

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

31 January 2013

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 31 January 2013.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Kennecott Bingham Canyon Mine, SPK-2011-01265.
Name of water being evaluated on this JD form: Wetlands 1-10; Yosemite Gulch

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: UT County: Salt Lake City: Copperton

Center coordinates of site (lat/long in degree decimal format): Lat: 40.54483 N, Long: 112.11148 W

Universal Transverse Mercator: _____

Name of nearest waterbody: Butterfield Creek.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Great Salt Lake.

Name of watershed or Hydrologic Unit Code (HUC): 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. List other JDs: _____

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

Office (Desk) Determination. Date: January 30, 2013.

Field Determination. Date(s): November 23, 2011.

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: **A total of 10 wetlands (totalling 1.07-acre) and one channel section with an OHWM (940 feet) were located within the survey area. The survey area consists of 5,627 acres on the north, east, southeast, and southern borders of the Bingham Canyon Mine, operated by Kennecott Utah Copper LLC (Figure 1). The eastern section of study area**

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.

contains a lined stormwater canal and the South Area Water Collection Pipeline, as seen in Figure 4A. These collect surface and groundwater through a system of cutoff walls and collection pipes from the perimeter of the Mine and deliver the water into the Industrial Process Water System. This system was determined to be non-jurisdictional in a previous Approved Jurisdictional Determination (SPK-200901213-UO). Wetlands 1, 2, 3, 4, 7, 8, 9, and 10 (Figures 6A-G), as well as the 940 feet of Yosemite Wash that contained evidence of an OHWM (Figure 6 F) all flow into this Industrial Process Water System and are therefore isolated from any connection to a Traditional Navigable Water. Wetlands 5 and 6 (Figure 6D) are downstream of the lined stormwater canal. These two wetland areas (0.02 and 0.18-acre, respectively) are in a basin that is isolated by a small berm that would prevent any flow from leaving the study area. Although the berm has a culvert, it is filled on the upstream side and there is no evidence of flow below the culvert.

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.

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): _____ linear feet _____ width (ft).
- 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): 940 linear feet 2 width (ft).
- Lakes/ponds: _____ 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.

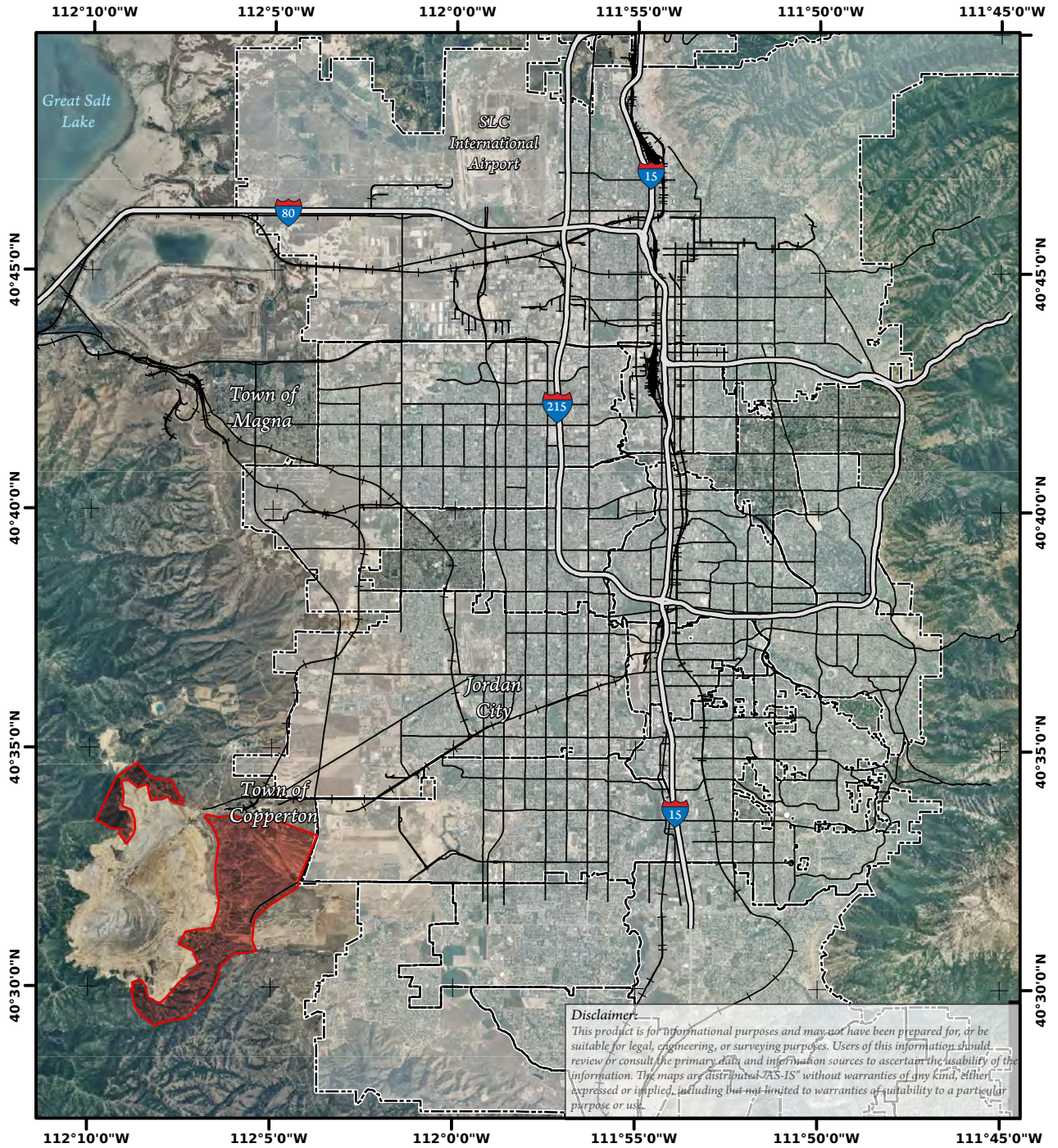
- Other non-wetland waters: _____ acres. List type of aquatic resource: _____.
- Wetlands: 1.07 acres.

