UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Ref: 8ENF-L

December 19, 2014

Ms. Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 1900 R
Washington, DC 20460

Re: In the Matter of BP America Production Company,
Docket No. CWA-08-2014-0037

Dear Ms. Anderson:

I represent the United States Environmental Protection Agency, the Complainant in this action. Enclosed for filing please find an original and one copy of the Complaint's Motion for Partial Accelerated Decision on Liability and Memorandum in Support of Complaint's Motion for Partial Accelerated Decision on Liability.

If you have any questions, please contact the undersigned at 303-312-6858 or livingston.peggy@epa.gov. In my absence, please contact my supervisor, Jim Eppers, at 303-312-6893 or eppers.jim@epa.gov.

Thank you.

Sincerely,

Margaret J. (Peggy) Livingston

Margaret J. (Peggy) Livingston
Senior Enforcement Attorney

cc (with enclosures):

Andrea Wang & Nicole Abbott
DAVIS GRAHAM & STUBBS LLP
1550 17th Street, Suite 500
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By Certified Mail, Return Receipt Requested

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF	)	Docket No. CWA-08-2014-0037
BP America Production Company,	)	**COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION ON LIABILITY**
Respondent.	)	

EPA Region 8, the Complainant in this matter, requests a partial accelerated decision against Respondent BP America Production Company (BP) on liability in this action. Please see the accompanying Memorandum in Support of Complainant's Motion for Partial Accelerated Decision for more details in support of this motion.

Respectfully submitted,

Margaret J. (Peggy) Livingston

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date indicated below, this Memorandum in Support of Complainant's Motion for Partial Accelerated Decision on Liability with all Declarations and Exhibits to the Declarations, along with the accompanying Motion for Partial Accelerated Decision on Liability, were distributed as follows:

One copy via U.S. Mail, Certified with Return Receipt to:

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Original and one copy via U.S. Mail, to:

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Date: Monday, December 22, 2014

By: Dayle Aldinger
Dayle Aldinger

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF	)	Docket No. CWA-08-2014-0037
BP America Production Company,	)	**MEMORANDUM IN SUPPORT OF COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION ON LIABILITY**
Respondent.	)	

I. INTRODUCTION

This memorandum is in support of a motion for partial accelerated decision filed by the United States Environmental Protection Agency (EPA).

The EPA's Penalty Complaint and Notice of Opportunity for Hearing (Complaint) in this matter was filed on September 30, 2014. The Complaint alleges that Respondent BP America Production Company (BP) violated section 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a), by discharging produced water from a pipeline into waters of the United States without a CWA permit. At this time, the EPA requests a ruling only on liability, not on the appropriate penalty amount.

II. FACTS

BP owns and/or operates a pipeline known as the Y #1 Lateral (Pipeline) on the Southern Ute Indian Reservation (Reservation). (Answer and Request for Hearing, filed on

November 12, 2014 (Answer), ¶ 5.) The Pipeline transports a two-phase stream consisting of coal bed methane and produced water. (Answer, ¶ 6.)

On March 15, 2013, personnel from the Southern Ute Indian Tribe (Tribe) reported a leak from the Pipeline. (Answer, ¶ 7; April 16, 2014, letter from BP (BP's Section 308 Response[1]), No. 3.) The leak was from a section of the Pipeline underlying a wetland bench adjacent to an unnamed tributary of Spring Creek. (BP's Section 308 Response, No. 14.) The unnamed tributary flows into Spring Creek approximately 450 feet to the southeast of the leak location. (BP's Section 308 Response, No. 14.)

In approximately early April of 2013, BP contacted the United States Army Corps of Engineers (Corps) regarding plans to repair the leak. On April 12, 2013, BP and Corps representatives met at the site of the leak. (Hellige Declaration, ¶¶ 3 and 4.)

