



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 WEST OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401

SAS-OD-RC

March 12, 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ SAS-2021-00220

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of "waters of the United States" found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 "Revised Definition of 'Waters of the United States,'" as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Georgia due to litigation.

¹ While the Supreme Court's decision in *Sackett* 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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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.

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1. SUMMARY OF CONCLUSIONS.

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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 3	JD	Section 404
Wetland 5	JD	Section 404
Wetland 6	JD	Section 404
Wetland 7	JD	Section 404
Wetland 8	Non-JD	N/a
Wetland 9	JD	Section 404
Wetland 10	JD	Section 404
Wetland 11	Non-JD	N/a
Wetland 12	JD	Section 404
Stream 1	JD	Section 404
Stream 3	JD	Section 404
Stream 4	JD	Section 404
Stream 5	JD	Section 404
Stream 6	JD	Section 404
Stream 7	JD	Section 404
Stream 9	JD	Section 404
Open Water 4	JD	Section 404
Ditch 8	Non-JD	N/a

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- A. Project Are Size (in acres): 1,003
- B. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 32.322241 Longitude: -82.082838
- C. Nearest City or Town: Metter
- D. County: Candler
- E. State: Georgia

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

A. Name of nearest downstream TNW, Territorial Sea or interstate water:
The Canoochee River is a TNW.

B. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum and documented occurrences of boating traffic on the identified water.

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

Streams 1, 7 and 9 are Relatively Permanent Waters (RPW) that are unnamed tributaries to Stream 3. Streams 3, 4, 5, and 6 are RPWs and are unnamed tributaries to Wolfe Creek, an RPW. Wolfe Creek is a tributary to the Canoochee River, (TNW). The Ordinary High-Water Marks (OHWM) of the unnamed tributaries were indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks. Additionally, these streams were assessed with the use of the North Carolina Stream Identification Methodology.

The wetlands meet the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Eastern Mountains and Piedmont Regional Supplement and are contiguous with the unnamed tributaries. Wetlands 3, 5 and 6 are part of the same wetland system and abut stream 3 and stream 1 (RPWs). Additionally, wetland 7 abuts and is contiguous with stream 3 as well. Stream 3 flows south and is a tributary to Wolfe Creek (RPW). Wolfe Creek is a tributary to the Canoochee River (TNW).

Wetland 12 abuts and is continuous with Stream 7 (RPW). Stream 7 is a tributary to the aforementioned Stream 3 and follows the same flow path described.

Wetland 9 abuts and is continuous with Stream 5 (RPW). Wetland 10 abuts and is continuous with Stream 4 (RPW). Both stream 5 and stream 4 are tributaries to Wolfe Creek (RPW). Wolfe Creek is a tributary to the Canoochee River (TNW).

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ 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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

a. TNWs (a)(1): N/a

b. Interstate Waters (a)(2): N/a

c. Other Waters (a)(3): N/a

d. Impoundments (a)(4): N/a

e. Tributaries (a)(5):

Name of Aquatic Resource	Size (in acres and feet)	Flow Regime and additional description of the tributary	Method for determining flow regime
Stream 1	0.1 1,475'	See attached delineation map	NCDWR stream identification form

⁵ 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.

⁶ 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.

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Stream 3	0.40 4,978'	See attached delineation map	NCDWR stream identification form
Stream 4	0.19 4,100'	See attached delineation map	NCDWR stream identification form
Stream 5	0.17 2,145'	See attached delineation map	NCDWR stream identification form
Stream 6	0.28 2,697'	See attached delineation map	NCDWR stream identification form
Stream 7	0.05 1,154'	See attached delineation map	NCDWR stream identification form
Stream 9	0.02 218'	See attached delineation map	NCDWR stream identification form
Open Water 4	5.84	See attached map	Pond was constructed onstream and in a wetland. The pond continues through a culvert under Country Road 198 and flows into stream 3.

f. The territorial seas (a)(6): N/a

g. Adjacent wetlands (a)(7):