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: In December 19, 2011 Delineation Report.
- 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 December 19, 2011 Delineation Report
- USDA Natural Resources Conservation Service Soil Survey. Citation: In December 19, 2011 Delineation Report.
- 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 December 19, 2011 Delineation Report and Google Earth
or Other (Name & Date): In December 19, 2011 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: A total of 10 wetlands (totalling 1.07-acre) and one channel section with an OHWM (940 feet) were located within the survey area. The survey area consists of 5.627 acres on the north, east, southeast, and southern borders of the Bingham Canyon Mine, operated by Kennecott Utah Copper LLC (Figure 1). The eastern section of study area contains a lined stormwater canal and the South Area Water Collection Pipeline, as seen in Figure 4A. These collect surface and groundwater through a system of cutoff walls and collection pipes from the perimeter of the Mine and deliver the water into the Industrial Process Water System. This system was determined to be non-jurisdictional in a previous Approved Jurisdictional Determination (SPK-200901213-UO). Wetlands 1, 2, 3, 4, 7, 8, 9, and 10 (Figures 6A-G), as well as the 940 feet of Yosemite Wash that contained evidence of an OHWM (Figure 6 F) all flow into this Industrial Process Water System and are therefore isolated from any connection to a Traditional Navigable Water. Wetlands 5 and 6 (Figure 6D) are downstream of the lined stormwater canal. These two wetland areas (0.02 and 0.18-acre, respectively) are in a basin that is isolated by a small berm that would prevent any flow from leaving the study area. Although the berm has a culvert, it is filled on the upstream side and there is no evidence of flow below the culvert. .



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-  Municipal Boundary
-  Analysis Area
-  Interstate
-  State Highway
-  Minor Road
-  Railroad

