JURISDICTIONAL DETERMINATION (JD) REQUIREMENTS FOR A COMPLETE JD REQUEST

Albuquerque & Omaha Districts

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US Army Corps of Engineers ®

U.S.ARMY

OVERVIEW

What is a Jurisdictional Determination?

1. Must satisfy parameters (methods per *Corps 87 Manual*) before jurisdiction can be determined:

- **Wetlands** (Three Parameters)
  - Hydrology
  - Hydrophytic Vegetation
  - Hydric Soils
    - » To be considered a wetland the area must satisfy all **three parameters**.
    - » This is documented using the Corps approved wetland data sheets.

- **Non-wetland waters**
  - Ordinary High Water Mark (OHWM).
  - Defined Bed and Bank.
    - » To be considered a non-wetland water it must satisfy the above criteria.
    - » This is documented using the Corps approved OHWM indicator data sheet.

Colorado River near Burns, CO

OVERVIEW

In the past, jurisdictional determinations (JDs) specified geographic areas that were treated as being subject to regulation by the Corps.

Today, there are several approaches to jurisdiction.

- **Determination** provides a yes/no if review area contains waters of the United States (WOTUS). Completed by Corps.
- **Delineation** identifies the boundary and acreage of any aquatic resources in the review area. Prepared by the Corps or applicant/consultant.
- **Verification** revises/confirms delineation or JD. Completed by Corps.

JURISDICTIONAL DETERMINATIONS – RGL 16-01

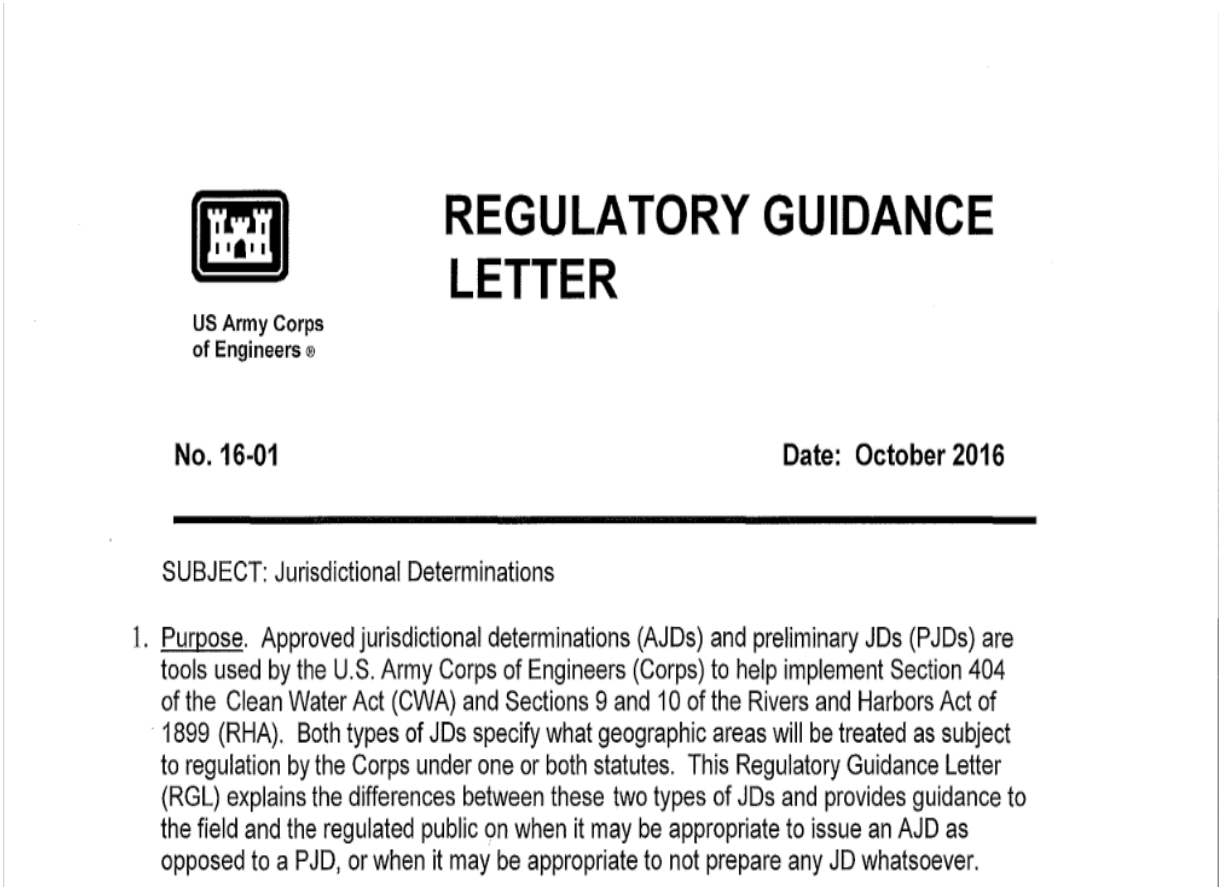
- Once the aquatic resources have been delineated (i.e., **satisfy parameters**) then jurisdiction can be determined, if needed.

- ***RGL 16-01*** explains defines an Approved JD and a Preliminary JD.

