DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT
3636 N. CENTRAL AVE, SUITE 900
PHOENIX, AZ 85012-1939

June 5, 2020

SUBJECT: Approved Jurisdictional Determination

Victoria Peacey
Resolution Copper Company
102 Magma Heights
Superior, Arizona 85273

Dear Ms. Peacey:

I am responding to your request (File No. SPL-2016-00547) dated May 18, 2020, for an approved Department of the Army jurisdictional determination (JD) for the Resolution Copper Mine pipeline/power corridor (lat. 33.327°, long. -111.069°) located near the town of Superior, Pinal County, Arizona.

Based on available information, I have determined waters of the United States do not occur on the project site. The basis for our determination can be found in the enclosed Approved Jurisdictional Determination (JD) forms.

This letter includes an approved jurisdictional determination for the Resolution Copper Mine project site. If you wish to submit new information regarding this jurisdictional determination, please do so within 60 days. We will consider any new information so submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. If you object to this or any revised or reissued jurisdictional determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) and Request for Appeal (RFA) form. If you wish to appeal this decision, you must submit a completed RFA form within 60 days of the date on the NAP to the Corps South Pacific Division Office at the following address:

Tom Cavanaugh
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division, CESPD-PDO
450 Golden Gate Ave.
San Francisco, CA 94102

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5 (see below), and that it has been received by the Division Office by August 4, 2020.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the particular project site identified in your request, and is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

Thank you for participating in the regulatory program. If you have any questions, please contact me at (602) 230-6953 or via e-mail at Michael.W.Langley@usace.army.mil. Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Sincerely,

Sallie Diebolt

Sallie Diebolt
Chief, Arizona Branch
Regulatory Division

Enclosures

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL		
Applicant: Resolution Copper Company	File Number: SPL-2016-00547-MWL	Date: JUNE 5, 2020
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
X	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. 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. 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. 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:

Michael Langley
U.S. Army Corps of Engineers
Los Angeles District
3636 N. Central Ave, Suite 900
Phoenix, AZ 85012-1939

Phone: (602) 230-6953
Email: Michael.W.Langley@usace.army.mil

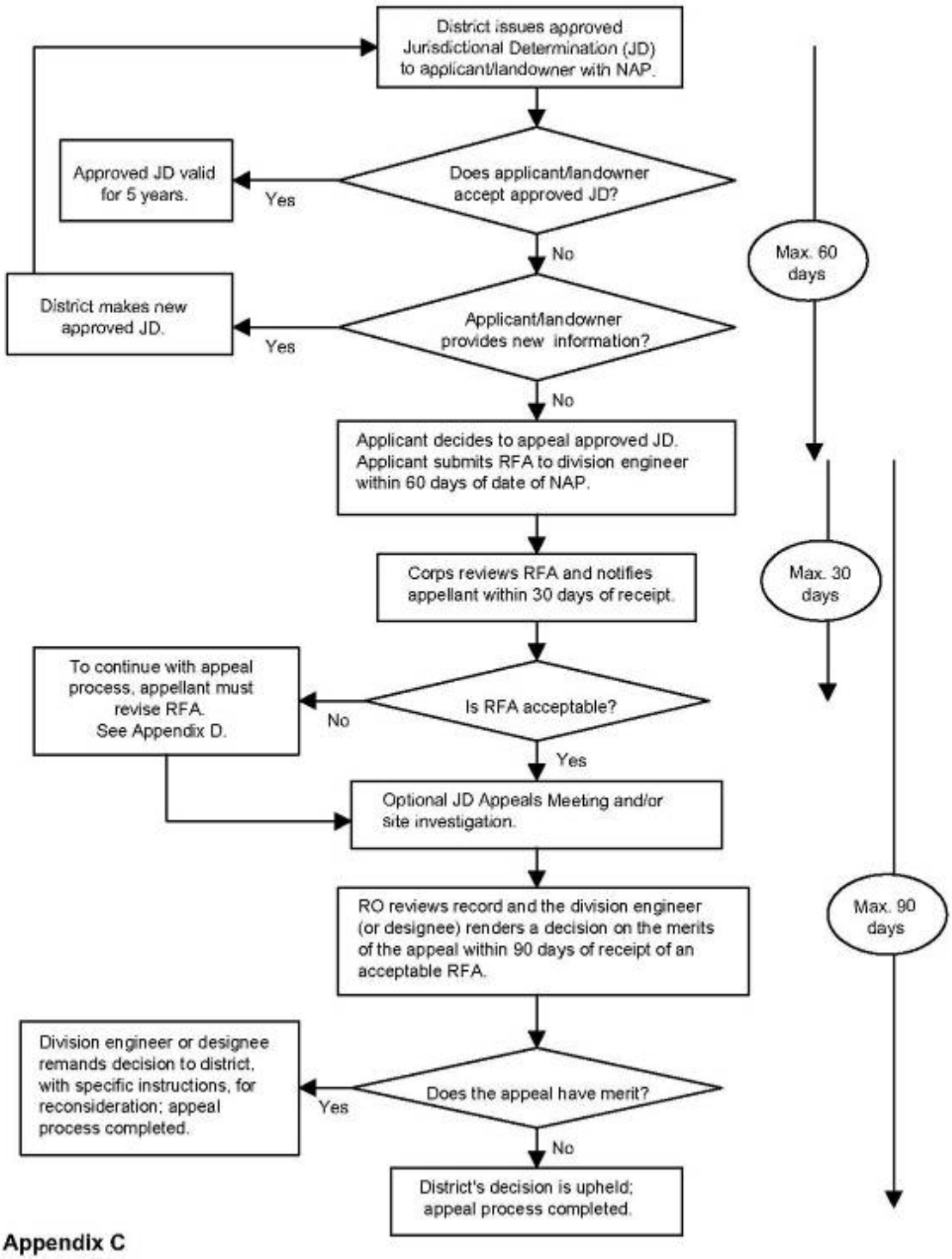
If you only have questions regarding the appeal process you may also contact: Thomas J. Cavanaugh

Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division
450 Golden Gate Ave.
San Francisco, CA 94102
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:

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

§ 331.5 Criteria.

(a) *Criteria for appeal* —(1) *Submission of RFA.* The appellant must submit a completed RFA (as defined at §331.2) to the appropriate division office in order to appeal an approved JD, a permit denial, or a declined permit. An individual permit that has been signed by the applicant, and subsequently unilaterally modified by the district engineer pursuant to 33 CFR 325.7, may be appealed under this process, provided that the applicant has not started work in waters of the United States authorized by the permit. The RFA must be received by the division engineer within 60 days of the date of the NAP.

(2) *Reasons for appeal.* The reason(s) for requesting an appeal of an approved JD, a permit denial, or a declined permit must be specifically stated in the RFA and must be more than a simple request for appeal because the affected party did not like the approved JD, permit decision, or the permit conditions. Examples of reasons for appeals include, but are not limited to, the following: A procedural error; an incorrect application of law, regulation or officially promulgated policy; omission of material fact; incorrect application of the current regulatory criteria and associated guidance for identifying and delineating wetlands; incorrect application of the Section 404(b)(1) Guidelines (see 40 CFR Part 230); or use of incorrect data. The reasons for appealing a permit denial or a declined permit may include jurisdiction issues, whether or not a previous approved JD was appealed.

(b) *Actions not appealable.* An action or decision is not subject to an administrative appeal under this part if it falls into one or more of the following categories:

(1) An individual permit decision (including a letter of permission or a standard permit with special conditions), where the permit has been accepted and signed by the permittee. By signing the permit, the applicant waives all rights to appeal the terms and conditions of the permit, unless the authorized work has not started in waters of the United States and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7;

(2) Any site-specific matter that has been the subject of a final decision of the Federal courts;

(3) A final Corps decision that has resulted from additional analysis and evaluation, as directed by a final appeal decision;

(4) A permit denial without prejudice or a declined permit, where the controlling factor cannot be changed by the Corps decision maker (e.g., the requirements of a binding statute, regulation, state Section 401 water quality certification, state coastal zone management disapproval, etc. (See 33 CFR 320.4(j));

(5) A permit denial case where the applicant has subsequently modified the proposed project, because this would constitute an amended application that would require a new public interest review, rather than an appeal of the existing record and decision;

(6) Any request for the appeal of an approved JD, a denied permit, or a declined permit where the RFA has not been received by the division engineer within 60 days of the date of the NAP;

(7) A previously approved JD that has been superceded by another approved JD based on new information or data submitted by the applicant. The new approved JD is an appealable action;

(8) An approved JD associated with an individual permit where the permit has been accepted and signed by the permittee;

(9) A preliminary JD; or

(10) A JD associated with unauthorized activities except as provided in §331.11.

