

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): August 5, 2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, HOLLISTER DEVELOPMENT BLOCK PROJECT ELKO, SPK-2003-25109-NO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Nevada** County/parish/borough: **Elko County** City:
Center coordinates of site (lat/long in degree decimal format): Lat. **41.12846°**, Long. **-116.5730°**
Universal Transverse Mercator: **11 537090.85 4548185.03**

Name of nearest waterbody: **Willow Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **N/A**

Name of watershed or Hydrologic Unit Code (HUC): **Rock, 16040106**

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: **Ephemeral stream channels AC30/Antelope Creek, NAC32/North/Little Antelope Creek, AC00A, AC00B/C, AC00D, AC01, AC02/3, AC05, AC06, AC09, AC11, AC20, AC22, AC24, AC29, NAC35, NAC37, NAC39, NAC41, NAC45, NAC49, NAC53, NAC55, NAC57, NAC63, NAC65, NAC70, NAC72, NAC78, NAC84, NAC88, NAC59/60, NAC61, NAC89, NAC80 and NAC81**

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

Office (Desk) Determination. Date: **August 5, 2019**

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet, wide, and/or acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Pick List

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **Antelope Spring (0.017 acres) meets all three criteria of jurisdictional wetlands (soil, vegetation, hydrology); however, the wetland discharges into a small closed basin, which is bordered by a dirt road that does not have a culvert allowing the water to flow under. There are no indicators of overflow or an OHWM flowing from the spring to any of the ephemeral drainages, meaning it does not share surface flows with a**

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.

jurisdictional drainage. Hesperon Spring (0.049 acres) also meets the three criteria of jurisdiction wetlands; however, it is a man-made spring with concrete headwalls and gate, which drains into a closed basin. The basin is bordered by a berm that restricts the flows of the spring. There are no channel OHWM or overflow indicators showing a connection between the spring and any of the ephemeral, jurisdiction drainages. All delineated wetlands are isolated features that drain toward a manmade on-site basin, an isolated feature that has no direct or indirect connection to the Rye Patch Reservoir. The Rye Patch is the closest Traditional Navigable Waters (TNW). The subject channels have discrete termini and no connection to a downstream tributary or waterbody. Therefore, wetlands Antelope Spring and Hesperon are isolated, intrastate waters with no connection to interstate commerce and are not jurisdictional.

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 waterbody⁴ 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: 911.7 square miles

Drainage area: Pick List

Average annual rainfall: 10.27 inches

Average annual snowfall: 41.5 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through Pick List tributaries before entering TNW.

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

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.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:
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):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 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
 OHWM⁶ (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):
 Discontinuous OHWM.⁷ 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: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;

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.

⁶A 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.

⁷Ibid.

- 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:
- 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:

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-RPWs⁸ 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: 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.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.

⁸See Footnote # 3.

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

¹⁰Prior 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.

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): linear feet, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: **0.066** 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: [Aquatic Resource Delineation SPK-2003-25109 Hollister Mine, Figures 1-10, prepared by Redhorse Corporation. October 24, 2018.](#)
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. [Delineation of Waters of the United States Hollister Project Elko County, Nevada, Appendix A, prepared by AMEX E&I, Inc., November 2012](#)
 - 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; Willow Cr Reservoir SE**
- USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey. <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. Accessed August 5, 2019.
- National wetlands inventory map(s). Cite name: <https://www.fws.gov/wetlands/Data/Mapper.html>. Accessed August 5, 2019
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date): [Delineation of Waters of the United States Hollister Project Elko County, Nevada, Appendix B, prepared by AMEX E&I, Inc., November 2012](#)
- Previous determination(s). File no. and date of response letter: **SPK-2003-25109, June 19, 2013**
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The 2018 review concluded that the previously delineated features have not changed. This AJD is consistent with and preserves the findings of the June 19, 2013 AJD.

There are 0.066 acres of non-jurisdictional wetlands within the project area.

Antelope Spring (0.017 acres) meets all three criteria of jurisdiction wetlands (soil, vegetation, hydrology); however, the wetland discharges into a small closed basin, which is bordered by a dirt road that does not have a culvert allowing the water to flow under. There are no indicators of overflow or an OHWM flowing from the spring to any of the ephemeral drainages, meaning it does not share surface flows with a jurisdiction drainage. Aerial photography, topographic maps, and photographs show that Antelope Spring lies within a small depression and the area surrounding the spring is relatively flat.