On May 17, 2013, URS Corporation (URS), as agent for BP, submitted a pre-construction notice (PCN) to the Corps for impacts from repairing and replacing the Pipeline, pursuant to Nationwide Permit (NWP)[2] No. 3. (Hellige Declaration, ¶ 5.) URS's letter to the Corps stated that the PCN was for:

> replacement of fill, temporary impact to an intermittent stream with palustrine emergent fringe wetland, and temporary access across a perennial stream (Spring Creek) and a second drainage for the repair and replacement of the So Ute Y1 Lateral produced water pipeline. The proposed project is covered under

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[1] The cover letter for BP's Section 308 Response is included with the accompanying Declaration of Natasha Davis.

[2] A NWP is a type of general permit that section 404(e) of the CWA, 33 U.S.C. § 1344(e), authorizes the Corps to issue for certain discharges of dredged or fill material. The Corps issued the relevant version of NWP No. 3 as described in 77 Fed. Reg. 10184, 10191-10193 (February 21, 2012).

Nationwide Permit (NWP) for Maintenance. [Hellige Declaration, ¶ 5 and Exhibit 2; page 1 of the PCN.]

URS's letter stated that the leak site was "within a tributary to Spring Creek" and that the leak had "created an open pit directly above the pipeline on a wetland bench within the drainage." (Hellige Declaration, ¶ 5 and Exhibit 2; page 1 of the PCN.) The letter indicated that the open pit along the wetland bench was approximately 25 feet by eight feet, with a depth of 10 feet. (Hellige Declaration, ¶ 5 and Exhibit 2; page 3 of the PCN.) The letter also included a wetland delineation that URS had performed on the wetland bench. (Hellige Declaration, ¶ 5 and Exhibit 2; Attachment D to the PCN.)

On June 20, 2013, the Corps responded to BP's request for a permit for the leak repair project, stating that the proposed activity was authorized by NWP No. 3. (Hellige Declaration, ¶ 7 and Exhibit 3.) The Corps' response stated:

> This project involves activities, including discharges of dredged or fill material, in waters of the United States to repair a produced water pipeline. Activities within waters of the United States specifically involve the installation of a temporary access road, wetland restoration, and stream bank rehabilitation.

The Corps' response also included a Preliminary Jurisdictional Determination Form, stating that 100 linear feet of non-wetland waters with "perennial and intermittent" stream flow and 0.002 acres of wetland would be impacted.[3] The form (Hellige Declaration, ¶ 10 and Exhibit 4) stated:

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[3] A jurisdictional determination (JD) is a written, formal statement of the Corps' view that property contains waters of the United States and is, therefore, subject to regulation under the CWA. See, e.g., Fairbanks North Star Borough v. U.S. Army Corps of Engineers, 543 F.3d 586, 589 (9th Cir. 2008), *cert. denied*, 557 U.S. 919, 129 S.Ct. 2825, 174 L.Ed.2d 552 (2009).

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains . . . a Nationwide General Permit (NWP) or other general permit requiring "preconstruction notification (PCN) . . . and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware [that] . . . undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes an agreement that all wetlands and other water bodies on the site affected in any way by the activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court . . . .

The EPA first learned of the leak by means of a letter dated May 17, 2013, when URS requested a water quality certification from the EPA pursuant to section 401 of the CWA, 33 U.S.C. § 1341,[4] for repairing the Pipeline. EPA waived certification. (Hellige Declaration, ¶ 6.)

[4] BP applied for a section 401 certification from the EPA because section 401 requires that an applicant for a federal permit to conduct any activity that may result in a discharge into navigable

III. STANDARD FOR GRANTING AN ACCELERATED DECISION

If no genuine issue of fact exists and a party is entitled to judgment as a matter of law, a Presiding Officer may issue an accelerated decision in favor of that party as to any or all parts of the proceeding. 40 C.F.R. § 22.20(a).

IV. ARGUMENT

Congress enacted the Federal Water Pollution Control Amendments of 1972, commonly referenced as CWA. The CWA's objective is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (Section 101(a) of the CWA, 33 U.S.C. § 1251(a).)

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits discharging pollutants without a CWA permit.[5] Sections 402 and 404 of the CWA, 33 U.S.C. §§ 1342 and 1344, authorize the EPA and the Corps, respectively, to issue permits authorizing discharges of pollutants.

To prove a violation of section 301(a) of the CWA, the EPA must prove that a person discharged pollutants from a point source into navigable waters without authorization under the Act. Committee to Save the Mokelumne River v. East Bay Utility District, 13 F.3d 305, 308 (9th Cir. 1993), *cert. denied,* 513 U.S. 873, 115 S.Ct. 198, 130 L.Ed.2d 130 (1994); In re: Larry

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waters must provide the permitting agency with a certification from the state in which the discharge will originate that the project will comply with certain CWA provisions. Where a state does not have authority to provide such a certification (e.g., on Indian reservations that are not covered by state water quality standards), the EPA provides this certification. States and the EPA may waive section 401 certification. See section 401(a)(1) of the CWA, 33 U.S.C. § 1341(a)(1).

[5] Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states, "Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful."

Richner / Nancy Sheepbouwer & Richway Farms, 2002 EPA App. LEXIS 13 (E.A.B. 2002). As the following demonstrates, each of these elements has been established in this action.

As mentioned above, at this stage in the proceeding, the EPA requests a decision only on liability. As long as there is an unpermitted discharge of a pollutant, the amount or duration of the discharge[6] is not an issue for purposes of liability. Any discharge of a pollutant is sufficient for establishing liability. *See, e.g.*, City of Milwaukee v. Illinois, 451 U.S. 304, 318, 101 S.Ct. 1784, 1793, 68 L.Ed.2d 114, 127 (1981), stating, "Congress' intent in enacting the [Federal Water Pollution Control Act Amendments of 1972] was clearly to establish an all-encompassing program of water pollution regulation. *Every* point source discharge is prohibited unless covered by a permit, which directly subjects the discharger to the administrative apparatus established by Congress to achieve its goals." (emphasis in original).

A. Person

BP has admitted that it is a Delaware corporation and a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5). (Answer, ¶¶ 3 and 4.)

B. Point Source

The term "point source" is defined in the CWA as

> any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture. [CWA § 502(14).]

BP has admitted that "a pipe is a point source as defined by the CWA." (Answer, ¶ 24.) Thus, BP has admitted that the Pipeline is a "point source."

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[6] The EPA reserves the right to present evidence at a later stage of this proceeding that the volume and duration of the discharge were substantially greater than BP claims.

C. Pollutant

The definition of "pollutant" in section 502(6) of the CWA, 33 U.S.C. § 1362(6), is as follows:

> dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if degradation of ground or surface water resources.

Courts have consistently held that produced water is a "pollutant" as defined in the Act. *See, e.g.*, Northern Plains Resource Council v. Fidelity Exploration and Development Company, 325 F.3d 1155 (9th Cir. 2003), *cert. denied,* 540 U.S. 967, 124 S.Ct. 434, 157 L.Ed.2d 312 (2003), and Sierra Club, Lone Star Chapter v. Cedar Point Oil Co., 73 F.3d 546, 568 (5th Cir.), *cert. denied,* 519 U.S. 811, 117 S.Ct. 57, 136 L.Ed.2d 20 (1996).

BP has admitted that "a small quantity of produced water was accidentally released from the Pipeline." (Answer, ¶ 24.)

Paragraph 23 of the Complaint alleged that the produced water referenced in paragraph 7 of the Complaint is a "pollutant" as defined by section 502(6) of the CWA, 33 U.S.C. §1362(6). BP answered this allegation by stating that "Paragraph 10 of EPA's Complaint contains legal conclusions to which no response is required." (Answer, ¶ 23.) BP admitted that "the Pipeline transports a two-phase stream consisting of coal bed methane and produced water, which is

naturally occurring in the formation and does not contain any liquid hydrocarbons." (Answer, ¶ 6.)

