

**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):** March 30, 2012

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Los Angeles District, BNSF 2012 Bridge Renewals, SPL-2012-00136-SLP

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

State: California County/parish/borough: San Bernardino City: near Bagdad

Center coordinates of site (lat/long in degree decimal format): Lat. 34.502455° N, Long. -115.875575° W.

Name of nearest waterbody: Dry Lake Watershed

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A

Name of watershed or Hydrologic Unit Code (HUC): Southern Mojave, Lower Mojave Desert (HUC #18100100)

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: March 30, 2012

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 no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>1</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs (no adjacent wetlands)
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs (with a surface connection) that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: linear feet: width (ft) and/or acres.

Wetlands: acres.

**c. Limits (boundaries) of jurisdiction based on: Pick List**

Elevation of established OHWM (if known): .

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

**Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:**

The Dry Lake Watershed is situated within the closed basin of the Southern Mojave Watershed. Dry Lake and its non-RPW tributaries (Dry Lake Watershed) function as an isolated intrastate system, which lacks the presence of a TNW. Moreover, Dry Lake and all tributaries to Dry Lake are NOT (a)(3) waters as defined by 33 CFR 328.3, as they do NOT meet criteria (a)(3)(i-iii) and since surface waters are NOT used for industrial or other commercial purposes by interstate commerce industries.

<sup>1</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>2</sup> Supporting documentation is presented in Section III.F.

Dry Lake, the central terminus point for surface waters within the Dry Lake Watershed, is situated within California, San Bernardino County, immediately southeast of Bagdad. Its shallow depth ranges 610-feet to 620-feet in elevation. The Lake covers an area exceeding 2,600-acres, with an approximate width of 2-miles and length of 2.4-miles. Bristol Lake is surrounded by the Bullions Mountains to the west, the Bristol/Granite/Marble/Old Dad Mountains to the north, an elevated lava field/Amboy Crater and alluvial fan to the immediate east and southeast, and the Sheep Hole/Calumet/Coxcomb Mountains to the south. Dry Lake is situated immediately west of Bristol dry lake, and is hydrologically isolated from Bristol dry lake by an elevated geologic lava field formation and an alluvial fan immediately south of the lava field. The overall Dry Lake Watershed occupies an area of approximately 308,348 acres and is primarily uninhabited.

The surface waters within the Dry Lake area all drain to Dry Lake, the central eastern elevational low point of the Dry Lake Watershed. Dry Lake is situated immediately south of major east-west transportation corridors, including the interstate roadway, I-40, a BNSF main rail line and National Trails Highway (Route 66). Typical rainfall average in this area ranges 3- to 5-inches. The groundwater level is near the surface of Dry Lake. Currently, there are no published commercial uses of the surface waters of any tributaries to Dry Lake, and the review of aerial photographs (Google Earth) also did not depict surface water usage of any drainages tributary to Dry Lake. Therefore, all tributaries to Dry Lake are NOT (a)(3) waters as defined by 33 CFR 328.3 (a)(3)(i-iii).

Dry Lake, as the terminus for all waters within the Dry Lake Watershed, is NOT a TNW. Moreover, Dry Lake is NOT an (a)(3) water as defined by 33 CFR 328.3. Dry Lake does NOT meet criteria (a)(3)(i-iii), as it: i) DOES NOT have use for surface water recreation or other purposes by foreign or interstate travelers, ii) DOES NOT have harvesting activities of fish or shellfish that may be sold in interstate or foreign commerce, and iii) DOES NOT have surface water industrial usage by industries in interstate commerce. In contrast to the nearby Bristol dry lake, Dry Lake is not even mined for salt production. Similar to the tributaries of Dry Lake, there are no published uses of Dry Lake surface waters, mining or otherwise, and there is lack of evidence of any commerce/commercial activity within Dry Lake based on the review of aerial photographs (Google Earth).

The above is based upon: the Jurisdictional Waters Delineation Request for the Bristol Lake and Dry Lake watersheds (dated February 1, 2012, prepared by TRC Solutions, Inc.), the Jurisdictional Waters Delineation Request for 2012 BNSF Bridge Renewal Projects at Mile Posts 659.8, 668.1, and 668.9 (dated October 3, 2011, prepared by TRC Solutions, Inc.), the California Groundwater Bulletin 118: Bristol Valley Groundwater Basin (last updated February 27, 2004), and the review of aerial photographs (Google Earth) that also did not show surface water usage of any tributaries to Dry Lake or of the dry lake terminus itself. Therefore, since Dry Lake is an intrastate isolated water without a surface water connection to commerce, all tributaries to Dry Lake as part of the overall watershed system are also isolated and additionally have no nexus to commerce. Thus, the Dry Lake Watershed is an isolated watershed system that has no surface water connection to commerce.

Based on the information above, the Corps concludes that all tributaries to Dry Lake, and Dry Lake, (i.e. the Dry Lake Watershed) are NONJURISDICTIONAL waters of the United States, since the waters are NOT tributary to either a TNW or an (a)(3) water and are NOT (a)(3) waters themselves. The Corps makes such a watershed conclusion since the waters are tributary to an isolated, intrastate dry lake.

### 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>3</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: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

Tributary flows directly into TNW.

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

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

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

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

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

Project waters cross or serve as state boundaries. Explain: \_\_\_\_\_

Identify flow route to TNW<sup>4</sup>: \_\_\_\_\_

Tributary stream order, if known: \_\_\_\_\_

<sup>3</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>4</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.

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

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

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

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

**Primary tributary substrate composition (check all that apply):**

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

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

**Presence of run/riffle/pool complexes. Explain:**

**Tributary geometry: Pick List**

**Tributary gradient (approximate average slope):** %

(c) Flow:

**Tributary provides for: Pick List**

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

Describe flow regime:

Other information on duration and volume:

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

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

Dye (or other) test performed:

**Tributary has (check all that apply):**

Bed and banks  
 OHWM<sup>5</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>6</sup> Explain:

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

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

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

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

Riparian corridor. Characteristics (type, average width):

<sup>5</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.

<sup>6</sup>Ibid.

- Wetland fringe. Characteristics: .
- Habitat for:
  - Federally Listed species. Explain findings: .
  - Fish/spawn areas. Explain findings: .
  - Other environmentally-sensitive species. Explain findings: .
  - Aquatic/wildlife diversity. Explain findings: .

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

**(i) Physical Characteristics:**

**(a) General Wetland Characteristics:**

Properties:

Wetland size:        acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

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

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

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

Dye (or other) test performed: .

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

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: .

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

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

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

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

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

**(ii) Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

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

Riparian buffer. Characteristics (type, average width): .

Vegetation type/percent cover. Explain: .

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: .

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

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately (        ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

**C. SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

**Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:**

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):**

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
 TNWs: linear feet 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-RPWs<sup>7</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.

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

<sup>7</sup>See Footnote # 3.

- Tributary waters:            linear feet            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:            acres.

**7. Impoundments of jurisdictional waters.<sup>8</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>9</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):

- 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.

<sup>8</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>9</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.

- 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: .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: USGS 7.5' Amboy Crate quadrangle map.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: Online at [http:// www.fws.gov/wetlands/Data/Mapper.html](http://www.fws.gov/wetlands/Data/Mapper.html)..
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth 9/16/2011.
  - 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): Jurisdictional Waters Delineation Request for the Bristol Lake and Dry Lake watersheds (dated February 1, 2012, prepared by TRC Solutions, Inc.); Jurisdictional Waters Delineation Request for 2012 BNSF Bridge Renewal Projects at Mile Posts 659.8, 668.1, and 668.9 (dated October 3, 2011, prepared by TRC Solutions, Inc.); California Groundwater Bulletin 118: Bristol Valley Groundwater Basin (last updated February 27, 2004); Amboy Volcano, California (<http://www.volcanodiscovery.com/amboy.html>),

#### **B. ADDITIONAL COMMENTS TO SUPPORT JD:**

The Dry Lake Watershed is situated within the closed basin of the Southern Mojave Watershed. Dry Lake and its non-RPW tributaries (Dry Lake Watershed) function as an isolated intrastate system, which lacks the presence of a TNW. Moreover, Dry Lake and all tributaries to Dry Lake are NOT (a)(3) waters as defined by 33 CFR 328.3, as they do NOT meet criteria (a)(3)(i-iii) and since surface waters are NOT used for industrial or other commercial purposes by interstate commerce industries.

