

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): 1 February 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWO-OD-RWY, BLACK THUNDER MINE, SOUTH HILIGHT AMENDMENT , NWO-2008-00775

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Playa lake

State: **Wyoming**

County/parish/borough: **Campbell** City: **n/a**

Center coordinates of site (lat/long in degree decimal format): Lat. **43.65398N**; Long. **-105.35681W**

Universal Transverse Mercator:

PLSS Location: ~SE 1/4 SW 1/4, Section 35, T43N, R71W, 6th PM

Name of nearest waterbody: **Playa Lake**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **n/a**

Name of watershed or Hydrologic Unit Code (HUC): **HUC 12: Upper Little Thunder Creek (101201030301)**

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: **17 January 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: 1987 Delineation Manual

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: **1 playa is isolated from other surface waters with no connection to interstate commerce. .**

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.

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): .

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: 0.09 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):

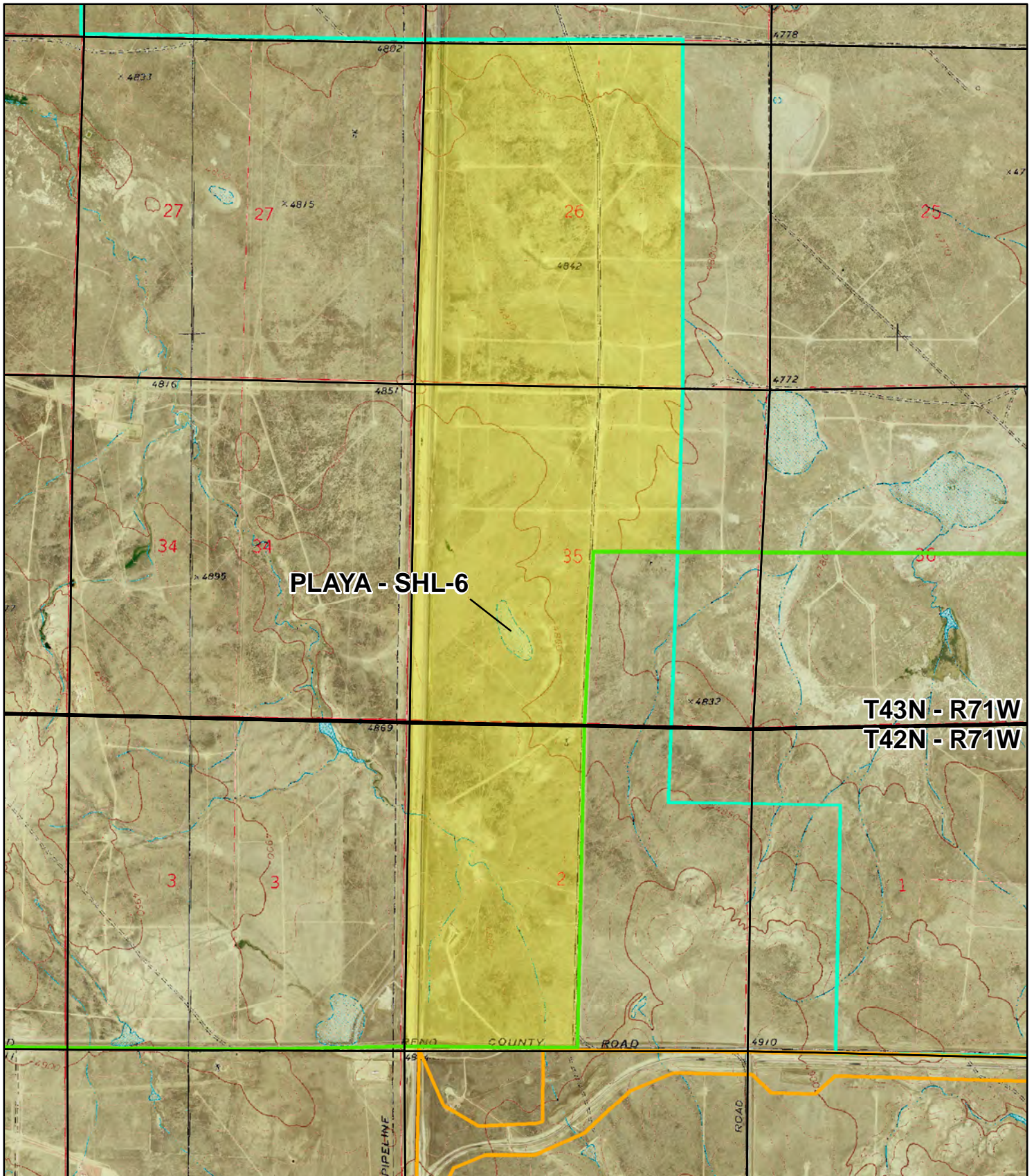
- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

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: "Black Thunder Mine, South Hilight Tract, Waters of the U.S. Assessment, 2008-2009".
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. "Wetland and Other Water of the United States Assessment, Thunder Basin Coal Company, Black Thunder Mine, South Hilight Amendment Area, 2008-2009" Prepared by Knight Technologies, Inc., November 2011.
 - 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: USGS 7.5 minute topographic maps (1:24,000): Reno Reservoir, Little Thunder Reservoir, Piney Canyon NW, Hilight.
- 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): USDA NAIP 2006 and NAIP 2009.
 - 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: This isolated playa is a natural depression completely surrounded by upland with no evidence of any "continuous surface connection" or flow to other potentially jurisdictional waters. The playas within this region are generally formed by collecting precipitation which is held at the surface by a natural clay layer preventing infiltration. They are not created by exposure of groundwater. The fact this playa exists on mine property with limited access for non-mining activities indicates there is no potential for these areas to (1) be used by interstate or foreign travelers for recreational purposes, (2) produce fish or shellfish which are or could be taken and sold in interstate or foreign commerce, or (3) be used for industrial purposes by industries in interstate commerce.



Legend

- SOUTH HILGERT AMENDMENT REVIEW AREA
- BLACK THUNDER MINE: NWO-2008-00775
- NORTH ROCHELLE MINE: NWO-2008-00780
- SCHOOL CREEK MINE: NWO-2009-01411



Scale: 1:24,000

FIGURE 1

**BLACK THUNDER MINE
SOUTH HILGERT AMENDMENT AREA
APPROVED JURISDICTIONAL DETERMINATION**