Although it is not entirely clear from the Answer, BP may be taking the position that the coal bed methane (CBM) and produced water in the Pipeline occur naturally in the underground formation and, therefore, are not "pollutants." However, this argument was rejected in Northern Plains Resource Council, *supra*. In that case, the court stated:

> In arguing that CBM water is not a pollutant, Fidelity makes much of the fact that the CBM water is "unaltered," "naturally occurring," and that it is only water. Fidelity relies on *Ass'n to Protect Hammersley, Eld, and Totten Inlets (APHETI) v. Taylor Res., Inc.*, 299 F.3d 1007 (9th Cir. 2002), to argue that only those substances "transformed by human activity" can be pollutants under the CWA. See *APHETI, 299 F.3d 15 1017.* Fidelity misapplies *APHETI. . . . APHETI* cannot sensibly be read to require human transformation of all materials identified in the CWA definition of "pollutant." For one thing, the CWA definition of "pollutant" includes such terms as "rock," "sand," and "heat." See 33 U.S.C. § 1362(6). It is the introduction of these contaminants, not their transformation by humans, that renders them pollutants. . . . We reject Fidelity's arguments and hold that CBM water is a pollutant pursuant to the CWA. [325 F.3d at 1162-1163.]

Because BP has admitted that it released produced water, and because produced water is a "pollutant," BP has released[7] a pollutant.

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[7] Presumably, BP uses the term "release," rather than "discharge," because it takes the position that the produced water did not reach "navigable waters." However, as demonstrated below, the leak did reach "navigable waters," meaning that the "release" is also a "discharge of a pollutant" as defined in the CWA.

D. Discharge

Under section 502(12) of the CWA, 33 U.S.C. § 1362(12), the term "discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source."

BP has admitted that the produced water reached the wetland bench. In paragraph 7 of its Answer, BP stated, "Respondent admits that a release was discovered on March 15, 2013. Respondent is not aware of evidence that the release extended beyond the wetland bench." Thus, BP has admitted that produced water was added to the wetland bench.

E. Navigable Waters

For the following reasons, even if the produced water reached only the wetland bench, BP is liable under the CWA as a matter of law, because the wetland bench is a "navigable water" as defined in the CWA.[8]

1. Statutory and Regulatory Background

The term "navigable waters" is defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7), as "the waters of the United States, including the territorial seas."

The term "waters of the United States" is defined in 40 C.F.R. § 122.2[9] to mean, among other things:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce . . . ;

(b) All interstate waters . . . ;

. . . .

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[8] The EPA reserves the right to present evidence at any later stage in this proceeding that the produced water that BP discharged extended beyond the wetland bench.

[9] The relevant provisions of the definition in 40 C.F.R. § 122.2 are substantially similar to the corresponding provisions in the Corps of Engineers' definition of "waters of the United States" in 33 C.F.R. § 328.3(a).

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

. . . . [and]

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

2. Argument

a. Having Accepted Permit Coverage, BP May Not Now Deny that the Wetland Bench is a Water of the United States

Although it previously applied for and obtained a CWA permit for impacts from repairing the Pipeline, BP now claims that the produced water that leaked from the Pipeline did not reach any water of the United States (Answer, page 5, Affirmative Defense No. 1.) Apparently, BP now takes the position that the wetland bench, which it admits that the produced water reached (Answer, ¶ 7), is not a water of the United States.

By applying for and accepting coverage under NWP No. 3, BP waived any argument that the receiving waters are not waters of the United States. As indicated above, the Corps' preliminary JD supporting BP's coverage under NWP No. 3 expressly states that "undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes an agreement that all wetlands and other water bodies on the site affected in any way by the activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action." (Hellige Declaration, ¶ 10 and Exhibit 4.)

Had BP been sued for any discharges in connection with the repair, presumably it would have asserted the "permit as a shield" defense of section 404(p) of the CWA. Having received the benefits of permit coverage for the impacts of its repair operation, BP may not now claim that no permit was required.

