

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

31 Jan 2012

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 31 Jan 2012.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, SF Phosphates, SPK-1999-7570.
Name of water being evaluated on this JD form: Isolated Channels 2, 3, 4, 5, 6, 7, 7a, 7b, 8, 9, and 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: UT County: Uintah City: Vernal

Center coordinates of site (lat/long in degree decimal format): Lat: 40.6188 N, Long: 109.4910 W

Universal Transverse Mercator: 12627633 4497544.

Name of nearest waterbody: Big Bluff Creek.

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

Name of watershed or Hydrologic Unit Code (HUC): Ashley-Brush, Utah, 14060002.

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: SPK-1999-75070-Channel 1

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

Office (Desk) Determination. Date: 5 Jan 2012.

Field Determination. Date(s): 16 Oct 2011.

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: **Within the Tailings Impoundment Area, Channel's 2, 3, 4, 5, 6, 7, 7a, 7b, 8, 9, and 10, as depicted on the attached Figures 9 and 10, were found to have an OHWM. The delineation also included three other washes within the Tailings Impoundment Area that did not exhibit an OHWM. All of the channels within the area flow into the tailings impoundment**

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.

which was originally constructed in 1961 and is currently operated by the Simplot Phosphate Mine. The impoundment is used by the Mine to store tailings, the end waste product of the mining operation. Although the tailings dam does have a spillway for emergencies, it has never been necessary and the design of the dam insures that there is enough freeboard to completely contain the maximum design flood. Therefore, no surface water can escape the impoundment into Big Brush Creek, the closest potential RPW to the dam. The potential for seepage from the impoundment is low based on the area's bedrock and the impoundment's design. The impoundment has a seepage cutoff and collection system to prevent any seepage into Big Brush Creek. Groundwater studies using wells at the toe of the dam and the Brush Creek floodplain have shown that there is no seepage into Brush Creek. A recent study, completed August 2011, using stable isotope analysis confirmed there is no contamination of Brush Creek from the tailings impoundment. Therefore, no hydrologic connection exists between the channels within the Tailings Impoundment Area and the closest water of the US, Big Brush Creek and are therefore isolated.

Further, there is no interstate commerce connection that would be adversely affected as a result of degradation of these drainages, as such, they would not constitute waters as defined under 328.3 (a)(3).

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

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.

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):

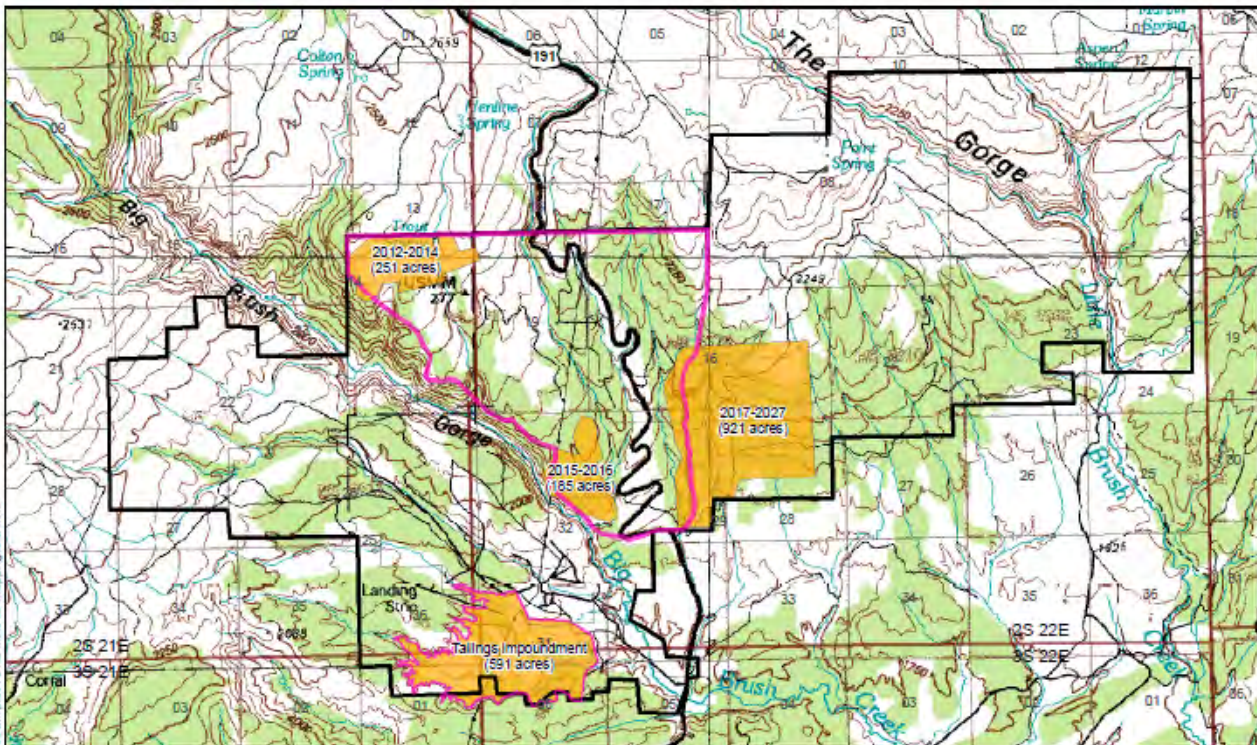
- Non-wetland waters (i.e., rivers, streams): ____ linear feet ____ width (ft).
- Lakes/ponds: ____ acres.
- Other non-wetland waters: ____ acres. List type of aquatic resource: _____.
- Wetlands: ____ acres.

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: 26 September 2011 Waters of the US Jurisdictional Determination Report.
- 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: 7.5 Minute USGS UT-Burnt Cabin Gorge
- USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey.
- 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): Included in Delineation Report
or Other (Name & Date): Included in Delineation Report.
- Previous determination(s). File no. and date of response letter: SPK-1999-75070; 9 June 1999.
- Applicable/supporting case law: _____.
- Applicable/supporting scientific literature: _____.
- Other information (please specify): _____.

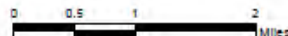
B. ADDITIONAL COMMENTS TO SUPPORT JD: Within the Tailings Impoundment Area, Channel's 2, 3, 4, 5, 6, 7, 7a, 7b, 8, 9, and 10, as depicted on the attached Figures 9 and 10, were found to have an OHWM. The total length of all the channels exhibiting an OHWM was 18,842 linear feet. The delineation also included three other washes within the Tailings Impoundment Area that did not exhibit an OHWM. All of the channels within the area flow into the tailings impoundment which was originally constructed in 1961 and is currently operated by the Simplot Phosphate Mine. The impoundment is used by the Mine to store tailings, the end waste product of the mining operation. Although the tailings dam does have a spillway for emergencies, it has never been necessary and the design of the dam insures that there is enough freeboard to completely contain the maximum design flood. Therefore, no surface water can escape the impoundment into Big Brush Creek, the closest potential RPW to the dam. The potential for seepage from the impoundment is low based on the area's bedrock and the impoundment's design. The impoundment has a seepage cutoff and collection system to prevent any seepage into Big Brush Creek. Groundwater studies using wells at the toe of the dam and the Brush Creek floodplain have shown that there is no seepage into Brush Creek. A recent study, completed August 2011, using stable isotope analysis confirmed there is no contamination of Brush Creek from the tailings impoundment. Figure 2 is the vicinity map showing the Tailings Impoundment Area as well as the other areas covered in the wetland delineation. Figures 9 and 10 show the channels located within the Tailings Impoundment Area.



BASE MAP: USGS 1:100,000 SCALE TOPOGRAPHIC MAP



- Mine Boundary
- Build-Out Areas & 2011 Delineation Study Area
- 1999 Delineation Study Area

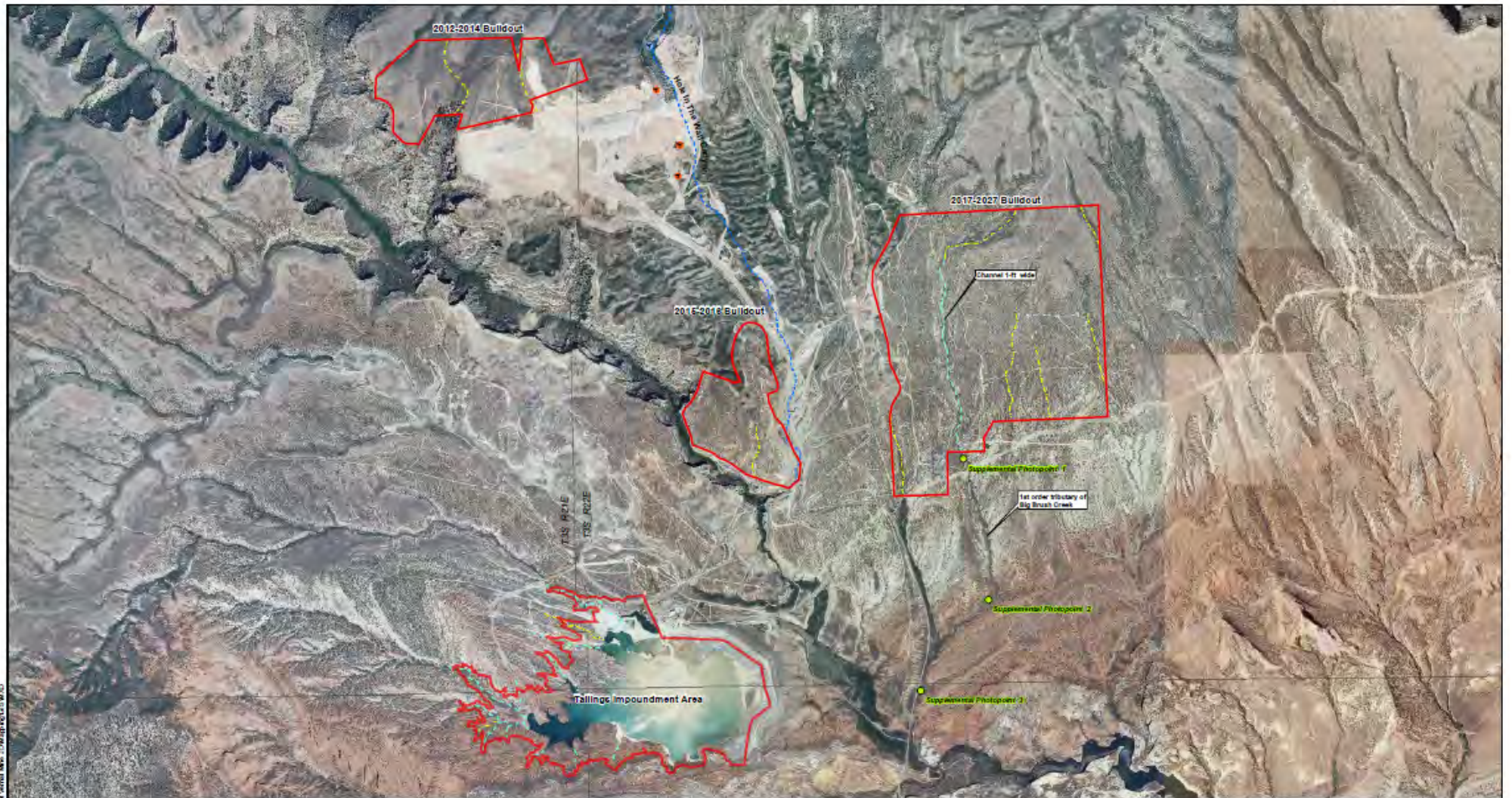


SIMPLOT PHOSPHATES, LLC WATERS OF THE U.S. SURVEY

FIGURE 2
DELINEATION STUDY AREAS



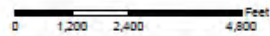
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SCALE 1 in = 1 miles	



BASE MAP: 2010 NAIP IMAGE



- Survey Boundaries
- Wetland Avoided
- Wetland Filled/Excavated (Permitted)
- Supplemental Photopoint
- - - Channel with OHWM
- Channel Filled/Excavated (Permitted)
- - - Swale without OHWM



**SIMPLOT PHOSPHATES, LLC
WATERS OF THE U.S. SURVEY**

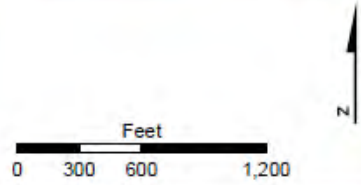
**VERNAL MINE 2011 SURVEY
SUPPLEMENTAL PHOTOPLOTS**

JBR	DRAWN BY	CHJ	DATE DRAWN	10/28/11
	SCALE	1 in = 1,250 feet		



File Path: P:\GIS\2011_Calendar\08_A1117_00_Simple_Vermal_Map_P2\MapDoc_GIS\MXD

- BASE MAP: NAIP IMAGE 2010
- Study Area Boundary 6,050 ft. amsl
 - Channel with OHWM
 - P2 Photograph Location
 - Swale without OHWM
 - 131 Reference Location (OHWM datasheet)
 - + Data Collection Site



**SIMPLLOT PHOSPHATES, LLC
WATERS OF THE U.S. SURVEY**

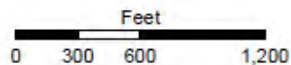
**FIGURE 9
TAILINGS IMPOUNDMENT NORTH**

	DRAWN BY	DATE
	CHJ	9/8/11
SCALE 1 inch = 500 feet		



BASE MAP: NAIP IMAGE 2010

- Study Area Boundary 6,050 ft. amsl
- P2 121 Photograph Location
- 121 Reference Location (OHWM datasheet)
- + Data Collection Site
- Channel with OHWM
- Swale without OHWM



SIMPLOT PHOSPHATES, LLC
WATERS OF THE U.S. SURVEY

FIGURE 10
TAILINGS IMPOUNDMENT SOUTH



DRAWN BY	CHJ	DATE DRAWN	9/8/11
SCALE		1 inch = 600 feet	