RioTinto

Kennecott Utah Copper LLC

2011 Bingham Canyon Inspection


FIGURE 1

Analysis Area Locations

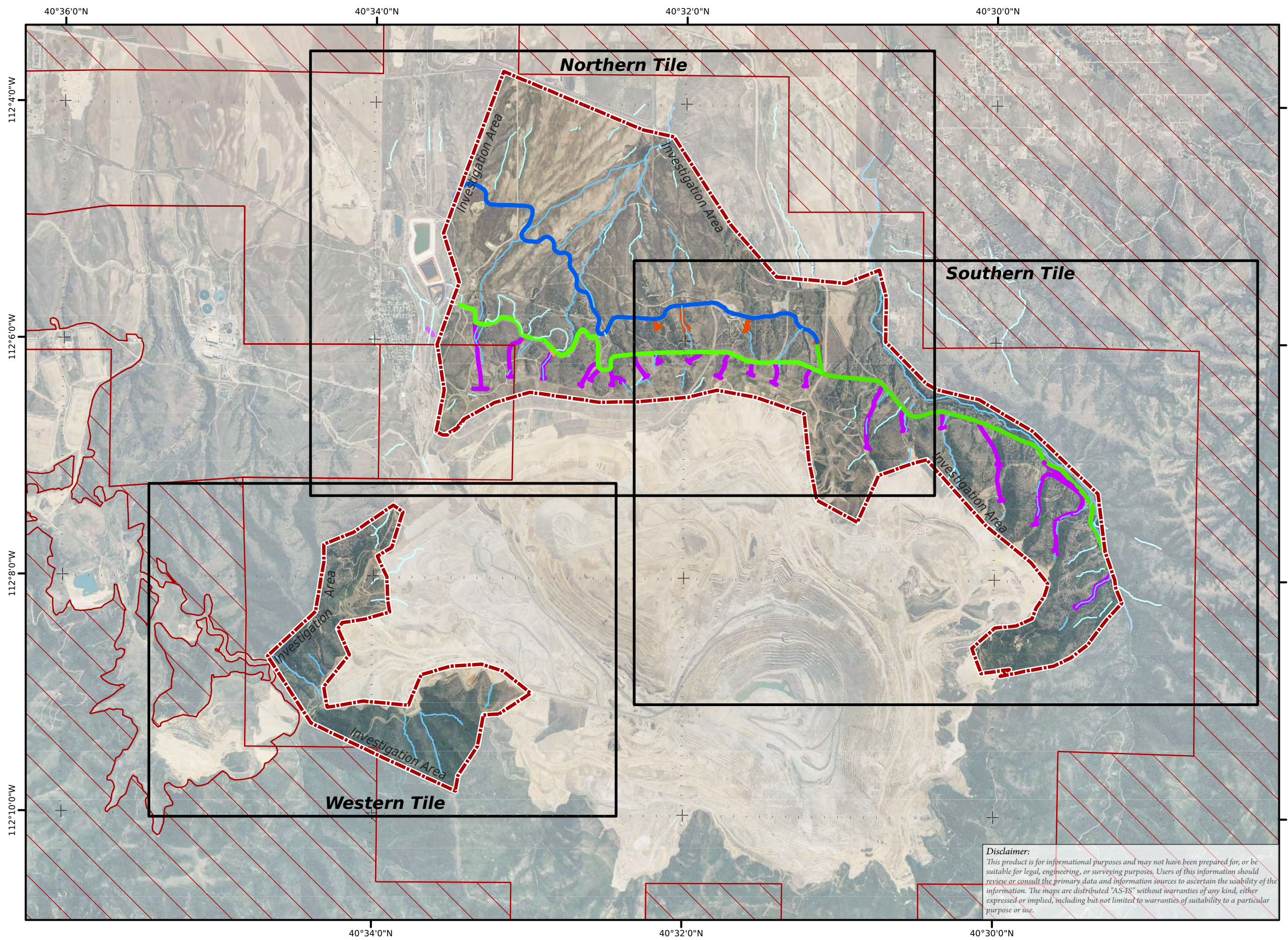
0 20,000 40,000










Feet

Scale: 1" = 20,000'

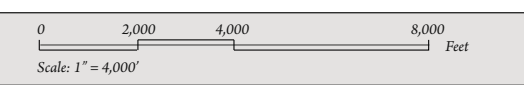



Prepared By: WPNRC Inc.
 Prepared For: Kennecott Utah Copper
 Date: August 2011



-  Investigation Area 5,665 Acres
-  DOGM Permit Boundary
-  Outside DOGM Permit Boundary
-  Named Gulch/Wash
-  Unnamed Gulch/Wash
-  Historic Cutoff Wall & Collection Pipe
-  Recent Cutoff Wall & Collection Pipe
-  South Area Water Collection Pipeline
-  Lined Stormwater Canal

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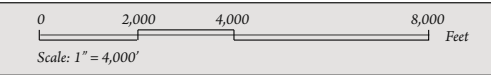
Kennecott Utah Copper LLC