Courts have repeatedly held that a permittee may not collaterally challenge the validity of its permit as a defense to an enforcement action. *See, e.g.*, GM v. EPA, 168 F.3d 1377 (D.C. Cir. 1999), affirming 7 E.A.D. 465 (E.A.B. 1997); California Public Interest Research Group v. Shell Oil Company, 840 F.Supp. 712, 719 (N.D. Calif. 1993). Thus, BP should also be barred from claiming, at this point, that the wetland bench is not a water of the United States.

b. The Wetland Bench is a Water of the United States

Even if BP were permitted to disavow its application for permit coverage, it is clear that the wetland bench is a water of the United States. As mentioned above, BP has admitted that its "release" reached the wetland bench. (Answer, ¶ 7.)

The wetland bench is adjacent to an unnamed tributary of Spring Creek, which is a tributary of the Pine River. The Pine River flows into the Navajo Reservoir, which is an impoundment of the Pine River, the Piedra River, and the San Juan River. The San Juan River begins in Colorado. It flows into New Mexico, across the northeast corner of Arizona, and then into Utah. (Hellige Declaration, ¶ 9.)

In the consolidated cases of U.S. v. Rapanos and Carabell v. United States Army Corps of Engineers,, 547 U.S. 715, 126 S.Ct. 2208, 165 L.Ed.2d 159 (2006), the United States Supreme Court addressed wetlands adjacent to tributaries of navigable-in-fact waters. The Court remanded to the Sixth Circuit Court of Appeals, with two different standards. One standard is known as the

plurality or Scalia standard, because it was articulated in an opinion by Justice Scalia, who was joined by three other Justices. The second standard, which is sometimes known as the significant nexus standard, comes from a concurrence by Justice Kennedy. Four members of the Court dissented and would have upheld the Court of Appeals' finding that the wetlands in question were waters of the United States.

Under the plurality standard, wetlands adjacent to tributaries that are not themselves navigable-in-fact are waters of the United States if the adjacent channel contains a relatively permanent body of water connected to traditional interstate navigable waters and if the wetland has a continuous surface connection with the adjacent channel. 547 U.S. at 732-733 and 742, 126 S.Ct. at 2221 and 2227, 165 L.Ed.2d at 174 and 180. The plurality also stated:

> By describing "waters" as "relatively permanent," we do not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought. We also do not necessarily exclude seasonal rivers, which contain continuous flow during some months of the year but no flow during dry months -- such as the 290-day, continuously flowing stream postulated by Justice Stevens' dissent. 547 U.S. at 732, n.5, 126 S.Ct. at 2221, n.5, 165 L.Ed.2d at 174, n.5.

Under Justice Kennedy's standard, this type of wetland is a water of the United States if it, either alone or in combination with other similarly situated wetlands, has a significant nexus with downstream navigable-in-fact waters. 547 U.S. at 779-780, 126 S.Ct. at 2248, 165 L.Ed. 2d at 203.

The Environmental Appeals Board (E.A.B.) and at least several federal appellate courts have concluded that either *Rapanos* standard is sufficient to prove CWA coverage. *See, e.g.*,

United States v. Donovan, 661 F.3d 174, 176 (3rd Cir. 2011), *cert. denied,*, __ U.S. __, 132 S. Ct. 2409, 182 L.Ed.2d 1024 (2012); United States v. Bailey, 571 F.3d 791, 799 (8th Cir. 2009); United States v. Johnson, 467 F.3d 56, 66 (1st Cir. 2006), *cert. denied,*, 552 U.S. 948 (2007); Smith Farm Enterprises, LLC, 15 E.A.D. __, CWA Appeal No. 08-02, 2011 EPA App. Lexis 10 (E.A.B. 2011); Henry Stevenson and Parkwood Land Co., 16 E.A.D. __, CWA Appeal No. 13-01, 2013 EPA App. LEXIS 36 (E.A.B. 2013).

As mentioned above, the wetland bench is adjacent to an unnamed tributary of Spring Creek, which is a tributary of the Pine River, which in turn flows into the Navajo Reservoir, an impoundment of the Pine River, the Piedra River, and the San Juan River. Based on the Scalia or plurality standard, the wetland bench is a water of the United States.[10]

The San Juan River is a water of the United States for at least two independently sufficient reasons. First, the San Juan River is currently used, was used in the past, and is susceptible to use in interstate or foreign commerce. (Hellige Declaration, ¶ 9; part (a) of the definition of "waters of the United States" in 40 C.F.R. ¶ 122.2.) This type of water is sometimes known as a "traditionally navigable water" or TNW. Second, the San Juan River flows across state borders (Hellige Declaration, ¶ 9) and is, therefore, an interstate water.

The Navajo Reservoir is a water of the United States because it is an impoundment of at least one TNW. (Hellige Declaration, ¶ 9; part (b) of the definition of "waters of the United States" in 40 C.F.R. ¶ 122.2.)

The Pine River originates in Colorado outside of the Reservation, enters and flows through the Reservation, and flows out of the Reservation into New Mexico. (Hellige

[10] The EPA reserves right to present evidence at any later stage of this proceeding that there is also a significant nexus between the wetland bench and downstream navigable-in-fact waters.

Declaration, ¶ 9.) The Pine River is a water of the United States for at least three independently sufficient reasons, discussed below.

First, the Pine River has sufficient flow to support navigation (Hellige Declaration, ¶ 9), and is, therefore, "susceptible to use in interstate . . . commerce" pursuant to part (a) of the definition of "waters of the United States" in 40 C.F.R. § 122.2(a). To be a TNW, a water need only be susceptible for use in waterborne commerce, not actually used for that purpose. FPL Energy Marine Hydro, LLC v. FERC, 287 F.3d 1151, 1157 (D.C. Cir. 2002); Alaska v. Ahtna, Inc., 891 F.2d 1401, 1404 (9th Cir. 1989), *cert. denied,* 495 U.S. 919, 110 S.Ct. 1949, 109 L.Ed.2d 312 (1990).

Second, the Pine River is an interstate water, because it flows over tribal and state boundaries. (Hellige Declaration, ¶ 9; part (b) of the definition of "waters of the United States" in 40 C.F.R. ¶ 122.2.)

Third, the Pine River is a perennial tributary of the San Juan River. Under the plurality standard in Rapanos, *supra*, a perennial tributary is a relatively permanent water.

Spring Creek is a water of the United States because it flows year-round most years (Hellige Declaration ¶ 9). It is, therefore, at least seasonal, qualifying as a relatively permanent water for purposes of the plurality standard. Moreover, BP's consultant, URS, described Spring Creek as perennial. (Hellige Declaration, Exhibit 2, page 1.)

The unnamed tributary is a water of the United States because it is at least a seasonal tributary of Spring Creek. BP has admitted that the "unnamed tributary is at least an intermittent tributary of Spring Creek." (Answer, ¶ 11.) At multiple times per year, the unnamed tributary has had flow. A representative of the Tribe has driven by the unnamed tributary upstream from the

leak site at least a dozen times per year since 2010 and has observed water in that stream each time. (Nylander Declaration, ¶ 5.) He has also hiked the segment of the unnamed tributary from the site of the leak to the confluence with Spring Creek and observed flow throughout this segment. (Nylander Declaration, ¶ 5.) During September of 2014, at least two individuals observed flow in the unnamed tributary at the site of the leak. (Davis Declaration, ¶ 3; Nylander Declaration, ¶ 4.) In April of 2013, approximately a month after the leak in question, the unnamed tributary was flowing at the site of the leak. (Hellige Declaration, ¶ 4.)

