THACKER PASS CREEK AND KINGS RIVER AERIAL							
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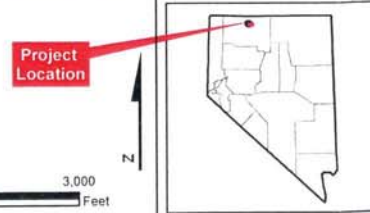
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BASE MAP NAIP IMAGERY

- Project Area
- Channel with OHWM
- Channel Features Mapped by USGS
- Wetland (see Appendix B for detailed maps and data forms)
- Observation Point
- Photopoint and Data Form Site
- Photopoint

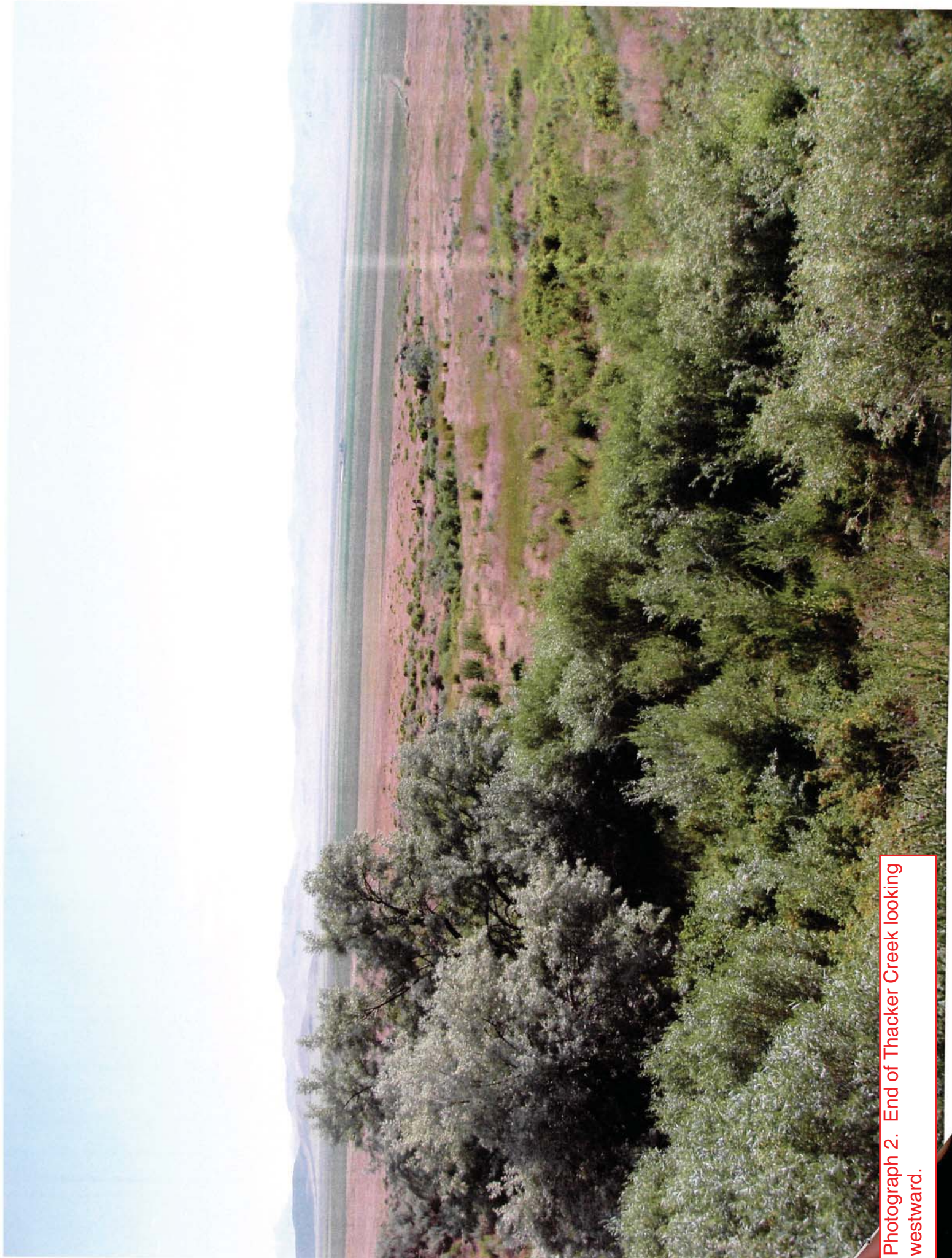


WESTERN LITHIUM ^{WLC}	KINGS VALLEY LITHIUM PROJECT								
FIGURE 8 CROWLEY CREEK AND QUINN RIVER AERIAL									
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Photograph 1. End of Thacker Creek looking westward.



Photograph 2. End of Thacker Creek looking westward.



Photograph 9. Feature 4. A flat pasture where Crowley Creek ends, 5.5 miles east of the project site. This is the branch of Crowley Creek Channel that carries flow.



Photograph 10. Feature 5, view downstream. No OHWM.