



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS ALBUQUERQUE DISTRICT
4101 JEFFERSON PLAZA, NE
ALBUQUERQUE, NM
87109

CESPA-RD

05/19/2025

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 SPA-2025-00147

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

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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 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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- 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).

Table 1: Streams within the Pentstemon and Globemallow Solar Projects

Stream Name	Flow Regime	Length (linear ft)	Jurisdiction	Map Figure Reference Number	Latitude °N	Longitude °W
S-01	Ephemeral	217	Non-Jurisdictional	4-6	35.200895	-105.954703
S-02	Ephemeral	192	Non-Jurisdictional	4-6	35.200525	-105.954927
S-03	Ephemeral	152	Non-Jurisdictional	4-6	35.198868	-105.954872
S-04	Ephemeral	171	Non-Jurisdictional	4-6	35.199207	-105.953632
S-05	Ephemeral	126	Non-Jurisdictional	4-6	35.198726	-105.954000
S-06	Ephemeral	145	Non-Jurisdictional	4-6	35.199072	-105.953203
S-07	Ephemeral	159	Non-Jurisdictional	4-6	35.199009	-105.953128
S-08	Ephemeral	123	Non-Jurisdictional	4-6	35.198895	-105.953029
S-09	Ephemeral	152	Non-Jurisdictional	4-6	35.198014	-105.953940
S-10	Ephemeral	783	Non-Jurisdictional	4-3	35.203809	-105.946198
S-11	Ephemeral	1,509	Non-Jurisdictional	4-3	35.206953	-105.938937
S-12	Ephemeral	1,051	Non-Jurisdictional	4-3, 4-4	35.205199	-105.937665
S-13	Ephemeral	622	Non-Jurisdictional	4-7	35.201570	-105.941531
S-14	Ephemeral	990	Non-Jurisdictional	4-7, 4-8	35.196719	-105.939103
S-15	Ephemeral	446	Non-Jurisdictional	4-12	35.195365	-105.918732
S-16	Ephemeral	380	Non-Jurisdictional	4-15	35.187422	-105.922742
S-17	Ephemeral	387	Non-Jurisdictional	4-15	35.187027	-105.921423
S-18	Ephemeral	297	Non-Jurisdictional	4-15	35.186012	-105.921407
S-19	Ephemeral	165	Non-Jurisdictional	4-9	35.200417	-105.913275
S-20	Ephemeral	131	Non-Jurisdictional	4-9	35.200312	-105.913057
S-21	Ephemeral	485	Non-Jurisdictional	4-9	35.201253	-105.917112
S-22	Ephemeral	241	Non-Jurisdictional	4-9	35.201364	-105.914285
S-23	Ephemeral	102	Non-Jurisdictional	4-9	35.201387	-105.912148
S-24	Ephemeral	1,345	Non-Jurisdictional	4-5, 4-9	35.202758	-105.913443
S-25	Ephemeral	1,445	Non-Jurisdictional	4-5, 4-8	35.204115	-105.914624
S-26	Ephemeral	281	Non-Jurisdictional	4-5	35.205026	-105.912865
S-27	Ephemeral	187	Non-Jurisdictional	4-1	35.212280	-105.916309
S-28	Ephemeral	333	Non-Jurisdictional	4-1, 4-5	35.210365	-105.913613
S-29	Ephemeral	368	Non-Jurisdictional	4-15	35.186748	-105.918738

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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SPA-2025-00147

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)
 - d. Aquatic Resource Delineation Pentstemon and Globemallow Solar Projects, January 31, 2025, ERP, LLC
3. REVIEW AREA. The Study Area is 2,352 acres, located at 35.197697 Latitude and -105.934012 Longitude, situated within southern Santa Fe County, New Mexico. The area consists of undeveloped rangeland, with abandoned structures located in the west-central portion. The Study Area is located within the Central New Mexico Plains Level IV Ecoregion, located within the broader Southwestern Tablelands Level III Ecoregion. The Central New Mexico Plains ecoregion is characterized by broad rolling plains, tablelands, and piedmonts with ephemeral drainages. The Southwestern Tablelands ecoregion is characterized by sub-humid grassland and semiarid rangeland. The climate of Santa Fe County is classified under the Köppen Climate Classification System as a Cold Semi- Arid Climate. Annual rainfall in Stanley, New Mexico averages 13.67 inches, with 26 inches of average annual snowfall and an average annual low temperature of 35° Fahrenheit (F) and an average annual high temperature of 65° F.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The aquatic resource is not connected to a downstream TNW.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There is no flow path between the water and a downstream TNW.
6. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

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.

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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 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. 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

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.

within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁷ 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).

Under the Revised 2023 Rule, streams within the Study Area qualify unequivocally as ephemeral, defined by their hydrologic response exclusively to precipitation and characterized by discontinuous channel morphology and absent or transient ordinary high-water marks (OHWMs). Ephemeral channels lack the requisite “well-defined bed and bank” and “stable over time” indicators of stream geomorphology that typify relatively permanent waters (RPWs), which are standing or continuously flowing bodies of water possessing a continuous surface connection to downstream waters under 33 CFR 328.3(a)(2). Observed channel discontinuities transition into swales lacking defined beds, banks, or OHWMs, or dissipate into upland sheet flow, precluding any persistent hydraulic or hydrologic linkage to RPWs. Even sequential ephemeral segments within the same drainage “crenulation” manifest only transient surface flow, and thus were uniformly designated with consistent monikers for clarity without implying any functional connectivity.

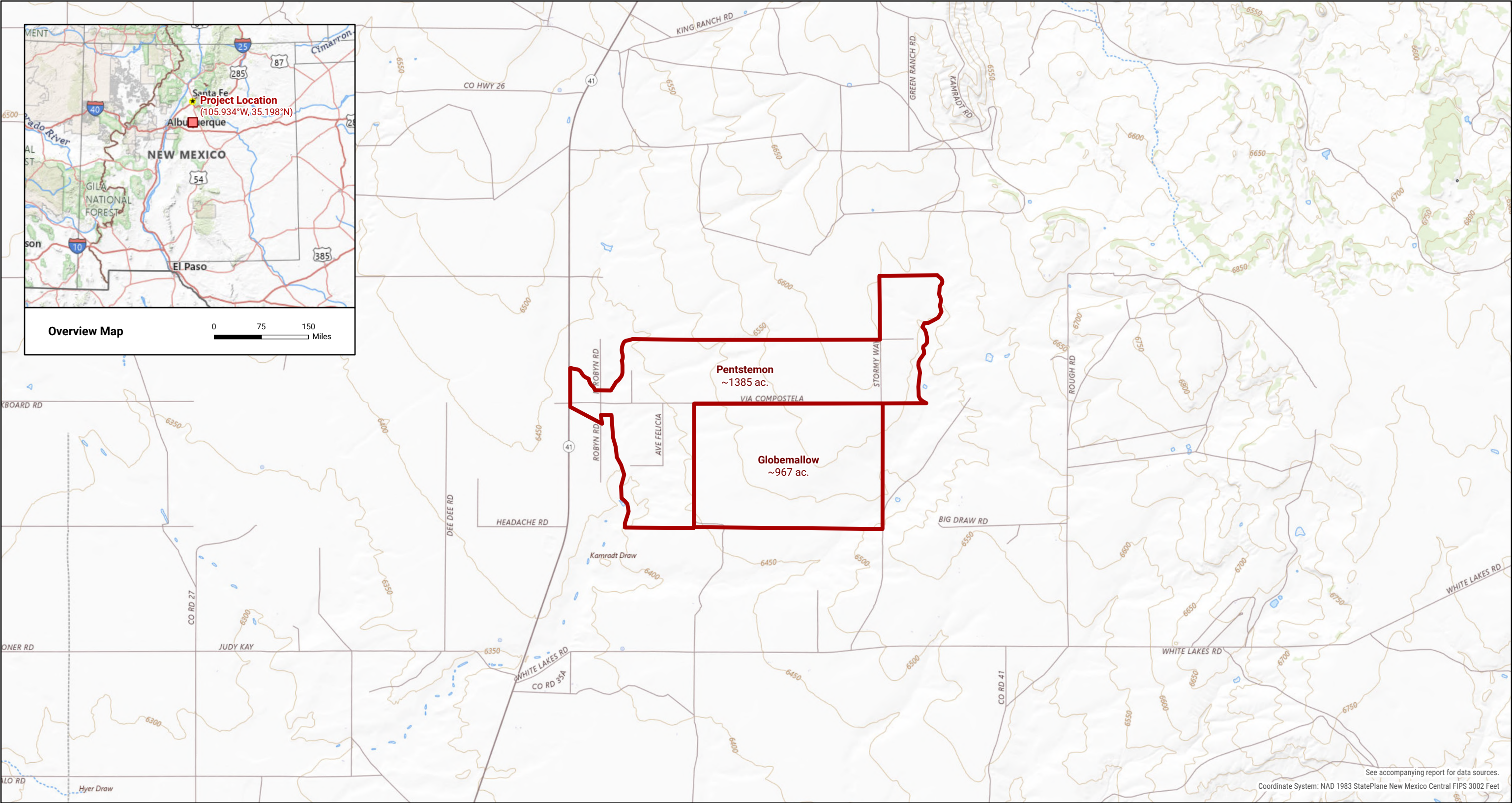
To confirm that observed dry conditions reflect intrinsic ephemerality rather than anomalous drought, the Antecedent Precipitation Tool (APT) was employed. The APT compares antecedent rainfall over the preceding three months to a 30-year climatological baseline, classifying conditions as “wet,” “normal,” or “dry”. Analysis indicated normal precipitation during the field investigation, thereby excluding atypical aridity as a confounding factor in channel desiccation. Under normal climatology, persistent drying of these channels confirms their classification as ephemeral. As such, the 29 stream segments lack the continuous surface connection and perennial flow regime required for RPWs. Consequently, these streams are anticipated to be non-jurisdictional under the Revised 2023 Rule, requiring no Section 404 permitting.

⁷ 88 FR 3004 (January 18, 2023)

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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. National Wetlands Inventory Mapper (2/18/2025)
 - b. USGS Topo Map Santa Fe County, NM 2022
 - c. Memorandum on NAP-2023-01223
 - d. Memorandum on NWK-2022-00809
 - e. Memorandum on SWG-2023-00284
10. OTHER SUPPORTING INFORMATION. Nineteen topographic depressions (0.72 acres total) within the Study Area represent potential engineered pond basins but now support well-developed upland plant communities, exhibit no hydric soils or anaerobic indicators, and lack any ordinary high-water marks. Antecedent Precipitation Tool data confirmed “normal” moisture conditions during the survey, indicating that prolonged desiccation is intrinsic rather than drought-driven. Because these features fail all three wetland criteria—hydrology, hydric soils, and hydrophytic vegetation—they are correctly classified as upland points under the USACE Wetland Delineation Manual and are non-jurisdictional under the Revised 2023 Rule.
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.



See accompanying report for data sources.
Coordinate System: NAD 1983 StatePlane New Mexico Central FIPS 3002 Feet

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LEGEND
 Review Area

Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Regional Topography

Project Location: Santa Fe County, New Mexico

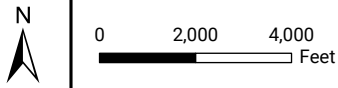
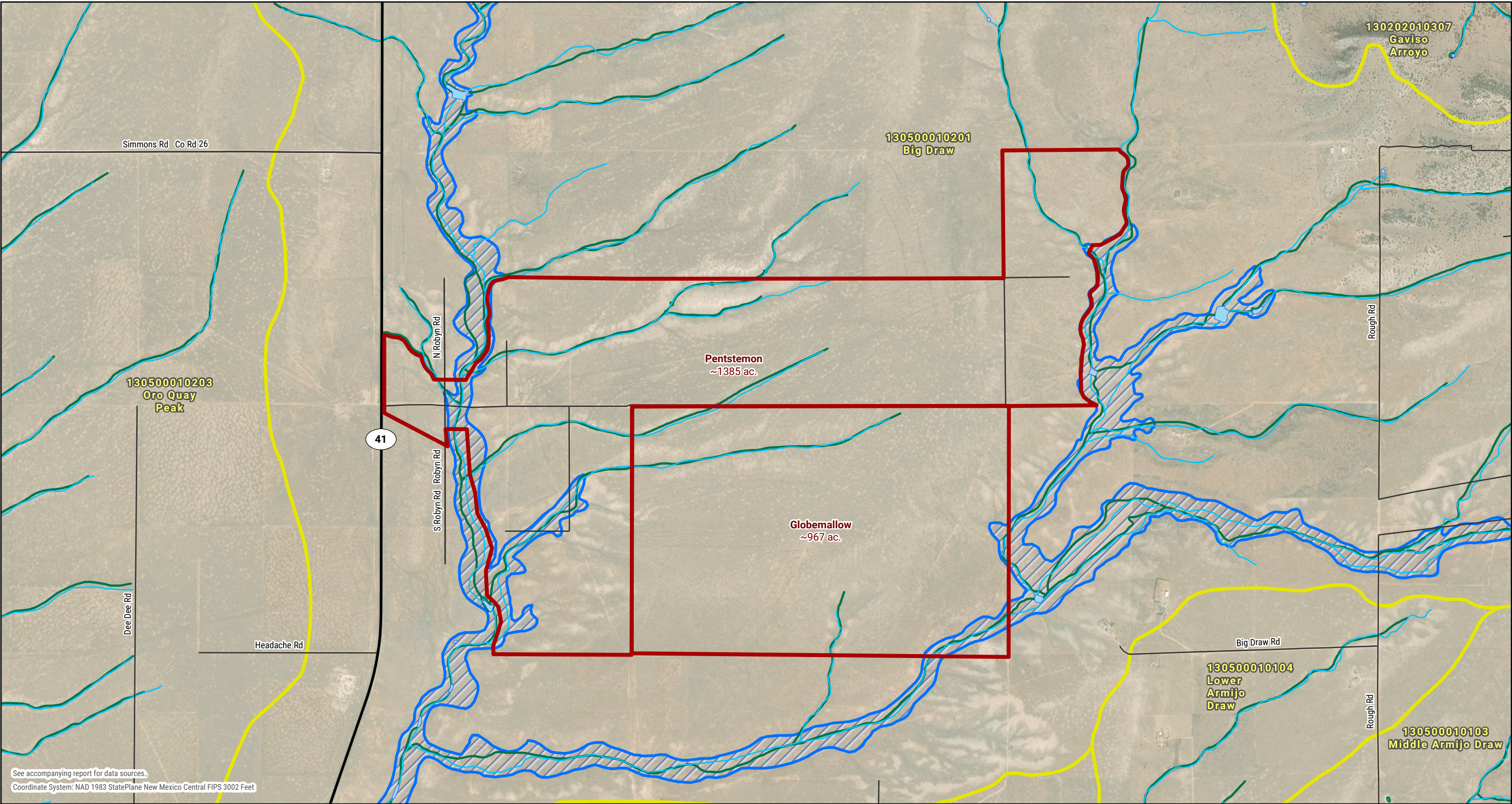


