



REPLY TO
ATTENTION OF

Regulatory Division

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

August 13, 2012

Valarie McFall, Environmental Services Director
Transportation Corridor Agencies
125 Pacifica, Suite 100
Irvine, California 92618-3304

SUBJECT: Approved Jurisdictional Determination regarding presence/absence of geographic jurisdiction

Dear Ms. McFall:

Reference is made to your March 14, 2012 request (File No. SPL-2012-00196-SAM) for an approved Department of the Army jurisdictional determination (JD) for the proposed SR-241 Tesoro Toll Road Extension Project site (33.535194° N, -117.595728° W) located in an unincorporated area near the city of Rancho Santa Margarita, Orange County, California.

As you may know, 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, then a permit is required. The first test determines whether or not the proposed project is located in a water of the United States (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under section 10 of the River and Harbor Act or section 404 of the Clean Water Act. As part of the evaluation process, pertaining to the first test only, we have made the jurisdictional determination below.

Based on available information, including our site visits in late February and May 2012, *Tesoro Extension, Orange County, California, Delineation of Federal Jurisdictional Waters, prepared for F/ETCA, by RBF Consulting, April 2012, JN 10-105687*, and other information supporting our JD forms and exhibits, we have determined there are waters of the United States on the project site, as well as non-jurisdictional aquatic resources in the locations depicted on the enclosed exhibits. The basis for our determination can be found in the enclosed jurisdictional summary table and is documented in thirty-four separate JD forms and associated exhibits included in the administrative record for the referenced project file and found on the attached CD.

The aquatic resources identified as Drainages A₁, I, J, K, and L are jurisdictional waters of the U.S., because the drainage is a Relatively Permanent Water (Drainage I) or, based on a significant nexus evaluation, it has more than an insubstantial or speculative effect on the chemical, physical, and/or biological integrity of a Traditional Navigable Water (TNW) (A₁, J, K, L). The aquatic resources identified as Drainages A₂, A₃, B, C, D, E, F, G, H, T5, T6 (A-F

and W), T7 (A-C), and T8 are non-jurisdictional waters based on a significant nexus evaluation, with each having no more than an insubstantial or speculative effect on the chemical, physical, and/or biological integrity of a TNW. The aquatic resources identified as Drainages 1, 2, 3, 4, 8, 9, 10, and Isolated Wetland 1 are non-jurisdictional as intra-state, isolated, non-navigable waters with no apparent interstate or foreign commerce connection. As such, Drainages A₂, A₃, B, C, D, E, F, G, H, T5, T6 (A-F and W), T7 (A-C), T8, 1, 2, 3, 4, 8, 9, 10, and Isolated Wetland 1 are 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 and/or the U.S. Fish and Wildlife Service.

This letter contains an approved jurisdictional determination for the proposed SR-241 Tesoro Toll Road Extension Project site. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet (Appendix A) and Request for Appeal (RFA) form. If you request to appeal this decision you must submit a completed RFA form to the Corps South Pacific Division Office at the following address:

Thomas J. Cavanaugh
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division, CESP-DPS-O, 2042B
1455 Market Street, San Francisco, California 94103-1399

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 C.F.R. section 331.5, and that it has been received by the Division Office within 60 days of the date on the NAP. Should you decide to submit an RFA form, it must be received at the above address by **October 12, 2012**. It is not necessary to submit an RFA form to the Division office if you do not object to the decision in this letter.

This verification is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. If you wish to submit new information regarding the approved jurisdictional determination for this site, please submit this information to Susan Meyer at the letterhead address by **October 12, 2012**. The Corps 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. A revised or reissued jurisdictional determination can be appealed as described above.

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. 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.

If you have any questions, please contact Susan Meyer of my staff at 808-835-4599 or via e-mail at Susan.A.Meyer@usace.army.mil. Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,

David J. Castanon
Chief, Regulatory Division

Enclosures

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: TCA (POC: Valarie McFall)	File Number: SPL-2012-00196-SAM	Date: August 13, 2012
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx 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. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. 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: 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.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **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.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: 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.

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. 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.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

DISTRICT ENGINEER
Los Angeles District, Corps of Engineers
ATTN: Chief, Regulatory Division
P.O. Box 532711
Los Angeles, CA 90053-2325
Phone: (213) 452-3406 Fax: (213) 452-4196

If you only have questions regarding the appeal process you may also contact: Thomas J. Cavanaugh

Administrative Appeal Review Officer,
U.S. Army Corps of Engineers
South Pacific Division
1455 Market Street, 2052B
San Francisco, California 94103-1399
Phone: (415) 503-6574 Fax: (415) 503-6646
Email: thomas.j.cavanaugh@usace.army.mil

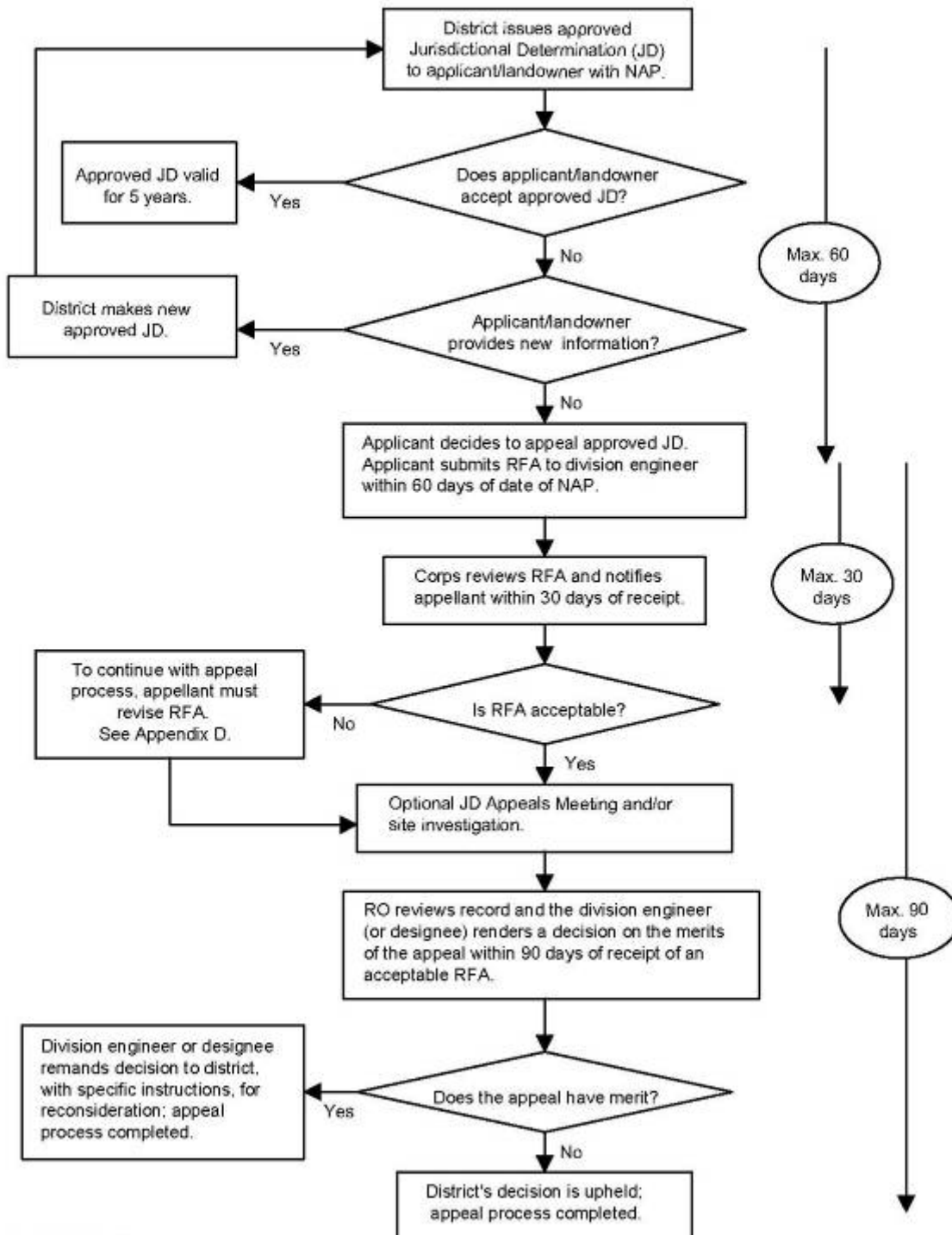
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

Administrative Appeal Process for Approved Jurisdictional Determinations



Jurisdictional Summary of Waters of the U.S.

