

## STEP 1: ARE WATERS OF THE US PRESENT WITHIN THE BOUNDARIES OF THE ACTIVITY?

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The first step of the Section 404 compliance process is to evaluate the presence/absence of **waters of the US** through completion of a jurisdictional delineation (JD).

### A. Definitions and Examples

In general, waters of the US denote the Corps' jurisdictional limits under CWA Section 404. The full definition of the term is provided in Title 33 Code of Federal Regulations (CFR) Chapter II, Part 328—Definition of Waters of the United States, provided in Attachment 1-1. Three categories of waters of the US are defined in this regulation: territorial seas, **tidal waters**, and **non-tidal waters**.

Waters of the US can also be categorized as tribal waters (occurring on tribal lands), outstanding (a.k.a. unique) waters (classification designated by ADEQ), or other waters (all non-tribal and non-outstanding [non-unique waters]).

All waters of the US in Arizona (tribal, outstanding [unique], and other) are non-tidal waters and include but are not limited to:

- **washes**
- **rivers** and streams
- natural ponds
- **wetlands**
- certain canals



Waters of the US can also include lakes (wet or dry, including playa lakes), mud and sandflats, **sloughs**, and wet meadows.

### B. Jurisdictional Delineation

A JD is the process through which the boundaries and other physical characteristics of a potential waters of the US are evaluated at the site of an activity. The term JD is also used to describe the resulting report, ultimately submitted by EPG to the Corps for their consideration and approval.

EPG has developed a list of required submittal items to be included in all JD applications. This list was compiled in coordination with the Corps and is provided in Attachment 1-2 (Required Submittal Items for Jurisdictional Delineations). As noted on the list, key components of a JD include (refer to Attachment 1-2 for the complete list of all required JD components):

- Aerial photographs of appropriate age and scale
- Ground photographs with location map
- Table 1—JD Physical Characteristics & Other Information, provided in Attachment 1-5
- Table 2—Wash Summary, also provided in Attachment 1-5)
- The Approved Jurisdictional Determination (JD) Form (Attachment 1-6) or the Preliminary Jurisdictional Determination (JD) Form (Attachment 1-7); a cover letter (Attachment 1-8) is attached for either form.

The Corps and EPG have developed two sets of labels to be used on JD aerial photographs for all ADOT activities. Labels are provided in Attachment 1-3 (Corps Labels for Approved Jurisdictional Delineations) or in Attachment 1-4 (Corps Labels for Preliminary Jurisdictional Delineations).

Table 2—Wash Summary (provided in Attachment 1-5) is coded to identify information required in JDs and information required in NWP PCN submittals/**Individual Permit** applications. Activity proponents should use the applicable columns of Table 2 when preparing a JD. Please note that Table 1—J.D. Physical Characteristics & Other Information (also part of Attachment 1-5) and Table 2 are to be used when preparing JDs *and* NWP PCN submittals. If only a JD is being prepared, Table 1 is to be used; Table 2 is not needed.

The Preliminary JD Form (Attachment 1-7) is to be used for most projects. The Preliminary JD Form is less intensive to complete than the Approved JD Form (Attachment 1-6), and it typically can be approved by the Arizona COE office without being sent to Los Angeles COE office or the EPA. In addition, multiple washes can be included in one Preliminary JD Form. For additional guidance on Preliminary JDs, please refer to the guidance memo from the Federal Highway Administration in Attachment 1-9 (FHWA Guidance Memo on Preliminary Jurisdictions). If there are five (5) or more washes identified in the JD, the Corps Waters Data Sheet (Attachment 1-10) is to be filled out and submitted with the Preliminary JD Form.

The Approved JD Form (Attachment 1-6) is to be used if, for any reason, the jurisdiction of the water may have a controversial outcome. This Form is also recommended by the COE if the delineation involves a perennial water. *The Approved JD Form is only to be used when instructed by the EPG planner.*

It is important to identify the source and date of all documentation and references used to prepare a JD, including aerial photographs, ground photographs, and applicable mapping.

To assist activity proponents in the preparation of JDs in arid and semi-arid areas, the Corps has developed the Final Summary Report: Guidelines for Jurisdictional Determinations for Waters of the United States in the Arid Southwest (Corps 2001). These guidelines are provided for reference as Appendix 1.



It is important to note that specific regulatory requirements apply to wetlands; therefore, JDs of potential waters of the US must clearly differentiate between non-wetland water features and wetlands.

## 1. Non-Wetland Water Features

An **ordinary high water mark** (OHWM) represents the Corps' jurisdictional limit in a non-wetland water feature. The Corps defines the OHWM as a "...line on the bank or shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line imposed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, or the presence of litter and debris" (Corps 2001). In addition to these five characteristics, EPG also evaluates the presence/absence of sediment deposits, water stains, and exposed roots, as well as the width and depth (cross-sectional area) of the OHWM, when conducting a JD of a non-wetland water feature.

## 2. Wetlands

Wetlands are defined by the Corps as:

"Those areas that are **inundated** or saturated by surface or **ground water** at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in **saturated soil conditions**. Wetlands generally include swamps, marshes, bogs, and similar areas" (Corps 1987).

The Corps' jurisdictional limit in a wetland is considered to be the **wetland boundary**, defined as "the point on the ground at which a shift from wetlands to non[-]wetlands or aquatic **habitats** occurs. These boundaries usually follow contours" (Corps 1987). The *Corps of Engineers Wetlands Delineation Manual* (Corps 1987) provides guidance in evaluating the jurisdictional limits of wetlands and is available online at:

<http://www.nan.usace.army.mil/business/buslinks/regulat/formdocs/wlman87.pdf>

In addition to the above manual, the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region ~ Version 2.0* (Corps 2008) is to be used, and is available online at:

[http://www.usace.army.mil/cecw/pages/reg\\_supp.aspx](http://www.usace.army.mil/cecw/pages/reg_supp.aspx)

JDs of wetlands must be prepared in accordance with these Corps' manuals.