

**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): December 1, 2015**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Barrick Pine Creek Headwaters, SPK-2014-00729**

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

State: **Nevada** County/parish/borough: **Eureka** City:  
Center coordinates of site (lat/long in degree decimal format): Lat. **40.16°**, Long. **-116.45°**  
Universal Transverse Mercator: **11 546386 4441307**

Name of nearest waterbody: **Pine Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Humbolt River**

Name of watershed or Hydrologic Unit Code (HUC): **Pine, Nevada., 16040104**

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: **December 1, 2015**

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 and are not** "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: **1,513,937** linear feet, **0.5-10** wide, and/or acres.

Wetlands: **40.66** 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):<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The study area is approximately 79,101 acres that is comprised of 1,513,937 linear feet of drainages and 40.66 acres of palustrine emergent wetland. Of the 40.66 acres of wetland, 2.05 acres are considered isolated and non jurisdictional. These 15 separate wetland areas are: 26-48-23-313A 0.01 acre), 26-48-23-313B (0.02 acre), 26-48-26-123A and B (0.02 acre), 27-48-25-334 (0.47 acre), 25-49-29-213 (0.11 acre), 26-48-02-322 (0.1 acre), 26-48-10-142 (0.12 acre), 26-48-11-142 (0.02 acre), 26-48-11-144 A and B (0.38 acre), 26-48-11-422 (0.21 acre), 26-48-13-432 (0.43 acre), 26-48-02-224 (0.01 acre), 26-49-05-324 (0.01 acre), 26-48-12-**

<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.

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Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Humbolt River**

Name of watershed or Hydrologic Unit Code (HUC): **Pine, Nevada., 16040104**

- 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: **December 1, 2015**  
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**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 and are not** "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: **1513937** linear feet, **0.5-6** wide, and/or          acres.  
Wetlands: **40.66** 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):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The property wetlands were addressed in two separate JD forms. This form addresses the significant and non-significant nexus wetlands. The study area is approximately 79,101 acres that is comprised of 1,513,937 linear feet of drainages and 40.66 acres of palustrine emergent wetland. Of the 40.66 acres of wetland, 0.16 acres are considered to have a non-significant nexus with the nearest TNW, the Humboldt River. These 3 separate wetland areas are: 26-48-03-321 (0.02 acres), 26-48-03-413A (0.07 acres) and 26-48-03-413B (0.07 acres). These wetland did not exhibit any physical, biological or chemical**

<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.

connection with the nearest RPW, Horse Creek. Horse Creek is at least 600 feet downslope with no channel exhibiting an OHWM connect the wetlands and this RPW.

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

##### 1. TNW

Identify TNW:

Summarize rationale supporting determination:

##### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

#### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

##### 1. Characteristics of non-TNWs that flow directly or indirectly into TNW

###### (i) General Area Conditions:

Watershed size: **Pick List**  
Drainage area: **Pick List**  
Average annual rainfall: **10** inches  
Average annual snowfall: \_\_\_\_\_ inches

###### (ii) Physical Characteristics:

###### (a) Relationship with TNW:

- Tributary flows directly into TNW.  
 Tributary flows through **1** tributaries before entering TNW.

Project waters are **25-30** river miles from TNW.  
Project waters are **Pick List** river miles from RPW.  
Project waters are **25-30** aerial (straight) miles from TNW.  
Project waters are **Pick List** aerial (straight) miles from RPW.  
Project waters cross or serve as state boundaries. Explain:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW<sup>5</sup>: **All RPW's within the site flow into Pine Creek a Tributary of the Humboldt River. Approximately 5 miles downstream of the study site Pine Creek loses its OHWM. However, on aerial photographs it is clear that the relatively flat topography causes the channel to braid at this section and then confine to one channel again, approximately 1.5 miles downstream. From this point Pine Creek flows to the north and connects with the Humboldt River approximately 25 miles downstream.**

Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

- Tributary is:  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: **0.5-10** feet  
Average depth: feet  
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):

- |                                             |                                                    |                                   |
|---------------------------------------------|----------------------------------------------------|-----------------------------------|
| <input checked="" type="checkbox"/> Silts   | <input checked="" type="checkbox"/> Sands          | <input type="checkbox"/> Concrete |
| <input checked="" type="checkbox"/> Cobbles | <input checked="" type="checkbox"/> Gravel         | <input type="checkbox"/> Muck     |
| <input checked="" type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain:    |                                                    |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): **0-3 %**

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List.** Characteristics:

Subsurface flow: **Unknown.** Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- Bed and banks
- OHWM<sup>6</sup> (check all indicators that apply):
 

<input checked="" type="checkbox"/> clear, natural line impressed on the bank	<input checked="" type="checkbox"/> the presence of litter and debris
<input checked="" type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input checked="" type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input checked="" type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input checked="" type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	

Discontinuous OHWM.<sup>7</sup> Explain: **Approximately 5 miles downstream from project site there is an approximately 1.5 mile break of clearly defined OHWM. This are is characterized with braided channels that lack an OHWM and areas of wet meadow.**

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |                                                               |                                                             |
|---------------------------------------------------------------|-------------------------------------------------------------|
| <input type="checkbox"/> High Tide Line indicated by:         | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum;         |

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

- fine shell or debris deposits (foreshore)
- physical markings/characteristics
- tidal gauges
- other (list):
- physical markings;
- vegetation lines/changes in vegetation types.

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:  
Identify specific pollutants, if known:

**(iv) Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: **Periodic wetland areas that would be classified as palustrine emergent.**
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

**(i) Physical Characteristics:**

**(a) General Wetland Characteristics:**

Properties:

Wetland size: **2.02** acres

Wetland type. Explain: **Palustrine Emergent**

Wetland quality. Explain: **Overall wetland quality is good which is evident by diversity of plant species.**

Project wetlands cross or serve as state boundaries. Explain: **No**

**(b) General Flow Relationship with Non-TNW:**

Flow is: **Pick List**. Explain:

Surface flow is: **Discrete and confined**

Characteristics: **Upland swales with evidence of flows into an RPW and adjacent wetlands located directly next to RPW's**

Subsurface flow: **Pick List**. Explain findings:

- Dye (or other) test performed:

**(c) Wetland Adjacency Determination with Non-TNW:**

- Directly abutting

- Not directly abutting

Discrete wetland hydrologic connection. Explain: **Wetlands within the site are either considered adjacent (within 40 feet) or flow through an upland swale that connects with nearest RPW.**

Ecological connection. Explain:

Separated by berm/barrier. Explain:

**(d) Proximity (Relationship) to TNW**

Project wetlands are **25-30** river miles from TNW.

Project waters are **25-30** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **50 - 100-year** floodplain.

**(ii) Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: **Water quality is generally good except for non-point source pollution from adjacent grazing activities.**

Identify specific pollutants, if known: **unknown**

**(iii) Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width):

- Vegetation type/percent cover. Explain: **Typical wetland vegetation is Juncus articus and Carex nebrascensis**

- Habitat for:

- Federally Listed species. Explain findings:

- Fish/spawn areas. Explain findings:
- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings:

**3. Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **15-20**

Approximately **2.02** acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Wetland ID</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Wetland ID</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
25-49-11-423	adjacent	20 feet	0.08		
26-48-03-134	flow upland swale	0.01			
26-48-03-444	adjacent	40 feet	0.19		
26-48-10-142	flow upland swale	0.12			
26-48-10-232	adjacent	40 feet	0.03		
26-48-10-441	flow upland swale	0.02			
26-48-10-442	flow upland swale	0.03			
26-48-10-444	flow upland swale	0.02			
27-48-25-324	adjacent	40 feet	0.02		
27-48-25-324A	adjacent	100 feet	0.02		
27-48-25-411	adjacent	100 feet	0.13		
27-48-25-244	flow upland swale	0.28			
27-49-31-344	adjacent	50 feet	0.04		
26-48-01-131	flow upland swale	0.75			
26-49-18-423	adjacent	40 feet	0.04		
26-49-122A	adjacent	40 feet	0.08		
27-48-24-421	adjacent	40 feet	0.1		
27-49-29-413	adjacent	40 feet	0.06		

