

**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): August 10, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Epperson Project, SPK-2016-00240-UO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Utah** County/parish/borough: **Salt Lake** City: **Salt Lake City**
Center coordinates of site (lat/long in degree decimal format): Lat. **40.79204°**, Long. **-112.08837°**
Universal Transverse Mercator: **12 408178.26 4516242.46**

Name of nearest waterbody: **Great Salt Lake**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Great Salt Lake**

Name of watershed or Hydrologic Unit Code (HUC): **Jordan, 16020204**

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: **201600240 Significant Nexus Determination**

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

Office (Desk) Determination. Date:

Field Determination. Date(s): **4/19/2016**

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 waters² (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, wide, and/or acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: 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: **Within Parcel 32 and 33 is a irrigation ditch dug solely in uplands and is controlled by a gate valve which can direct all flows to the west. This ditch does not have any downstream associated water rights and is not tied to interstate commerce. This ditch is identified on the Figure H3 and H5 as D33-6 (1,039 feet), D33-7 (998 feet), D33-8 (1,066 feet), D33-9 (1,514 feet), D33-10 (36 feet), D33-15 (737 feet), D32-5 (1,601 feet), D32-6 (501 feet), D32-7 (64 feet), D32-8 (728 feet), and D-32-12 573 feet). These types of water are not regulated under the Clean Water Act since they are dug solely in uplands, can be completely shut off and there are no associated downstream usage or water rights.**

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.

**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): August 10, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Epperson Project, SPK-2016-00240-UO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Utah** County/parish/borough: **Salt Lake** City: **Salt Lake City**
Center coordinates of site (lat/long in degree decimal format): Lat. **40.79204°**, Long. **-112.08837°**
Universal Transverse Mercator: **12 408178.26 4516242.46**

Name of nearest waterbody: **Great Salt Lake**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Great Salt Lake**

Name of watershed or Hydrologic Unit Code (HUC): **Jordan, 16020204**

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: **Non Jurisdictional Form 201600240 - 8,857 linear feet of Channel**

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

Office (Desk) Determination. Date:

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 waters² (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: **Ditch 18,292** linear feet, **varies** wide, and/or **Playa 76.3** acres.

Wetlands: **141.58** acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

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 waterbody⁴ 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: **35,000 square miles**

Drainage area: **805 square miles**

Average annual rainfall: **24 inches**

Average annual snowfall: **59 inches**

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through **2** 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 **2-5** 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 do not cross or serve as state boundaries.**

Identify flow route to TNW⁵:

Tributary stream order, if known: **The RPW D17-1 flows west into the Goggin Drain, a tributary of the Great Salt Lake, the nearest TNW. The RPW D32-4 flows west into Lee Creek, a Tributary of the Great Salt Lake, the nearest TNW.**

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.

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

- Tributary is:** Natural
 Artificial (man-made). Explain: **Both D-32-4 and D17-1 are sections of artificial canals dug for irrigation purposes and roadside flow conveyance.**
 Manipulated (man-altered). Explain:

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

Average width: **10-15** feet
 Average depth: **unknown** feet
 Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

- Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: **Phragmites australis and Distichilis spicata**
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **Both tributaries are stable due to vegetated banks and stable substrates.**

Presence of run/riffle/pool complexes. Explain: **None**

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): **0-1** %

(c) Flow:

Tributary provides for: **Perennial**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: **Consistent throughout the growing season.**

Other information on duration and volume:

Surface flow is: **Discrete and confined.** Characteristics: **Flow is confined to channels except in areas with directly abutting playa or wetland where flows can overtop the banks.**

Subsurface flow: **No.** Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- Bed and banks
 OHWM⁶ (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.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: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: **Generally clear except after large storm events.**

⁶A 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.

⁷Ibid.

Identify specific pollutants, if known: **Non-point source pollution from upstream adjacent agricultural activities and upstream developments.**

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: **Sporadic areas of Phragmites australis and Distichilis spicata**
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

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: **W32-3 1.4ac and W17-6 2.5ac** acres

Wetland type. Explain: **Saline Wet Meadow- wetland is dominated by hydrophytic halophytes.**

Wetland quality. Explain: **Moderate- due to its proximity to the Great Salt Lake, large portion of adjacent areas being undeveloped and diversity of plants.**

Project wetlands cross or serve as state boundaries. Explain: **Wetland does not cross/serve as state boundaries.**

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: **It could not be determined from field indicators if there is an perennial or intermittent flow connection between W32-3 and W17-6 and their nearest RPW.**

Surface flow is: **Overland sheetflow**

Characteristics: **There is approximately 100 feet of relatively flat upland between W32-3 and W32-1. This area is comprised of a mixture of hydrophytic, mesic and upland species that indicate there is a surface water connection during a portion of the year. W32-1 directly abuts and flows into an RPW.**

Subsurface flow: **Unknown**. Explain findings: **W17-6 is directly adjacent to channel D17-1 and ponds against a berm that is only 15 feet wide. This is an earthen berm that is likely pervious due to the clay-silt substrate used for construction and allows some water to pass from the wetland to canal.**

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: **A 15-foot clay-silt earthen berm separates W17-6 and D17-1 and likely allows the passage of water through the berm. W32-2 is located approximately 550 feet north of the nearest RPW. Hydrophytic vegetation occurs between W32-3 and W32-1. The hydrophytic and mesic species suggests an occasional surface connection. Wetland W32-1 directly abuts D32-4 (an RPW).**

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **100 - 500-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: **Water for these sites and surrounding wetland is generally clear.**

Identify specific pollutants, if known: **Non-point source pollution from adjacent agricultural activities mainly cattle grazing and upstream developments.**

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain: **Distichilis spicata 40% and Suaeda calceoliformis 40%**

- 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: **25-30**

Approximately **130** 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>
W32-1 Yes	71.96	W17-1 Yes	27.5
W32-2 Yes	11.18	W17-2 Yes	4.4
W32-3 No	1.4	W17-3 Yes	2.3
W32-4 Yes	0.84	W17-4 Yes	0.3
W32-5 Yes	0.52	W17-5 Yes	1.1
W32-6 Yes	0.35	W17-6 No	2.5
W32-7 Yes	0.39	W17-7 Yes	0.2
W32-8 Yes	0.91	W17-8 Yes	0.05
W32-9 Yes	0.11		
W32-10 Yes	1.86		
W32-11 Yes	0.49		
W32-12 Yes	0.12		
W32-13 Yes	0.05		
W32-14 Yes	0.02		
W32-15 Yes	0.79		
W32-16 Yes	0.1		
W32-17 Yes	0.04		
W32-18 Yes	0.04		
W32-19 Yes	0.1		

Summarize overall biological, chemical and physical functions being performed: **Physically, these wetlands provide important floodwater storage/dissipation and groundwater recharge. Biologically, these wetlands provide habitat and food for the many avian species that utilize the Great Salt Lake. Chemically, these wetlands help filter pollutants from non-point sources including adjacent I-80, Salt Lake City International Airport, Wingpointe Golf Course, the developments surrounding 5600 West and adjacent agricultural fields.**

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: **W32-3 is located approximately 550 feet north of the nearest RPW. There is a overland sheetflow hydrologic connection between W32-3 and W32-1. Wetland W17-6 is separated from the nearest RPW D17-1 by a 15 foot earthen berm that likely allows the passage of water. Cumulatively these wetlands and the other wetlands identified onsite are considered a wetland/playa complex. This complex provides critical wetland functions such as filtering of pollutants, floodwater storage and groundwater recharge. These onsite wetland functions would become even more critical as the surrounding area is developed for industrial/commercial uses. The filtering of pollutants is one of the more critical functions considering the polluted nature of the Great Salt Lake from urban runoff. Therefore, the Corps has determined that Wetland 32-3 and W17-6 have a significant nexus with the Great Salt Lake a traditional navigable water of the U.S. regulated under Section 404 of the Clean Water Act.**

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: **Parcel 17 is comprised of D17-1 (1,251 feet) and D17-2 (4,048 feet), are classified as RPW. Parcel 29 is comprised of D29-1 (1,926 feet), D29-2 (1,734 feet) and D29-3 (1,577 feet), totaling 5,237 linear feet of RPW. Parcel 32 is comprised of D32-1 (125 feet), D32-2 (133 feet), D32-3 (476 feet), D32-4 (612 feet), D32-9 (296 feet), D32-10 (22 feet), D32-11 (529 feet) have been determined to be RPW's that flow into the Great Salt Lake. Parcel 33 is comprised of D33-2 (1,346 feet), D33-3 (1,442 feet), D33-4 (1,090 feet), D33-5 (153 feet) and D33-16 (183 feet) are RPW's and flow directly into RPW's and the Great Salt Lake. All of these sections of ditches are classified as RPW's due to inundation being identified off of multiple aerial photographs throughout different seasons.**
- 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 seasonal RPW D33-14 (1,304 feet), D33-13 (1,961 feet), D33-12 (802 feet), D33-11 (780 feet) and D33-1 (786 feet) was determined seasonal due to flows being identified on aerial photographs into early summer with an estimate flow time of 40-60 days.**

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

- Tributary waters: **18,292** linear feet **5-20 feet** wide.
- Other non-wetland waters: **76.3** acres.

