

**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): February 17, 2023**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, North Maryland Creek Ranch, SPA-2022-00133**

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

State: **Colorado** County/parish/borough: **Summit County** City: **Silverthorne**  
Center coordinates of site (lat/long in degree decimal format): Lat. **39.700451°**, Long. **-106.12052°**  
Universal Transverse Mercator: **13 403934.98 4395111.15**

Name of nearest waterbody: **Maryland Creek - Relevant Reach 1**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Colorado River**

Name of watershed or Hydrologic Unit Code (HUC): **Blue, 14010002**

☒ 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: **February 17, 2023**

☒ Field Determination. Date(s): **June 27, 2022**

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

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

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

☐ TNWs, including territorial seas

☐ Wetlands adjacent to TNWs

☒ Relatively permanent waters<sup>2</sup> (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: **3,661** linear feet, **5** wide, and/or **0.42** acres.

Wetlands: **9.51** acres.

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

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

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

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</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>3</sup> Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW:

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</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: **Blue River: 683 square miles**  
Drainage area: **Maryland Creek: 3.2 square miles**  
Average annual rainfall: **24.9 inches**  
Average annual snowfall: **159.2 inches**

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- ☐ Tributary flows directly into TNW.  
☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.  
Project waters are **1 (or less)** river miles from RPW.  
Project waters are **30 (or more)** 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: **NA.**

Identify flow route to TNW<sup>5</sup>: **Maryland Creek provides perennial flows directly to the Blue River, which converges with the Colorado River at a point approximately 30 river miles downstream of the review area. The Colorado River is a Traditionally Navigable Water and regulated under Section 10 of the Clean Water Act at a point approximately 198 river miles downstream of the review area, at its confluence with the Gunnison River in the City of Grand Junction, Colorado.**

Tributary stream order, if known: **2<sup>nd</sup> order.**

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</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: **5** feet

Average depth: **2** feet

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

Primary tributary substrate composition (check all that apply):

<input type="checkbox"/> Silts	<input type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input checked="" type="checkbox"/> Cobbles	<input checked="" type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain:		

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

Presence of run/riffle/pool complexes. Explain: **Maryland Creek exhibits small riffles and pools that are utilized by small fish species and macroinvertebrates.**

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): **6 %**

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: **Maryland Creek is a perennial stream. Evidence of perennial flows include long-standing water rights to divert flows from Maryland Creek, a peristent fish population, and being a blue line stream on USGS mapping.**

Other information on duration and volume: **Maryland Creek is a perennial stream. This section is being filled out to address the wetland (AR-E) being adjacent but not abutting to Maryland Creek.**

Surface flow is: **Discrete and confined.** Characteristics: **Maryland Creek has perennial flow.**

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

☐ Dye (or other) test performed:

Tributary has (check all that apply):

<input checked="" type="checkbox"/> Bed and banks	
<input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply):	
<input checked="" type="checkbox"/> clear, natural line impressed on the bank	<input checked="" type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input checked="" type="checkbox"/> destruction of terrestrial vegetation
<input checked="" type="checkbox"/> shelving	<input checked="" type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input checked="" type="checkbox"/> sediment sorting
<input checked="" type="checkbox"/> leaf litter disturbed or washed away	<input checked="" type="checkbox"/> scour
<input checked="" type="checkbox"/> sediment deposition	<input checked="" type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:	

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 water is clear and clean due to being primarily sourced from the Eagles Nest Wilderness area where there is no unnatural disturbance and large wetland complexes that serve to filter and retain sediments and any naturally occurring pollutants.**

<sup>6</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>7</sup>Ibid.

Identify specific pollutants, if known: **NA**.

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

- ☒ Riparian corridor. Characteristics (type, average width): **200 ft**
- ☒ Wetland fringe. Characteristics: **90 ft**
- ☒ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☒ Fish/spawn areas. Explain findings: **Small fish species are known to persist in Maryland Creek.**
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☒ Aquatic/wildlife diversity. Explain findings: **The subject channels and adjacent wetlands offer habitat for various terrestrial and aquatic species, including elk, deer, black bear, bobcat, migratory birds, and aquatic insects.**

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: **AR-H, E, and NMC: 9.51 acres**

Wetland type. Explain: **A mix of palustrine emergent and scrub-shrub wetlands.**

Wetland quality. Explain: **The wetlands within the review area are of moderate high quality due to a lack of nearby development. However, these wetlands are not of the highest quality because of surrounding agricultural practices and only a moderate amount of hydrology.**

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: **AR-E is connected to Maryland Creek via a drainage swale that experiences intermittent or seasonal flow. The drainage swale is maintained for agricultural purposes so that the associated hay field, including AR-E, is not too wet to access with farming equipment. Maryland Creek provides perennial flows to the Blue River.**

Surface flow is: **Discrete and confined**

Characteristics: **The drainage swale does not have an ordinary high water mark but is maintained in a straight alignment with bed and bank.**

Subsurface flow: **Yes**. Explain findings: **Due to proximity of less than 20 ft and being at the same elevation, hydrology from AR-E recharges the water table associated with Maryland Creek via subsurface flows.**

☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☒ Not directly abutting

☒ Discrete wetland hydrologic connection. Explain: **AR-E is connected via a discrete agricultural drainage swale.**

☒ Ecological connection. Explain: **AR-E is primarily a palustrine emergent wetland due to seasonal cutting of vegetation for agricultural purposes, but portions of the wetland extend in palustrine scrub-shrub riparian habitat that is continuous with the wetland along Maryland Creek. The wetland is utilized by the same terrestrial wildlife species (e.g., deer, elk, black bear, migratory and nonmigratory birds) that utilize habitats surrounding Maryland Creek. Given that the wetland is utilized as an agricultural hay field, wildlife species also utilize the site as a desirable food source. Large and small animals also utilize the area as a travel corridor between the Eagles Nest Wilderness Area and the Blue River corridor, although downstream development precludes direct undisturbed access to between the site and the Blue River.**

☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **30 (or more)** river miles from TNW.

