



DEPARTMENT OF THE ARMY

Los Angeles District Corps of Engineers

P.O. Box 532711

Los Angeles, CA 90017-3401

July 2, 2013

REPLY TO
ATTENTION OF

Regulatory Division

Russell Williams, Principal Planner
Riverside County Transportation Department
3525 14th Street
Riverside, California 92502

SUBJECT: Approved Jurisdictional Determination regarding presence/absence of geographic jurisdiction

Dear Mr. Williams:

Reference is made to your request (File No. SPL-2010-00446-VCC) dated December 27, 2012, for an approved Department of the Army jurisdictional determination (JD) for the Interstate 215/Newport Road Interchange project site (Long: -117.171863 W, Lat: 33.687105 N) located within the City of Menifee, Riverside County, California.

As you may know, the Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, then a permit is required. The first test determines whether or not the proposed project is located in a water of the United States (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the Rivers and Harbor Act or Section 404 of the Clean Water Act. As part of the evaluation process, pertaining to the first test only, we have made the jurisdictional determination below.

Based on available information, we have determined there are no waters of the United States located at Feature 2 on the project site, in the locations depicted on the enclosed drawing. The basis for our determination can be found in the enclosed JD form(s).

The aquatic resources identified as "Feature 2" on the JD form are non-tidal drainages excavated on dry land that were built in the uplands and were not intended to and do not replace waters of the U.S. nor do they convey flows between waters of the U.S. As such, this aquatic resource is not currently regulated by the Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Clean Water Act. Other Federal, State, and local laws may apply to your activities. In particular, you may need authorization from the California State Water Resources Control Board and/or the U.S. Fish and Wildlife Service.

This letter contains an approved jurisdictional determination for the Interstate 215/Newport Road Interchange Project site. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet (Appendix A) and Request for Appeal (RFA) form. If you request to appeal this decision you must submit a completed RFA form to the Corps South Pacific Division Office at the following address:

Tom Cavanaugh
Administrative Appeal Review Officer,
U.S. Army Corps of Engineers
South Pacific Division, CESPDPDS-O, 2042B
1455 Market Street, San Francisco, California 94103-1399

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. Part 331.5, and that it has been received by the Division Office within 60 days of the date on the NAP. Should you decide to submit an RFA form, it must be received at the above address by **August 31, 2013**. It is not necessary to submit an RFA form to the Division office if you do not object to the decision in this letter.

This verification is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. If you wish to submit new information regarding the approved jurisdictional determination for this site, please submit this information to Veronica Chan at the letterhead address by **August 31, 2013**. The Corps will consider any new information so submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. A revised or reissued jurisdictional determination can be appealed as described above.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the particular project site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

If you have any questions, please contact Veronica Chan at 213-452-3292 or via e-mail at Veronica.C.Chan@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at:
<http://per2.nwp.usace.army.mil/survey.html>.

"Building Strong and Taking Care of People!"

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Cohen". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark D. Cohen
Deputy Chief, Regulatory Division

Enclosures

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Riverside County Transportation Department (POC: Russell Williams)		File Number: SPL-2010-00446-VCC	Date: 7/2/2013
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

