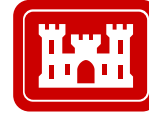




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Regulatory Program



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INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD):

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): SPK-2017-00317

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: California

County/parish/borough: Madera County

City:

Center coordinates of site (lat/long in degree decimal format): Lat. 37.0042565092837, Long. -120.040485386351.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1):

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date:

Office (Desk) and Field Determination. Office/Desk Dates: Field Date(s): September 18, 2017.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: INVESTIGATION OF POTENTIAL WATERS OF THE UNITED STATES HERMAN PROPERTY/CASTELLINA MADERA COUNTY, CALIFORNIA, October 22, 2018.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: INVESTIGATION OF POTENTIAL WATERS OF THE UNITED STATES HERMAN PROPERTY/CASTELLINA MADERA COUNTY, CALIFORNIA, October 22, 2018.

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date:

Data sheets prepared by the Corps. Title/Date:

Corps navigable waters study. Title/Date:

CorpsMap ORM map layers. Title/Date:

USGS Hydrologic Atlas. Title/Date:

USGS, NHD, or WBD data/maps. Title/Date:

USGS 8, 10 and/or 12 digit HUC maps. HUC number:

USGS maps. Scale & quad name and date: 1:24k, Madera, 2012.

USDA NRCS Soil Survey. Citation: April 9, 2019.

USFWS National Wetlands Inventory maps. Citation: May 6, 2019.

State/Local wetland inventory maps. Citation:

FEMA/FIRM maps. Citation:

Photographs: Aerial. Citation: Google Earth, August 23, 2018. or Other. Citation:

LIDAR data/maps. Citation:

- Previous JDs. File no. and date of JD letter: SPK-2017-00317, March 6, 2018.
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

- "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

- (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))
 - **Complete Table 1 - Required**
 - This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.
- (a)(2): All interstate waters, including interstate wetlands.
 - **Complete Table 2 - Required**
- (a)(3): The territorial seas.
 - **Complete Table 3 - Required**
- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.
 - **Complete Table 4 - Required**
- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 5 - Required**
- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
 - **Complete Table 6 - Required**
 - Bordering/Contiguous.
 - Neighboring:
 - (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.
 - (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.
 - (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.
- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**
 - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- **Complete Table 10 - Required**

(b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.

(b)(2): Prior converted cropland.

(b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).

(b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.

(b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.

(b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹

(b)(4)(iv): Small ornamental waters created in dry land.¹

(b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.

(b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹

(b)(4)(vii): Puddles.¹

(b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹

(b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹

(b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: The flow path from the study area to the Pacific Ocean can be seen in exhibit 1. Tributary of SJR flow path leaves project site via non-jurisdictional swales to Schmidt Creek, Dry Creek, Fresno River, then the East Side Bypass. After entering the East Side Bypass the flow path has numerous

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

paths to reach the San Joaquin River, the nearest traditionally navigable water. Numerous diversions exist as either irrigation channels or bypass structures for flood controls. Determination of a primary flow path has not been made as it is beyond the scope of this evaluation however; each path will be listed as a potential path. After entering the East Side Bypass (ESB), the first potential flow path would exit the ESB via a diversion channel that meets the Fresno River again. The Fresno River at this location is discontinuous as it has been interrupted by the ESB. The Fresno River flows through partially channelized sections to the SJR. The next potential flow path exits the ESB to Brenda Slough to the Fresno River and to the SJR. The next potential flow path would exit the ESB into Sand Slough to the Mariposa Slough to the SJR. This path seems to be unlikely as satellite imagery seems to indicate a weir at the intersection of the ESB and Sand Slough that would prohibit flow into Sand Slough but this could not be determined as fact. The next potential flow path exits the ESB into the Mariposa Bypass to Mariposa Slough to the SJR. The last potential flow path exits the ESB into East Side Slough, Deep Slough, Bear Creek, SJR. .

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	N/A	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
N/A	SW-1	San Joaquin River	<p>The nearest (a)(1)-(a)(5) water is over 4,000 linear feet from SW-1. SW-1 has been determined to not be adjacent or similarly situated to waters of the US. As seen in exhibit 1, SW-1 lies approximately 9,184 feet from the nearest a(5) water (Schmidt Creek).</p> <p>The nearest (a)(5) tributary is Schmidt Creek. This water has an ordinary high water mark (OHWM), defined bed and bank and flow patterns at beginning at approximately 37.011264°, -120.079695° (OHWM-1). National Wetland Inventory data sources identify Schmidt Creek as having a distinct flow path that continues eastward approximately 4.5 miles of OHWM-1. However based on field observation and satellite imagery this section eastward of OHWM-1 does not exhibit characteristics of an a(5) water. It lacks an ordinary high-water mark. The flow is discrete and confined within the swale but, is lacks an OHWM and has neither bed nor banks. Exhibit 3 documents all available locations where Schmidt Creek could be observed for defining characteristics. Therefore the point OHWM-1 becomes the closest a(5) to SW-1. OHWM-1 lies approximately 2 miles from SW-1, therefore it does not meet one of the parameters of similarly situated as it lies greater than 4,000 feet from the nearest water of the US, in this case Schmidt Creek an a(5) water. SW-1 is hydrologically connected to downstream waters via a defined swale be this flow path lacks an OHWM or defined bed and bank.</p> <p>SW-1 was delineated as a seasonal wetland by Live Oak Associates, Inc. on February 23, 2017. The October 22, 2018 Revised INVESTIGATION OF POTENTIAL WATERS OF THE UNITED STATES HERMAN PROPERTY/CASTELLINA MADERA COUNTY, CALIFORNIA, is incorporated as exhibit 2. A site visit was conducted on September 18, 2017, to confirm and document the extent of the delineated wetlands. The Corps concurs with the delineation of SW-1. A photo log of the site visit is incorporated as exhibit 4.</p>
N/A	NW-1	San Joaquin River	<p>The nearest (a)(1)-(a)(5) water is over 4,000 linear feet from NW-1. NW-1 has been determined to not be adjacent or similarly situated to waters of the US. As seen in exhibit 1, NW-1 lies approximately 9,184 feet from the nearest a(5) water (Schmidt Creek).</p> <p>The nearest (a)(5) tributary is Schmidt Creek. This water has an ordinary high water mark (OHWM), defined bed and bank and flow patterns at beginning at approximately</p>

			37.011264°, -120.079695° (OHWM-1). National Wetland Inventory data sources identify Schmidt Creek as having a distinct flow path that continues eastward approximately 4.5 miles of OHWM-1. However based on field observation and satellite imagery this section eastward of OHWM-1 does not exhibit characteristics of an a(5) water. It lacks an ordinary high-water mark. The flow is discrete and confined within the swale but, is lacks an OHWM and has neither bed nor banks. Exhibit 3 documents all available locations where Schmidt Creek could be observed for defining characteristics. Therefore the point OHWM-1 becomes the closest a(5) to NW-1. OHWM-1 lies approximately 2 miles from NW-1, therefore it does not meet one of the parameters of similarly situated as it lies greater than 4,000 feet from the nearest water of the US, in this case Schmidt Creek an a(5) water.
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Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
N/A	N/A
N/A	N/A

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A