Project waters are **30 (or more)** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **50 - 100-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: **Chemically, the AR-E is connected to Maryland Creek via surface flow in swales that are maintained for agricultural purposes and sub-surface flows due to proximity. Given the agricultural use of the**

surrounding area, AR-E specifically functions to filter sediments and other pollutants associated with agricultural activities (e.g., nitrogen) from Maryland Creek.

Identify specific pollutants, if known:

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

- ☒ Riparian buffer. Characteristics (type, average width): **200 feet wide.**
- ☒ Vegetation type/percent cover. Explain: **Scrub-shrub species, including willows (salix spp.)**
- ☒ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☒ Aquatic/wildlife diversity. Explain findings: **The wetland is utilized by the same terrestrial wildlife species (e.g., deer, elk, black bear, migratory and nonmigratory birds) that utilize habitats surrounding Maryland Creek. Given that the wetland is utilized as an agricultural hay field, wildlife species also utilize the site as a desirable feed source. Large and small animals also utilize the area as a travel corridor between the Eagles Nest Wilderness Area and the Blue River corridor, although downstream development precludes direct undisturbed access to between the site and the Blue River.**

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

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

Approximately **24.2** acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
AR-H: Y	1.54	Similarly Situated 1 (offsite):Y	10.5
AR-E: N	4.16	Similarly Situated 2 (offsite):Y	8

Summarize overall biological, chemical and physical functions being performed: **Similarly situated wetlands within the Maryland Creek drainage area provide biological, chemical, and physical functions that are interconnected with both Maryland Creek the Blue River. Biologically, the wetlands offer habitat diversity, feed, and water to local wildlife, including elk, moose, bear, deer, beavers, migratory and non-migratory birds, and many small mammals (e.g., mice). Chemically, the wetlands serve to filter water, especially sediment that is mobilized during high flow events. Physically, the wetlands are directly connected via surface and subsurface flows and serve to retain excess water that is slowly released through subsurface flows.**

## 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:

AR-E is a 4.16-acre palustrine emergent wetland that is reasonably close and adjacent to, but does not abut, Maryland Creek. Given the evidence available, AR-E is sustained by both natural and artificial hydrology. Certain types of aquatic resources are generally not considered WOTUS, including artificially irrigated areas which would revert to upland if the irrigation ceased. However, the Corps reserves the right on a case-by-case basis to determine that a particular waterbody is a WOTUS (November 13, 1986, Federal Register (51 FR, 41217)).

In this case, artificial irrigation was not ceased (i.e., turned off) for at least two years, as suggested by Corps guidance, for purposes of this investigation so the best available information was utilized. After review, it has been determined that AR-E would not cease in the absence of irrigation due the size of the immediate watershed (approximately 45 acres) being large enough to sustain wetlands (e.g., AR-H, AR-W), the presence of a distinct and persistent moist area within the wetland forming a drainage pattern as shown in historic aerial imagery, the presence of drainage swales directly connecting the wetland to Maryland Creek, and the wetland having a similar elevation and slope to the nearby water table associated with Maryland Creek (perennial).

Physically, the southeastern (downslope) boundary of AR-E is within 20 feet of abutting wetlands associated with Maryland Creek (perennial), making the wetland adjacent, but not abutting, because it is reasonably close to a perennial stream. At the far eastern boundary of the wetland, two drainage swales transport excess flows through uplands to Maryland Creek. The wetland is aligned parallel to Maryland Creek and the slope of the wetland is consistent with the slope of Maryland Creek, providing evidence that both resources utilize the same high-water table, especially at the furthest downstream extent of AR-E. Therefore, hydrology of the wetland assists in recharging the water table and contributing flows to the same channel that they were diverted from, approximately 0.28 mile upstream (west).

Biologically, AR-E is primarily a palustrine emergent wetland due to seasonal cutting of vegetation for agricultural purposes, but portions of the wetland extend in palustrine scrub-shrub riparian habitat that is continuous with the wetland along Maryland Creek. The wetland is utilized by the same terrestrial wildlife species (e.g., deer, elk, black bear, migratory and nonmigratory birds) that utilize habitats surrounding Maryland Creek. Given that the wetland is utilized as an agricultural hay field, wildlife species also utilize the site as a desirable feed source. Large and small animals also utilize the area as a travel corridor between the Eagles Nest Wilderness Area and the Blue River corridor, although downstream development precludes direct undisturbed access to between the site and the Blue River.

Chemically, the AR-E is connected to Maryland Creek via surface flow in swales that are maintained for agricultural purposes and sub-surface flows due to proximity. Given the agricultural use of the surrounding area, AR-E specifically functions to filter sediments and other pollutants associated with agricultural activities (e.g., nitrogen) from the watershed.

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
☐ TNWs: linear feet, wide, Or acres.  
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: **Maryland Creek is a perennial stream. Evidence of perennial flow includes long-standing water rights to divert flows from the stream, being labeled as blue line perennial in USGS maps, landowner knowledge, robust wetland and riparian corridor, and the presence of persistent fish populations.**  
☐ 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: **Maryland Creek: 3,661** linear feet **5** wide.  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:

3. **Non-RPWs<sup>8</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):

- ☐ Tributary waters:            linear feet,            wide.  
☐ Other non-wetland waters:            acres.

Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

**AR-H is a 1.54-acre palustrine scrub-shrub wetland that does not include a channel with ordinary high-water mark but does experience sheet flows, as documented during the delineation in August 2021. This resource runs perpendicular to and directly abuts Maryland Creek at its downslope extent.**

**AR-NMC is a 3.81-acre palustrine scrub-shrub wetland that directly abuts and runs parallel to Maryland Creek, as documented during the delineation in August 2021.**

- ☐ 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: **5.35** 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: **AR-E: 4.16** 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>9</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>10</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):

<sup>8</sup>See Footnote # 3.

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

<sup>10</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.

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

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- ☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:
- ☐ Other: (explain, if not covered above):

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, wide.
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource:
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, wide.
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource:
- ☐ Wetlands: acres.

**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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation 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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**
  - ☒ USGS NHD data.
  - ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; Dillon**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**
- ☐ 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, (2022) Aquatic Resource E- Aerial Imagery Compilation.**  
or ☒ Other (Name & Date): **USACE (2022) Relevant Reach Map.**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify):  
**U.S. Geological Service (2022) Streamstats Drainage Reports.**  
**USACE (June 27, 2022) Site Visit Memo for Record.**  
**Colorado Division of Water Resource (2022) Famine Creek Ditch Report.**  
**Colorado Division of Water Resources (2022), Whetstone Ditch-Sheep Creek Report.**

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

**SUMMARY OF RELEVANT REACH 1:**



**AR- E, H, and NMC total 9.51 acres (3,661 linear feet of Maryland Creek) and have been determined to be WOTUS.**

**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): February 17, 2023**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, North Maryland Creek Ranch, SPA-2022-00133**

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

State: **Colorado** County/parish/borough: **Summit County** City: **Silverthorne**  
Center coordinates of site (lat/long in degree decimal format): Lat. **39.700451°**, Long. **-106.12052°**  
Universal Transverse Mercator: **13 403934.98 4395111.15**

Name of nearest waterbody: **Un-named Channel locally known as Sheep Creek - Relevant Reach 2**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Colorado River**

Name of watershed or Hydrologic Unit Code (HUC): **Blue, 14010002**

☒ 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: **February 17, 2023**

☒ Field Determination. Date(s): **June 27, 2022**

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

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

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

☐ TNWs, including territorial seas

☐ Wetlands adjacent to TNWs

☒ Relatively permanent waters<sup>2</sup> (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: **2,053** linear feet, **2ft** wide, and/or **0.09** acres.

Wetlands: **0.65** acres.

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

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

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

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</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>3</sup> Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: **No TNWs within the review area.**

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”: **Not applicable.**

**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 *Rapapos* 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>4</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: **Blue River: 683 square miles**  
Drainage area: **Sheep Creek: 0.47 square miles**  
Average annual rainfall: **24.9 inches**  
Average annual snowfall: **159.2 inches**

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- ☐ Tributary flows directly into TNW.  
☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.  
Project waters are **1 (or less)** river miles from RPW.  
Project waters are **30 (or more)** 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: **NA.**

Identify flow route to TNW<sup>5</sup>: **Flows from Sheep Creek are seasonal, relatively permanent and directly contribute to the Blue River, which confluences with the Colorado River at a point approximately 30 river miles downstream of the review area. The Colorado River is a Traditionally Navigable Water and regulated under Section 10 of the Clean Water Act at a point approximately 198 river miles downstream of the review area, at its confluence with the Gunnison River in the City of Grand Junction, Colorado.**

Tributary stream order, if known: **1st order.**

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</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: **2** feet

Average depth: **1** feet

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

Primary tributary substrate composition (check all that apply):

<input type="checkbox"/> Silts	<input type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input checked="" type="checkbox"/> Cobbles	<input checked="" type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain:		

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

Presence of run/riffle/pool complexes. Explain: **Sheep Creek exhibits riffles and pools, although very small and not utilized by fish or macroinvertebrates due to the intermittent seasonal flow regime.**

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): **20 %**

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: **Intermittent and greater than 3 months out of the year.**

Other information on duration and volume: **Flows were present in the channel during August 2021, as documented by the delineation report, and again in June 2022 during a Corps site visit. Evidence of seasonal-intermittent flow includes diversion records and the presence of water in the channel during the wetland delineation conducted in early August 2021. Specifically, data from the Colorado Division of Water Resources provides evidence that flows were diverted from the Sheep Creek into the Old Whetstone Sheep Creek Ditch 3 to 5 months out of each year from 2016-2021. During that same time, annual diversion volumes ranged from 6.4 acre-feet in 2016 up to 104.3 acre-feet during 2019. Physical evidence of seasonal flows within the channel includes the stream substrate being composed of gravel and cobble and the presence of woody debris outside of the channel that was moved by higher stream flows. Lastly, the consistent width of abutting wetlands along the entire reach of stream channel also provides evidence that the channel experiences sustained or persistent hydrology, at least on a seasonal basis.**

Surface flow is: **Discrete and confined.** Characteristics: **Sheep Creek (AR-L, Relevant Reach 1) has intermittent flow.**

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

☐ Dye (or other) test performed:

Tributary has (check all that apply):

<input checked="" type="checkbox"/> Bed and banks	
<input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply):	
<input checked="" type="checkbox"/> clear, natural line impressed on the bank	<input checked="" type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input checked="" type="checkbox"/> destruction of terrestrial vegetation
<input checked="" type="checkbox"/> shelving	<input checked="" type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input checked="" type="checkbox"/> sediment sorting
<input checked="" type="checkbox"/> leaf litter disturbed or washed away	<input checked="" type="checkbox"/> scour
<input checked="" type="checkbox"/> sediment deposition	<input checked="" type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:	

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;

<sup>6</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>7</sup>Ibid.

- ☐ 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: **The water is clear due to being primarily sourced from the Eagles Nest Wilderness area where there is no unnatural disturbance and large wetland complexes that serve to filter sediments and any naturally occurring pollutants.**

Identify specific pollutants, if known: **NA.**

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

- ☒ Riparian corridor. Characteristics (type, average width): **25 ft**  
☒ Wetland fringe. Characteristics: **2 ft**  
☒ Habitat for:  
☐ Federally Listed species. Explain findings:  
☐ Fish/spawn areas. Explain findings:  
☐ Other environmentally-sensitive species. Explain findings:  
☒ Aquatic/wildlife diversity. Explain findings: **The subject channels and adjacent wetlands offer terrestrial wildlife habitat and a travel corridor that connects the Eagles Nest Wilderness Area with the Blue River. This travel corridor is especially important to elk, deer, and moose seasonal migration patterns and offers a secluded path through an area that is somewhat developed. These resources also contribute flows to at least 2 artificially created ponds that provide habitat for migratory waterfowl and other aquatic wildlife species (e.g., frogs).**

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: **AR- L (0.47 acre), R (0.04 acre), W (0.13 acre) and V (0.01 acre) total 0.65 acres**

Wetland type. Explain: **Mixed palustrine emergent and scrub shrub wetlands.**

Wetland quality. Explain: **AR-L and R are of relatively high quality due to their abutting proximity to Sheep Creek that provides sustained hydrology and the surrounding upland areas being comprised of dense pine and aspen forests that provide habitat diversity. AR-W and V are of relatively moderate quality because they are surrounded by sagebrush habitat and are connected to Sheep Creek via culverts and man-made ponds.**

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: **AR-L, R, W, and V directly abut Sheep Creek, which exhibits intermittent flows. Therefore, flows between these wetlands and Sheep Creek also occur on an intermittent basis.**

Surface flow is: **Not present**

Characteristics:

Subsurface flow: **Yes**. Explain findings: **AR-L, R, W, and V directly abut Sheep Creek and they therefore subsurface hydrology is shared between the wetland and Sheep Creek.**

☐ 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 **30 (or more)** river miles from TNW.

Project waters are **30 (or more)** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **2-year or less** 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: **Chemically, water within the wetlands is clear and clean due to being primarily sourced**

directly from snowmelt that occurs fairly slowly and does not transport sediments within wetlands. Clean water is also sourced from seeps located in the hillside.

Identify specific pollutants, if known: **None.**

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

- ☒ Riparian buffer. Characteristics (type, average width): **AR-L, and R are associated with a riparian buffer that is dominated by pine and aspen forest. AR-W and V are not associated with a riparian buffer because they are directly surrounded by sagebrush habitats.**
- ☒ Vegetation type/percent cover. Explain: **Palustrine emergent and scrub-shrub (90%).**
- ☒ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☒ Aquatic/wildlife diversity. Explain findings: **The wetlands are utilized by the same terrestrial wildlife species (e.g., deer, elk, black bear, migratory and nonmigratory birds) that utilize habitats surrounding Sheep Creek. Large and small animals also utilize the area as a travel corridor between the Eagles Nest Wilderness Area and the Blue River corridor.**

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

All wetland(s) being considered in the cumulative analysis: **5**

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

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
<b>AR-L: Y</b>	<b>0.47 acre</b>	<b>AR-V: Y</b>	<b>0.01 acre</b>
<b>AR-R: Y</b>	<b>0.04 acre</b>	<b>Similarly Situated 1 (offsite): Y</b>	<b>7.57 acres</b>
<b>AR-W: Y</b>	<b>0.13 acre</b>		

Summarize overall biological, chemical and physical functions being performed: **Similarly situated wetlands within the Sheep Creek drainage area provide biological, chemical, and physical functions that are interconnected with both Sheep Creek the Blue River. Biologically, the wetlands offer habitat diversity, feed, and water to local wildlife, including elk, moose, bear, deer, beavers, migratory and non-migratory birds, and many small mammals (e.g., mice). Chemically, the wetlands serve to filter water, especially sediment that is mobilized during high flow events. Physically, the wetlands directly abut Sheep Creek and are therefore connected via surface and subsurface flows and serve to retain excess water that is slowly released through subsurface flows. Further, Sheep Creek originates from a wetland (Similarly Situated wetland 1: 7.57 acres) that is outside the review area.**

## 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, wide, Or acres.  
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  
☒ 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: **Sheep Creek (Relevant Reach 2) is an intermittent-seasonal stream. Evidence of intermittent flow includes diversion records and the presence of water in the channel during the wetland delineation conducted in early August 2021. Specifically, data from the Colorado Division of Water Resources provides evidence that flows were diverted from the Sheep Creek into the Old Whetstone Sheep Creek Ditch 3 to 5 months out of each year from 2016 -2021. During that same time, annual diversion volumes ranged from 6.4 acre-feet in 2016 up to 104.3 acre-feet during 2019. Physical evidence of seasonal flows within the channel includes the stream substrate being composed of gravel and cobble and the presence of woody debris outside of the channel that was moved by higher stream flows. Lastly, the consistent width of abutting wetlands along the entire reach of stream channel also provides evidence that the channel experiences sustained or persistent hydrology, at least on a seasonal basis. After leaving the review area, Sheep Creek intersects with perennial RPWs associated with the adjacent gravel mine operation (i.e., ponds) and is directly connected to the Blue River via surface flows.**

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

- ☒ Tributary waters: **Sheep Creek : 2,054 linear feet 2 wide.**  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:

3. **Non-RPWs<sup>8</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):

- ☐ Tributary waters: linear feet, wide.  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**  
☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:  
☒ 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: **Based on the delineation of resources by the agent, AR-L, R, W and V directly abut Sheep Creek or man-made ponds that contribute relatively permanent flows to Sheep Creek. AR-W and V are directly**

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<sup>8</sup>See Footnote # 3.