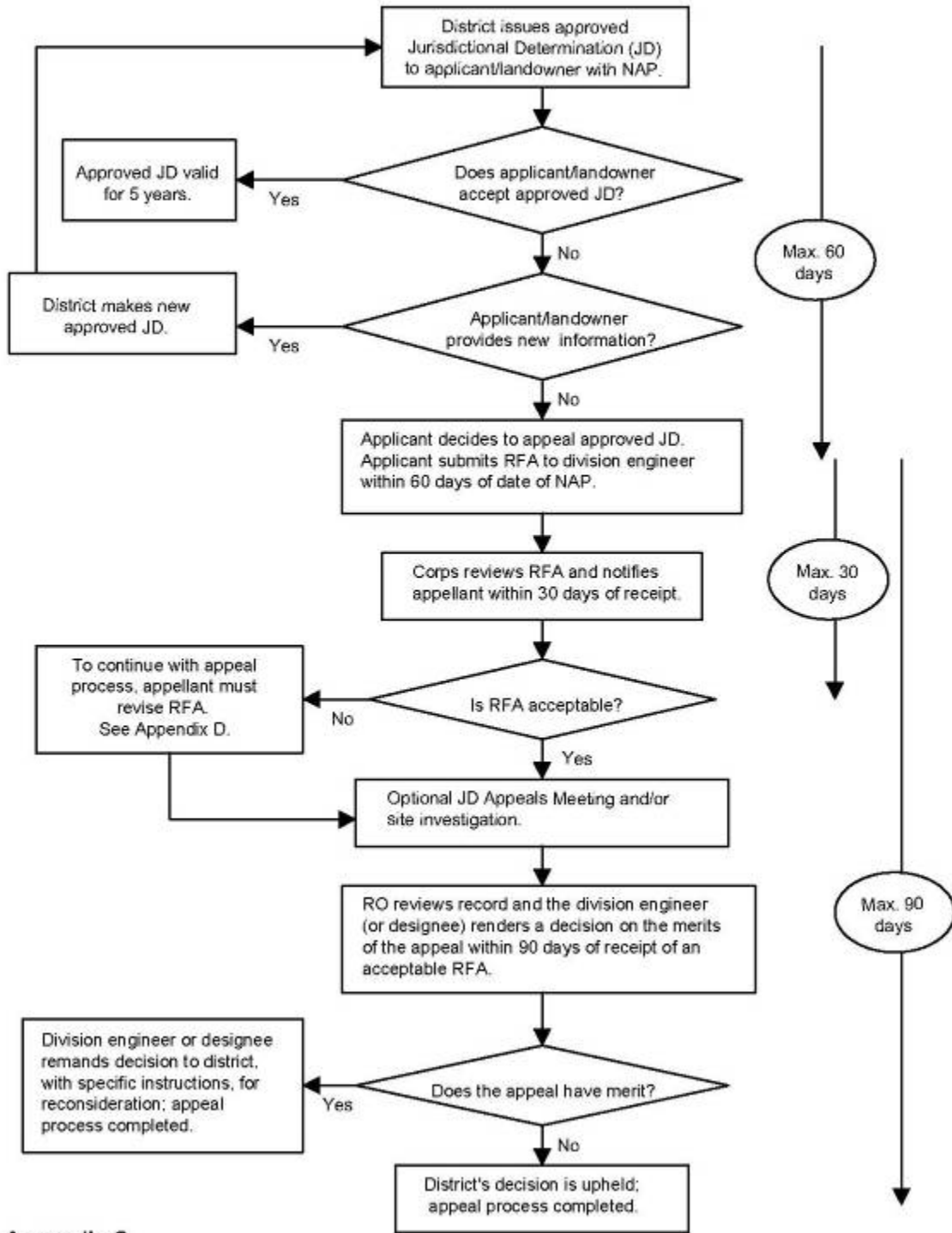
D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT		
REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)		
ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.		
POINT OF CONTACT FOR QUESTIONS OR INFORMATION:		
If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact: Thomas J. Cavanaugh Administrative Appeal Review Officer, U.S. Army Corps of Engineers South Pacific Division 1455 Market Street, 2052B San Francisco, California 94103-1399 Phone: (415) 503-6574 Fax: (415) 503-6646 Email: thomas.j.cavanaugh@usace.army.mil	
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.		
_____ Signature of appellant or agent.	Date:	Telephone number:

Administrative Appeal Process for Approved Jurisdictional Determinations



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): 03-JUL-2013

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, SPL-2010-0046-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION: The Project is located within the Romoland 7.5-Minute Topographic Quadrangle at the intersection of Sections 2, 3, 34, and 35 within Townships 5 and 6 South, Range 3 West (USGS 1979). It occurs at an approximate elevation of 1,400 ft above mean sea level (msl). The Project is surrounded primarily by commercial development, disturbed open areas, residential housing, a golf course, and associated public infrastructure.

The study area contains three features: two unnamed features (Features 1 and 2) and one named feature (Feature 3, Salt Creek). Each of these three features contains an Ordinary High Water Mark (OHWM). Feature 2 is considered non-Relatively Permanent Waters (RPW) that flows through a tributary system to a Traditional Navigable Water (TNW) (i.e., Canyon Lake) and is assessed within this Approved Jurisdictional Determination Form. The review area cited within Section II.B below refers only Feature 2.

State: CA County/parish/borough: Riverside County City: Menifee
Center coordinates of site (lat/long in degree decimal format): Lat. 33.685061° **N**, Long. -117.171397° **W**.
Universal Transverse Mercator: NAD83/UTM Zone 11N

Name of nearest waterbody: Salt Creek

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

Name of watershed or Hydrologic Unit Code (HUC): San Jacinto HUC

- 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: 21-June-2013
 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):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: 1341 linear feet: 10 width (ft) and/or 1.576 acres.
Wetlands: 0 acres.

c. Limits (boundaries) of jurisdiction based on: **Established by OHWM.**

Elevation of established OHWM (if known): 3.84 ft.

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).

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: **Feature 2 is an earthen v-ditch connected to a detention basin that is connected to an earthen channel that outlets to Salt Creek. Feature 2 conveys flows from the adjacent freeway and residential developments. Feature 2 collects urban runoff and localized storm runoff flows that are localized to the immediate vicinity of the drainage feature. The distance between the headwaters of Feature 2 and Salt Creek is 4,400 linear feet. Feature 2 drains approximately 105.9 acres consisting of storm flows from northbound I-215, open upland areas adjacent to the roadway, residential and undeveloped open areas at Antelope Road and Albion Road, and runoff from the commercial development south of Newport Road and east of the feature. It does not contain any upstream hydrological connectivity with any natural drainage. The detention basin located in the southeast corner of Newport Road and the I-215 northbound off ramp collects stormwater flows from a portion of the adjacent commercial development to the east, from the northbound lanes of I-215, and from the I-215/Newport Road northbound off ramp. The majority of the commercial development to the east drains to an existing storm drain system located at the intersection of Newport Road and Antelope Road, which eventually discharges to Salt Creek to the north. The total tributary area to the existing basin is 27.88 acres. The peak discharge from the 25-year, 3-hour storm with a unit time of 10 minutes was used to develop a unit hydrograph as it compared well with the 25-year rational method analysis. The peak 25-year flow rate to the basin is 22.09 cfs. According to the basin routing analysis, the peak 25-year tributary flow to the basin ponds to a depth of 3.84 feet within the basin. The existing 48-inch RCP outlet structure within the basin has an invert elevation that is 4 ft higher than the basin floor. Therefore, the existing basin retains the 25-year tributary flow. As a result, flows from the upslope portion of Feature 2 and the detention basin south of Newport Road are rarely conveyed downslope through the remaining portion of Feature 2 north of Newport Road, which limits the relative reach of Feature 1 from north of Newport Road to Salt creek in most years. As stated in the Preamble to 33 CFR Part 328.3 (Definitions): "it should be noted that we generally do not consider the following waters to be "Waters of the United States". Non-tidal drainages and irrigation ditches excavated on dry land." According to historical aeriels and topography, Feature 2 was built in the uplands and was not intended and do not replace waters of the U.S. nor do they convey flows between waters of the U.S. They do not contain relatively permanent flow. Wetlands exist in the detention basin due to the ponding within the basin.**

³ Supporting documentation is presented in Section III.F.

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 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: 489,934 acres

Drainage area: 105.9 acres

Average annual rainfall: 11.2 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

Project waters are 2-5 river miles from RPW.

Project waters are 1 (or less) aerial (straight) miles from TNW.

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

Project waters cross or serve as state boundaries. Explain: N/A.

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: Feature 2 directs flows north through the study area for approximately 4,440 ft before entering Salt Creek, which then directs flows for approximately 4.0 miles before entering Canyon Lake. Canyon Lake is considered the first downstream TNW from the study area. Flows exit Canyon Lake and then enter the San Jacinto River, which directs flows for 2.8 miles before entering Lake Elsinore. Lake Elsinore has very little outflow, but during rare intense storm events may produce outfalls that enter Temescal Wash, which flows to the Santa Ana River and ultimately the Pacific Ocean.

Tributary stream order, if known: 1.

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

Tributary is: Natural
 Artificial (man-made). Explain: The drainage ditch was created when the freeway was built to convey runoff from the freeway and adjacent uplands to Salt Creek.
 Manipulated (man-altered). Explain:

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

Average width: 10 feet
 Average depth: 3 feet
 Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: Vegetation consists of a dominance of non-native upland species such as ripgut brome (NI), black mustard (NI), Russian thistle (NI) and tocalote (NI) with approximately 90% cover.
 Other. Explain: some emergent hydrophytes occur within a drainage basin south of Newport Road. This basin is regularly maintained for vegetation removal.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Feature 2 contains stable banks with little to no erosion or sloughing. The feature is part of the Interstate grade.

Presence of run/riffle/pool complexes. Explain: None.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 2 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

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

Describe flow regime: Flows are a result of localized rainfall events within the region, which sheetflow into Feature 1.

Other information on duration and volume: Based upon field observations of the OHWM within Feature 2, flows are short duration and low volume, and only flow during and immediately following storm events.

Surface flow is: **Confined**. Characteristics: Flows within Feature 2 are confined within a constructed earthen flood-control channel.

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 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.⁷ Explain:

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.

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

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

(iii) Chemical Characteristics:

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

Explain: The upper reach of Feature 2 contains flows within an earthen detention basin where some settling occurs; however, ponded water is dark brown when present as a result of roadway runoff. The lower reach of Feature 2 from Newport Road to Salt Creek was not observed flowing; however, because most of the flows are contained within the upper reach, this portion of the feature likely has somewhat better water quality due to its short reach.

Identify specific pollutants, if known: Chemical pollutants such as roadway pollutants (i.e., oil, grease, transmission fluid, etc.), sediment, trash, and debris occur within portions of Feature 2.

⁷Ibid.

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

- Riparian corridor. Characteristics (type, average width): NONE.
- Wetland fringe. Characteristics: NONE.
- Habitat for:
 - Federally Listed species. Explain findings: NONE.
 - Fish/spawn areas. Explain findings: NONE.
 - Other environmentally-sensitive species. Explain findings: NONE.
 - Aquatic/wildlife diversity. Explain findings: NONE.

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:Physical attributes.
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: Feature 2 was constructed in uplands and conveys runoff solely from upland sources. Significant nexus does not apply..
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: **4,440** linear feet **10** 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: 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.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.
- 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: .

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.

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): **Feature 2 is an earthen v-ditch connected to a detention basin that is connected to an earthen channel that outlets to Salt Creek. Feature 2 conveys flows from the adjacent freeway and residential developments. Feature 2 collects urban runoff and localized storm runoff flows that are localized to the immediate vicinity of the drainage feature. The distance between the headwaters of Feature 2 and Salt Creek is 4,400 linear feet. Feature 2 drains approximately 105.9 acres consisting of storm flows from northbound I-215, open upland areas adjacent to the roadway, residential and undeveloped open areas at Antelope Road and Albion Road, and runoff from the commercial development south of Newport Road and east of the feature. It does not contain any upstream hydrological connectivity with any natural drainage. The detention basin located in the southeast corner of Newport Road and the I-215 northbound off ramp collects stormwater flows from a portion of the adjacent commercial development to the east, from the northbound lanes of I-215, and from the I-215/Newport Road northbound off ramp. The majority of the commercial development to the east drains to an existing storm drain system located at the intersection of Newport Road and Antelope Road, which eventually discharges to Salt Creek to the north. The total tributary area to the existing basin is 27.88 acres. The peak discharge from the 25-year, 3-hour storm with a unit time of 10 minutes was used to develop a unit hydrograph as it compared well with the 25-year rational method analysis. The peak 25-year flow rate to the basin is 22.09 cfs. According to the basin routing analysis, the peak 25-year tributary flow to the basin ponds to a depth of 3.84 feet within the basin. The existing 48-inch RCP outlet structure within the basin has an invert elevation that is 4 ft higher than the basin floor. Therefore, the existing basin retains the 25-year tributary flow. As a result, flows from the upslope portion of Feature 2 and the detention basin south or Newport Road are rarely conveyed downslope through the remaining portion of Feature 2 north of Newport Road, which limits the relative reach of Feature 1 from north of Newport Road to Salt creek in most years. As stated in the Preamble to 33 CFR Part 328.3 (Definitions): "it should be noted that we generally do not consider the following waters to be "Waters of the United States". Non-tidal drainages and irrigation ditches excavated on dry land." According to historical aerials and topography, Feature 2 was built in the uplands and was not intended and do not replace waters of the U.S. nor do they convey flows between waters of the U.S. They do not contain relatively permanent flow. Wetlands exist in the detention basin due to the ponding within the basin.**

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: Figures 1-8 within the Jurisdictional Determination Report.

- 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:Historic USGS Topography Maps.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
 - U.S. Geological Survey map(s). Cite scale & quad name: U.S. Geological Survey (USGS) 7.5-Minute Series Romoland, California Quadrangle.
 - USDA Natural Resources Conservation Service Soil Survey. Citation:U.S. Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS). 2005. Soil Survey Geographic (SSURGO) Database. Soil Survey of Western Riverside Area, California. .
 - National wetlands inventory map(s). Cite name: USFWS National Wetlands Inventory .
 - State/Local wetland inventory map(s): .
 - FEMA/FIRM maps:Figure 6 within the Jurisdictional Determination Report.
 - 100-year Floodplain Elevation is:1,441 (National Geodetic Vertical Datum of 1929)
 - Photographs: Aerial (Name & Date):Historic Aerials (1938 to 2002) conducted by EDR.
 - or Other (Name & Date):Site photographs - Appendix B, Photograph Log, of the Jurisdictional Determination Report.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature:Please see list of references below.
- Other information (please specify): .

References Cited: Please see the Jurisdictional Determination Report

B. ADDITIONAL COMMENTS TO SUPPORT JD: Feature 2 is an earthen v-ditch connected to a detention basin that is connected to an earthen channel that outlets to Salt Creek. Feature 2 conveys flows from the adjacent freeway and residential developments. Feature 2 collects urban runoff and localized storm runoff flows that are localized to the immediate vicinity of the drainage feature. The distance between the headwaters of Feature 2 and Salt Creek is 4,400 linear feet. Feature 2 drains approximately 105.9 acres consisting of storm flows from northbound I-215, open upland areas adjacent to the roadway, residential and undeveloped open areas at Antelope Road and Albion Road, and runoff from the commercial development south of Newport Road and east of the feature. It does not contain any upstream hydrological connectivity with any natural drainage. The detention basin located in the southeast corner of Newport Road and the I-215 northbound off ramp collects stormwater flows from a portion of the adjacent commercial development to the east, from the northbound lanes of I-215, and from the I-215/Newport Road northbound off ramp. The majority of the commercial development to the east drains to an existing storm drain system located at the intersection of Newport Road and Antelope Road, which eventually discharges to Salt Creek to the north. The total tributary area to the existing basin is 27.88 acres. The peak discharge from the 25-year, 3-hour storm with a unit time of 10 minutes was used to develop a unit hydrograph as it compared well with the 25-year rational method analysis. The peak 25-year flow rate to the basin is 22.09 cfs. According to the basin routing analysis, the peak 25-year tributary flow to the basin ponds to a depth of 3.84 feet within the basin. The existing 48-inch RCP outlet structure within the basin has an invert elevation that is 4 ft higher than the basin floor. Therefore, the existing basin retains the 25-year tributary flow. As a result, flows from the upslope portion of Feature 2 and the detention basin south of Newport Road are rarely conveyed downslope through the remaining portion of Feature 2 north of Newport Road, which limits the relative reach of Feature 1 from north of Newport Road to Salt creek in most years . As stated in the Preamble to 33 CFR Part 328.3 (Definitions): "it should be noted that we generally do not consider the following waters to be "Waters of the United States". Non-tidal drainages and irrigation ditches excavated on dry land." According to historical aerials and topography, Feature 2 was built in the uplands and was not intended and do not replace waters of the U.S. nor do they convey flows between waters of the U.S. They do not contain relatively permanent flow. Wetlands exist in the detention basin due to the ponding within the basin.

Feature 2 Drainage Map