2011 Bingham Canyon Inspection

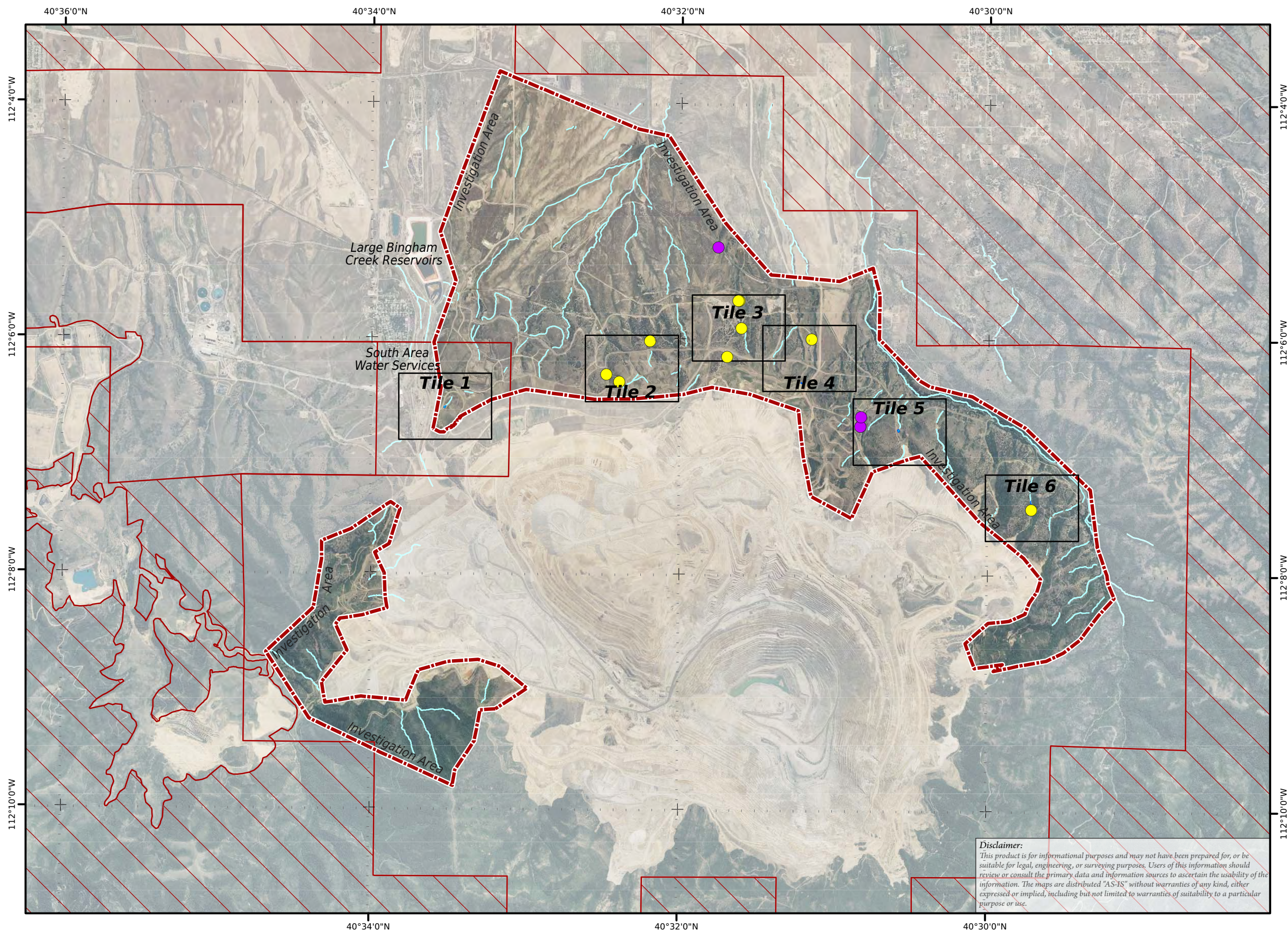
FIGURE 6A

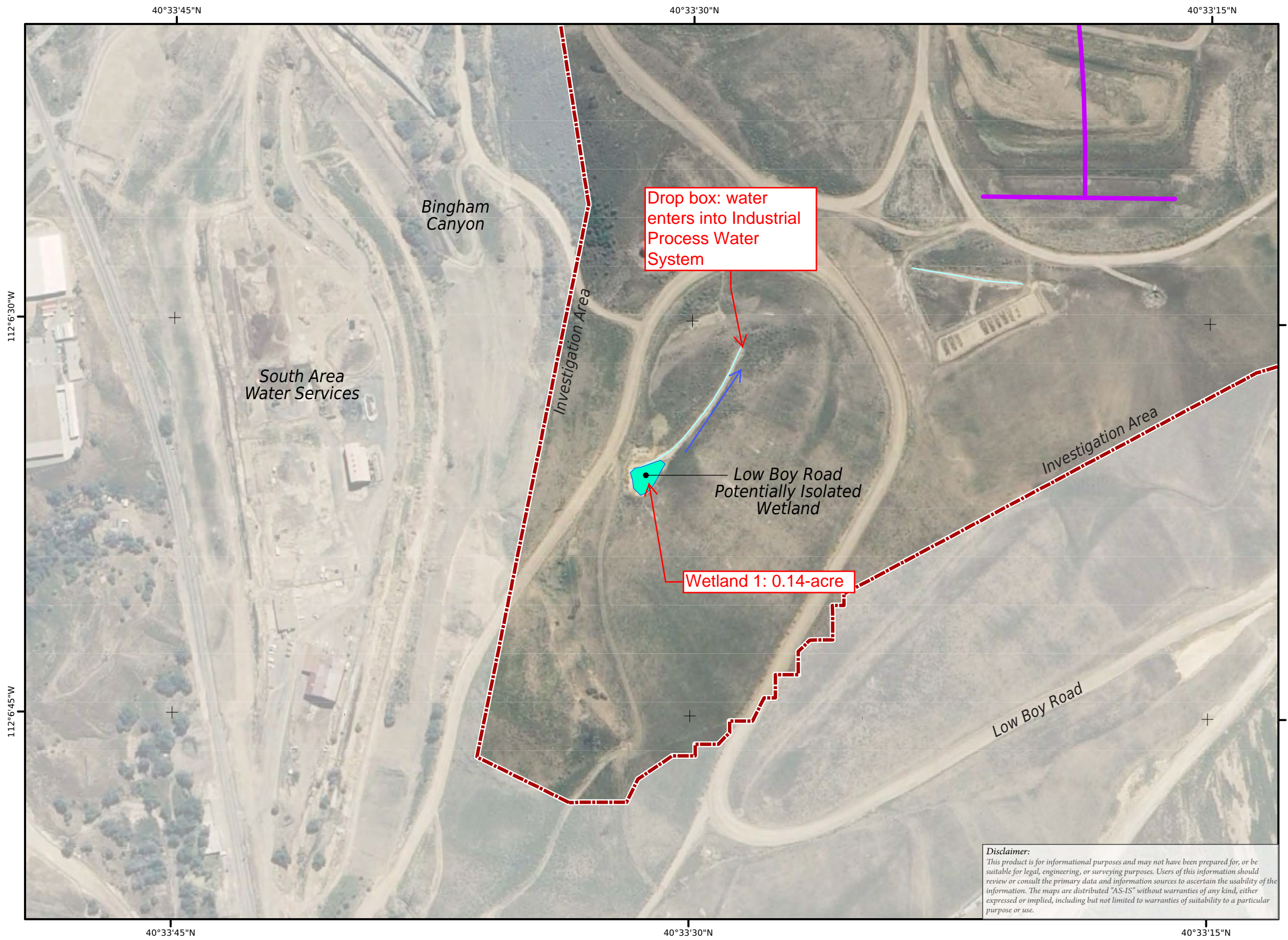
Potentially Isolated Wetlands
Tile Overview

- Investigation Area 5,665 Acres
- DOGM Permit Boundary
- Outside DOGM Permit Boundary
- Dry Gulch/Wash
- Data Point
- OHWM Data Point