Hesperon Spring (0.049 acres) also meets the three criteria of jurisdiction wetlands; however, it is a man-made spring with concrete headwalls and gate, which drains into a closed basin. The basin is bordered by a berm that restricts the flows of the spring. There are no channel OHWM or overflow indicators showing a connection between the spring and any of the ephemeral, jurisdiction drainages. For Hesperon Spring, aerial photography, topographic maps, and photographs show that this spring also lies within a depression.

Both wetlands have obvious boundaries with a sharp contrast of wetland and non-wetland plant communities and steep basin sides. The wetlands lack sufficient surface flows to create indicators of shared surface flow with the ephemeral drainages, including channels and have no connection to the Rye Patch Reservoir.

There are 36 ephemeral drainages within the review area that are addressed on a separate jurisdictional determination form.

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): August 5, 2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, HOLLISTER DEVELOPMENT BLOCK PROJECT ELKO, SPK-2003-25109

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Nevada** County/parish/borough: **Elko County** City:
Center coordinates of site (lat/long in degree decimal format): Lat. **41.08408°**, Long. **-116.55841°**
Universal Transverse Mercator: **11 537090.85 4548185.03**

Name of nearest waterbody: **Rock Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Rye Patch Reservoir**

Name of watershed or Hydrologic Unit Code (HUC): **Rock, 16040106**

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: **Antelope Spring and Hespiron Spring (Isolated)**

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

Office (Desk) Determination. Date: **August 5, 2019**

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 waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: **170,587.6** linear feet, **0.5** wide, and/or **15.76** acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: **Established by OHWM**

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

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 waterbody⁴ 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: 911.7 square miles

Drainage area: Pick List

Average annual rainfall: 10.27 inches

Average annual snowfall: 41.5 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

Project waters are 10-15 river miles from RPW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Project waters are 5-10 aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵: The Rye Patch Reservoir, an instream impoundment of the Humboldt River, has been determined to be a Navigable in Fact Traditional Navigable Water (TNW). AC00A, AC00B/C, AC00D, AC01, AC02/3, AC05, AC06, AC09, AC11, AC20, AC22, AC24, and AC29 flow to AC30 (Antelope Creek), which flows to Rock Creek, which flows to the Humboldt River.

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.

NAC35, NAC37, NAC39, NAC41, NAC45, NAC49, NAC53, NAC55, NAC57, NAC63, NAC65, NAC70, NAC72, NAC78, NAC84, and NAC88 flow to NAC32 (North/Little Antelope Creek), which flows to Antelope Creek, which flows to Rock Creek, which flows to the Humboldt River.

NAC59/60, NAC61, and NAC89 flow to NAC63, which flows to North Antelope Creek, which flows to Antelope Creek, which flows to Rock Creek, which flows to the Humboldt River.

NAC80 and NAC81 flow to NAC78, which flows to North Antelope Creek, which flows to Antelope Creek, which flows to Rock Creek, which flows to the Humboldt River.

The Humboldt River flows directly into the Rye Patch Reservoir at a distance of about 125 miles.

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 2.4
Average depth: feet 0.5
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 checked="" 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: **Relatively straight**

Tributary gradient (approximate average slope): 20 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: **Streamflow of the channels are dependent almost entirely on snowpack in the surrounding Mountains. Mean annual precipitation ranges from about 6-15 inches. Year to year and longer-term variations in annual precipitation results in corresponding variations in flow of these streams.**

Other information on duration and volume:

Surface flow is: **Discrete and confined.** Characteristics:

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

- Dye (or other) test performed:

Tributary has (check all that apply):

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

⁶A 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.

⁷Ibid.

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): | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: [Water quality appears to be relatively good through the proposed project area. However, known water quality issues and concerns exist in the Humboldt Watershed.](#)
Identify specific pollutants, if known: [Mining and agricultural activities both historic and current, may contribute to poor water quality within the watershed.](#)

(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: [Channels provide spawning gravel and cobble down gradient to perennial waters that provide habitat for ESA listed *Oncorhynchus clarkii henshawi*](#)
 - Fish/spawn areas. Explain findings: [Channels provide spawning gravel and cobble down gradient to perennial waters that provide habitat for fish species.](#)
 - 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: AC30 (Antelope Creek) flows for 31,407.1 feet within the survey area. Antelope Creek flows to Rock Creek, which flows to the Humboldt River (upstream of Rye Patch Reservoir), which flows to Rye Patch Reservoir, a Traditional Navigable Water, Navigable-in-Fact. NAC32 (North Antelope Creek) flows for 47,112.6 feet within the survey area. North Antelope Creek flows to Antelope Creek. AC00A (2181.4 feet), AC00B/C (2742.3 feet), AC00D (2697 feet), AC01 (1017.2 feet), AC02/3 (397.9 feet), AC05 (1427.3 feet), AC06 (1480.5 feet), AC09 (1909.7 feet), AC11 (179.16 feet), AC20 (2348.7 feet), AC22 (1425.8 feet), AC24 (2867.7 feet), and AC29 (112.6 feet) flow to AC30 (Antelope Creek). NAC35 (1943.8 feet), NAC37 (1033.2 feet), NAC39 (1608.1 feet), NAC41 (26.2 feet), NAC45 (1410.4 feet), NAC49 (1767.9 feet), NAC53 (1365.4 feet), NAC55 (3437.6 feet), NAC57 (4887.3 feet), NAC63 (3499.8 feet), NAC65 (1224.8 feet), NAC70 (1836.1 feet), NAC72 (639.1 feet), NAC78 (7130.5 feet), NAC84 (629.3 feet), and NAC88 (8589.6 feet) flow to NAC32 (North/Little Antelope Creek). NAC59/60 (6168.04 feet), NAC61 (3843 feet), and NAC89 (2099.9 feet) flow to NAC63, which flows to North Antelope Creek. NAC80 (8826.7 feet) and NAC81 (9313.9 feet) flow to NAC78, which flows to North Antelope Creek.

Kondolf et al. (1991) demonstrated that intermittent and ephemeral high-gradient tributaries are important to spawning and rearing habitat for trout species (including ESA listed *Oncorhynchus clarkii henshawi*) in downstream perennial streams. Intermittent and ephemeral streams provide water, spawning gravel and cobble to down gradient perennial waters during flow events. Nelson et al. (1992) found *Oncorhynchus spp.* abundance to be positively influenced by proximity to sedimentary inputs within the Humboldt River watershed. The findings of Achord et al. (2007) indicate that *Oncorhynchus spp.* exhibit fine-scale population structure and local adaptations to their natal habitats.

Hilborn *et al.* (2003), found that the variation among local environmental conditions decreases extinction risk and increase sustainability of long-term species reproduction. These studies demonstrate that the individual tributaries to the Rye Patch Reservoir have a buffering effect on variability of the aggregate fish community and these populations become weaker as habitat diversity is reduced. The subject channels each have a significant effect on the physical, chemical and biological integrity of the Rye Patch Reservoir.

The channels labeled on attached maps Figure 4 each provide water, habitat and life cycle support functions for fish species present in the downstream TNW. Each provides water, gravel and cobble to perennial tributaries to the Humboldt River thereby providing spawning and rearing habitat for trout species that migrate downstream to the Rye Patch Reservoir. This process, which occurs in each of these tributaries, transfers nutrients and organic carbon from the headwaters to the downstream TNW and supports downstream food webs.

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-RPWs⁸ 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: 170,587.6 linear feet, 0.5 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.

⁸See Footnote # 3.

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):

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.
 Lakes/ponds: _____ acres.
 Other non-wetland waters: _____ acres. List type of aquatic resource:
 Wetlands: _____ acres.

SECTION IV: DATA SOURCES.

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.