Summarize overall biological, chemical and physical functions being performed: **Overall these wetlands provide hydrology for Pine Creek and its tributaries throughout a majority of the growing season. These wetlands also provide habitat and water to local wildlife. In additiona these water potentially**

**C. SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: **Significant Nexus- The 18 separate wetland areas or 2.02 acres were determined to have a significant nexus with nearby tributaries due to adjacency of 400 feet or less, or the wetlands are connected by an upland swale.**  
**Non-significant Nexus- Three wetlands totaling 0.16 acres were determined to have no significant nexus with downstream tributaries. This is due to there being no evidence of a recent hydrologic connection or biological and chemical connection. All of these wetlands were located more than 600 feet from the nearest tributary with no signs of a recent hydrologic connection except for an historic upland swale. These wetlands range in size from 0.02 acres to 0.07 acres.**

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):**

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
 TNWs: linear feet, wide, Or acres.  
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  
 Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: **Inundation within the section of Pine Creek where there is a loss of OHWM has been identified on aerial photographs between 4/9/2014 through 6/7/14. It has been determined that this section of Pine Creek flows for at least 2 months of the year since these photos were taken at random times. This arid region only receives 10 inches of precipitation annually. Therefore, Pine Creek has been determined to be a seasonal RPW. Horse Creek, Willow Creek and Dry Creek all have similar characteristics and were determined to be seasonal RPW's.**

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

- Tributary waters: **1,293,838.81** linear feet **0.5-10 feet** wide.  
 Other non-wetland waters: acres.  
Identify type(s) of waters:

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**  
 Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

- Tributary waters: linear feet, wide.  
 Other non-wetland waters: acres.  
Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**  
 Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:  
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: **37.92** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

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<sup>8</sup>See Footnote # 3.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **2.02** acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area:            acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

**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>10</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,            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: **The 0.16 acres of wetland are not hydrologically, biologically or chemically connected with the nearest RPW, Horse Creek.**
- 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,            wide.
- 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):            linear feet,            wide.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</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.



nearest RPW, Horse Creek. All of these wetlands are located along the same upland swale that does not show any signs of recent flows. Also, due to the small watershed (approximately 10 acres) and only 10 inches of precipitation a year, there would only be a hydrologic connection in extreme storm events (200-500 year events). Therefore, these wetlands do not have a biological, chemical or physical nexus with Horse Creek and have been determined non-jurisdictional. Also, the study area is not currently utilized for mining operations and gold would not be derived from these drainages. The degradation of wetlands 26-48-03-321 (0.02 acres), 26-48-03-413A (0.07 acres) and 26-48-03-413B (0.07 acres) would have no affect on the mine and thus no adverse impact on interstate commerce. Additionally, there are no fisheries of any type, there are no sand and gravel operations or any other commercial endeavor being conducted on the surface waters of this area.

324 (0.02 acre), and 26-48-12-341 (0.17 acre). None of these wetlands have a physical connection with the nearest RPW. Of the 1,513,937 linear feet of drainages, 113,996 linear feet are considered isolated and non jurisdictional. These two main drainage system: PC-T1 is 67,474.03 linear feet and PC-T2 is 46,521.64 linear feet are ephemeral and do not physically connect with Pine Creek approximately 0.5 miles south.

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

**1. TNW**

Identify TNW:

Summarize rationale supporting determination:

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

- Watershed size: **Pick List**
- Drainage area: **Pick List**
- Average annual rainfall: inches
- Average annual snowfall: inches

**(ii) Physical Characteristics:**

- (a) Relationship with TNW:
  - Tributary flows directly into TNW.
  - Tributary flows through **Pick List** tributaries before entering TNW.
- Project waters are **Pick List** river miles from TNW.
- Project waters are **Pick List** river miles from RPW.
- Project waters are **Pick List** aerial (straight) miles from TNW.
- Project waters are **Pick List** aerial (straight) miles from RPW.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>:

Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

- Tributary is:**  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain:

**Tributary** properties with respect to top of bank (estimate):

Average width:        feet  
Average depth:         feet  
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):

- |                                          |                                                    |                                   |
|------------------------------------------|----------------------------------------------------|-----------------------------------|
| <input type="checkbox"/> Silts           | <input type="checkbox"/> Sands                     | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles         | <input type="checkbox"/> Gravel                    | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock         | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain: |                                                    |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope):        %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List.** Characteristics:

Subsurface flow: **Pick List.** Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- Bed and banks
- OHWM<sup>6</sup> (check all indicators that apply):
- |                                                                    |                                                                     |
|--------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris          |
| <input type="checkbox"/> changes in the character of soil          | <input type="checkbox"/> destruction of terrestrial vegetation      |
| <input type="checkbox"/> shelving                                  | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent   | <input type="checkbox"/> sediment sorting                           |
| <input type="checkbox"/> leaf litter disturbed or washed away      | <input type="checkbox"/> scour                                      |
| <input type="checkbox"/> sediment deposition                       | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining                            | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list):                             |                                                                     |
- Discontinuous OHWM.<sup>7</sup> Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that

apply):

- |                                                                    |                                                                        |
|--------------------------------------------------------------------|------------------------------------------------------------------------|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |                                                                        |
| <input type="checkbox"/> other (list):                             |                                                                        |

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:  
Identify specific pollutants, if known:

**(iv) Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

**(i) Physical Characteristics:**

**(a) General Wetland Characteristics:**

Properties:

Wetland size:        acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

**(b) General Flow Relationship with Non-TNW:**

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

- Dye (or other) test performed:

**(c) Wetland Adjacency Determination with Non-TNW:**

- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain:
  - Ecological connection. Explain:
  - Separated by berm/barrier. Explain:

**(d) Proximity (Relationship) to TNW**

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

**(ii) Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:  
Identify specific pollutants, if known:

**(iii) Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

**3. Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately        acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)      Size (in acres)      Directly abuts? (Y/N)      Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

**C. SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):**

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
 TNWs:      linear feet,      wide, Or      acres.  
 Wetlands adjacent to TNWs:      acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  
 Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: **Inundation within the section of Pine Creek where there is a loss of OHWM has been identified on aerial photographs between 4/9/2014 through 6/7/14. It has been determined that this section of Pine Creek flows for at least 2 months of the year since these photos were taken at random times. This arid region only receives 10 inches of precipitation annually. Therefore, Pine Creek has been determined to be a seasonal RPW. Horse Creek, Willow Creek and Dry Creek all have similar characteristics and were determined to be seasonal RPW's.**

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

- Tributary waters: **1,399,941.33** linear feet **0.5-10 feet** wide.
  - Other non-wetland waters:            acres.
- Identify type(s) of waters:

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

- Tributary waters:            linear feet,            wide.
  - Other non-wetland waters:            acres.
- Identify type(s) of waters:

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
  - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
  - Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **The 38.45 acres of wetlands located within the channel of Horse Creek, Willow Creek, Dry Creek and Pine Creek channel directly abut these drainages. Horse Creek, Willow Creek and Dry Creek flow into Pine Creek a seasonal RPW the flows indirectly into the Humboldt River a traditional navigable waterway.**

Provide acreage estimates for jurisdictional wetlands in the review area: **38.45** acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area:            acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area:            acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

- As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
- Demonstrate that impoundment was created from "waters of the U.S.," or
  - Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
  - Demonstrate that water is isolated with a nexus to commerce (see E below).

**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>10</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:**

<sup>8</sup>See Footnote # 3.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</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: 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): **113,996** linear feet, **0.5-2 feet** wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: **2.05** 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:
- 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: **HDR Consultants**
- 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-ROCKY HILLS**
- 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): **Google Earth 1993 thru 2014**  
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 project area has been divided into two separate jurisdictional determinations (JD). This JD form covers the intraste isolate waters of the U.S. A separate form was developed for the 0.16 acres of non-significant nexus waters.

The project area is located on the eastern side of the Cortez Mountains, approximately 50 miles south of I-80 along SR-278 in Eureka County, Nevada. The study area is comprised of 79,101 acres of primarily public land administered by

the Bureau of Land Management. Within the study area there are 91 spring/wetland sites comprising 40.66 acres and 62 drainage features comprising 1,513,937 linear feet. On average the area receives 10 inches of precipitation.

