

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): March 16, 2018

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Lompa East, SPK-2016-00867

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Nevada** County/parish/borough: **Carson City** City: Carson City

Center coordinates of site (lat/long in degree decimal format): Lat. **39.168667°**, Long. **-119.735610°**

Universal Transverse Mercator: **11 263663.78 4339059.03**

Name of nearest waterbody: **Mexican Ditch**

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

Name of watershed or Hydrologic Unit Code (HUC): **Upper Carson, 16050201**

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: March 16, 2018

Field Determination. Date(s):

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** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

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: 1,960 linear feet, 0.5-17 feet wide, and/or 0.7666 acres.

Wetlands: 0.0076 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

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

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

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 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.

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: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: 10.3 inches
Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- Tributary flows directly into TNW.
 Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 2-5 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: no

Identify flow route to TNW⁵: The unnamed ephemeral tributary AR-1c flows south through a vegetated upland swale into unnamed ephemeral tributary AR-1b that flows south through vegetated upland swales into unnamed RPW AR-2. AR-2 exits the southern border of the project through a culvert that drains to a NDOT constructed mitigation site consisting of a stream channel with abutting wetlands that drains directly to Mexican Ditch. Mexican ditch drains directly to the Carson River. At the point of confluence of Mexican Ditch and the Carson River, the Carson River meets the definition of a navigable-in-fact Traditional Navigable Water. See below for further information on Carson River TNW determination.

Tributary stream order, if known:

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.

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

- Tributary is:** Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: The area has been altered by past agriculture use. AR-1b & AR-1c are remnant portions of an unnamed perennial stream previously mapped (USGS) before the construction of I-580. The construction of I-580 has changed surface flow patterns and reduced the hydrologic input to this area.

Tributary properties with respect to top of bank (estimate): AR-1b & AR-1c

Average width: 0.5 feet
Average depth: 0.5 feet
Average side slopes: **Vertical (1:1 or less).**

Tributary properties with respect to top of bank (estimate): AR-2

Average width: 17 feet
Average depth: 1.75 feet
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input checked="" type="checkbox"/> Other. Explain: Clay | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: AR-2 is stable, straight and regularly dredged for maintenance. The average width of the channel at the OHWM is 17 feet, the average depth is 22 inches. AR-1b & AR-1c have a defined bed and bank and the OHWM was determined by abrupt changes in substrate and vegetation. Banks are stable and vegetated, upland plant species found above OHWM and wetland species found below OHWM. The average width of the channel at the OHWM is 12 inches, the average depth is 6 inches.

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

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 0.4 %

(c) Flow:

Tributary provides for: **Ephemeral flow AR-1b & AR-1c**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: Hydrology is derived from offsite stormwater inputs, groundwater, the Carson Hot Springs and the Goni Canyon watershed. The channels are remnant portions of an unnamed perennial stream previously mapped (USGS) before the construction of I-580. The construction of I-580 has changed surface flow patterns and reduced the hydrologic input to these channels.

Other information on duration and volume:

Tributary provides for: **Perennial flow AR-2**

Estimate average number of flow events in review area/year: **continuous**

Describe flow regime: Hydrology is derived from offsite stormwater inputs, groundwater, the Carson Hot Springs and the Goni Canyon watershed.

Other information on duration and volume:

Surface flow is: **Confined**. Characteristics: **AR-1b, AR-1c and AR-2 receive stormwater input from the surrounding area, the Goni Canyon Watershed and the Carson Hot Springs. These channels have a defined bed and the OHWM was determined in the field by abrupt changes in the bottom substrate and vegetation. During high flow events the flow is confined to upland swales that connect AR-1b & AR-1c to AR-2. AR-2 is connected to the NDOT constructed mitigation site that borders the southern edge of the property by a culvert. The NDOT site drains directly to Mexican Ditch. Mexican ditch drains directly to the Carson River, an interstate navigable-in-fact water.**

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):

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

- | | |
|--|---|
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input checked="" type="checkbox"/> changes in the character of soil | <input checked="" type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input 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 type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input checked="" type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
- Discontinuous OHWM.⁷ Explain: AR-1b and AR-1c are remnant portions of an unnamed perennial stream previously mapped (USGS) before the construction of I-580. The construction of I-580 has changed surface flow patterns and reduced the hydrologic input to these channels.