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: [Aquatic Resource Delineation SPK-2003-25109 Hollister Mine, Figures 1-10, prepared by Redhorse Corporation, October 24, 2018.](#)
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. [Delineation of Waters of the United States Hollister Project Elko County, Nevada, Appendix A, prepared by AMEX E&I, Inc., November 2012](#)
 - 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; Willow Cr Reservoir SE**
- USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey. <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. Accessed August 5, 2019.
- National wetlands inventory map(s). Cite name: <https://www.fws.gov/wetlands/Data/Mapper.html>. Accessed August 5, 2019
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date): [Delineation of Waters of the United States Hollister Project Elko County, Nevada, Appendix B, prepared by AMEX E&I, Inc., November 2012](#)
- Previous determination(s). File no. and date of response letter: **SPK-2003-25109, June 19, 2013**
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
 - [Achor, S., Zabel R.W., Sandford B.P. \(2007\) Migration timing, growth, and estimated parr-to-smolt survival rates of wild Snake River spring-summer Chinook salmon from the Salmon River Basin, Idaho, to the Lower Snake River. *Trans Am Fish Soc* **136**, 142–154.](#)
 - [USEPA \(US Environmental Protection Agency\). "Connectivity of streams and wetlands to downstream waters: a review and synthesis of the scientific evidence." \(2015\).](#)
 - [Hilborn, R., Quinn T.P., Schindler D.E., Rogers D.E. \(2003\) *Biocomplexity and fisheries sustainability. Proc Natl Acad Sci* **100**, 6564–6568.](#)
 - [Kondolf, G. M., et al. "Distribution and stability of potential salmonid spawning gravels in steep boulder-bed streams of the eastern Sierra Nevada." *Transactions of the American Fisheries Society* **120.2** \(1991\): 177-186.](#)
 - [Nelson, Rodger L., et al. "Trout distribution and habitat in relation to geology and geomorphology in the North Fork Humboldt River drainage, northeastern Nevada." *Transactions of the American Fisheries Society* **121.4** \(1992\): 405-426.](#)
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The 2018 review concluded that the previously delineated features have not changed. This AJD is consistent with and preserves the findings of the June 19, 2013 AJD.

There are 170,587.6 linear feet of 36 ephemeral drainages, with a significant nexus to Rye Patch Reservoir (TNW, Navigable-in-Fact) within the project area.

AC30 (Antelope Creek) and NAC32 (North Antelope Creek) both flow southwest, receiving runoff from the Tuscarora Mountains. Antelope Creek flows for 31,407.1 feet within the survey area. Antelope Creek flows to Rock Creek, with flows to the Humboldt River (upstream of Rye Patch Reservoir), which flows to Rye Patch Reservoir, a Traditional Navigable Water, Navigable-in-Fact. North Antelope Creek flows for 47,112.6 feet within the survey area. North Antelope Creek flows to Antelope Creek. AC00A (2181.4 feet), AC00B/C (2742.3 feet), AC00D (2697 feet), AC01 (1017.2 feet), AC02/3 (397.9 feet), AC05 (1427.3 feet), AC06 (1480.5 feet), AC09 (1909.7 feet), AC11 (179.16 feet), AC20 (2348.7 feet), AC22 (1425.8 feet), AC24 (2867.7 feet), and AC29 (112.6 feet) flow to AC30 (Antelope Creek). NAC35 (1943.8 feet), NAC37 (1033.2 feet), NAC39 (1608.1 feet), NAC41 (26.2 feet), NAC45 (1410.4 feet), NAC49 (1767.9 feet), NAC53 (1365.4 feet), NAC55 (3437.6 feet), NAC57 (4887.3 feet), NAC63 (3499.8 feet), NAC65 (1224.8 feet), NAC70 (1836.1 feet), NAC72 (639.1 feet), NAC78 (7130.5 feet), NAC84 (629.3 feet), and NAC88 (8589.6 feet) flow to NAC32 (North/Little Antelope Creek). NAC59/60 (6168.04 feet), NAC61 (3843 feet), and NAC89 (2099.9 feet) flow to NAC63, which flows to North Antelope Creek. NAC80 (8826.7 feet) and NAC81 (9313.9 feet) flow to NAC78, which flows to North Antelope Creek.

These streams all have indications of an OHWM, including scour, vegetation breaks, and bed and banks. These streams are ephemeral with an average of 6 flow events per year, all of which are from rainfall events and snowmelt runoff. These ephemeral tributaries contribute spawning gravel, sediments, water and nutrients to the downstream perennial tributaries supporting natural geomorphological processes and contributing to overall stream health. The survey area receives 10 to 20 inches of rainfall each year. See Table 4.2 "Ephemeral/Intermittent Drainage Details" and "Figure 4: Waters of the United States" for details on surface flow and size for each drainage. All tributaries which Antelope Creek and North Antelope Creek flow through before reaching Rye Patch Reservoir are perennial.

There are 2 non-jurisdictional wetlands associated with these drainages, which have been addressed on a separate form.