Name of Aquatic Resource	Size (in acres)	Contiguous with or abutting? If so, list water	Describe continuous surface connection
Wetland 3 Wetland 6	11.52 1.55	Yes, Stream 3	Wetland 3 is contiguous with Open Water 4 and stream 3. The flow continues through a culvert under Country Road 198 and contiguous with stream 3, an RPW. Wetlands 3, 6 and Open water 4 wetland are functioning as one wetland complex.
Wetland 5	2.92	Yes, Stream 1	Wetland 5 is connected to stream 1 through a culvert under Country Road 198 and is connected to and contiguous with stream 1, an RPW.
Wetland 7	7.66	Yes, Stream 3	Wetland 7 is contiguous and adjacent with jurisdictional water Stream 3, which is an RPW.
Wetland 9	3.58	Yes, Stream 5	Wetland 9 is contiguous and adjacent with jurisdictional water Stream 5, which is an RPW.
Wetland 10	8.55	Yes, Stream 4	Wetland 10 is contiguous and adjacent with jurisdictional water Stream 4, which is an RPW.
Wetland 12	2.42	Yes, Stream 7	Wetland 12 is contiguous and adjacent with jurisdictional water Stream 7, which is an RPW.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁷ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/a
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance.

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Ditch 8	0.01	This feature was excavated/constructed to drain water from the roadway and was dug in uplands and does not drain wetlands or carries relatively permanent flow.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/a
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/a
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/a
- f. 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 pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are

⁷ 51 FR 41217, November 13, 1986.

non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Wetland 8	2.4	Wetland lacks a continuous surface connection to water of the US
Wetland 11	0.06	Wetland lacks a continuous surface connection to water of the US

Wetland 8 and Wetland 11 are closed depressional wetlands that do not have a discrete feature that would constitute a continuous surface connection to a jurisdictional waters. The wetlands are completely surrounded by uplands.

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. 1. Date of Office (desktop review): January 24, 2024
2. Date(s) of Field Review (if applicable): site visit conducted on January 30, 2024.
 - b. Data sources used to support this determination (included in the administrative record).
 - ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: SR Metter Delineated Features Figure 6 Pages 1-6, dated 2/20/2024
 - ☒ Photographs: SR Metter Site – SAS-2021-002200 Photographs November 30, 2020; December 1, 2, 3, 4 & 16, 2020; February 7 & 13, 2024
 - ☒ Aerial Imagery: 1993, 1999, 2012, 2017 Google Earth
 - ☒ LIDAR: Lidar Hillshade, Lidar from NOAA
 - ☒ USDA NRCS Soil Survey: NRCS Soil Survey of Candler County, GA Figure 4 dated 2/15/2024, provided by applicant
 - ☒ USFWS NWI maps: NWI, NHD, FEMA Floodplains Figure 5, dated 2/15/2024, provided by the applicant
 - ☒ USGS topographic maps: USGS Topographic Quadrangles (Metter SE), dated 2/15/2024, provided by applicant
 - ☒ USGS NHD data/maps: NHD and Flowpath Maps Western and Eastern Side of Review Area.
 - ☒ Section 10 resources used: SAS District Section 10 List
 - ☒ NCDWR stream identification forms submitted by the applicant, dated December 1, 2020.
 - ☒ Antecedent Precipitation Tool Analysis: 11/30/2020; 12/01/2020; 12/02/2020; 12/03/2020; 12/04/2020, 12/16/2020; 2/07/2024; 02/13/2024

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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.

SR Metter
Delineated Features
Figure 6 Page 1 of 6

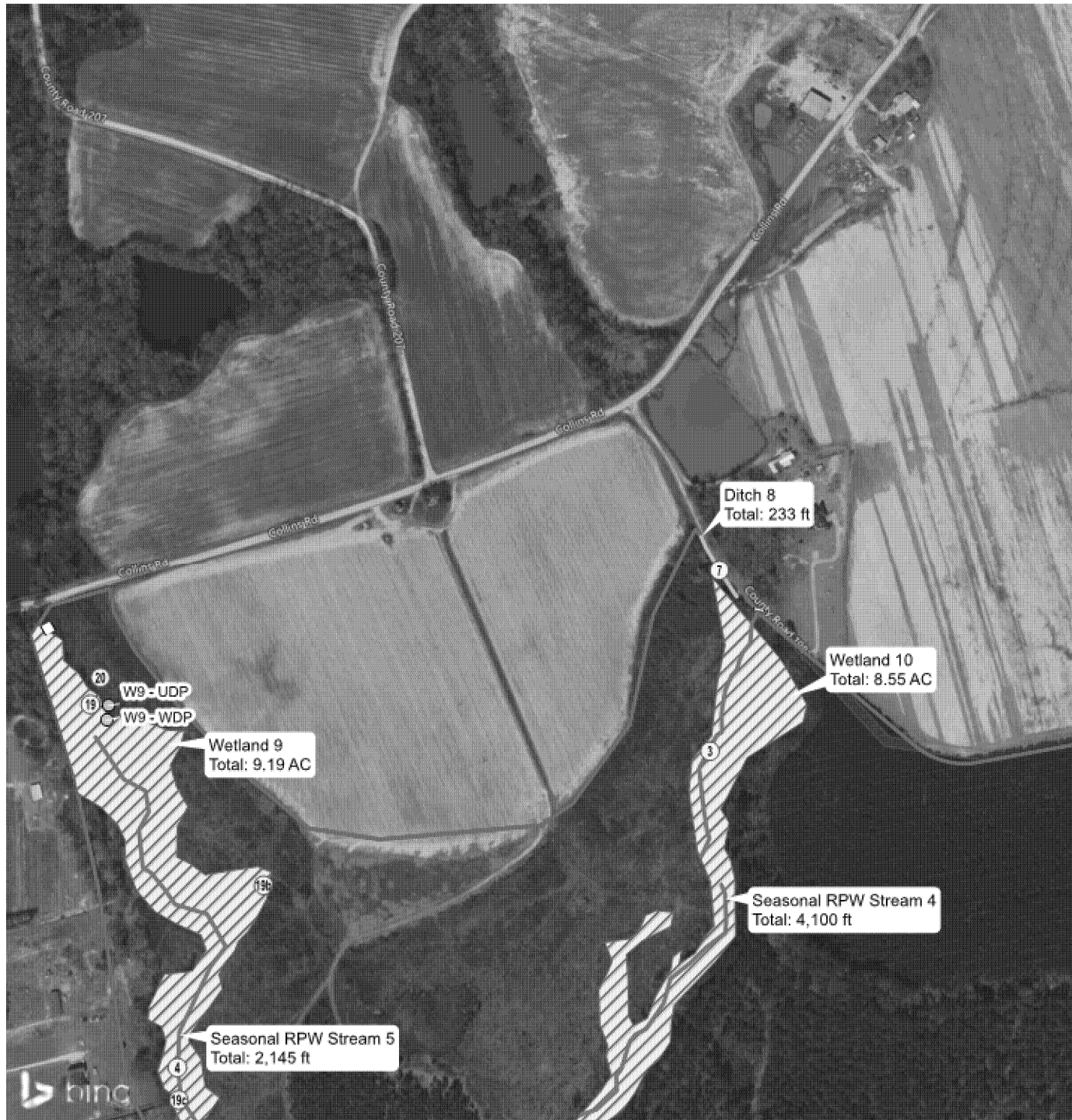
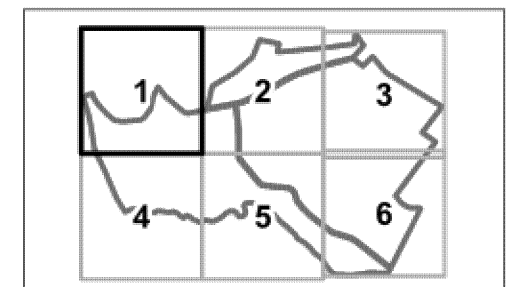
LEGEND

-  Project Area (1,003 ac)
-  Photo Points
-  Upland Data Point
-  Wetland Data Point
-  Relatively Permanent Water (RPW)
-  Ditch
-  Culvert
-  Jurisdictional Wetlands
-  Non-Jurisdictional Wetlands
-  Jurisdictional Open Waters

DATA SOURCE: Bing Hybrid Aerial Imagery













Name: SR Metter
 Applicant: Silicon Ranch Corporation
 Location: Candler County, GA
 Date: 2/20/2024
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**SR Metter
Delineated Features
Figure 6 Page 2 of 6**