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **1B**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **1B**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters _____ Linear Feet _____ Width (ft) and/or _____ Acres

Wetlands Acres: _____

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: 1B

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **1B**

Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 10.97
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: 1B

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: 1B

Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):
- ☐ Other Non-wetland Waters MBR acres:
- ☐ Wetlands MBR 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 880.48 linear feet (ft), 10.97 width (ft)
- ☐ Other waters acres
- ☐ 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 Applicant/Consultant: WestLand Resources, Inc.
- ☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study
- ☐ US Geological Survey Hydrologic Atlas
  - ☐ USGS NHD Data
  - ☐ USGS 8 and 12 digit HUC Maps
- ☑ US Geological Survey Map(s) Scale and Quad Name:
  Superior 7.5-Minute Quadrangle

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID:
1B

- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Resolution Mine Pipeline Corridor

Feature ID: **1C**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **1C**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: 1C

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Feature ID: **1C**

Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 6.68
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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U.S. Army Corps of Engineers

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

APPROVED JURISDICTIONAL DETERMINATION FORM
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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 297.05 linear feet (ft), 6.68 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

APPROVED JURISDICTIONAL DETERMINATION FORM
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Feature ID: **1C**

- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Resolution Mine Pipeline Corridor

Feature ID: **2**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **2**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters _____ Linear Feet _____ Width (ft) and/or _____ Acres

Wetlands Acres: _____

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: 2

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 11.59
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
Habitat for:
☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:
Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 1476.15 linear feet (ft), 11.59 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

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Feature ID: **3 (Conley Spring Wash)**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **3 (Conley Spring Wash)**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW
☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 4.02
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 556.05 linear feet (ft), 4.02 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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U.S. Army Corps of Engineers

Feature ID:
3 (Conley Spring Wash)

- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **4**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **4**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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U.S. Army Corps of Engineers

Feature ID: 4

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 2.92
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 583.15 linear feet (ft), 2.92 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
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Feature ID: 5

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature 5

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 4.27
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
Habitat for:
☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:
Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 923.17 linear feet (ft), 4.27 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

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Feature ID: **5A**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **5A**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 4.41
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

☐ Mean High water Mark indicated by:
- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

☐ Federally Listed Species Explain findings:

☐ Fish/Spawn Areas Explain findings:

☐ Other environmentally -sensitive species Explain findings:

☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

☐ Wetland Directly Abutting Non-TNW

☐ Wetland Not Directly Abutting Non-TNW

- ☐ Discrete wetland hydrologic connection Explain:
- ☐ Ecologcal connection Explain:
- ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):
- ☐ Other Non-wetland Waters MBR acres:
- ☐ Wetlands MBR 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 833.72 linear feet (ft), 4.41 width (ft)
- ☐ Other waters acres
- ☐ 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 Applicant/Consultant: WestLand Resources, Inc.
- ☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study
- ☐ US Geological Survey Hydrologic Atlas
  - ☐ USGS NHD Data
  - ☐ USGS 8 and 12 digit HUC Maps
- ☑ US Geological Survey Map(s) Scale and Quad Name:
  Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
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Feature ID: **5B**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **5B**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 3.70
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 654.77 linear feet (ft), 3.70 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
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Feature ID: **5C**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **5C**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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U.S. Army Corps of Engineers

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 4.86
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 531.82 linear feet (ft), 4.86 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

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Feature ID: 6

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature 6

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 3.87
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
Habitat for:
☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:
Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 248.91 linear feet (ft), 3.87 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

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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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature 7

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters _____ Linear Feet _____ Width (ft) and/or _____ Acres

Wetlands Acres: _____

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 3.07
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
Habitat for:
☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:
Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 550.19 linear feet (ft), 3.07 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **7B**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **7B**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 3.92
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
Habitat for:
☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:
Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 414.55 linear feet (ft), 3.92 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **7C**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **7C**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 2.20
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 449.71 linear feet (ft), 2.20 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

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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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **7D**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 3.50
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 522.75 linear feet (ft), 3.50 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID:
7D

- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **7E**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **7E**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Feature ID: **7E**

Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 3.11
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by: ☐ Mean High water Mark indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

- ☐ Federally Listed Species Explain findings:
- ☐ Fish/Spawn Areas Explain findings:
- ☐ Other environmentally -sensitive species Explain findings:
- ☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Wetland Directly Abutting Non-TNW
- ☐ Wetland Not Directly Abutting Non-TNW
  - ☐ Discrete wetland hydrologic connection Explain:
  - ☐ Ecologcal connection Explain:
  - ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 521.26 linear feet (ft), 3.11 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

APPROVED JURISDICTIONAL DETERMINATION FORM
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Feature ID: **7E**

- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **7F**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **7F**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 3.84
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

☐ Mean High water Mark indicated by:
- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

☐ Federally Listed Species Explain findings:

☐ Fish/Spawn Areas Explain findings:

☐ Other environmentally -sensitive species Explain findings:

☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

☐ Wetland Directly Abutting Non-TNW

☐ Wetland Not Directly Abutting Non-TNW

- ☐ Discrete wetland hydrologic connection Explain:
- ☐ Ecologcal connection Explain:
- ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 726.50 linear feet (ft), 3.84 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

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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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **7G**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

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SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW

☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 2.50
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

☐ Mean High water Mark indicated by:
- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

☐ Federally Listed Species Explain findings:

☐ Fish/Spawn Areas Explain findings:

☐ Other environmentally -sensitive species Explain findings:

☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

☐ Wetland Directly Abutting Non-TNW

☐ Wetland Not Directly Abutting Non-TNW

- ☐ Discrete wetland hydrologic connection Explain:
- ☐ Ecologcal connection Explain:
- ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

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U.S. Army Corps of Engineers

Feature ID: 7G

Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 324.50 linear feet (ft), 2.50 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

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U.S. Army Corps of Engineers

Feature ID:
7G

- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

Resolution Mine Pipeline Corridor

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **WP-1A-3**

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): May 15, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2016-00547

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage Feature **WP-1A-3**

State: AZ County/Parish/borough: Pinal County City: Superior

Center coordinates of site: Lat. 33.30979°N Long. -111.039659°W

Name of nearest waterbody: Queen Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Gila River between Powers Butte and Gillespie Dam

Name of watershed or Hydrologic Unit Code (HUC): 15050100

☑ Check if map/diagram of review are 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: 06/05/2020

☐ 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.

☐ 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.

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.

a. Indicate presence of water of U.S. in review area (Check all the apply):

☐ TNWs (new)
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters (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-Wetlands waters Linear Feet Width (ft) and/or Acres

Wetlands Acres:

c. Limits (boundaries) of Jurisdiction based on:

2. Non-Regulated Waters/Wetlands (check if applicable):

☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined not to be jurisdictional:

Explain: Drainage is ephemeral and does not qualify as a TNW or RPW. Therefore, this drainage could only be considered jurisdictional if it possessed a significant nexus with a downstream TNW. This drainage does not possess a significant nexus with the downstream TNW.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatice resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: ☐ Vegetation

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent"

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed Size (sq mi):	49650
Drainage Area (sq mi):	
Average Annual Rainfall (in):	18
Average Annual Snowfall (in):	1.4

(ii) Physical Characteristics:

(a) Relationship with TNW

☐ Tributary flows directly to TNW
☑ Tributary flows through 5 tributaries before entering TNW

Project waters are 30 (or more) river miles from TNW

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U.S. Army Corps of Engineers

Feature ID: **WP-1A-3**

Project waters are 30 (or more) river Miles from tributary to RPW:
Project waters are 30 (or more) aerial (straight) miles from tributary to TNW:
Project waters are 30 (or more) aerial (straight) miles from tributary to RPW:
Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW: Generally to Queen Creek to East Maricopa Floodway to the Gila River

(b) General Tributary Characteristics

Tributary is: Natural Explain:

Tributary properties with respect to top of bank (estimate):
Average Width (ft): 6.13
Average Depth (ft): 1
Average Side Slopes: 2:1

Primary tributary substrate composition (check all that apply):

☐ Silts ☑ Sands ☐ Concrete ☐ Muck
☐ Cobbles ☑ Gravel
☐ Bedrock ☐ Substrate - Vegetation Other, Explain:

Tributary Condition/Stability [e.g., highly eroding, sloughing banks. Explain: Stable
Presence of Run/Riffle/Pool Complexes. Explain: None present.
Tributary Geometry: Relatively Straight
Tributary Gradient (approximate average slope): 2%

(c) Flow:

Tributary Provides for: Ephemeral Flow
Estimate average number of flow events in review area/year:
Describe Flow Regime: Ephemeral.
Other Information on Duration and Volume:

Surface Flow is: Confined Characteristics:
Subsurface Flow: No Explain:
☐ Dye (or other) test performed:

Tributary Has (Check all that apply):

☑ Bed and Banks
☑ OHWM (check all the apply): OHWM Indicators:

☐ Clear, natural line impressed on the bank
☑ Changes in soil character
☐ Shelving
☑ Vegetation matted down, bent or absent
☑ Leaf litter disturbed or washed away
☑ Sediment deposition
☐ Water staining
☐ Presence of litter and debris
☑ Destruction of terrestrial vegetation
☐ Presence of wrack line
☑ Sediment sorting
☐ Scour
☐ Multiple observed or predicted flow events
☐ Abrupt change in plant community

Other (list):

☐ Discontinuous? Explain:

If factors other than the OHWN were used to determine lateral extent of CWA jurisdiction (Check all that apply)

☐ High tide line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other

☐ Mean High water Mark indicated by:
- ☐ survey to available datum
- ☐ physical markings
- ☐ vegetation lines/changes in vegetation types

(iii) Chemical Characteristics:

Characterize Tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc):

Explain:

Identify Specific Pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian Corridor Characteristics:

☐ Wetland Fringe Characteristics:

Habitat for:

☐ Federally Listed Species Explain findings:

☐ Fish/Spawn Areas Explain findings:

☐ Other environmentally -sensitive species Explain findings:

☐ Aquatic/Wildlife diversity Explain:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics

Properties:

Wetland Size (ac):

Wetland Type, Explain:

Wetland Quality, Explain:

Project Wetlands Cross or Serve as State Boundaries, Explain:

(b) General Flow Relationship with Non-TNW:

Wetland Flow is: Explain:

Surface Flow is:

Characteristics:

Subsurface Flow: Explain Findings:

(c) Wetland Adjacency Determination with Non-TNW:

☐ Wetland Directly Abutting Non-TNW

☐ Wetland Not Directly Abutting Non-TNW

- ☐ Discrete wetland hydrologic connection Explain:
- ☐ Ecologcal connection Explain:
- ☐ Separated by berm/barrier Explain:

(d) Proximity (Relationship) to TNW

Project Wetlands: River Miles from TNW:

Project Wetlands: Aerial Miles from TNW:

Flow is From:

Estimate approximate Location of Wetland within Floodplain:

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: ect.).
Explain
Identify specific pollutants, if know:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian Buffer Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:

Habitat for:

☐ Federally Listed Species Explain:
☐ Fish/Spawn Areas Explain:
☐ Other environmentally-sensitive species Explain:
☐ Aquatic/Wildlife Diversity Explain:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in cumulative analysis:
Wetland acres in total being considered in cumulative analysis:

Describe each wetland (directly abuts tributary?; size in acres; overall biological, chemical or physical functions):

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
•Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
•Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent welands, then go to SectionIII.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of signifcant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **WP-1A-3**

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs Linear Feet: Width (ft): TNW Acres

☐ Wetlands adjacent to TNWs: Acres:

2. RPWs that flow directly or indirectly into TNWs

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and Rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review are (check all that apply):

☐ Tributary waters Linear Feet: Width (Ft).

☐ Other non-wetland waters: Acres:

3. Non-RPWs that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has significant nexus with a TNW is jurisdictional. Data supporting this conclusion provided at section III.c.

Provide estimates of jurisdictional waters within the review area (check all that apply):

Length (Linear Feet): Width (feet): Acres:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting and RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "Seasonally". Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2 above. Provide rationale indicating that wetland is directly abutting and RPW

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TN

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetland in the review area: Acres:

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C..

Provide estimates for jurisdictional wetland in the review area (in acres):

7. Impoundments of jurisdictional waters.

Demonstration of Jurisdiction:

E. ISOLATED WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID: **WP-1A-3**

Supporting rationale:

Length (linear feet): Acres:

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

Non-Jurisdictional Waters: Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Explain finding of no Significant Nexus: The characteristics of the surface water features within the current Analysis Area and the flowpath to the TNW eliminate the potential for a more than insubstantial hydrologic connection to exist between the Analysis Area and the downgradient TNW. The surface water features within the current Analysis Area do not either contribute or filter pollutants, or contribute sediments at an amount or frequency that would affect the chemical or physical integrity of the downstream TNW. They do not provide significant habitat or life cycle support functions for any species population found within the TNW, do not affect the aquatic habitat of or the amount of nutrient transport to the TNW reach of the Gila River, and do not have a more than insubstantial effect on the biological integrity of this TNW. As such, there is no significant nexus between the surface water features within the current Analysis Area and the downgradient TNW and, as such, these features are not a jurisdictional Waters.

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):

☐ Other Non-wetland Waters MBR acres:

☐ Wetlands MBR 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 2210.34 linear feet (ft), 6.13 width (ft)

☐ Other waters acres

☐ 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 Applicant/Consultant: WestLand Resources, Inc.

☑ Data Sheets Prepared/Submitted by or on behalf of 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 Water Study

☐ US Geological Survey Hydrologic Atlas

- ☐ USGS NHD Data
- ☐ USGS 8 and 12 digit HUC Maps

☑ US Geological Survey Map(s) Scale and Quad Name:

Superior 7.5-Minute Quadrangle

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

Feature ID:
WP-1A-3

- ☐ USDA Nat'l Res Conservation Service Soil Survey Citation:
- ☐ National Wetlands Inventory Maps Cite Map Name:
- ☐ State/Local Wetland Inventory Maps
- ☐ FEMA/FIRM Maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Aerial Photographs (Name and Date): 2019 USDA NAIP Orthophoto
- ☐ Other Photographs (Name and Date):
- ☐ Previous Determinations File No. and Date of Response Letter:
- ☐ Applicable/Supporting Case Law Citation:
- ☐ Applicable/Supporting Scientific Literature Citation:

Other Information, Please Specify:

Additional Comments to Support JD:

ATTACHMENT E
Selected Jurisdictional Determination Forms from Corps File No. SPL-2009- 00315-MB

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): 07/28/2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2009-00315-MB

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage WP1A3
State:AZ County/parish/borough: Pinal City: Superior
Center coordinates of site (lat/long in degree decimal format): Lat. 33.302994° **N**, Long. -111.10701° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Queen Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Gila River from Powers Butte to Gillespie Dam
Name of watershed or Hydrologic Unit Code (HUC): 15050100
☒ 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: 07/28/2011
☒ Field Determination. Date(s): 06/27 through 07/01/2011, 07/07 ,07/08, 07/19 and 07/20/2011

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 waters[2] (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: **Drainages within the review area are ephemeral, and do not qualify as TNW's or RPW's. Therefore, these drainages would only be considered jurisdictional if they possessed a significant nexus with a TNW. None of the drainages in the review area possess a significant nexus with a TNW.**.

[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

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": .

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: 49,650 **square miles**
Drainage area: 0.064 **square miles**
Average annual rainfall: 18 inches
Average annual snowfall: 1.4 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **5** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.
Project waters are **30 (or more)** river miles from RPW.
Project waters are **30 (or more)** aerial (straight) miles from TNW.
Project waters are **30 (or more)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: Drainage WP1A3 discharges through non-channelized flow to Drainage WP1A. Drainage WP1A discharges to Drainage WP1 which then discharges to Silver King Wash and thence to Queen Creek. The

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

remainder of the flow route to the TNW is Queen Creek to the East Maricopa Floodway to the Gila River, and approximately 74 river miles along the Gila to the TNW at Powers Butte..
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 2 feet
Average depth: Less than 0.5 feet
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

☐ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☒ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable.
Presence of run/riffle/pool complexes. Explain: Not present.
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): 2 %

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **2-5**
Describe flow regime: Ephemeral.
Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

Subsurface flow: **No**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☒ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☒ sediment deposition	☐ multiple observed or predicted flow events
☒ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Unknown.
Identify specific pollutants, if known: None.

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is**: Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Drainage WP1A3 is located approximately 125 river miles from the nearest TNW, the Gila River between Powers Butte and Gillespie Dam. Evaluation of potential stormwater discharges from the Analysis Area, the hydrological characteristics of the downstream flowpath, the presence of significant impoundments in this flowpath, and the distance to the TNW suggests that no hydrologic connection exists between these Analysis Area drainages and the TNW. Although historic mining activities in the Analysis Area may have contributed to the impairment of Queen Creek for copper, reclamation activities and stormwater controls have significantly reduced or eliminated the discharge of pollutants to downstream receiving waters from this area. However, the reach of the Gila River between the Salt River and Waterman Wash has been sampled for copper, and no exceedances of copper concentrations were identified as part of this sampling effort. As no sources of those pollutants causing the impairment of the downstream TNW reach of the Gila River (which are tied to agricultural runoff) have been identified in the Analysis Area, there does not appear to be a chemical nexus between these drainages and the TNW. Additionally, the Analysis Area drainages do not provide lifecycle support functions, nutrients, or organic carbon to species within the TNW. Drainange WP1A3 does not have a more than speculative or insubstantial effect on the physical, chemical, and/or biological integrity of the TNW. Therefore the Analysis Area surface water features do not possess a significant nexus to the TNW reach of the Gila River between Powers Butte and Gillespie Dam, and are not jursidicational under Section 404 of the Clean Water Act.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

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):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

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: **As described in Section III C 1 above, an evaluation of the surface water features within the review area found that they do not possess a significant nexus with the TNW.**
☐ 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: 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): **1,661** linear feet, **2'** 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:WestLand Resources, 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:Superior 7.5 Quad.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .

[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

- ☐ 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):Cooper Aerial Imagery; 2010.
  or ☒ Other (Name & Date):Ground Photos; June 27 through July 20, 2011.
- ☐ 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: .

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): 07/28/2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2009-00315-MB

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage EP2
State:AZ County/parish/borough: Pinal City: Superior
Center coordinates of site (lat/long in degree decimal format): Lat. 33.299165° **N**, Long. - 111.057152° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Queen Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Gila River from Powers Butte to Gillespie Dam
Name of watershed or Hydrologic Unit Code (HUC): 15050100
☒ 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: 07/28/2011
☒ Field Determination. Date(s): 06/27 through 07/01/2011, 07/07 ,07/08, 07/19 and 07/20/2011

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 waters[2] (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: **Drainages within the review area are ephemeral, and do not qualify as TNW's or RPW's. Therefore, these drainages would only be considered jurisdictional if they possessed a significant nexus with a TNW. Adjacent wetlands would only be considered jurisdictional if they possessed a significant nexus with a TNW. None of the drainages in the**

[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.

review area, nor their associated adjacent wetlands, possess a significant nexus with a TNW. Therefore, the drainages and their associated wetlands are not jurisdictional waters.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": .

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: 49,650 **square miles**
Drainage area: 0.46 **square miles**
Average annual rainfall: 18 inches
Average annual snowfall: 1.4 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **5** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.
Project waters are **30 (or more)** river miles from RPW.
Project waters are **30 (or more)** aerial (straight) miles from TNW.
Project waters are **30 (or more)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW[5]: Drainage EP2 discharges directly to Queen Creek. The remainder of the flow route to the TNW is Queen Creek to the East Maricopa Floodway to the Gila River, and approximately 74 river miles along the Gila to the TNW at Powers Butte.
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: Less than 0.5 feet
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

☐ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☒ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable.
Presence of run/riffle/pool complexes. Explain: Not present.
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): 1 %

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **2-5**
Describe flow regime: Ephemeral.
Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

Subsurface flow: **No**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☒ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☒ sediment deposition	☐ multiple observed or predicted flow events
☒ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Unknown.
Identify specific pollutants, if known: None.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 2.104 acres

Wetland type. Explain: Generally, wetlands were dominated by herbaceous vegetation with some woody species.

Wetland quality. Explain: Quality was generally poor due to heavy use by cattle (grazing and watering). Species diversity was low.

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **No Flow** . Explain: .

Surface flow is**: Discrete and confined**

Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☒ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **30 (or more)** river miles from TNW.

Project waters are **30 (or more)** aerial (straight) miles from TNW.

Flow is from: **No Flow.**

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: unknown.

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☒ Vegetation type/percent cover. Explain: Herbaceous, some woody species. Percent cover varies.
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **3**

Approximately (2.10) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y	2.07		
Y	0.03		

Summarize overall biological, chemical and physical functions being performed: Unknown.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Drainage EP2 is located approximately 125 river miles from the nearest TNW, the Gila River between Powers Butte and Gillespie Dam. Evaluation of potential stormwater discharges from the Analysis Area, the hydrological characteristics of the downstream flowpath, the presence of significant impoundments in this flowpath, and the distance to the TNW suggests that no hydrologic connection exists between these Analysis Area drainages and the TNW. Although historic mining activities in the Analysis Area may have contributed to the impairment of Queen Creek for copper, reclamation activities and stormwater controls have significantly reduced or eliminated the discharge of pollutants to downstream receiving waters from this area. However, the reach of the Gila River between the Salt River and Waterman Wash has been sampled for copper, and no exceedances of copper concentrations were identified as part of this sampling effort. As no sources of those pollutants causing the impairment of the downstream TNW reach of the Gila River (which are tied to agricultural runoff) have been identified in the Analysis Area, there does not appear to be a chemical nexus between these drainages and the TNW. Additionally, the Analysis Area drainages do not provide lifecycle support functions, nutrients, or organic carbon to species within the TNW. Drainage EP2, in conjunction with its adjacent wetlands, Wetlands 6 and 7, does not have a more than speculative or insubstantial effect on the physical, chemical, and/or biological integrity of the TNW. Therefore the Analysis Area surface water features do not possess a significant nexus to the TNW reach of the Gila River between Powers Butte and Gillespie Dam, and are not jurisdicational under Section 404 of the Clean Water Act.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

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):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

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: **As described in Section III C 1 above, an evaluation of the surface water features within the review area found that they do not possess a significant nexus with the TNW.**
☐ 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: 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): **8,351** linear feet, **3'** width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: 2.104 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:WestLand Resources, 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:Superior 7.5 Quad.

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[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

- ☐ 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):Cooper Aerial Imagery; 2010.
  or ☒ Other (Name & Date):Ground Photos; June 27 through July 20, 2011.
- ☐ 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: .

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): 07/28/2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, File No. SPL-2009-00315-MB

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Wetland 9
State:AZ County/parish/borough: Pinal City: Superior
Center coordinates of site (lat/long in degree decimal format): Lat. 33.299165° **N**, Long. -111.057152° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Queen Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Gila River from Powers Butte to Gillespie Dam
Name of watershed or Hydrologic Unit Code (HUC): 15050100
☒ 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: 07/28/2011
☒ Field Determination. Date(s): 06/27 through 07/01/2011, 07/07 ,07/08, 07/19 and 07/20/2011

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 waters[2] (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 wetland considered here is isolated with no nexus to interstate commerce, and are therfore non-jurisdictional**.

[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

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": .

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: 49,650 **square miles**
Drainage area: 0.194 **acres**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: .
Tributary stream order, if known: .

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):

☐ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: Ephemeral.
Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☐ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Unknown.
Identify specific pollutants, if known: None.

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is**: Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Unknown.

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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):[10]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

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: 0.194 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:WestLand Resources, 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:Superior 7.5 Quad.
☐ 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):Cooper Aerial Imagery; 2010.
or ☒ Other (Name & Date):Ground Photos; June 27 through July 20, 2011.
☐ 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: .

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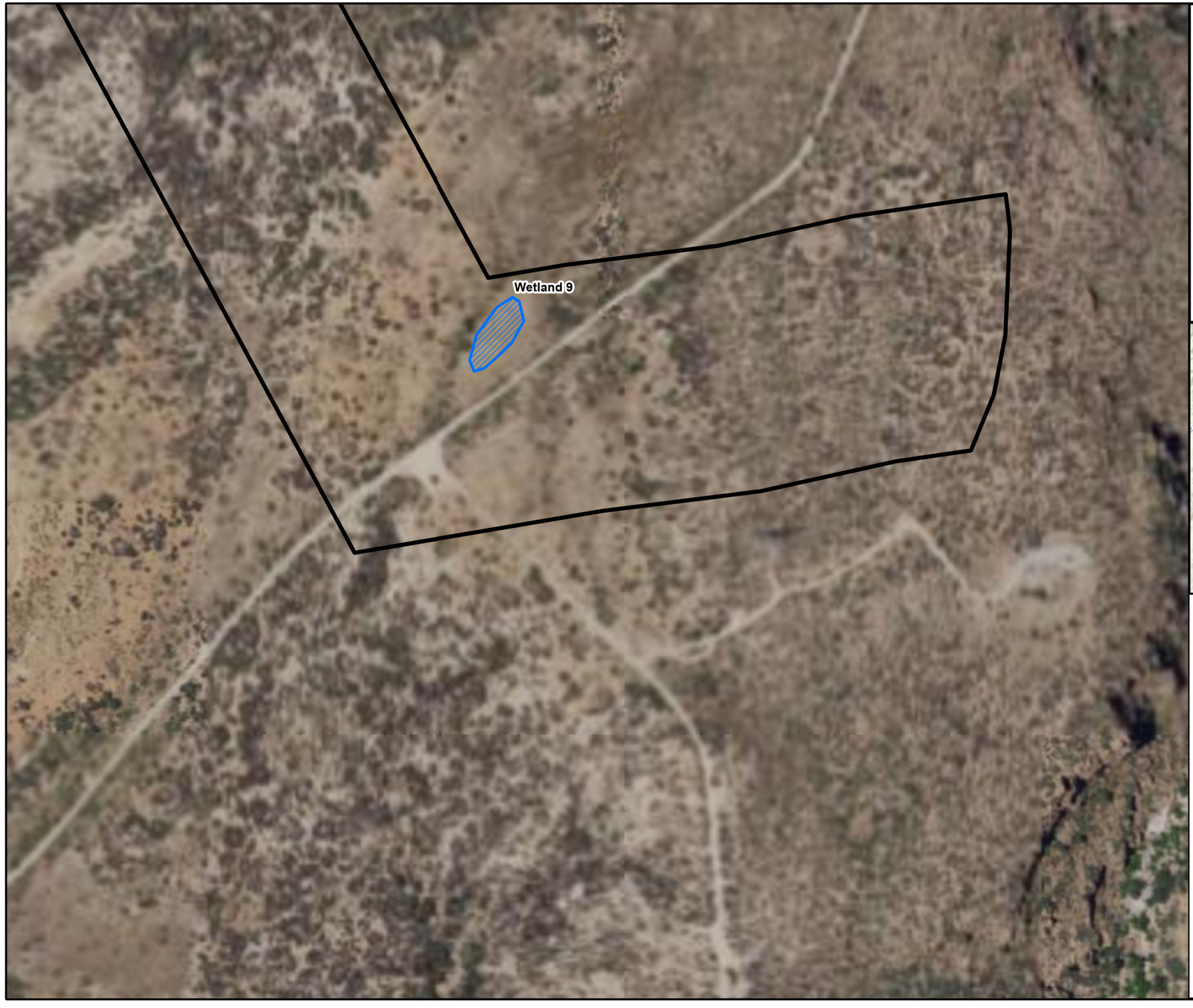

APPROVED JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers, Los Angeles District
Application No. SPL - *2016* - *00547* - *MWL*

Boundary of area surveyed for jurisdictional waters of the United States

Ordinary High Water Mark

Waters of the United States

Wetland Boundary
(If legend is blank no wetlands occur in survey area)

200' Scale *2019* Date of Photograph

N Site Visit by Corps (Y/N) Date: *NA*

June 5, 2020 Date Delineation issued by Corps

M. Langley Corps Project Manager

Sheet *1* of *9*

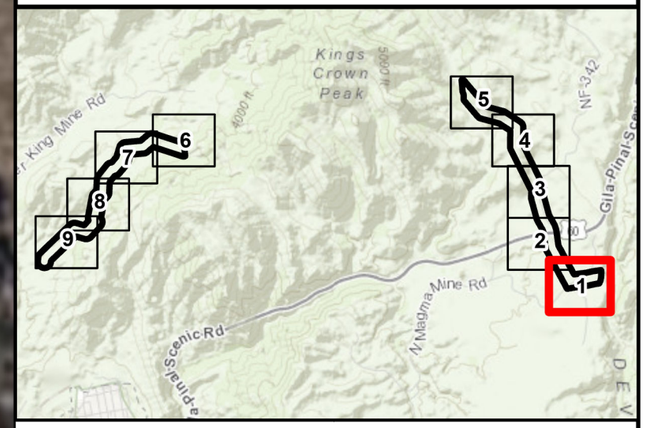

Image Sources: ArcGIS Online World Topo Map and 2019 USDA NAIP Orthophoto

Legend

Analysis Area

Previously Reviewed Wetland Feature, Corps File No. SPL-2009-00315-MB

N 0 100 200 Feet
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WestLand Resources

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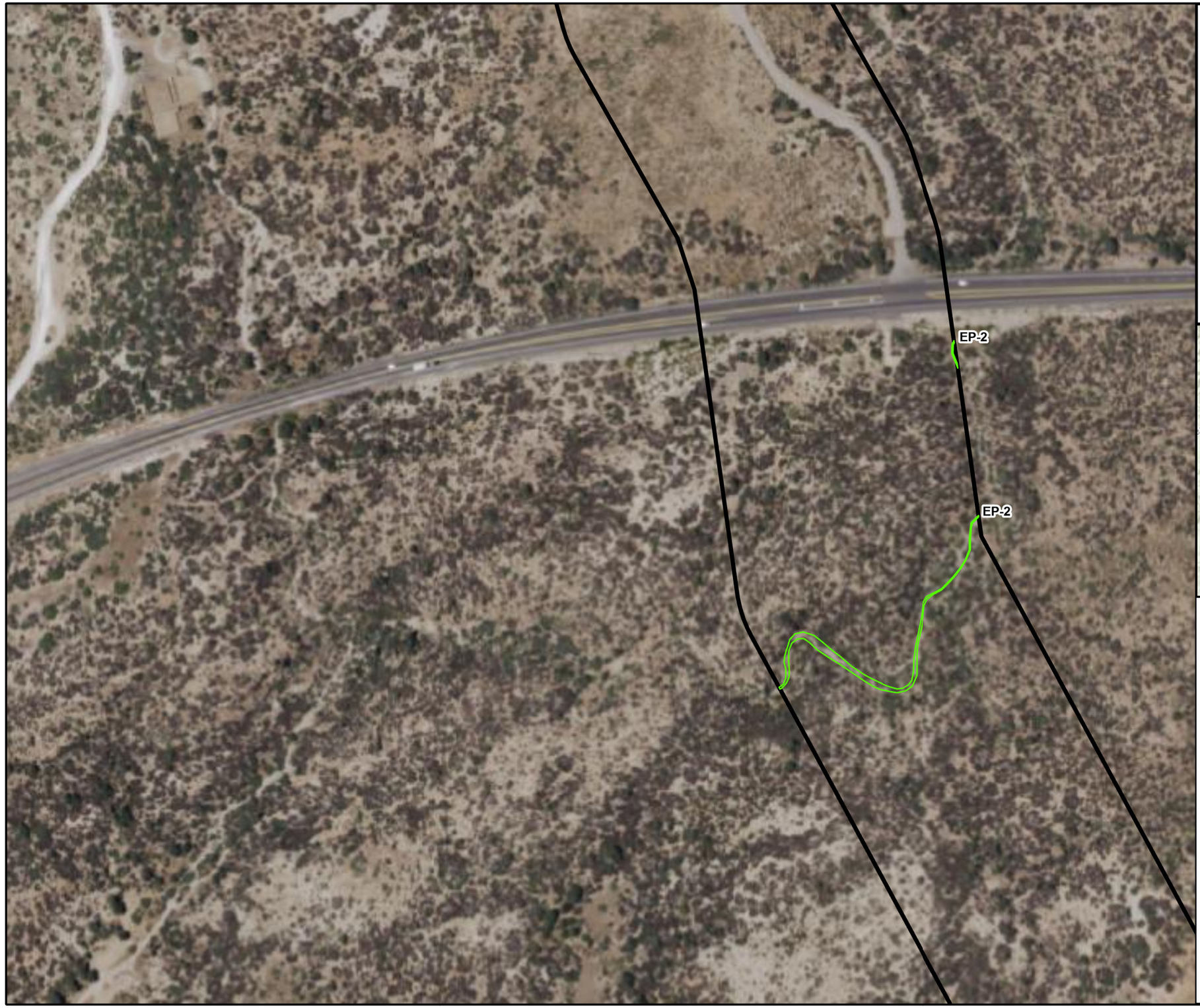
Approved Jurisdictional Determination
Corps File No. SPL-2016-00547

Figure 5
Sheet 1 of 9



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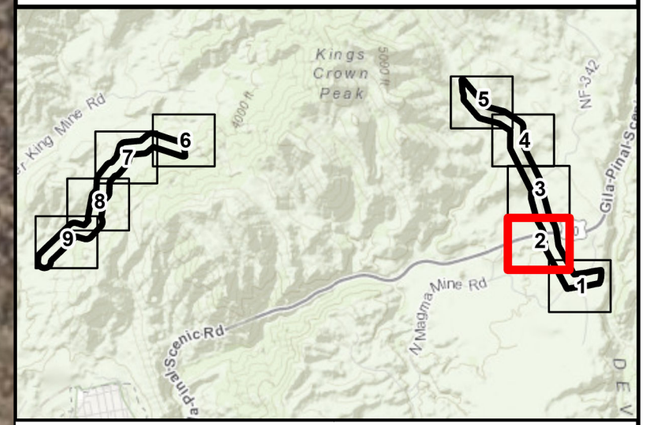
M. Langley Corps Project Manager
Sheet *2* of *9*



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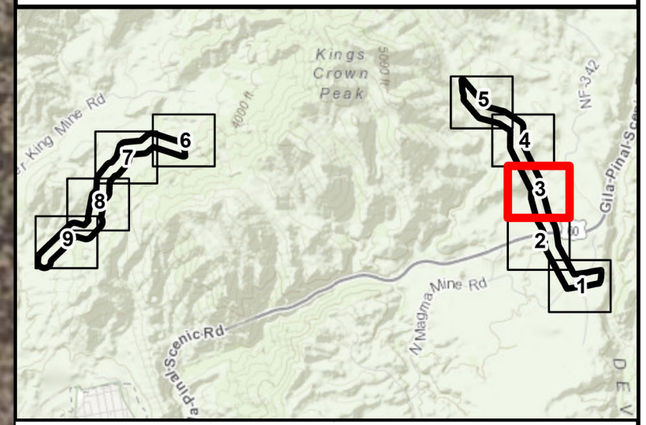
Sheet *3* of *9*



