

**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): August 30, 2022**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, 30-Megawatt Solar Energy Facility Kennecott-Copperton Concentrator, SPK-2011-01262**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: **Utah** County/parish/borough: **Salt Lake County**

City: **Copperton**

Center coordinates of site (lat/long in degree decimal format): Lat. **40.590°**, Long. **-112.091°**

Universal Transverse Mercator: **12 407701.18 4493332.86**

Name of nearest waterbody: **Jordan River**

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

Name of watershed or Hydrologic Unit Code (HUC): **Jordan, 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:

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

Office (Desk) Determination. Date: August 30, 2022

Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **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 **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):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (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 acres.

Wetlands: acres.

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

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

#### **Isolated Features within the study area:**

Wetland 1: This is a 0.25-acre wetland located near the Barneys Mine road and eastern railroad grade at the eastern end of the study area. A culvert passes under the road and railroad which could allow flows from Barneys Creek through the road and railroad grade; however, jurisdictional determination for the properties to the east of the road and railroad grade revealed that there is no evidence of regular flows through the culvert making this wetland an isolated feature with no connection to any other drainage features or any other jurisdictional waters on or off-site, and no apparent connection to interstate or foreign commerce.

Wetland 2: This is a >0.1-acre wetland located near the Barneys Mine Road at the southeast end of the study area. A culvert passes under the road which could allow flows from Barneys Wash through the railroad grade; however, jurisdictional determination for the properties to the east of the road and railroad grade revealed that there is no evidence of regular flows through the culvert making this wetland an isolated feature with no connection to any other drainage features or any other jurisdictional waters on or off-site, and no apparent connection to interstate or foreign commerce.

Barneys Wash: This is a 1.85-mile-long linear feature. The headwaters of Barneys Wash are located approximately one mile to the west of the study area on Curry Peak and extend in a west to east direction along the southern study area boundary. The only evidence of OHWM was observed in the vicinity of stormwater drainage locations from RTK's developed areas at the Concentrator and from the Haul Road. These stormwater drainage areas showed evidence of concentrated water flows which produced the presence of litter and debris, vegetation matted down, sediment sorting, leaf litter and deposition of sediments. These OHWM features continue through Barneys Wash for a short distance before disappearing because of stormwater flows infiltrating into the substrate. In a few places near the RTK conveyor, there appeared to be fairly large discharge of stormwater coming from the conveyor system's road network. However, the remainder of the Wash showed no signs of regular or frequent high flow events needed to produce OHWMs. The wash continues off the property into agricultural fields where it is not clearly channelized, with many wide, shallow swales. The wash is once again visible on the east side of the agricultural fields and continues downstream into a residential development where it has been channelized and rip-rapped through residential areas terminating at approximately 400 feet east of the railroad tracks near Festive Way, West Jordan, Utah. Maps and historic aerial records confirm that Barneys Wash is an isolated feature with no connection to any other drainage features or any other jurisdictional waters on or off site, with no apparent connection to interstate or foreign commerce and the Corps has determined that this feature is not regulated under the CWA Section 404.

### **SECTION III: CWA ANALYSIS**

#### **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:

Summarize rationale supporting determination:

##### **2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

#### **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 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<sup>4</sup> 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: **Pick List**

Drainage area: **Pick List**

Average annual rainfall:      inches

Average annual snowfall:      inches

### (ii) Physical Characteristics:

#### (a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>:

Tributary stream order, if known:

#### (b) General Tributary Characteristics (check all that apply):

- Tributary** is:
- Natural
  - Artificial (man-made). Explain:
  - Manipulated (man-altered). Explain:

**Tributary** properties with respect to top of bank (estimate):

Average width: feet

Average depth: feet

Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- |  |  |                                   |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts           | <input type="checkbox"/> Sands                     | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles         | <input type="checkbox"/> Gravel                    | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock         | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain: |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope):      %

#### (c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime:

Other information on duration and volume:

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

Subsurface flow: **Pick List**. Explain findings:

- Dye (or other) test performed:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> 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.

Tributary has (check all that apply):

- Bed and banks
- OHWM<sup>6</sup> (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):
- Discontinuous OHWM.<sup>7</sup> 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:

Identify specific pollutants, if known:

**(iv) Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- 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:

**(c) Wetland Adjacency Determination with Non-TNW:**

- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain:
  - Ecological connection. Explain:

<sup>6</sup>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.