Identify type(s) of waters: **Playa-all playas directly abut the RPW's identified above.**

3. **Non-RPW⁸ 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: linear feet, wide.
- Other non-wetland waters: acres.

Identify type(s) of waters:

⁸See Footnote # 3.

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: **As identified on the Parcel 17, 32 and 33, Delineation of Wetlands and Other Waters of the U.S. of the Epperson Parcel, prepared by Kagel Environmental, these wetland all directly abut RPW's.**
 - 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: **Wetlands W33-2 (0.16 acres), W33-3 (2 acres), and W33-4 (1.24 acres) all directly abut the seasonal RPW identified in Section III.D.2.**

Provide acreage estimates for jurisdictional wetlands in the review area: **137.68** 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: **3.9** 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.⁹

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):¹⁰

- 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.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ 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.

- 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: **Kagel Environmental LLC**
- 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; UT-SALTAIR**
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **Google Earth 1997-2015**
or Other (Name & Date):
- 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:

The study area is approximately 1,864 acres and is broken up into four parcels. The study area contains approximately 141.58 acres of saline wet meadow, 76.3 acres of playa, and 18,292 linear feet of channels that have been determined to be jurisdictional under Section 404 of the Clean Water Act. Parcel 32 and 33 contain 8,857 linear feet of channel that has been determined non-jurisdictional due to being dug wholly and draining only upland and having no downstream usage. These non-jurisdictional channels are analyzed in a separate JD Form.

Parcel 17 contains 38.3 acres of saline wet meadow, 21.9 acres of playa, and 5,299 linear feet of channel, which have been determined jurisdictional. Wetland W17-1 (27.5 acres), W17-2 (4.4 acres), W17-3 (2.3 acres), W17-4 (0.3 acres), W17-5 (1.1 acres), W17-7 (0.2 acres) and W17-8 (0.05 acres) directly abut or flow into RPW's that are tributary to the Great Salt Lake. Playas P17-1 (0.7 acres), P17-2 (8.2 acres) and P17-3 (13 acres) directly abut and flow into RPW's that are tributary to the Great Salt Lake. Channel D17-1 (1,251 feet) and D17-2 (4,048 feet) are classified as RPW. Wetland W17-6 (2.5 acres) is adjacent (separated by a 15 foot manmade berm) to this RPW which connects with the Goggin Drain a tributary of the Great Salt Lake. W17-6 is has been determined to have a significant nexus with the adjacent RPW D17-1 to the north a tributary of the Great Salt Lake.

Parcel 29 is comprised of D29-1 (1,926 feet), D29-2 (1,734 feet) and D29-3 (1,577 feet), totaling 5,237 linear feet or 1.31 acres of channel. This channel/ditch was determined to be a RPW due to the inundation being identified on multiple years of aerials throughout the seasons and the canal flowing into the Goggin Drain, a tributary of the Great Salt Lake.

Parcel 32 contains 91.3 acres of saline wet meadow, 54.4 acres of playa, and 2,557 linear feet of channel which have been determined jurisdictional. Wetland W32-1 (71.96 acres), W32-2 (11.18 acres), W32-4 (0.84 acres), W32-5 (0.52 acres), W32-6 (0.35 acres), W32-7 (0.39 acres), W32-8 (0.91 acres), 32-9 (0.11 acres), W32-10 (1.86 acres), W32-11 (0.49 acres), W32-12 (0.12 acres), W32-13 (0.05 acres), W32-14 (0.02 acres), W32-15 (0.76 acres), W32-16 (0.10 acres), W32-17 (0.04 acres), W32-18 (0.04 acres) and W32-19 (0.10 acres) directly abut an RPW which flows west and eventually empties into the Great Salt Lake. Wetland W32-3 is separated from W32-1 by a 100 foot upland that has been determined that the wetland has a significant nexus with the RPW to the south which flows directly into the Great Salt Lake, nearest TNW. Playas P32-1 (50.06 acres), P32-2 (1.11 acres), P32-3 (2.67 acres) and P32-4 (0.05 acres) directly RPW's that flow west into the Great Salt Lake, the nearest TNW. Channels D32-1 (125 feet), D32-2 (133 feet), D32-3 (476 feet), D32-4 (612 feet), D32-9 (296 feet), D32-10 (22 feet), D32-11 (529 feet) have been determined to be RPW's that flow into the Great Salt Lake. Non-jurisdictional Channels D32-5 (1601 feet), D32-6 (501 feet), D32-7 (64 feet), D32-8 (728 feet), and D32-12 (573 feet) originate on Parcel 33 at a larger canal which has a headgate that can completely turn off water to these sections of channels. These non-jurisdictional channels has been analyzed under a different JD Form and have no downstream usage such as irrigation. Also, there are no downstream water rights which must be satisfied with the use of these ditches, as verified by Elliot Christensen, President of the Brighton and North Point Irrigation Companies.

