

**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): June 22, 2017**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Twin View Boulevard NorCal Investments, SPK-2008-01778**

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

State: **California** County/parish/borough: **Shasta** City: **Redding**  
Center coordinates of site (lat/long in degree decimal format): Lat. **40.63308°**, Long. **-122.36209°**  
Universal Transverse Mercator: **10 553945.34 4498222.43**

Name of nearest waterbody: **Salt Creek**

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

Name of watershed or Hydrologic Unit Code (HUC): **Clear Creek-Sacramento River, 18020154**

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:

Field Determination. Date(s): **January 7, 2010, August 16, 2016**

**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: linear feet, wide, and/or **9.475** acres.

Wetlands: **1.203** acres.

**Non-wetland waters (9.46 acres)**

Name	Size	Name	Size
12:IS	0.794	30:ES	0.009
14:IS	1.574	31:IS	0.003
15:PS	5.959	33:ES	0.003
20:IS	0.001	34:ES	0.005
21:IS	0.039	36:CD	0.003
22:IS	0.002	38:CD	0.001
23A:CD	0.017	43:IS	0.163
24:IS	0.022	44:ES	0.029
27:IS	0.018	45:IS	0.307
28:IS	0.034	49:IS	0.300
29:IS	0.192		

<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).

**Wetlands (1.203 acres)**

<u>Name</u>	<u>Size</u>	<u>Name</u>	<u>Size</u>
1:WM	0.005	19:WS	0.125
2:WM	0.031	23:SW	0.038
3:WM	0.029	25:WS	0.013
4:SW	0.001	26:SW	0.009
5:WM	0.015	32:WM	0.015
6:WM	0.002	35:SW	0.001
7:WM	0.005	37:WM	0.004
8:WM	0.024	39:CP	0.064
9:WM	0.012	40:WM	0.019
10:WM	0.002	41:WM	0.006
11:WM	0.001	42:WM	0.037
13:SW	0.025	46:SW	0.009
13A:SW	0.009	47:SW	0.002
16:SW	0.001	48:SW	0.016
17:WS	0.132	50:SW	0.015
18:CP	0.528	51:WS	0.008

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 project area contains 0.102 acres of wetmeadows, seasonal wetlands, and streams that are isolated waters, with no interstate or foreign commerce connection, or do not have a significant nexus. 10:WM, 16:SW, 32:WM, 35:SW, 37:WM, 40:WM, 41:WM, 48:SW, 50:SW and 51:WS are depressions that are isolated and do not have a hydrological connection to any Relatively Permanent Waters (RPW). 31:IS, 33:ES, 34:ES do not have a significant nexus. These waters do not directly or indirectly flow into a Traditionally Navigable Water (TNW). 36:CD, and 38:CD is not considered waters of the United States in accordance with the 1986 preamble as ditches excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water.**

**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: **The site does not support a TNW.**

Summarize rationale supporting determination:

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": **N/A**

**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

<sup>3</sup> Supporting documentation is presented in Section III.F.

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: 311,076 acres  
Drainage area: 232 Pick List  
Average annual rainfall: 63.67 inches  
Average annual snowfall: 0.06 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 2 tributaries before entering TNW.

Project waters are 10-15 river miles from TNW.  
Project waters are 1 (or less) river miles from RPW.  
Project waters are 2-5 aerial (straight) miles from TNW.  
Project waters are 1 (or less) aerial (straight) miles from RPW.  
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: A complex of waters (43:IS, 23A:CD, 22:IS, 23:SW, 20:IS, 19:WS, 18CP, and 17:WS) travel through a series of culverts to be hydrologically connected to a Churn Creek, which is a RPW.

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

Average width: 1-112 feet  
Average depth: Varies feet  
Average side slopes: 2:1.

Primary tributary substrate composition (check all that apply):

- Silts
- Sands
- Concrete
- Cobbles
- Gravel
- Muck
- Bedrock
- Vegetation. Type/% cover: Varies
- Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable  
Presence of run/riffle/pool complexes. Explain: No riffle pool complexes were located on site.

Tributary geometry: Meandering

Tributary gradient (approximate average slope): the gradient varies, the downslope on most of the tributaries is an average of 2 %

(c) Flow:

Tributary provides for: Perennial  
Estimate average number of flow events in review area/year: 20 (or greater)

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

<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.