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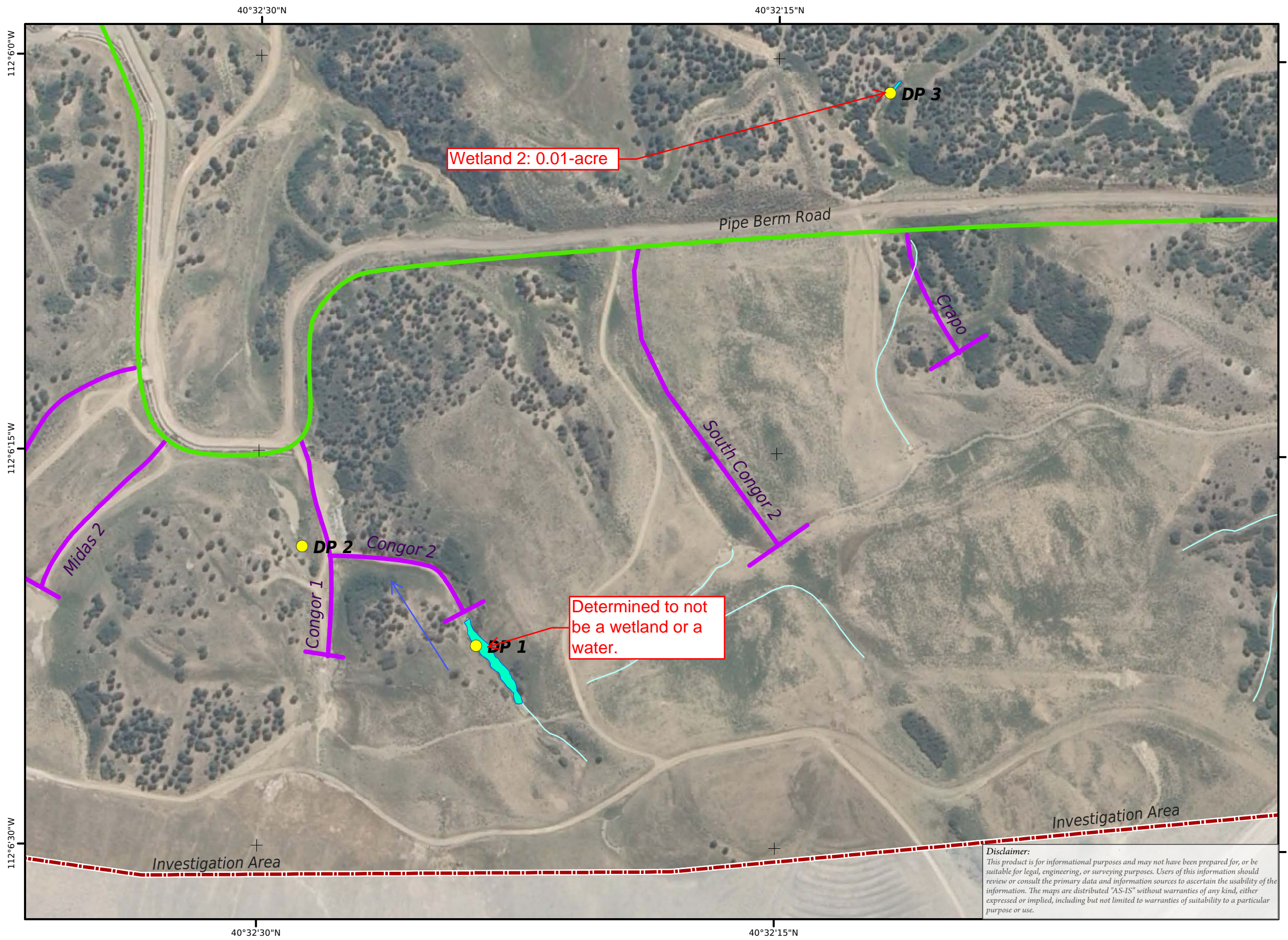


- Investigation Area 5,665 Acres
- DOGM Permit Boundary
- Outside DOGM Permit Boundary
- Gulch/Wash
- Data Point
- OHWM Data Point
- Potentially Isolated Wetland
- Historic Cutoff Wall & Collection Pipe
- Recent Cutoff Wall & Collection Pipe
- South Area Water Collection Pipeline
- Lined Stormwater Canal

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Kennecott Utah Copper LLC

2011 Bingham Canyon Inspection

FIGURE 6C

*Potentially Isolated Wetlands
Tile 2*

- Investigation Area 5,665 Acres
- DOGM Permit Boundary
- Outside DOGM Permit Boundary
- Gulch/Wash
- Data Point
- OHWM Data Point
- Hydic Feature (Non-Wetland)
- Historic Cutoff Wall & Collection Pipe
- Recent Cutoff Wall & Colleciton Pipe
- South Area Water Collection Pipeline
- Lined Stormwater Canal

