

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):

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, South Coast Branch/Carlsbad Field Office, Seville Solar Project

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: California County/parish/borough: Imperial City: Unincorporated
Center coordinates of site (lat/long in degree decimal format): Lat. 33.05'51.44" **N**, Long. 115.59'34.77" **W**.
Universal Transverse Mercator: 593968.8; 3662560.4

Name of nearest waterbody: Salton Sea

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Salton Sea

Name of watershed or Hydrologic Unit Code (HUC): Salton Sea 18100200

☒ 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: *January 21, 2015 by Corps*

☒ Field Determination. Date(s): February 13, 2013 *by consultant*

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: 1,008 linear feet: 5.5 width (ft) and/or 0.58 acres.

Wetlands: 0.05 acres.

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

Elevation of established OHWM (if known): 12 feet above mean sea level.

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: **Nearly all of the approved JD review area supported groundwater-irrigated farming in the past. As such, the majority of the features identified during the HELIX 2013 delineation are man-made features associated with a closed network of agricultural wells, buried irrigation pipes, reservoirs, concrete-lined irrigation ditches, and unlined drainage ditches. These features are not considered to be waters of the U.S. Farming on the property began in the early**

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.

1950s and reached a peak in 1978 when approximately 1,600 acres were farmed. The property was last farmed in 2011. Decades of intensive agricultural uses have resulted in substantial changes to the landscape and hydrological regime. Two groundwater wells were initially drilled to provide water necessary for farming. Seven more water wells were drilled between 1965 and 1982. Lands in the southwestern portion of the property situated within the historic path of San Felipe Wash were completely converted for agricultural uses. Aerial photographs document that, between 1973 and 1978, the entire course of San Felipe Wash was redirected through the construction of a large, north-south trending berm along the western edge of the property. The berm was created to protect the property against flood flows carried by San Felipe Creek and other washes immediately west of the property. Irrigation pipes were buried and distributed well water throughout the property. Three reservoirs were used to capture and reuse irrigation draining off farmed areas. One straight irrigation ditch runs east-west just north of the largest reservoir that serves to distribute well water. Several other ditches occur that were designed to convey well water. The linear depressions that occur around the many tamarisk windbreaks within the property were created not to serve as drainage ditches, but to cut the roots of the tamarisk in an attempt to keep them from spreading. All of these features are associated with a closed hydrologic system whereby groundwater is pumped from on-site wells, conveyed through a series of on-site pipes and ditches, stored and retained in on-site basins, distributed on-site during irrigation activities, and returned as on-site groundwater recharge as a result of percolation. With this closed system, the property does not receive water from or discharge water to any potential jurisdictional resources.

In addition, four non-jurisdictional man-made ditches were identified in the northern portion of the approved JD review area. These ditches were created to collect and control runoff from Highway 78 and man-made water bars or interceptor dykes to prevent erosion from flows sheeting off Highway 78. The water bars are man-made isolated features that terminate within uplands. Therefore, the ditches are not considered to be waters of the U.S.

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: *Salton Sea*

Summarize rationale supporting determination: *Calvin Case*

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: 1,150 **acres**

Drainage area: 0.58 **acres**

Average annual rainfall: 0.52 inches

Average annual snowfall: 0.00 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are **15-20** river miles from TNW.

Project waters are **15-20** river miles from RPW.

Project waters are **10-15** aerial (straight) miles from TNW.

Project waters are **10-15** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: No.

⁴ 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 TNW⁵: The review area supports an unnamed tributary to San Felipe Creek and several unnamed tributaries to Tarantula Wash. Tarantula Wash is a tributary to San Felipe Creek, which outfalls into the Salton Sea, a Traditional Navigable Water.

Tributary stream order, if known: Not known.

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

Tributary is: ☒ Natural

☐ Artificial (man-made). Explain: .

☒ Manipulated (man-altered). Explain: The uppermost reach of the unnamed tributary to San Felipe Creek in the review area has been channelized and serves as a drainage ditch receiving and directing flows over Highway 78 before discharging them back into a natural wash reach.

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

Average width: 50 feet

Average depth: 5 feet

Average side slopes: **4:1 (or greater)**.

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: The tributaries are dry wash features that are highly eroded and unstable.

Presence of run/riffle/pool complexes. Explain: Flows are ephemeral through the tributaries and there are no run/riffle/pool complexes present.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): 1 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

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

Describe flow regime: Tributaries convey short duration surface flows during and immediately following rain events. Volumes are expected to range. Tributaries are subject to flash floods.

Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: Surface flow is discrete and confined.

Subsurface flow: **Unknown**. 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

☐ changes in the character of soil

☐ shelving

☒ vegetation matted down, bent, or absent

☐ leaf litter disturbed or washed away

☒ sediment deposition

☐ water staining

☐ other (list):

☐ Discontinuous OHWM.⁷ Explain: .

☐ the presence of litter and debris

☐ destruction of terrestrial vegetation

☐ the presence of wrack line

☒ sediment sorting

☒ scour

☐ multiple observed or predicted flow events

☐ abrupt change in plant community

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☒ High Tide Line indicated by:

☐ oil or scum line along shore objects

☐ fine shell or debris deposits (foreshore)

☐ physical markings/characteristics

☐ Mean High Water Mark indicated by:

☐ survey to available datum;

☐ physical markings;

☐ vegetation lines/changes in vegetation types.

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.

⁶ 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.

⁷ Ibid.

- ☐ 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: Surface flow is ephemeral and no water was observed during field delineation. Water is subject to some impairments due to low-water crossings on Highway 78 immediately upstream.

Identify specific pollutants, if known: Potentially oil, antifreeze, grease and metals from cars on Highway 78.

(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: *none*.

☐ Fish/spawn areas. Explain findings:

☒ Other environmentally-sensitive species. Explain findings: Potential habitat for flat-tailed horned lizard, a California species of special concern. *no FESA species.*

☐ 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: 0.05 acres

Wetland type. Explain: Tamarisk thicket supporting problematic hydric soils. Wetland hydrology and vegetation present. Area determined to support wetland conditions.

Wetland quality. Explain: Low quality associated with dry desert wash immediately downstream of low-water crossing for Highway 78.

Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain:

Surface flow is: **Overland sheetflow**

Characteristics: The wetland area is situated within the broad active floodplain for the tributary. Surface flows through the wetland area are not discrete and appear to sheet flow across the broad plain when present.

Subsurface flow: **Unknown**. 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 **15-20** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **2 - 5-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: Surface flow is ephemeral and no water was observed during field delineation. Water is subject to some impairments due to low-water crossings on Highway 78 immediately upstream.

Identify specific pollutants, if known: Potentially oil, antifreeze, grease and metals from cars on Highway 78.

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

☒ Riparian buffer. Characteristics (type, average width): Riparian thicket, 50 feet wide.

☐ 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: **1**

Approximately (0.05) 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>
Yes	0.05		

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: The tributaries have the capacity to reduce the amount of pollutants and flood waters reaching a TNW. The tributaries are situated immediately downstream of Highway 78 and have the capacity to treat pollutants running off the road. The tributaries have the capacity to attenuate flows and affect flood waters downstream. The tributaries provide habitat and ecological functions for wildlife, including feeding and dispersal habitat for flat-tailed horned lizard, which is a California state species of special concern. Nutrients and organic carbon could be transferred from the tributaries downstream to biologically productive reaches of San Felipe Creek and the Salton Sea.
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 width (ft), 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 width (ft).
☐ 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.

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

- ☒ Tributary waters: **1,043** linear feet **0.63 acre** width (ft).
☐ 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: 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: **0.05** 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.

⁸See Footnote # 3.

⁹To 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.

- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: .
- ☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination:

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

- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
- ☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (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): .

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 width (ft).
- ☐ 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, width (ft).
- ☐ 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: Maps and other information submitted by HELIX Environmental Planning, Inc. as part of written request for Approved JD and attachments dated April 15, 2014.
- ☒ 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: <http://water.usgs.gov/wsc/>; <http://cfpub.epa.gov/surf/locate/index.cfm>.
 - ☐ USGS NHD data.
 - ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: Sections 15, 22, 23, 25, 26, and 27, Township 12 South, Range 9 East of the Borrego Mtn SE, Harpers Well, Kane Spring NW, and Shell Reef U.S. Geological Survey 7.5-minute topographic quadrangles.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>.
- ☒ National wetlands inventory map(s). Cite name: <http://www.fws.gov/wetlands/index.html>.
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Aerial imagery and other information submitted by HELIX Environmental Planning, Inc. as part of written request for Approved JD and attachments dated April 15, 2014.
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:

Potentially jurisdictional waters of the U.S. were assessed and delineated within the review area or survey area (please see enclosed Figure 1 Waters of the U.S., Significant Nexus Map, and Jurisdictional Delineation Report) and determined to be federally jurisdictional waters under the regulatory purview of the USACE. The ephemeral streams and adjacent wetlands flow indirectly into and have hydrological and ecological surface connection to a TNW (Salton Sea).

Using the criteria outlined in 33 CFR 328.3 the USACE has previously determined that the Salton Sea exhibits sufficient evidence of interstate commerce to meet the requirements of 33 CFR 328.3(a)(3)(iii) and meet the requirements for navigability at 33 CFR 328.3(a)(1). The Salton Sea was declared a TNW in 2000 by the Calvin Court Case (U.S. Supreme Court) because of the interstate and intrastate commerce and recreational uses. The delineated aquatic features occurring within Seville Solar Project Site have a significant nexus to the Salton Sea, and are therefore subject to USACE jurisdiction under Section 404 of the Clean Water Act.

Based on the results of the delineation and federal guidance outlined above, the waters delineated within the survey area are determined to be waters of the U.S. and thus regulated by USACE for the following principal reasons:

1. Hydrological connectivity to a TNW is apparent based on field delineation and review of available data. The review area supports an unnamed tributary to San Felipe Creek and several unnamed tributaries to Tarantual Wash. Tarantula Wash is a tributary to San Felipe Creek, which outfalls into the Salton Sea approximately 16 river miles east of the survey area
2. The tributaries have the capacity to reduce the amount of pollutants and flood waters reaching the Salton Sea, a TNW. The tributaries are situated immediately downstream of Highway 78 and have the capacity to treat pollutants running off the road. The tributaries have the capacity to attenuate flows and affect flood waters downstream. The tributaries provide habitat and ecological functions for wildlife, including feeding and dispersal habitat for flat-tailed horned lizard, which is a California state species of special concern. Nutrients and organic carbon could be transferred from the tributaries downstream to biologically productive reaches of San Felipe Creek and the Salton Sea.