**connected by a culvert and only otherwise separated by a man-made dirt road crossing and therefore are the same wetland resource, making AR-V also directly abutting to Sheep Creek.**

Provide acreage estimates for jurisdictional wetlands in the review area: **AR-L, R, W, and V: 0.65** 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>9</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>10</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, \_\_\_\_\_ wide.  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters:  
☐ Wetlands: \_\_\_\_\_ acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  
☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).  
☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:  
☐ Other: (explain, if not covered above):

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, \_\_\_\_\_ wide.  
☐ Lakes/ponds: \_\_\_\_\_ acres.  
☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource:  
☐ Wetlands: \_\_\_\_\_ acres.

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

<sup>10</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.



Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):          linear feet,          wide.  
☐ Lakes/ponds:          acres.  
☐ Other non-wetland waters:          acres. List type of aquatic resource:  
☐ Wetlands:          acres.

## **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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation 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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**
- ☒ USGS NHD data.
- ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; Dillon**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):
- or ☒ Other (Name & Date): **USACE (2022) Relevant Reach Map.**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify):
- U.S. Geological Service (2022) Streamstats Drainage Reports.**
- USACE (June 27, 2022) Site Visit Memo for Record.**
- Colorado Division of Water Resources (2022), Whetstone Ditch-Sheep Creek Report.**

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

## SUMMARY OF RELEVANT REACH 2:

**AR- L (0.47 acre, 2,054 linear feet), R (0.04 acre), W (0.13 acre) and V (0.01 acre) total 0.65 acres and have been determined to be WOTUS.**

**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): February 17, 2023**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, North Maryland Creek Ranch, SPA-2022-00133**

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

State: **Colorado** County/parish/borough: **Summit County** City: **Silverthorne**  
Center coordinates of site (lat/long in degree decimal format): Lat. **39.700451°**, Long. **-106.12052°**  
Universal Transverse Mercator: **13 403934.98 4395111.15**

Name of nearest waterbody: **AR-S2 (Un-named Drainage) - Relevant Reach 3**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Colorado River**

Name of watershed or Hydrologic Unit Code (HUC): **Blue, 14010002**

☒ 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: **February 17, 2023**

☒ Field Determination. Date(s): **June 27, 2022**

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

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

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

☐ TNWs, including territorial seas

☐ Wetlands adjacent to TNWs

☒ Relatively permanent waters<sup>2</sup> (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: **1574** linear feet, **1.4ft** wide, and/or **0.05** acres.

Wetlands: **0.42** acres.

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

Elevation of established OHWM (if known): **Not applicable for stream channels.**

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

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

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</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>3</sup> Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: No TNWs within the review area.

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”: Not applicable.

**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>4</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: 683 square miles

Drainage area: 0.51 square miles

Average annual rainfall: 24.9 inches

Average annual snowfall: 159.2 inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☒ Tributary flows through 2 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

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

Project waters are 30 (or more) 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: NA.

Identify flow route to TNW<sup>5</sup>: The un-named drainage (AR-S2) provides intermittent seasonal flows directly to the Blue River, which confluences with the Colorado River at a point approximately 30 river miles downstream of the review area. The Colorado River is a Traditionally Navigable Water and regulated under Section 10 of the Clean Water Act at a point approximately 198 river miles downstream of the review area, at its confluence with the Gunnison River in the City of Grand Junction, Colorado.

Tributary stream order, if known: 1<sup>st</sup> order.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</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: **The tributary is natural within the review area. A downstream portion that is outside of the review area has been altered to accommodate State Highway 9.**

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

Average width: **2** feet

Average depth: **2** feet

Average side slopes: **2:1**

Primary tributary substrate composition (check all that apply):

<input type="checkbox"/> Silts	<input checked="" type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input checked="" type="checkbox"/> Cobbles	<input checked="" type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain:		

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

Presence of run/riffle/pool complexes. Explain: **Several small pools and riffles are present but fish species do not inhabit the reach.**

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): **6 %**

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime:

Other information on duration and volume: **The channel conveys flows for at least 4 months out of the year. Evidence of relatively permanent flow includes flows being documented in August 2021 and late June 2022, after snowmelt was over. The channel also has persistent hydrology sufficient to support a continuous fringe wetland.**

Surface flow is: **Discrete.** Characteristics: **Surface flow is limited to a somewhat entrenched channel.**

Subsurface flow: **Yes.** Explain findings: **The consistent presence of a fringe wetland surrounding the channel provides evidence of subsurface flows.**

☐ Dye (or other) test performed:

Tributary has (check all that apply):

<input checked="" type="checkbox"/> Bed and banks	
<input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply):	
<input checked="" type="checkbox"/> clear, natural line impressed on the bank	<input checked="" type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input checked="" type="checkbox"/> destruction of terrestrial vegetation
<input checked="" type="checkbox"/> shelving	<input checked="" type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input checked="" type="checkbox"/> sediment sorting
<input checked="" type="checkbox"/> leaf litter disturbed or washed away	<input checked="" type="checkbox"/> scour
<input checked="" type="checkbox"/> sediment deposition	<input checked="" type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:	

