

**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): December 31, 2019**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Sacramento District, **Battle Mountain Levee, SPK-2015-00613**

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

State: **Nevada** County/parish/borough: **Lander County** City: **Battle Mountain**

Center coordinates of site (lat/long in degree decimal format): Lat. **40.6273°**, Long. **-116.9253°**

Universal Transverse Mercator: **11 504960.99 4496464.48**

Name of nearest waterbody: Reese River

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Rye Patch Reservoir**

Name of watershed or Hydrologic Unit Code (HUC): **Reese, 16040107**

- 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: December 31, 2019  
 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):<sup>1</sup>**

- TNWs, including territorial seas  
 Wetlands adjacent to TNWs  
 Relatively permanent waters<sup>2</sup> (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: 10,056 linear feet, 3-24 feet wide, and/or 6.75 acres.  
Wetlands: 44.08 acres.

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

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The Rye Patch Reservoir, an instream impoundment of the Humboldt River, has been determined to be the downstream Navigable in Fact Traditional Navigable Water (TNW). Investigation and analysis performed by SWCA Environmental Consultants demonstrated that Wetland C and D do not have a chemical, physical or biological connection with the Rye Patch Reservoir and do not cross or serve as a state

<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.

boundry. Wetlands C and D are located in depressed areas surrounded by uplands approximately 1,800 feet from the nearest drainage, isolating them from jurisdictional waters.

### **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 waterbody<sup>4</sup> 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: **2,380 square miles**  
Average annual rainfall: **9 inches**  
Average annual snowfall: **17 inches**

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

- Tributary flows directly into TNW.  
 Tributary flows through **2** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.

Project waters are **1 (or less)** river miles from RPW.

Project waters are **30 (or more)** 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: No. The waters within the project area are located entirely within the State of Nevada.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW<sup>5</sup>: The Rye Patch Reservoir, an instream impoundment of the Humboldt River, has been determined to meet the 2-parameter test (navigable and interstate commerce connection) of a Navigable In Fact TNW at the point of confluence with the river. . The waters in the review area drain through Channel A (Reese River). Channel A (Reese River) drains directly to the Humboldt River (a perennial RPW) which flows directly into the Rye Patch Reservoir at a distance of about 180 miles. Tributary stream order, if known: Drainage B, C, and D are 1<sup>st</sup> order streams. They are braids originating from and returning to Drainage A (Reese River). Drainage B, C and D do not drain individual watersheds. Drainage A is a 2<sup>nd</sup> order stream within the review area.

(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: 3-24 feet  
Average depth: feet  
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover:  
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stream channel incised and eroding in areas where channel is constricted.

Presence of run/riffle/pool complexes. Explain: No

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Ephemeral flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: Streamflow of Drainages A-D are dependent almost entirely on snowpack in the surrounding Mountains. Mean annual precipitation ranges from about 6-15 inches. Year to year and longer-term variations in annual precipitation results in corresponding variations in flow of these streams. The applicant supplied delineation titled *Aquatic Resources Delineation Report for the Battle Mountain Levee Project, prepared by SWCA Environmental Consultants*, states that Drainages A-D were observed to be ephemeral (R6).

Other information on duration and volume:

Surface flow is: **confined**. Characteristics:

Subsurface flow: **unknown**. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks  
 OHWM<sup>6</sup> (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.<sup>7</sup> Explain:

<sup>5</sup> 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.

<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.

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: No water observed in channels during site inspection or noted in aerial photographs.

Identify specific pollutants, if known: Mining and agricultural activities both historic and current, may contribute to poor water quality within the watershed.

**(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: Channels provide spawning gravel and cobble downstream to perennial waters that provide habitat for fish species.
  - 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: 44.08 acres

Wetland type. Explain: PEM and PSS

Wetland quality. Explain: Good, portions of the historic wetlands have been converted to agriculture use. The remaining wetlands provide groundwater recharge and stream flow maintenance and flood protection.

Project wetlands cross or serve as state boundaries. Explain: No, The waters within the project area are located entirely within the State of Nevada.

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

Flow is: **ephemeral flow**. Explain: Wetlands receive and store water when channels flow and discharge to channels and aquifer during arid times when channel is not flowing.

Surface flow is: **discreet and confined**

Characteristics:

Subsurface flow: **Unknown**. Explain findings:

- Dye (or other) test performed:

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

Directly abutting. Wetlands H and I directly abut the Humboldt River (RPW) outside of the review area.

Not directly abutting. Wetlands A, B, E, F, G1, and G2 are adjacent to but do not directly abut Drainage A (Reese River).

