



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

REPLY TO  
ATTENTION OF

July 27, 2011

Regulatory Division (SPK-2000-50443)

Brandon Weston  
Environmental Services Director  
Utah Department of Transportation  
PO Box 148380  
Salt Lake City, Utah 84114-8380

Dear Mr. Weston:

As you know, on April 14, 2011, the Corps' South Pacific Division (SPD) completed its decision regarding your administrative appeal of the Sacramento District's approved jurisdictional determination for the Southern Parkway Segment 3A2, in St George, Washington County, Utah. In its memorandum, SPD directed the Sacramento District to reconsider its determination based on instructions in the appeal administrative decision document.

After evaluating the factors identified in SPD's decision document and conducting additional research and analysis, we find that our jurisdictional determination dated October 29, 2010 for the waters of the United States, including wetlands, on Southern Parkway Segment 3A2 is no longer valid and has changed. We do not consider drainages M and N jurisdictional under Section 404 of the Clean Water Act since they do not have a significant nexus with the Virgin River, the nearest Traditional Navigable Water. Enclosed please find a copy of our July 21, 2011 memorandum addressing the remand findings and our response.

Please refer to identification number SPK-2000-50443 in any correspondence concerning this project site. If you have any questions, please contact Karen Clementsen at the St. George Regulatory Office, 321 North Mall Drive, Suite L-101, St. George, Utah 84790, telephone 435-986-1961 or email [karen.l.clements@usace.army.mil](mailto:karen.l.clements@usace.army.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "M. Jewell", written over a white background.

Michael S. Jewell  
Chief, Regulatory Division

Enclosure

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Brandon Weston, Utah Department of Transportation	File No.: SPK-2000-50443 Southern Parkway, Segment 3A2, Unnamed Wash M and N (Remand)	Date: July 22, 2011
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	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/inet/functions/cw/cecwo/reg> 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 (not district) engineer (address on reverse). 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 (not district) engineer (address on reverse). This form must be received by the DIVISION (not district) 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 (not district) engineer (address on reverse). This form must be received by the DIVISION engineer within 60 days of the date of this notice. Exception: JD appeals based on new information must be submitted to the DISTRICT 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**

Sacramento District, Corps of Engineers  
Attn: Karen Clementsen, Project Manager, Regulatory Division  
321 North Mall Drive Suite L-101  
St. George, UT 84790-7310  
435-986-1961, FAX 435-986-3981  
(Use this address for submittals to the **DISTRICT ENGINEER**)

If you only have questions regarding the appeal process you may also contact:

**DIVISION ENGINEER**

Army Engineer Division, South Pacific, CESP-D-CM-O  
Attn: Tom Cavanaugh, Administrative Appeal Review Officer, Army  
Corps of Engineers, CESP-D-PDS-O, 1455 Market Street, San  
Francisco, CA 94103-1399 (415-503-6574, FAX 415-503-6646)  
(Use this address for submittals to the **DIVISION ENGINEER**)

**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:



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REPLY TO  
ATTENTION OF

MEMORANDUM FOR RECORD

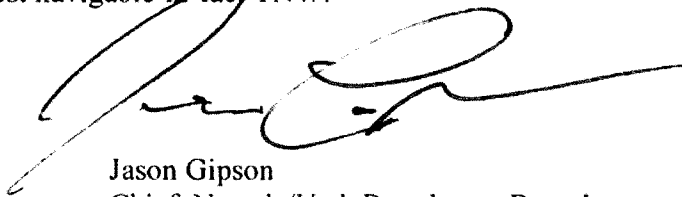
July 21, 2011

**SUBJECT: Remand Response for Southern Parkway, Segment 3A2, Unnamed Ephemeral Wash M and N, (Regulatory Division SPK-2000-50443)**

