

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): August 25, 2010.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Low Land BL, LLC, SPK-2010-00799.
Name of water being evaluated on this JD form: Bench Lake and associated wetlands

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Utah County: Washington City: Hurricane

Center coordinates of site (lat/long in degree decimal format): Lat: 37.1341 N, Long: -113.3416 W

Universal Transverse Mercator: 12.

Name of nearest waterbody: _____.

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

Name of watershed or Hydrologic Unit Code (HUC): Upper Virgin, 15010008.

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: _____

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

Office (Desk) Determination. Date: August 10, 2010.

Field Determination. Date(s): July 1, 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):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 _____ 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):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **Bench Lake and associated wetlands are non-jurisdictional because flows terminate in a closed basin and they are intrastate, isolated, non-navigable waters with no interstate or foreign commerce connection.**

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.

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):⁴

- 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).
- 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: 9.4 acres.
- Other non-wetland waters: _____ acres. List type of aquatic resource: _____.
- Wetlands: 9.4 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.

- 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: Report for Jurisdictional Determination, Lowe Land BL, LLC property in Hurricane, Utah, July 21, 2010.
 - Data sheets prepared/submitted by or on behalf of the applicant/consultant.

⁴ 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.

- 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): Two historic photographs, 1-3-1938 and 10-1-'52.
or Other (Name & Date): Field Visit, July 1, 2010.
- 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: On April 15, 2010, a wetland delineation was prepared for the project. A field visit was conducted to verify the delineation. On July 21, 2010, an approved jurisdictional determination was requested for the project.

The 60-acre project is southwest of the Hurricane Airport on the Hurricane Bench, an internally drained basin, surrounded by Volcano Mountain to the North, Hurricane Cliffs to the East, and Sand Mountain to the west. The annual average precipitation in Hurricane, UT is approximately 8 inches. The total average snowfall is approximately 3 inches.

A 1938 aerial photograph and USGS topographic mapping indicates that Bench Lake is the terminus for two unnamed ephemeral drainages. Two historic aerial photographs indicate that, between 1938 and 1952, berms were constructed in Bench Lake. The lake subsequently developed the herb stratum (Typha Latifolia and Juncus Spp) reported on the wetland determination data forms, prepared for Lowe Livestock, LLC, by NRCS staff, and observed during the site visit. During the growing season, the wetlands regularly receive water from Hurricane Canal Company and runoff from adjacent pasture land. The site visit confirmed that the Bench Lake outflows enter adjacent land and, due to topography, remain in the closed basin.

Bench Lake and associated wetlands are on fenced, gated, private land used for livestock grazing and do not support recreation, fishery, or industrial uses. The wetland ponds currently receive grazing pressure from the livestock. The 60-acre project is proposed to improve adjacent livestock pasture by irrigation. According to the internet, Lowe Livestock advertises and sold two Black Angus bulls through Johnson Feedlot in Aurora, Utah (<http://lowelivestock.com/>). However, neither of these bulls appear to be associated with the Lowe Land, BL, LLC land discussed in this JD. No interstate or foreign 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 Bench Lake and associated wetlands are non-jurisdictional because they are intrastate, isolated, non-navigable waters with no interstate or foreign commerce connection..