Drainage/ Drainage Feature/ Wetland Name	Location		Jurisdictional Area (acres)		Basis of the Jurisdictional Determination
	Latitude	Longitude	Non-wetland WoUS ⁵	Wetland WoUS	
Drainage A ₁	33.535194° N	-117.595728° W	0.518	0	Non-Relatively Permanent Water with a significant nexus to a TNW ¹
Drainage A ₂	33.542563° N	-117.594252° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos ²
Drainage A ₃	33.544166° N	-117.594145° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage B	33.532890° N	-117.597110° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage C	33.534423° N	-117.596781° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage D	33.532891° N	-117.597131° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage E	33.538356° N	-117.594855° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage F	33.539938° N	-117.597137° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage G	33.547330° N	-117.593120° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage H	33.551465° N	-117.594385° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage I	33.576544° N	-117.613729° W	0.085	14.00	Relatively Permanent Water and abutting wetlands
Drainage J	33.581497° N	-117.609899° W	0.038	0	Non-Relatively Permanent Water with a significant nexus to a TNW
Drainage K	33.581031° N	-117.608638° W	0.010	0	Non-Relatively Permanent Water with a significant nexus to a TNW
Drainage L	33.581565° N	-117.607591° W	0.029	0	Non-Relatively Permanent Water with a significant nexus to a TNW
Drainage Feature 1	33.532853° N	-117.600563° W	0	0	Non-jurisdictional as isolated water under SWANCC ³
Drainage Feature 2	33.536310° N	-117.596573° W	0	0	Non-jurisdictional as isolated water under SWANCC
Drainage Feature 3	33.548477° N	-117.596190° W	0	0	Non-jurisdictional as isolated water under SWANCC
Drainage Feature 4	33.553264° N	-117.595168° W	0	0	Non-jurisdictional as isolated water under SWANCC
Drainage Feature 8	33.572640° N	-117.609861° W	0	0	Non-jurisdictional as isolated water under SWANCC
Drainage Feature 9	33.573631° N	-117.609396° W	0	0	Non-jurisdictional as isolated water under SWANCC
Drainage Feature 10	33.574577° N	-117.609811° W	0	0	Non-jurisdictional as isolated water under SWANCC
Isolated Wetland 1	33.574888° N	-117.612536° W	0	0	Non-jurisdictional as isolated water under SWANCC
Drainage T5	33.563031° N	-117.605581° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T6A	33.565526° N	-117.608472° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T6B	33.566475° N	-117.608112° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T6C	33.566561° N	-117.607657° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T6D	33.566383° N	-117.607435° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T6E	33.563933° N	-117.608397° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T6F	33.561685° N	-117.609446° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T6W	33.562923° N	-117.608649° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T7A	33.570240° N	-117.609015° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T7B	33.569527° N	-117.608515° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T7C	33.568236° N	-117.611080° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Drainage T8	33.577195° N	-117.609911° W	0	0	Non-jurisdictional water with no significant nexus to a TNW under Rapanos
Cattle Stock Pond	33.552291° N	-117.596641° W	0	0	Non-Jurisdictional, excavated in the uplands ⁴
Totals			0.680	14.00	

Notes:

1: TNW = Traditional Navigable Water

2: *Rapanos v. United States*, 547 U.S. 715 (2006).

3: SWANCC= Solid Waste Agency of Northern Cook County. *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001).

4: Not a regulated water of the U.S. pursuant to 33 C.F.R. section 328.3 and consistent with the preamble to the 1986 Corps Regulatory Program regulations.


5: WoUS = Waters of the U.S.

