

**APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 31-Jul-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, SPA-2008-00322-ABQ-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : NM - New Mexico
County/parish/borough: Santa Fe
City: Nambe Pueblo
Lat: 35.8869728
Long: -105.9664974
Universal Transverse Mercator: 13N
Name of nearest waterbody: Pojoque Creek Tributary
Name of nearest Traditional Navigable Water (TNW): Rio Grande
Name of watershed or Hydrologic Unit Code (HUC): 130201011204

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 29-Jul-2008

Field Determination Date
(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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

1. Waters of the U.S.**a. Indicate presence of waters of U.S. in review area:¹**

Water Name	Water Type(s) Present
SPA-2008-00322, Low water crossing	Non-RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWB Elevation: (if known)

2. Non-regulated waters/wetlands:³

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****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: 27820
acres

Drainage area: 27820
acres

Average annual rainfall: 9.9 inches

Average annual snowfall: 9.84 inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are 5-10 river miles from TNW.

Project waters are 2-5 river miles from RPW.

Project Waters are 5-10 aerial (straight) miles from TNW.

Project waters are 2-5 aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Project waters are located on tribal lands but do not cross boundaries.

Identify flow route to TNW:⁵

Unnamed arroyo to Pojoaque Creek to the Pojoaque River to the Rio Grande.

Tributary Stream Order, if known:

Order	Tributary Name
-	SPA-2008-00322, Low water crossing

(b) General Tributary Characteristics:**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
SPA-2008-00322, Low water crossing	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
SPA-2008-00322, Low water crossing	26	1	3:1

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
SPA-2008-00322, Low water crossing	X	X	-	-	-	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
SPA-2008-00322, Low water crossing	Bank soils are easily erodible and need protection from erosion. Stream bed is sand and easily erodible.	None present.	Meandering	1.9

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
SPA-2008-00322, Low water crossing	Ephemeral flow	2-5	Flows are flashy during the monsoon season. Due to low grade, flows are of relatively low velocity.	Flows are restricted to storm events and are of short duration.

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
SPA-2008-00322, Low water crossing	Discrete and confined	Ephemeral flows. Stream channel has a defined bed and bank. Flows are the result of discrete rain events.

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
SPA-2008-00322, Low water crossing	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
SPA-2008-00322, Low water crossing	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
SPA-2008-00322, Low water crossing	X	-	-	X	X	-	-	-	-	-	-	-	-	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
SPA-2008-00322, Low water crossing	Flashy flows develop during monsoon season. Ephemeral drainage. Bed and banks are easily erodible increasing turbidity.	Nitrates and sulfates from agricultural use. Petrochemical fuels and lubricants from vehicle leaks and spills on nearby roadways.

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
SPA-2008-00322, Low water crossing	X	cottonwood trees - 60-66 ft. wide x 1,200 ft. long.	-	-	-

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: SPA-2008-00322, Low water crossing

The project waterway has a channel bed consisting of sands and silts. Banks and bed are easily erodible and discharge into Pojoaque Creek approximately 700 feet downstream of site. Agricultural uses of nearby lands can result in the discharge of nitrates and sulfates into storm water flows into Pojoaque Creek and Pojoaque River to the Rio Grande where the habitat of two Federally-listed threatened and endangered species are located. Leaks and spills of petrochemical fuels and lubricants can enter the unnamed tributary of Pojoaque Creek and will be transported downstream to the Rio Grande. The ephemeral flow regime appears to be capable of contributing more than minimal contaminants to a TNW.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Tributary Name	Type	Size (Linear) (m)	Size (Area) (m ²)
SPA-2008-00322, Low water crossing	Non-RPWs that flow directly or indirectly into TNWs	-	404.6856
Total:		0	404.6856

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	maps and drawings	applicant
--U.S. Geological Survey Hydrologic Atlas	U.S. Geological Service	-
----USGS 8 and 12 digit HUC maps	U.S. Geological Survey	-
--U.S. Geological Survey map(s).	Cundiyo, NM Quad	7.5 minute series
--Photographs	-	-
----Aerial	US Geological Survey	2005/2006

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

1-Boxes checked below shall be supported by completing the appropriate sections in Section III below.

2-For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3-Supporting documentation is presented in Section III.F.

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

5-Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

6-A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

7-Ibid.

8-See Footnote #3.

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

10-Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.