Describe flow regime: **On-site tributaries (20:IS, 21:IS, 22:IS, 23A:CD, 24:IS, 27:IS, 28:IS, 30:ES, 43:IS, 44:ES, and 45:IS) are primarily comprised of ephemeral and intermittent streams that typically flow for several days following storm events. On-site tributaries (12:IS, 14:IS, 29:IS, 49:IS) are comprised of relatively permanent waters with seasonal flow at least three months out of the year. The site also supports one perennial stream, which is Churn Creek (15:PS). Flow volumes peak in spring and winter, with lower volumes during the remainder of the year. Flow in RPw"s include runoff from upslope urban areas.**

Other information on duration and volume:

Surface flow is: **Discrete and confined.** Characteristics: **Carried via manmade conveyances for some portion of the site, however sheetflow could be exhibited in some of the aquatic resources.**

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):
  - clear, natural line impressed on the bank
  - changes in the character of soil
  - shelving
  - vegetation matted down, bent, or absent
  - leaf litter disturbed or washed away
  - sediment deposition
  - water staining
  - 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):

- 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 quality is generally good, the tributaries within the watershed collect, retain, filter and more slowly release runoff from surrounding roads, housing, pastures, farms, and other surrounding land uses. Collection of runoff onto these wetlands and stream on the site reduces chemicals and other pollutants normally found in runoff water. (gas, oil, herbicides, pesticides, nutrients, human and animal waste, and other waste material). There is also evidence of illegal dumping of trash. The tributary receives road runoff where additional pollutants, particularly petroleum byproducts will be present**

Identify specific pollutants, if known:

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

- Riparian corridor. Characteristics (type, average width): **The site supports a blue oak woodland plant community dominated by blue oak with a lesser component of gray pine. The tree canopy ranges from very open to moderately dense. The corridor exists on the headwaters of Churn Creek for this project site.**
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings: **Churn Creek and Salt Creek provides habitat for federally-listed Central Valley steelhead (Oncorhynchus mykiss).**
  - Fish/spawn areas. Explain findings: **Churn Creek and Salt Creek supports federally-listed Central Valley steelhead (O. mykiss).**
  - Other environmentally-sensitive species. Explain findings:

<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.

- Aquatic/wildlife diversity. Explain findings: **Churn Creek supports amphibians during low-flow conditions.**

## 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: **1.116** acres

Wetland type. Explain: **Palustrine emergent, and palustrine unconsolidated**

Wetland quality. Explain: **Quality varies from high quality, undisturbed features to poor quality, man-induced features (e.g., illegal 4-wheel drive vehicle activity). The poor quality wetlands are a result of dumping of trash and the adjacent roads and urban runoff. The wetlands perform important services including transforming and sequestering pollutants.**

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

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

Flow is: **Intermittent flow**. Explain: **The source wetlands within the review area are expected to maintain base flow throughout the winter months and then discharge intermittently following precipitation events at the onset of the growing season.**

Surface flow is: **Discrete and confined**

Characteristics: **Discernable on aerial photography, especially the digital globe photo from March 1, 2017.**

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

Dye (or other) test performed:

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

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: **Based on topographic maps and aerial imagery, most on-site waters have apparent hydrologic connection to downstream waters.**

Ecological connection. Explain: **Wetlands have the potential to support federally-listed crustaceans during some part of their life cycle.**

Separated by berm/barrier. Explain:

#### (d) Proximity (Relationship) to TNW

Project wetlands are **10-15** river miles from TNW.

Project waters are **2-5** 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: **Good to poor quality. Sampling was not undertaken, but it is expected that these areas will have high detectable levels of metals and petroleum byproducts due to the majority of surface runoff coming from the roadways. Pollutants would also be caused from man-induced features (e.g., illegal 4-wheel drive vehicle activity) subject to pollutants associated with on-going off-road vehicle activity (i.e., sediment and hydrocarbons).**

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: **Wetlands typically support herbaceous annual vegetation. Percent cover varies wetland to wetland.**

Habitat for:

Federally Listed species. Explain findings: **The project area contains suitable habitat for Federally-listed vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepridus packardii*). There were wet and dry season surveys completed in 2007, which showed negative results, but that survey occurred 10 years ago, and the surveys are not current.**

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: **Numerous wetland dependent non-avian vertebrate species are common in the vicinity and are likely to use these habitats and as such contribute to**

the high value and biological integrity of the project site. Invertebrate species are likely to contribute to overall aquatic diversity of the site.

