Appendix R

Approved Jurisdictional Determination

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT
60 SOUTH CALIFORNIA STREET, SUITE 201
VENTURA, CA 93001

August 18, 2026

SUBJECT: Approved Jurisdictional Determination

Stephanie Lauer
Bonanza Peak Solar, LLC
400 Spectrum Center Dr, Suite 1400
Irvine, California 92618

Dear Ms. Lauer:

I am responding to your request dated October 28, 2025, for an approved Department of the Army jurisdictional determination (JD) for the Bonanza Peak Solar Project site (File No. SPL-2025-00902). The proposed project is located in the southern Pahrump Valley, Inyo County, California (Lat. 35.989675°, Long. -115.907961°).

The Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, a permit would likely be required. The first test determines whether or not the proposed project is located within the Corps' geographic jurisdiction (i.e., it is within a water of the United States). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. This evaluation pertains only to geographic jurisdiction.

The aquatic resources identified in the documentation you provided do not meet the definition of Waters of the United States as defined in 33 CFR 328.3 and are therefore not jurisdictional under the Clean Water Act. The basis for our determination is included in the enclosed memorandum for record. As such, each aquatic resource is not currently regulated by the Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Clean Water Act. Other federal, state, and local laws may apply to your activities. In particular, you may need authorization from the California State Water Resources Control Board, the California Department of Fish and Wildlife, and/or the U.S. Fish and Wildlife Service.

This letter includes an approved jurisdictional determination for the Bonanza Peak Solar Project site. If you wish to submit new information regarding this jurisdictional determination, please do so within 60 days. We will consider any new information so submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. If you object to this or any revised or reissued jurisdictional determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal

Process (NAP) and Request for Appeal (RFA) form. If you wish to appeal this decision, you must submit a completed RFA form within 60 days of the date on the NAP to the Corps South Pacific Division Office at the following address:

Travis Morse
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division, CESPD-PDO
450 Golden Gate Ave.
San Francisco, CA 94102

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5 (see below), and that it has been received by the Division Office by **October 16, 2026**.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the particular project site identified in your request and is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

Thank you for participating in the regulatory program. If you have any questions, please contact me at (805) 585-2147 or via email at Antal.J.Szijj@usace.army.mil. Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at https://regulatory.ops.usace.army.mil/customer-service-survey/.

Sincerely,

Date: 2026.08.18
14:16:59 -07'00'

Antal Szijj
Team Lead
North Coast Section
Southern California Branch

Enclosures

U.S. Army Corps of Engineers (USACE)

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

For use of this form, see Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act; the proponent agency is CECW-COR.

Form Approved - OMB No. 0710-0003 Expires 2027-10-31

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority The authorities for requesting this information are Sections 9, 10, 13, and 14, Rivers and Harbors Act of March 3, 1899; Section 404, Clean Water Act; and Section 103 Marine Protection Research and Sanctuaries Act of 1972.

Principal Purpose This information serves as notification to affected parties regarding the USACE administrative appeal options and process, as well as to facilitate requests for appeal of USACE decisions with which they disagree.

Routine Uses Routine uses will include: (a) To serve as notification to affected parties of the Corps administrative appeal options and process and to facilitate requests for appeal of Corps decisions with which they disagree. (b) Records may be referred to the Department of Justice for possible criminal prosecution. (c) Records may be referred to other Federal, State, and local agencies for evaluation and enforcement purposes.

Disclosure Disclosure of this information is voluntary on your part. However, failure of individual to provide requested information could result in inability to determine all pertinent information regarding a Department of the Army permit matter.

The Agency Disclosure Notice (ADN)

The Public reporting burden for this collection of information, 0710-0003, is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PURPOSE: This form is used to facilitate the initiation of the administrative appeals process. The appeals process allows an affected party to pursue an administrative appeal of certain Corps of Engineers decisions with which they disagree.