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40°31'45"N

40°31'30"N

112°5'45"W

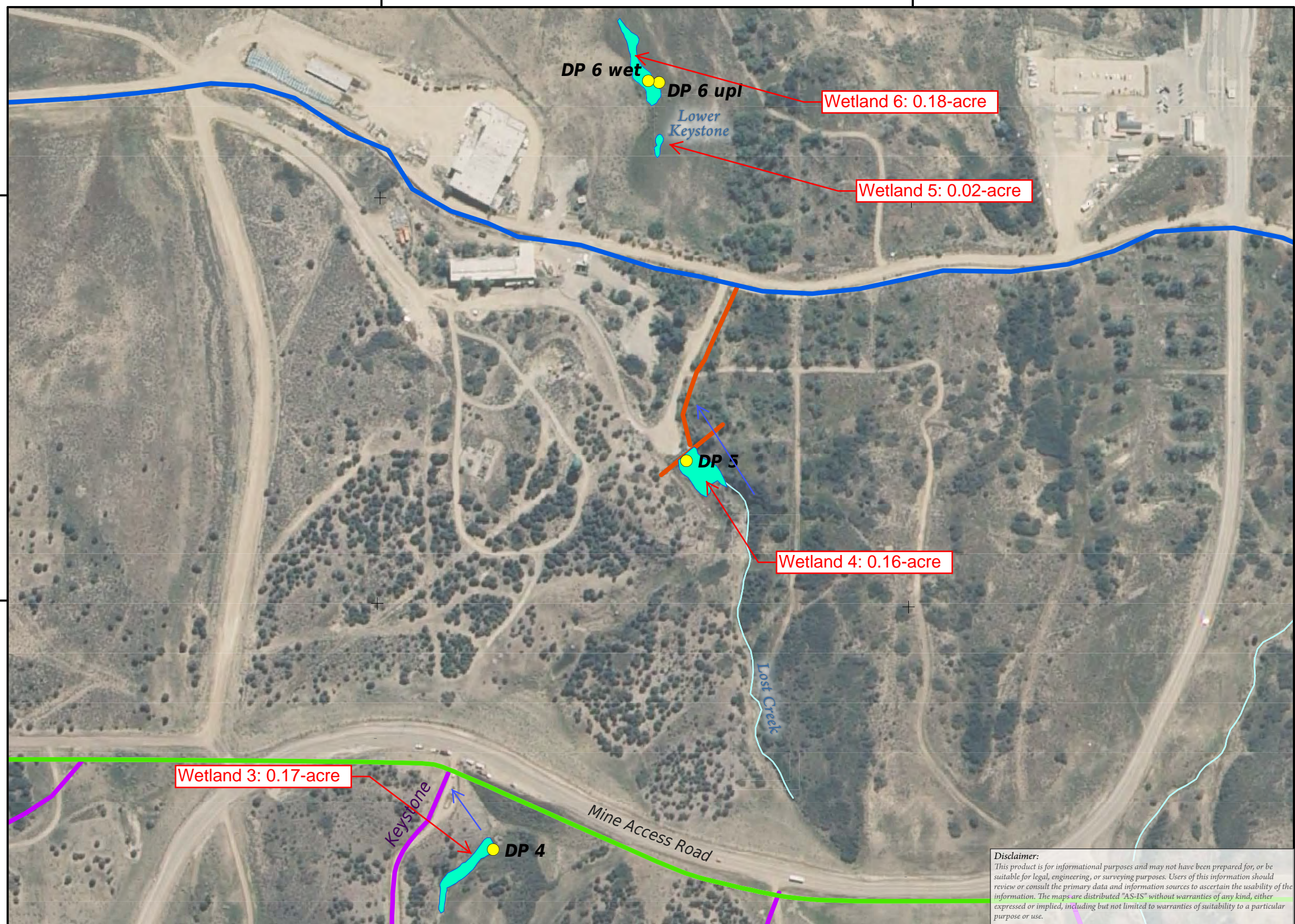
112°5'45"W

112°6'0"W

112°6'0"W

40°31'45"N

40°31'30"N



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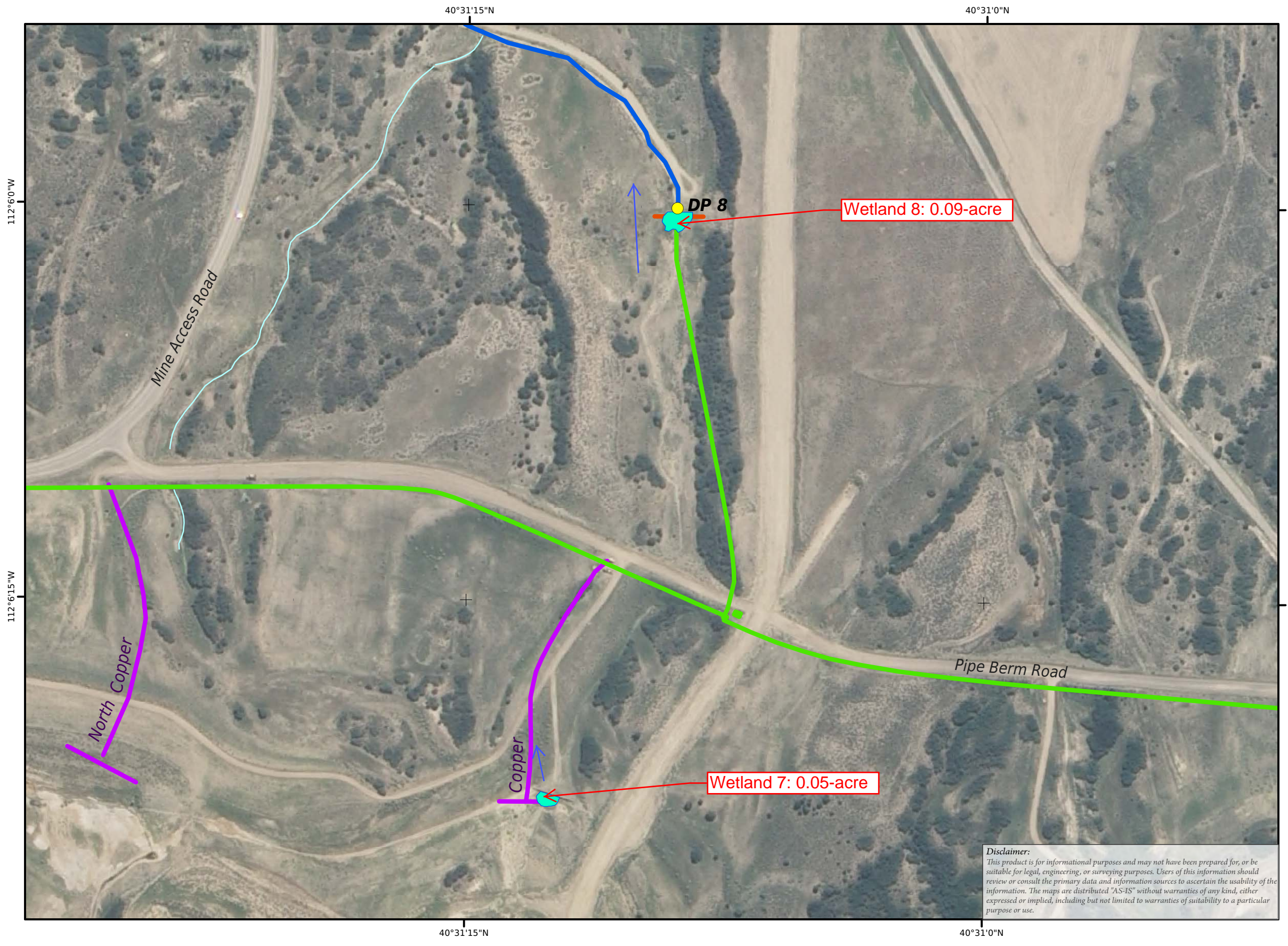
FIGURE 6D

