MEMORANDUM OF UNDERSTANDING
Between the U.S. Army Corps of Engineers, Sacramento District, Regulatory Division
and the
U.S. Environmental Protection Agency, Region 8
Regarding the Use of a Modified Jurisdictional Determination Process
In the States of Colorado and Utah

This Memorandum of Understanding (MOU) is entered into between the Sacramento District, U.S. Army Corps of Engineers, Regulatory Division (Sacramento District) and the U.S. Environmental Protection Agency, Region 8 (EPA Region 8). This MOU is entered into pursuant to the authorizations detailed in § 104(a) and (b) of the Clean Water Act.

Whereas, on June 5, 2007, the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency jointly issued a memorandum providing procedures for coordination of Clean Water Act (CWA) Section 404 Jurisdictional Determinations (JD) in light of the U.S. Supreme Court decisions in Solid Waste Agency of Northern Cook County (*SWANCC*) v. U.S. Army Corps of Engineers and Rapanos v. United States (*Rapanos*).

Whereas, on June 5, 2007, the Corps issued a Regulatory Guidance Letter (RGL) 07-01, titled "Practices for Documenting Jurisdiction under Section 404 of the CWA and Sections 9 and 10 of the Rivers and Harbors Act (RHA) of 1899".

Whereas, on January 28, 2008, the Corps modified the above referenced coordination memo to further clarify the process for coordinating JDs conducted pursuant to Section 404 of the CWA in light of the *Rapanos* and *SWANCC* Supreme Court decisions. The June 5, 2007 and January 28, 2008 memoranda will be collectively referred to in this MOU as the "Coordination Memo".

Whereas, the Sacramento District and EPA Region 8 recognize the need to supplement the Coordination Memo as modified on January 28, 2008, and RGL 07-01 with a modified coordination process to satisfy the public need for efficient and timely permit decisions.

NOW THEREFORE, the Sacramento District and EPA Region 8 agree as follows:

a. This MOU does not replace or supplant the Coordination Memo as modified or RGL 07-01, but is a local supplement to the Coordination Memo as modified and RGL 07-01 that provides for a modified coordination process, to be used on a project-by-project basis, for completing approved JDs on aquatic resources. The Sacramento District and EPA Region 8 will

continue to follow all terms of the Coordination Memo as modified and RGL 07-01 except with respect to the modified coordination process described below.

b. Use of this modified coordination process is initiated by an applicant's written request to the Sacramento District for an approved JD.

c. Upon receipt of the applicant's request, Sacramento District will identify aquatic resources within the project area for which approved JDs will be performed.

d. The Sacramento District will ensure that all waters in the project area have been identified and incorporated into the JD. Resources utilized will include, but are not limited to: USGS topographic maps, soils surveys, NWI maps, aerial photos, consultant reports, field reviews, and other resources as available and appropriate.

e. If the Sacramento District determines that all waters within the project area have a significant nexus to a Traditional Navigable Water (TNW), EPA Region 8 will have 3 (three) business days from receipt of an electronic copy of the draft JD to provide the Sacramento District written comments, or notification that it does not intend to provide written comments, or notification that it intends to elevate the JD for higher review in accordance with RGL 07-01.

f. After the conclusion of 3 (three) business days, if no response is provided by EPA Region 8, the Sacramento District may finalize the JD.

g. The Sacramento District will make all approved JDs for waters that have a significant nexus to a TNW available on their websites within 30 days of completion.

h. If the Sacramento District determines that some of the waters within the project area have a significant nexus to a TNW, and some of the waters do not have a significant nexus to a TNW, the JD will be coordinated with EPA Region 8 in accordance with the terms and time frames established in the Coordination Memo as modified.

i. This MOU does not apply to those waters that the Sacramento District determines do not have a significant nexus to a TNW. All JDs involving such waters will be coordinated with EPA Region 8 according to the terms of the Coordination Memo as modified.

j. This MOU does not apply to isolated waters.

k. This MOU may be amended at any time upon written agreement of the parties. Revisions to this MOU may be necessary to ensure consistency with any revisions to the Corps/EPA national coordination procedures. EPA Region 8 or the Sacramento District can terminate this MOU at any time after written notice is provided to the other party.

l. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the Corps or EPA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the Corps or EPA.

m. This MOU will remain in effect until terminated by either Corps or EPA, as referenced above.

BY THEIR SIGNATURES, THE UNDERSIGNED ATTEST THAT THEY HAVE THE AUTHORITY TO SIGN THIS MOU ON BEHALF OF THE PART THAT THEY REPRESENT.

MICHAEL S. JEWELL
Chief, Regulatory Division
U.S. Army Corps of Engineers, Sacramento District

2 April 2012
Date

MARTIN HESTMARK
Acting Assistant Regional Administrator
Office of Ecosystems Protection
and Remediation

3/27/12
Date