- Provides guidance on which type, if any, is appropriate to issue.

The selection of an **AJD** or **PJD** includes factors, such as:

- Requestor's preference and reasons.
- If a permit authorization is associated.
- The nature of any proposed activity requiring authorization.



US Army Corps of Engineers

REGULATORY GUIDANCE LETTER

No. 16-01 Date: October 2016

SUBJECT: Jurisdictional Determinations

1. Purpose. Approved jurisdictional determinations (AJDs) and preliminary JDs (PJDs) are tools used by the U.S. Army Corps of Engineers (Corps) to help implement Section 404 of the Clean Water Act (CWA) and Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). Both types of JDs specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes. This Regulatory Guidance Letter (RGL) explains the differences between these two types of JDs and provides guidance to the field and the regulated public on when it may be appropriate to issue an AJD as opposed to a PJD, or when it may be appropriate to not prepare any JD whatsoever.

Link: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Guidance-Letters/

ARDV, PJD, AND AJD

- **ARDV (aka Boundary Confirmation)**
  - Corps confirms the boundary of the delineated aquatic resource is accurate.
  - Most used to support NWP verifications or as a planning tool to avoid and minimize impacts.
  - No expiration date.
- **PJD**
  - Corps will agree that the aquatic resources are jurisdictional for planning/permitting purposes.
  - No expiration date and not subject to appeal.
  - Not recommended.
- **AJD (Includes Dry Land JD)**
  - The Corps determines the jurisdiction of aquatic resources (presence/absence of WOTUS)
  - Determination is appealable.
  - Valid for 5 years*
    - When making new permit decisions, the Corps will not rely on an AJD issued under a previous regulatory regime. The Corps will make new permit decisions pursuant to the currently applicable regulatory regime (i.e., the pre-2015 regulatory regime).
  - Used to support a No Permit Required or permit decision.
- **Coordinate early with appropriate PM to ensure the right request is made**.

REQUIREMENTS FOR A COMPLETE JD REQUEST

Green Lake (one of hundreds of "Green Lakes" in CO), near Crested Butte, CO

REQUEST FOR JD FORM

Request Form

– These provide context regarding the request, and basic information for processing.

- Why the request is being made.
- Contact info and location.
- Clearly designates the type of verification requested.
- Access permission for the parcel.

REQUEST FOR AQUATIC RESOURCES DELINEATION VERIFICATION

OR JURISDICTIONAL DETERMINATION

A separate jurisdictional determination (JD) is not necessary to process a permit. An Approved Jurisdictional Determination (AJD) is required to definitively determine the extent of waters of the U.S. and is generally used to disclaim jurisdiction over aquatic resources that are not waters of the U.S., in cases where the review area contains no aquatic resources, and in cases when the recipient wishes to challenge the water of the U.S. determination on appeal. Either an Aquatic Resources Delineation Verification or a Preliminary Jurisdictional Determination (PJD) may be used when the recipient wishes to assume that aquatic resources are waters of the U.S. for the purposes of permitting. In some circumstances an AJD may require more information, a greater level of effort, and more time to produce. If you are unsure which product to request, please speak with your project manager or call the Sacramento District's general information line at (916) 557-5250.

I am requesting the product indicated below from the U.S. Army Corps of Engineers, Sacramento District, for the review area located at:

Street Address: _____ City: _____ County: _____
State: _____ Zip: _____ Section: _____ Township: _____ Range: _____
Latitude (decimal degrees):_____ Longitude (decimal degrees): _____
The approximate size of the review area for the JD is _____ acres. **(Please attach location map)**

Choose one:
- ○ I own the review area
- ○ I hold an easement or development rights over the review area
- ○ I lease the review area
- ○ I plan to purchase the review area
- ○ I am an agent/consultant acting on behalf of the requestor
- ○ Other: _____

Choose one product:
- ○ I am requesting an Aquatic Resources Delineation Verification
- ○ I am requesting an Approved JD
- ○ I am requesting a Preliminary JD
- ○ I am requesting additional information to inform my decision about which product to request

Reason for request: (check all that apply)
- ☐ I need information concerning aquatic resources within the review area for planning purposes.
- ☐ I intend to construct/develop a project or perform activities in this review area which would be designed to avoid all aquatic resources.
- ☐ I intend to construct/develop a project or perform activities in this review area which would be designed to avoid those aquatic resources determined to be waters of the U.S.
- ☐ I intend to construct/develop a project or perform activities in this review area which may require authorization from the Corps; this request is accompanied by my permit application.
- ☐ I intend to construct/develop a project or perform activities in a navigable water of the U.S. which is included on the district's list of navigable waters under Section 10 of the Rivers and Harbors Act of 1899 and/or is subject to the ebb and flow of the tide.
- ☐ My lender, insurer, investors, local unit of government, etc. has indicated that an aquatic resources delineation verification is inadequate and is requiring a jurisdictional determination.
- ☐ I intend to contest jurisdiction over particular aquatic resources and request the Corps confirm that these aquatic resources are or are not waters of the U.S.
- ☐ I believe that the review area may be comprised entirely of dry land.
- ☐ Other: _____

Attached Information:
- ☐ Maps depicting the general location and aquatic resources within the review area consistent with Map and Drawing Standards for the South Pacific Division Regulatory Program (Public Notice February 2016, http://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/Article/651327/updated-map-and-drawing-standards/)
- ☐ Aquatic Resources Delineation Report, if available, consistent with the Sacramento District's Minimum Standards for Acceptance (Public Notice January 2016, http://1.usa.gov/1V68IYa)

AJD CHECKLIST

1. Completed AJD* form for each jurisdictional and non-jurisdictional waters on-site available.

   **The Corps will complete the final AJD form* but if the data is provided in the same format it will assist with the review time.