FIGURE 1

Prepared by: J. Hobbs Date: 2025-01-30



See accompanying report for data sources.
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LEGEND

Review Area

Watershed (HUC12)

Stream/Drainage

Waterbody

Wetland

100-year Floodplain

Linea Energy
**Pentstemon and Globemallow
Solar Projects**

Desktop-Identified Waters

Project Location: Santa Fe County, New Mexico

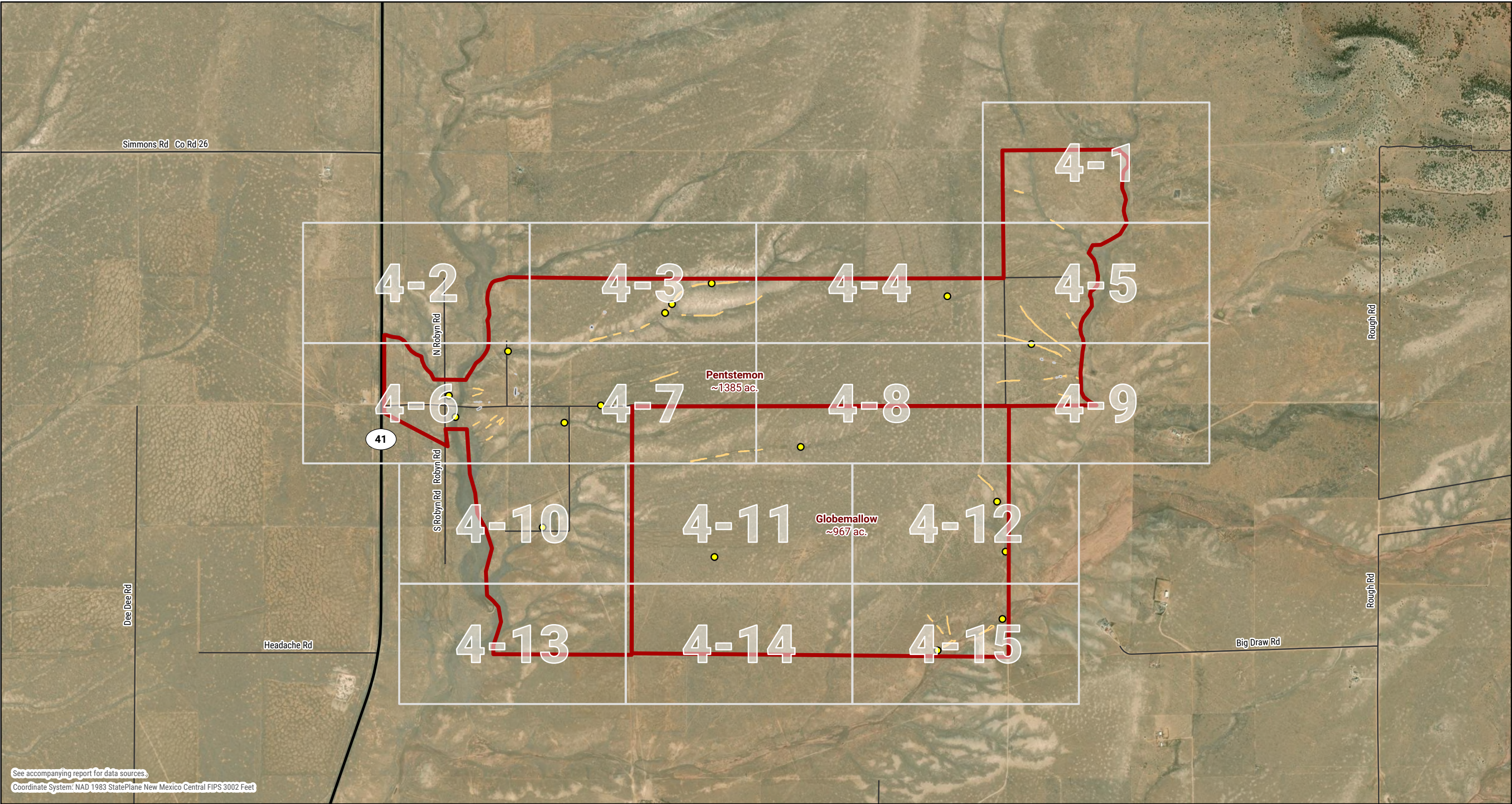


0 1,000 2,000
Feet

FIGURE 2

Prepared by: J. Hobbs

Date: 2025-01-30



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LEGEND

- Figure Extent
- Review Area

- Data Point
- Ephemeral Stream (non-jurisdictional)
- Topographic Depression (non-jurisdictional)

Linea Energy
**Pentstemon and Globemallow
Solar Projects**

Field-Identified Waters
INDEX

Project Location: Santa Fe County, New Mexico



0 1,000 2,000
Feet

FIGURE 4

Prepared by: J. Hobbs Date: 2025-01-30



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LEGEND

 Review Area

 Ephemeral Stream (non-jurisdictional)