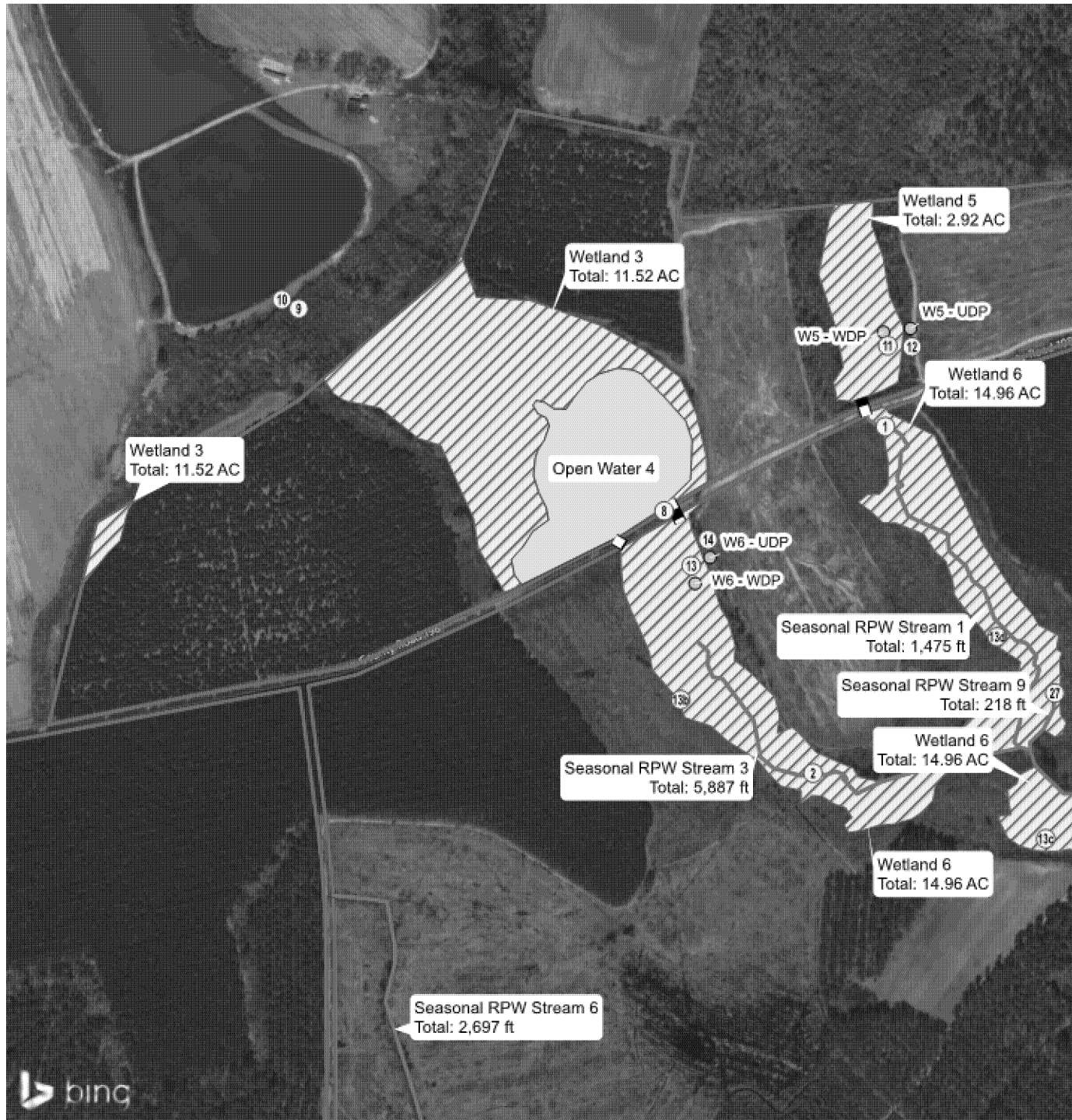
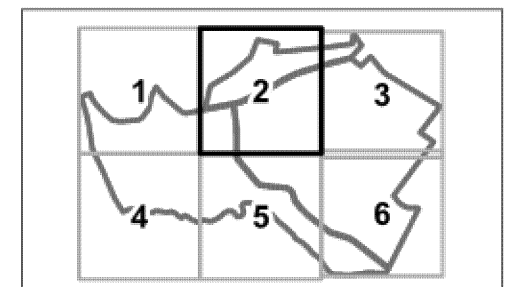
LEGEND

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Delineated Features
Figure 6 Page 3 of 6

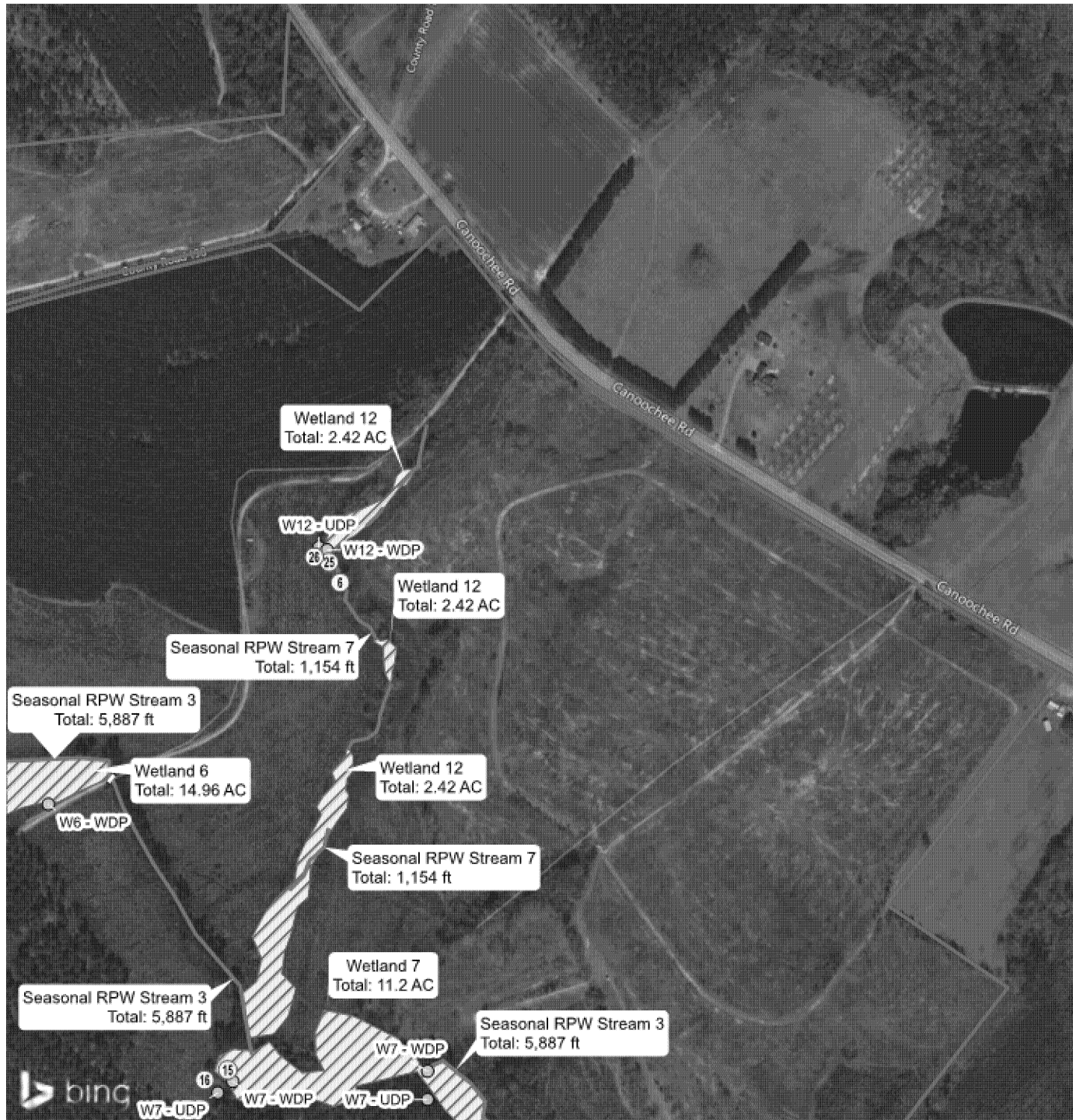
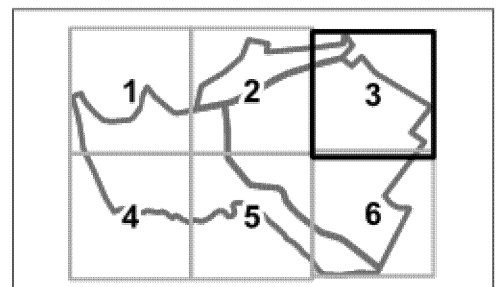
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Delineated Features
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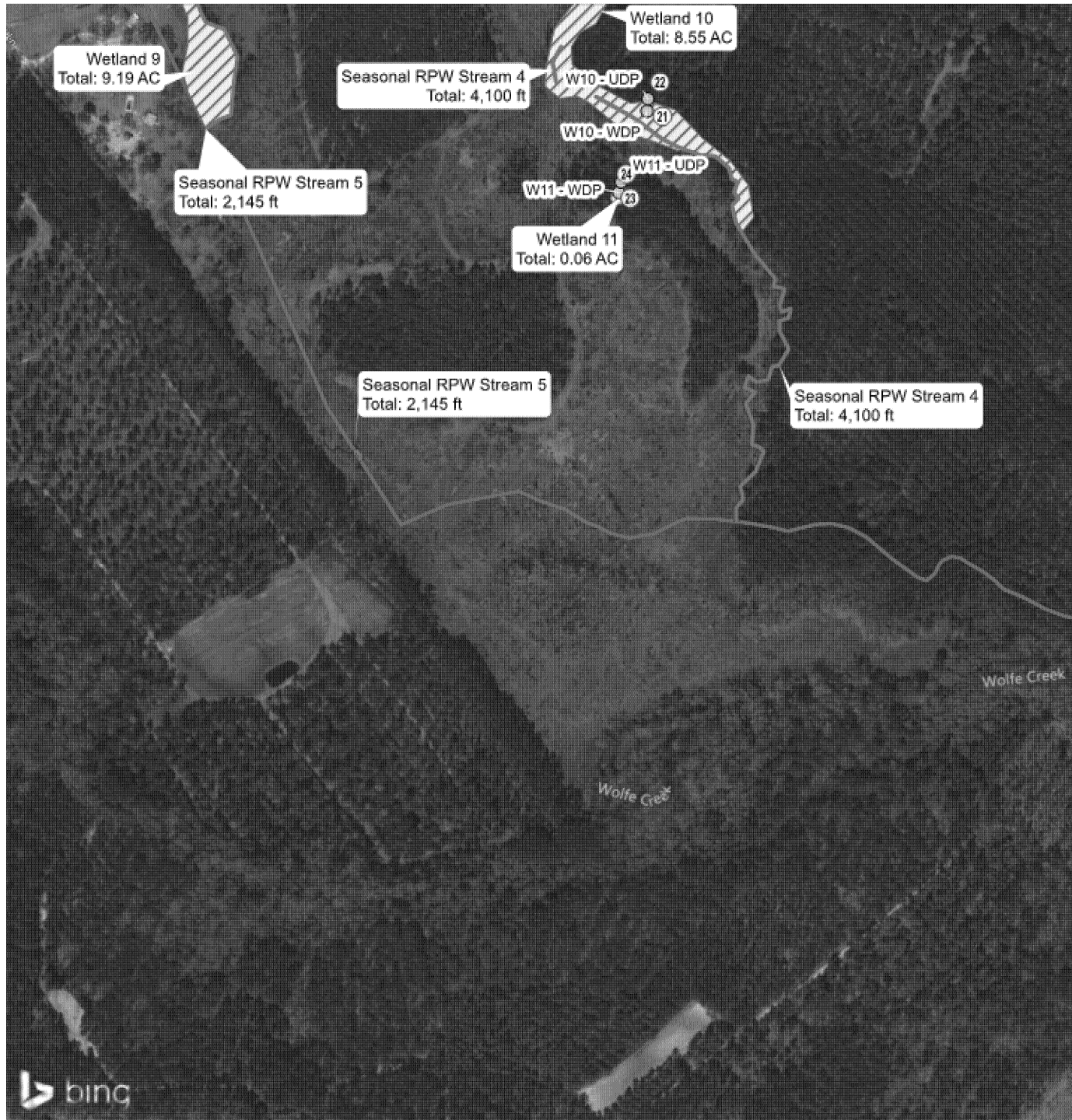
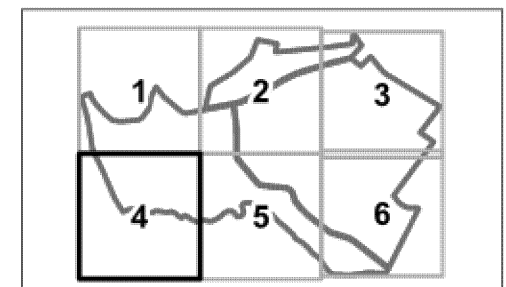