Discrete wetland hydrologic connection. Explain: The findings of SWCA Environmental Consultants demonstrate that Wetlands A, B, G1 and G2, directly abut one another and are connected through shallow, unconfined groundwater movement through underlying permeable sediments. As such, they can be thought of as a wetland complex consisting of a mosaic of scrub-shrub, and emergent wetlands connected by the local water table that flow into Drainage A (Reese River).

Ecological connection. Explain:

Separated by berm/barrier. Explain:

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

Project wetlands are **30 (or more)** river miles from TNW.

Project waters are **30 (or more)** aerial (straight) miles from TNW.  
 Flow is from: **wetland to navigable waters.**  
 Estimate approximate location of wetland as within the **5-10 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:  
 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: **10**  
 Approximately **40** 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>
Wetland A (N)	1.19	Wetland B (N)	2.98
Wetland C (N)	0.74	Wetland D (N)	0.05
Wetland E (N)	0.12	Wetland F (N)	1.29
Wetland G1 (N)	3.00	Wetland G2 (N)	0.48
Wetland H (Y)	34.61+	Wetland I (Y)	0.41+

Summarize overall biological, chemical and physical functions being performed: Groundwater recharge and streamflow maintenance, fish and wildlife habitat, water quality improvement through sediment removal and flood protection through runoff detention.

**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:

The Channels labeled Drainage B, Drainage C and Drainage D on attached maps Appendix A were each demonstrated to flow directly to Drainage A (Reese River). Drainage A (Reese River), a non-RPW, drains directly to the Humboldt River, a perennial RPW, which drains directly to the Rye Patch Reservoir a waterbody that meets the 2 criteria for a Traditional Navigable Water (TNW) at its confluence with the river.

Nelson et al. (1992) found *Oncorhynchus spp.* (fish) abundance to be positively influenced by proximity to sedimentary inputs within the Humboldt River watershed. The findings of Achord *et al.* (2007) indicate that *Oncorhynchus spp.* exhibit fine-scale population structure and local adaptations to their natal habitats. Hilborn *et al.* (2003), found that the variation among local environmental conditions decreases extinction risk and increase sustainability of long-term species reproduction. These studies demonstrate that the individual tributaries to the Rye Patch Reservoir have a buffering effect on variability of the aggregate fish community and these populations become weaker as habitat diversity is reduced. The subject channels each have a significant effect on the physical, chemical and biological integrity of the Rye Patch Reservoir.

The findings of Maurer et al. (2008) demonstrated that unit-area runoff from perennial watersheds is greater than unit-area runoff from ephemeral watersheds. They found that ephemeral tributaries located within alluvial fans like Drainages A-D reduce stormwater and non-point source pollutant input to the downstream receiving waters. Drainages A-D accomplish this by allowing infiltration that also provides basin aquifer recharge.

The Channels labeled Drainage A-D on attached maps Appendix A each provide water and life cycle support functions for fish species present in the downstream TNW. Each provides water and gravel to perennial tributaries to the Humboldt River thereby providing spawning and rearing habitat for trout species that migrate downstream to the Rye Patch Reservoir. This process, which occurs in each of these tributaries, transfers nutrients and organic carbon from the headwaters to the downstream TNW and supports downstream food webs. The Channels labeled Drainage A-D have a significant effect on the chemical, physical and biological integrity of the Rye Patch Reservoir that is more than speculative or insubstantial.

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 wetlands labeled as Wetland A, Wetland B, Wetland E, Wetland F, Wetland G1, and Wetland G2 on attached maps Appendix A were determined to be adjacent to the Drainage A (Reese River). The findings of SWCA Environmental Consultants demonstrate that Wetlands A, B, G1 and G2, directly abut one another and are connected through shallow, unconfined groundwater movement through underlying permeable sediments. As such, they can be thought of as a wetland complex consisting of a mosaic of scrub-shrub, and emergent wetlands connected by the local water table that flow into Drainage A (Reese River). Wetlands E and F are adjacent to but do not directly abut and are intermittently connected to Drainage A (Reese River) during precipitation and high flow events through overland sheet flow, upland swales and remnant channels that do not exhibit an OHWM. Drainage A (Reese River) has an unbroken surface connection to the downstream TNW, the Rye Patch Reservoir.