Upon release, this form will also be available on the Corps website https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/

Applicant: Bonanza Peak Solar, LLC	File Number: SPL-2025-00902	Date: August 18, 2026

Documents Attached (*select all that apply*):		Form Reference Section:
	INITIAL PROFFERED PERMIT (*Standard Permit or Letter of Permission*)	A
	PROFFERED PERMIT (*Standard Permit or Letter of Permission*)	B
	PERMIT DENIAL WITHOUT PREJUDICE	C
	PERMIT DENIAL WITH PREJUDICE	D
X	APPROVED JURISDICTIONAL DETERMINATION	E
	PRELIMINARY JURISDICTIONAL DETERMINATION	F

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/ or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: *You may accept or object to the permit*

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: *You may accept or appeal the permit*

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: *Not appealable*

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: *You may appeal the permit denial*

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: *You may accept or appeal the approved JD or provide new information for reconsideration*

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.

- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

- RECONSIDERATION: You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: *Not appealable*

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:	If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:
Name: Antal Szijj, Project Manager	Name: Travis Morse, Administrative Appeal Review Officer
U.S. Army Corps of Engineers, Los Angeles District 60 South California Street, Suite 201 Ventura, CA 93001	U.S. Army Corps of Engineers, South Pacific Division 450 Golden Gate Ave. San Francisco, CA 94102
Phone: (805) 585-2147	Phone: (213) 452-3146
Email: Antal.J.Szijj@usace.army.mil	Email: w.travis.morse@usace.army.mil

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT	
REASONS FOR APPEAL OR OBJECTIONS: (*Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.*)	
ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.	
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.	
Email address of appellant and/or agent	Telephone number
Signature of appellant or agent	Date

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT
60 SOUTH CALIFORNIA STREET, SUITE 201
VENTURA, CA 93001

CESPL-RGS-N 18 August 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,[1] SPL-2025-00902[2]

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.[3] AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.[4]

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),[5] the 2023 Rule as amended,

---

[1] While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.
[2] When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.
[5] USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

   a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Waters_Name	Latitude	Longitude	Waters Size	Type Of Aquatic Resource	Geographic Authority
1000	35.9873	-115.89447	.008 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
1001	35.98806	-115.88138	.017 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
209	35.98734	-115.8809	.005 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
209a	35.98781	-115.8795	.02 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
210	35.98695	-115.88153	.011 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
211	35.98664	-115.88119	.348 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
211a	35.98649	-115.88166	.005 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
211b	35.98699	-115.88079	.004 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
211c	35.98757	-115.87979	.008 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
211d	35.98677	-115.88077	.001 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
211e	35.9877	-115.87831	.023 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
216	35.98757	-115.88193	.032 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
217	35.98699	-115.88551	.022 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
218	35.98733	-115.88483	.039 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
221	35.98845	-115.88398	.008 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
226	35.98748	-115.88617	.05 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
243	35.98788	-115.89378	.045 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
247	35.9884	-115.89149	.024 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
249	35.98331	-115.88586	.024 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
3001	35.97738	-115.88389	.008 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
3002	35.97729	-115.88459	.02 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
3003	35.98127	-115.88144	.007 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
3004	35.98504	-115.88014	.043 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
3005	35.98783	-115.88653	.029 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
3006	35.98872	-115.88776	.023 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
3007	35.98465	-115.8821	.012 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
309	35.98347	-115.88451	.004 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
700	35.98016	-115.88549	.018 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
701	35.98022	-115.88602	.018 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None

