

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

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** August 10, 2010.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Sacramento District, Alton Coal, Coal Hollow Surface Mine Project, SPK-2009-01008.

Name of water being evaluated on this JD form: Wetland 17.

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Utah County: Kane City: Alton

Center coordinates of site (lat/long in degree decimal format): Lat: 37.4000 N, Long: -112.4484 W

Universal Transverse Mercator: 12.

Name of nearest waterbody: Lower Robinson Creek.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: \_\_\_\_\_.

Name of watershed or Hydrologic Unit Code (HUC): Kanab, 015010003.

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. List other JDs: Lower Robinson Creek-Ephemeral Segment, Lower Robinson Creek-Intermittent Segments 1 and 2, Unnamed Ephemeral Streams 1 through 6, Wetlands 1 through 16.

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

Office (Desk) Determination. Date: August 6, 2010.

Field Determination. Date(s): May 7, 2010.

**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 no** "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: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft) and/or \_\_\_\_\_ acres.

Wetlands: \_\_\_\_\_ acres.

**c. Limits (boundaries) of jurisdiction based on: Pick List and Pick List**

Elevation of established OHWM (if known): \_\_\_\_\_.

**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: **The water identified as Wetland 17, and any associated seep is an intrastate isolated water. Wetland 17 is**

<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.

**located in a swale about 500 feet east of Lower Robinson Creek. No jurisdictional features (scour, bed/bank, ordinary high water mark, etc) are observed in the swale downstream of Wetland 17. Flows terminate and infiltrate within the wetland.**

### **SECTION III: CWA ANALYSIS**

- A. TNWs AND WETLANDS ADJACENT TO TNWs: NOT APPLICABLE
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS: NOT APPLICABLE
- C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: NOT APPLICABLE
- 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>4</sup>

- 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:**

- 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: 0.02 acres.

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

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

### **SECTION IV: DATA SOURCES.**

<sup>4</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.

**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 and Stream Channel Delineation for the Relocation of County Road 136 near Alton, Kane County, Utah, prepared for Alton Coal Development, LLC by Frontier Corporation USA, May 18, 2010. Wetland Delineation Technical Report, Coal Hollow Surface Mine Project, Approximately 635-acre Study Area near Alton, Kane County, Utah, prepared for Alton Coal Development, LLC by Frontier Corporation USA, January 2010. Investigation of Groundwater and Surface-Water Systems in the 630-acre Proposed Coal Hollow Mine Permit and Adjacent Area; Probably Hydrologic Consequences of Coal Mining; Recommended Monitoring Plan; Potential Alluvial Valley Floor Information, Kane County, Utah, prepared for Alton Coal Development, LLC by Petersen Hydrologic, LLC, 12 June 2007.
- 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): \_\_\_\_\_  
or  Other (Name & Date): Field Visit, May 7, 2010.
- Previous determination(s). File no. and date of response letter: \_\_\_\_\_.
- Applicable/supporting case law: \_\_\_\_\_.
- Applicable/supporting scientific literature: \_\_\_\_\_.
- Other information (please specify): State of Utah, Department of Natural Resources, Division of Oil, Gas, and Mining, Decision Document and Application Approval, Alton Coal Development, LLC, Coal Hollow Project, C/025/005, Task ID#3371, October 19, 2009. U.S. Department of the Interior, Bureau of Land Management, Alton Road Relocation Environmental Assessment (UT-110-08-011), Case File # (UTU-83017), November 2008. Utah Coal Mining Water Quality Database, Coal Hollow: <http://linux1.ogm.utah.gov/cgi-bin/appx-ogm-get.cgi?runwhat=Sites+By+Mine&MINE=41>.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The center of the Alton Coal Development, LLC, Coal Hollow Mine Project, is approximately 3 miles south of the town of Alton, Utah. Alton Coal Development, LLC has submitted the Department of Interior, Bureau of Land Management (BLM), an application to lease Federal coal adjacent to their 635.64-acres of private lands. The Alton Coal Lease Tract has been determined by BLM and encompasses approximately 3,600 acres of federal coal reserves. Under the BLM Lease by Application process, and in response to Alton Coal Development LLC's application, BLM plans to competitively offer the Alton Coal Lease Tract to interested parties in accordance with BLM's standard terms, conditions, and policies. BLM's draft Environmental Impact Statement for Alton Coal Development LLC's Federal Coal Lease Application and a competitive offer for the Federal coal lease are pending. While BLM's actions are pending, Alton Coal Development LLC is proceeding with a State of Utah application to mine on their privately held lands. Alton Coal Development, LLC has submitted a complete application (File # C/025/005) to Utah Division of Oil, Gas, and Mining (DOGGM) that, if approved, would permit surface coal mining on their 635.64-acres of private land in the Alton Coal Field. Kane County Road 136 bisects a portion of these privately held lands. To facilitate the proposed mining operations, Alton Coal Development, LLC, requested Kane County temporarily relocate part of the road. On December 12, 2008, BLM granted Kane County a 66-foot right-of-way to re-route approximately 3.1 miles of Kane County Road 136 through about 27 acres of BLM-administered land. Roadway construction is proposed after DOGGM, and other authorizing agencies, grant Alton Coal Development, LLC approval to begin mining.

In January 2010, a Wetlands Delineation was prepared for the privately-held lands. On May 7, 2010, a field visit was conducted to verify the delineation. On May 18, 2010, a Wetland and Stream Channel Delineation was prepared for the Kane County Road 136 realignment. The May 2010 submittal included the revised wetland delineation maps requested during the field visit.

Livestock grazing has been the primary land use in the project area. In November 2009, all livestock were removed in preparation for the proposed surface mine which is not a water dependent activity. No other potential interstate commerce connections were found.

Precipitation generally falls as snow in the winter and rain in the summer. The average annual total precipitation is 16.57 inches. The average annual snowfall is 83.5 inches. During the growing season, most of the precipitation (4.7 inches) occurs during the summer month of July, August, and September. If conditions are optimal, ephemeral drainages within the project area can have surface water flow in response to snow melt and rain events.

The water identified as Wetland 17 is described as follows.

<u>Water</u>	<u>Acreage</u>	<u>Location</u>
Wetland 17	0.02 acres	Proposed Coal Hollow Mine Project Permit Area

Wetland 17 receives non-measurable flow from a groundwater seep. The field visit found Wetland 17 located in an unnamed drainage swale about 500 feet upstream of Lower Robinson Creek. The swale is dominated by upland vegetation and does not have jurisdictional features (scour, bed/bank, ordinary high water mark, etc) downstream of the wetland. The swale is not a designated blue line on USGS mapping.

The water identified as Wetland 17 and any associated seep, is located in a drainage swale, has limited surface water flow, and does not support recreation, fishery, commercial, or industrial uses. No interstate commerce connections were found that would be adversely affected as a result of degradation or destruction of these waters.

Therefore, the Corps has determined that Wetland 17, and any associated seep, is non-jurisdictional because it is an intrastate, isolated, non-navigable water with no interstate commerce connection.