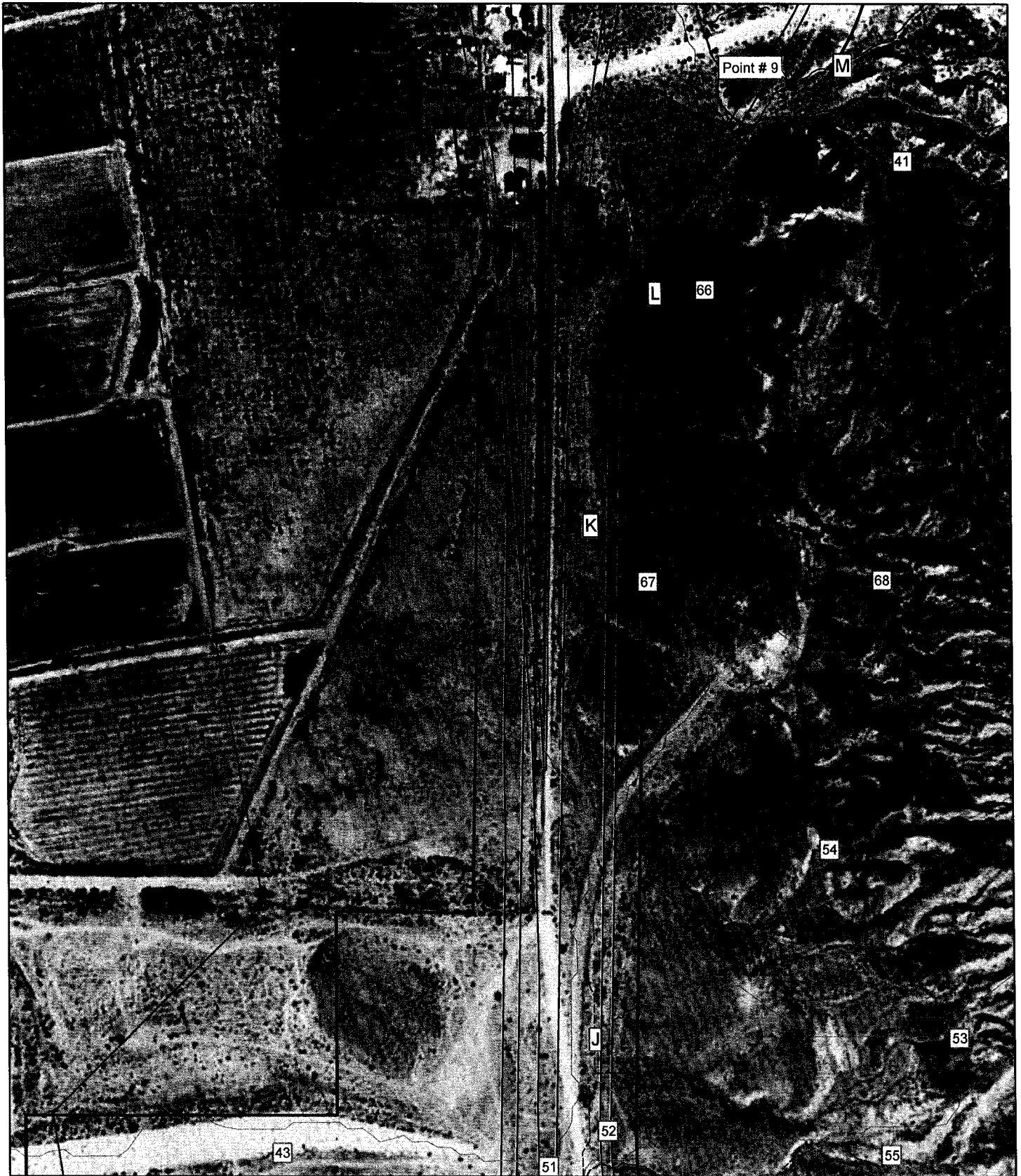
1. The Southern Parkway project, as approved in the Federal Highway Administration's October 2005 Record of Decision, consists of an interchange at Reference Post 2 on Interstate 15 in St George, Utah, and an associated 26-mile, four-lane, limited-access highway that connects to State Route 9 in Hurricane, Utah. Utah Department of Transportation (UDOT) has constructed Southern Parkway Segments 1 and 2 and is planning to construct portions of Segment 3A. On September 27, 2010, UDOT submitted a Delineation of Waters of the U.S., Southern Parkway-Segment 3A report requesting an approved jurisdictional determination (AJD) for 17 unnamed ephemeral washes in the 245-acre project area. Based on the submitted and available information, on October 29, 2010, the District determined 15 of the 17 washes were intrastate, isolated, non-navigable waters with no apparent interstate or foreign commerce connection that did not meet the significant nexus standard. The approximately 2,954-linear foot ephemeral wash identified as "M" and 1,458-linear foot ephemeral wash identified as "N" were determined to be jurisdictional, non-relatively permanent waters (non-RPWs), that had a significant nexus to the Virgin River, an interstate waterway as defined under 33 CFR 328.3(a)(2). On January 13, 2011, the South Pacific Division (SPD) accepted UDOT's appeal of the District's determination that ephemeral washes M and N were regulated under Section 404 of the Clean Water Act. On April 14, 2011, SPD directed the District to evaluate and document whether the non-RPWs have more than a speculative or insubstantial effect on the chemical, physical, and or biological integrity of the nearest downstream TNW, instead of the nearest downstream interstate water. In doing so, the District was requested to document its consideration of information provided by UDOT and other data and observations to support its conclusions.
2. The October 29, 2010, AJD Form used for Wash M and N and its nearest downstream interstate water, the Virgin River, was evaluated for the "significant nexus standard" based on the delineation report and field determinations. The washes were determined jurisdictional because sediment carried with the estimated Wash M and N flows appeared to have a more than a speculative or insubstantial affect on the physical and chemical integrity of the Virgin River (a perennial, interstate [33 C.F. R. section 328.3 (a)(2)] RPW).
3. As a result of the SPD directive, the Virgin River was further analyzed in accordance with the December 2, 2008, Revised Rapanos Guidance. This evaluation found that the