705	35.97958	-115.8836	.007 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
706	35.98118	-115.88323	.029 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
707	35.98266	-115.8812	.03 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
708	35.98465	-115.88329	.008 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
709	35.98473	-115.88463	.011 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
710	35.98502	-115.88554	.008 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
711	35.98371	-115.8892	.009 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
712	35.98477	-115.88526	.009 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
713	35.98483	-115.88468	.006 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
714	35.9848	-115.88395	.024 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
715	35.98493	-115.8863	.008 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
800a	35.97909	-115.88123	.02 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
800b	35.97952	-115.88092	.304 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
800c	35.97873	-115.88199	.13 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
800d	35.97828	-115.88266	.001 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
801	35.97997	-115.8839	4.351 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
801a	35.98013	-115.88057	.006 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
802	35.98085	-115.88549	10.878 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
803	35.98051	-115.88636	.003 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
804	35.98113	-115.88524	.004 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
806	35.98581	-115.88397	4.143 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
807	35.98493	-115.88099	.049 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
808	35.98413	-115.88406	.006 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
809	35.99127	-115.93488	.019 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
900	35.98727	-115.88266	.022 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
901	35.99601	-115.89999	.013 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None
902	35.99585	-115.90007	.034 ACRES	NON-WOTUS-TRIB.NEGATIVE.A3	None

2. REFERENCES.

a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))

c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area encompasses a 2,708-acre area in eastern Inyo County, California, near the Nevada border (see attached figure). The review area was modified subsequent to the initial request to remove the access road area extending to the east.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. None of the subject aquatic features drain to a TNW.[6]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

6. SECTION 10 JURISDICTIONAL WATERS[7]: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.[8] N/A

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used.

---

[6] This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

[7] 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

[8] This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A

b. The Territorial Seas (a)(1)(ii): N/A

c. Interstate Waters (a)(1)(iii): N/A

d. Impoundments (a)(2): N/A

e. Tributaries (a)(3): N/A

f. Adjacent Wetlands (a)(4): N/A

g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).[9] N/A

b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).
All aquatic features listed in the table under 1.a. are non-relatively permanent features based on the findings of the Aquatic Resources Delineation Report prepared on behalf of the requestor by Stantec, Inc. All features exhibited ephemeral flow regimes based on an analysis using the Streamflow Duration Assessment Method and eventually drain to a closed basin playa lake in the Pahrump Valley, which is not a TNW. Additionally, none of the aquatic features maintain a continuous Ordinary High Water Mark (OHWM) to the playa and eventually dissipate into poorly defined swales.

[9] 88 FR 3004 (January 18, 2023)

Although the entire review area is within the State of California, several drainage channels were further examined as potential interstate waters since the National Hydrography Dataset depicted the relevant reach of at least two features originating in Nevada and crossing the state line as they entered the review area. Field surveys confirmed the NHD flowlines do not match conditions on the ground, which were much more varied and diffuse. Additionally, a graded road adjacent to the review area follows the state line and intercepts each of the aquatic features potentially extending into California. Each intercepted channel has approximate channel width (between OHWMs) of 2-3 feet, indicative of relatively minor flow capacity. None of the three features exhibited a continuous OHWM that extended across the state line and into California. The features do not appear to generate sufficient flow volume to maintain a continuous channel across the state line. Therefore, they did not meet the criteria of an (a)(1)(iii), interstate water.