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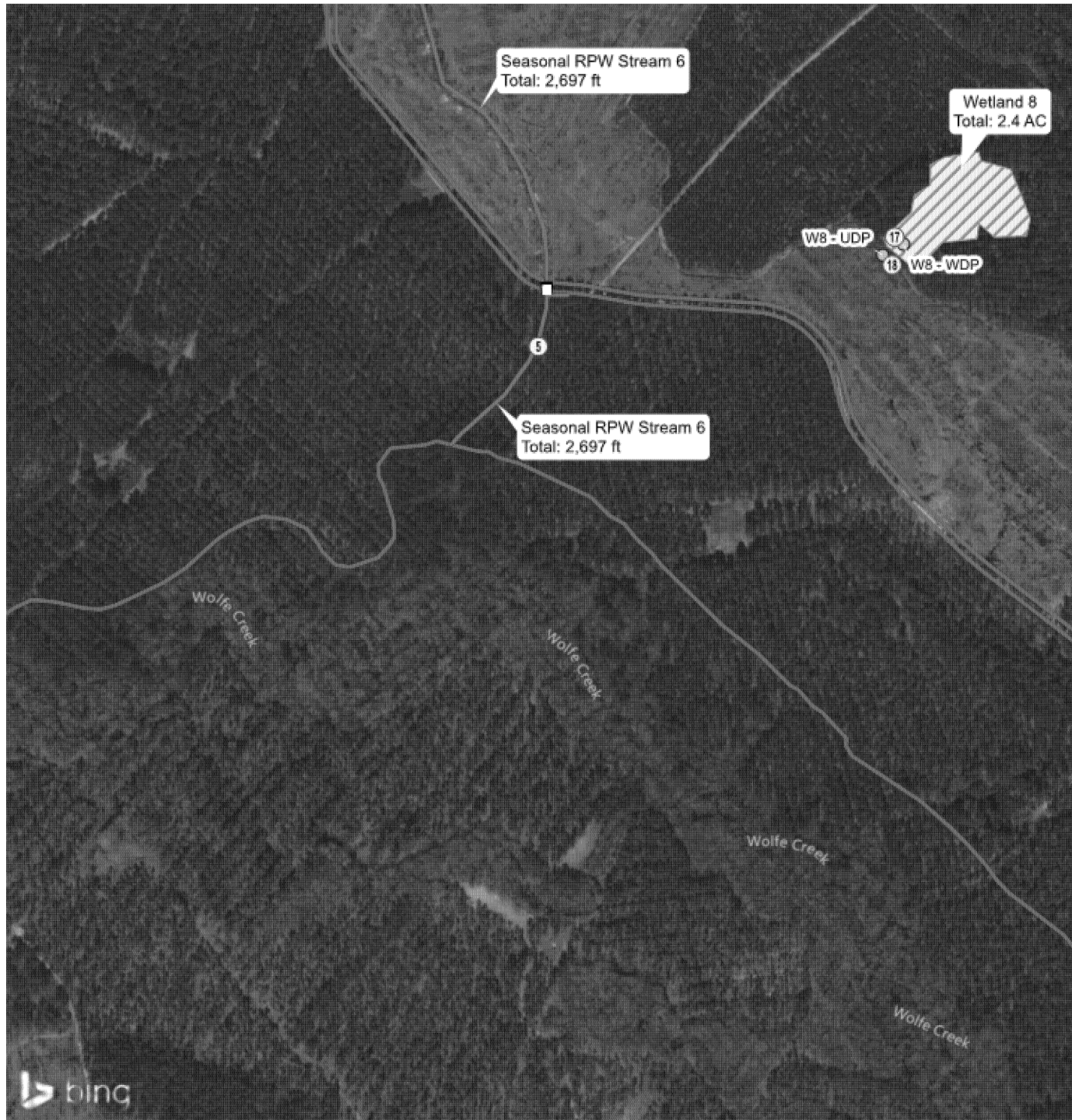
DATA SOURCE: Bing Hybrid Aerial Imagery



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**SR Metter
Delineated Features
Figure 6 Page 5 of 6**



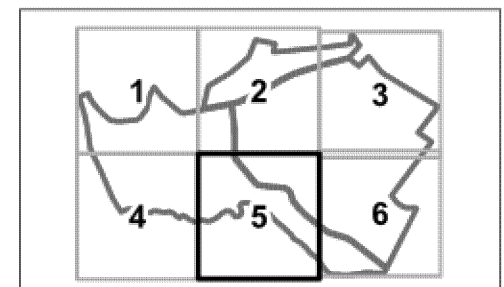
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DATA SOURCE: Bing Hybrid Aerial Imagery













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Delineated Features
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LEGEND

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