

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 10, 2009

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Manteca 6-Lane Project, SPK-2009-01109

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: CA County/parish/borough: San Joaquin City: Manteca

Center coordinates of site (lat/long in degree decimal format): Lat. 37.8391° S, Long. -121.2123° E.

Universal Transverse Mercator: 10

Name of nearest waterbody: Lone Tree Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: San Joaquin River

Name of watershed or Hydrologic Unit Code (HUC): 18040002

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

Field Determination. Date(s): December 4, 2009

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are and are not** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: A) Unnamed Tributary to French Camp Slough B) Littlejohns Creek C) Lone Tree Creek

D) French Camp Slough E) Ag Ditch 1 F) Ag Ditch 2 G) Ag Ditch 3

linear feet: width (ft) and/or 4.371 acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM.

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

Wetlands 1-5 meet the three-parameter test for wetlands; however, all five appear to be artificial and lack a significant-nexus to waters of the U.S. They occur in depressions that collect storm water runoff from the highway or other impervious surfaces adjacent to them. National Wetland Index Mapper, historical data, and aerial photos I have reviewed do not indicate the presence of any historical aquatic features located at their present locations.

Detention Basins 1-11, Golf Course Ponds 1-3, Roadside Ditches 1-10, and Agricultural Ditches 4 & 5 do not appear to meet the definition of "Waters of the United States". First, these features encounter extremely low volume flows, and are infrequent in nature. Secondly, these features have been excavated wholly in and drain only uplands and do not carry a relatively permanent flow of water. Section 328.3: Definitions, states that we generally do not consider the following to be "Waters of the United States." (a) Non-tidal drainage and irrigation ditches excavated on dry land. (b) Artificially irrigated areas which would revert to upland if the irrigation ceased. (c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. (d) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

Furthermore, the June 5, 2007, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States memorandum to EPA regions and U.S. Army Corps of Engineers districts specifically states, "The agencies generally will not assert jurisdiction over the following features:

1) Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow), and 2) Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 1,830 **square miles**

Drainage area: unkwon **Pick List**

Average annual rainfall: 15-20 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 3 tributaries before entering TNW.

Project waters are **5-10** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **2-5** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵. Unnamed Tributary to French Camp Slough empties into French Camp Slough approximately 3 miles west from the project. Littlejohns Creek converges with Lone Tree Creek and French Camp

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Slough approximately 1 mile west of the project before emptying into the San Joaquin River approx. 6 miles from the project. French Camp Slough is fed by Littlejohns Creek approx. 1 mile east of the project. French Camp Slough converges with Lone Tree Creek and Littlejohns Creek approx. 1 mile west of the project before emptying into the San Joaquin River 6 miles downstream of the project. Agricultural Ditches 1-3, all empty into the South San Joaquin Irrigation District Canal (SSJIDC) approx. 3 miles west of the project. The SSJIDC empties into the San Joaquin River. Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: All of the waterways appear to have been channelized and recontoured due to local irrigation district practices.

Tributary properties with respect to top of bank (estimate):

Average width: 20-30 feet

Average depth: 10-15 feet

Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

Silts

Sands

Concrete

Cobbles

Gravel

Muck

Bedrock

Vegetation. Type/% cover: Emergent Wetland Vegetation/5-10% cover

Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable and maintained.

Presence of run/riffle/pool complexes. Explain: None.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): >5 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: During the summer months, irrigation water is present. In the winter, overland flow and flood waters are present.