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Analysis Area

Ordinary High Water Mark

N

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0 50 100 Meters

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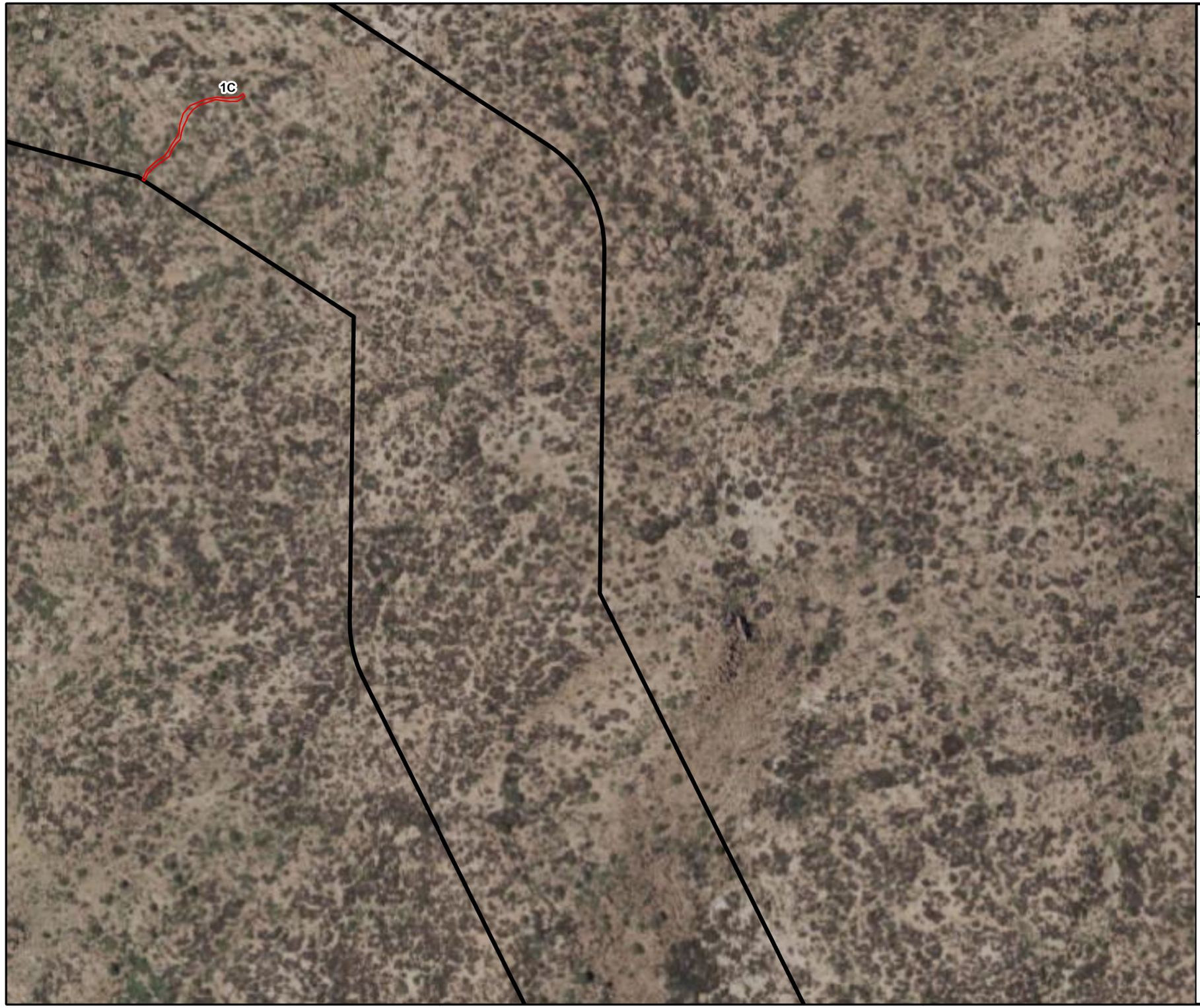

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Sheet *4* of *9*

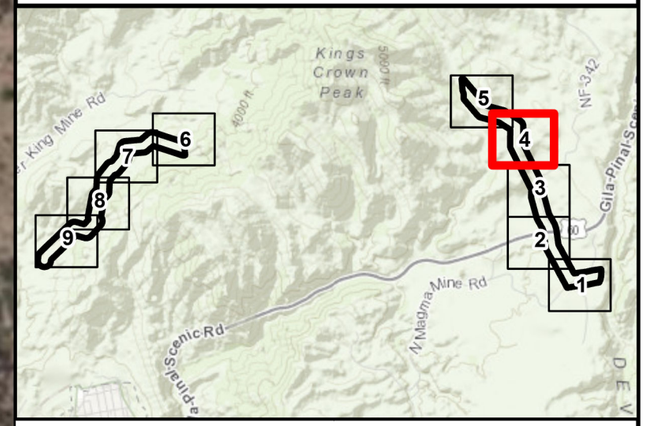

Image Sources: ArcGIS Online World Topo Map and 2019 USDA NAIP Orthophoto

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Analysis Area

Ordinary High Water Mark

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0 50 100 Meters

WestLand Resources

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Approved Jurisdictional Determination
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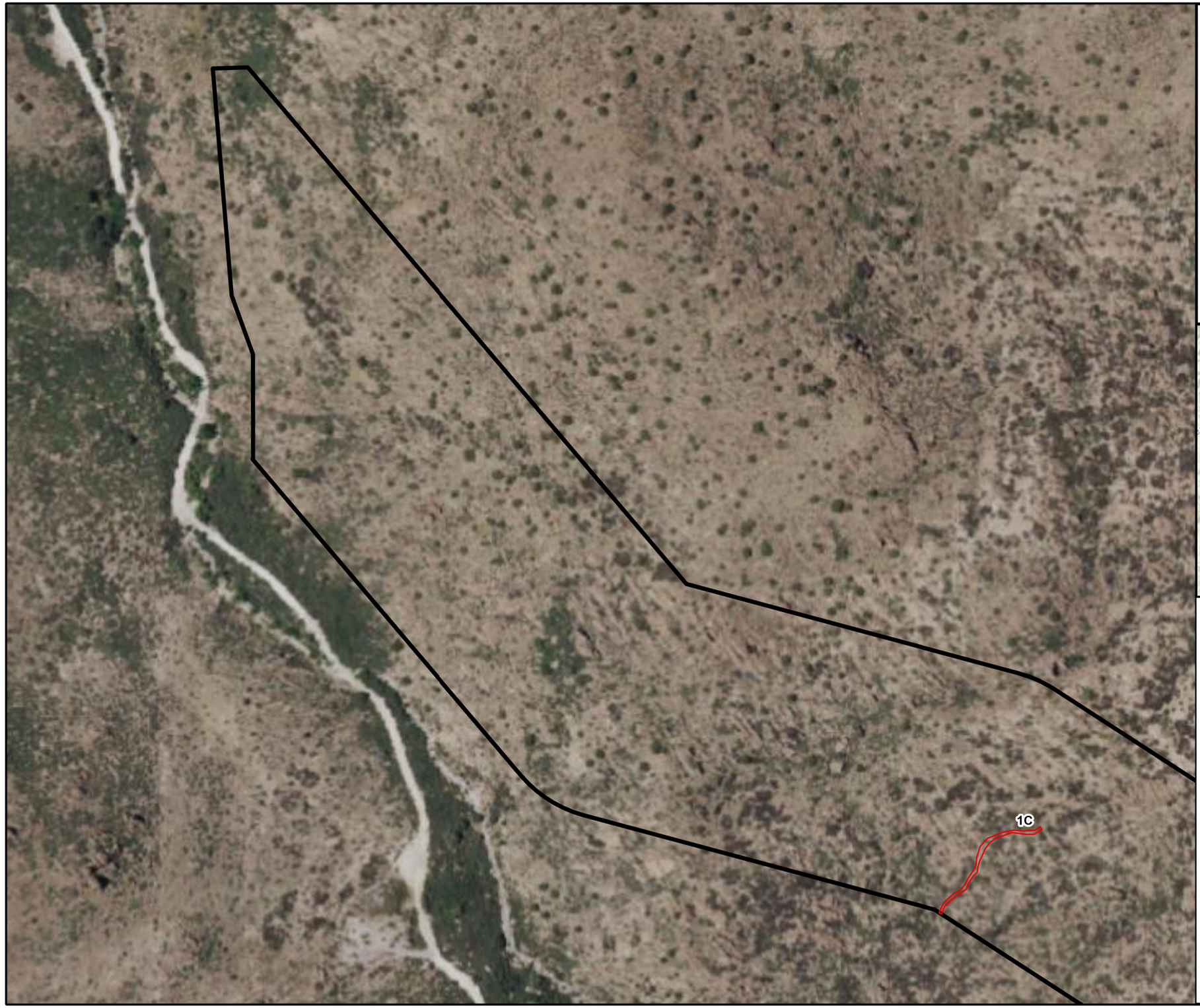

