

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

## SECTION I: BACKGROUND INFORMATION

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**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 08-May-2008

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Sacramento District, SPK-2007-02139-JD4

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

State : CA - California  
 County/parish/borough: Butte  
 City: Chico  
 Lat: 39.6418693922974  
 Long: -121.647738261647  
 Universal Transverse Mercator: [ ]  
 Name of nearest waterbody: Clear Creek  
 Name of nearest Traditional Navigable Water (TNW): Sacramento River  
 Name of watershed or Hydrologic Unit Code (HUC): Lower Sacramento River



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 the action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION:**



Office Determination Date:


 24-Oct-2007

Field Determination Date(s):

## SECTION II: SUMMARY OF FINDINGS

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**A. RHA SECTION 10 DETERMINATION OF JURISDICTION**

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.



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

**1. Waters of the U.S.****a. Indicate presence of waters of U.S. in review area:<sup>1</sup>**

Water Name	Water Type(s) Present
Ephemeral 3	Non-RPWs that flow directly or indirectly into TNWs

**b. Identify (estimate) size of waters of the U.S. in the review area:**Area: 46.255 (m<sup>2</sup>)

Linear: 46.255 (m)

**c. Limits (boundaries) of jurisdiction:**

based on: 1987 Delineation Manual.

OHWM Elevation: (if known)

**2. Non-regulated waters/wetlands:<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****A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

**2. Wetland Adjacent to TNW**

Not Applicable.

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):****1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: 593 square miles

Drainage area: 375111 acres

Average annual rainfall: 24.4 inches

Average annual snowfall: 0 inches

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

:Number of tributaries

Project waters are 25-30 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:

Project waters does not cross any state boundaries

Identify flow route to TNW:<sup>5</sup>

ephemeral drainage flows east into an un-named tributary which flows into Clear Creek. Clear Creek flows southeast into Dry Creek, which flows into Cherokee Canal. Cherokee Canal Flows into Butte Creek, which flows into the Sacramento River, a traditionally navigable water of the United States.

**Tributary Stream Order, if known:**

Order	Tributary Name
5	Ephemeral 3

**(b) General Tributary Characteristics:**

**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
Ephemeral 3	-	X	Highly disturbed swales have been converted and channelized to connect to Clear Creek	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
Ephemeral 3	.5	1	2:1

**Primary tributary substrate composition:**

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
Ephemeral 3	X	-	-	-	-	X	-	X	-

**Vegetation Explained:**

Tributary Name	Percent Cover	Vegetation Explained
Ephemeral 3	30	annual grasses

**Tributary (conditions, stability, presence, geometry, gradient):**

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
Ephemeral 3	Ephemeral drainage OW09 was dry during the October 2007 field visit. Bed and bank features were present with a 2% gradient	This drainage feature supports rainfall and run-off from nearby roads and agricultural fields. No riffle pool complexes or runs are associated with this feature.	Relatively straight	2

**(c) Flow:**

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
Ephemeral 3	Ephemeral flow	2-5	Ephemeral stream supports rainfall and run-off. This feature only has water for a short period of time after a precipitation event.	-

**Surface Flow is:**

Tributary Name	Surface Flow	Characteristics
Ephemeral 3	Confined	Confined to the bed and bank. Flows indirectly into Clear Creek, a tributary to the Sacramento River

**Subsurface Flow:**

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Ephemeral 3	Unknown	-	-

**Tributary has:**

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM <sup>7</sup>	Explain
Ephemeral 3	X	X	-	-

**Tributaries with OHWM<sup>6</sup> - (as indicated above)**

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow
Ephemeral 3	X	X	-	X	-	X	-	X	-	X	-	X	

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

**High Tide Line indicated by:**

Not Applicable.

**Mean High Water Mark indicated by:**

Not Applicable.

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Tributary Name	Explain	Identify specific pollutants, if known
Ephemeral 3	No water was present during the October 2007 site visit. The rainfall for 2007 was well below average.	No pollutants known

**(iv) Biological Characteristics. Channel supports:**

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
Ephemeral 3	-	-	-	-	-

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW****(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

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

Not Applicable.

**Surface flow is:**

Not Applicable.

**Subsurface flow:**

Not Applicable.

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

Not Applicable.

**(d) Proximity (Relationship) to TNW:**

Not Applicable.

**(ii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Not Applicable.

**(iii) Biological Characteristics. Wetland supports:**

Not Applicable.

**3. Characteristics of all wetlands adjacent to the tributary (if any):****All wetlands being considered in the cumulative analysis:**

Not Applicable.

**Summarize overall biological, chemical and physical functions being performed:**

Not Applicable.

**C. SIGNIFICANT NEXUS DETERMINATION**

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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.

**Findings for:** Ephemeral 3

Ephemeral drainage OW09 and its tributary flow directly into Clear Creek, a relatively permanent water of the United States. Clear Creek is a non-navigable tributary to the Sacramento River. A significant Nexus call is not required for this feature.

## **D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:**

**1. TNWs and Adjacent Wetlands:**

Not Applicable.

**2. RPWs that flow directly or indirectly into TNWs:**

Not Applicable.

**Provide estimates for jurisdictional waters in the review area:**

Not Applicable.

**3. Non-RPWs that flow directly or indirectly into TNWs.<sup>8</sup>**

Not Applicable.

**Provide estimates for jurisdictional waters in the review area:**

Tributary Name	Type	Size (Linear) (m)	Size (Area) (m <sup>2</sup> )
Ephemeral 3	Non-RPWs that flow directly or indirectly into TNWs	-	4.4515416
<b>Total:</b>		<b>0</b>	<b>4.4515416</b>

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

**Provide estimates for jurisdictional wetlands in the review area:**

Not Applicable.

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

Not Applicable.

**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:<sup>10</sup>**

Not Applicable.

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

Not Applicable.

**Provide estimates for jurisdictional waters in the review area:**

Not Applicable.

**F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS**

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):

**Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:**

Not Applicable.

**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.**

Not Applicable.

**SECTION IV: DATA SOURCES.****A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Durham-Pentz Road and Butte Campus Drive Signalization Project	Delineation of Waters of the United States prepared by Gallaway Consulting
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Durham-Pentz Road and Butte Campus Drive Signalization Project	Delineation of Waters of the United States prepared by Gallaway Consulting
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	Delineation of Waters of the United States prepared by Gallaway Consulting
----Office concurs with data sheets/delineation report	-	Delineation of Waters of the United States prepared by Gallaway Consulting
--USDA Natural Resources Conservation Service Soil Survey.	-	Delineation of Waters of the United States prepared by Gallaway Consulting
--USDA Natural Resources Conservation Service Soil Survey.	-	Delineation of Waters of the United States prepared by Gallaway Consulting
--USDA Natural Resources Conservation Service Soil Survey.	Durham-Pentz Road and Butte Campus Drive Signalization Project	Delineation of Waters of the United States prepared by Gallaway Consulting
--Photographs	-	Delineation of Waters of the United States prepared by Gallaway Consulting
----Aerial	-	-
----Other	-	-

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

Not Applicable.

<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.

<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 thereview area, to flow into tributary b, which then flows into TNW.

<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.

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

<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.