

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): August 1, 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:

Denver Regulatory Office
Isolated Indian Peaks Filing 17 North Detention Pond, which includes wetlands A, B and C
199580926

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

Wetlands A, B and C within the Indian Peaks filing 17 North Detention Pond

State: **CO** County/parish/borough: **Boulder** City: **Lafayette**
Center coordinates of site (lat/long in degree decimal format): Lat. **39.998121** Long. **-105.131178**
Universal Transverse Mercator:

Name of nearest waterbody: **Bullhead Gulch**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Boulder Creek**

Name of watershed or Hydrologic Unit Code (HUC): **10190005**

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 31, 2012**

Field Determination. Date(s): **June 28, 2012**

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 no** "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 waters² (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: width (ft) and/or acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: **Pick List**

Elevation of established OHWM (if known): .

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: **Reference is made to the November 13, 1986 Federal Register (Page 41217), Part 328 (a) Non-tidal drainage and irrigation ditches excavated on dry land, (b) artificially irrigated areas which would revert to upland if the irrigation ceased, (c) artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. The Corps of Engineers generally does not consider these types of aquatic resources waters of the U.S. except on a case-by-case basis. In this case, there is no relatively permanent flow from the detention pond to a waters of the US. As such, the pond is not considered jurisdictional.**

SECTION III: CWA ANALYSIS

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): **Reference is made to the November 13, 1986 Federal Register (Page 41217), Part 328 (a) Non-tidal drainage and irrigation ditches excavated on dry land, (b) artificially irrigated areas which would revert to upland if the irrigation ceased, (c) artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. The Corps of Engineers generally does not consider these types of aquatic resources waters of the U.S. except on a case-by-case basis. In this case, there is no relatively permanent flow from the detention pond to a waters of the US. As such, the pond is not considered jurisdictional.**

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 width (ft).
- 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, 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: **Western Ecological Resource, Inc.**
- 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: **1:24000, LOUISVILLE**
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **project site**

³ Supporting documentation is presented in Section III.F.

- or Other (Name & Date) **project site**
- Previous determination(s). File no. and date of response letter:
 - Applicable/supporting case law: **Rapanos and Carabell cases.**
 - Applicable/supporting scientific literature:
 - Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: **site map**