2. Project name.

3. Past Actions including JDs, Permits, etc. with the Corps Action ID number.

4. Property record(s) for the property or review area.

5. Photographs should be representative of the site and may include pictures of the wetlands, soils, tributaries, etc.… in the review area.

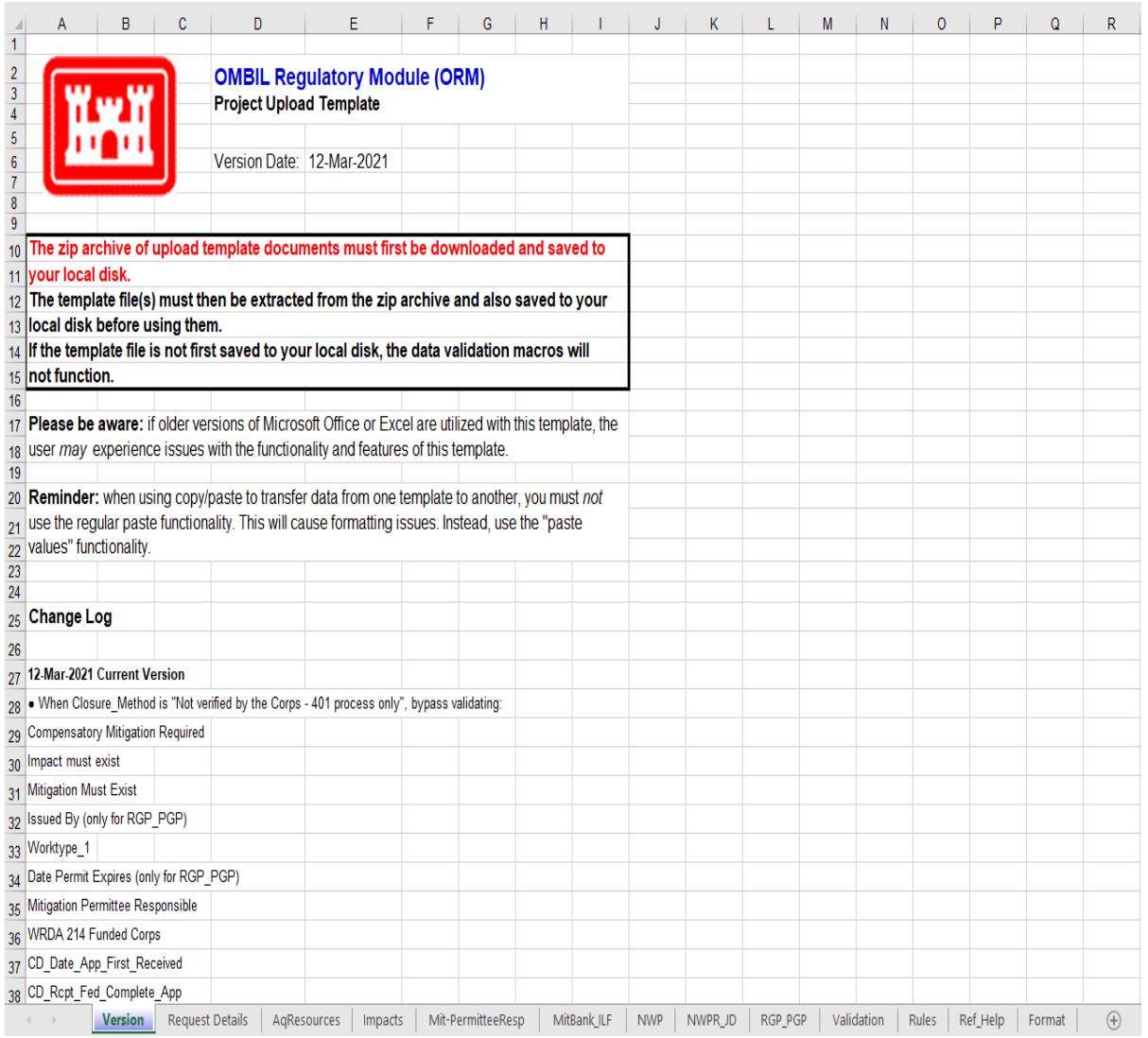
6. Data forms (i.e., wetland and OHWM) of both upland and wetland data points for each wetland type (i.e., PEM, PSS, and PFO). All data points shall include a distinct latitude and longitude coordinate (in decimal degrees).

AJD CHECKLIST

7. Brief narrative description of each water and wetland including type and function of each.

8. Size of waters of the US. Total area of each wetland and open water on site. Total linear feet of each on site tributary. Name each water (i.e., Wetland A, Tributary A, Wetland 1, Stream 1, Open Water). Mapping exhibits should not title waters as jurisdictional or non-jurisdictional. For projects with multiple distinct crossings, submit and electronic copy in Excel format of the **Waters Upload Sheet* available at:
http://www.spd.usace.army.mil/Portals/13/docs/regulatory/standards/Zip%20file.zip

* For delineations that contain greater than 10 aquatic resources



OMBIL Regulatory Module (ORM)
Project Upload Template

Version Date: 12-Mar-2021

The zip archive of upload template documents must first be downloaded and saved to your local disk.
The template file(s) must then be extracted from the zip archive and also saved to your local disk before using them.
If the template file is not first saved to your local disk, the data validation macros will not function.

Please be aware: if older versions of Microsoft Office or Excel are utilized with this template, the user *may* experience issues with the functionality and features of this template.

Reminder: when using copy/paste to transfer data from one template to another, you must *not* use the regular paste functionality. This will cause formatting issues. Instead, use the "paste values" functionality.

Change Log

12-Mar-2021 Current Version

- When Closure_Method is "Not verified by the Corps - 401 process only", bypass validating:

Compensatory Mitigation Required
Impact must exist
Mitigation Must Exist
Issued By (only for RGP_PGP)
Worktype_1
Date Permit Expires (only for RGP_PGP)
Mitigation Permittee Responsible
WRDA 214 Funded Corps
CD_Date_App_First_Received
CD_Rcpt_Fed_Complete_App

Version | Request Details | AqResources | Impacts | Mit-PermitteeResp | MitBank_ILF | NWP | NWPR_JD | RGP_PGP | Validation | Rules | Ref_Help | Format

LIST ALL AQUATIC FEATURES

List all Aquatic Features :

- Rivers
- Streams
- Lakes
- Ponds
- Impoundments
- Wetlands
- Ditches
- Etc.

Name	Size: Length, width, acreage	Flow Frequency	Flows to	Proximity	More info Needed?
Middle Fork South Platte River	12 feet wide, 100 feet long	Year round	South Platte River		
Tributary 1	4 feet wide, 50 feet long	More than 3 months/yr	Middle Fork South Platte		
Tributary 2	4 feet wide, 50 feet long	Less than 3 months/yr	Middle Fork South Platte		Yes
Pond 1	1.0 acre	Year round	Middle Fork South Platte		
Lake 1	2.0 acre		No outlet (isolated)		Yes
Wetland 1	0.6 acre		Middle Fork South Platte	adjacent	Yes
Wetland 2	0.8 acre		Middle Fork South Platte	abutting	
Wetland 3	0.5 acre		Tributary 2	abutting	Yes
Wetland 4	0.7 acre		isolated		Yes

Example table listing aquatic features

ADDITIONAL INFORMATION (FOR APPLICABLE FEATURES)

For those features which require additional information, the following questions need to be addressed for each applicable feature:

For linear tributaries:

- ☐ Describe average cubic feet per second of flow (or gallons per minute), at what times of year, and how often:
- ☐ Describe if the flow is confined to a channel, or is it overland sheet flow?
- ☐ Does an OHWM exist continuously within the permit area?
- ☐ Does an OHWM exist continuously downstream to the nearest year-round flowing stream? If not, explain upland inclusions, how flows disappear or reappear, if flows never make it to a stream, etc.

Fish Creek, Routt County, CO

If answers to the above questions indicate that the feature is isolated, please give additional info supporting why the feature may be isolated:

- ☐ Size of the immediate drainage area of this feature (acres or square mi):
- ☐ Name of nearest year-round flowing stream the feature flows into?
- ☐ How many river miles to the nearest year-round flowing stream:
- ☐ How many aerial (straight) miles to the nearest year-round flowing stream:
- ☐ Is the feature natural, man-made, or man-altered? If man-made or altered, explain.
- ☐ Describe average width, depth, and side slopes of feature (from top of bank):
- ☐ Describe feature's substrate composition (silt, sands, cobble, bedrock, gravel, concrete, muck, vegetation, other):
- ☐ Describe the feature's bank stability (eroding or stable):
- ☐ Does the feature have run/riffle/pool complexes?:
- ☐ Describe feature's channel geometry (meandering or straight)
- ☐ Describe feature's gradient (average slope through permit area):
- ☐ Estimate at what point, moving upstream within the permit area, this linear feature stops having an OHWM (USGS Quad name and Sec, Township, Range or Lat / Long):
- ☐ Describe the water quality (clear, discolored, oily film, known pollutants, etc.):
- ☐ Describe if a riparian corridor exists (type, width, etc.):
- ☐ Describe if a wetland fringe exists (type, characteristics, functions, etc.):
- ☐ Is the feature habitat for T&E species? Fish? Other.
- ☐ Describe wildlife seen or known within or around the feature:

ADDITIONAL INFORMATION… CONT'D

For those features which require additional information, the following questions need to be addressed for each applicable feature:

For wetland, pond, or lake features:

- Does the wetland/pond have continuous surface flows to a nearby stream or aquatic feature?
- If impounded, does the wetland/pond have an outlet to a nearby stream or aquatic feature and how often does it outflow?
- Is the wetland/pond separated from the stream by uplands or man-made berm?
- If separated, distance of wetland/pond to nearby stream or aquatic feature?
- Describe if the wetland flows to the stream, the stream flows to the wetland, or both?
- Describe any subsurface flow characteristics if known (dye test performed?)
- Is the wetland/pond within the 100-year floodplain of a nearby stream or feature?

If answers to the above questions indicate that the feature is isolated, please give any additional info supporting why the feature may be isolated:

- Wetland/pond function rating: low, med, high, or none, and explanation.
- Describe water quality of wetland/pond (clear, discolored, oily film, known pollutants, etc.).
- Describe if a riparian corridor exists: (type, width, etc.).
- Is the feature habitat for a federally listed threatened or endangered species, or within designated critical habitat? Fish habitat? Other? Provide rationale.
- Describe wildlife seen or known within or around the feature.

Wetlands near Elkhead Reservoir, Moffat County, CO

SIGNIFICANT NEXUS DETERMINATIONS

9. Significant Nexus Determination for each non- Traditional Navigable Waters (TNW) or wetland adjacent to a TNW. A tributary with a significant nexus has more than an insubstantial or speculative effect on the chemical, physical and biological integrity of a TNW.

a. **Relative reach analysis** includes a consideration of the hydrologic and ecologic factors throughout the stream reach in combination with the functions performed by any wetlands adjacent to the tributary.

b. **Hydrologic factors** include volume, duration and frequency of flow including consideration of certain physical characteristics of the tributary such as, proximity to a TNW, watershed area, and average annual rainfall at a minimum.

c. **Ecological factors** include the ability of the tributary and its adjacent wetlands, if applicable, to carry pollutants and flood waters to TNW; to provide aquatic habitat that supports biota of Traditional Navigable Waters; to trap and filter pollutants; to store flood waters, and to maintain water quality in a TNW at a minimum.

d. **List** any downstream, impaired waterbody and corresponding pollutants.

e. **Provide** a quantitative estimate of flow (Q) (e.g., Rational method or SCS curve method).

f. **Indicate** vegetation and aquatic animals present, list specific species and hydrophytic status (e.g., obligate, facultative wetland, etc.) or applicable life cycle interaction.

MAPS

- All maps should be prepared in accordance with the South Pacific Division (SPD) mapping standards. * **NWO does not have mapping standards.**

  - **Vicinity/Location Map:** including exact location of the property or review area. It should include the nearest intersection of two state highways or other identifiable reference points. A USGS quadrangle map and/or street atlas is preferred.

  - **Aquatic Resource Delineation Map:** show all the aquatic resources within the associated relevant reach. Include data points taken, referencing a specific data form, location of photographs taken including direction of each representative photograph specific details, and features critical to your conclusion (e.g., culverts, berms, areas of sheet flow, storm drain connections, impoundments, etc.).

  - **NRCS Soils Map.**

  - **Aerial Map:** with property or review area limits and wetland/waters sketch including date of photo, available at:

  - **USGS Topographic Map:** including quadrangle name and date

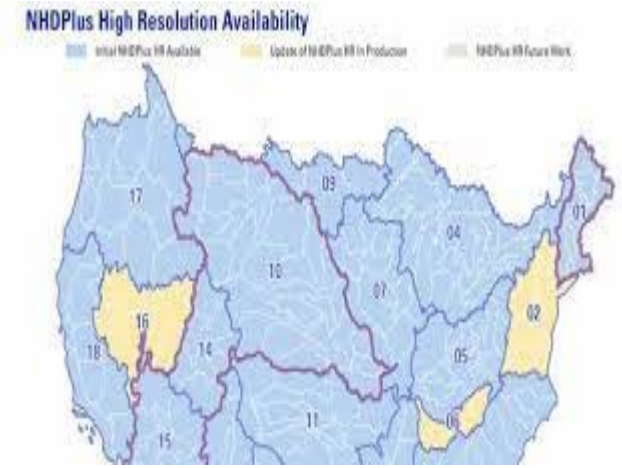
MAPS

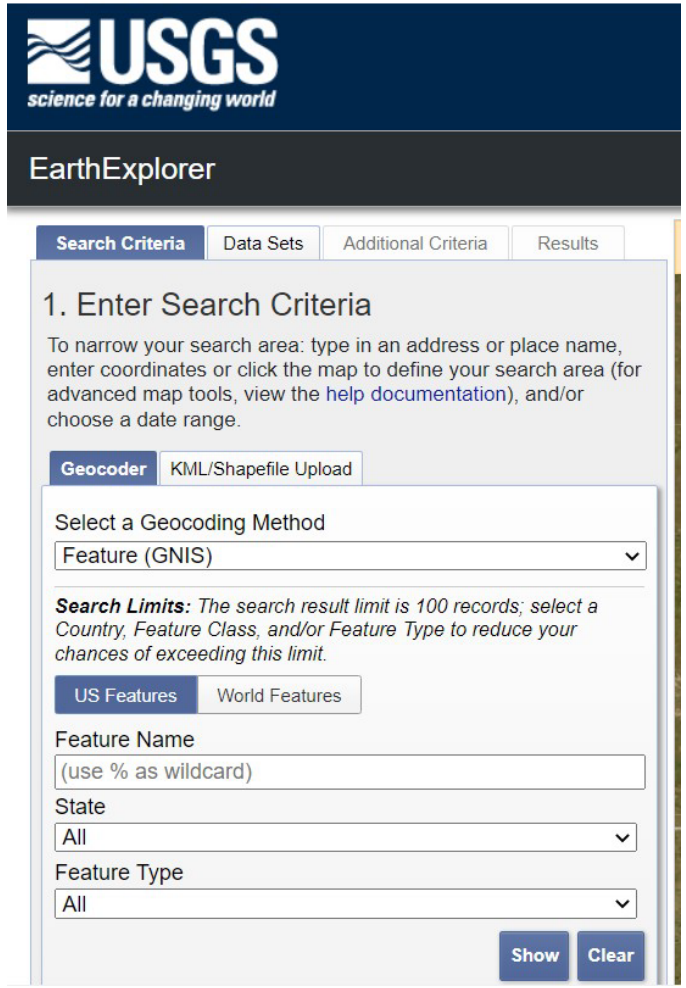
- All maps should be prepared in accordance with the South Pacific Division mapping standards. * **NWO does not have mapping standards**.

