

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

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** December 3, 2010.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Sacramento District, Fotowatio Renewable Ventures - Pabco Solar Project, SPK-2010-1086-SG.

Name of water being evaluated on this JD form: Ephemeral Drainages

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

State: Nevada County: Clark City: Las Vegas

Center coordinates of site (lat/long in degree decimal format): Lat: 36.23 S, Long: -114.87 W

Universal Transverse Mercator: \_\_\_\_\_

Name of nearest waterbody: Lake Mead/Colorado River.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lake Mead/Colorado River.

Name of watershed or Hydrologic Unit Code (HUC): 15010005.

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: December 3, 2010.

Field Determination. Date(s): September 14, 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** "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

The drainages associated with this project terminate within the project area. Historically, it appears that the current Pabco Gypsum Mine was located on a large isolated playa. The site is bounded on the west side by Gypsum Wash and to the east by tributaries of Government Wash, both which flow into Lake Mead at a distance of approximately 7.0 miles. The Pabco Gypsum Mine, located directly downstream, has dramatically changed the landscape and the nine drainages associated with the project terminate directly at the mine site. Gypsum and Government Washes are part of FEMA special flood hazard sites, but the drainages associated with this project are not included in FEMA flood hazard maps or are they included in the Clark County Regional Flood Control Master Plan. A site visit was done on September 14, 2010 to verify that the drainages did not drain to tributaries of Lake Mead/Colorado River. It was found that no drainages leave the site or connect to Gypsum or Government Washes. There is no evidence of flow beyond Pabco Road to the west and unnamed local road to the south of project area (Entrance to Pabco Gypsum Mine). The site is located approximately 7.0 miles from Lake Mead/Colorado River.

<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).

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: 29832 linear feet \_\_\_\_\_ width (ft) and/or \_\_\_\_\_ acres.

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

**c. Limits (boundaries) of jurisdiction based on: Established by OHWM, 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: \_\_\_\_\_.

**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). Prior to January of 2001 – these waters would not have been jurisdictional based on the MBR. They do not provide any habitat for migratory birds.
- 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): 29832 linear feet \_\_\_\_\_ width (ft).

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

<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.

- 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: Triton Engineering, 2010.
- 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): \_\_\_\_\_.
- 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 drainages associated with this project terminate within the project area. Historically, it appears that the current Pabco Gypsum Mine was located on a large isolated playa. The site is bounded on the west side by Gypsum Wash and to the east by tributaries of Government Wash, both which flow into Lake Mead at a distance of approximately 7.0 miles. The Pabco Gypsum Mine, located directly downstream, has dramatically changed the landscape and the nine drainages associated with the project terminate directly at the mine site. Gypsum and Government Washes are part of FEMA special flood hazard sites, but the drainages associated with this project are not included in FEMA flood hazard maps or are they included in the Clark County Regional Flood Control Master Plan. A site visit was done on September 14, 2010 to verify that the drainages did not drain to tributaries of Lake Mead/Colorado River. It was found that no drainages leave the site or connect to Gypsum or Government Washes. There is no evidence of flow beyond Pabco Road to the west and unnamed local road to the south of project area (Entrance to Pabco Gypsum Mine).

Regulatory Action Type	Size	Cowardin	HGM	Local Waterway
SPK-2010-1086(A) (ISOLATE)	1372.8	R4SB2	RIVERINE	Lake Mead
SPK-2010-1086(b) (ISOLATE)	4435.2	R4SB2	RIVERINE	Lake Mead
SPK-2010-1086(c) (ISOLATE)	3643.2	R4SB2	RIVERINE	Lake Mead
SPK-2010-1086(d) (ISOLATE)	4329.6	R4SB2	RIVERINE	Lake Mead
SPK-2010-1086(e) (ISOLATE)	4065.6	R4SB2	RIVERINE	Lake Mead
SPK-2010-1086(f) (ISOLATE)	3115.2	R4SB2	RIVERINE	Lake Mead
SPK-2010-1086(g) (ISOLATE)	3379.2	R4SB2	RIVERINE	Lake Mead
SPK-2010-1086(h) (ISOLATE)	2956.8	R4SB2	RIVERINE	Lake Mead
SPK-2010-1086(i) (ISOLATE)	2534.4	R4SB2	RIVERINE	Lake Mead
total	29832			