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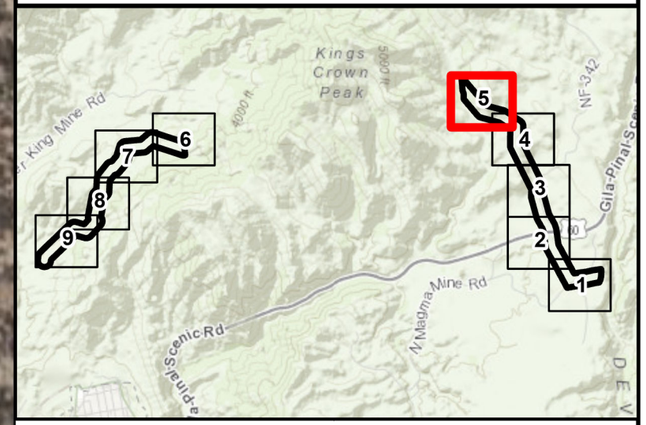
M. Langley Corps Project Manager
Sheet *5* of *9*



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Analysis Area

Ordinary High Water Mark

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0 50 100 Meters

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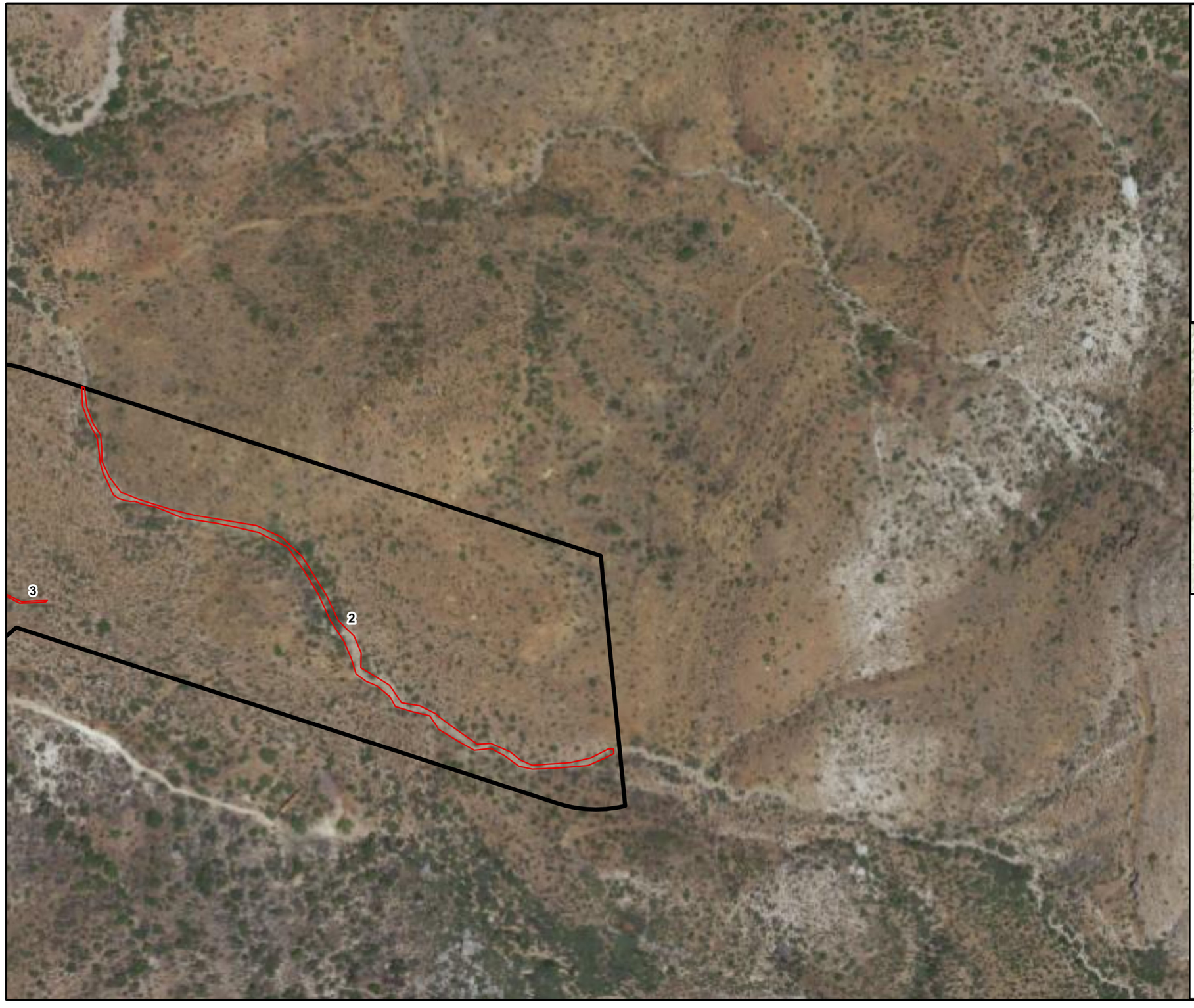

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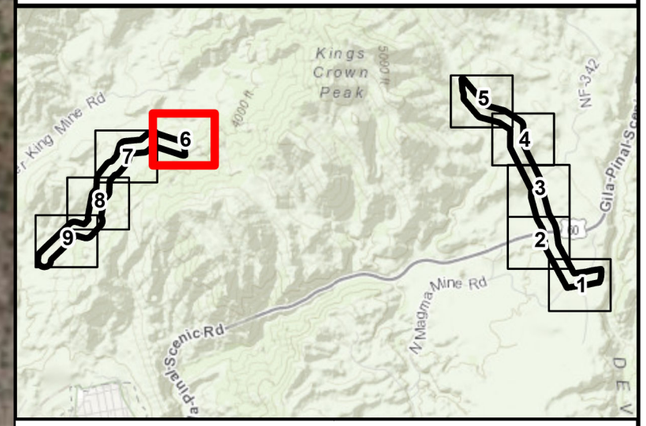

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Analysis Area

Ordinary High Water Mark

N
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APPROVED JURISDICTIONAL DETERMINATION
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Boundary of area surveyed for jurisdictional waters of the United States

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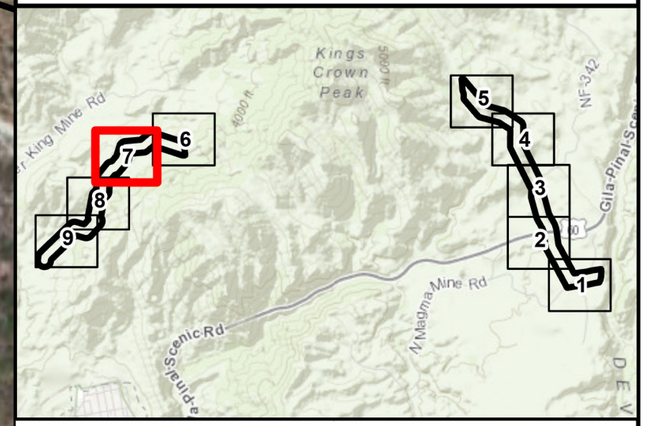

