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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): February 15, 2011.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: **Sacramento District,** Fotowatio Renewable Ventures - Apex Industrial Solar Project, SPK-2010-00930.

Name of water being evaluated on this JD form: Unnamed tributaries of Apex Dry Lake

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Nevada County: Clark City: Apex

Center coordinates of site (lat/long in degree decimal format): Lat: 36.35 **N**, Long: -114.93 **W**

Universal Transverse Mercator: .

Name of nearest waterbody: Dry Lake.

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

Name of watershed or Hydrologic Unit Code (HUC): Muddy River - NV 15010012.

☒ 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: November 2, 2010.

☐ Field Determination. Date(s): _____.

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 waters[2] (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: **Established by OHWM.** 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: **All 42 washes within the project area drain into Dry Lake Valley, which is a topographically closed basin comprising approximately 160 square miles. Elevations within the basin range from about 4000-ft on the west in the**

[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.

Arrow Canyon Range to about 1970-ft at the Dry Lake Playa. The Dry Lake Range on the southeast rises to an elevation of only about 3400-ft. On the south, the Dry Lake Valley is separated from the Las Vegas Valley by a narrow topographic divide. A somewhat broader divide on the north and northeast separates Dry Lake Valley from the California Wash, a tributary of the Muddy River. On the valley floor, the major features are the many washes that drain the bounding upland areas and the playa in the central part of the valley. Surface water in the Dry Lake Valley is meager, occurring only as ephemeral flow in the streambeds that drain the upland areas or in temporary ponding of runoff in the playa. There are no gauging stations in the Dry Lake Valley, and total runoff has been estimated at 300 acre-feet per year. Heavy runoff events may result in short duration flows along reaches of washes in the basin; however, most rainfall probably infiltrates and is transpired by vegetation or evaporated from the soil. After numerous internet searches, the conclusion was reached that is no water dependent interstate commerce associated with this area. The area has already experienced a significant amount of development as an industrial park and is designated as a solar energy development zone.

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). There is no indication that the area is or has been used by 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): **58893.6** linear feet _____ width (ft).

[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.***

☐ 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: _____.
☐ 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 Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): _____
  or ☐ Other (Name & Date): _____.
☐ Previous determination(s). File no. and date of response letter: SPK-2010-01033 - Moapa Solar - February 15, 2011.
☐ Applicable/supporting case law: _____.
☐ Applicable/supporting scientific literature: _____.
☐ Other information (please specify): _____.

B. ADDITIONAL COMMENTS TO SUPPORT JD: All 42 washes within the project area drain into Dry Lake Valley, which is a topographically closed basin comprising approximately 160 square miles. A previous determination has been made for the Dry Lake and drainages on the east side of the basin under SPK-2010-01033. Elevations within the basin range from about 4000-ft on the west in the Arrow Canyon Range to about 1970-ft at the Dry Lake Playa. The Dry Lake Range on the southeast rises to an elevation of only about 3400-ft. On the south, the Dry Lake Valley is separated from the Las Vegas Valley by a narrow topographic divide. A somewhat broader divide on the north and northeast separates Dry Lake Valley from the California Wash, a tributary of the Muddy River. On the valley floor, the major features are the many washes that drain the bounding upland areas and the playa in the central part of the valley. Surface water in the Dry Lake Valley is meager, occurring only as ephemeral flow in the streambeds that drain the upland areas or in temporary ponding of runoff in the playa. There are no gauging stations in the Dry Lake Valley, and total runoff has been estimated at 300 acre-feet per year. Heavy runoff events may result in short duration flows along reaches of washes in the basin, however, most rainfall probably infiltrates and is transpired by vegetation or evaporated from the soil. After numerous internet searches, the conclusion was reached that is no water dependent interstate commerce associated with this area. I has already experienced a significant amount of development as an industrial park and is designated as a solar energy development zone. Other areas that may appear to be drainage features on the landscape did not meet the criteria for consideration - OHWM, defined bank, scour, lack of vegetation, etc. It is the Corps recommendation that these drainages be considered non-jurisdictional based on a lack of water dependent interstate commerce and the fact that they are located within an isolated, closed basin with no connection to traditionally navigable waters.

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Waters assessed on this form:

Regulatory Action Type	Size (ft)	Local Waterway
SPK-2010-00930(1) (ISOLATE)	500	Dry Lake
SPK-2010-00930(2) (ISOLATE)	500	Dry Lake
SPK-2010-00930(3) (ISOLATE)	528	Dry Lake
SPK-2010-00930(4) (ISOLATE)	528	Dry Lake
SPK-2010-00930(5) (ISOLATE)	580.8	Dry Lake
SPK-2010-00930(6) (ISOLATE)	580.8	Dry Lake
SPK-2010-00930(7) (ISOLATE)	528	Dry Lake
SPK-2010-00930(8) (ISOLATE)	500	Dry Lake
SPK-2010-00930(9) (ISOLATE)	1531.2	Dry Lake
SPK-2010-00930(10) (ISOLATE)	739.2	Dry Lake
SPK-2010-00930(11) (ISOLATE)	1584	Dry Lake
SPK-2010-00930(12) (ISOLATE)	897.6	Dry Lake
SPK-2010-00930(13) (ISOLATE)	1003.2	Dry Lake
SPK-2010-00930(14) (ISOLATE)	580.8	Dry Lake
SPK-2010-00930(15) (ISOLATE)	1584	Dry Lake
SPK-2010-00930(16) (ISOLATE)	1372.8	Dry Lake
SPK-2010-00930(17) (ISOLATE)	1742.4	Dry Lake
SPK-2010-00930(18) (ISOLATE)	3273.6	Dry Lake
SPK-2010-00930(19) (ISOLATE)	1953.6	Dry Lake
SPK-2010-00930(20) (ISOLATE)	2164.8	Dry Lake
SPK-2010-00930(21) (ISOLATE)	3273.6	Dry Lake
SPK-2010-00930(22) (ISOLATE)	1267.2	Dry Lake
SPK-2010-00930(23) (ISOLATE)	1425.6	Dry Lake
SPK-2010-00930(24) (ISOLATE)	739.2	Dry Lake
SPK-2010-00930(25) (ISOLATE)	686.4	Dry Lake
SPK-2010-00930(26) (ISOLATE)	2534.4	Dry Lake
SPK-2010-00930(27) (ISOLATE)	1056	Dry Lake
SPK-2010-00930(28) (ISOLATE)	1056	Dry Lake
SPK-2010-00930(29) (ISOLATE)	1848	Dry Lake
SPK-2010-00930(30) (ISOLATE)	2587.2	Dry Lake
SPK-2010-00930(31) (ISOLATE)	3062.4	Dry Lake
SPK-2010-00930(32) (ISOLATE)	1584	Dry Lake
SPK-2010-00930(33) (ISOLATE)	950.4	Dry Lake
SPK-2010-00930(34) (ISOLATE)	633.6	Dry Lake
SPK-2010-00930(35) (ISOLATE)	2006.4	Dry Lake
SPK-2010-00930(36) (ISOLATE)	792	Dry Lake
SPK-2010-00930(37) (ISOLATE)	1003.2	Dry Lake
SPK-2010-00930(38) (ISOLATE)	2904	Dry Lake
SPK-2010-00930(39) (ISOLATE)	2270.4	Dry Lake
SPK-2010-00930(40) (ISOLATE)	3009.6	Dry Lake
SPK-2010-00930(41) (ISOLATE)	633.6	Dry Lake
SPK-2010-00930(42) (ISOLATE)	897.6	Dry Lake