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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): _____.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, NV Northern Railroad Track Renovation, SPK-2001-25033-NO.

Name of water being evaluated on this JD form: Duck Creek

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Nevada County: Elko and White Pine Counties City: Ely

Center coordinates of site (lat/long in degree decimal format): Lat: 39.48737 **N**, Long: 114.82972 **W**

Universal Transverse Mercator: 11.

Name of nearest waterbody: Duck Creek.

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

Name of watershed or Hydrologic Unit Code (HUC): _____.

☒ 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. List other JDs: _____

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

☒ Office (Desk) Determination. Date: 3 March 2009.

☐ Field Determination. Date(s): _____.

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

☐ Waters subject to the ebb and flow of the tide.

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

Explain: _____.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. Waters of the U.S.

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

☐ TNWs, including territorial seas
☐ Wetlands adjacent to TNWs
☐ Relatively permanent 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: _____ linear feet _____ width (ft) and/or _____ acres.

Wetlands: _____ acres.

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

Elevation of established OHWM (if known): _____.

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

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: North (downstream) of Bassett Lake, lower Duck Creek changes from a perennial stream to an ephemeral stream before reaching Goshute Lake. According to topographic maps Duck Creek reaches Goshute Lake. The delineation provided

[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.

documents that the OHWM for the ephemeral stretch of Duck Creek does not meet with the OHWM of Goshute Lake. However, there may be shallow surface water connection. Goshute Lake is located in a closed hydrologic basin, is not considered a Navigable-In-Fact waterway and has no connection to interstate commerce. Lower Duck Creek North of Bassett Lake is an intrastate isolated water with no connection to a Traditionally Navigable Water or interstate commerce. Within Steptoe Valley adjacent to Duck Creek are wetlands A, B, C, D, E, F, G, H, I, J, K, L, M, N and O. Since Duck Creek is an isolated water, these wetlands are also isolated waters. According to topographic maps wetland P is abutting Goshute Lake Playa. Goshute Lake is an intrastate isolated water, therefore wetland P is an intrastate isolated water with no connection to a Traditionally Navigable Water. A search of the Internet was completed and no connection to interstate commerce was found. Within the Goshute Valley Nelson Creek and Phalen Creek are the main surface drainages. Both of the creeks where delineated as ephemeral streams. Goshute Valley is a closed hydrologic basin. Neither of these streams have a connection to a Traditionally Navigable water or interstate commerce. Also delineated with in Goshute Valley is an unnamed perennial stream that drains from several spring fed drainages South of Currie. This stream flows to the North. After crossing U.S. Hwy 93, it is diverted into a ditch for use in irrigation of fields. The stream flow dissipates in the fields. This stream is located within a closed hydrologic basin, has no connection to a Traditionally Navigable Water and does not have a connection to interstate commerce. This unnamed stream is an intrastate isolated water. Wetlands Q and R are adjacent to the springs that feed the unnamed stream and the riparian area bording the stream. Since these wetlands are abutting the unnamed stream, they are isolated intrastate waters. Wetland S located within the Goshute Valley appears to be fed by shallow ground water from the irrigation of the fields were the unnamed stream dissipates. This wetland is located within a closed hydrologic basin, has no connection to a Traditional Navigable Water and no conncection to interstate commerce therefore Wetland S is an isolated intrastate water.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs: NOT APPLICABLE

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

C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: 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 (CHECK ALL THAT APPLY):[4]

- ☐ 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 _____ width (ft).
- ☐ Other non-wetland waters: ____ acres.
  - Identify type(s) of waters: _____.
- ☐ Wetlands: ____ acres.

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).
- ☐ Other: (explain, if not covered above): _____.

[4] 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): 41245 linear feet / _____ width (ft) and/or 3.86 acres.
- ☒ Lakes/ponds: approx 13,585 acres.
- ☒ Other non-wetland waters: 0.54 acres. List type of aquatic resource: man-made ditches.
- ☒ Wetlands: 49.96 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: dated May 2007 and October 2007.
- ☒ 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: _____
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- ☒ National wetlands inventory map(s). Cite name: Goshute Lake North, Goshute Lake South, Cherry Creek Station, Borchert Spring, Monte Neva Hot Springs, Steptoe, Steptoe Ranch, Lusetti Canyon, and McGill (USFWS NWI Wetlands Mapper; http://www.fws.gov/wetlands/data/Mapper.html).
- ☐ 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): Nevada Northern Railway Project, Wetland Delineation Technical Report, May 2007.
- ☐ 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: Steptoe and Goshute Valleys are situated in closed hydrologic basins with no outlets and no tributary connections to Traditionally Navigable Waters (TNW). The nearest TNW is the Great Salt Lake located in Utah, approximately 80 miles northeast of the project end at Shafter Siding. The valleys are bordered by the Duck Creek, Schell Creek, Dolly Varden, and Goshute Mountains to the east, and the Egan, Cherry Creek and Pequop Mountains to the west. Rainfall ranges from a low of about 6 inches per year in the valleys to more than 20 inches per year in the mountains that border the valleys. The valleys receive hydrological inputs via surface drainage and groundwater infiltration from the adjacent mountains, primarily as a result of spring snowmelt. Evaporation and transpiration by plants generally exceed precipitation and hydrological inputs.