 Topographic Depression (non-jurisdictional)

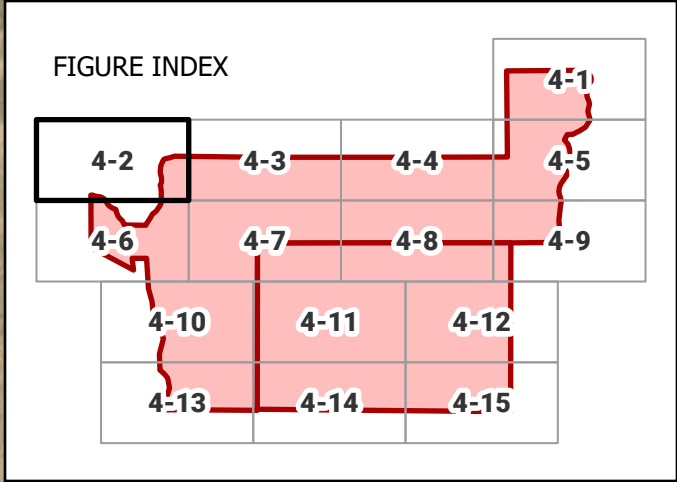
Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Field-Identified Waters

Project Location: Santa Fe County, New Mexico



FIGURE 4-1

Prepared by: J. Hobbs Date: 2025-01-30



41

Robyn Rd N Robyn Rd

Pentstemon
~1385 ac.

Pentstemon
~1385 ac.

See accompanying report for data sources.
Coordinate System: NAD 1983 StatePlane New Mexico Central FIPS 3002 Feet

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ERP
ENERGY RENEWAL PARTNERS, LLC

LEGEND

Review Area

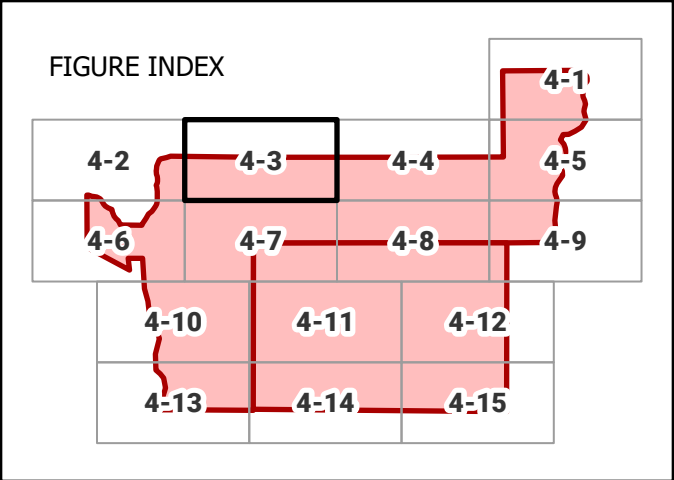
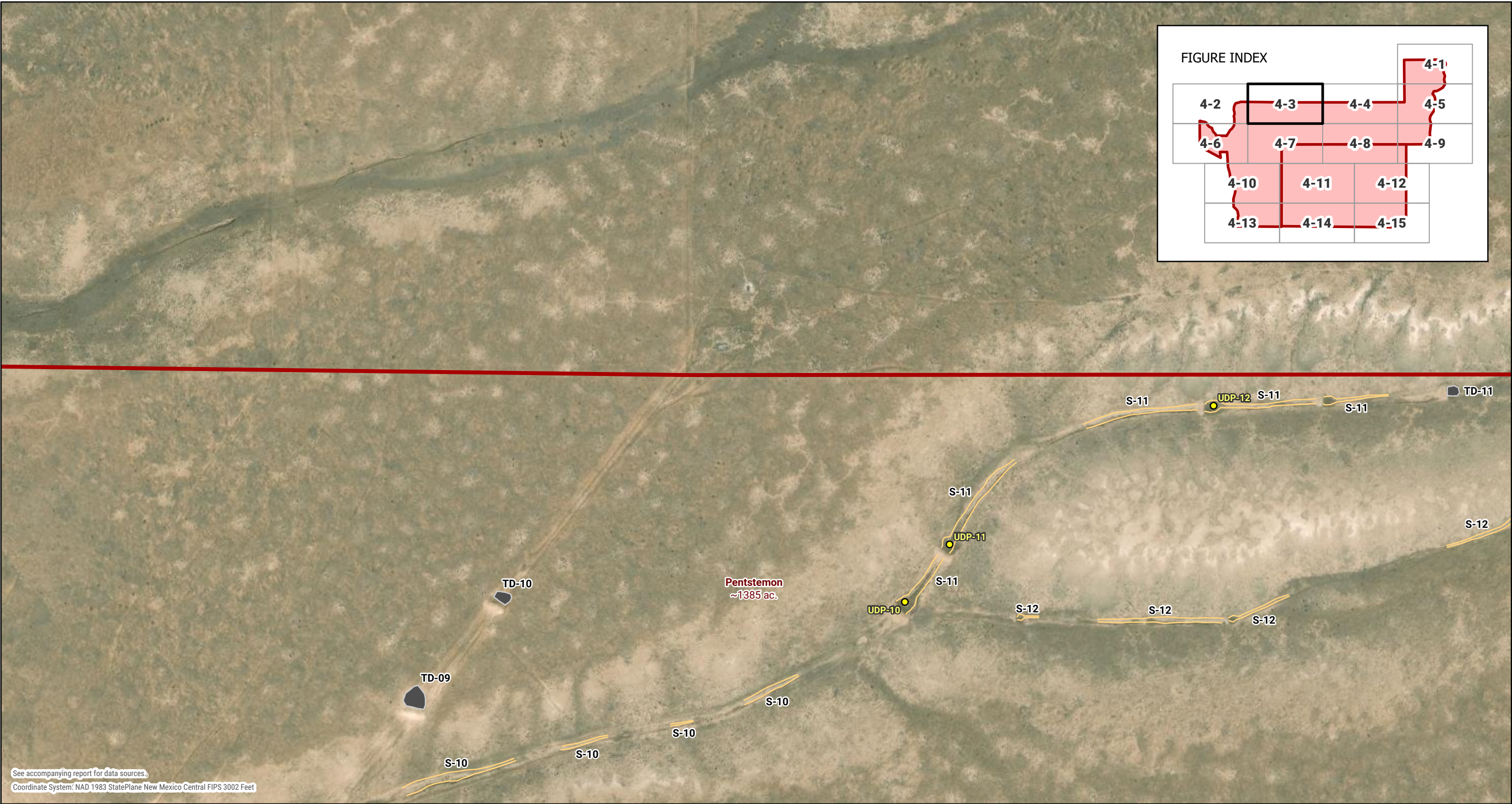
Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Field-Identified Waters