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:**

<sup>6</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>7</sup>Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).  
Explain: **The water is clear and clean due to being sourced from a basin that has not been disturbed by development, including the Eagles Nest Wilderness area, where there is no unnatural disturbance and large wetland complexes that serve to filter sediments and any naturally occurring pollutants.**  
Identify specific pollutants, if known: **NA.**

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

- ☒ Riparian corridor. Characteristics (type, average width): **25 ft**
- ☒ Wetland fringe. Characteristics: **5 ft**
- ☒ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☒ Aquatic/wildlife diversity. Explain findings: **The subject channels and adjacent wetlands offer habitat for various terrestrial and aquatic species, including elk, deer, black bear, bobcat, migratory birds, and aquatic insects.**

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: **AR-S1: 0.42 acres**

Wetland type. Explain: **Palustrine scrub-shrub wetland.**

Wetland quality. Explain: **AR-S1 is of relatively high quality due to it directly abutting and intermittent stream (AR-S2) that provides sustained hydrology and the surrounding upland areas being comprised of dense pine and aspen forests that provide habitat diversity.**

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: **AR-S1 directly abuts an intermittent stream. Therefore, flows between these wetlands and the stream also occur on an intermittent basis.**

Surface flow is: **Not present**

Characteristics:

Subsurface flow: **Yes**. Explain findings: **AR-S1 directly abuts an intermittent stream and therefore subsurface hydrology is shared between the wetland and stream.**

☐ 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 **30 (or more)** river miles from TNW.

Project waters are **30 (or more)** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **2-year or less** 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: **Chemically, water within the wetland is clear and clean due to being primarily sourced directly from snowmelt that occurs fairly slowly and does not transport sediments within wetlands. Clean water is also sourced from seeps located in wetlands at the top of the drainage.**

Identify specific pollutants, if known: **None.**

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

- ☒ Riparian buffer. Characteristics (type, average width):
- ☒ Vegetation type/percent cover. Explain: **Palustrine emergent and scrub-shrub (90%)**
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:

- ☐ Other environmentally-sensitive species. Explain findings:
- ☒ Aquatic/wildlife diversity. Explain findings: **The wetland is utilized by the same terrestrial wildlife species (e.g., deer, elk, black bear, migratory and nonmigratory birds) that utilize habitats surrounding AR-S2 and other nearby aquatic resources. Large and small animals also utilize the area as a travel corridor between the Eagles Nest Wilderness Area and the Blue River corridor.**

**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:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
AR-S1: Y	0.42 acre	Similarly Situated 1 (offsite): Y	3.16 acre
		Similarly Situated 2 (offsite): Y	0.61 acre

Summarize overall biological, chemical and physical functions being performed: **Similarly situated wetlands within the Relevant Reach 3 (un-named intermittent stream) drainage area provide biological, chemical, and physical functions that are interconnected with both the stream and the Blue River. Biologically, the wetlands offer habitat diversity, feed, and water to local wildlife, including elk, moose, bear, deer, beavers, migratory and non-migratory birds, and many small mammals (e.g., mice). Chemically, the wetlands serve to filter water, especially sediment that is mobilized during high flow events. Physically, all the wetlands directly abut the stream and are therefore connected via surface and subsurface flows and serve to retain excess water that is slowly released through subsurface flows. Further, the intermittent stream originates from a wetland (Similarly Situated wetland 1: 3.16 acres) that is outside the review area.**

**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, wide, Or acres.  
☐ Wetlands adjacent to TNWs: acres.

**2. RPWs that flow directly or indirectly into TNWs.**

- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  
☒ 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: **On average, the channel conveys flows for at least 4 months out of the year. Evidence of relatively permanent flow includes flows being documented in August 2021 and late June 2022, after snowmelt was over. The channel also has persistent hydrology sufficient to support a continuous fringe wetland.**

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

- ☒ Tributary waters: **1,574** linear feet **2** wide.  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:

**3. Non-RPWs<sup>8</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):

- ☐ Tributary waters: linear feet, wide.  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:  
  
☒ 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: **Based on the delineation provided by the agent and a site visit, the wetland is directly abutting the stream channel.**

Provide acreage estimates for jurisdictional wetlands in the review area: **0.42** 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>9</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

<sup>8</sup>See Footnote # 3.

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

- ☐ 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>10</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, wide.  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:  
☐ Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  
☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).  
☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:  
☐ Other: (explain, if not covered above):

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, wide.  
☐ Lakes/ponds: acres.  
☐ Other non-wetland waters: acres. List type of aquatic resource:  
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, wide.  
☐ Lakes/ponds: acres.  
☐ Other non-wetland waters: acres. List type of aquatic resource:  
☐ Wetlands: acres.

**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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation 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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**  
☒ USGS NHD data.  
☒ USGS 8 and 12 digit HUC maps.  
☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; Dillon**  
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:

<sup>10</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.



- ☒ National wetlands inventory map(s). Cite name: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):  
or ☒ Other (Name & Date): **USACE (2022) Relevant Reach Map.**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify):  
**U.S. Geological Service (2022) Streamstats Drainage Reports.**  
**USACE (June 27, 2022) Site Visit Memo for Record.**  
**Colorado Division of Water Resources (2022), Whetstone Ditch-Sheep Creek Report.**

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

**SUMMARY OF RELEVANT REACH 3:**

**AR-S2 (1,574 lf) is a relatively permanent seasonal water and AR-S1 (0.42 acres) is a wetland that directly abuts AR-S1. Therefore both resources are waters of the United States.**

**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): February 17, 2023**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, North Maryland Creek Ranch, SPA-2022-00133**

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

State: **Colorado** County/parish/borough: **Summit County** City: **Silverthorne**  
Center coordinates of site (lat/long in degree decimal format): Lat. **39.700451°**, Long. **-106.12052°**  
Universal Transverse Mercator: **13 403934.98 4395111.15**

Name of nearest waterbody: **Maryland Creek, Sheep Creek, and Blue River**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Colorado River**

Name of watershed or Hydrologic Unit Code (HUC): **Blue, 14010002**

☒ 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: **February 17, 2023**

☒ Field Determination. Date(s): **June 27, 2022**

**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):<sup>1</sup>**

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters<sup>2</sup> (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: linear feet, wide, and/or acres.