Virgin River is a water of the United States which is currently used, or was used in the past, or may be susceptible to navigation and has an interstate or foreign commerce connection. Therefore, on June 30, 2011, the District determined the Virgin River was a Navigable-In-Fact TNW (see SPK-2011-00347).

4. The Virgin River is the nearest downstream TNW to Washes M and N. The District has conducted additional site visits, obtained technical information for the non-RPWs and the Virgin River, and analyzed the new information for the "significant nexus standard" in accordance with the Revised Rapanos Guidance. The evaluation found that although Wash M and N can transport nutrients, inorganic and organic materials, and total dissolved solids to the Virgin River, based on the duration, frequency, and volume of flow, the contribution from these drainages account for only 0.0005% of the Virgin River flows. Since Wash M and N flows are significantly less than previously analyzed, the District determined the effects of Washes M and N on the physical, biological, and chemical functions of the Virgin River are insignificant and do not have a significant nexus to the Virgin River.
5. Coordination with EPA was required for this significant nexus determination. On July 5, 2011, the District submitted the AJD to EPA for review, pursuant to the June 5, 2007 Army/EPA Memorandum for the Field: Coordination on JDs under CWA Section 404 in light of SWANCC and Rapanos Supreme Court Decisions. No comments were received during the fifteen day review period.
6. Based on new information, the District has reversed the October 29, 2010 AJD decision and determined Unnamed Ephemeral Wash M and N are non-jurisdictional because they are intrastate, non-navigable, non-relatively permanent waters, with no significant nexus to the Virgin River, the nearest navigable-in-fact TNW.



