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): May 10, 2022
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Galland North Fields, SPK-2022-00084

C.	PROJECT	I OCATION	AND	BACKGROUND	INFORMATION:

State: Utah County/parish/borough: Wasatch County City: Heber City Center coordinates of site (lat/long in degree decimal format): Lat. 40.5349180187535°, Long. -111.430556773872° Universal Transverse Mercator: 12 463536.13 4487219.68 Name of nearest waterbody: Provo River Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Utah Lake Name of watershed or Hydrologic Unit Code (HUC): Provo, 16020203 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: May 10, 2022

Field Determination. Date(s): April 25, 2022

SECTION II: SUMMARY OF FINDINGS

commerce. Explain:

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

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are and are not "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.

а.	indicate presence of waters of U.S. in review area (check all that apply):
	TNWs, including territorial seas
	Wetlands adjacent to TNWs
	Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs
	Non-RPWs that flow directly or indirectly into TNWs
	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
	Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
	Impoundments of jurisdictional waters
	☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 1,598 linear feet, wide, and/or 0.39 acres. Wetlands: 1.90 acre.

c. Limits (boundaries) of jurisdiction based on: Not Applicable

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: The study area constitutes 2,530 linear feet of ditches excavated wholly in and draining into uplands which do not carry a relatively permanent flow of water.

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: 673 square miles
Drainage area: 25 square miles
Average annual rainfall: 20.2 inches
Average annual snowfall: 80.0 inches

(ii) Physical Characteristics:

(a) Relationship with	ı TNW:
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☐ Tributary flows directly into TNW.

Tributary flows through 4 tributaries before entering TNW.

Project waters are **25-30** river miles from TNW.

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

Project waters are 20-25 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:

Identify flow route to TNW⁵: Middle Ditch flows into Spring Creek which then connects to the Provo River, flowing into Deer Creek Reservoir, back into the Provo River, and then terminates in Utah Lake. Tributary stream order, if known: 2

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

Note that the Instructional Cuidehack conta

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.

		e Ditch is a natural tributary but is manipulated ily of irrigation lateral ditches to convey flows
	Tributary properties with respect to top of bank (estimate): Average width:8 feet Average depth:1 feet Average side slopes: 4:1 (or greater) .	
	Primary tributary substrate composition (check all that apply): Sands Cobbles Gravel Bedrock Vegetation. Type/% cover: riparia Other. Explain:	☐ Concrete ☐ Muck n vegetation, 10-20%
	Tributary condition/stability [e.g., highly eroding, sloughing banks natural meanders as well as some channelized sections. often receive full natural flow potential given the nature of Presence of run/riffle/pool complexes. Explain: N/A Tributary geometry: Meandering Tributary gradient (approximate average slope): 1-2%	Banks appear stable as stream doesn't
(c)	c) Flow: Tributary provides for: Perennial Estimate average number of flow events in review area/year: 1 Describe flow regime: perennial tributary Other information on duration and volume:	
	Surface flow is: Discrete and confined. Characteristics:	
	Subsurface flow: Unknown . Explain findings: Dye (or other) test performed:	
	 ☐ changes in the character of soil ☐ shelving ☐ the present the present the present that the present the present that the present the present the present that the present the pres	esence of litter and debris ction of terrestrial vegetation esence of wrack line ent sorting e observed or predicted flow events change in plant community
	☐ oil or scum line along shore objects ☐ sur ☐ fine shell or debris deposits (foreshore) ☐ phy	extent of CWA jurisdiction (check all that High Water Mark indicated by: vey to available datum; vsical markings; getation lines/changes in vegetation types.
	apply): High Tide Line indicated by: Oil or scum line along shore objects In fine shell or debris deposits (foreshore) In physical markings/characteristics Itidal gauges	High Water Mark indicated by: vey to available datum; /sical markings;

(iii) Chemical Characteristics:

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.

⁷lbid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: The tributary originates from the Provo River approximately one mile upstream of the project area and has clear water color with good water quality.

Identify specific pollutants, if known: Given the area's rich history of agricultural and livestock production, nitrogen, phosphorus and other agricultural effluent are common pollutants.