Dry Lake, the central terminus point for surface waters within the Dry Lake Watershed, is situated within California, San Bernardino County, immediately southeast of Bagdad. Its shallow depth ranges 610-feet to 620-feet in elevation. The Lake covers an area exceeding 2,600-acres, with an approximate width of 2-miles and length of 2.4-miles. Bristol Lake is surrounded by the Bullions Mountains to the west, the Bristol/Granite/Marble/Old Dad Mountains to the north, an elevated lava field/Amboy Crater and alluvial fan to the immediate east and southeast, and the Sheep Hole/Calumet/Coxcomb Mountains to the south. Dry Lake is situated immediately west of Bristol dry lake, and is hydrologically isolated from Bristol dry lake by an elevated geologic lava field formation and an alluvial fan immediately south of the lava field. The overall Dry Lake Watershed occupies an area of approximately 308,348 acres and is primarily uninhabited.



The surface waters within the Dry Lake area all drain to Dry Lake, the central eastern elevational low point of the Dry Lake Watershed. Dry Lake is situated immediately south of major east-west transportation corridors, including the interstate roadway, I-40, a BNSF main rail line and National Trails Highway (Route 66). Typical rainfall average in this area ranges 3- to 5-inches. The groundwater level is near the surface of Dry Lake. Currently, there are no published commercial uses of the surface waters of any tributaries to Dry Lake, and the review of aerial photographs (Google Earth) also did not depict surface water usage of any drainages tributary to Dry Lake. Therefore, all tributaries to Dry Lake are NOT (a)(3) waters as defined by 33 CFR 328.3 (a)(3)(i-iii).

Dry Lake, as the terminus for all waters within the Dry Lake Watershed, is NOT a TNW. Moreover, Dry Lake is NOT an (a)(3) water as defined by 33 CFR 328.3. Dry Lake does NOT meet criteria (a)(3)(i-iii), as it: i) DOES NOT have use for surface water recreation or other purposes by foreign or interstate travelers, ii) DOES NOT have harvesting activities of fish or shellfish that may be sold in interstate or foreign commerce, and iii) DOES NOT have surface water industrial usage by industries in interstate commerce. In contrast to the nearby Bristol dry lake, Dry Lake is not even mined for salt production. Similar to the tributaries of Dry Lake, there are no published uses of Dry Lake surface waters, mining or otherwise, and there is lack of evidence of any commerce/commercial activity within Dry Lake based on the review of aerial photographs (Google Earth).

The above is based upon: the Jurisdictional Waters Delineation Request for the Bristol Lake and Dry Lake watersheds (dated February 1, 2012, prepared by TRC Solutions, Inc.), the Jurisdictional Waters Delineation Request for 2012 BNSF Bridge Renewal Projects at Mile Posts 659.8, 668.1, and 668.9 (dated October 3, 2011, prepared by TRC Solutions, Inc.), the California Groundwater Bulletin 118: Bristol Valley Groundwater Basin (last updated February 27, 2004), and the review of aerial photographs (Google Earth) that also did not show surface water usage of any tributaries to Dry Lake or of the dry lake terminus itself. Therefore, since Dry Lake is an intrastate isolated water without a surface water connection to commerce, all tributaries to Dry Lake as part of the overall watershed system are also isolated and additionally have no nexus to commerce. Thus, the Dry Lake Watershed is an isolated watershed system that has no surface water connection to commerce.

Based on the information above, the Corps concludes that all tributaries to Dry Lake, and Dry Lake, (i.e. the Dry Lake Watershed) are NONJURISDICTIONAL waters of the United States, since the waters are NOT tributary to either a TNW or an (a)(3) water and are NOT (a)(3) waters themselves. The Corps makes such a watershed conclusion since the waters are tributary to an isolated, intrastate dry lake.

**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):** March 30, 2012

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Los Angeles District, BNSF 2012 Bridge Renewals, SPL-2012-00136-SLP

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

State: California      County/parish/borough: San Bernardino      City: near Amboy  
Center coordinates of site (lat/long in degree decimal format): Lat. 34.51414° **N**, Long. -115.72274° **W**.

Name of nearest waterbody: Bristol Lake Watershed

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A

Name of watershed or Hydrologic Unit Code (HUC): Southern Mojave, Lower Mojave Desert

- 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: March 30, 2012  
 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 no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):**

- TNWs, including territorial seas  
 Wetlands adjacent to TNWs  
 Relatively permanent waters<sup>1</sup> (RPWs) that flow directly or indirectly into TNWs  
 Non-RPWs that flow directly or indirectly into TNWs (no adjacent wetlands)  
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs  
 Wetlands adjacent to but not directly abutting RPWs (with a surface connection) that flow directly or indirectly into TNWs  
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs  
 Impoundments of jurisdictional waters  
 Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters:      linear feet:      width (ft) and/or      acres.  
Wetlands:      acres.

**c. Limits (boundaries) of jurisdiction based on: **Pick List****

Elevation of established OHWM (if known): .

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

**Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:**

The Bristol Lake Watershed is situated within the closed basin of the Southern Mojave Watershed. Bristol Lake and its non-RPW tributaries (Bristol Lake Watershed) function as an isolated intrastate system, which lacks the presence of a TNW. Moreover, Bristol Lake and all tributaries to Bristol Lake are NOT (a)(3) waters as defined by 33 CFR 328.3, as they do NOT meet criteria (a)(3)(iii), since surface waters are NOT used for industrial or other commercial purposes by interstate commerce industries.

Bristol Lake, the central terminus point for surface waters within the Bristol Lake Watershed, is situated within California, San Bernardino County, immediately southeast of Amboy. Its shallow depth ranges 585-feet to 610-feet in elevation. The Lake covers an area exceeding

<sup>1</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>2</sup> Supporting documentation is presented in Section III.F.

41,578-acres, with an approximate width of 7.1-miles and length of 10.7-miles. Bristol Lake is surrounded by the Bullions Mountains to the west, the Bristol/Granite/Marble/Old Dad Mountains to the north, the Marble/Calumet/Ship Mountains to the east, and the Sheep Hole/Calumet/Coxcomb Mountains to the south. The overall Bristol Lake Watershed occupies an area of approximately 377,760 acres and is primarily uninhabited.

The surface waters within the Bristol Valley groundwater basin all drain to Bristol dry lake, the central elevational low point of the Bristol Lake Watershed. Bristol Lake is situated immediately south of major east-west transportation corridors, including the interstate roadway, I-40, a BNSF main rail line and National Trails Highway (Route 66). A rail spur from this east-west main rail line even extends slightly south, from Saltus to the northern tip of Bristol Lake. Typical rainfall average in this area ranges 3- to 5-inches. The groundwater level is near the surface of Bristol Lake, and temporary ponding has occurred in the Lake even in low rainfall years. Prior approved jurisdictional determinations have been made for specific non-RPW tributaries to Bristol dry lake. Currently, there are no published commercial uses of the surface waters of any tributaries to Bristol Lake, and the review of aerial photographs (Google Earth) also did not depict surface water usage of any drainages tributary to Bristol Lake. Therefore, all tributaries to Bristol Lake are NOT (a)(3) waters as defined by 33 CFR 328.3 (a)(3)(i-iii).

Bristol Lake, as the terminus for all waters within the Bristol Lake Watershed, is NOT a TNW. Moreover, Bristol Lake is NOT an (a)(3) water as defined by 33 CFR 328.3. Bristol dry lake does NOT meet criteria (a)(3)(i-iii), as it: i) DOES NOT have use for surface water recreation or other purposes by foreign or interstate travelers, ii) DOES NOT have harvesting activities of fish or shellfish that may be sold in interstate or foreign commerce, and iii) DOES NOT have surface water industrial usage by industries in interstate commerce. Mining and processing activities for calcium chloride (salt) have taken place in Bristol Lake since approximately 1909. Bristol Lake is also one of very few areas in California that naturally contains a large percentage of calcium chloride as salt. However, these salt mining industries on the lake do NOT utilize the lake surface waters. Therefore, per Corps Headquarters guidance, the mining industry located on the Lake does NOT qualify as interstate commerce under 33 CFR 328.3 (a)(3)(i-iii), as the Clean Water Act is a surface water law and does NOT include industry that only utilizes groundwater. Furthermore, there are no published uses of Bristol Lake surface waters, mining or otherwise.

The above is based upon: the Jurisdictional Waters Delineation Request for the Bristol Lake and Dry Lake watersheds (dated February 1, 2012, prepared by TRC Solutions, Inc.), the Jurisdictional Waters Delineation Request for 2012 BNSF Bridge Renewal Projects at Mile Posts 659.8, 668.1, and 668.9 (dated October 3, 2011, prepared by TRC Solutions, Inc.), the Delineation of Jurisdictional Waters and Wetlands for Bristol Dry Lake and Its Tributaries (dated January 11, 2008, prepared by Michael Brandman Associates), the Supplemental Data Delineation of Jurisdictional Waters and Wetlands for Bristol Dry Lake and Its Tributaries (dated July 2, 2009, prepared by Michael Brandman Associates), the California Groundwater Bulletin 118: Bristol Valley Groundwater Basin (last updated February 27, 2004), the review of aerial photographs (Google Earth) that also did not show surface water usage of any tributaries to Bristol Lake or the dry lake terminus itself, and prior approved jurisdictional determinations within the same watershed (see specific JD information listed in Section IV). Therefore, since Bristol Lake is an intrastate isolated water without a surface water connection to commerce, all tributaries to Bristol Lake as part of the overall watershed system are also isolated and additionally have no nexus to commerce. Thus, the Bristol Lake Watershed is an isolated watershed system that has no surface water connection to commerce.

Based on the information above, the Corps concludes that all tributaries to Bristol Lake, and Bristol Lake, (i.e. the Bristol Lake Watershed) are NONJURISDICTIONAL waters of the United States, since the waters are NOT tributary to either a TNW or an (a)(3) water and are NOT (a)(3) waters themselves. The Corps makes such a watershed conclusion since the waters are tributary to an isolated, intrastate dry lake.

**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>3</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: **Pick List**  
Average annual rainfall: inches  
Average annual snowfall: \_\_\_\_\_ inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

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

Project waters are **Pick List** river miles from TNW.  
Project waters are **Pick List** river miles from RPW.  
Project waters are **Pick List** aerial (straight) miles from TNW.  
Project waters are **Pick List** aerial (straight) miles from RPW.  
Project waters cross or serve as state boundaries. Explain: \_\_\_\_\_ .

Identify flow route to TNW<sup>4</sup>: \_\_\_\_\_ .

<sup>3</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>4</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.

Tributary stream order, if known: .

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

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

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

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

**Primary tributary substrate composition (check all that apply):**

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

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

**Presence of run/riffle/pool complexes. Explain:** .

**Tributary geometry: Pick List**

**Tributary gradient (approximate average slope):** %

(c) Flow:

**Tributary provides for: Pick List**

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

Describe flow regime: .

**Other information on duration and volume:** .

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

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

Dye (or other) test performed: .

**Tributary has (check all that apply):**

Bed and banks  
 OHWM<sup>5</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>6</sup> Explain: .

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

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

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: .

Identify specific pollutants, if known: .

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

<sup>5</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.

<sup>6</sup>Ibid.

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

**(i) Physical Characteristics:**

**(a) General Wetland Characteristics:**

Properties:

Wetland size: \_\_\_\_\_ acres

Wetland type. Explain: \_\_\_\_\_

Wetland quality. Explain: \_\_\_\_\_

Project wetlands cross or serve as state boundaries. Explain: \_\_\_\_\_

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

Flow is: **Pick List**. Explain: \_\_\_\_\_

Surface flow is: **Pick List**

Characteristics: \_\_\_\_\_

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

Dye (or other) test performed: \_\_\_\_\_

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

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: \_\_\_\_\_

Ecological connection. Explain: \_\_\_\_\_

Separated by berm/barrier. Explain: \_\_\_\_\_

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

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

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

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

**(ii) Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: \_\_\_\_\_

Identify specific pollutants, if known: \_\_\_\_\_

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

Riparian buffer. Characteristics (type, average width): \_\_\_\_\_

Vegetation type/percent cover. Explain: \_\_\_\_\_

Habitat for:

Federally Listed species. Explain findings: \_\_\_\_\_

Fish/spawn areas. Explain findings: \_\_\_\_\_

Other environmentally-sensitive species. Explain findings: \_\_\_\_\_

Aquatic/wildlife diversity. Explain findings: \_\_\_\_\_

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

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( \_\_\_\_\_ ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

**Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:**

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: linear feet 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-RPWs<sup>7</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.

<sup>7</sup>See Footnote # 3.





- 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: .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: USGS 7.5' Amboy Crate quadrangle map.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: Online at [http:// www.fws.gov/wetlands/Data/Mapper.html](http://www.fws.gov/wetlands/Data/Mapper.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): Google Earth 9/16/2011.
  - Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: SPL-2010-01055-MAS (March 4, 2011), SPL-2009-00887-RJV (January 8, 2010), SPL-2008-402-SLP (November 17, 2009), SPL-2009-00450-SLP (November 18, 2009).
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): Jurisdictional Waters Delineation Request for the Bristol Lake and Dry Lake watersheds (dated February 1, 2012, prepared by TRC Solutions, Inc.); Jurisdictional Waters Delineation Request for 2012 BNSF Bridge Renewal Projects at Mile Posts 659.8, 668.1, and 668.9 (dated October 3, 2011, prepared by TRC Solutions, Inc.); Delineation of Jurisdictional Waters and Wetlands for Bristol Dry Lake and Its Tributaries (dated January 11, 2008, prepared by Michael Brandman Associates); Supplemental Data Delineation of Jurisdictional Waters and Wetlands for Bristol Dry Lake and Its Tributaries (dated July 2, 2009, prepared by Michael Brandman Associates); California Groundwater Bulletin 118: Bristol Valley Groundwater Basin (last updated February 27, 2004); Ecological Subregions of California: 322Ao (<http://www.fs.fed.us/r5/projects/ecoregions/322ao.htm>); Desert: Magazine of the Southwest (dated December 1977); Bureau of Land Management California Solid Leasable Minerals ([http://www.blm.gov/ca/st/en/prog/minerals/solid\\_lse.html](http://www.blm.gov/ca/st/en/prog/minerals/solid_lse.html)).

#### **B. ADDITIONAL COMMENTS TO SUPPORT JD:**

The Bristol Lake Watershed is situated within the isolated, closed basin of the Southern Mojave Watershed. Bristol Lake and its non-RPW tributaries (Bristol Lake Watershed) function as an isolated intrastate watershed system, which lacks the presence of a TNW. Moreover, Bristol Lake and all tributaries to Bristol Lake are NOT (a)(3) waters as defined by 33 CFR 328.3, as they do NOT meet criteria (a)(3)(i-iii) and since surface waters are NOT used for industrial or other commercial purposes by interstate commerce industries.

Bristol Lake, the central terminus point for surface waters within the Bristol Lake Watershed, is situated within California, San Bernardino County, immediately southeast of Amboy. Its shallow depth ranges 585-feet to 610-feet in elevation. The Lake covers an area exceeding 41,578-acres, with an approximate width of 7.1-miles and length of 10.7-miles. Bristol Lake is surrounded by the Bullions Mountains to the west, the Bristol/Granite/Marble/Old Dad Mountains to the north, the Marble/Calumet/Ship Mountains to the east, and the Sheep Hole/Calumet/Coxcomb Mountains to the south. The overall Bristol Lake Watershed occupies an area of approximately 377,760 acres and is primarily uninhabited.

The surface waters within the Bristol Valley groundwater basin all drain to Bristol dry lake, the central elevational low point of the Bristol Lake Watershed. Bristol Lake is situated immediately south of major east-west transportation corridors, including the interstate roadway, I-40, a BNSF main rail line and National Trails Highway (Route 66). A rail spur from this east-west main rail line even extends slightly south, from Saltus to the northern tip of Bristol Lake. Typical rainfall average in this area ranges 3- to 5-inches. The groundwater level is near the surface of Bristol Lake, and temporary ponding has occurred in the Lake even in low rainfall years. All surface flows that enter Bristol dry lake either evaporate or percolate into the groundwater table. Prior approved jurisdictional determinations have been made for specific non-RPW tributaries to Bristol dry lake. Currently, there are no published commercial uses of the surface waters of any tributaries to Bristol Lake, and the review of aerial photographs (Google Earth) also did not depict surface water usage of any drainages tributary to Bristol Lake. Therefore, all tributaries to Bristol Lake are NOT (a)(3) waters as defined by 33 CFR 328.3 (a)(3)(i-iii).

Bristol Lake, as the terminus for all waters within the Bristol Lake Watershed, is NOT a TNW. Moreover, Bristol Lake is NOT an (a)(3) water as defined by 33 CFR 328.3. Bristol dry lake does NOT meet criteria (a)(3)(i-iii), as it: i) DOES NOT have use for surface water recreation or other purposes by foreign or interstate travelers, ii) DOES NOT have harvesting activities of fish or shellfish that may be sold in interstate or foreign commerce, and iii) DOES NOT have surface water industrial usage by industries in interstate commerce. Mining and processing activities for calcium chloride (salt) have taken place in Bristol Lake since approximately 1909. Bristol Lake is also one of very few areas in California that naturally contains a large percentage of calcium chloride as salt. However, these salt mining industries on the lake do NOT utilize the lake surface waters. Therefore, per Corps Headquarters guidance, the mining industry located on the Lake does NOT qualify as interstate commerce under 33 CFR 328.3 (a)(3)(i-iii), as the Clean Water Act is a surface water law and does NOT include industry that only utilizes groundwater. Furthermore, there are no published uses of Bristol Lake surface waters, mining or otherwise.

The above is based upon: the Jurisdictional Waters Delineation Request for the Bristol Lake and Dry Lake watersheds (dated February 1, 2012, prepared by TRC Solutions, Inc.), the Jurisdictional Waters Delineation Request for 2012 BNSF Bridge Renewal Projects at Mile Posts 659.8, 668.1, and 668.9 (dated October 3, 2011, prepared by TRC Solutions, Inc.), the Delineation of Jurisdictional Waters and Wetlands for Bristol Dry Lake and Its Tributaries (dated January 11, 2008, prepared by Michael Brandman Associates), the Supplemental Data Delineation of Jurisdictional Waters and Wetlands for Bristol Dry Lake and Its Tributaries (dated July 2, 2009, prepared by Michael Brandman Associates), the California Groundwater Bulletin 118: Bristol Valley Groundwater Basin (last updated February 27, 2004), and the review of aerial photographs (Google Earth) that also did not show surface water usage of any tributaries to Bristol Lake or the dry lake terminus itself. Therefore, since Bristol Lake is an intrastate isolated water without a surface water connection to commerce, all tributaries to Bristol Lake as part of the overall watershed system are also isolated and additionally have no nexus to commerce. Thus, the Bristol Lake Watershed is an isolated watershed system that has no surface water connection to commerce.

Based on the information above, the Corps concludes that all tributaries to Bristol Lake, and Bristol Lake, (i.e. the Bristol Lake Watershed) are NONJURISDICTIONAL waters of the United States, since the waters are NOT tributary to either a TNW or an (a)(3) water and are NOT (a)(3) waters themselves. The Corps makes such a watershed conclusion since the waters are tributary to an isolated, intrastate dry lake.