

**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):** March 22, 2019

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Sacramento District, **South Hills Investments 13095 South Virginia Street Site, SPK-2018-00815**

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

State: **Nevada** County/parish/borough: **Washoe County** City: **Reno**  
Center coordinates of site (lat/long in degree decimal format): Lat. **39.432345°**, Long. **-119.76329°**  
Universal Transverse Mercator: **11 262166.88 4368400.51**

Name of nearest waterbody: **Whites Creek**

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

Name of watershed or Hydrologic Unit Code (HUC): **Truckee, 16050102**

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: **March 22, 2019**

Field Determination. Date(s): **October 24, 2018**

**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):<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: **874** linear **1-3** feet, wide, and/or **0.046** acres.

Wetlands: **6.944** acres.

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

**SECTION III: CWA ANALYSIS**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

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

## A. TNWs AND WETLANDS ADJACENT TO TNWs

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

### 1. TNW

Identify TNW:

Summarize rationale supporting determination:

### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

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

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

#### (i) General Area Conditions:

Watershed size: 18.5 square miles

Drainage area: 18.8 square miles

Average annual rainfall: 7.48 inches

Average annual snowfall: inches

#### (ii) Physical Characteristics:

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

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.

Project waters are 1 or less river miles from RPW.

Project waters are 5-10 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>: **The Truckee River has been determined to be a "Navigable in Fact" Traditionally Navigable Water (TNW) and is an interstate, water of the U.S. The review area's hydrology has been extensively modified with a system of ditches to support agriculture. The hydrology regime within the below ditches is continuous seasonally. Water enters the project area**

<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.

from the south via Ditch 6 and from the west via a culvert that runs under under South Virginia Street and is located approximately where Ditch 4 abuts Ditch 3. Water exits the review area via Ditch 1 at the northern edge through two culverts that pass under Old Virginia Road. Flow into the review area can be manipulated by opening or closing offsite gates in the ditch system, and flows from the review area can be routed to either or both Thomas Creek and/or Whites Creek, depending on which gates are open in the ditch system. Thomas Creek and Whites Creek are both RPWs and mapped (USGS) perennial streams. Flow passes through Thomas Creek and/or Whites Creek directly to Steamboat Creek, an RPW and mapped (USGS) perennial stream that flows directly into the Truckee River, a TNW.

Tributary stream order, if known: **Ditch 6 and the unnamed ditch that enters the project though the culvert under South Virginia Street are both 1<sup>st</sup> order channels that combine to form a 2<sup>nd</sup> order channel. Ditches 1, 2 and 3 are 2<sup>nd</sup> order channels.**

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain: **The area hydrology has been extensively modified with ditches to support agriculture.**

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

Average width: **3** feet  
Average depth: **1** feet  
Average side slopes: **2:1**.

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: **stable banks, no sign of erosion**

Presence of run/riffle/pool complexes. Explain: **no**

Tributary geometry: **relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **seasonal flow**

Estimate average number of flow events in review area/year: **1**

Describe flow regime: flows are commensurate with the opening of offsite head gates

Other information on duration and volume:

Surface flow is: **confined**. Characteristics: **Flows are confined within the bed and banks of an excavated ditch on the property.**

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  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.<sup>7</sup> Explain: **Ditches 1-6 are a continuous channel with a discontinuous OHWM. Ditches 2-4 do not exhibit OHWM but are part of the tributary and also meet all 3 wetland parameters.**

<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.

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: [Whites Creek and Thomas Creek total dissolved solids \(TDS\) concentration, nitrogen and bacterial counts were found to be relatively stable with low values \(Widmer and Jersch 2002\).](#)

Identify specific pollutants, if known:

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

- Riparian corridor. Characteristics (type, average width): [PEM](#)
- Wetland fringe. Characteristics: [PEM](#)
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: [Widmer and Jersch \(2002\) found that the riparian corridors within the Thomas Creek and Whites Creek watersheds provide very good habitat for deer, coyotes, small mammals and birds.](#)

**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: **6.944** acres ([Wetland 1 = 6.62 acre; Ditch 2 = 0.004 acre; Ditch 3 = 0.262 acre; and Ditch 4 = 0.058 acre](#))

Wetland type. Explain: [PEM](#)