<sup>7</sup>Ibid.

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: 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:  
 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: acres.  
Identify type(s) of waters:

3. **Non-RPWs<sup>8</sup> 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:  
 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 jurisdictional.  
Data supporting this conclusion is provided at Section III.C.

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.<sup>9</sup>**

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<sup>8</sup>See Footnote # 3.

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):<sup>10</sup>**

- 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: 0.26 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.**

**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: "Aquatic Resources Delineation Report 30MW Solar Energy Facility Salt Lake County, Utah" prepared by SGM, Inc. dated May 26, 2022.
- 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:

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> 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*.

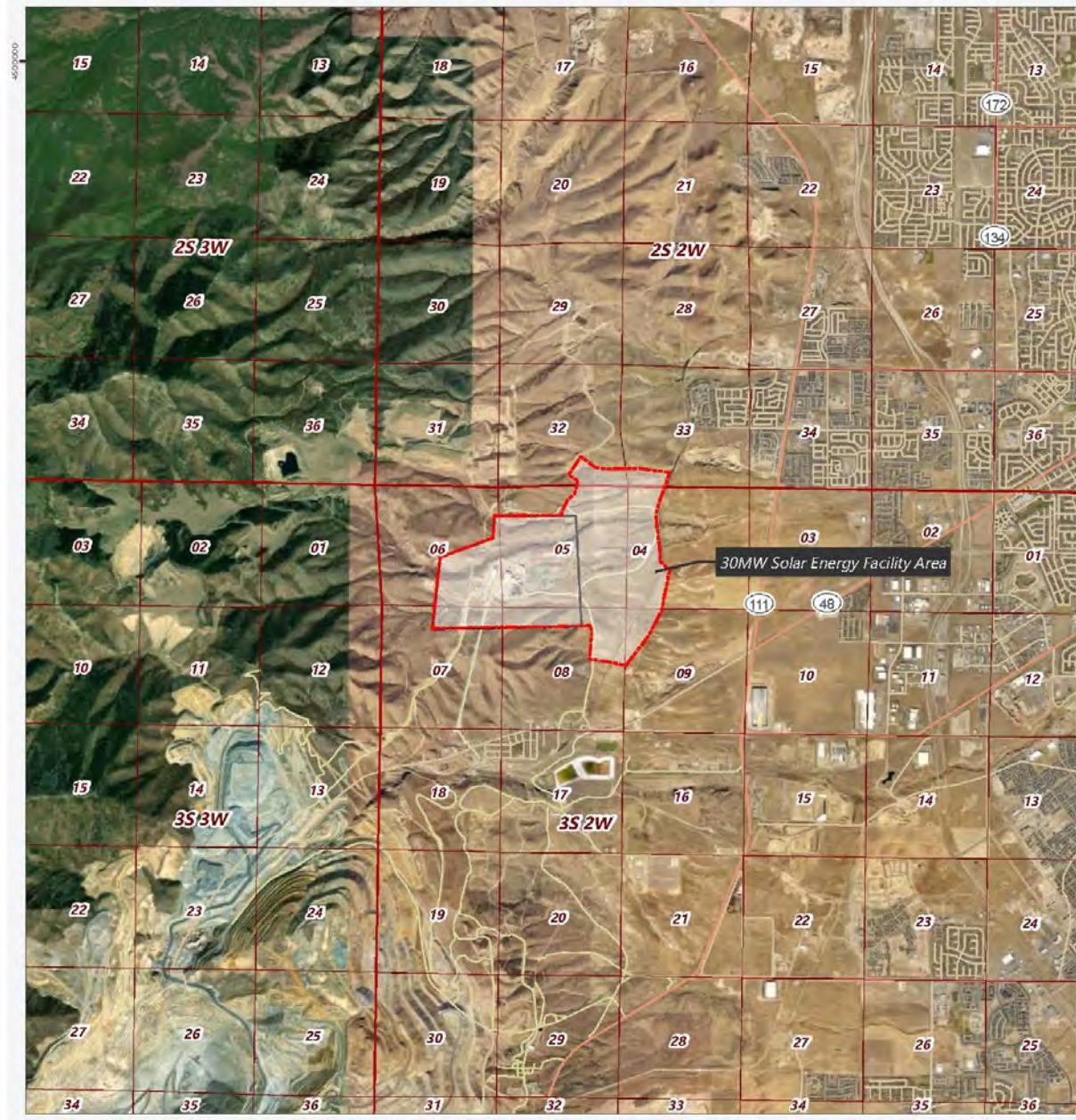
- USGS NHD data. USGS NHD data. National Hydrography Dataset Flowlines – Large Scale from National Layers in the National Regulatory Viewer for the South Pacific Division. Retrieved June 27, 2022.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; Lark**
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name: US Fish and Wildlife Service Wetland Mapper – National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved June 27, 2022.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): GoogleEarth 7.3.3.7692. (Historic Aerial Imagery). Salt Lake County, Utah. Latitude 40.590°, Longitude -112.091°, Retrieved June 27, 2022 from <http://www.earth.google.com>.  
or  Other (Name & Date):
- Previous determination(s). File no. and date of response letter: Approved Jurisdictional Determination verified on December 29, 2011 and evaluated under the same SPK number as the current request (SPK-2011-01262). In 2011 RTK submitted a request for an approved JD verification within a 602-acre site in the 30MW Solar area. On December 29, 2011, the U.S. Army Corps of Engineers (USACE) verified that the site did not support any jurisdictional wetlands or waters of the United States and a Department of the Army would not be required for any work within the 602-acre study area.