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WestLand Resources

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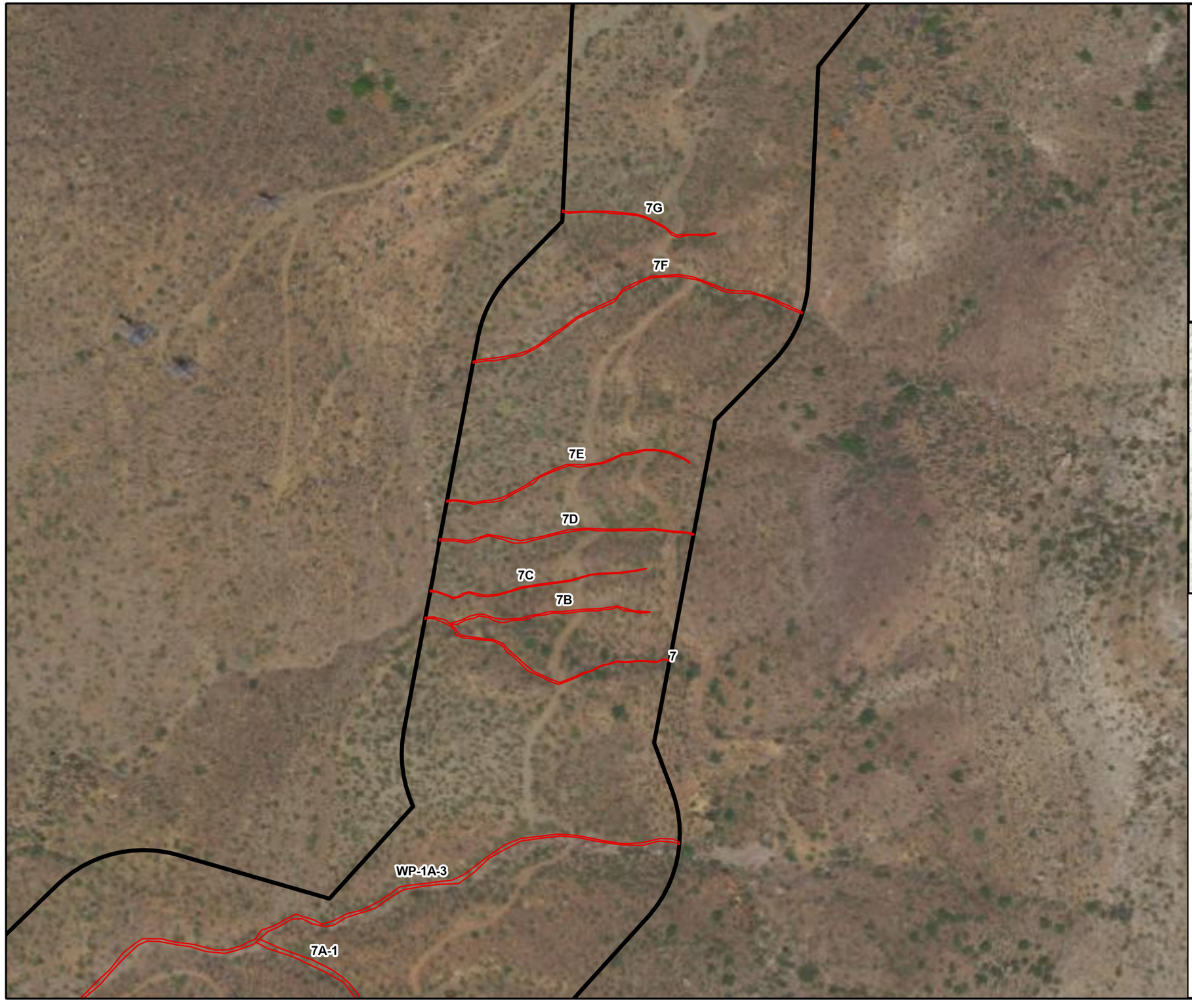

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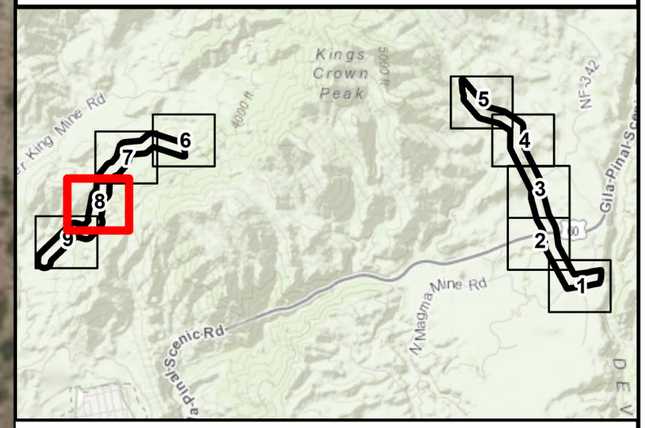

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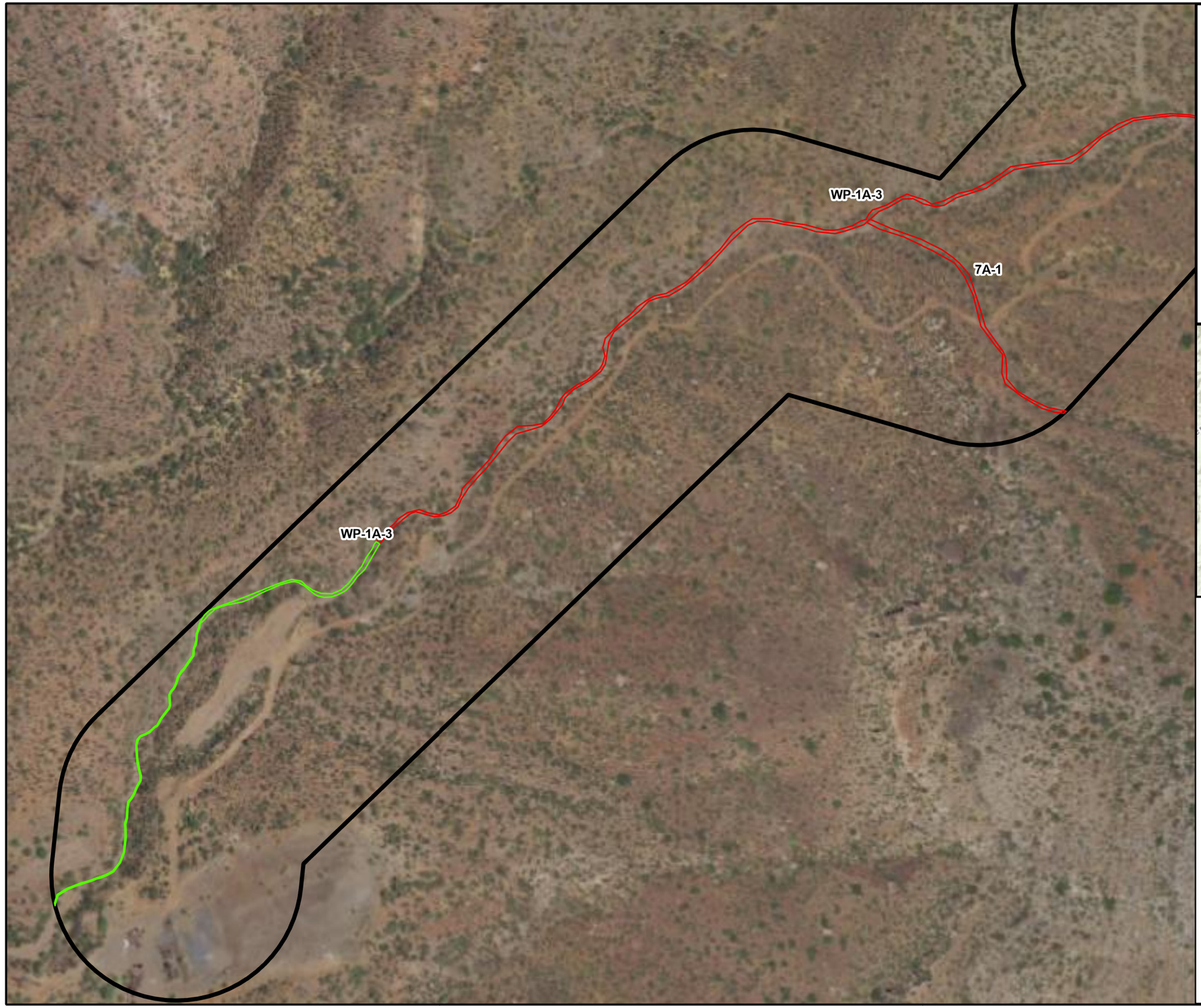

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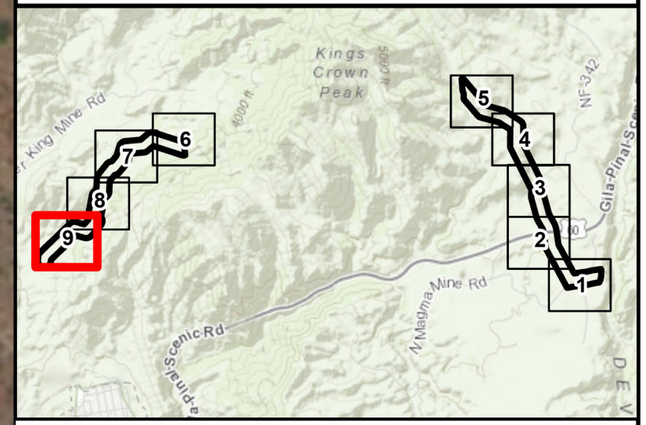
Sheet *9* of *9*



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Analysis Area

Ordinary High Water Mark

Previously Reviewed Feature, Corps File No. SPL-2009-00315-MB

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