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	(iv)		Riparian corridor. Characteristics (type, average width): salix spp. Observed in ground photos. Width of the corridor is relatively small and confined to areas immediately adjacent to Middle Ditch. Wetland fringe. Characteristics: The wetlands identified within the project area (Wetland A, B, C and D) are directly abutting Middle Ditch in a depressional area. There are other wetland fringe areas upstream and downstream of the project area along Middle Ditch. Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Fish are known to spawn in the Provo River. Middle Ditch connects to the Provo River, both up and downstream with no barriers between, and provides the necessary substrate for spawning fish. Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings: Middle Ditch is a perennial tributary in the Heber Valley and provides similar habitat as tributaries where waterfowl usage has been observed.
2.	Cha	arac	teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: General Wetland Characteristics: Properties: depressional wetlands located adjacent to the perennial Middle Ditch Wetland size: 1.897 acres Wetland type. Explain: palustrine emergent wetlands Wetland quality. Explain: Wetlands are high quality as a result of decades of flood irrigation. The wetlands function to cycle nutrients that exist within Middle Ditch as a result of agricultural effluent. There are no culverts or anthropogenic impacts to the wetlands. Project wetlands cross or serve as state boundaries. Explain: The waters are wholly within the state of Utah.
		(b)	General Flow Relationship with Non-TNW: Flow is: Perennial flow. Explain: wetlands all received perennial flow from Middle Ditch.
			Surface flow is: Overland sheetflow Characteristics: Hydrologic movement through the wetlands is mainly through sheet flow and shallow subsurface flow.
			Subsurface flow: Unknown. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are 25-30 river miles from TNW. Project waters are 20-25 aerial (straight) miles from TNW. Flow is from: Wetland to TNW. Estimate approximate location of wetland as within the 2 - 5-year floodplain.
	(ii)	Cha c p	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed haracteristics; etc.). Explain: Water color is clear, water quality is likely high in nutrients from agricultural ractices. ntify 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:
Aguatic/wildlife diversity. Explain findings: Habitat for invertebrates, small mammals, birds, etc.

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: 4

Approximately **1.90** 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)
Wetland A, Yes Wetland B, Yes Wetland C, Yes Wetland D, Yes	0.82 0.2 0.07 0.02		

Summarize overall biological, chemical and physical functions being performed: The wetlands provide numerous functions and services including aquatic and wildlife habitat, water quality enhancement, flood attenuation, and groundwater recharge.

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:

- 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: Middle Ditch receives perennial flows from the Provo River, located approximately one river-mile upstream of the project area. ☐ 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: ☐ Other non-wetland waters: ☐ Identify type(s) of waters:
3.	Non-RPWs ⁸ 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:
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: 1.08 acres of wetlands (Wetlands A, B, C, D, palustrine emergent aquatic resources) directly abut Middle Ditch.
	□ 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 jurisidictional. 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.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. 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).

⁸See Footnote # 3.

WATERS (CHECK ALL THAT APPLY):10

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE,

DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH

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

	 □ 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. ☐ 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 study area constitutes 2,530 linear feet of ditches excavated wholly in and draining into uplands which do not carry a relatively permanent flow of water. 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): 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.
SE	CTION 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 Resource Delineation for the Approximately 30.7- acre Galland North Fields Property in Wasatch County, Utah, dated 25-Jan-2022, created by Civil Solutions Group, Inc. 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: Figure 5, NHD and NWI Map, Aquatic Resource Delineation for the Approximately 30.7- acre Galland North Fields Property in Wasatch County, Utah USGS NHD data. USGS 8 and 12 digit HUC maps.
	U.S. Geological Survey map(s). Cite scale & quad name: 1:24K; Heber City. Figures 1, 2a, 2b of the Aquatic Resource Delineation for the Approximately 30.7- acre Galland North Fields Property in Wasatch County, Utah

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.*

\boxtimes	USDA Natural Resources Conservation Service Soil Survey. Citation: Figure 4, USDA Soil Survey Map, Aquatic
	Resource Delineation for the Approximately 30.7- acre Galland North Fields Property in Wasatch County,
	Utah
\boxtimes	National wetlands inventory map(s). Cite name: Figure 5, NHD and NWI Map, Aquatic Resource Delineation for the
	Approximately 30.7- acre Galland North Fields Property in Wasatch County, Utah
	State/Local wetland inventory map(s):
	FEMA/FIRM maps:
	100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
\boxtimes	Photographs: 🗍 Aerial (Name & Date):
	or ⊠ Other (Name & Date): Appendix C, Photo Log, Aquatic Resource Delineation for the
	Approximately 30.7- acre Galland North Fields Property in Wasatch County, Utah
	Previous determination(s). File no. and date of response letter:
	Applicable/supporting case law:
	Applicable/supporting scientific literature:
	Other information (please specify):
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B. ADDITIONAL COMMENTS TO SUPPORT JD: