

**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, 2012.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Sacramento District, Milford Flat Wind Corridor Phase IV, SPK-2007-02034.

Name of water being evaluated on this JD form: Phase IV drainages flowing to Cove Creek and Cove Creek.

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

State: Utah County: Millard City: Milford and Blackrock

Center coordinates of site (lat/long in degree decimal format): Lat: 38.6497 N, Long: -112.8936 W

Universal Transverse Mercator: 12 335216.11, 4279608.25.

Name of nearest waterbody: Beaver River/Sevier River/Sevier Dry Lake.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: No TNWs in this area at this time.

Name of watershed or Hydrologic Unit Code (HUC): Beaver Bottoms-Upper Beaver, Utah 16030007.

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: Approved JD for Beaver River Bottom Milford Wind SPK-2007-02034 dated August 18, 2011, and Approved JD Milford Wind Corridor Phase I and II dated November 30, 2011

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

Office (Desk) Determination. Date: February 15, 2012.

Field Determination. Date(s): April 13 & 14, 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: N/A.

**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: N/A linear feet N/A width (ft) and/or N/A acres.

Wetlands: N/A acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual, and Established by OHWM.**

Elevation of established OHWM (if known): N/A.

**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 project site is located in the Escalante Desert. The project area is scattered with upland drainage swales

<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.

and washes which flow towards the Beaver River Bottoms. The Phase IV project area is approximately 42,574 acres in size. The Phase IV project area is located east of the Beaver River Bottoms and collects runoff from various drainages from the Mineral Mountains. The main drainage is Cove Creek. An approved JD was issued for Beaver River upstream of the confluence of Cove Creek. The approved JD determined that the Beaver River upstream of Cove Creek was not jurisdictional. According to the information provided on the datasheets submitted by the applicant, the drainages within the Phase IV area which lead to Cove Creek and Cove Creek itself do not have defined bed or bank characteristics and there were no ordinary high water mark indicators present. Although the NHD and USGS maps indicate streams in this location, they do not have the characteristics that are required by the Corps and EPA guidance to be considered a water of the United States.

The data was collected during site visits between February 24 and July 21, 2011. A total of 27 representative stream survey Flow Assessment Points were established within the project area. Temporary ponding was observed at some locations but no continuous flows were observed.

None of the 3 representative wetland datasheets completed within the study area met all 3 wetland parameters: hydrophytic vegetation, soils, and hydrology. No plant communities were dominated with hydrophytic vegetation within the study area. Some soils were very close to the hydric soil criteria and were only off a change in chroma or at that time no redoximorphic features were observed. Hydrology was observed in WB03. Photos and notes from the applicants datasheet clearly document the presence of hydrology in this area. The areas with observed hydrology are manmade impoundments constructed in uplands and designed to retain runoff for cattle. Although groundwater is not likely the source of hydrology in this area, surface runoff collected and retained long enough could induce the growth of wetland vegetation or continue to develop hydric soil characteristics. In addition, some ponding and saturation were noted along flow paths near stream sample point locations. All 3 sample points failed to meet the definition of a wetland or to meet the 3 criteria outlined in the Corps 1987 Wetland Delineation Manual and the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual Arid West Region (Version 2.0). Unless the site is disturbed or normal circumstances do not exist, the area should have all 3 criteria present to be considered a jurisdictional wetland. All of the sample points were determined to be uplands.

None of the 27 Flow Assessment Points or the 3 OHWM data points within the project area along Cove Creek identified on Figure 3 meet the characteristics for a jurisdictional water of the U.S. The sample points and areas upgradient and downgradient did not have a defined bed and bank or any indicators of OHWM. Although some photos depicted possible OHWM these are isolated features with little to no connection to other OHWM features up or down gradient. These features are characteristic of upland drainages and do not appear to carry sufficient flows to develop continuous or discontinuous OHWM through erosion and sediment transportation. The drainages were evaluated in accordance with the information provided in A Field Guide to the Identification of the ordinary High Water Mark in the Arid West Region of the Western United States. All of these drainages were considered upland drainage swales with no OHWM or wetland characteristics and therefore would not be jurisdictional.

### 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: N/A.
  - Other factors. Explain: N/A.

Identify water body and summarize rationale supporting determination: N/A

<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.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: N/A linear feet N/A width (ft).
- Other non-wetland waters: N/A acres.  
Identify type(s) of waters: N/A.
- Wetlands: N/A 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): **Upland swales were identified as non jurisdictional and did not have defined bed or bank or OHWM indicators.**

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): N/A linear feet N/A width (ft).
- Lakes/ponds: N/A acres.
- Other non-wetland waters: N/A acres. List type of aquatic resource: N/A.
- Wetlands: N/A 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): N/A linear feet N/A width (ft).
- Lakes/ponds: N/A acres.
- Other non-wetland waters: N/A acres. List type of aquatic resource: N/A.
- Wetlands: N/A 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: Wetland and Stream Channel Delineation and Jurisdictional Assessment Technical Report, Milford Wind Corridor Phase IV Project December 2011.
- 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: Edits to hydrology based on evidence of hydrology on photos 31 at WB03.
- Corps navigable waters' study: N/A.
- 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: 1:24k Milford 1978, Read 1973, Lime Mountain 1989, and Ranch Canyon 1976, and 1:24k UT-Black Rock
- USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey.
- National wetlands inventory map(s). Cite name: N/A.
- State/Local wetland inventory map(s): N/A
- FEMA/FIRM maps: N/A.
- 100-year Floodplain Elevation is: N/A (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Provided by Applicant. Wetland and Stream Channel Delineation and Jurisdictional Assessment Technical Report, Milford Wind Corridor Phase IV Project December 2011  
or  Other (Name & Date): Provided by Applicant. Wetland and Stream Channel Delineation and Jurisdictional Assessment Technical Report, Milford Wind Corridor Phase IV Project December 2011.
- Previous determination(s). File no. and date of response letter: Approved JD for Beaver River Bottom Milford Wind SPK-2007-02034 dated August 18, 2011, and Approved JD Milford Wind Corridor Phase I and II dated November 30, 2011 .
- Applicable/supporting case law: N/A.
- Applicable/supporting scientific literature: N/A.
- Other information (please specify): Site Visit Conducted on April 13 and 14, 2011.

**B. ADDITIONAL COMMENTS TO SUPPORT JD: Refer to the information provided in the Delineation Report dated December 2011, titled Wetland and Stream Channel Delineation and Jurisdictional Assessment Technical Report, Milford Wind Corridor Phase IV Project, dated December 2011, prepared by Frontier Corporation USA.**