Steptoe Valley:

North (downstream) of Bassett Lake lower Duck Creek changes from a perennial stream to an ephemeral stream before reaching Goshute Lake Playa. According to USGS topographic mapping, the perennial reach of Duck Creek ends approximately 2.2 miles north of White Pine County Road 18 (C.R. 18). At this point, the perennial channel disperses onto a broad floodplain that extends to the Cherry Creek Highway (C.R. 21). The ephemeral reach of Duck Creek enters the area from the West. There are no culverts under the Union Pacific Railroad track at this location. The drainage is captured in the railroad right of way (ROW) and rerouted northward in a manman-made ditch approximately 6,610 linear feet, where it passes through the ROW via an existing culvert. According to topographic maps, Duck Creek continues north toward Goshute Lake Playa. Upon close examination it appears that Duck Creek dissipates before reaching the playa on topo maps. On the ground it was noted that the OHWM for Duck Creek does not meet the OHWM for Goshute Lake Playa. Lower Duck Creek, North of Bassett Lake is an intrastate isolated water with no connection to interstate commerce.

Wetlands B, C, D, E, and G are associated with the Duck Creek floodplain. Over bank flooding, shallow groundwater, irrigation diversions, and/or surface water runoff contribute to the hydrology of these wetlands. Wetland E also receives drainage from the Monte Neva Hot Springs. Wetland P is associated with the Goshute Lake playa, and is likely supported by the seasonal accumulation of discharge from Duck Creek and other contributing drainages, surface water runoff and shallow groundwater.

Wetlands I and J occur on the perimeter of a small sub-basin that contains several seasonally flooded playas. These wetlands are likely supported by the seasonal accumulation of surface water runoff and shallow groundwater associated with the playas.

Wetlands K and O are associated with surface flows from two unnamed spring-fed streams that cross the Project Area. The springs originate on the foothills of the Cherry Creek Mountains west of the Project Area, and appear to be an important water source for ranching operations.

Wetlands F, H, L, M and N are associated with drainages that convey surface water runoff, shallow groundwater, and/or irrigation return flows from Goshute Creek diversions.

Wetland A is associated with a drainage swale that is captured by the railroad borrow pit. It appears in the Nevada Northern Railway Project Frontier Corporation USA Wetland Delineation Technical Report 15 May 2007 that the wetland is supported by surface water runoff and spillage from a windmill-operated well used for livestock watering. The windmill was not operating at the time of field investigation, although the flow path where spillage from the watering troughs would enter into the wetland was discernable. A shallow water table intercepted by the excavation of the railroad borrow pit may also contribute to the hydrology of Wetland A.

Wetlands A, B, C, D, E, F, G, H, I, J, K, L, M, N, O and P are intrastate isolated wetlands with no connection to interstate commerce. A search of the Internet provided no documentation that there was an interstate commerce connection for these wetlands.

Goshute Valley:

Goshute Lake playa is located in a closed hydrologic basin with no outlets and no tributary connections to Traditionally Navigable Waters. This ephemeral playa lake is only inundated during years of above-average snow pack. The topography in the Goshute Valley directs water flows to the valley floor where they are evaporated or transpirated by plants. Goshute Lake is located in a closed hydrologic basin, is not considered a Navigable-In-Fact waterway and has no connection to interstate commerce.

Nelson Creek and Phalen Creek are the predominant surface drainages in the Goshute Valley. These drainages originate in the foothills. Both of these creeks are ephemeral, and had no flow at the time of field investigations. No wetlands are associated with these creeks in the area of the waters delineation.

The only sources of water capable of supporting wetlands are associated with several spring-fed drainages located south of Currie. These drainages merge in the vicinity of a basalt outcropping to form an unnamed perennial stream that flows to the North. Wetlands Q and R are associated with the spring sources and the riparian area bordering the perennial stream channel. After it crosses U.S. 93, the unnamed stream is diverted into a ditch network to irrigate livestock pasture and hayfields. Stream flows are completely dissipated in these fields. Wetland S is located in a depression and appears to be supported by shallow groundwater that is likely augmented by the irrigation of the fields where the unnamed stream dissipates.

Nelson Creek, Phalen Creek and wetlands Q, R and S are intrastate isolated waters and wetlands with no connection to interstate commerce. A search of the Internet provided no documentation that there was an interstate commerce connection for any of the above listed waters.