Parcel 33 contains 11.98 acres of saline wet meadow, and 9,577 linear feet of channel which have been determined to be jurisdictional. Wetlands W33-2 (0.16 acres), W33-3 (2 acres) and W33-4 (1.24 acres) directly abut a seasonal RPW that flows between 30-60 days annually and empties into a RPW that flows directly into the Great Salt Lake. The seasonal RPW's are D33-14 (1,304 feet), D33-13 (1,961 feet), D33-12 (802 feet), D33-11 (780 feet) and D33-1 (786 feet). Jurisdictional wetlands W33-1 (0.23 acres), W33-5 (7.61 acres), W33-6 (0.40 acres) and W33-7 (0.34 acres) directly abut RPW's that flow into the Great Salt Lake. Channels D33-2 (1,346 feet), D33-3 (1,442 feet), D33-4 (1,090 feet), D33-5 (153 feet) and D33-16 (183 feet) are RPW's and flow directly into RPW's and the Great Salt Lake. Channels D33-6 (1,089 feet), D33-7 (998 feet), D33-8 (1,066 feet), D33-9 (1,514 feet), D33-10 (36 feet), and D33-15 (737 feet) are part of the canal that flows onto Parcel 32 that was dug completely in an upland and can be shut off by a headgate originating at D33-2. There are no associated downstream water right with this ditch and it is analyzed under a different JD Form.

SECTION III: CWA ANALYSIS

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 waterbody⁴ 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: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:

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.

Tributary stream order, if known:

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

- Tributary is:** Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

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

- Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> Other. Explain: | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

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

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

Subsurface flow: **Pick List**. Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Bed and banks | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: | |

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:

Identify specific pollutants, if known:

⁶A 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.

⁷Ibid.

(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:

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**

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: **Pick List**

Approximately _____ 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:
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:

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:

3. **Non-RPWs⁸ 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.

⁸See Footnote # 3.

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

- 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:

Provide acreage estimates for jurisdictional wetlands in the review area: 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: **W32-3 1.4ac and W17-6 2.5ac** 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.⁹

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):¹⁰

- 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.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ 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.

- 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): **The channel/ditch was excavated wholly in and draining only uplands and does not carry a relatively permanent flow. Therefore, the 8,857 linear feet of channel as illustrated in Parcel 32 and 33 is not considered jurisdictional. Also, this channel/ditch does not contribute to any downstream usage (ex. irrigation) or has any associated water rights.**

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: **Kagel Environmental LLC**
- 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; UT-SALTAIR**
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **Google Earth 1997-2015**
or Other (Name & Date):
- 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:

The study area is approximately 1,864 acres and is broken up into four parcels. The study area contains approximately 141.58 acres of saline wet meadow, 76.3 acres of playa, and 27,149 linear feet of channels. The wetland and playa were all determined jurisdictional. Of the 27,149 linear feet of channels, 8,857 linear feet were determined to be non-jurisdictional due to being dug wholly and draining only upland and having no downstream usage.

The Non-Jurisdictional channel is located in Parcel 32 and 33, and is comprised of 8,857 linear feet of ordinary high water mark with no associated wetlands. This channel flows southwest and connects with a canal that runs along I-80, which flows to the west into the Great Salt Lake, the nearest TNW. This non-jurisdictional channel can be completely shut off by a headgate located in Parcel 33 and the entire channel was dug solely in uplands. Also, this channel has no associated downstream usage or water rights as verified by Elliot Christensen, President of the Brighton and North Point Irrigation Companies. The channel is identified on the "Delineation of Wetlands and Other Waters of the U.S. on Parcels 32 and 33 of the Epperson Project", Figure H3 and H5, prepared by Kagel Environmental LLC.