

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 24, 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Denver Regulatory Office, 16200 East 144th Avenue, NWO-2012-2191-DEN

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Tear Shaped Pond

State: **CO** County/parish/borough: **Weld** City: **Brighton**
Center coordinates of site (lat/long in degree decimal format): Lat. **39.950819 N**; Long. **-104.796657 W**
Universal Transverse Mercator:

Name of nearest waterbody: **Higgins Lake 385 feet to the SW is a terminal irrigation pond**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **none**

Name of watershed or Hydrologic Unit Code (HUC): **10190003**

- 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: **September 25, 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 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): .

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 subject property contains two irrigation ditches, an abandoned irrigation reservoir, and the Tear Shaped Pond. The irrigation ditches have been determined to be "preamble waters", as explained below. The abandoned irrigation reservoir no longer**

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).

³ Supporting documentation is presented in Section III.F.

receives water and has reverted to being populated by upland plants. The Tear Shaped Pond is considered isolated with no nexus to interstate commerce.

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. **This abandoned irrigation reservoir no longer holds water and has reverted up being populated with uplands plants. No aquatic resources are present.**
- 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): **This Tear Shaped Pond is an abandoned irrigation pond. While irrigation water is no longer shunted into the pond, the water table in the immediate area is high enough to maintain a pool within the pond. The historic irrigation ditches to shunt water into and out of the pond have also been abandoned and are now populated with upland grasses. Surrounding land use is irrigated agricultural fields. The closest jurisdictional aquatic resource is Barr Lake, which is approximately 1 mile to the southeast. This pond has no nexus to interstate commerce, is isolated and considered non-jurisdictional.**

There is no information available to show that this pond 1) is or could be used by interstate or foreign travelers for recreational or other purposes, 2) produces fish or shellfish which are or could be taken and sold in interstate or foreign commerce, or 3) is or could be used for industrial purposes by industries in the interstate commerce.

Regarding the irrigation ditches: 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. 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, these ditches were constructed in uplands and have no relatively permanent flow to a waters of the US, nor do they connect two waters of the US. As such, these ditches are 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: **0.23 acre pond**
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands:

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 Environment and Ecology, 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, Brighton**
- 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 Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date):
- 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: aerial photo