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

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: The channels receive input primarily from municipal stormwater from the surrounding area, the Carson Hot Springs and the Goni Canyon watershed. Common pollutants in stormwater runoff include pesticides, fertilizers, oils, metals, pathogens, salt, sediment, litter and other debris. Identify specific pollutants, if known:

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: 0.01-acre PEM1E wetland fringe abutting AR-1b.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

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: **0.0076** acres

Wetland type. Explain: PEM1E. Palustrine Emergent Persistent Seasonally Flooded. Nontidal wetlands dominated by persistent emergent shrubs. Characterized by erect, rooted, herbaceous hydrophytes including *Juncus balticus*. This vegetation is present for most of the growing season in most years.

Surface water is present for extended periods during the growing season, but is absent by the end of the season in most years. When surface water is absent, the substrate typically remains saturated at or near the surface.

Wetland quality. Explain: Moderate. Small area with low plant diversity.

Project wetlands cross or serve as state boundaries. Explain: no

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: AR-1 is directly abutting AR-1b. The wetlands (AR-1) were observed by Resource Concepts Inc as directly touching (i.e., no breaks in connection) AR-1b with no barriers. During precipitation events there is a surface water connection between AR-1b and AR-2 through upland swales.

Surface flow is: **Confined**

Characteristics:

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

- Dye (or other) test performed:

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.

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
 - Discrete wetland hydrologic connection. Explain: AR-1 is directly abutting AR-1b. The wetlands (AR-1) were observed by Resource Concepts Inc as directly touching (i.e., no breaks in connection) AR-1b with no barriers. During precipitation events there is a surface water connection between AR-1b and AR-2 through upland swales. AR-2 is connected to the NDOT constructed mitigation site that borders the southern edge of the property by a culvert. The NDOT site drains directly to Mexican Ditch. Mexican ditch drains directly to the Carson River, an interstate navigable-in-fact water.
- Not directly abutting
 - Ecological connection. Explain:
 - Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.
 Project waters are **2-5** aerial (straight) miles from TNW.
 Flow is from: **Wetland to navigable waters.**
 Estimate approximate location of wetland as within the **2-year or less** 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: The wetland receives input primarily from municipal stormwater from the surrounding area, the Carson Hot Springs and the Goni Canyon watershed. The project area has been used for agriculture for several years. Common pollutants in stormwater runoff include pesticides, fertilizers, oils, metals, pathogens, salt, sediment, litter and other debris.
 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: **1**
 Approximately **0.0076** 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>
AR-1 N	0.01		

Summarize overall biological, chemical and physical functions being performed: Wetland AR-1 reduces stormwater and non-point source pollutant input to the Carson River by allowing infiltration that also provides basin aquifer recharge.