An extensive review of the literature on waterbody connectivity (USEPA 2015), which included a detailed review by an EPA Science Advisory Board (SAB) of technical experts from the public concluded that low levels of connectivity can be important relative to impacts on the chemical, physical, and biological integrity of downstream waters. The subject wetlands and similarly situated wetlands provide infiltration and reduce runoff thereby reducing flow volumes and turbidity delivered downstream to the Rye Patch Reservoir. The wetlands within the review area accomplish this by allowing infiltration that also provides basin aquifer recharge. The wetlands within the review area in combination with other similarly situated waters in the Reese River watershed have a significant effect on the physical, chemical and biological integrity of the Rye Patch Reservoir that is more than speculative or insubstantial.

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-RPWs<sup>8</sup> 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. **Drainage A-D**

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

- Tributary waters: **10,056** linear feet, **3-24 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: **Wetland H and I directly abut the Humboldt River outside of the review area.**
  - 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: **35.02** 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: \_\_\_\_\_ 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. **Wetland A, Wetland B, Wetland E, Wetland F, Wetland G1, and Wetland G2 are adjacent to but do not directly abut Drainage A (Reese River).**

Provide estimates for jurisdictional wetlands in the review area: **9.06** acres.

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

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

- 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):

<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.

- 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:  
**Investigation and analysis performed by SWCA Environmental Consultants demonstrated that Wetland C and D do not have a chemical, physical or biological connection with the Rye Patch Reservoir and do not cross or serve as a state boundary. Wetlands C and D are located in depressed areas surrounded by uplands isolating them from jurisdictional waters.**
- 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: **0.79** 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: Aquatic Resources Delineation Report for the Battle Mountain Levee Project. Appendix A, Figures 1-5, prepared by SWCA Environmental Consultants, October, 2018.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. Aquatic Resources Delineation Report For The Battle Mountain Levee Project. Appendix B, prepared by SWCA Environmental Consultants, October, 2018.
  - 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; Blossom Spring**
- USDA Natural Resources Conservation Service Soil Survey. Citation:  
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> Accessed December 31, 2019
- National wetlands inventory map(s). Cite name: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> Accessed December 31, 2019
- 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 Pro July/ 4/ 2014  
or  Other (Name & Date): Aquatic Resources Delineation Report for the Battle Mountain Levee Project. Appendix C, photo 1-50, prepared by SWCA Environmental Consultants, October, 2018.
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:



Achord, S., Zabel R.W., Sandford B.P. (2007) *Migration timing, growth, and estimated parr-to-smolt survival rates of wild Snake River spring-summer Chinook salmon from the Salmon River Basin, Idaho, to the Lower Snake River.* *Trans Am Fish Soc* **136**, 142–154.

USEPA (US Environmental Protection Agency). "Connectivity of streams and wetlands to downstream waters: a review and synthesis of the scientific evidence." (2015).

Hilborn, R., Quinn T.P., Schindler D.E., Rogers D.E. (2003) *Biocomplexity and fisheries sustainability.* *Proc Natl Acad Sci* **100**, 6564–6568.

Nelson, Rodger L., et al. "Trout distribution and habitat in relation to geology and geomorphology in the North Fork Humboldt River drainage, northeastern Nevada." *Transactions of the American Fisheries Society* 121.4 (1992): 405-426.

Maurer, D.K., Paul, A.p., Berger, D.L., and Mayers, C.J., 2008, Analysis of streamflow trends, ground-water and surface-water interactions, and water quality in the upper Carson River basin: U.S. Geological Survey Scientific Investigations Report 2008-5238, 190 p

Other information (please specify):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Drainages B-D are ephemeral tributaries to Drainage A (Reese River), they are braids originating from and returning to Drainage A (Reese River). Drainage B, C and D do not drain individual watersheds. Drainage A (Reese River) is mapped (USGS) as a perennial river that flows directly to the Humboldt River, an RPW and mapped (USGS) perennial river which flows directly into the Rye Patch Reservoir a Navigable in Fact Traditional Navigable Water. Wetland H and I directly abut the Humboldt River outside of the review area. Wetland A, Wetland B, Wetland E, Wetland F, Wetland G1, and Wetland G2 are adjacent to but do not directly abut Drainage A (Reese River). Wetland C and D do not have a chemical, physical or biological connection with the Rye Patch Reservoir and do not cross or serve as a state boundary. Wetlands C and D are located in depressed areas surrounded by uplands isolating them from jurisdictional waters. Each wetland and stream is documented on individual forms located in the Aquatic Resources Delineation Report for the Battle Mountain Levee Project, prepared by SWCA Environmental Consultants, dated October, 2018. These sheets include the general area conditions, physical characteristics, chemical characteristics, and biological characteristics of each water evaluated so the responses provided in B and D of this document should be considered averages.