Due to the expiration of the previous AJD, expansion in the project boundaries, and the proposed development of the 30MW Solar Facility, RTK submitted a new request for an AJD verification for a 1,262-acre site that included the 602-acre site evaluated in 2011. In the AR submitted for the new request, the environmental consultant indicated that USACE concurred with an isolation wetland determination for two areas that were delineated and described in the 2011 AR report. These wetland areas were outside of the 602-acre study area evaluated in 2011 and were not coordinated for an isolation determination with the U.S. Environmental Protection Agency or USACE Headquarters as part of the 2011 AJD review process. In addition, the 2011 AJD USACE verification specifically excluded these wetlands since they were both located outside of the 2011 AJD 602-acre study area.

- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Historic Aerials Salt Lake County, Utah. Latitude 40.590°, Longitude -112.091°, Retrieved June 23, 2022 from <https://www.historicaerials.com/viewer>

## B. ADDITIONAL COMMENTS TO SUPPORT JD:

1. Barney Creek: This is a 2.8-mile-long linear feature. The headwaters of Barneys Creek are located approximately 3 miles to the west of the study area on Barneys Peak and extend in a west to east direction along the northern study area boundary. Barneys Creek is split into North Fork Barneys Creek (0.9 miles) and South Fork Barneys Creek (1.9 miles). Barneys Creek (north and south forks) within the study area does not show consistent evidence of an OHWM. Indicators of an OHWM, including drift/debris, sediment changes, and vegetation cover; were limited to specific stormwater discharge points and did not occur elsewhere in the investigation area. OHWM indicators occur in these areas only as a result of storm water runoff from hardscaped areas not from upstream flows. Remaining areas along the creek have converted into a confined upland hydrological conveyance feature and did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements and is not subject to jurisdiction under Section 404 CWA.
2. Field observation for this request found similar conditions existed in Barneys Creek and Barneys Wash as in 2011. While past or historic flow events have likely shaped the topography of Barneys Creek and Barneys Wash to form a concave shape, current flow events in the upper reaches of Barneys Creek and Barneys Wash are rare, very short lived, and low volume events. The historic railroad grade at the western end of the study area prevents flows from the headwaters of Barneys Creek and Barneys Wash from continuing down-channel.
3. The National Wetland Inventory map did not indicate the presence of wetlands within the study area other than ponds associated with the concentrator which are part of Kennecott UC LLC's industrial process water system. This is a closed system which is not subject to jurisdiction under Section 404 CWA.

**Figure 1. Vicinity Map**

**RioTinto**  
**KENNECOTT UTAH COPPER LLC**  
**2021 Waters of the U.S.**  
**Jurisdictional Investigation**  
**Vicinity Map**



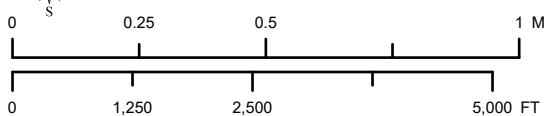
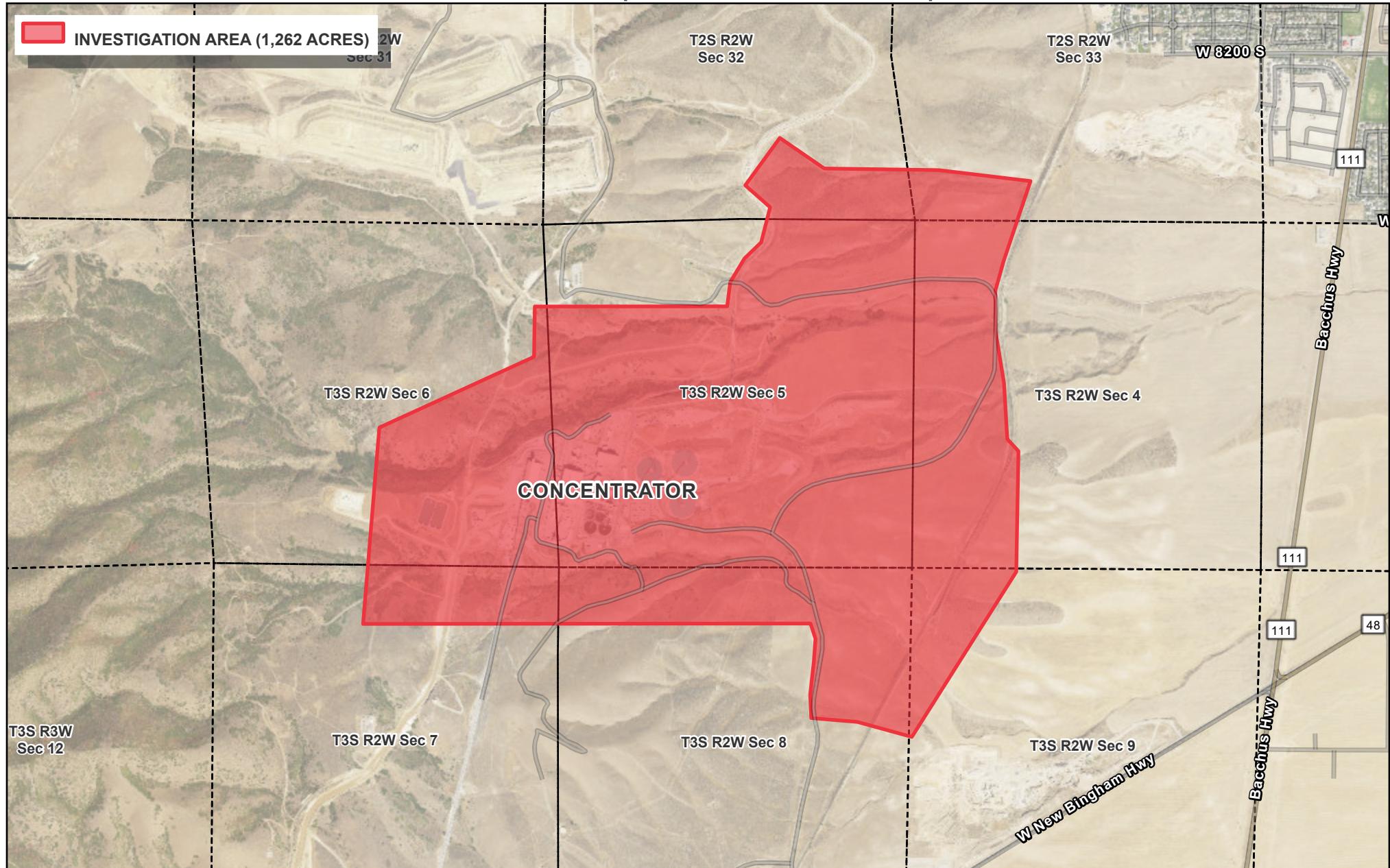
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**SGM**  
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 Glenwood Springs, CO 81601  
 970.944.9040  
[www.sgm-inc.com](http://www.sgm-inc.com)

Date: 12/21/2021	Location: 40°73091, -112°16446
Created By: SGM	Drawn By: RKK

0 0.5 1 2 Miles  
 SCALE: 1" = 1 miles

# 30MW SOLAR ENERGY FACILITY (SPK-2011-01262-UO) INVESTIGATION AREA



**Rio Tinto**  
Kennebott Copper

DATE: 3/8/2022 2:41 PM

CREATED BY: COLTON.NORMAN

DOCUMENT NAME: GIS::TAILINGS IMPOUNDMENT INVESTIGATION AREA  
COORDINATE SYSTEM: NAD 1983 STATEPLANE UTAH CENTRAL FIPS 4302 FEET

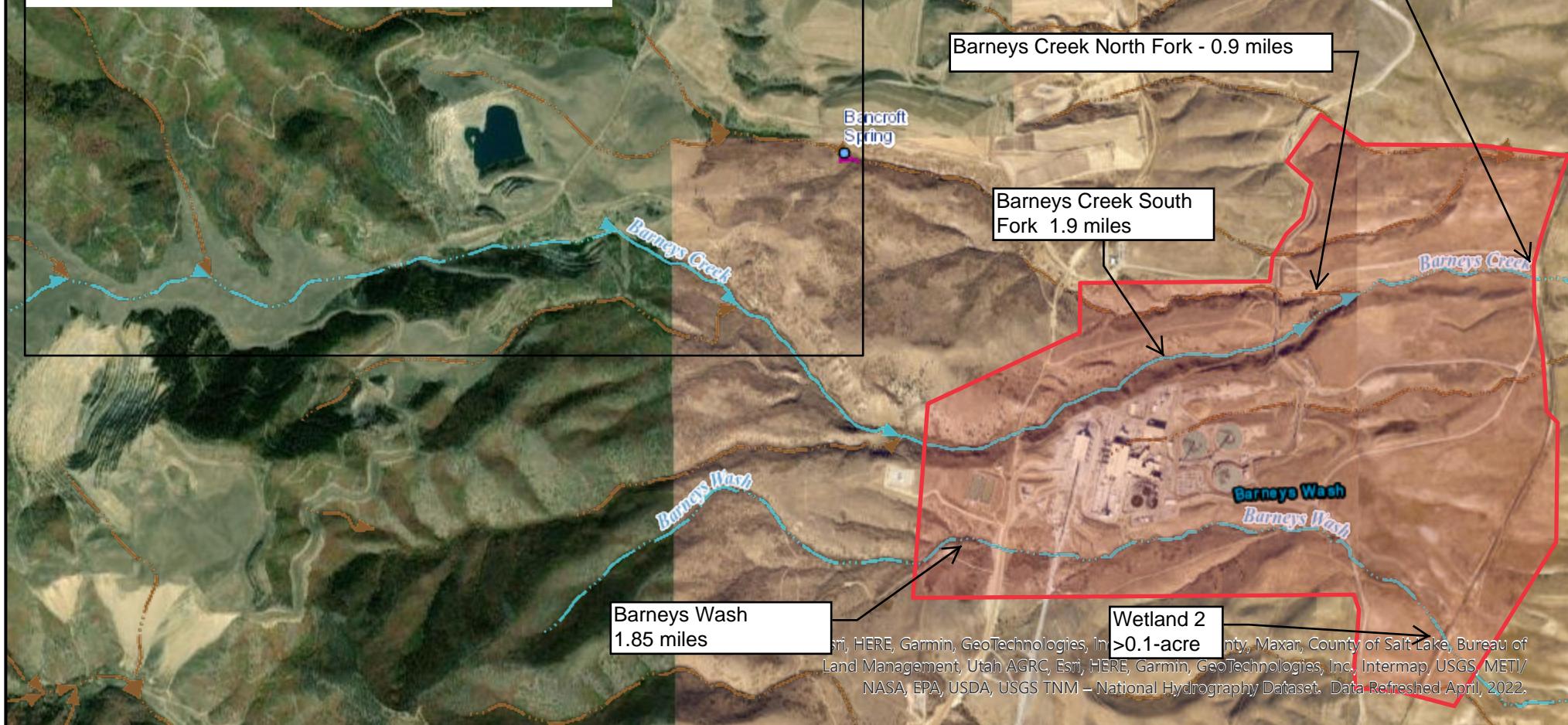
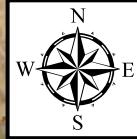
© 2022 RIO TINTO KENNECOTT

## Legend

Study Area 1,262 Acres

## National Hydrography Dataset (NHD)

- Perennial
- Intermittent
- Ephemeral



SPK-2011-01262

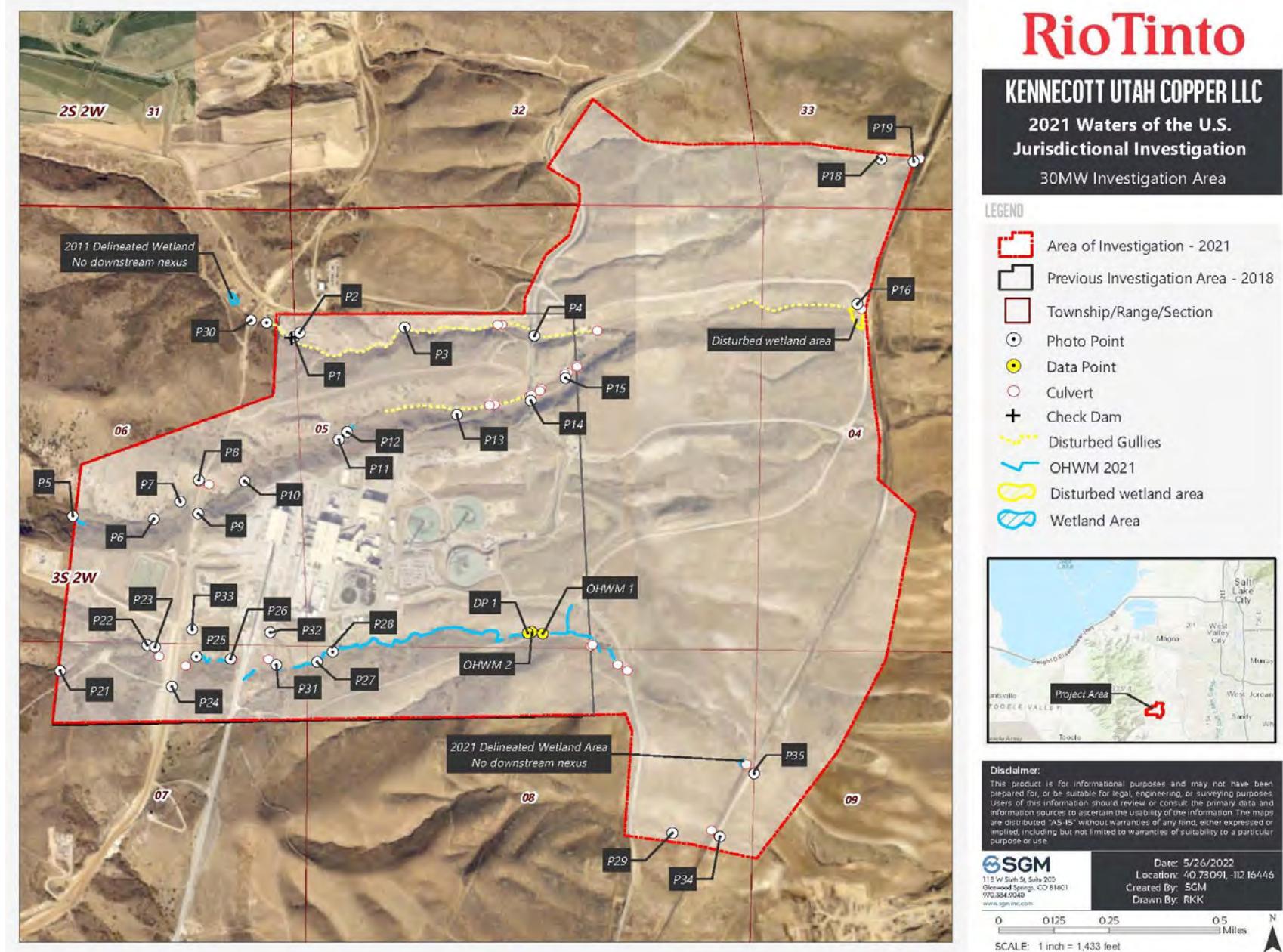
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mi

