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): April 4, 2017

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, **State Route 269 Bridge (EA# 06-39460)**, **SPK-2016-00284**

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: **California** County/parish/borough: **Fresno** City: near Huron
Center coordinates of site (lat/long in degree decimal format): Lat. **36.2346563241451**°, Long. **-120.110139795423**°
Universal Transverse Mercator: **10 759715.89 4013849.18**
Name of nearest waterbody: **Los Gatos Creek**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Santa Clara River**
Name of watershed or Hydrologic Unit Code (HUC): **Tulare-Buena Vista Lakes, 18030012**
☒ 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: April 3, 2017
☐ 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** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☒ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 7,007 linear feet, ~100' wide, 17.8 acres
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM**
      Elevation of established OHWM (if known): unknown

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:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

[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 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[4] 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: 529 **square miles**
Drainage area: 448 **square miles**
Average annual rainfall: **14.4** inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **3** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.
Project waters are **2-5** river miles from RPW.
Project waters are **30 (or more)** aerial (straight) miles from TNW.
Project waters are **2-5** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]: The relevant reach of the Arroyo Pasajero that we are considering begins where Los Gatos Creek and the Zapato Chino Creek join to become the Arroyo Pasajero, or Lower Los Gatos Creek. This reach extends from this point, which is approximately 1/3 of a mile west of the Interstate 5 overcrossing of the Arroyo Pasajero, to where flood flows from the Arroyo Pasajero flow into the California Aqueduct (CA) at the Gale Avenue gates, near the town of Huron. The CA flows to the Edmonston Pumping Plant where the water is pumped across the Tehachapi Mountains to the Tehachapi Afterbay,

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] 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.

where the water is divided into the East and West branches of the CA. The east branch flows into Silverwood Lake in San Bernardino County, California, a TNW. The west branch is pumped to Quail Lake in Los Angeles County, California. From Quail Lake it flows through a permanent pipeline waterway to Pyramid Lake, in Los Angeles County, California, a TNW. The water continues from Pyramid Lake through the Angeles Tunnel to Castaic Lake in Los Angeles County, California, a TNW. From Castaic Lake it flows down Castaic Creek to the Santa Clara River. The Santa Clara River flows to the Pacific Ocean, a TNW, near Ventura, California. Additional information regarding the identified TNWs is in section IV.B.

Tributary stream order, if known: 5th

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

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain:
- ☒ Manipulated (man-altered). Explain: The relevant reach of the Arroyo Pasajero is in a mostly natural condition upstream of the project site. However starting near State Route 269, the reach in and downstream of the project area to the Gale Avenue gates is heavily and regularly manipulated by California Department of Water Resources (DWR) who maintain the channel and re-construct it after large storm events.

Tributary properties with respect to top of bank (estimate):
- Average width: 100 feet
- Average depth: 5 feet
- Average side: 4:1 or greater

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☒ Other. Explain: clay		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): 4%

(c) Flow:

Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **2-5**
Describe flow regime: Storm flows typically in winter or spring
Other information on duration and volume: varies, some events may peak at 75 cfs and only last a day, but others peak over 5,000 cfs and last for 12 days or longer.

Surface flow is: **Discrete and confined.** Characteristics: The stream is confined to the channel through the review area

Subsurface flow: **Unknown**. Explain findings: No documentation regarding subsurface flow was available.
- ☐ Dye (or other) test performed:

Tributary has (check all that apply):
- ☒ Bed and banks
- ☒ OHWM[6] (check all indicators that apply):

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

- ☐ Discontinuous OHWM.[7] Explain:

[6]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.
[7]Ibid.

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

☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other (list):

☐ Mean High Water Mark indicated by:
- ☐ survey to available datum;
- ☐ 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: Water is typically discolored due to the high sediment load.

Identify specific pollutants, if known: asbestos, clay and sand sediments.

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

☒ Riparian corridor. Characteristics (type, average width): narrow (50-60' wide) band of mature cottonwoods, some tamarisk and herbaceous species.

☐ Wetland fringe. Characteristics:

☒ Habitat for: birds, reptiles, mammals

- ☐ Federally Listed species. Explain findings:
- ☐ Fish/spawn areas. Explain findings:
- ☒ Other environmentally-sensitive species. Explain findings: Due to the arid nature of the upland areas, ephemeral streams like the Arroyo Pasajero with their adjacent riparian areas provide important habitat for desert species and typically support much of the biotic diversity of desert areas. Several California Species of Concerns have been observed in the area and likely utilize the Arroyo Pasajero, including the western spadefoot toad (Spea hammondi), the San Joaquin whipsnake (*Masticophis flagellum ruddocki*), the burrowing owl (*Athene cunicularia*), the American badger (*Taxidea taxus*), and the loggerhead shrike (*Lanius ludovicianus*). The Arroyo Pasajero provides suitable nesting habitat for the loggerhead shrike and other migratory birds.
- ☐ 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: Abandoned asbestos mines, including the Atlas Asbestos Mine (a Superfund Site), and serpentine soils are located in the watershed of the Arroyo Pasajero. According to the February 1991, *Superfund Record of Decision for the Atlas Asbestos Mine*, asbestos levels in Arroyo Pasajero flood flows were measured to range from 80,000-240,000 millions of fibers per liter. According to the DWR, on at least eight occasions since 1978, the Arroyo Pasajero discharged from 412 to 35,501 acre-feet of water containing asbestos and other sediments into the CA. According to the August 2014, *Management of the California State Water Project,* the Arroyo Pasajero, which was cut-off from its historic 450-square mile alluvial fan by construction of the CA, provides a difficult operational and maintenance problem for the State Water Project due to the high sediment and asbestos levels of its flood flows, which increase treatment costs for downstream water users. According to the report, only two years after construction of the San Luis Canal segment of the CA, the detention basin, which was to provide 50 years of sediment storage, was nearly full. Additionally in 1980, asbestos discovered in Metropolitan Water District's water supply was traced to the Arroyo Pasajero. In 2004 and 2005, DWR increased the capacity of the detention basin, raised levees, purchased flood