*Potentially Isolated Wetlands
 Tile 3*

- Investigation Area 5,665 Acres
- DOGM Permit Boundary
- Outside DOGM Permit Boundary
- Dry Stream/Wash
- Data Point
- OHWM Data Point
- Potentially Isolated Wetland
- Historic Cutoff Wall & Collection Pipe
- Recent Cutoff Wall & Collection Pipe
- South Area Water Collection Pipeline
- Lined Stormwater Canal

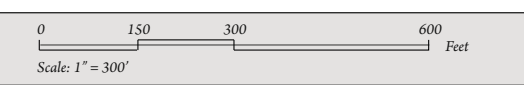


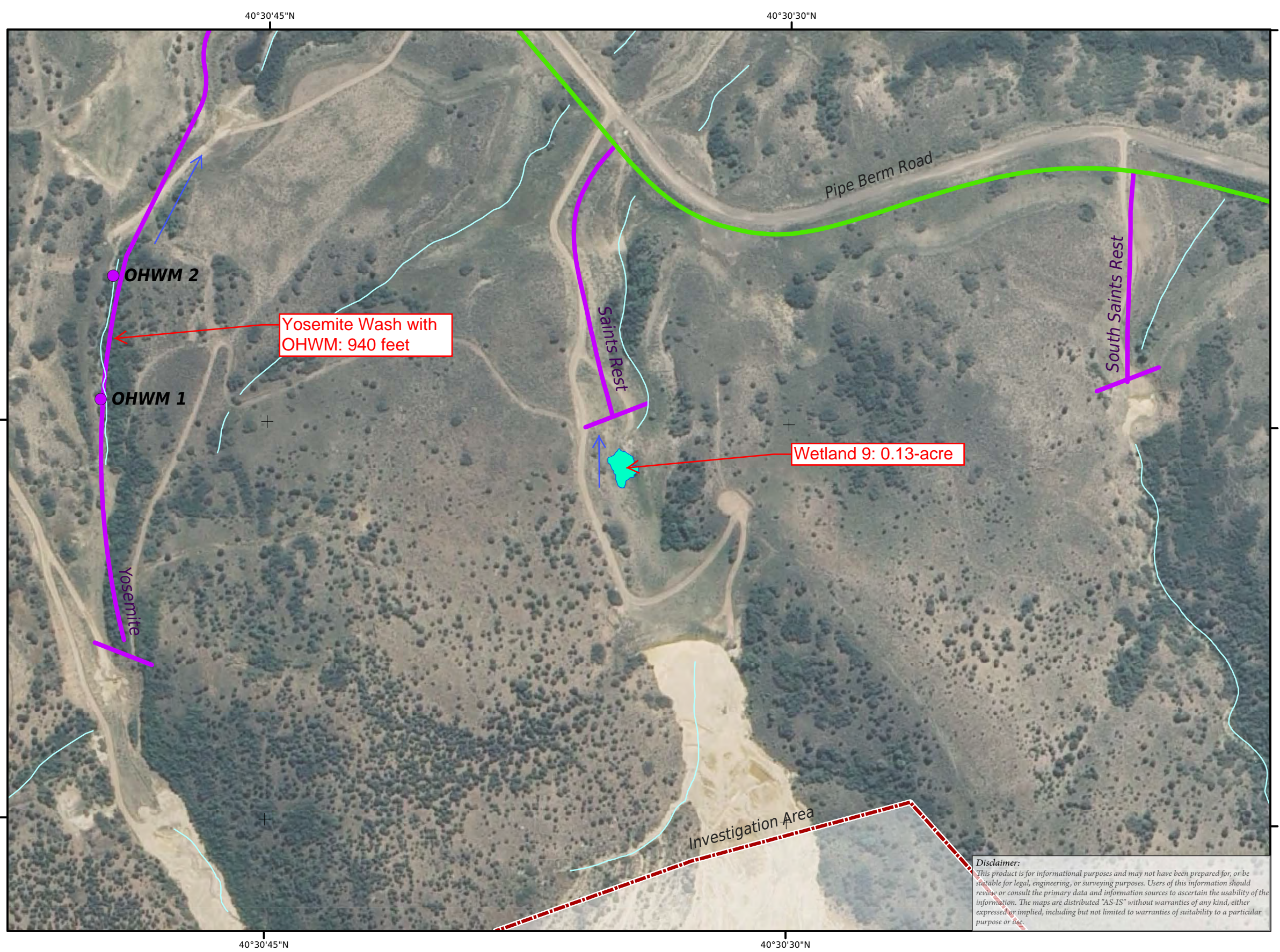
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- Investigation Area 5,665 Acres
