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

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): April 11, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, **Gould Wash Detention Basin**, **SPK-2013-00804**

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: **Utah** County/parish/borough: **Washington County** City: **Hurricane**
Center coordinates of site (lat/long in degree decimal format): Lat. **37.1176782965121**°, Long. **-113.231061523933**°
Universal Transverse Mercator: **12 301781.52 4110256.49**
Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Virgin River (at the point of confluence with Gould Wash).**
Name of watershed or Hydrologic Unit Code (HUC): **Upper Virgin, 15010008**
☒ 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: 3/28/2022
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

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

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 55,830 linear feet.
      Wetlands: 0.41 acre

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

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

   (i) General Area Conditions:
   Watershed size: 298 **acres**
   Drainage area: **Pick List**
   Average annual rainfall: 10-13 inches
   Average annual snowfall: 3 inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through **1** tributaries before entering TNW.

   Project waters are **2-5** 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[5]: **the non-relatively permanent waterways (referred to hereafter as ephemeral channels) within the study area, W2-W13B, all flow less than one river mile to a relatively permanent waterway- Gould Wash. Gould Wash flows directly into the Virgin River just northwest of the City of Hurricane, Utah. The Virgin River has qualities of a Traditionally Navigable Waterway, including navigability in the form of tubing, rafting, and kayaking; interstate water as defined under 33 CFR 328.3, as the Virgin River flows through Utah, Arizona, and Nevada; and has interstate commerce in**

[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.

the form of National Parks, irrigation, hydroelectric production, water-related commercial activities, and irrigation.

Tributary stream order, if known: The ephemeral channels' stream order was both mapped by the project's consultant, Bowen Collins & Associates, as well as through the National Hydrography Dataset Plus. All tributaries are mapped as either first or second order before they intercept Gould Wash.

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

Tributary is: ☒ Natural. Explain: The ephemeral channels within the study area do not appear to have been manipulated. The sinuous nature of the streams, ground photos and mature xeric vegetation are supporting evidence for this determination. The segments of Gould Wash upstream of the Town of Hurricane (11,607 linear feet) also exhibit characteristics of natural tributaries.

☐ Artificial (man-made). Explain:

☒ Manipulated (man-altered). Explain: The segments of Gould Wash within the City of Hurricane (14,256 linear feet) have been anthropogenically manipulated. Both the hydrologic and physical characteristics have been altered from activities including channelization, storm water runoff, bank stabilization, and irrigation practices which have diverted flows from the river and deposited agricultural effluent like Nitrogen and Phosphorus. Segments of Gould Wash southeast of the City of Hurricane, W1D and W10, are immediately downstream of two in-stream ponds which may artificially diminish natural flows. No other manipulation is evident at W1D and W10.

Tributary properties with respect to top of bank (estimate) **for the ephemeral channels (1st and 2nd order tributaries)**:

Average width: 8 feet
Average depth: 6 feet
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):

☐ Silts	☒ Sands	☐ Concrete
☒ Cobbles	☐ Gravel	☐ Muck
☒ Bedrock	☒ Vegetation. Type/% cover: xeric, 10-20%	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: highly eroding along banks, though the streambeds typically have a restrictive layer to prevent incision.
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 5%

Tributary properties with respect to top of bank (estimate) **for Gould Wash (3rd order tributary) assessed as a RPW**:

Average width:10 feet
Average depth: 5 feet
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☒ Cobbles	☐ Gravel	☐ Muck
☒ Bedrock	☒ Vegetation. Type/% cover: riparian, 10-20%	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: incised and channelized through town and similar conditions to the upstream ephemerals to the southeast of the City of Hurricane.
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 2-5%

(c) Flow for ephemeral upstream streams:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **1**
Describe flow regime: the first and second order ephemeral streams flow in direct response to storm events. This region of Utah is relatively low in elevation and does not experience spring runoff from snowmelt unless there is an exceptionally high snowpack or snow at low elevations.

Other information on duration and volume: The ephemeral channels require large storms to convey enough flows, such as a 24-hour, 2-year flood event. When the ephemeral channels do flow, they do not flow for more than a few hours and would never flow for longer than a day.

Surface flow is: **Discrete and confined.** Characteristics: Mostly confined to channels

Subsurface flow: **Unknown**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☒ Bed and banks
☐ OHWM[6] (check all indicators that apply):
- ☐ clear, natural line impressed on the bank
- ☐ changes in the character of soil
- ☒ shelving
- ☒ vegetation matted down, bent, or absent
- ☐ leaf litter disturbed or washed away
- ☒ sediment deposition
- ☐ water staining
- ☐ other (list):
- ☐ the presence of litter and debris
- ☐ destruction of terrestrial vegetation
- ☐ the presence of wrack line
- ☐ sediment sorting
- ☒ scour
- ☐ multiple observed or predicted flow events
- ☐ abrupt change in plant community

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

☐ Mean High Water Mark indicated by:
- ☐ survey to available datum;
- ☐ physical markings;
- ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: Water is typically darker in color as flows carry sands and sediments from the dry streambeds.

Identify specific pollutants, if known: none as there aren't any developments nearby that would attribute to anthropogenic pollution.

(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: habitat for small mammals, birds.

(c) Flow for relatively permanent section of Gould Wash:

Tributary provides for: **Seasonal flow (at least 4 months continuously each year)**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: Gould Wash, as it flows through the City of Hurricane, has irrigation tailwater and storm drain inputs which contribute flows on a semi-regular basis. Since more than half of Gould Wash within the survey area flows at least seasonally, the entirety of the system is considered a relatively permanent waterway per page 6 of the revised December 2, 2008 Rapanos/Carabell Guidance. The portion of Gould Wash east of the City of Hurricane, shares the same flow frequency and duration patterns as the ephemeral channels.

Other information on duration and volume: see above.

Surface flow is: **Discrete and confined.** Characteristics: topography of Gould Wash and the adjacent foothills and canyons southeast of the City of Hurricane facilitates discrete and confied flows from the adjacent ephemeral tributaries.

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

Subsurface flow: **Unknown**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[8] (check all indicators that apply):
- ☒ clear, natural line impressed on the bank
- ☐ changes in the character of soil
- ☒ shelving
- ☒ vegetation matted down, bent, or absent
- ☐ leaf litter disturbed or washed away
- ☐ sediment deposition
- ☐ water staining
- ☐ other (list):
- ☒ the presence of litter and debris
- ☐ destruction of terrestrial vegetation
- ☐ the presence of wrack line
- ☒ sediment sorting
- ☐ scour
- ☐ multiple observed or predicted flow events
- ☒ abrupt change in plant community

☐ Discontinuous OHWM.[9] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other (list):

☐ Mean High Water Mark indicated by:
- ☐ survey to available datum;
- ☐ physical markings;
- ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: As flows persist through the City of Hurricane, water color appears clear, though there's impaired water quality from pollutants discussed below.
Identify specific pollutants, if known: Likely to be high in Nitrogen and Phosphorus due to agricultural and residential areas immediately adjacent to waterways.

(iv) Biological Characteristics. Channel supports (check all that apply):
☒ Riparian corridor. Characteristics (type, average width): riparian vegetation exists in all photo points where Gould Wash runs through the City of Hurricane. Riparian vegetation also exists along Gould Wash near wetland W11.
☒ Wetland fringe. Characteristics: The one wetland identified within the study area, W11, is a fringe wetland that directly abuts Gould Wash.
☒ Habitat for:
- ☐ Federally Listed species. Explain findings:
- ☐ Fish/spawn areas. Explain findings:
- ☐ Other environmentally-sensitive species. Explain findings:
- ☒ Aquatic/wildlife diversity. Explain findings: habitat for small mammals, 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: 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**

[8]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.
[9]Ibid.

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: **1**
Approximately **0.41** 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: **The ephemeral channels that flow into Gould Wash, and eventually into the Virgin River, have a chemical, biological, and physical nexus that is more than speculative and imperceivable. These channels have a surface water connection to the Virgin River downstream when they flow, conveying flood waters, organic materials and sediment flows necessary for proper health and maintenance of downstream RPWs/TNW, as well as providing habitat for birds, small mammals, and other wildlife. The Virgin River meets the criteria of a Navigable in Fact TNW at its point of confluence with Gould Wash, in accordance with Appendix D of the Rapanos Guidance. The criteria includes interstate commerce through waterborne recreation, including tubing, rafting and kayaking; interstate water as defined under 33 CFR 328.3, as the Virgin River flows through Utah, Arizona, and Nevada; and has interstate commerce in the form of National Parks, irrigation, hydroelectric production, water-related commercial activities, and irrigation.**

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: based on info submitted by applicant indicating continuous flows due to irrigation return flows (effluent) as well as aerial photos and storm water runoff from the city of hurricane all indicate continuous, likely seasonal, flow.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☒ Tributary waters: **25,863** linear feet wide.
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters:

3. **Non-RPWs[10] 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: **29,967** 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.

[10]See Footnote # 3.

☐ 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: **Wetland W11 directly abuts Gould Wash, which the Corps has identified as an seasonal RPW as more than 50% of the wash within the study area flows for four months.**

Provide acreage estimates for jurisdictional wetlands in the review area: **0.41** acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

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

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

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

7. Impoundments of jurisdictional waters.[11]

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):[12]

☐ 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):

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

[12] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, wide.
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource:
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): 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: **Appendix E, Delineation Results Figures (Figures 4A-4D) of the July 2021 Gould Wash Flood Protection Project Aquatic Resource Delineation Report.**
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ 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; Hurricane, The Divide, & Little Creek Mountain. Appendix A, Site Location Figures (Figure 1B) of the July 2021 Gould Wash Flood Protection Project Aquatic Resource Delineation Report.**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Appendix C: Soils Figures and Custom Soils Report,July 2021 Gould Wash Flood Protection Project Aquatic Resource Delineation Report.**
- ☒ National wetlands inventory map(s). Cite name: **Appendix B, NWI Figures (2A-2D), of the July 2021 Gould Wash Flood Protection Project Aquatic Resource Delineation Report.**
- ☐ 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): **Appendix G, Additional Photos, of the July 2021 Gould Wash Flood Protection Project Aquatic Resource Delineation Report.**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:
According to the 2008 Revised Rapanos Guidance, the flow regime that best characterizes the entire tributary (i.e, a majority of the system across all mapped segments) determines Gould Wash as being a relatively permanent waterway as opposed to a non-relatively permanent waterway. The portions of Gould Wash that flow through the City of Hurricane (W1E, W1F, W1G) which are described as having continuous flow for at least four months each year constitute 14,256 linear feet, whereas the other segments which are described as having ephemeral flow (W1A, W1B, W1C, W1D), constitutes 11,607 linear feet. Therefore, the Corps concludes that the entire relevant reach of Gould Wash—for purposes of verifying this AJD request—is a seasonal RPW. As such, the one wetland feature within the study area, W11, is directly adjacent to a relatively permanent waterway and is jurisdictional by Rule.

The ephemeral channels (i.e., non-RPWs) all flow into Gould Wash which connects downstream to the Virgin River. As discussed above in Section III B,1,(ii)(a) and Section III C,2, the Virgin River exhibits qualities of a Navigable In Fact Traditionally Navigable Waterway at its point of confluence with Gould Wash . Therefore, all ephemeral channels have a significant nexus to the Virgin River and are jurisdictional under current Corps guidance.