Project Location: Santa Fe County, New Mexico

N
0 150 300 Feet

FIGURE 4-2

Prepared by: J. Hobbs Date: 2025-01-30



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Review Area

Data Point

Ephemeral Stream (non-jurisdictional)

Topographic Depression (non-jurisdictional)

Linea Energy

**Pentstemon and Globemallow
Solar Projects**

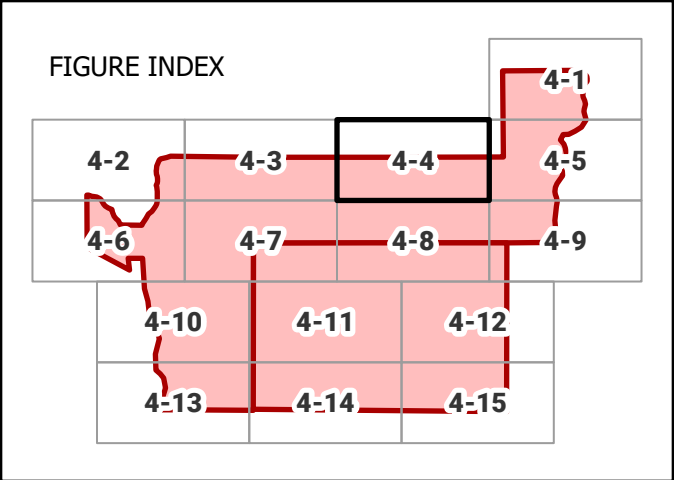
Field-Identified Waters

Project Location: Santa Fe County, New Mexico

FIGURE 4-3

Prepared by: J. Hobbs

Date: 2025-01-30



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Review Area

Data Point

Ephemeral Stream (non-jurisdictional)

Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Field-Identified Waters

Project Location: Santa Fe County, New Mexico

N

0 150 300 Feet

FIGURE 4-4

Prepared by: J. Hobbs Date: 2025-01-30



FIGURE INDEX				
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4-10	4-11	4-12		
4-13	4-14	4-15		

See accompanying report for data sources.
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LEGEND

Review Area

Ephemeral Stream (non-jurisdictional)

Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Field-Identified Waters

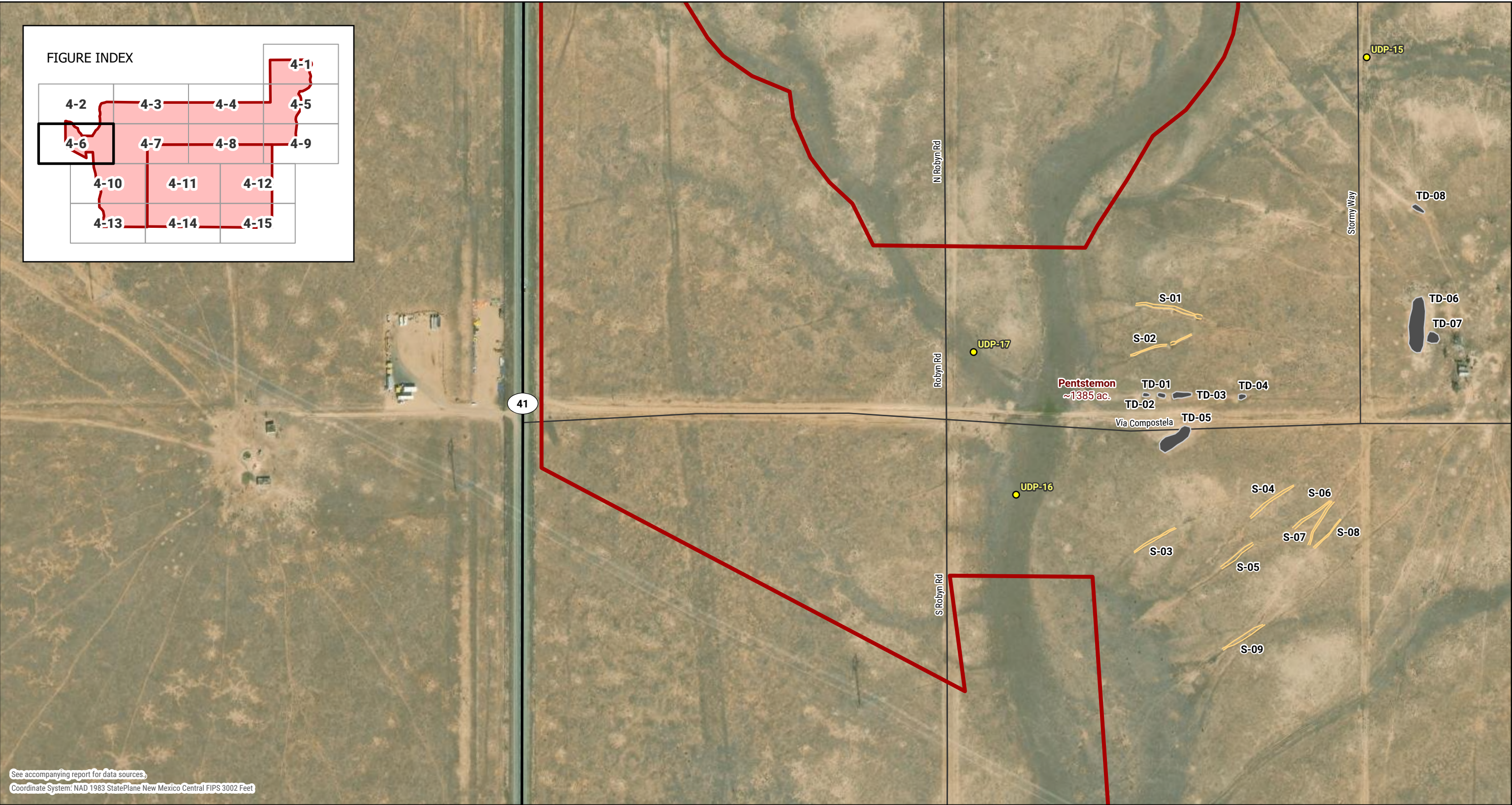
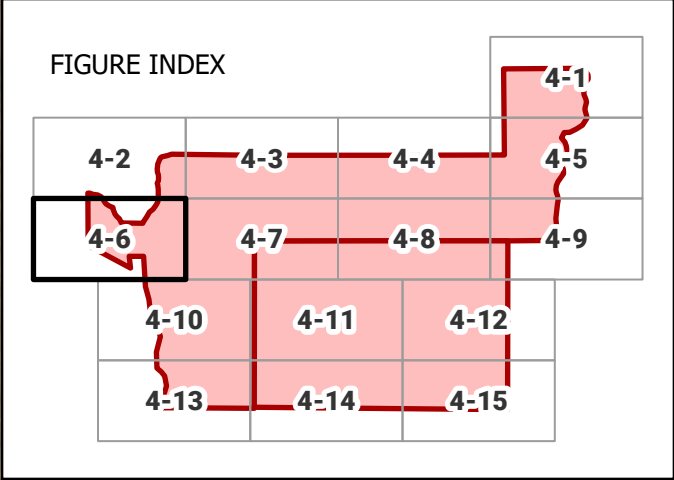
Project Location: Santa Fe County, New Mexico



0 150 300
Feet

FIGURE 4-5

Prepared by: J. Hobbs Date: 2025-01-30



See accompanying report for data sources.
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LEGEND

- Review Area
- Data Point
- Ephemeral Stream (non-jurisdictional)
- Topographic Depression (non-jurisdictional)

Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Field-Identified Waters

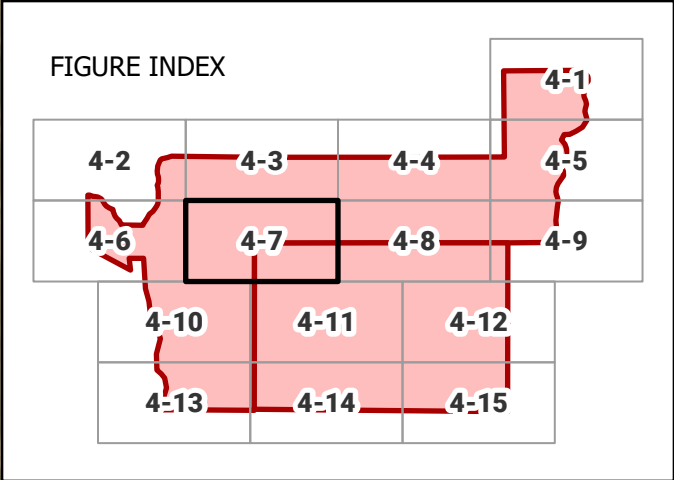
Project Location: Santa Fe County, New Mexico

N

0 150 300 Feet

FIGURE 4-6

Prepared by: J. Hobbs Date: 2025-01-30



See accompanying report for data sources.
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LEGEND

- Review Area
- Data Point
- Ephemeral Stream (non-jurisdictional)
- Topographic Depression (non-jurisdictional)

Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Field-Identified Waters

Project Location: Santa Fe County, New Mexico

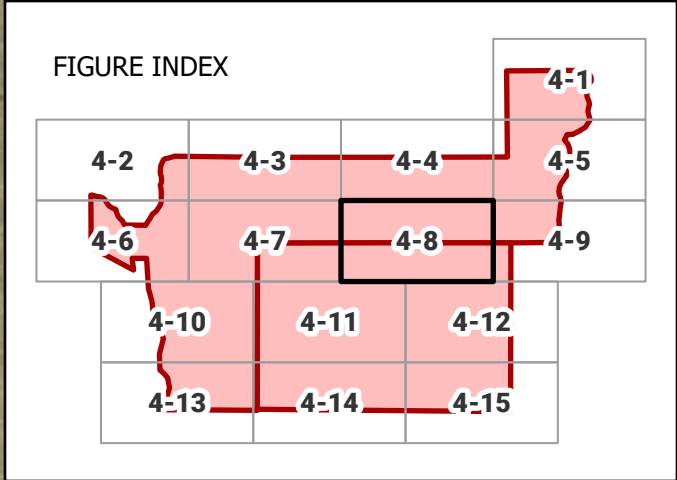
N

0 150 300 Feet

FIGURE 4-7

Prepared by: J. Hobbs

Date: 2025-01-30



Pentstemon
~1385 ac.

Via Compostela

Globemallow
~967 ac.

UDP-06

S-14

See accompanying report for data sources.
Coordinate System: NAD 1983 StatePlane New Mexico Central FIPS 3002 Feet

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LEGEND

Review Area

Data Point

Ephemeral Stream (non-jurisdictional)

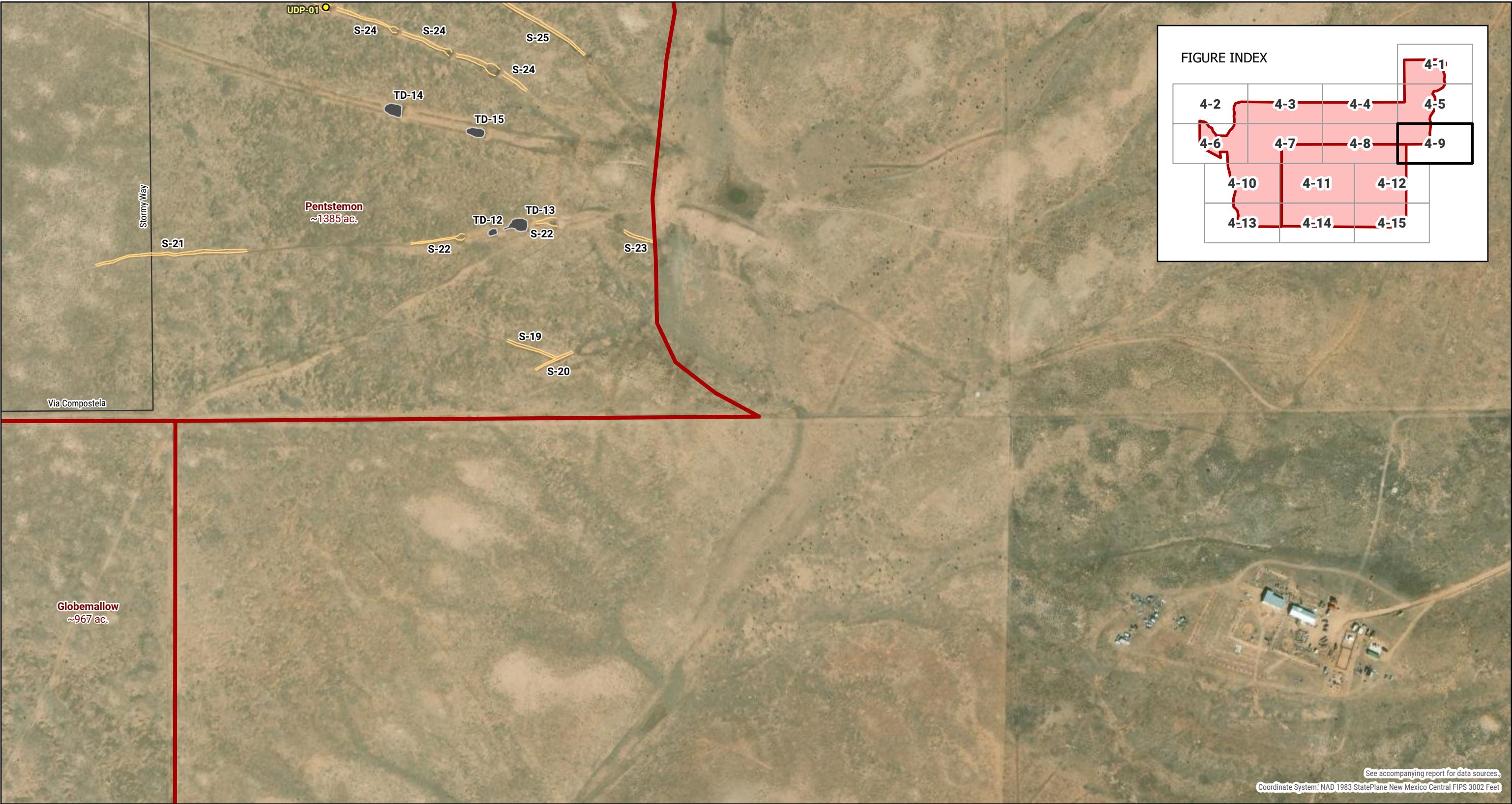
Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Field-Identified Waters

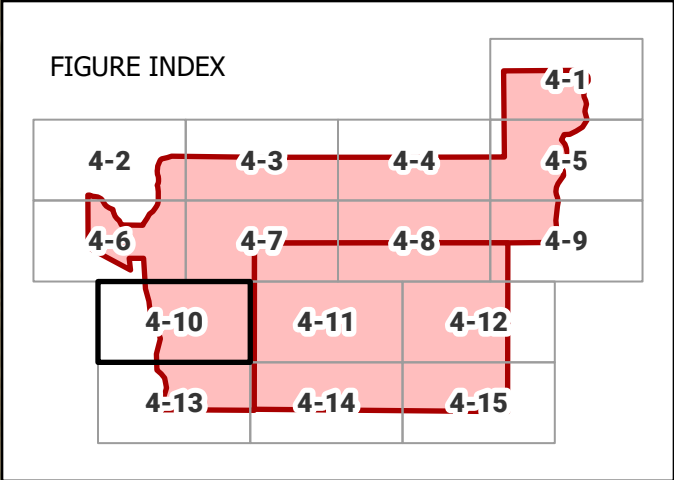
Project Location: Santa Fe County, New Mexico



FIGURE 4-8

Prepared by: J. Hobbs Date: 2025-01-30





S Robyn Rd | Robyn Rd

Ave Felicia

Pentstemon
~1385 ac.

UDP-14

Ave Alyssa

See accompanying report for data sources.
Coordinate System: NAD 1983 StatePlane New Mexico Central FIPS 3002 Feet

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LEGEND

Review Area

Data Point

Linea Energy

Pentstemon and Globemallow

Solar Projects

Field-Identified Waters

Project Location: Santa Fe County, New Mexico

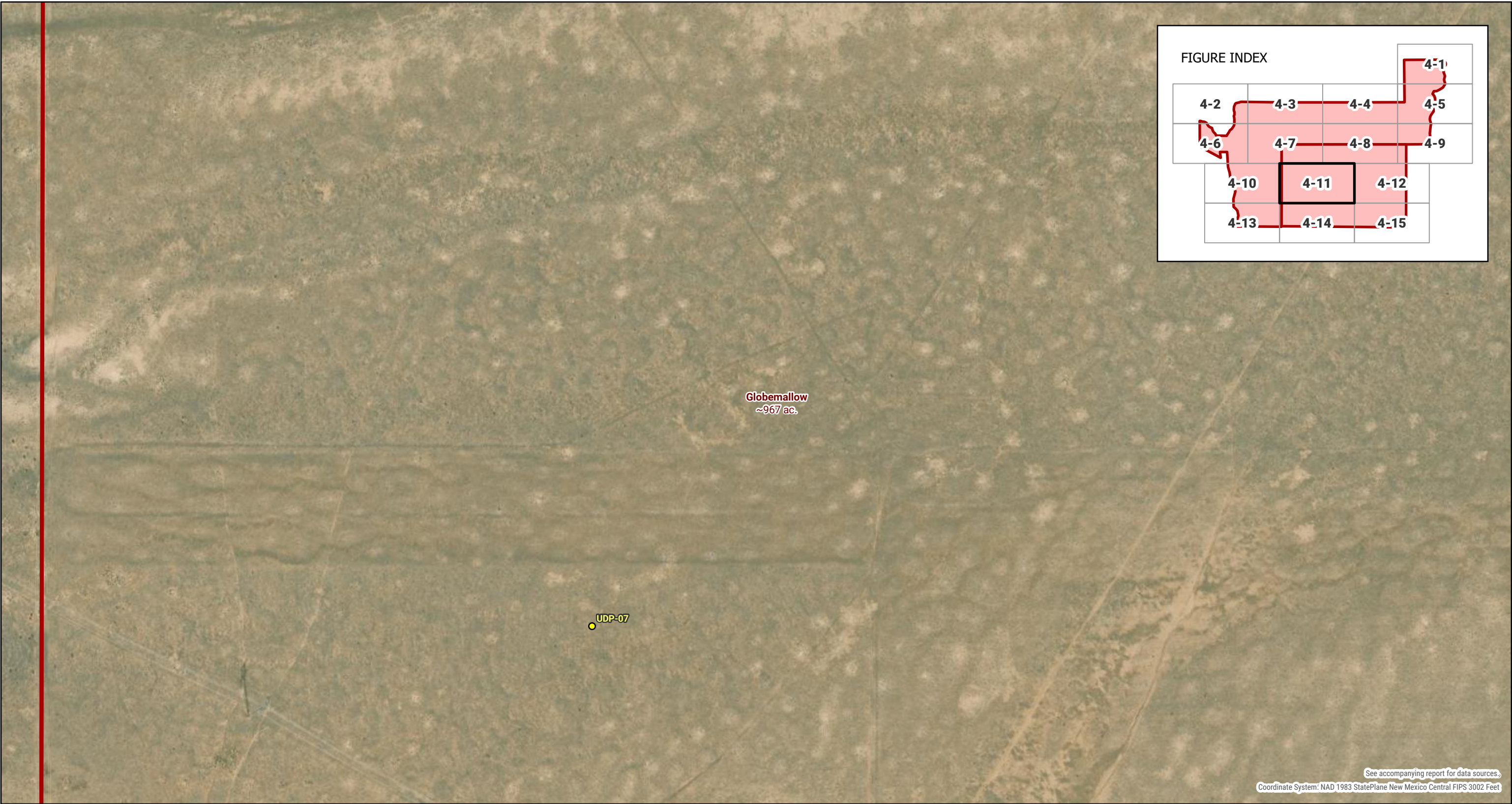
N

0 150 300
Feet

FIGURE 4-10

Prepared by: J. Hobbs

Date: 2025-01-30





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LEGEND

Review Area

Data Point

Ephemeral Stream (non-jurisdictional)

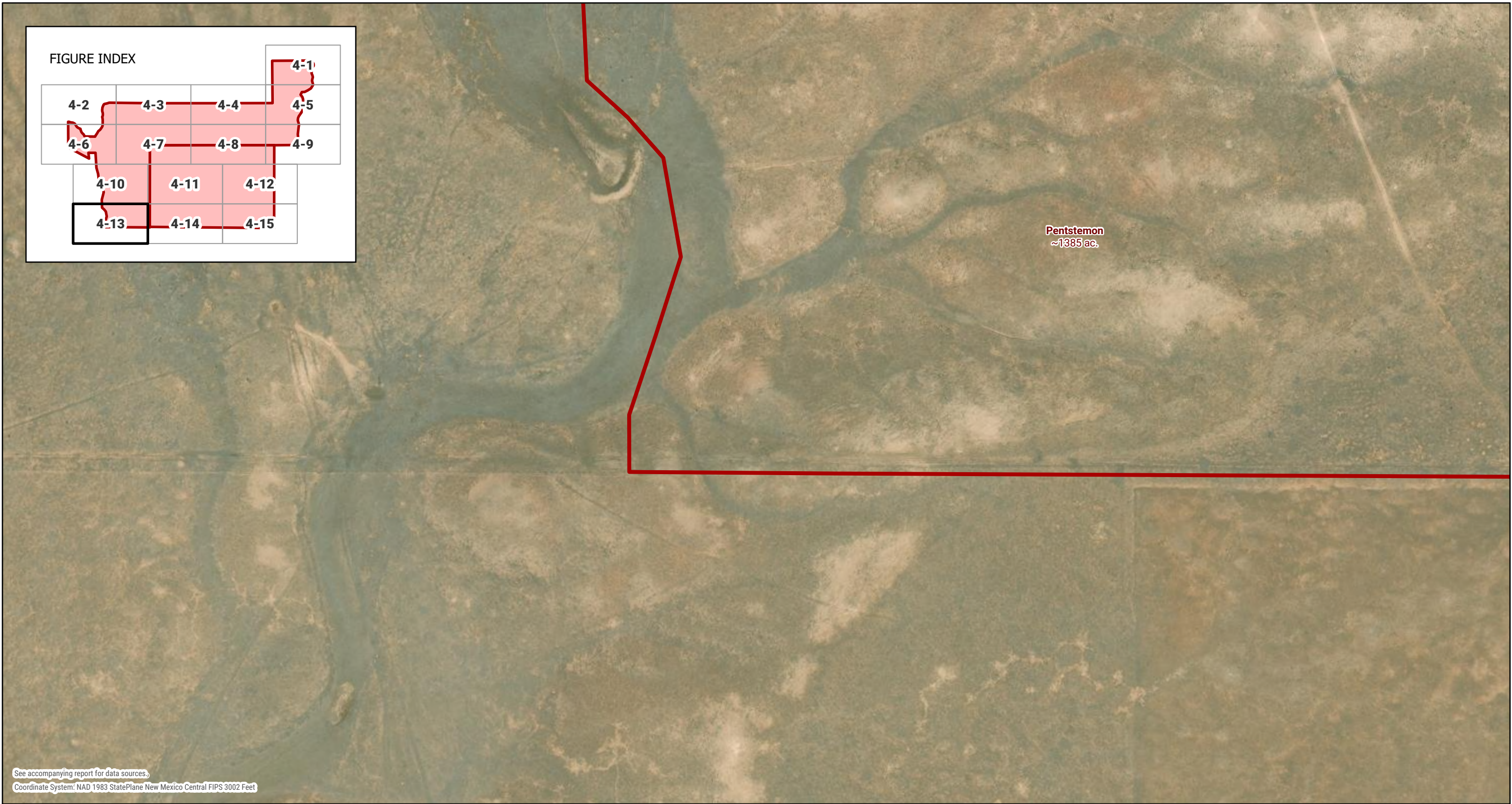
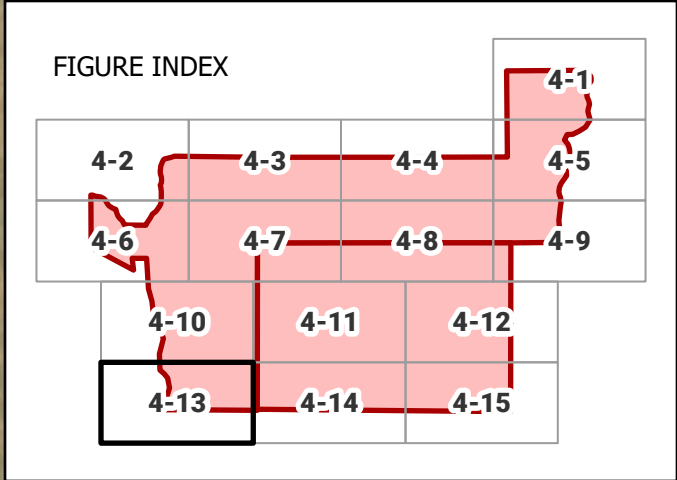
Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Field-Identified Waters

Project Location: Santa Fe County, New Mexico



FIGURE 4-12

Prepared by: J. Hobbs Date: 2025-01-30



See accompanying report for data sources.
Coordinate System: NAD 1983 StatePlane New Mexico Central FIPS 3002 Feet

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LEGEND

Review Area

Linea Energy

Pentstemon and Globemallow

Solar Projects

Field-Identified Waters

Project Location: Santa Fe County, New Mexico

0150300

Feet

FIGURE 4-13

Prepared by: J. Hobbs

Date: 2025-01-30



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LEGEND

Review Area

Linea Energy
**Pentstemon and Globemallow
Solar Projects**
Field-Identified Waters

Project Location: Santa Fe County, New Mexico

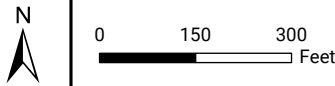


FIGURE 4-14

Prepared by: J. Hobbs Date: 2025-01-30



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LEGEND



Review Area



Data Point



Ephemeral Stream (non-jurisdictional)

Linea Energy
**Pentstemon and Globemallow
Solar Projects**

Field-Identified Waters

Project Location: Santa Fe County, New Mexico



0 150 300
Feet

FIGURE 4-15

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