  - **FEMA Flood Plain Map.**
  - **National Wetlands Inventory (NWI) Map.**
  - **Engineering Surveys:** two-foot contours or less topographic map of the site (optional).
  - **LiDAR:** is highly recommended where available and eases the review of a project including desktop verification requests, re-verification requests and determining whether a site visit is necessary.
  - **Relevant reach and the nearest TNW, and all connecting aquatic features.**
  - **Drainage area boundary and watershed boundary.**

OTHER RESOURCES

- Colorado Decision Support Tool to identify flow regimes of ditches.
- NHD for flow path/connectivity.
- USGS Aerial Photos of Colorado.





COLORADO'S
Decision Support Systems
CWCB / DWR

SOUTH PACIFIC DIVISION MAPPING STANDARDS

US Army Corps of Engineers

SPECIAL PUBLIC NOTICE

Updated Map and Drawing Standards
for the South Pacific Division Regulatory Program

February 10, 2016

Corps contacts:
Sacramento District: Jason Deters (916) 557-7152 (Jason.Deters@usace.army.mil)
San Francisco District: William Connor (415) 503-6631 (William.M.Connor@usace.army.mil)
Los Angeles District: Dan Swenson (213) 452-3414 (Daniel.P.Swenson@usace.army.mil)
Albuquerque District: Deanna Cummings (505) 342-3280 (Deanna.L.Cummings@usace.army.mil)
South Pacific Division: Thomas Cavanaugh (415) 503-6574 (Thomas.J.Cavanaugh@usace.army.mil)

Introduction: This notice establishes updated standards and guidelines for maps and drawings submitted as part of delineations and applications for U.S. Army permits and jurisdictional determinations. The intent of these standards is to improve the quality and consistency of maps and drawings and simplify and improve review and processing by Corps Regulatory project managers. We estimate that at least 70-80% of maps and drawings submitted to the Corps Regulatory Program in South Pacific Division (comprised of Albuquerque, San Francisco, Sacramento, and Los Angeles districts) already meet the majority of these standards. By adhering to a single standard for maps and drawings, applicants and consultants should have a clear and concise product, and project managers should be able to provide permit decisions and jurisdictional determinations in a more consistent and timely manner. In addition, electronic mapping of permit-related maps and drawings will enable data sharing with other resource agencies for coordination of mitigation decision-making.

Applicability: These standards apply to all submittals to Regulatory Divisions, within the Districts of the Corps' South Pacific Division, and supersede all previous SPD district-specific standards related to map and drawing requirements. At the Corps' discretion, these standards may be modified or waived on a case by case basis, for example, projects or activities with small or temporary impacts to waters of the U.S. (for example, less than a tenth of an acre of permanent impact), projects where the applicant possesses limited financial resources (for example, private homeowners and small land owners), emergencies, and restoration projects with limited grant funding. Additional examples where these standards may be modified or waived include reauthorization of previously-authorized work and maintenance, repair, and/or rehabilitation projects where the original authorization included adequate drawings that are available. In general, compensatory mitigation plans must adhere to these standards, regardless of whether the standards are waived for the overall project.

Standards:

1) General:

a. Documents must include at a minimum: location (vicinity) map(s) and plan view map(s). Mitigation

5) Delineations of waters of the United States (see attached example map):