easements on private farmlands, and installed a control structure with an inflatable rubber dam and flood gates. The enlarged detention basin and decanting weir constructed by DWR are designed to reduce the quantity of the asbestos laden sediment in the floodwaters before they discharge into the CA. With these improvements DWR achieved what they consider to be a 50-year level of protection. The last recorded flood event to discharge waters from the Arroyo Pasajero into the CA was in 2005 when 641 acre-feet were discharged over two days. Considering the infrastructure and ongoing maintenance DWR has dedicated to preventing Arroyo Pasajero flood flows from entering the CA, it is likely that the frequency of the discharges will decrease; however as the region has experienced two major droughts since 2005 (2007-2009 and 2012-2017) the revised system has not been tested by many normal or above average wet seasons since construction. In fact, State Route 269, which crosses the Arroyo Pasajero within the study area, was overtopped by flood flows eleven times between 1978 and 1999, but has only been overtopped three times since 2004. As shown in Section III.B.1.ii, the Arroyo Pasajero has a tributary connection to four TNWs, including the Pacific Ocean. Therefore, the Arroyo Pasajero could contribute substantial amounts of asbestos and other pollutants to these TNWs during large flood events. Although the infrastructure DWR has installed will reduce the frequency of the discharges into the CA and under most flows will trap asbestos and other sediments before they can enter the CA, the Arroyo Pasajero has the potential to overwhelm the infrastructure with large storm events and affect the chemical integrity of the TNWs in a substantial way, as it did in 1980 when elevated asbestos levels of 2500 millions of fibers per liter were found in the CA by Metropolitan Water District. This is a concentration more than 350 times EPA's maximum contaminant level of 7 millions of fibers per liter. Flood flows into the CA from the Arroyo Pasajero in 1980 were recorded by DWR to total 6,259 acre-feet, which is considerably less than the Arroyo Pasajero's peak recorded flow in 1978 of 35,501 acre-feet. As there is no treatment between the CA and the TNWs, asbestos and other sediment deposited by the Arroyo Pasajero in the CA would continue to the TNWs. As infrequent high flow discharges may not be entirely contained by the infrastructure DWR has constructed, we find the Arroyo Pasajero has a substantial potential to further contaminate TNWs with asbestos and other pollutants. Based on these facts we have determined the Arroyo Pasajero has the capacity to carry pollutants or flood waters to TNWs and therefore to have a significant nexus to TNWs.

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:

   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:

3. **Non-RPWs[8] 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: 7,007 linear feet, ~100' wide, 17.8 acres
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters:

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

[8]See Footnote # 3.

☐ 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: 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 jurisidictional. 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.[9]
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):[10]
☐ 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):

[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] 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, 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):
☐ 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: January 30, 2017, *Route 269 Bridge Project, EA#06-39460, Revised Aquatic Resources Delineation Map*
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets/delineation report, as revised on January 30, 2017.
  - ☐ 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; CA-CALFLAX**
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Various Google Earth images
  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): DWR provided flow data, *Superfund Record of Decision for the Atlas Asbestos Mine*, February 1991; *Five-Year Review Report for Atlas Asbestos Mine Superfund Site and Coalinga Asbestos Mine (Johns-Manville Mill) Superfund Sites, Fresno County, CA*, September 2006; *Management of the State Water Project, Bulletin 132-12, 50th Edition*, August 2014; *Sediment in Arroyo Pasajero and San Luis Canal*, July 2003; *Supplement to Aquatic Resources Delineation Report, State Route 269 Bridge Project, EA# 06-39460*, December 2016; NHDPlus v2.1 Watershed Characterization Report. DWR draft report, *Arroyo Pasajero Stream and Precipitation gages on CDEC*, undated. Early coordination with Rob Leidy of EPA who provided comments by e-mail.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Pyramid Lake, Silverwood Lake, and Castaic Reservoir were all determined to be navigable-in-fact and therefore TNWs due to the presence of boat ramps, boat rentals, campgrounds, and abundant boating and fishing. Both Pyramid Lake and Castaic Reservoir also support fishing tournaments.

The Arroyo Pasajero during flood events can transport large quantities of sediment, including asbestos, into the CA, as evidenced by the infrastructure and ongoing maintenance DWR has invested to reduce the risk to their downstream water users. As any water and pollutants entering the CA from the Arroyo Pasajero flow without any treatment to TNWs, including Silverwood and Pyramid Lakes, the Arroyo Pasajero clearly has the capacity to carry pollutants or flood waters to TNWs