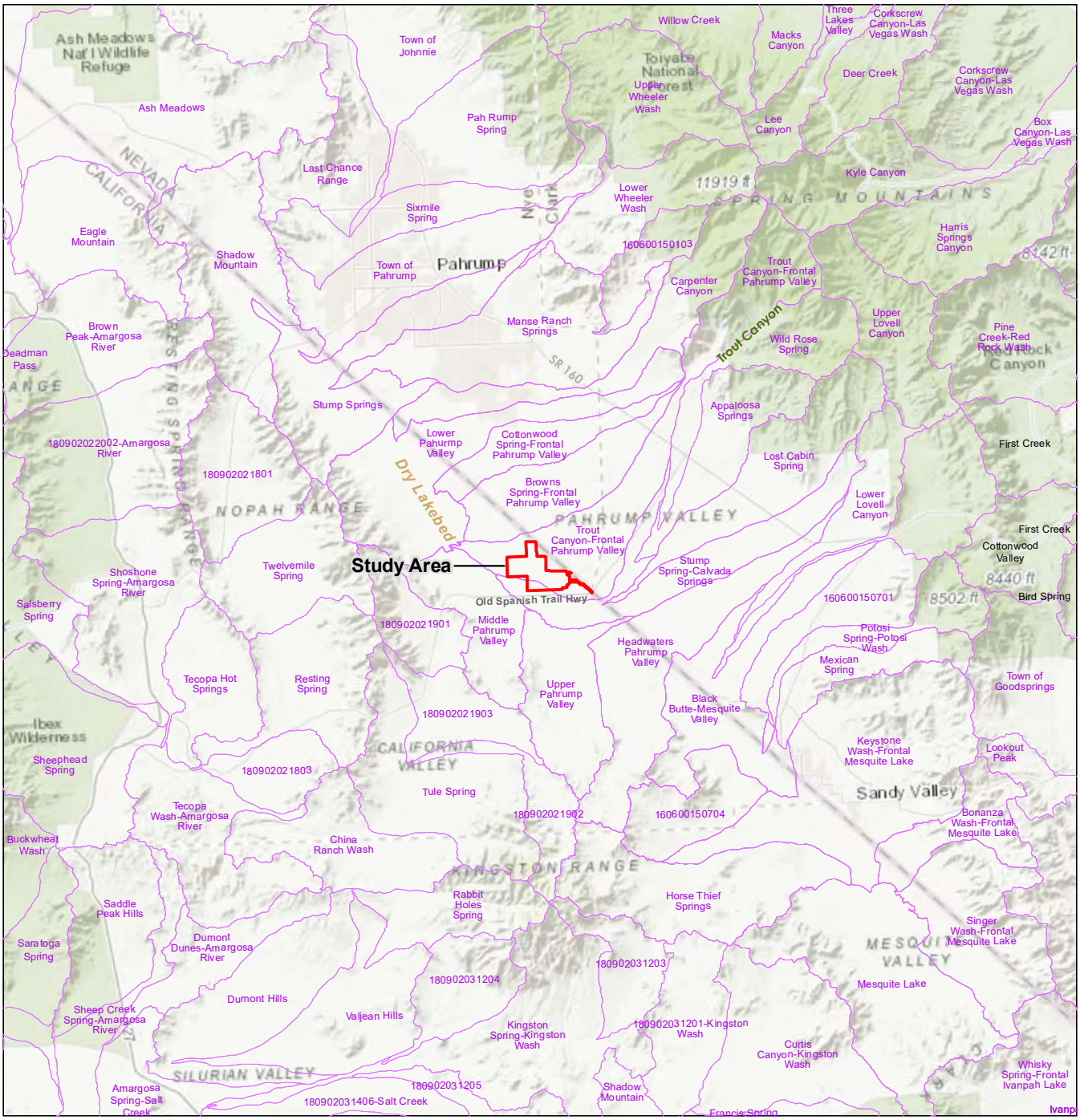
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

   a. Aquatic Resources Delineation Report, Stantec, Inc. (18 July 2025)

   b. Memo, Clarification on Bonanza Peak Solar Approved Jurisdictional Delineation Request, Stantec, Inc. (11 May 2026)

10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Study Area (2,709.2 acres)

USGS HUC-12 Watersheds

0 5 10 Miles

1:500,000
at original document size of 8.5" x 11"

