

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): July 21, 2022

B. ALBUQUERQUE DISTRICT, FILE NAME, AND NUMBER: Morning Light Solar AJD, SPA-2022-00165

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Colorado County/parish/borough: Pueblo City: Boone

Center coordinates of site (lat/long in degree decimal format): Lat. 38.252732° N, Long. -104.212587° W.

Universal Transverse Mercator: 13

Name of nearest waterbody: Arkansas River

Name of watershed or Hydrologic Unit Code (HUC): 11020004-Upper Arkansas

- 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: July 7, 2022
 Field Determination. Date(s): June 7, 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.

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.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The review area for this determination is comprised of twelve Wetlands (identified as WL01-WL12) totaling 9.70 acres, eight open water ponds (identified as OHWM 06, 08, 17, 18, 19, 23, 25, 26) totaling 3.38 acres, and twenty ephemeral stream reaches (identified as OHWM 01, 02, 03, 04, 05, 07, 09, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 24, 27, 28) totaling 1.79 acres located within the approximately 2,840-acre project boundary. A reach of the Colorado Canal is also located within the project boundary, however, this waterway is likely a water of the U.S. under current regulation/guidance and is not included in this determination. The National Wetland Inventory (NWI) shows one isolated wetland and five ponds in the review area and the National Hydrography Dataset (NHD) shows two ephemeral streams draining to the Colorado Canal, one ephemeral stream draining into the Arkansas River, and two ephemeral streams ending before they reach the Colorado Canal. Based on a review of the NHD, the nearest mapped potential relatively permanent water (RPW) is the Colorado Canal and the nearest Traditional Navigable Water (TNW) is the Arkansas River approximately 1.4 miles south of the review area. On June 7, 2022, Corps staff completed a field visit to review the March 2022, SWCA Environmental Consultants Wetland Delineation Report (Delineation Report) and assessed whether a surface connection was present between the delineated aquatic resources and the downstream mapped RPW or TNW. During this field visit, Corps staff determined that the aquatic resource boundaries contained within the Delineation Report were accurate, however, no surface connection was observed between the delineated aquatic resources and any downstream water south of the review area. Specifically, Corps staff reviewed the furthest downstream points of the five unnamed mapped waterways that are the confluences of all delineated aquatic resources and did not observe a defined channel, flow, or surface connection between all five waters and the Colorado Canal or the Arkansas River. All five unnamed mapped waterways become overland runoff (or infiltrate sandy soils beneath the ground surface) without a defined channel providing a necessary surface or shallow subsurface connection. Due to their small size and/or disturbed characteristics, the twelve Wetlands, eight open water ponds, and twenty ephemeral**

¹ Supporting documentation is presented in Section III.F.

stream reaches, provide limited habitat functions to surrounding areas and exhibit tenuous ecological connections to nearby surface waters. The Corps has determined that the twelve Wetlands, eight open water ponds, and twenty ephemeral stream reaches are isolated features with no surface or shallow subsurface hydrologic connection or ecological connection to a RPW or TNW. These aquatic resources do not border, neighbor, nor are contiguous with another WOUS nor are they separated from other WOUS by man-made dikes, barriers, or berms. These aquatic resources do not support a link to interstate or foreign commerce; they are not known to be used by interstate or foreign travelers for recreation or other purposes; They do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined that the twelve Wetlands, eight open water ponds, and twenty ephemeral stream reaches are not regulated by the Corps under Section 404 of the Clean Water Act.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A

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

C. SIGNIFICANT NEXUS DETERMINATION: N/A

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

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): N/A

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): **1.79 acres** linear feet **4** width (ft).
- Lakes/ponds: **3.38** acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: **9.70** 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, width (ft).
- 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: **March 2022, SWCA Environmental Consultants Wetland 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:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **1:24K Boone Hill**

- USDA Natural Resources Conservation Service Soil Survey. Citation: Pueblo County Soil Survey
- National wetlands inventory map(s). Cite name: USFWS National Wetland Inventory
- 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: 2020, 2018, 2017, 2015, 2013, 2010 2008, 2006, 2005, 2000, 1994
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):

B. ADDITIONAL COMMENTS TO SUPPORT JD: