

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): November 24, 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District; Folsom 138, SPK-2008-00326; JD-1

C. PROJECT LOCATION AND BACKGROUND INFORMATION: SWS-1 to SWS-5, SW-1 to SW-8, Seep-1 to Seep-9 and VP-1 to VP-2

State: California County/parish/borough: Sacramento City: Folsom
Center coordinates of site (lat/long in degree decimal format): Lat. 38.63555° **N**, Long. 121.0878° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Alder Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 18020111

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: September 18, 2008

Field Determination. Date(s): April 21, 2008

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. [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: linear feet: width (ft) and/or 0.783 acres.

Wetlands: 1.209 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

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.

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: 299 square miles

Drainage area: 9 square miles

Average annual rainfall: 19 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.

Project waters are 5-10 river miles from RPW.

Project waters are 5-10 aerial (straight) miles from TNW.

Project waters are 5-10 aerial (straight) miles from RPW.

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

Identify flow route to TNW⁵: The seasonal channel has bed and bank and becomes an ephemeral drainage off-site, approximately 800 feet downstream. The majority of the downstream flow of the seasonal channel occurs during and for a short time following rain events, although the channel also contains a ground water source and during the rainy season contains water throughout the season. Water flows through the seasonal channel and ephemeral drainage, into Alder Creek, an RPW that is tributary to the American River, a TNW. The American River is a tributary to the Sacramento River, a navigable water subject to both Section 10 and Section 404 of the Clean Water Act.

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:

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

Average width: 10 feet
Average depth: 3 feet
Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: Hydrophytic vegetation, ~95%
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The seasonal channel is well vegetated with stable slopes..

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 1-2 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: The seasonal channel contains water throughout the rainy season, although it only flows during and for a short time following rain events. The seasonal channel is part of a drainage that on the adjacent site, 800 feet downstream, consists of an ephemeral drainage that flows into Alder Creek, an RPW that is tributary to the American River. The American River at this location is a TNW, as determined by the Sacramento District on February 4, 2008. Below river mile 12, the American River is a navigable water, subject to both Section 10 and Section 404, and flows into the Sacramento River, which is also a navigable water of the U.S.

Other information on duration and volume:

Surface flow is: **Confined**. Characteristics: The flow within the channel is confined, with bed and bank, although there is no ordinary high water mark present. Further downstream, the channel becomes an ephemeral drainage, with an ordinary high water mark.

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):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 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: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

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: During the site visit, no water was present within the seasonal channel, therefore chemical characteristics are unknown.

Identify specific pollutants, if known: Unknown.

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

Riparian corridor. Characteristics (type, average width):

Wetland fringe. Characteristics: Approximately 1.209 acre of wetlands, including seeps, seasonal wetlands and vernal pools are directly abutting the seasonal channel.

Habitat for:

Federally Listed species. Explain findings: Potential habitat for listed vernal pool species.

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The channel likely contains suitable habitat for invertebrates, avian and terrestrial wildlife.

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: 1.209 acres

Wetland type. Explain: 1.209 acre of seeps, seasonal wetlands and vernal pools that abut the seasonal channel.

Wetland quality. Explain: Unknown.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: The wetlands abutting the seasonal channel contain hydrophytic vegetation, wetland soils and wetland hydrology during the rainy season and dry up during the summer months. Flow is generally south-west, into the non-RPW seasonal channel, which is part of an ephemeral channel that flows into Alder Creek, an RPW that is tributary to the American River, a TNW.

Surface flow is: **Overland sheetflow**

Characteristics: The flow within the wetlands abutting the seasonal channel drain via overland sheetflow. The seasonal channel is within a confined channel that contains bed and bank and becomes an ephemeral drainage downstream, which flows into Alder Creek, an RPW.

Subsurface flow: **Unknown**. 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 **5-10** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **500-year or greater** 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: No water was observed within the wetland complex at the time of the site visit. During the rainy season, rainwater collects from the nearby hills and drains into the seeps, vernal pools and seasonal wetlands that are abutting the seasonal channel. The seasonal channel is part of an ephemeral drainage that flows into Alder Creek. Alder Creek is a tributary to the American River, which, at this location, is a navigable-in-fact TNW as determined by the Sacramento District on February 4, 2008 (file number SPK-2008-00099). The American River is a tributary to the Sacramento River, a navigable water of the U.S.