N

Stantec

Project Location
Inyo County, CA

Prepared by PG on 2025-07-16
Technical Review by SC on 2025-07-17

Client/Project

Bonanza Peak Solar, LLC
Bonanza Peak Solar

Figure No.
1

Title

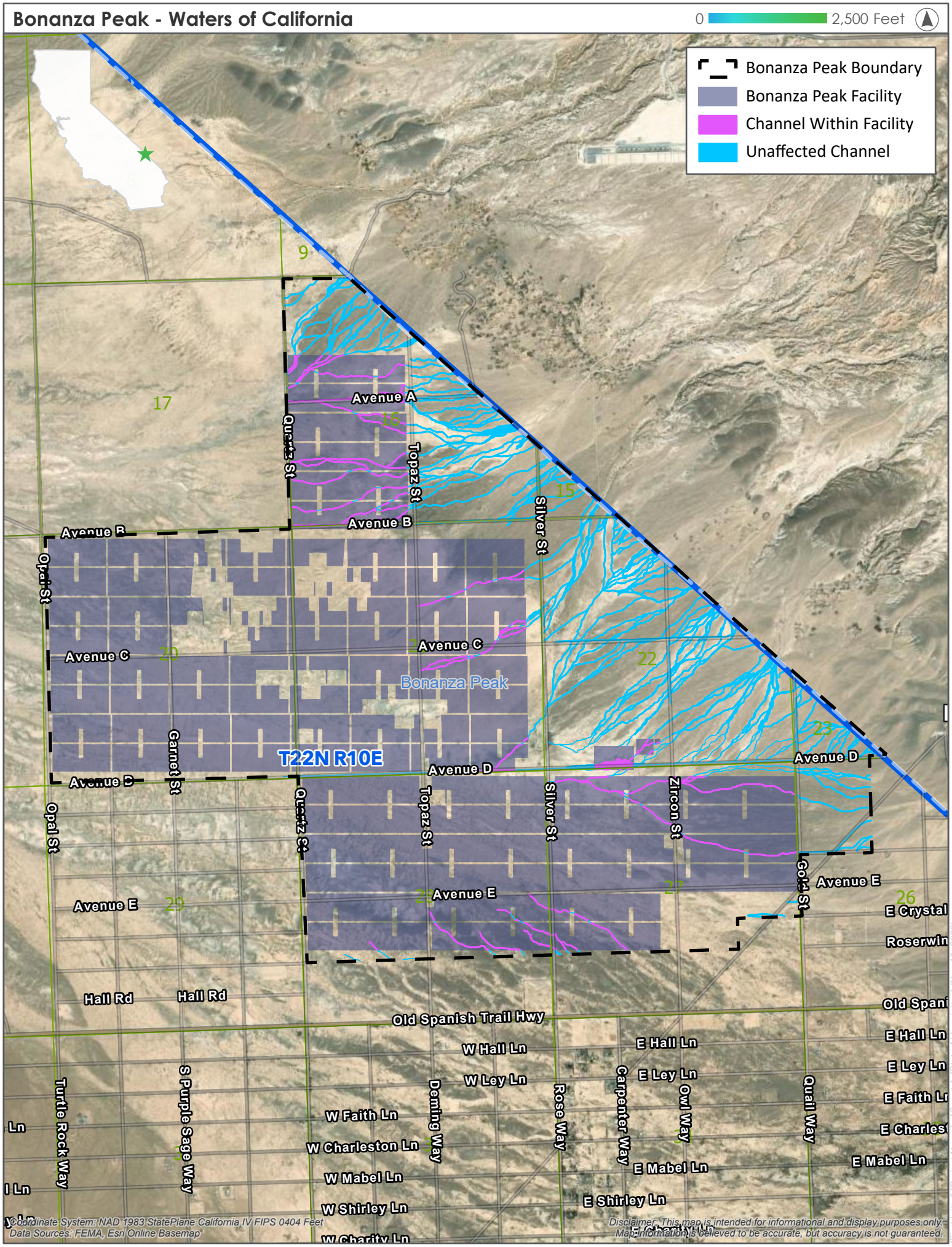
Project Location

Notes
1. Coordinate System: NAD 1983 StatePlane California IV FIPS 0404 Feet
2. Background: Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

V:\1857\active\185706575\03_data\gis_cad\gis\mxd\figures\aquatic\Fig_1_ProjectLocation_20250716.mxd Revised: 2025-07-17 By: nplendening

Disclaimer: This document has been prepared based on information provided by others as cited in the Notes section. Stantec has not verified the accuracy and/or completeness of this information and shall not be responsible for any errors or omissions which may be incorporated herein as a result. Stantec assumes no responsibility for data supplied in electronic format, and the recipient accepts full responsibility for verifying the accuracy and completeness of the data.