Other information on duration and volume:

Surface flow is: **Confined**. Characteristics:

Subsurface flow: **Unknown**. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM⁶ (check all indicators that apply):

- | | |
|---|--|
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input checked="" type="checkbox"/> shelving | <input checked="" type="checkbox"/> the presence of wrack line |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input checked="" type="checkbox"/> sediment deposition | <input checked="" type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |

Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by:

- oil or scum line along shore objects
- fine shell or debris deposits (foreshore)
- physical markings/characteristics
- tidal gauges
- other (list):

Mean High Water Mark indicated by:

- survey to available datum;
- physical markings;
- vegetation lines/changes in vegetation types.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: The water quality is severely degraded within the project area. The most significant water quality problems in the San Joaquin River watershed are selenium, salt, boron, pesticides, and unknown toxicity. All of these problems result primarily from agricultural activities and are exacerbated by altered flow regimes, in addition to storm water runoff, discharges from inactive or abandoned mines, discharges from dairies, discharges from National Pollutant Discharge Elimination System (NPDES) facilities, and elevated temperature caused by water management practices.

Identify specific pollutants, if known: .

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): Willows, tule, cottonwood trees extend to the outer 5 feet.
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings: Seasonal sport fishing include crappie, catfish and bass.
 - Other environmentally-sensitive species. Explain findings: Migratory birds frequent the area in winter, year round resident birds of prey forage for aquatic fauna for food, turtles and amphibians use the area for shelter, breeding and feeding.
- Aquatic/wildlife diversity. Explain findings: Diversity is low, due to the effects of encroaching development and long standing irrigation district vegetation removal and maintenance practices.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
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Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial.
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: The tributaries typically fill with water released from lakes and reservoirs located upstream after the rainy season and during the summer months of June-August in order to provide farmers with irrigation water. Heavy rain events throughout the winter season can cause flows to last for several months as well.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: **4.371** acres.
Identify type(s) of waters: **Open water.**

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
- Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
Identify type(s) of waters: .
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:**Wetlands 1-5 meet the three-parameter test for wetlands; however, all five appear to be artificial and lack a significant-nexus to waters of the U.S. They occur in depressions that collect storm water runoff from the highway or other impervious surfaces adjacent to them. National Wetland Inventory Mapper, historical data, and aerial photos I have reviewed do not indicate the presence of any historical aquatic features located at their present locations.**
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: 0.438 acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:CA-Manteca.
- USDA Natural Resources Conservation Service Soil Survey. Citation:1977.
- National wetlands inventory map(s). Cite name:ORM2.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):Google Pro 1998-2009.
 - or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: The Relatively Permanent Waters (RPW's), that flow directly and indirectly into the San Joaquin River, identified within the study area, have a significant nexus with the San Joaquin River (SJR), a TNW, because they all have the capacity to carry pollutants or flood waters to the TNW, as well as provide habitat and lifecycle support functions for fish and other species. Studies have indicated that toxic pollutants are being carried by the various tributaries within the SJR watershed, out to the Bay Delta. Without a doubt, it is the Corps position that these RPW's, significantly contribute to the chemical and biological integrity of San Joaquin River

Wetlands 1-5 meet the three-parameter test for wetlands; however, all five appear to be artificial and lack a significant-nexus to waters of the U.S. They occur in depressions that collect storm water runoff from the highway or other impervious surfaces adjacent to them. National Wetland Inventory Mapper, historical data, and aerial photos I have reviewed do not indicate the presence of any historical aquatic features located at their present locations.

Detention Basins 1-11, Golf Course Ponds 1-3, Roadside Ditches 1-10, and Agricultural Ditches 4 & 5 do not appear to meet the definition of "Waters of the United States". First, these features encounter extremely low volume flows, and are infrequent in nature. Secondly, these features have been excavated wholly in and drain only uplands and do not carry a relatively permanent flow of water. Section 328.3: Definitions, states that we generally do not consider the following to be "Waters of the United States." (a) Non-tidal drainage and irrigation ditches excavated on dry land. (b) Artificially irrigated areas which would revert to upland if the irrigation ceased. (c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. (d) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

Furthermore, the June 5, 2007, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States memorandum to EPA regions and U.S. Army Corps of Engineers districts specifically states, "The agencies generally will not assert jurisdiction over the following features: 1) Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow), and 2) Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water..