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: The wetlands contain hydrophytic vegetation, including Carters buttercup (*Ranunculus bonariensis*), managrass (*Glyceria declinata*), spiny-fruited buttercup (*Ranunculus muricatus*), Vasey's coyote-thistle (*Eryngium vaseyi*), field sedge (*Carex praegracilis*), Mexican rush (*Juncus mexicanus*), slender rush (*J. tenuis*), straight-beak buttercup (*Ranunculus orthorhynchus*), hairy hawkbit (*Leontodon taraxocoides*), Bermuda grass (*Cynodon dactylon*), ware cress (*Rorippa nasturtium-aquaticum*), hyssop loosestrife (*Lythrum hyssopifolia*), and needle-leaf navarretia (*Navarretia intertexta*).

Habitat for:

Federally Listed species. Explain findings: Potential vernal pool species.

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: The channel likely contains suitable habitat for invertebrates, avian and

terrestrial wildlife.

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

All wetland(s) being considered in the cumulative analysis: **15-20**

Approximately (1.209) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following: (*see attached map "Folsom 138 Wetland Delineation"*)

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Y	SW-1; 0.297	Y	Seep-3; 0.065
Y	SW-2; 0.007	Y	Seep-4; 0.069
Y	SW-3; 0.0075	Y	Seep-5; 0.110
Y	SW-4; 0.114	Y	Seep-6; 0.045
Y	SW-5; 0.044	Y	Seep-7; 0.011
Y	SW-6; 0.098	Y	Seep-8; 0.058
Y	SW-7; 0.001	Y	Seep-9; 0.058
Y	SW-8; 0.01	Y	
Y	VP-1; 0.025	Y	
Y	VP-2; 0.018	Y	
Y	Seep-1; 0.078	Y	
Y	Seep-2; 0.024	Y	

Summarize overall biological, chemical and physical functions being performed: The wetlands on the site provide various functions, including, but not limited to: water conveyance, water storage, flood control, wildlife habitat, water filtration, etc.

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: The seasonal channel contains bed and bank and consists of the upper reach of an ephemeral drainage which flows into Alder Creek, a perennial RPW that drains into the American River, a TNW. The seasonal channel and wetlands abutting the seasonal channel may contain habitat for federally listed threatened and endangered vernal pool species, as well as other wildlife, including: rabbits, deer, birds and various invertebrates. In addition, the site has been used and is currently being used for wildlife grazing. The wetlands directly abut the seasonal channel and ephemeral drainage, and during the rainy season water that is not absorbed into the ground or evaporates flows into the ephemeral drainage, which flows for an additional approximately 3 miles to Alder Creek. Although no studies have been conducted on the ephemeral drainage, if pollutants were discharged into the seasonal channel and abutting wetlands, the pollutants would be transported into the ephemeral drainage and subsequently into Alder Creek, American River, Sacramento River, and the San Francisco Bay. If the navigable waters become polluted, this would negatively impact state and federally listed threatened and/or endangered species, water supplies, and navigation. Therefore, there is a significant nexus between the seasonal channel, its abutting wetlands and navigable waters.

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:

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-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: **1800** linear feet **18** 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.

⁸See Footnote # 3.

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: **1.209** 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: _____

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: _____
 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: _____

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

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.**

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: Wetland Delineation for Folsom 138, dated March 7, 2008 and revised May 6, 2008, prepared by ECORP Consulting, Inc.
- 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: .
- 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): icubed-Aerials Express, June 2007, provided by ECORP Consulting, Inc..
or Other (Name & Date): Site visit photographs dated April 21, 2008.
- 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 seasonal channel contains bed and bank and consists of the upper reach of an ephemeral drainage which flows into Alder Creek, a perennial RPW that drains into the American River, a TNW. The wetlands abutting the seasonal channel may contain habitat for federally listed threatened and endangered vernal pool species, as well as other wildlife, including: rabbits, deer, birds and various invertebrates. In addition, the site has been used and is currently being used for wildlife grazing. The wetlands directly abut the seasonal channel and ephemeral drainage, and during the rainy season water that is not absorbed into the ground or evaporates flows into the ephemeral drainage, which flows for an additional approximately 3 miles to Alder Creek. Although no studies have been conducted on the ephemeral drainage, if pollutants were discharged into the seasonal channel and abutting wetlands, the pollutants would be transported into the ephemeral drainage and subsequently into Alder Creek, American River, Sacramento River, and the San Francisco Bay. If the navigable waters become polluted, this would negatively impact state and federally listed threatened and/or endangered species, water supplies, and navigation. Therefore, there is a significant nexus between the seasonal channel, its abutting wetlands and navigable waters.