a. Plan view maps must be provided.
b. Cross-sectional view drawings must be provided at the Corps project manager's discretion. Examples of when cross-sectional view drawings would be appropriate include stream or wetland restorations, stream crossings, proposed structures, and delineations of tidal areas.
c. The survey area boundary must be clearly annotated and/or symbolized. The survey area boundary encloses the spatial area for which a Corps jurisdictional determination is being requested.
d. Clearly show location and extent of all areas within the survey area potentially meeting the criteria for waters of the U.S., including special aquatic sites (e.g., wetlands, sanctuaries and refuges, mudflats, vegetated shallows, and riffle and pool complexes), and/or navigable waters. Each type of boundary (for example, ordinary high water mark, mean high water, wetlands or other special aquatic sites, and high tide line) must be clearly annotated and/or symbolized to ensure they are differentiable on the map.
e. Show locations of any wetland delineation or ordinary high water mark data points, labeled according to the number of the corresponding wetland delineation form or ordinary high water mark data sheet. Generally, a wetland boundary must be based on at least one set of paired wetland delineation data points, with one within the proposed wetland boundary and one immediately outside it.
f. Include representative ordinary high water mark (OHWM) widths where measured in the field (averages may be acceptable for uniform channel reaches). OHWM widths must be shown with a transect/profile line (e.g., A-A') labeled with the corresponding width measurement in feet. In some cases, a corresponding cross section may be required, in which case the cross section must include the corresponding OHWM elevations.
g. Include information not directly related to a delineation of waters of the U.S. on a separate map(s).
h. If there are tidal areas within the survey area, identify the location and elevation of Mean High Water and the High Tide Line on all maps and cross-section drawings. Annotate boundaries with the corresponding elevation (ft) and the tidal (vertical) datum used (NAVD88, NGVD29, MLLW, etc.).
i. For non-tidal zones, identify the Ordinary High Water Mark.
j. Each line or polygon representing a water of the U.S. must be labeled with a unique name (For example, WL1, WL2, VP1, VP2, STR1, STR2, etc.). Multi-geometry features, such as streams split by a culvert crossing, shall be separated into individual sections, each with their own unique names (For Example, STR1a, STR1b, etc.).
k. The delineation report must be accompanied by a completed copy of the Aquatic Resources sheet in the Consolidated ORM Upload Workbook (ORM_Upload_Sheet_Consolidated_Rapanos_20151022.xslm from the attached Zip file).

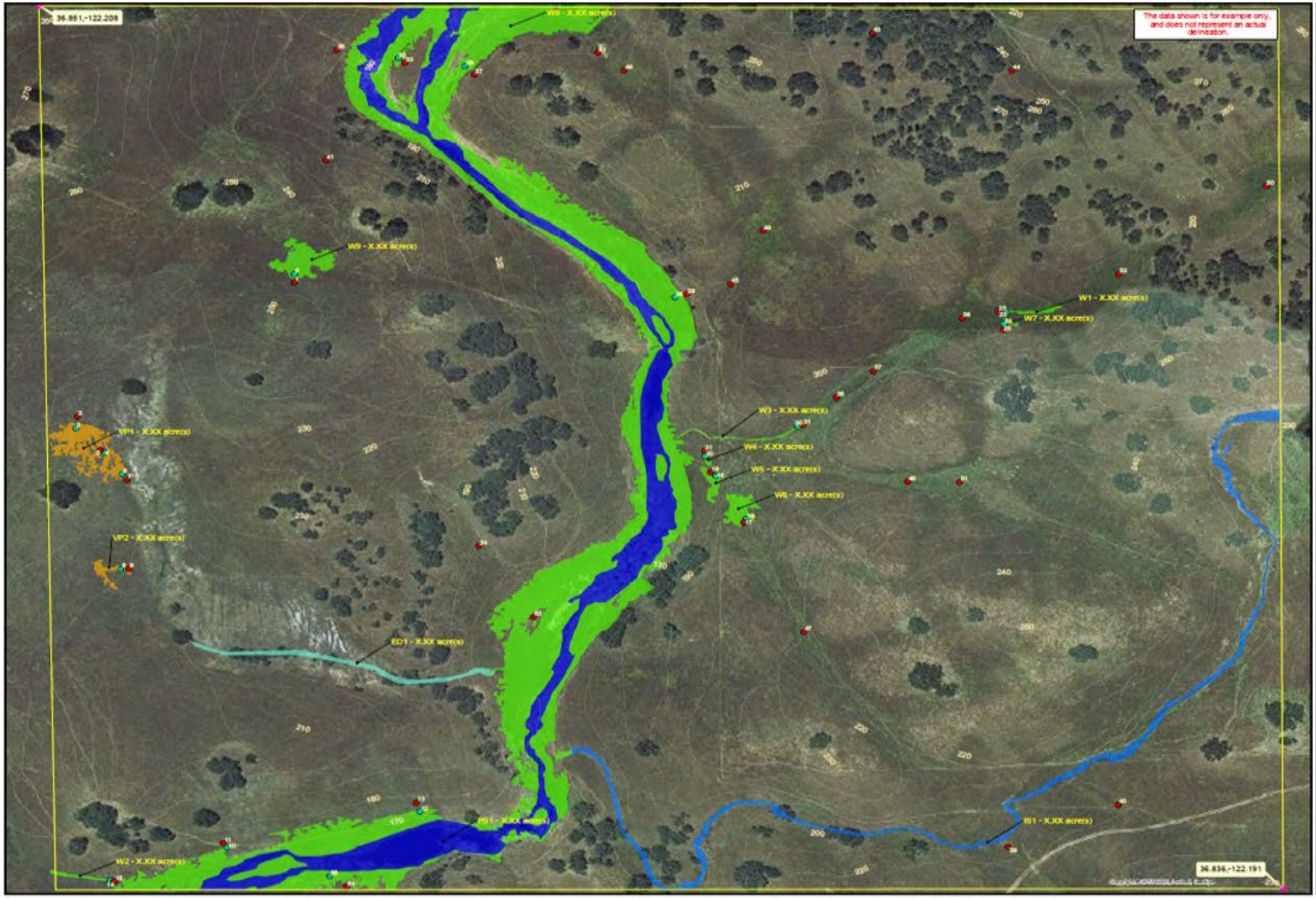


Figure X:
Delineation of Wetlands and Other Waters of the U.S. for the Hypothetical Project Site