Jason Gipson  
Chief, Nevada/Utah Regulatory Branch

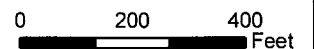


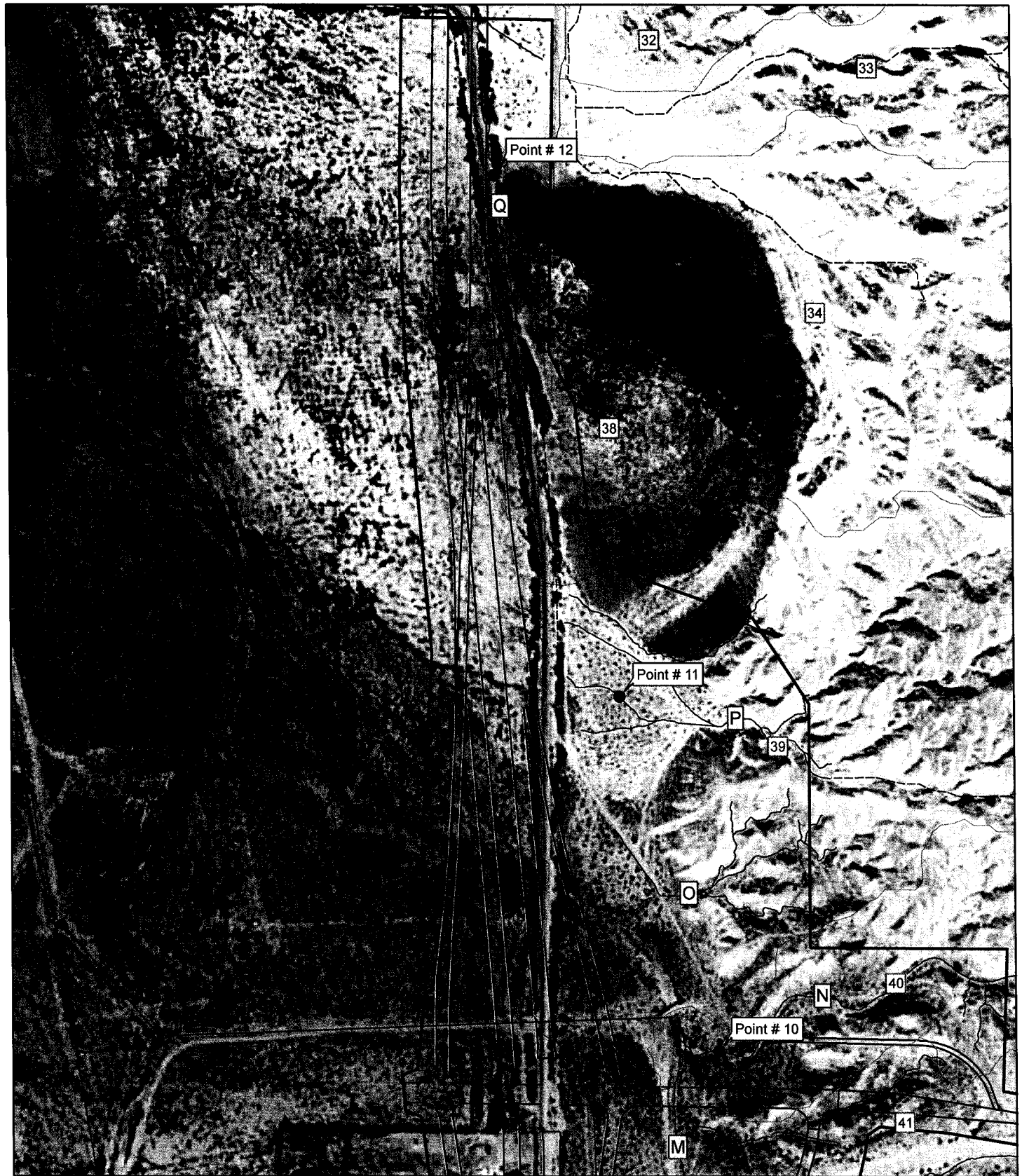
**Legend**

- Mapped in The Field - Identified Washes
- - - Mapped Remotely - Identified Washes
- Warner Draw Disposal System
- Segment 3A Project Area/Delineation Study Area
- Proposed Roadway
- Drainage Basins
- OHWM Data Form Points

**Southern Parkway  
Segment 3A**

**Delineation of Waters of the U.S.  
Figure 4d - Delineation Study Area**





**Legend**

- Mapped in The Field - Identified Washes
- - - Mapped Remotely - Identified Washes
- Warner Draw Disposal System
- Segment 3A Project Area/Delineation Study Area
- Proposed Roadway
- Drainage Basins
- OHWM Data Form Points



Southern Parkway  
Segment 3A

Delineation of Waters of the U.S.  
**Figure 4e - Delineation Study Area**