#### **Jurisdictional Waters-**

The site has four main drainage basins; Pine Creek, Horse Creek, Willow Creek and Dry Creek. Pine Creek (relatively permanent waterway) is the main drainage in which Willow Creek, Horse Creek and Dry Creek flow into. Pine Creek flows offsite to the north and loses its defined ordinary high water mark, approximately 5 miles downstream of the study site. However, on aerial photographs it is clear that the relatively flat topography causes the channel to braid at this section and then confine to one channel again, approximately 1.5 miles downstream. From this point water flows into the Humboldt River approximately 25 miles downstream, the nearest traditional navigable waterway. Therefore any of the 38.49 acres of wetland and 1,399,941.81 of drainages that flow into Pine Creek are considered jurisdictional due to the physical connection.

#### **Isolated Non-Jurisdictional Waters-**

There are 113,996 linear feet of drainages located on the north end of the study area that are isolated. These two main drainage systems (PC-T1 is 67,474.03 linear feet and PC-T2 is 46,521.64 linear feet) are ephemeral and do not connect with Pine Creek, greater than 0.5 mile downslope. There is no evidence of any hydrologic connection with Pine Creek which is the nearest RPW. Both of these drainages are classified as ephemeral and flow into Pine Valley and fan out and dissipate. PC-T1 loses its ordinary high water mark approximately 1 mile northwest of Pine Creek and PC-T2 loses its ordinary high water mark approximately 1/2 mile northwest of Pine Creek. The combination of approximately 10 inches of precipitation annually, small watershed and porous substrate does not allow flows from either of these drainages to reach Pine Creek. All of the drainages listed above are intrastate, isolate non-navigable waters with no connection to a traditional navigable water of the U.S.

There are 15 separate isolated wetland areas totaling 2.05 acres: 26-48-23-313A (0.01 acre), 26-48-23-313B (0.02 acre), 26-48-26-123A and B (0.02 acre), 27-48-25-334 (0.47 acre), 25-49-29-213 (0.11 acre), 26-48-02-322 (0.1 acre), 26-48-10-142 (0.12 acre), 26-48-11-142 (0.02 acre), 26-48-11-144 A and B (0.38 acre), 26-48-11-422 (0.21 acre), 26-48-13-432 (0.43 acre), 26-48-02-224 (0.01 acre), 26-49-05-324 (0.01 acre), 26-48-12-324 (0.02 acre), and 26-48-12-341 (0.17 acre). All of these wetlands are classified as palustrine emergent and are groundwater sustained. Wetlands 26-48-23-313A, 26-48-23-313B, and 26-48-26-123A and B are within small valleys that do not exhibit an ordinary high water mark and are over 4 miles from the nearest RPW, Pine Creek. Wetlands 25-49-29-213, 26-48-02-322, 26-48-11-144A and B, 26-48-11-142, 26-48-11-422, 26-48-13-432, 27-48-25-334, 26-49-05-324, and 26-48-02-224 are located more than 800 feet from the nearest RPW with no potential hydrologic connection. Wetlands 26-48-11-422 and 27-48-25-334 are located 400 feet from the nearest RPW, while wetlands 26-48-10-142, 26-48-12-341 and 26-48-12-324 are all located more than 150 feet from the nearest RPW. None of the wetlands listed above exhibited any hydrologic connection to the nearest RPW, which is evident on the attached aerial photographs and topography maps. These 15 separate wetlands do not have a physical, chemical or biological connection with Pine Creek the main RPW that flows into the Humboldt River the nearest TNW.

The 2.05 acres of wetland and 113,996 linear feet of drainage are intrastate and isolated with no connection to a traditional navigable water of the U.S. These channels/wetlands are associated with the study area for Barrick Gold of North America (which has interstate commerce), as they could be impacted/filled due to future road crossings and tailings piles. However, currently the study is not utilized for mining operation and gold would not be derived from these drainages. Therefore, the degradation of these aquatic resources would have no affect on the mine and thus no adverse impact on interstate commerce. Additionally, there are no fisheries of any type, there are no sand and gravel operations or any other commercial endeavor being conducted on the surface waters of these watersheds.