Wetlands: acres.

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

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **AR-D, F, G, I, J, K, M, N, O, P, Q, T, and U total 2.47 acres, and have been determined to be isolated resources because they are each isolated from the nearest downstream RPW. See Section IV.B for details for each resource.**

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</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>3</sup> Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW:

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</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: **square miles**

Drainage area: **square miles**

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>5</sup>:

Tributary stream order, if known:

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

**Tributary** is: ☐ Natural

☐ Artificial (man-made). Explain:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</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.

☐ 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):

<input type="checkbox"/> Silts	<input type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input type="checkbox"/> Cobbles	<input type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain:		

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

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):

<input type="checkbox"/> Bed and banks	
<input type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply):	
<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:	

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:

Identify specific pollutants, if known:

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

☐ Riparian corridor. Characteristics (type, average width):

☐ Wetland fringe. Characteristics:

☐ Habitat for:

☐ Federally Listed species. Explain findings:

☐ Fish/spawn areas. Explain findings:

☐ Other environmentally-sensitive species. Explain findings:

<sup>6</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>7</sup>Ibid.

☐ 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, wide, Or acres.  
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  
☐ 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 wide.  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:

3. **Non-RPWs<sup>8</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):

- ☐ Tributary waters: linear feet, wide.  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:

---

<sup>8</sup>See Footnote # 3.

**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>9</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>10</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,          wide.
- ☐ Other non-wetland waters:          acres.
- Identify type(s) of waters:
- ☐ Wetlands:          acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
- ☒ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☒ Other: (explain, if not covered above): **Each of the wetlands offer habitat for migratory birds and therefore would have been regulated based solely on the MBR.**

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

<sup>10</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.

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,          wide.
- ☐ Lakes/ponds:          acres.
- ☐ Other non-wetland waters:          acres. List type of aquatic resource:
- ☒ Wetlands: **2.47** acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):          linear feet,          wide.
- ☐ Lakes/ponds:          acres.
- ☐ Other non-wetland waters:          acres. List type of aquatic resource:
- ☐ Wetlands:          acres.

#### **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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation 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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**
  - ☒ USGS NHD data.
  - ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; Dillon**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is:          (National Geodetic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date):  
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):  
**U.S. Geological Service (2022) Streamstats Drainage Reports.**  
**USACE (June 27, 2022) Site Visit Memo for Record.**  
**Colorado Division of Water Resources (2022), Whetstone Ditch-Sheep Creek Report.**

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

The following resources from within the entire review are isolated from the nearest downstream RPW and not WOTUS because they are aquatic resources that (1) do not have a physical surface or more than speculative shallow subsurface hydrologic connection to the nearest downslope RPW, (2) are not separated from a RPW by man-made dikes or natural river berms and (3) are not reasonably close to a RPW such that they have an ecological interconnection with the nearest RPW.

AR-D (0.11 acre), F (0.14 acre), and G (0.04 acre) are wetlands that are not adjacent to Maryland Creek (the nearest downstream RPW), or other WOTUS and therefore are isolated and not a WOTUS. Specifically, these wetlands are located more than 300 feet from the nearest downslope RPW (Maryland Creek). AR- D, F, and G are located near an agricultural irrigation ditch that was constructed in uplands but they are predominantly sustained by natural seeps emerging from the hill slope and were not constructed in dry land.

AR- I, J, K, M, N, O, P, and Q are all isolated from Sheep Creek (the nearest downslope RPW) and not WOTUS. These wetlands are similarly situated to each other on an east facing slope with no potential surface flow path to the nearest downstream tributary (Sheep Creek or Blue River). They range from 100 feet to 1,400 feet in distance from the nearest RPW and each of the wetlands has formed within a depression or flat area that allows for sustained hydrology, especially from snow melt. The surrounding hillslope is dominated by sagebrush (*Artemisia* spp., FACU) with stands of aspen trees (*Populus tremuloides*, FACU).



**AR-T (0.20 acre)** is isolated from the Blue River (nearest downslope RPW) and not a WOTUS. The wetland is located directly adjacent to and on the upslope side (west) of Colorado State Highway 9. The wetland was formed by hydrology accumulating in a depression. The depression was a result of construction activities, including excavation of materials, as shown by a distinct cut line along the hillslope above the wetland. The closest drainage path to the wetland is located approximately 350 feet to the south but no channel or roadside ditch provides a potential surface connection between the wetland and an RPW. The Blue River is located downslope, approximately 175 feet and no potential surface conveyance path exists between the wetland and the Blue River.

**AR-U (0.24)** is a wetland that is isolated from the Blue River (the nearest downstream RPW) and not a WOTUS. AR-U is a 0.24-acre palustrine emergent wetland that has formed in a drainage swale that does not lead to any channel or conveyance path towards the Blue River.

In total, the review area includes 2.47 acres of isolated wetlands that are not WOTUS. These resources include AR-D, F, G, I, J, K, M, N, O, P, Q, T, and U.

**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): February 17, 2023**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, North Maryland Creek Ranch, SPA-2022-00133**

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

State: **Colorado** County/parish/borough: **Summit County** City: **Silverthorne**  
Center coordinates of site (lat/long in degree decimal format): Lat. **39.700451°**, Long. **-106.12052°**  
Universal Transverse Mercator: **13 403934.98 4395111.15**

Name of nearest waterbody: **Maryland Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Colorado River**

Name of watershed or Hydrologic Unit Code (HUC): **Blue, 14010002**

☒ 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: **February 17, 2023**

☒ Field Determination. Date(s): **June 27, 2022**

**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):<sup>1</sup>**

☐ TNWs, including territorial seas

☐ Wetlands adjacent to TNWs

☐ Relatively permanent waters<sup>2</sup> (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: linear feet, wide, and/or acres.

Wetlands: acres.

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

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

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

Explain: **The Corps does not generally consider certain types of aquatic resources as WOTUS, except on a case-by-case basis (November 13, 1986, Federal Register (51 FR, 41217)). Such aquatic resources include non-tidal drainage and irrigation ditches excavated on dry land. AR-A, B, C and X are aquatic resources that were formed by the construction of an irrigation ditch in dry land and they do not have a physical downstream connection to any tributary. Therefore, these resources are not WOTUS. See Section IV.B for details of each of these resources.**

**SECTION III: CWA ANALYSIS**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</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>3</sup> Supporting documentation is presented in Section III.F.

**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>4</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: : **square miles**

Drainage area: **square miles**

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: **NA**.

Identify flow route to TNW<sup>5</sup>:

Tributary stream order, if known:

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

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</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** 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: **Stable**.

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>6</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>7</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):  
☐ Wetland fringe. Characteristics:  
☐ Habitat for:  
☐ Federally Listed species. Explain findings:

<sup>6</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>7</sup>Ibid.

- ☐ 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, wide, Or acres.  
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: **Maryland Creek (AR-NMC, Relevant Reach 1) is a perennial stream. Evidence of perennial flow includes long-standing water rights to divert flows from the streams, being labeled as blue line perennial in USGS maps, landowner knowledge, robust wetland and riparian corridor, and the presence of persistent fish populations.**  
☐ 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 wide.  
☐ Other non-wetland waters: acres.

Identify type(s) of waters:

3. **Non-RPWs<sup>8</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):

- ☐ Tributary waters: linear feet, wide.

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<sup>8</sup>See Footnote # 3.

- ☐ 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>9</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>10</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,          wide.
- ☐ Other non-wetland waters:          acres.  
Identify type(s) of waters:
- ☐ Wetlands:          acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
- ☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- ☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:

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

<sup>10</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.

- ☒ Other: (explain, if not covered above): **AR-A, B, C, and X are generally not considered a water of the U.S. because they are the result of abandoned irrigation ditches constructed in dry land and do not have a potential surface connection to a downstream RPW. See Section IV.B for more information.**

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,            wide.  
☐ Lakes/ponds:            acres.  
☐ Other non-wetland waters:            acres. List type of aquatic resource:  
☐ Wetlands:            acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):            linear feet,            wide.  
☐ Lakes/ponds:            acres.  
☐ Other non-wetland waters:            acres. List type of aquatic resource:  
☐ Wetlands:            acres.

#### **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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation 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: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**  
☒ USGS NHD data.  
☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; Dillon**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name: **Ecological Resource Consultants, Inc. (July 11, 2022) Aquatic Resources Delineation Report.**
- ☐ 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, (2022) Aquatic Resource E- Aerial Imagery Compilation.**  
or ☒ Other (Name & Date): **USACE (2022) Relevant Reach Map.**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify):  
**U.S. Geological Service (2022) Streamstats Drainage Reports.**  
**USACE (June 27, 2022) Site Visit Memo for Record.**  
**Colorado Division of Water Resource (2022) Famine Creek Ditch Report.**  
**Colorado Division of Water Resources (2022), Whetstone Ditch-Sheep Creek Report.**

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

The Corps does not generally consider certain types of aquatic resources as WOTUS, except on a case-by-case basis (November 13, 1986, Federal Register (51 FR, 41217)). Such aquatic resources include non-tidal drainage and irrigation ditches excavated on dry land. AR-A, B, C and X are aquatic resources that have formed within irrigation ditches that have been excavated on dry land and do not have a physical downstream connection to any RPW. Therefore, these resources are not WOTUS.

**AR-A, B, and C:**

AR-A (0.01 acre), B (0.004 acre), and C (0.01 acre) are wetlands that are not WOTUS because they have been created by the excavation of dry land associated with constructing an irrigation ditch that at one time diverted flows from Maryland Creek. In total, these wetlands cover 0.02 acre. In this case, each of the wetlands have formed in the lowest lying areas of a man-made irrigation ditch that has not been used to transport water for several years. This ditch is likely a former alignment of the Famine Ditch (AR-X), which is now located farther downstream on Maryland Creek. The ditch traverses a southeast facing slope and collects snowmelt and



rainwater runoff such that sufficient wetland hydrology is only found within the lowest-lying areas. The ditch does not have an ordinary high-water mark or other evidence of active flows.

AR-X (0.08 acre) is an agricultural irrigation ditch, known as the Famine Creek Ditch, that is currently utilized to divert water from Maryland Creek to irrigate approximately 21.5 acres of agricultural hay fields along the north side of the creek. The ditch parallels the hillslope and does not intersect any naturally occurring wetlands. The ditch splits into several laterals that each terminate in uplands, with its closest location being approximately 300 feet from the nearest RPW (Maryland Creek).

AR-A, B, C, and X total 0.10 acre of aquatic resources that are not WOTUS.