Map Center: 112.118343°W 40.594989°N

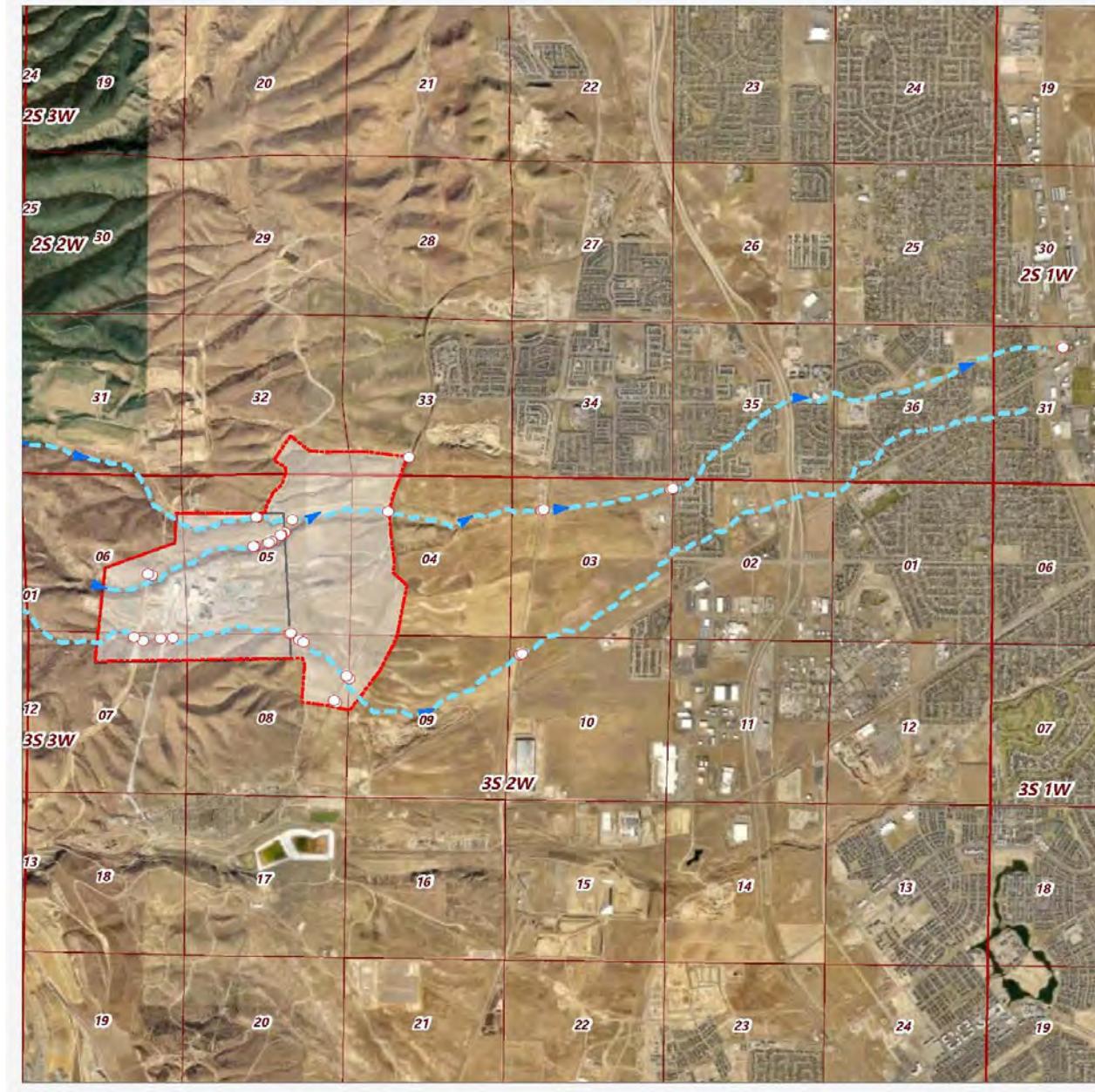
Map Created by: N. Fresard

Date: June 27, 2022

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

**Figure 3. Hydric Features and Data Collection Points**

## **Figure 4. Historic Flow Pathways**



Rio Tinto

KENNECOTT UTAH COPPER LLC

2021 Waters of the U.S.  
Jurisdictional Investigation

### Historic Flow Path

## LEGEND

- Area of Investigation - 2021
  - Previous Investigation Area - 2018
  - Township/Range/Section
  - Culvert
  - Historic Flow Paths
  - Interstate
  - State Highway
  - Local Road



**Disclaimer:**

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The logo for SGM (Society of General Management) is located in the bottom right corner. It consists of a stylized 'G' icon followed by the letters 'SGM' in a bold, sans-serif font.

Date: 12/21/2021  
Location: 40.73091, -112.16446  
Created By: SGM  
Drawn By: RKK

0 0.425  
SCALE: 1 in = 1 miles