

# 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): 12 Jun 2007

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:

Sacramento District, Rio Tinto Mine, SPK-2007-1117-NO

Rio Tinto Gulch

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Nevada County: Elko City:

Center coordinates of site (lat/long in degree decimal format):

Latitude: 41.81243° N Longitude: -115.98134° W Universal Transverse Mercator:

Name of nearest waterbody: Rio Tinto Gulch

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

Name of watershed or Hydrologic Unit Code (HUC): 17050104

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: 11 Jul 2007

Field Determination. Date(s):

## SECTION II: SUMMARY OF FINDINGS

A. RIVERS AND HARBORS ACT 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. CLEAN WATER ACT 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. [Required]

1. Waters of the U.S.

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

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (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: 800 linear feet: 1½ feet wide (average) and/or acres.

Wetlands: 0 acres.

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

Elevation of established OHWM (if known): ~6038 feet m.s.l.

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

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

Explain: .

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

<sup>2</sup> 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.

<sup>3</sup> Supporting documentation is presented in Section III.F.

### SECTION III: CLEAN WATER ACT ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

Section III.A is not applicable to non RPW Waters.

##### 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)<sup>4</sup>:

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

###### (i) General Area Conditions:

Watershed size: 225 acres

Drainage area: 200 acres

Average annual rainfall: 7.5 inches

Average annual snowfall: 28 inches

###### (ii) Physical Characteristics:

###### (a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 1-2 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1-2 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: This does not occur.

Identify flow route to TNW<sup>5</sup>: Rio Tinto Gulch is directly confluent with Mill Creek, a perennial RPW tributary, which is a primary tributary to the Owyhee River, an interstate, traditionally navigable water.

Tributary stream order, if known: 1st order tributary.

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

Tributary is:

Natural

Artificial (man-made). Explain: .

Manipulated (man-altered). Explain: .

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

Average width: 1½ feet

Average depth: 0.25 feet

Average side slopes: 2:1.

Primary tributary substrate composition (check all that apply):

Silts

Sands

Concrete

Cobbles

Gravel

Muck

Bedrock

Vegetation. Type/% cover: no riparian plants are present; sparse sagebrush community plants

Other. Explain: .

Tributary condition/stability, e.g., highly eroding, sloughing banks. Explain: The banks are fairly stable with little erosion occurring..

Presence of run/riffle/pool complexes. Explain: This is an ephemeral tributary; there are no riffle / pool complexes.

Tributary geometry: Relatively straight

Tributary gradient (approximate average slope): 8%

###### (c) Flow:

Tributary provides for: Ephemeral flow

Estimate average number of flow events in review area/year: 1

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

<sup>5</sup> 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.

**Describe flow regime:** This is a small watershed with very little flow, probably occurring once every 5-10 years. Most snow melt and precipitation infiltrates before water can begin flowing.

**Other information** on duration and volume: Unknown, but insignificant flows.

**Surface flow** is: Discrete. Characteristics: Because of the slope, flow is rapid down-slope.

**Subsurface flow:** Unknown. Explain findings: Subsurface flows likely exist, but are not easily measured.

Dye (or other) test performed: .

**Tributary has** (check all that apply):

Bed and banks

OHWM<sup>6</sup> (check all indicators that apply):

clear, natural line impressed on the bank

changes in the character of soil

shelving

vegetation matted down, bent, or absent

leaf litter disturbed or washed away

sediment deposition

water staining

other (list):

Discontinuous OHWM.<sup>7</sup> Explain: .

the presence of litter and debris

destruction of terrestrial vegetation

the presence of wrack line

sediment sorting

scour

multiple observed or predicted flow events

abrupt change in plant community

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.

**(iii) Chemical Characteristics:**

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

Explain: The infrequent flows are expected to be clear. Some contributing flows originate from upland drainage ditches around a stockpile area that is monitored for sediment loading and other pollutants. These are reported to BLM and NDEP.

Identify specific pollutants, if known: Unknown.

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

Riparian corridor. Characteristics (type, average width): There is no riparian corridor.

Wetland fringe. Characteristics: There is no wetland fringe.

Habitat for: Habitat is unrelated to the presence of water

Federally Listed species. Explain findings: No listed fish species are in the area.

Fish/spawn areas. Explain findings: This is an ephemeral tributary; there are no fish present.

Other environmentally-sensitive species. Explain findings: None are known.

Aquatic/wildlife diversity. Explain findings: Only terrestrial wildlife would be expected to be found around the subject tributary. No aquatic macro organisms are evident.

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**  
**Section III.B.2 is not applicable to non RPW Waters.**

**(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:

<sup>6</sup>A 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.

<sup>7</sup>Ibid.

(b) General Flow Relationship with Non-TNW:

Flow is: Explain:

Surface flow is:  
Characteristics:

Subsurface flow: . 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 river miles from TNW.  
Project waters are aerial (straight) miles from TNW.  
Flow is from:.  
Estimate approximate location of wetland as within the 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)**

**Section III.B.3 is not applicable to non RPW Waters.**

All wetland(s) being considered in the cumulative analysis:  
Approximately acres in total are being considered in the cumulative analysis.

**For each wetland, specify the following:**

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

**C. SIGNIFICANT NEXUS DETERMINATION**

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. *The Rio Tinto Gulch flows directly into Mill Creek. Although the bed and bank formation is weak, there is a direct surface conveyance channel into Mill Creek. If there were sufficient flows in the gulch, after overcoming infiltration in the substrate, it would discharge directly into Mill Creek .*
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):**

**Section III.D is not applicable to non-RPS Waters, except #3 & 7 below.**

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:

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

**3. Non-RPWs<sup>8</sup> 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 in the review area (*check all that apply*):

- Tributary waters: **800** linear feet **1½** width (ft).
- Other non-wetland waters:            acres.

Identify type(s) of waters: **Ephemeral tributary.**

**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.<sup>9</sup>**

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*):<sup>10</sup> **Section III.E is not applicable to non-RPW Waters,****

- 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:**

<sup>8</sup>See Footnote # 3.

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

<sup>10</sup>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.*

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):**

**Section III.F is not applicable to non-RPS Waters,**

- 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 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: 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: [provided by the applicant.](#)
- 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: [Mountain City USGS 7½' topographic quadrangle map.](#)
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:
  - Aerial (Name & Date): [USGS Jun 2002 photo.](#)
  - Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Site visit(s) and Date(s): .
- Other information (please specify) [Information provided by the consultant.](#)