Wetland quality. Explain: [Widmer and Jersch \(2002\) rated the wetlands in the Thomas Creek and Whites Creek watersheds as "sensitive". A sensitive rating means that while the system is functioning normally, alteration of aquatic resources or development encroachment can degrade the system to a non-functional state. The wetlands currently provide water quality improvements to the downstream TNW and flood protection to the uplands surrounding the aquatic resources.](#)

Project wetlands cross or serve as state boundaries. Explain: [No, the survey area is entirely within the state of Nevada.](#)

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

Flow is: **Intermittent flow**. Explain: [Ditch 1 \(R4\), Ditch 2 \(PEM\), Ditch 3 \(PEM\), Ditch 4 \(PEM\), Ditch 5 \(R4\) and Ditch 6 \(R4\) are portions of a continuous channel with a discontinuous OHWM. The segments were numbered with unique identifiers to account for different characteristics, such as different morphology and whether the area meets/does not meet all three wetland parameters. Ditch 6 and Ditch 5 both flow to Ditch 4, which itself flows through Ditch 3, Ditch 2, and Ditch 1 prior to exiting the review area. The flow characteristics of the relevant reach at the farthest downstream limit in the review area are continuous seasonal flow. Wetland 1 is connected to Ditch 1 via shallow, subsurface connection through underlying permeable sediments and intermittent overland sheet flow to Ditch 1. Flow is relatively permanent seasonal from natural hydrologic input from offsite upstream irrigation, precipitation and groundwater. The property has not been irrigated for several years.](#)

Surface flow is: **Discrete and confined**

Characteristics: [Surface flow within Ditch 1 \(R4\), Ditch 2 \(PEM\), Ditch 3 \(PEM\), Ditch 4 \(PEM\), Ditch 5 \(R4\) and Ditch 6 \(R4\).](#)

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

- Dye (or other) test performed:

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

- Directly abutting [Ditch 2, 3 and 4 are a continuation of Ditch 1 that does not have an OHWM but meets all 3 wetland parameters. Ditch 2 flows to directly abutting seasonal RPW Ditch 1.](#)
- Not directly abutting

- Discrete wetland hydrologic connection. Wetland 1 is proximal to Ditch 1 and was observed to drain into Ditch 1 and have an unbroken seasonal surface and subsurface connection during spring runoff.
- Ecological connection. Explain:
- Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW  
 Project wetlands are **5-10** river miles from TNW.  
 Project waters are **5-10** aerial (straight) miles from TNW.  
 Flow is from: **wetlands to navigable waters**.  
 Estimate approximate location of wetland as within the **2-5-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: **Widmer and Jersch (2002) rated the wetlands in the Thomas Creek and Whites Creek watersheds as "sensitive". A sensitive rating means that while the system is functioning normally, alteration of aquatic resources or development encroachment can degrade the system to a non-functional state.** Identify specific pollutants, if known: **Livestock currently grazing on site in wetland areas. High levels of E coli, fecal coliforms and TDS are presumed.**

**(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: **Widmer and Jersch (2002) found that the wetlands within the Thomas and Whites Creek watersheds provide very good habitat for deer, coyotes, small mammals and birds.**

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

All wetland(s) being considered in the cumulative analysis: **4**  
 Approximately **6.944** 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>
Wetland 1 (N)	6.62	Ditch 2 (Y)	0.004
Ditch 3 (Y)	0.262	Ditch 4 (Y)	0.058

Summarize overall biological, chemical and physical functions being performed: **Groundwater recharge and streamflow maintenance, water quality improvement through sediment removal, carbon and detritus contributions and flood protection through runoff detention. The wetlands in the review area are one of many headwater contributions to the greater Truckee River watershed.**

**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: **The wetland labeled as Wetland 1 on attached map Figure 2 was determined to be adjacent to the relevant reach comprised of the features labeled as Ditch 1. The relevant reach is a seasonal RPW that flows through 2 additional RPW tributaries before reaching the Truckee River, which is a TNW. This wetland is connected to the relevant reach at Ditch 1, through shallow subsurface connection through underlying permeable sediments and seasonal overland sheet flow, there is no defined channel connecting Wetland 1 to Ditch 1. Wetland 1 is connected to the relevant reach, which flows into Thomas and/or Whites Creeks and eventually the Truckee River an interstate Navigable-in-fact Traditional Navigable Water of the U.S.**

In their 2002 report Widmer and Jesch found that wetlands abutting and adjacent to RPWs in the Truckee River watershed are directly associated with reducing nutrient input (nitrogen and phosphorous) to the Truckee River through plant uptake. The report also found that these wetlands are important in reducing runoff and turbidity by providing areas for sediment deposition. The subject wetlands, in combination with other similarly situated wetlands (those wetlands that also have an unbroken hydrologic connection, via surface or subsurface flow, with the RPW) in the Thomas and Whites Creek watersheds have a significant effect on the physical, chemical and biological integrity of the downstream TNW, the Truckee River.