Bonanza Peak - Waters of California



[First Initial] [Project Name] [County], [State Abbreviation] (Nov 10, 2023)

Stantec

Memo

To:	Antal Szijj, Project Manager U.S. Army Corps of Engineers, Los Angeles District	From:	Sheryl Creer, Bonanza Peak Solar Aquatic Resource Lead Stantec, San Francisco Office
Project/File:	SPL-2025-00902	Date:	May 11, 2026

Reference: SPL-2025-00902, Clarification on Bonanza Peak Solar Approved Jurisdictional Delineation Request

Hello Antal,

This memo is intended to summarize the history of consultation regarding this request, provide some additional information, and gain additional clarification around the current USACE jurisdiction of ephemeral aquatic resources on the proposed Bonanza Peak Solar Project (project) in Inyo County, California.

Consultation History

Ahead of submitting an Approved Jurisdictional Determination (AJD) request, we began consultation in August 2021 with Lisa Mangione, PM/Biologist (now retired). After a phone conversation discussing the path forward with Lisa, we followed up with an email to her confirming that we would pursue an AJD with a No Permit Needed letter, due to the presence of only non-relatively permanent waters (RPWs) on site, all within a closed basin. The project was then put on pause until February 2025, at which time, we reached back out to Lisa Mangione, who directed us to you, since she was retiring. I contacted you, and we discussed the aquatic resources and potential permit paths. At that time, my client wanted to confirm that the USACE would not take on any Section 7 consultation due to lack of USACE jurisdiction. You confirmed that there was no USACE authority under the Clean Water Act due to lack of RPWs in the study area and stated that it would not be appropriate to pursue a Nationwide Permit. I followed up in October 2025, requesting more official documentation of lack of USACE jurisdiction, which I was told could be provided upon submittal of an AJD request. The AJD was submitted via Regulatory Request System late October 2025, and was assigned to Mike Langley, who I reached out to and provided some background on the consultation thus far, and asked for a timeline estimate and asked if he needed additional information. At that time, Mike provided a general estimate of 6 months for the AJD (which we understand depends on work load and could take closer to a year). Mike then retired in March 2026, and the project was reassigned to you, at which point you brought up (a)(1)(iii) interstate waters and the likelihood that these are present in the project review area (review area).

Additional Background

Based upon all our prior consultation with the USACE on this project, as well as the 2023 Revised Definition of Waters of the US, conforming due to Sackett, our understanding is that non-RPWs are not USACE jurisdictional. In addition, a prior AJD that was referenced in earlier communications, AJD SPK-2024-00318 for Larrea Solar Project, dated July 24, 2024, includes a non-RPW (Unnamed Stream R3) that begins in

Reference: SPL-2025-00902

Nevada, and ends in a dry lakebed in the Nopah Range Wilderness Area in California. The AJD determined that this non-RPW was not jurisdictional. Larrea Solar Project is upstream but within the same watershed as the project, and the Unnamed Stream (R3) is shown on the National Hydrography Dataset (NHD) as crossing into the review area. Since then, additional AJDs from the Sacramento district have been released adjacent to Larrea and within the same watershed as the project: SPK-2024-00676 for Mosey Solar Project, dated Apri l10, 2025. This AJD found that all the waters in the review area were non-RPWs and not jurisdictional. An additional AJD, SPK-2023-00169 for Purple Sage Solar, dated October 24, 2025, found that 3 of the non-RPWs in the review area were interstate waters, and therefore jurisdictional. The review area for Purple Sage is in the same watershed as Larrea, Mosey, and the project. Two of the three non-RPWs determined to be jurisdictional interstate waters on Purple Sage are upstream segments of the same non-RPWs determined to be non-jurisdictional waters in the Mosey and Larrea review areas: Wash 1 (WOTUS) on Purple Sage is Unnamed R3 on Larrea (not WOTUS); Wash 4 (WOTUS) on Purple Sage is M006 (not WOTUS) on Mosey.