Legend

- Map Reference Point
- Survey Area Boundary (X.XX Acres)
- Upland Sampling Point
- Wetland Sampling Point
- Topography (10-foot Contour Interval)

Wetlands (X.XX acres)

- Vernal Pool (X.XX acres)
- Wetland (X.XX acres)

Other Waters (X.XX acres)

- Ephemeral Drainage (X.XX acres)
- Intermittent Stream (X.XX acres)
- Perennial Stream (X.XX acres)

N
W E
S

250 125 0 250

Feet

Coordinate System: NAD 1983 UTM Zone 10N
Projection: Transverse Mercator
Datum: North American 1983
Vertical Datum: NAVD88, U.S. Feet
1 inch = 250 feet

Created on April 30, 2013
Revised on February 8, 2016

Made in accordance with the *Updated Map and Drawing Standards for the South Pacific Division Regulatory Program*, as amended on February 10, 2016, by:

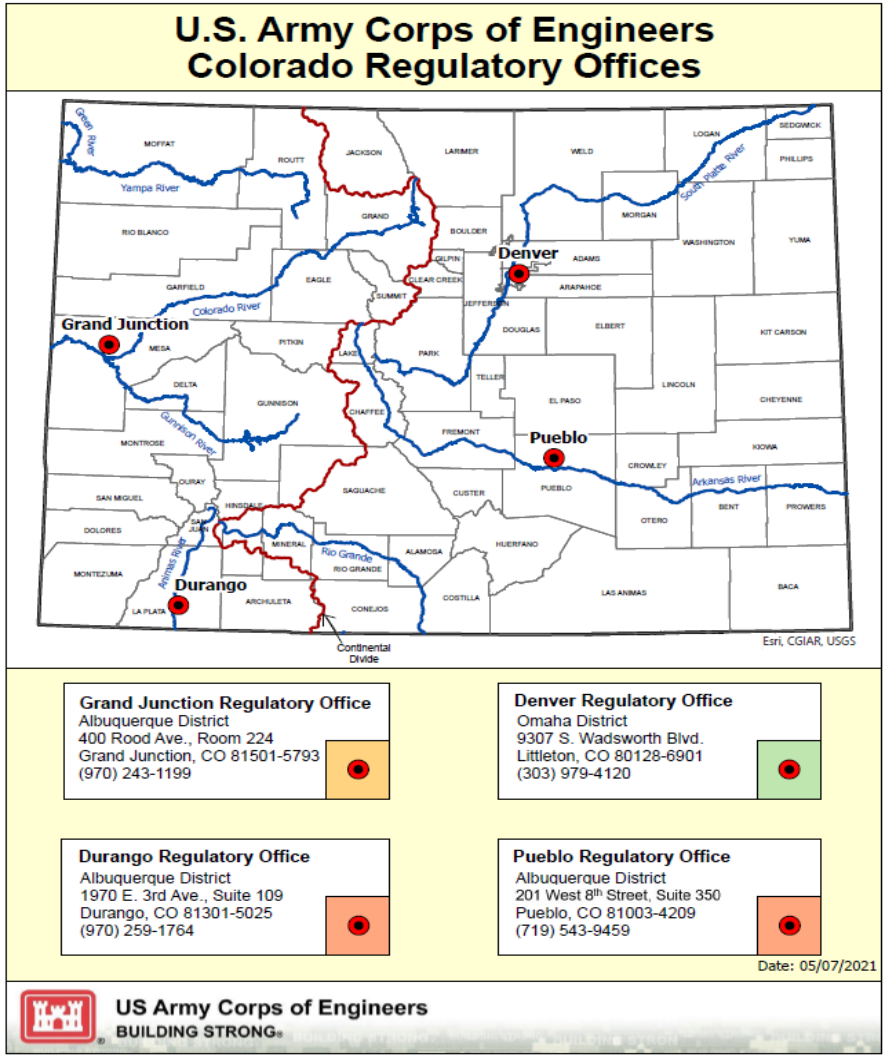
Jason Deters, Project Manager
Enforcement and Special Projects Unit
U.S. Army Corps of Engineers
South Pacific Division
Sacramento District, Regulatory Division
1325 J Street, Room 1350
Sacramento, California 95814-2022

SUBMITTAL PROCESS

To request a JD (Preliminary or Approved):

1) Complete the “Request for Jurisdictional Determination” form:
https://www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/Jurisdiction/SPA-Request-for-Jurisdictional-Determination-Jan-2017-ka.pdf?ver=2020-07-28-120953-540

2) Submit the signed form with the applicable above information to the appropriate office.
If you are unsure of which office to submit your documentation to, please see the district boundary map located on this website:
https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Regulatory-Contacts/.



QUESTIONS?

Mesa Lake, Grand Mesa, CO