



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 12-MAY-2021

ORM Number: SPK-2002-75601

Associated JDs: Previous JD dated 12/17/2003, also under SPK-2002-75601

Review Area Location¹:

State/Territory: CO City: Winter Park County: Grand County

Center Coordinates of Review Area: Latitude 39.930453, Longitude -105.794870

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- ☐ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Cozens Ditch	1710 feet 0.07 acre	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The Cozens Ditch is a constructed or excavated channel used to convey water. The Cozens Ditch receives flows diverted from both Vasquez Creek and Leland Creek, was constructed around 1888, and has been modified in several ways since being first constructed. To be an (a)(2) tributary, the Cozens Ditch must meet the flow conditions of an (a)(2) water; contribute surface water flow to a jurisdictional water in a typical year; and either relocate a tributary, be constructed in a tributary, or be constructed in an adjacent wetland.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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			<p>According to the AJD request, the subject reach of the Cozens Ditch has surface flows each year from May to October (intermittent). Thus, meeting the flow conditions of an (a)(2) water.</p> <p>Flows travel through the subject reach and into a complex of three man-made impoundments that periodically releases surface flows to the Fraser River, an (a)(2) water. Specifically, 2 cubic feet/second of water is delivered to the Fraser River from the downstream most impoundment over a 24-hour period during the months of November to April to satisfy water right obligations. Surface flows from the impoundment to the Fraser River also occur in direct response to precipitation events. Therefore, the subject reach of Cozens Ditch contributes surface flow to an (a)(2) water (Fraser River) in a typical year.</p> <p>The subject reach of Cozens Ditch receives diverted water from both Leland Creek and Vasquez Creek. The area surrounding the diversion on Leland Creek is conducive to wetland formation due to a flat floodplain surface being present adjacent to the creek. The exact location of the diversion may have been slightly altered in the past and the construction of a gravel road directly upstream of the diversion has modified the site since the diversion was first constructed. An AJD was conducted in 2002, prior to the construction of the gravel road, and the review area included the Cozens Ditch diversion on Leland Creek. The 2002 AJD documented the presence of wetlands adjacent to Leland Creek at the specific location where the diversion currently exists. The associated October 2002 Wetland Delineation report states that Leland Creek has a perennial flow regime and that palustrine scrub-shrub wetlands are present continuously along (i.e., adjacent to) Leland Creek. The 2002 AJD and associated report also documents naturally occurring hydrologic sources for wetlands at and near the Leland Creek diversion, including the presence of fen wetlands ~400 feet upslope of the diversion and continually saturated soils directly downslope of the Leland Creek diversion. Aerial imagery from September 5, 1999, depicts the diversion point prior to the diversion structure being improved and indicates the presence of palustrine scrub-shrub wetlands at the point of the Leland Creek diversion. Therefore, the Cozens Ditch was constructed within a wetland adjacent to Leland Creek.</p> <p>In summary, the Cozens Ditch has intermittent flows, contributes surface flow to an (a)(2) water in a typical year and was constructed within an adjacent wetland at</p>
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⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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			its diversion of Leland Creek. Therefore, the subject reach of Cozens Ditch meets the definition of an (a)(2) tributary. A similar analysis was not conducted for the Cozen Ditch diversion located on Vasquez Creek due to less available information and a lack of need to further document the jurisdictional status of the subject reach.
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Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A	N/A

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
N/A	N/A	N/A	N/A

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

 x Information submitted by, or on behalf of, the applicant/consultant:

- *August 2020, Aquatic Resources Inventory for the Willows Apartment Site, Grand County, Colorado. Prepared by SWCA Environmental Consultants*
- *January 14, 2021, Supplemental information regarding water right case No. 112, Grand County District Court; 98CW41, Water division No. 5; 99CW314, Water Division No. 5; 99CW315, Water Division No. 5; and 14CW3097/3098 Consolidated, Water Division No. 5. Submitted by SWCA Environmental Consultants*

This information *is not* sufficient for purposes of this AJD.

Rationale: *Additional information regarding the presence of adjacent wetlands at the Leland Creek diversion structure was needed to determine jurisdiction. The Corps was able to remotely gather this information.*

Data sheets prepared by the Corps: *Title(s) and/or date(s).*

 x Photographs: *Google Earth Aerial Imagery, compiled by the Corps, dated September 5, 1999; June 16, 2005; August 19, 2007; September 26, 2009; September 23, 2011; October 9, 2015;*

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and September 13, 2019.

- ☒ Corps Site visit conducted on: *October 15, 2020.*
- ☒ Previous Jurisdictional Determinations (AJDs or PJDs): *December 17, 2003, AJD issued.*
- ☐ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- ☐ USDA NRCS Soil Survey: *Title(s) and/or date(s).*
- ☒ USFWS NWI maps: *National Wetland Inventory Map, downloaded by the Corps of March 1, 2021.*
- ☒ USGS topographic maps: *USGS National Map, downloaded by the Corps March 1, 2021.*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	October 2002, Wetland Delineation Report, Maryvale West Property, prepared by Western Ecological Resource, Inc.
State Sources	N/A.
Other Sources	N/A.

Typical year assessment(s): The subject reach of Cozens Ditch has an intermittent flow regime and contributes surface flow to a complex of three man-made impoundments. A typical year assessment is needed to describe flows from the impoundments of Cozens Ditch to the Fraser River, an (a)(2) water. According to the AJD request and supplemental information provided by the agent, 2 cubic feet/second of water is delivered from the downstream most impoundment to the Fraser River over a 24-hour period during the months of November to April. Surface flows from the impoundment to the Fraser River also occur in response to precipitation events or active management of the impoundments. Therefore, a water surface connection occurs between the impoundments and the Fraser River in a typical year.

B. Additional comments to support AJD:

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NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Grand Park Development, LLC		File No.: SPK-2002-75601	Date: May 12, 2021
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
→	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

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

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

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

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

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

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

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

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

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

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Benjamin R. Wilson
Project Manager
U.S. Army Corps of Engineers
Albuquerque District
400 Rood Ave, Room 224
Grand Junction, Colorado 81501
Phone: (970) 243-1199 X 1012, FAX 916-557-7803
Email: Benjamin.R.Wilson@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Thomas J. Cavanaugh
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division
1455 Market Street, 2052B
San Francisco, California 94103-1399
Phone: 415-503-6574, FAX: 415-503-6646
Email: Thomas.J.Cavanaugh@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:



Figure A-2. Aquatic resources delineated in the study area.