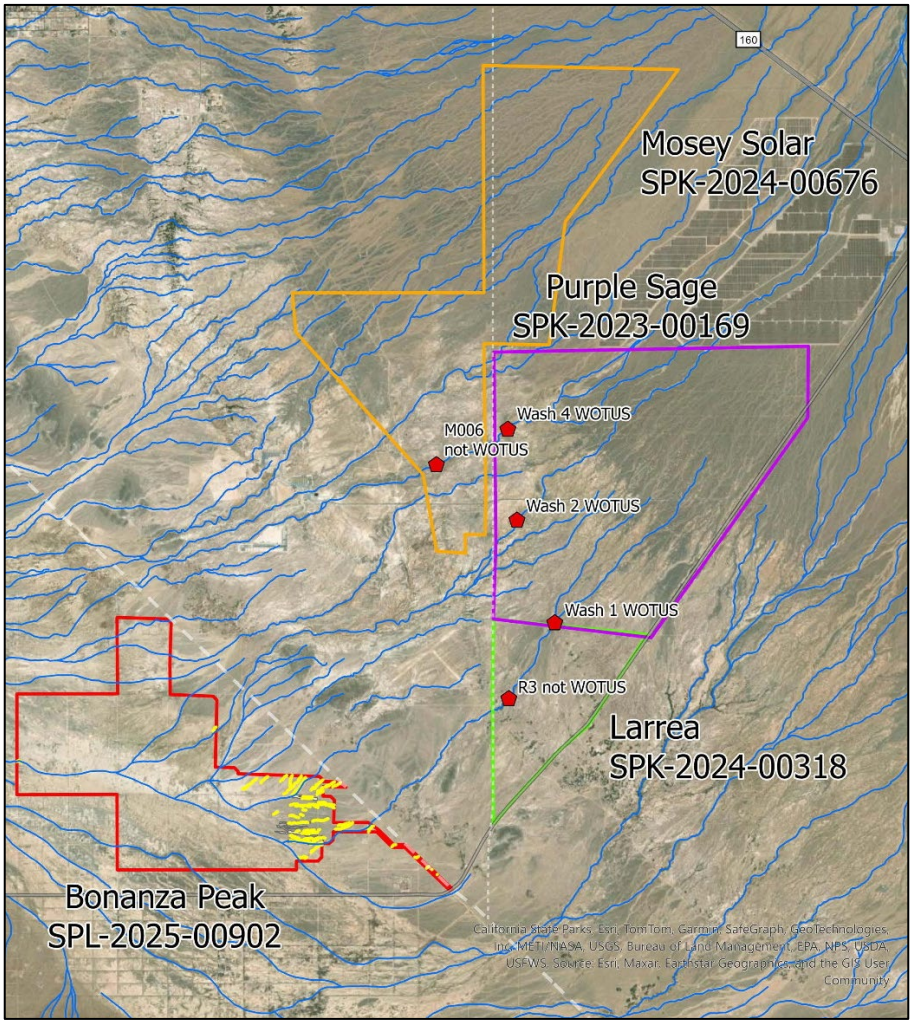


Figure 1. Overview of Existing AJDs relative to Bonanza Peak Review Area with the NHD

Reference: SPL-2025-00902

All 3 of the referenced AJDs rely upon desktop review of NHD when referring to waters that leave the review areas in Nevada and are assumed to continue into California. Our field investigations in the review area for Bonanza Peak show that the flowlines in the NHD do not match current conditions on the ground. The review area includes a segment along 0.6 mile of an actively maintained access road (South Tuscarora Street/South Eberhard Road) that runs along the California-Nevada Border. This access road interrupts ephemeral flows coming from Nevada into California. Within thet review area, we delineated 2 short segments that begin outside the review area in Nevada and lose OHWM once they reach the road/border. We also delineated an additional 2 segments that begin outside the review area in Nevada, lose OHWM in the road and a new segment with OHWM begins again on the other side of the road/border. In all cases, the road at the border severed OHWM. Moving northwest in the review area, all other ephemeral flows begin outside the review area are interrupted by this same road at the California-Nevada border.

