



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): April 12, 2021  
 ORM Number: SPK-2021-00043  
 Associated JDs: AJD SPK-2020-00853 verified on December 30, 2020 and AJD SPK-2021-00117 verified on April 6, 2021.  
 Review Area Location<sup>1</sup>: Approximately 7400 W SR-201 North Frontage Road  
 State/Territory: UT City: Magna County/Parish/Borough: Salt Lake County  
 Center Coordinates of Review Area: Latitude 40.720351 Longitude -112.066891

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)<sup>3</sup>

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/A	N/A	N/A

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide and included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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N/A	N/A	N/A	N/A
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**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
SPK-2021-00042 - W01	0.04 acres	(b)(1) Non-adjacent wetland	Wetland W01 is located in a large depression on the landscape on the south side along the east boundary of the study area and is connected to a large playa wetland west of the survey area through a culvert beneath an old two-track roadway. Hydrology for Wetland W01 is driven by groundwater and surface water runoff. Wetland W01 hydrologically connected to wetlands outside the study and extends into a downgradient parcel. A recent wetland delineation within the downgradient wetlands observed a human-made berm that acts as a barrier to surface-water flow between the wetlands and Kersey Creek, which flows off site in a north-to-south direction west of the downgradient parcels. Wetland W01 meets the definition of paragraph (c)(16); however, it does not abut, nor is it inundated by flooding from, an (a)(1) – (a)(3) water in a typical year, nor is it physically separated from an (a)(1) – (a)(3) water by a natural or artificial barrier. Furthermore, there is no hydrologic surface water connection between Wetland W01 and an (a)(1) – (a)(3) water. Therefore, Wetland W01 is not a water of the U.S. regulated under Section 404 of the Clean Water Act.
SPK-2021-00042 - W02	0.11 acres	(b)(1) Non-adjacent wetland	Wetland W02 is located at the center along the east boundary of the study area. Wetland W02 is within a closed depression on the landscape and there is no hydrologic connectivity to Wetland W01. Wetland hydrology is driven by surface water runoff and collection. Wetland W02 meets the definition of paragraph (c)(16); however, it does not abut, nor is it inundated by flooding from, an (a)(1) – (a)(3) water in a typical year, nor is it physically separated from an (a)(1) – (a)(3) water by a natural or artificial barrier. Furthermore, there is no hydrologic surface water connection between Wetland W02 and an (a)(1) – (a)(3) water. Therefore, Wetland W02 is not a water of the U.S. regulated under Section 404 of the Clean Water Act.

**III. SUPPORTING INFORMATION**

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: *Aquatic Resources Delineation Report for the Kennecott Utah Copper Subdivision Parcel, Salt Lake County, Utah*

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*dated December 2020 prepared by SWCA Environmental Consultants*

This information is sufficient for purposes of this AJD.

Rationale: N/A

\_\_\_ Data sheets prepared by the Corps: N/A

Photographs: *Aerials - Aerials*, GoogleEarth 7.3.3.7692. (15 July 1997, 3 May 2002, 14 July 2003, 18 August 2002, 24 August 2004, 3 July 2005, 31 July 2006, 31 December 2005, 27 April 2007, 22 June 2009, 17 June 2010, 14 September 2011, 4 June 2013, 16 June 2015, 8 July 2016, 15 June 2017, 17 June 2017, 9 October 2018, 18 July 2019, 31 May 2020). Salt Lake County, Utah 40.420029 -112.067373, eye alt 1356 ft. Retrieved April 12, 2021 from <http://www.earth.google.com>.

Historic Aerials by NETRonline. Aerials 1943, 1950, 1959, 1965, 1971, 1977, 1977, 2004, 2006, 2009, 2011, 2014, and 2016. Retrieved April 12, 2021 from <https://www.historicaerials.com/viewer>

\_\_\_ Corps Site visit(s) conducted on: N/A

Previous Jurisdictional Determinations (AJDs or PJDs): SPK-2020-00853 verified on December 30, 2020 and SPK-2020-00117 verified on April 6, 2021.

\_\_\_ Antecedent Precipitation Tool: provide detailed discussion in Section III.B. N/A

\_\_\_ USDA NRCS Soil Survey: N/A

\_\_\_ USFWS NWI maps: N/A

\_\_\_ USGS topographic maps: N/A

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Historic Aerials by NETRonline. Topo Maps. T1954, T1963, T1971, T1975, T1987, T1993, T2001, T2014, T2017. Retrieved April 12, 2021 from <a href="https://www.historicaerials.com/viewer">https://www.historicaerials.com/viewer</a>

**B. Typical year assessment(s):** N/A

**C. Additional comments to support AJD:** The downgradient parcel mentioned in *Section D-Excluded Water or Features* is located approximately 1,800 feet northwest and downgradient of Wetland W01. An Aquatic Resources (AR) report for the downgradient parcel was submitted to the U.S. Army Corps of Engineers (Corps) by Whitaker Construction for an AJD. The Corps subsequently verified the AJD for the Whitaker Construction site, identified under SPK-2020-00853, on December 30, 2020. The

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Corps concluded that the wetlands documented in the Whitaker Construction site (i.e. downgradient site) were not waters of the U.S. as the AR documented in this parcel were separated from Kersey Creek by a human-made berm that acts as a barrier to surface-water flow between the AR and the Creek. The hydrologic connection between Wetland W01 and the downgradient parcel, identified as features “W-B” and “D” (SPK-2020-00853) are depicted on the enclosed figures. Figure 1 depicts the hydrologic connection between the features over NAIP 2018 orthophotography (enclosure A) and Figure 2 depicts the hydrologic connection between the features over the most-recent USGS National Map (enclosure B). The nearest applicable “blueline” waterway is Kersey Creek located west of the subject study area and the Whitaker Construction site.

Furthermore, the Corps verified an AJD identified under SPK-2020-00117 on April 6, 2021 for the Mitchell Property located northwest of the subject study area. The AR documented in the Mitchell Property are also hydrologically connected to the AR in the Whitaker Construction site. In this case, the Corps also concluded that the wetlands at the Mitchell Property site were not waters of the U.S. due to the man-made barrier separating the Whitaker Construction site AR from Kersey Creek.

Request for information sent on February 4. Response submitted February 17, 2021.

#### Enclosures

Figure 1 - Hydrologic Connection to Offsite Aquatic Resources (2018 NAIP Orthophotography)

Figure 2 - Hydrologic Connection to Offsite Aquatic Resources (USGS Map)

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