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

All wetland(s) being considered in the cumulative analysis: 20-25

Approximately 1.116 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>		<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>		<u>Size (in acres)</u>
1:WM	N	0.005	2:WM	N	0.031
3:WM	N	0.029	4:SW	N	0.001
5:WM	N	0.015	6:WM	N	0.002
7:WM	N	0.005	8:WM	N	0.024
9:WM	N	0.012	11:WM	N	0.001
13:SW	N	0.025	13A:SW	N	0.009
17:WS	N	0.132	18:CP	N	0.528
19:WS	N	0.125	23:SW	N	0.038
25:WS	N	0.013	26:SW	N	0.009
39:CP	N	0.064	42:WM	N	0.037
46:SW	N	0.009	47:SW	N	0.002

Summarize overall biological, chemical and physical functions being performed: The vegetative characteristics of the wetlands and their tributaries allow for trapping of sediment and slowing of water velocities. They contribute discharge to tributary baseflow, export biomass, desynchronize floodflow, sequester sediment and toxicants, and transform nutrients. The dense vegetation helps to slow water velocity and allow settlement of suspended materials before they are discharged to the river. This is evident by the lack of erosion. The wetlands onsite have the potential to support amphibians. The on-site waters that have a hydrologic connection to RPWs help to support aquatic habitat downstream.

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: All tributaries with an apparent hydrologic connection could serve to: carry pollutants or flood waters to TNWs, provide habitat and lifecycle support for wildlife, and/or transfer nutrients and organic carbon to downstream foodwebs.
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: **All tributaries and their adjacent wetlands with an apparent hydrologic connection could serve to: carry pollutants or flood waters to TNWs, provide habitat and lifecycle support for wildlife, and/or transfer nutrients and organic carbon to downstream foodwebs.**

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: **Adjacent wetlands with an apparent hydrologic connection could serve to: carry pollutants or flood waters to TNWs, provide habitat and lifecycle support for wildlife, and/or transfer nutrients and organic carbon to downstream foodwebs.**

**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: **The On-site portion (15:PS) of Churn Creek is commonly known to exhibit perennial flow.**
- 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: **Based on field observation from multiple site visits, aerial imagery, and notes from Army Corps of Engineer staff, features 12:IS, 14:IS, 15:PS, 29:IS, and 49:IS support seasonal flow and are considered RPW's.**

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

- Tributary waters: **5,770** linear feet **Varies, See map** 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: **2608** linear feet, **Varies, see map** 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: 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: **1.015** 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.

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

Provide estimates for jurisdictional wetlands in the review area: **0.101** 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: **31:IS, 33:ES, and 34:ES were not isolated, but did not appear to have a significant nexus.**
- 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): **502** linear feet, **2 feet** wide.
- Lakes/ponds:            acres.
- Other non-wetland waters:            acres. List type of aquatic resource:
- Wetlands: **0.085** 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): **419** linear feet, **2 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:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Office concurs with data sheets/delineation report.

<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.

- 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; Project City**
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: **FIRM 060360**
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): **Digital Globe, March 1, 2017**  
or  Other (Name & Date):
- Previous determination(s). File no. and date of response letter: **SPK-2005-00819, August 25, 2009**
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): **Lidar map provided by Enplan**

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

39:CP was examined as a non-regulated water in accordance to the November 13, 1986, Federal Register (Page 41217), Part 328 (d) artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons; and (e) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States. 39:CP was constructed in the 1990's and the speculated intent was that the purpose would be for a golf course. Since then, the constructed pond has been abandoned, and the three parameter test indicates positive as a wetland.

**REFERENCES:**

1. Regulatory Programs of the Corps of Engineers, as amended (33 CFR 326), dated November 13, 1986.
2. Regulatory Guidance Letter 16-01 on Jurisdictional Determinations effective October, 2016.
3. Clean Water Act Jurisdiction Memorandum, dated December 2, 2008.
4. U.S. Army Corps of Engineers Jurisdictional Determinations Form Instructional Guidebook, dated May 30, 2007.