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): October 4, 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, La Plata, Cordera Development, Pine Creek, Colorado Springs, El Paso County, CO, SPA-2007-00481-SCO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Colorado** County/parish/borough: **El Paso** City: **Colorado Springs**
Center coordinates of site (lat/long in degree decimal format): Lat. **38.9805421609458°**, Long. **-104.751711°**
Universal Transverse Mercator: **13 521505.68 4314646.64**
Name of nearest waterbody: **Pine Creek**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Arkansas River**
Name of watershed or Hydrologic Unit Code (HUC): **Fountain. Colorado., 11020003**
☒ 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: **October 4, 2012**
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

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

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (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 **2.5** acres.
      Wetlands: **0.93** acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
      Elevation of established OHWM (if known): **The Tributary is a mixture of wetland channels, upland swales and ditch without OHWM, and pipes. The Tributary is characterized as 58% pipes and ditch, 24% upland swale, 8% perennial waters, and 10% ephemeral waters. From the upper end to the mouth the Tributary is: 300' ephemeral wetland channel, 100' perennial impounded water, 300' upland swale, 250' perennial impounded water, 300' ephemeral wetland channel, 1,600' upland swale, 300' ephemeral wetland channel, 130' upland swale, 50' ephemeral wetland channel, 50' upland swale, 400' perennial wetland channel with a spring, 300' upland swale, 100' pipe, 300' upland ditch, and 5,500' pipe with perennial flows at the outfall.**

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

2. Non-regulated waters/wetlands (check if applicable):[3]

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

Explain: **The upland swales and upland ditch of the Tributary were assessed and were determined to not be jurisdictional. The swales vary from defined channels to poorly-defined swales. None exhibited an OHWM or wetland characteristics. All were vegetated with upland perennial vegetation. The 5 upland swales and upland ditch were thus determined to be non-jurisdictional.**

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the waterbody[4] 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: **72 (Kettle Creek Basin) square miles**
Drainage area: **2 square miles**
Average annual rainfall: **16** inches
Average annual snowfall: **41** inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.
☒ Tributary flows through **4** tributaries before entering TNW.

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

[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.

Project waters are **1-2** 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:

Identify flow route to TNW[5]: **The Tributary flows into Kettle Creek (an RPW) which flows into Monument Creek which flows into Fountain Creek which flows into the Arkansas River.**
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☒ Natural
☐ Artificial (man-made). Explain:
☒ Manipulated (man-altered). Explain: **Lower half of the Tributary has been placed into a pipe.**

Tributary properties with respect to top of bank (estimate):
Average width: **10** feet
Average depth: **1** feet
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):
☒ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☒ Vegetation. Type/% cover: **Emergent wetland vegetation of sedge and rush/100%**
☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **Stable except for a headcut at the spring.**
Presence of run/riffle/pool complexes. Explain: **None.**
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): **4** %

(c) Flow:
Tributary provides for: **Intermittent but not seasonal flow**
Estimate average number of flow events in review area/year: **6-10**
Describe flow regime: **Perennial in some sections, intermittent in some sections, and ephemeral in other sections.**
Other information on duration and volume: **Flow in the perennial section is from a spring. The two impoundments have year-round water which is probably from a high water table and storm water runoff. Flows on the intermittent and ephemeral sections are from summer thunderstorms, spring rains, and winter snowmelt.**

Surface flow is: **Confined.** Characteristics: **Within the wetland sections, the flow is confined to the wetland channel. Within the upland swale sections, the flow appears confined to the swales and does not appear to be sheet flow at any point.**

Subsurface flow: **Unknown**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☒ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank ☐ the presence of litter and debris
☐ changes in the character of soil ☐ destruction of terrestrial vegetation
☐ shelving ☐ the presence of wrack line
☐ vegetation matted down, bent, or absent ☐ sediment sorting
☐ leaf litter disturbed or washed away ☐ scour
☐ sediment deposition ☐ multiple observed or predicted flow events
☐ water staining ☒ abrupt change in plant community
☐ other (list):
☒ Discontinuous OHWM.[7] Explain: **Within the project site there are five sections of wetland channel interspersed with four sections of upland swales. The upland swales lack a OHWM. Once the Tributary leaves the project site, it is an upland ditch and then a large pipe which leads to Kettle Creek.**

[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.

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

☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other (list):

☐ Mean High Water Mark indicated by:
- ☐ survey to available datum;
- ☐ physical markings;
- ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: **Water in spring-fed section of channel is clear. Water within the two impoundments is murky. Water circulation and quality appears to be poor from heavy disturbance by cattle.**

Identify specific pollutants, if known: **Bacteria, ammonia, and nitrates from cattle manure, especially in and around the two impoundments.**

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

☒ Riparian corridor. Characteristics (type, average width): **In the upland swale section below the spring-fed section, there is a 20-ft-wide narrowleaf cottonwood corridor.**

☒ Wetland fringe. Characteristics: **Five of the channel sections are wetland sedge/rush channels.**

☒ Habitat for:
- ☐ Federally Listed species. Explain findings:
- ☐ Fish/spawn areas. Explain findings:
- ☐ Other environmentally-sensitive species. Explain findings:
- ☒ Aquatic/wildlife diversity. Explain findings: **Insect and bird species that use riparian trees for food source and resting and nesting sites.**

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: **0.93** acres

Wetland type. Explain: **Emergent wetlands, impoundments also have shallow open water.**

Wetland quality. Explain: **Fair, adversely affected by heavy cattle trampling and manure in and around the impoundments.**

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Perennial flow**. Explain: **One Tributary section is perennial and fed from a spring, the two impoundments have perennial waters, and the other wetland channel sections are intermittent or ephemeral.**

Surface flow is**: Discrete**

Characteristics: **Flow in the perennial section is from a spring, flow in the other sections are from summer thunderstorms, spring rains, and winter snowmelt.**

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 **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: **Clear in the perennial stream section; water quality within the two perennial wetland**

stock ponds is only fair as evidenced by the thick algae growth in the ponds; and water at the mouth of the tributary appears polluted having a surface sheen and foam.

