

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 18 October 2016.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Pierce County Public Works, NWS-2015-156-WRD.
Name of water being evaluated on this JD form: Rhodes Lake

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Pierce City: Bonney Lake

Center coordinates of site (lat/long in degree decimal format): Lat: 47.143889 **N**, Long: -122.166111 **W**

Universal Transverse Mercator: _____

Name of nearest waterbody: Rhodes Lake.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Not Applicable.

Name of watershed or Hydrologic Unit Code (HUC): 171100140501.

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. List other JDs: _____

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 25 August 2016.

Field Determination. Date(s): 8 February 2016.

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: _____

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: _____ linear feet _____ width (ft) and/or _____ acres.

Wetlands: _____ acres.

c. Limits (boundaries) of jurisdiction based on: **Pick List and **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: See Section B for a comprehensive description of Rhodes Lake.

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: NOT APPLICABLE
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS: NOT APPLICABLE
- C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: NOT APPLICABLE

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):⁴

- 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:

- 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: 56 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: _____.
- 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: Accessed 25 August 2016.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.

⁴ 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.

- U.S. Geological Survey map(s). Cite scale & quad name: _____
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- National wetlands inventory map(s). Cite name: Accessed 25 August 2016.
- State/Local wetland inventory map(s): Accessed 25 August 2016
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): _____
or Other (Name & Date): _____.
- Previous determination(s). File no. and date of response letter: _____.
- Applicable/supporting case law: _____.
- Applicable/supporting scientific literature: _____.
- Other information (please specify): Report prepared by Associated Earth Sciences, Inc., dated 1 July 2016.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Rhodes Lake is located within a topographical depression within the landscape, approximately 5- to 1- feet lower in elevation than the surrounding landscape, except for the raised bog mats. Topography gently slopes northward to a small drainage ditch at Rhodes Lake's northwest boundary, as mapped on the Pierce County GIS database. The drainage ditch conveys water northwest, crossing beneath 193rd Avenue East and 190th Avenue Court East via culverts. The water then flows down a heavily vegetated slope toward the intersection of Falling Water Boulevard East and Rhodes Lake Road East. The water then flows into a roadside ditch along the road for approximately 300- to 400-feet before the flow turns south into a forested parcel where the water completely infiltrates into the ground. No surface water has been observed beyond this point.

Due to the volume of water infiltrating into the ground, it was assumed that the water flow would pop up elsewhere within the immediate area, such as Canyonfall Creek, two stormwater ponds at the southern end of Falling Water Boulevard East, or Fennel Creek. Online databases provide conflicting flow regime information. Some databases (such as Google Maps and SalmonScape) indicate that Rhodes Lake drains into Fennel Creek, while other databases (such as the U.S. Geological Survey – National Hydrography Dataset and the Pierce County GIS database) indicate that water flows into Canyonfall Creek. Fennel Creek is approximately 1.12 kilometers northwest of Rhodes Lake and Canyonfall Creek is approximately 1.4 kilometers southwest of Rhodes Lake. However, since the site inspection yielded inconclusive results, the Corps requested that the applicant perform a fluorescent dye test and monitor each of these locations.

On 6 July 2016, the applicant provided a report prepared by Associated Earth Sciences, Inc., dated 1 July 2016, summarizing the results of the fluorescent dye test. Associated Earth Sciences, Inc. monitored for the presence of fluorescent yellow/green xanthene dye safe in drinking water at four monitoring locations. Monitoring began on 9 June 2016 at 1000 hours and ended on 10 June 2016 at 1000 hours. The monitoring locations were located at: 1. the roadside ditch on the southeast side of Falling Water Boulevard East, 2. Falling Water Pond, downstream of the infiltration point, 3. A series of springs on the south side of Fennel Creek, west of Rhodes Lake Road East, which discharge into Fennel Creek, and 4. A ground monitoring well on the Falling Water Property. A map of each monitoring station is located in the JD Drawings dated 25 August 2016.

No evidence of fluorescent dye was observed in any of the samples taken over the 24-hour test period. The results of the fluorescent dye test indicate that Rhodes Lake does not have a surface water or subsurface connection to either Fennel Creek or Clover Creek, the nearest mapped waters of the U.S. Thus, Rhodes Lake is hydrologically isolated and its flow infiltrates directly into the ground, as described above.

In addition, Rhodes Lake is not used by interstate or foreign travelers for recreation purposes; lacks birds and wildlife species of special significance, which would attract interstate or foreign travelers; supports no fish or shellfish, which could be taken or sold in interstate or foreign commerce; and, is not used for industrial, agricultural, or silvicultural activities involving interstate or foreign commerce. In general, bogs are rare and an ecologically valuable resource; however, because Rhodes Lake is bordered by private residences and arterial roadways without public access, it is not publicly viewed as a resource of special significance, which would attract interstate or foreign travelers.

In conclusion, Rhodes Lake is hydrologically isolated and does not have an interstate or foreign commerce connection. Rhodes Lake is not a water of the U.S. and is not regulated under Section 404 of the Clean Water Act. The Corps will begin coordination with Corps Headquarters and the Environmental Protection Agency.

The JD was coordinated with Corps Headquarters (HQ) and the Environmental Protection Agency (EPA) on 27 September 2016. Twenty-one days were allotted for review and comment. Within the comment period, no comments were received from the EPA or Corps HQ. Because no objections were received, this JD has been finalized.

Please note: While the presence of Rhodes Lake was verified, its exact boundaries were not delineated by the Corps. Other state and local agencies should not verify the wetland boundaries according to this approved jurisdictional determination.