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: AR-1c is an ephemeral tributary to the Carson River that originates offsite and receives water from municipal stormwater, the Carson Hot Springs and the Goni Canyon watershed. The channel is a remnant portion of an unnamed perennial stream previously mapped (USGS) before the construction of I-580. The construction of I-580 has changed surface flow patterns and reduced the hydrologic input to this channel. Flow was observed in the channels in May when precipitation is declining. During low precipitation cycles the channel discharges into adjacent upland fields. During high precipitation and flow cycles the channel discharges into an onsite upland swale that does not display OHWM or bed and bank that discharges into AR-1b. AR-1b discharges to onsite upland swales that do not display OHWM or bed and bank that discharge to AR-2. AR-2 drains through a culvert at the projects southern boundary to an NDOT mitigation site that drains directly to Mexican Ditch. Mexican ditch drains directly to the Carson River, an interstate water. At the point of confluence between Mexican Ditch and the Carson River, the Carson River meets the definition of navigable in fact, having both current and historic navigation and historic interstate commerce. AR-1c has a significant effect on the chemical integrity of the Carson River that is more than speculative or insubstantial. The findings of Maurer et al. (2008) demonstrated that unit-area runoff from perennial watersheds is greater than unit-area runoff from ephemeral watersheds within the Carson River basin. They found that ephemeral tributaries located within alluvial fans like AR-1c reduce stormwater and non-point source pollutant input to the Carson River. AR-1c accomplishes this by allowing infiltration that also provides basin aquifer recharge.
- 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: AR-1b is an ephemeral tributary to the Carson River that originates onsite and receives water from and is a continuation of AR-1c. The channel is a remnant portion of an unnamed perennial stream previously mapped (USGS) before the construction of I-580. The construction of I-580 has changed surface flow patterns and reduced the hydrologic input to this channel. AR-1b also receives water from abutting wetland AR-1. The wetland (AR-1) was observed by Resource Concepts Inc as directly touching (i.e., no breaks in connection) AR-1b with no barriers. Flow was observed in the channel in May when precipitation is declining. During low precipitation cycles the channel discharges to the south into adjacent upland fields. During high precipitation and flow cycles the channel discharges into onsite upland swales that do not display OHWM or bed and bank and discharges into AR-2. AR-2 discharges through a culvert at the projects southern border to an NDOT mitigation site that drains directly to Mexican Ditch. Mexican ditch drains directly to the Carson River, an interstate water. At the point of confluence between Mexican Ditch and the Carson River, the Carson River meets the definition of navigable in fact, having both current and historic navigation and historic interstate commerce. AR-1b and AR-1 have a significant effect on the chemical integrity of the Carson River that is more than speculative or insubstantial. The findings of Maurer et al. (2008) demonstrated that unit-area runoff from perennial watersheds is greater than unit-area runoff from ephemeral watersheds within the Carson River basin. They found that ephemeral tributaries located within alluvial fans like AR-1b reduce stormwater and non-point source pollutant input to the Carson River. AR-1 and AR-1b accomplish this by allowing infiltration that also provides basin aquifer recharge.
- 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, wide, 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: **AR-2 displays OHWM and bed and bank and originates onsite from a 30-inch culvert that receives water from municipal stormwater from the surrounding area, the Carson Hot Springs and the Goni Canyon watershed, and is mapped (USGS) as a perennial stream. Flow was observed in the channel in May when precipitation is declining. The channel discharges out of a culvert at the southern border of the property into an NDOT constructed mitigation site consisting of a stream channel with abutting wetlands that drains directly to Mexican Ditch. Mexican ditch drains directly to the Carson River, an interstate navigable-in-fact water. The Nevada State Supreme Court declared the Carson River navigable according to the Nevada Division of State Lands (NDSL) in the court case: State v. Bunkowski (1972). The Attorney General of Nevada, on January 6, 1970, and the Nevada Legislative Counsel, on January 13, 1970, issued opinions that the Carson River is a navigable stream due to the river being used to float logs during the Comstock Era.**

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:

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

- Tributary waters: **1,597** linear feet **17** feet wide.
 Other non-wetland waters: acres.
Identify type(s) of waters:

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. **AR-1c and AR-1b**

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

- Tributary waters: **363** linear feet, 0.5-2 feet wide.
 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. **AR-1**

Provide acreage estimates for jurisdictional wetlands in the review area: **0.0076** 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).

⁸See Footnote # 3.

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

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:

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, wide.
- 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:
- 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, wide.
- 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, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: 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: Appendix A and B. Lompa Ranch East Hills, LLC Aquatic Resources Delineation Report. Resource Concepts Inc., October 2017.
- 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: **1:24K; New Empire**
- USDA Natural Resources Conservation Service Soil Survey. Citation: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>
- National wetlands inventory map(s). Cite name: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>

¹⁰ Prior 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.

- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Number 320001 Panel 0111 Suffix G
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth Pro 8/11/2017, 7/13/2016 and 12/30/2015
or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature: Maurer, D.K., Paul, A.p., Berger, D.L., and Mayers, C.J., 2008, [Analysis of streamflow trends, ground-water and surface-water interactions, and water quality in the upper Carson River basin](#): U.S. Geological Survey Scientific Investigations Report 2008-5238, 190 p
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The Nevada State Supreme Court declared the Carson River navigable according to the Nevada Division of State Lands (NDSL) in the court case: State v. Bunkowski (1972). The Attorney General of Nevada, on January 6, 1970, and the Nevada Legislative Counsel, on January 13, 1970, issued opinions that the Carson River is a navigable stream due to the river being used to float logs during the Comstock Era.