Identify specific pollutants, if known: **Cattle manure contributing bacteria, ammonia, and nitrates.**

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

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

☒ Vegetation type/percent cover. Explain: **Wet meadow and emergent wetland types/100%.**

☒ Habitat for:

☐ Federally Listed species. Explain findings:

☐ Fish/spawn areas. Explain findings:

☐ Other environmentally-sensitive species. Explain findings:

☒ Aquatic/wildlife diversity. Explain findings: **Frogs were observed in the perennial stream section. Aquatic insects were observed in the two impoundments.**

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

All wetland(s) being considered in the cumulative analysis: **6**

Approximately **0.93** 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)
Y	**0.37**	**Y**	**0.01**
Y	**0.35**	**Y**	**0.07**
Y	**0.03**	**Y**	**0.1**

Summarize overall biological, chemical and physical functions being performed: **The wetlands serve significant natural biological functions, including food chain production, general habitat and spawning, and rearing and resting sites for aquatic or land species. The wetlands maintain natural drainage characteristics and sedimentation patterns. The wetlands are significant in shielding other areas from erosion or storm damage. The wetlands serve as valuable storage areas for storm and flood waters. The wetlands are ground water discharge areas that maintain minimum baseflows important to aquatic life. The wetlands serve significant water purification functions by retaining and processing pollutants and helping to keep pollutants from entering the receiving RPW, Kettle Creek. The wetlands are scarce in quantity in the local 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: **There is a presence of significant nexus. The Tributary has the substantial**

capacity to carry flood waters as evidenced by the large rock-lined spillways of each impoundment. Although the Tributary is a discontinuous channel, the upland swale sections are relataively short, ranging from 50 linear feet to 1,600 linear feet and averaging 447 linear feet. These short sections of upland swales do not break the tributary connection and are not long enough to prevent flood waters and heavy storm runoff from reaching the Tributary mouth. The Tributary has more than an insubstantial capacity to both carry pollutants from cattle grazing to the receiving RPW stream during the large storm events which frequent the area, and to reduce the amount of pollutants by absorbing and converting pollutants within the wetlands during lesser storm events. The perennial sections of the Tributary provide habitat and observed full lifecycle functions for amphibians and aquatic insects.

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[8] 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: **9,930** linear feet, **10 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:

   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 jurisidictional. 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.

[8]See Footnote # 3.

Provide estimates for jurisdictional wetlands in the review area: **0.93** acres.

7. Impoundments of jurisdictional waters.[9]
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☒ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain:
☐ 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: **Crosswinds Environmental Consulting provided on July 12, 2007.**
☒ 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.

[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.*

- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☒ U.S. Geological Survey Hydrologic Atlas: **Williams Creek #110200030104**
  - ☐ USGS NHD data.
  - ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; CO-PIKEVIEW**
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☒ FEMA/FIRM maps: **El Paso County, Colorado.**
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Bing Maps Hybrid 2012; Google Earth Pro 2012**
  or ☐ Other (Name & Date):
- ☒ Previous determination(s). File no. and date of response letter: **SPA-2007-00481 August 30, 2007**
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

This is a reissuance of an expired approved JD for the project. Original approved JD was reviewed by the EPA and issued by the Corps on August 30, 2007. Applicant contacted the Corps and requested the extension since the original approved JD was limited to 5 years. Project was delayed due to the economy, and both the design and the water resources reviewed are unchanged from 2007 to the present.

The Tributary is characterized as a discontinous and heavily modified channel. It is shown as a blue line on USGS quad sheets indicating it had substantial flows in the past with a continous channel from the uppermost end in the project site to it's mouth at Kettle Creek, an RPW. The upland channel sections of the discontinous channel do not break the tributary connection of the entire Tributary. The lower half of the Tributary has been substantially altered by the construction of North Powers Boulevard, a divided four-lane highway, and the change in surrounding land use from cattle grazing to residential development. As part of these land use changes, the lower half of the tributary (58% of the total length) was converted from an open natural channel to a roadside ditch and two pipes. The pipe outfalls into a regional detention pond at the head of Kettle Creek. At it's outfall, the Tributary has perennial flows indicating the tributary is capable of contributing more than insubstantial flows to Kettle Creek. The Tributary has two impoundments used for cattle watering and which were created by excavating and berming the Tributary, probably prior to the Clean Water Act. The impoundments are perennial and have rock-lined spillways indicating the Tributary is capable of carrying more than insubstantial flows. The Tributary's five "wet" sections are characterized as wetland channels, one of which is fed by a spring and has perennial flows. This section helps support a thriving riparian zone located just downstream. The other "wet" sections have robust wetland vegetation indicating the Tributary carries sufficient flows to sustain the wetlands. Based on the above, the Corps finds a significant nexus between the subject Tributary and the TNW.