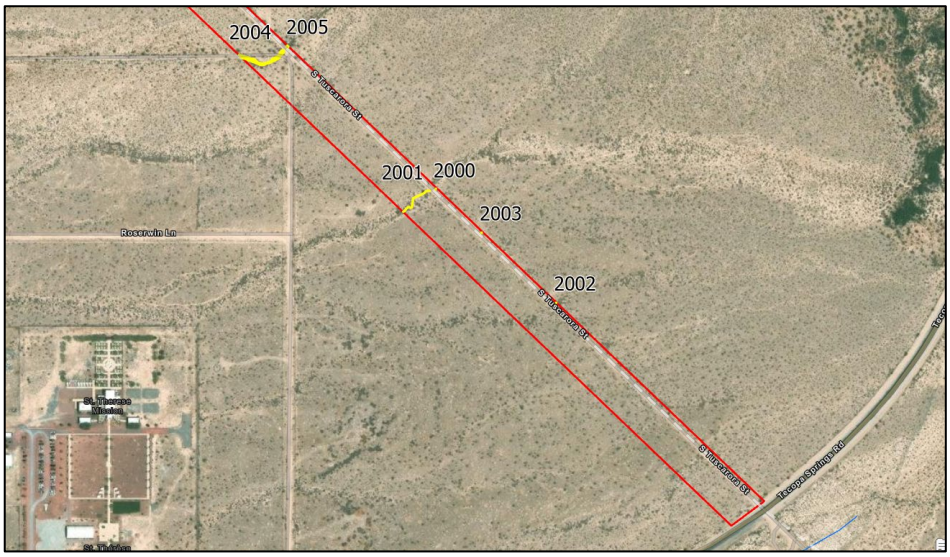


Figure 2. Detail of review area along South Tuscarora Street/California-Nevada border

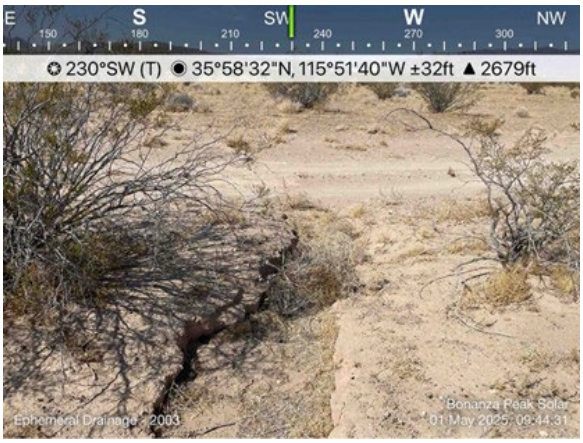


Photo 1. View of aquatic resource 2003, terminating at the access road at the California-Nevada border

Photo 2. View of aquatic resource 2000, terminating at the access road at the California-Nevada border

We understand the complexity that can arise in AJDs, especially with regards to ephemeral systems, can make jurisdictional determinations a challenge. We also understand that the definition of waters of the U.S. has changed since our initial 2021 consultation with Lisa Mangione, but the latest revisions due to Sackett, and the exclusion of non-RPWs further remove jurisdiction in ephemeral systems. In addition, the field observations during Stantec's aquatic resource delineation included surveys along an actively maintained access road at the California-Nevada border where the road interrupts the OHWM and ephemeral flows coming from the Nevada side.

Stantec's field observations at the state border should assist in clearing up the conflicting conclusions from the AJDs discussed above as they relate to waters in the project's review area. Can you please help us understand how the original and continued direction that aligns with the current definition of WOTUS is now changed for the ephemeral waters in our project review area and if the field observations can help shed light on the situation?

Once you've had time to review, please let me know and we can set up a call to discuss this further.

Thank you for your time,

Stantec Consulting Services Inc.

Sheryl Creer M.S.
Senior Botanist/Wetland Specialist
Phone: (415) 205 0270
sheryl.creer@stantec.com