**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: **The channels (Ditches 1, 5 and 6) are all components of the same continuous seasonal channel with a discontinuous OHWM. The channel originates offsite and receives water from Thomas and Whites Creeks. Thomas and Whites Creeks are RPWs and mapped (USGS) perennial streams. Flow was observed in the relevant reach in April and May when precipitation is declining. The relevant reach discharges into culverts that route flows from the review area under Old Virginia Road and into a ditch system that drains directly to Thomas and Whites Creeks. Thomas and Whites Creeks drain directly to Steamboat Creek. Steamboat Creek drains directly to the Truckee River, an interstate navigable in fact water.**

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

- Tributary waters: **874** linear feet **1-3** 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):

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

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

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

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
  - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
  - Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **The directly abutting wetlands (Ditches 2, 3, and 4) are part of the relevant reach, which itself is a seasonal RPW. However, the acreages of those features are accounted for in this section, since they function most analogously to wetlands than to a drainage channel.**

Provide acreage estimates for jurisdictional wetlands in the review area: **0.324** 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: **6.944** acres.

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

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

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

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

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

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

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain:
- Other factors. Explain:

**Identify water body and summarize rationale supporting determination:**

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

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

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

<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.

- 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.**

- 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 Report 13095 South Virginia Street at South Hills Drive \(32.5 acres\). Figure 2, prepared by Redhorse Corporation, September 17, 2018.](#)
  - Data sheets prepared/submitted by or on behalf of the applicant/consultant. [Aquatic Resource Delineation Report 13095 South Virginia Street at South Hills Drive \(32.5 acres\). Appendix D, prepared by Redhorse Corporation, September 17, 2018.](#)
    - 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; Mount Rose NE**
  - USDA Natural Resources Conservation Service Soil Survey. Citation: [Web Soil Survey. https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx. Accessed February 21, 2019](#)
  - National wetlands inventory map(s). Cite name: [https://www.fws.gov/wetlands/Data/Mapper.html. Accessed February 21, 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): [October 24, 2018, USACE site visit photolog.](#)  
or  Other (Name & Date): [Aquatic Resource Delineation Report 13095 South Virginia Street at South Hills Drive \(32.5 acres\). Appendix D & E, prepared by Redhorse Corporation, September 17, 2018.](#)
  - Previous determination(s). File no. and date of response letter:
  - Applicable/supporting case law:
  - Applicable/supporting scientific literature:  
[Widmer, M., and Jersch, J. 2002. Watershed Assessment for Tributaries to the Truckee River Technical Report prepared for the Regional Water Planning Commission, Reno, NV.](#)
  - Other information (please specify):

- B. ADDITIONAL COMMENTS TO SUPPORT JD: [Water from Thomas and Whites Creek enters the southern border of the project from a ditch system through a culvert under South Virginia Street and Ditch 6. Ditches 1, 2, 3, 4, 5 and 6 are all components of the same continuous seasonal channel with a discontinuous OHWM. Ditches 2, 3 and 4 are components of the tributary and also meet the 3-parameter test for wetlands in the 1987 Delineation Manual. Wetland 1 is adjacent to, but does not directly abut Ditch 1. Ditch 1 drains into culverts under Old Virginia Road and exits out of the northern border of the property into a ditch system that drains directly to Thomas and/or Whites Creeks, RPWs and mapped \(USGS\) perennial streams that flow directly to Steamboat Creek, an RPW and mapped \(USGS\) Perennial](#)**

Stream which flows directly into the Truckee River a navigable in fact, interstate water of the U.S. Each wetland and channel is documented on individual forms located in the *Aquatic Resource Delineation Report 13095 South Virginia Street at South Hills Drive (32.5 acres)* report submitted by Redhorse Corporation, dated September 17, 2018. These sheets include the general area conditions, physical characteristics, chemical characteristics, and biological characteristics of each wetland/water evaluated so the responses provided in B and D of this document should be considered averages.