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- Investigation Area 5,665 Acres
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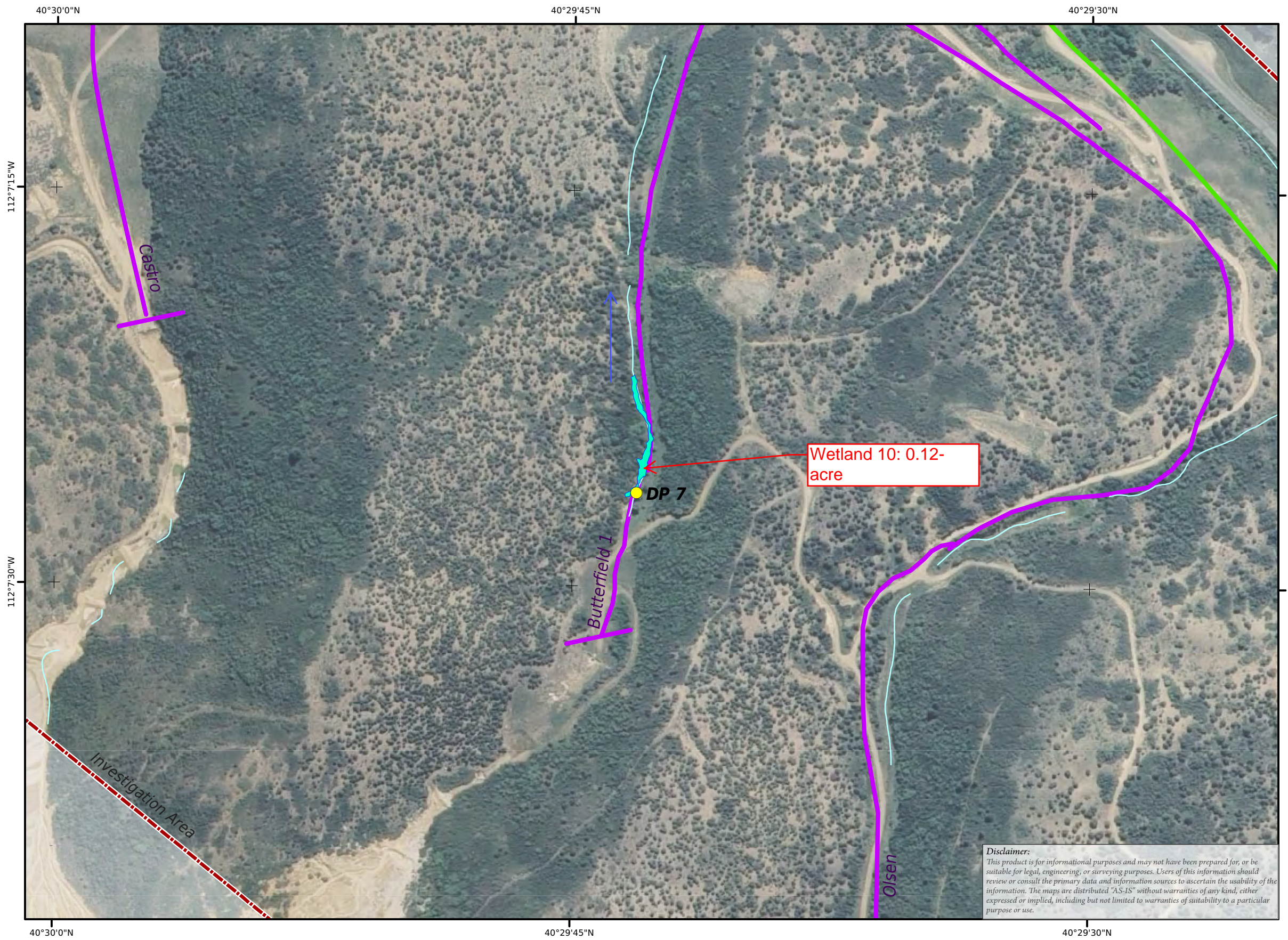
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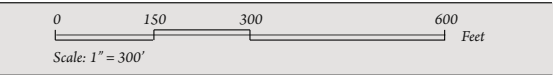
112°6'45"W
112°7'0"W

112°6'30"W
112°6'45"W
112°7'0"W

40°30'45"N
40°30'30"N
40°30'45"N
40°30'30"N



- Investigation Area 5,665 Acres
- DOGM Permit Boundary
- Outside DOGM Permit Boundary
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