

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

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

- A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** October 3, 2014
Waters being assessed on this form Drainages 1-21, Hardy Creek, Nanny Creek, Sixmile Creek, Johnson Springs Complex
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Sacramento District, Newmont Long Canyon , SPK-2014-00430
- C. PROJECT LOCATION AND BACKGROUND INFORMATION:**
State: **Nevada** County/parish/borough: **Elko** City:
Center coordinates of site (lat/long in degree decimal format): Lat. **40.9588°**, Long. **-114.503279°**
Universal Transverse Mercator: **11 710117.94 4537193.34**
Name of nearest waterbody: **Nanny Creek**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Sixmile Creek**
Name of watershed or Hydrologic Unit Code (HUC): **Spring-Steptoe Valleys, Nevada, 1606008**
 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:
- D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**
 Office (Desk) Determination. Date: **September 10, 2014**
 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 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, wide, and/or acres.
Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

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: **Drainages 1-21 were delineated but did not show any indications of an ordinary high water mark and were, therefore, not considered to be jurisdictional waters. Nanny and Sixmile Creeks and Long Canyon also did not show any indicators of flow and did not exhibit an OHWM. Hardy Creek did exhibit ordinary high water mark but is an intrastate isolated water body.**

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.

The 390-acre wetland complex associated with Johnson Springs was assessed for potential interstate commerce connections based on the fact that the water at Big Spring is piped and used as a municipal water source for West Wendover, Nevada and Wendover, Utah. A permit to change the point of diversion for the water right associated with Big Spring was issued on December 22, 2010 to West Wendover. The proposed permit change was requested because of potential quantity and quality changes that may occur with mineral exploration activities in the Pequop Mountains in the vicinity of Big Spring and directly above a portion of the source of water.

SECTION III: CWA ANALYSIS

- A. **TNWs AND WETLANDS ADJACENT TO TNWs:** There are no TNW’s within the proposed project watershed.
- B. **CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):** There are no Tributaries of TNW’s within the proposed project watershed.
- C. **SIGNIFICANT NEXUS DETERMINATION: THE GOSHUTE VALLEY IS A TOPOGRAPHICAL CLOSED BASIN AND HAS NO CONNECTION TO ANY TNW**
- D. **DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): 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, wide.
- Other non-wetland waters: acres.
Identify type(s) of waters:
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- 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).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:
- 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): **2.75** acres, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: **389.58** 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, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:

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.

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: **1:24K; NV-PEQUOP SUMMIT**
- 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 and wetlands associated with this JD are all located in the Goshute Valley, a closed hydrological basin with no outlets and no tributary connections to Traditionally Navigable Waters. The topography in the Goshute Valley directs water flows to the valley floor where they are evaporated or transpired by plants. Goshute Valley is located in a closed hydrologic basin, is not considered a Navigable-In-Fact waterway and has no connection to interstate commerce.

Drainages 1-21 and Nanny Creek, Sixmile Creek and Long Canyon do not contain any indicators of an ordinary high water mark (OHWM) and do not connect to any downstream drainages or streams. These ephemeral drainages did not exhibit any different vegetation than adjacent upland areas. The drainages typically would convey flow only during run-off from snow and rain events but most of the run-off infiltrates into the ground prior to reaching Hardy Creek or Big Spring and there are no channels (bed and bank) that connect these ephemeral drainages to Hardy Creek.

The Johnson Springs System encompasses approximately 390 acres within the project area and is a source of permanent surface water. The principal discharge point is known as Big Spring and it is located on the Big Spring Ranch in the southwest quarter of the southeast quarter of Section 28, Township 36 North, Range 66 East. The cities of West Wendover, Nevada and Wendover, Utah get their municipal water source from a portion of the flow from Big Spring, which is diverted through a pipeline. On June 9, 2009, the City of West Wendover, Nevada submitted an application for a change in the point of diversion for the Big Spring water right (Permit #47617). The request for a change was initiated by proposed mineral exploration activities in the Pequop Mountains in the vicinity of Big Spring and directly above the likely source of water. In addition, interstate commerce connections were analyzed and potential industrial users of water from Nevada were investigated. Intrepid Potash Mine does not currently use any water from Nevada and has water rights exclusively in Utah. Intrepid Potash Mine does not have a permit for any water rights in Nevada. The Corps has determined that the Johnson Springs System and Hardy Creek are intrastate, isolated features with no interstate or foreign commerce connection.

A search of the Internet provided no documentation that there was an interstate commerce connection for any of the above listed waters.