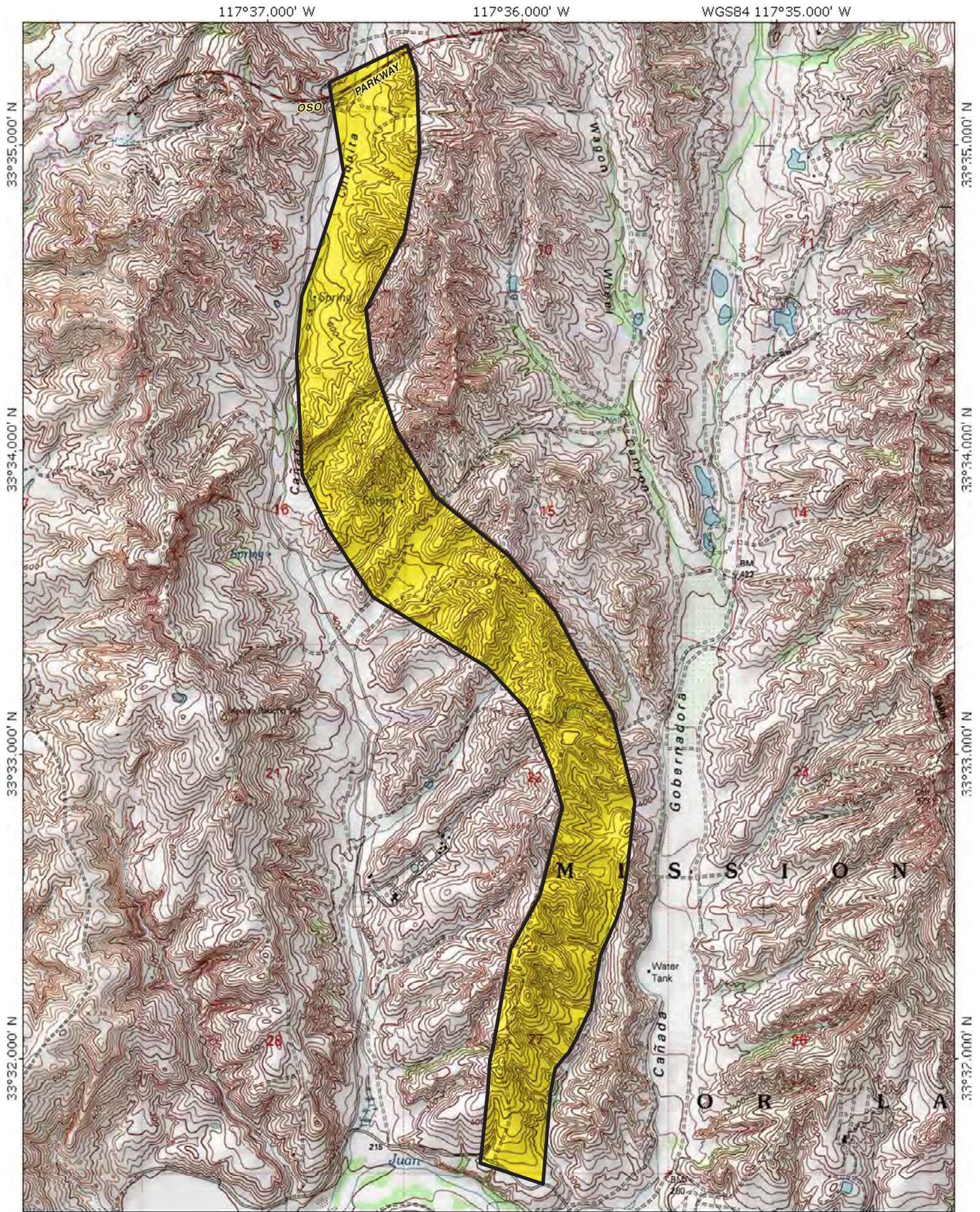
i: Acreages were calculated for linear features by multiplying the width times the total drainage length. For wetland features, the area was calculated in GIS to develop and the acreage for the polygon. Data points were obtained with a Garmin 62 Ground Positioning System (GPS) Map62 in order to record and identify specific ordinary high water marks (OHWM), soil pits, picture locations, and drainage features. This data was then transferred via USB port as a .shp file and added to the project's jurisdictional map.


ii: *Waters and Wetlands Delineated* pursuant to the Corps 1987 Delineation Manual and by the Arid West Supplement Version 2 (U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0). Ed. J.S. Wakeley, R.W. Lichvar, and C. V. Noble. ERDC/ELTR-08-28. Vicksburg, MS: U.S. Army Corps Engineer Research and Development Center.

iii. All approved jurisdictional determinations (JDs) have been documented using the U.S. Army Corps of Engineers Headquarters (HQUSACE) "Approved Jurisdictional Determination Form". Preliminary/draft determinations for non-RPWs requiring a significant nexus evaluation were coordinated with U.S. EPA Region IX pursuant to section 1.a. of the 28 January 2008 Army Memorandum for Commander, Major Subordinate Commands, and District commands, coordination on JDs under Clean Water Act Section 404 in light of SWANCC and *Rapanos* Supreme Court decisions, prior to the issuance of an approved JD; and preliminary/draft determinations for isolated waters were coordinated with U.S. EPA and HQUSACE pursuant to section 1.b. of the 28 January 2008 Army Memorandum for Commander, Major Subordinate Commands, and District commands, coordination on JDs under CWA Section 404 in light of SWANCC and *Rapanos* Supreme Court decisions, prior to the issuance of an approved JD. All final JD forms and exhibits are included in the administrative record for Corps File No. SPL-2012-00196-SAM.



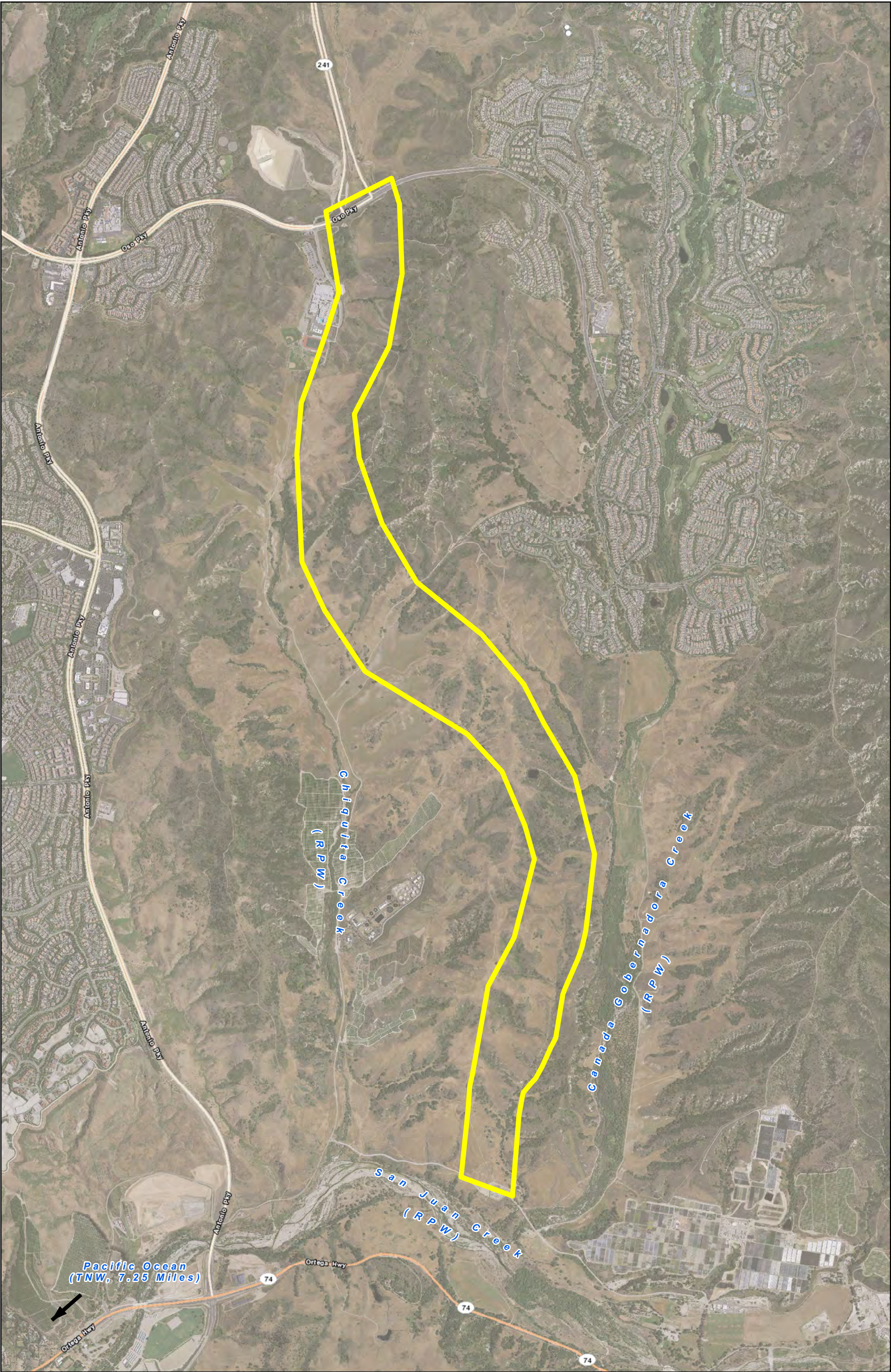
 Study Area



 Study Area

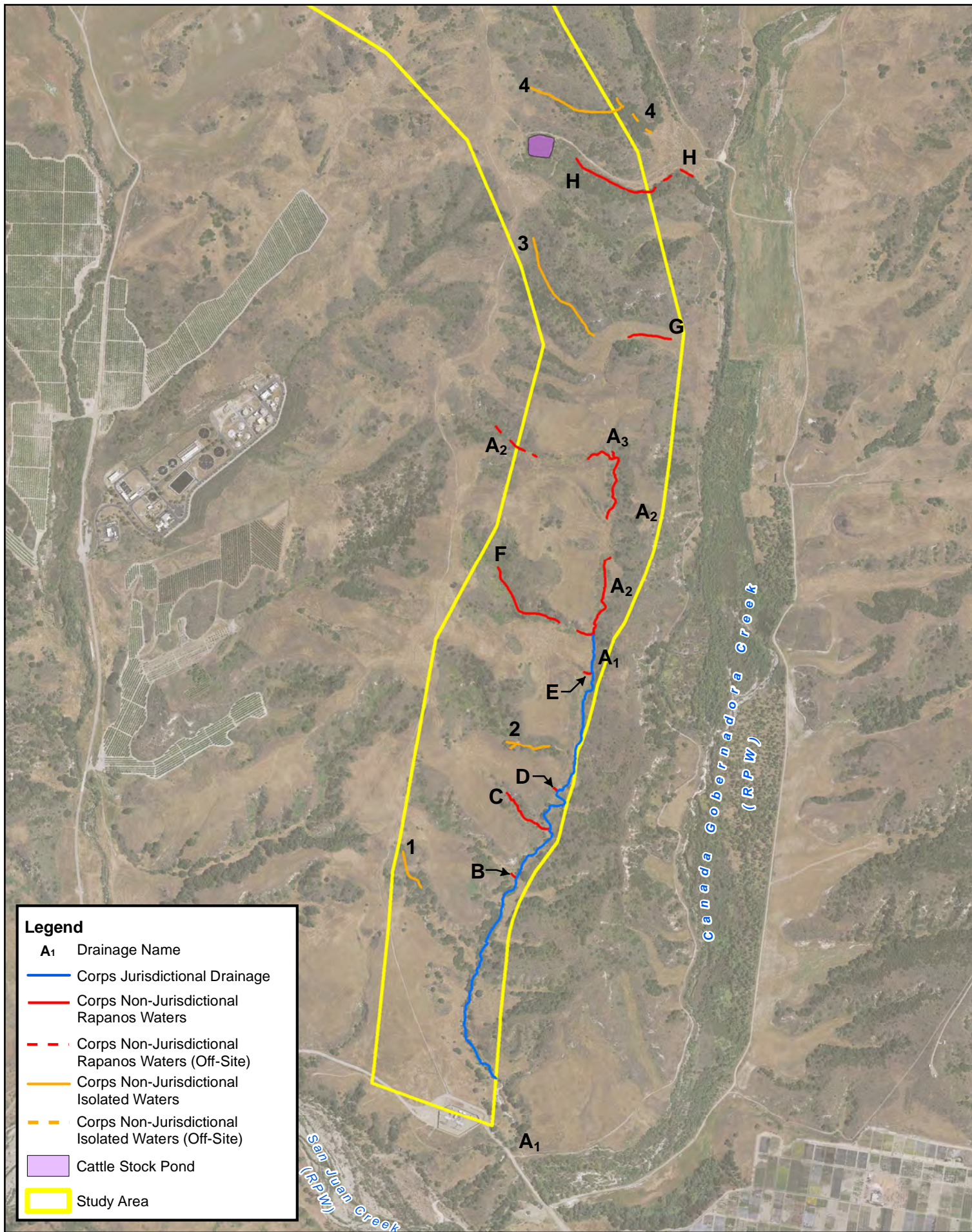
TESORO EXTENSION
Site Vicinity

Exhibit 2



3/13/2012 J:\M:\data\10105687\GIS\Ex3_Site Map.mxd J:\McPherson

8/7/2012 J:\M:\Data\10105687\GIS\Corps\Maps_IndexMap_85x11.mxd JMcPherson



8/7/2012 JN M:\Data\10105687\GIS\Corps\Maps_IndexMap_85x11.mxd McPherson