Being at least a seasonal tributary of Spring Creek, the unnamed tributary is clearly a relatively permanent water and, therefore, a water of the United States. See also U.S. v. Moses, 496 F.3d 984, 991 (9th Cir. 2007), *cert. denied,* 554 U.S. 918, 128 S. Ct. 2963, 171 L.Ed.2d 886 (2008), holding that the Supreme Court had "unanimously agreed that intermittent streams (at least those that are seasonal) can be waters of the United States."

The wetland bench is a water of the United States because it is adjacent to the unnamed tributary. (Hellige Declaration, ¶ 4.) BP has admitted that the "release area is near [the] unnamed tributary." (Answer, ¶ 11.)

When URS submitted its PCN to the Corps for repairing the pipeline, URS stated, "The existing water pipeline is leaking beneath the intermittent stream tributary to Spring Creek. The leak has created an approximate 25 ft. x 8 ft. open pit approximately 10 feet in depth on a point bar within the drainage." (Hellige Declaration, Exhibit 2, page 2 of letter to Kara Hellige, emphasis added.)

F. Permit

BP has admitted that no CWA permit authorized its discharge. (Answer, ¶ 26.)

G. Strict Liability

As mentioned above, in this motion, the EPA requests a ruling solely on liability. Liability under the CWA is strict. To establish liability, the government is not required to show that the defendant knew that his actions violated the CWA. U.S. v. Bailey, *supra*, 571 F.3d at 805. Similarly, to establish liability, there is no need for the government to demonstrate a deleterious effect on downstream waters. U.S. v. Hubenka, 438 F.3d 1026, 1035 (10th Cir. 2006), *cert denied*, 549 U.S. 850, 127 S.Ct. 114, 166 L.Ed.2d 87 (2006). There need not be any showing of maliciousness, willfulness, or fault to support a finding of liability. U.S. v. Sheyenne Tooling, 952 F.Supp. 1420, 1421 (D. N.Dak. 1996). For purposes of this motion, claims regarding state of mind or harm are not relevant (although, of course, they may be relevant to the penalty amount).

IV. CONCLUSION

Based on the foregoing, each element of a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), has been proven. Therefore, EPA requests that BP be held liable as a matter of law under for violating the CWA.

Respectfully submitted,

Margaret J. (Peggy) Livingston

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF	)	Docket No. CWA-08-2014-0037
BP America Production Company,	)	**DECLARATION OF NATASHA DAVIS**
Respondent.	)	

1. My name is Natasha Davis. I have been employed since February 2009 by the United States Environmental Protection Agency (EPA) in its Denver, Colorado office, also known as Region 8. My title is Life Scientist. I earned a Bachelor of Science in Natural Resource Management as well as a Master of Science in Rangeland Ecosystem Science from Colorado State University. My responsibilities at the EPA include providing technical support for enforcement actions that the EPA considers and/or initiates pursuant to the Clean Water Act (CWA). I have personal knowledge in all matters stated in this Declaration.

2. In its usual and ordinary course of business, the EPA issues information requests pursuant to section 308 of the CWA, 33 U.S.C. § 1318, and retains copies of the responses to those requests. Attached as Exhibit 1 is a copy of a response to such an information request from BP America Production Company. The response is dated April 16, 2014. Only the cover letter is included; the attachments to the response are not included.

3. On September 24, 2014, I visited the site of the leak of produced water that was the subject of the attached response. At that time, I observed the unnamed tributary that is adjacent to the wetland where the leak occurred. The unnamed tributary was flowing at the time of my site visit.

I declare under penalty of perjury that the foregoing is true and correct.

Natasha Davis
12-22-14
Date

Exhibit 1

Declaration of Natasha Davis

bp

Christy L. Hard
West Operations Manager

BP America Production Company
501 WestLake Park Boulevard
Houston, Texas 77079-3092
Phone 281-366-2000

RECEIVED
APR 17 2014
Office of Enforcement, Compliance and Environmental Justice (Water)

April 16, 2014

Via Federal Express, Tracking #: 7985 6248 3590
Ms. Natasha Davis
U.S. Environmental Protection Agency
Region 8 (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202

Subject: BP America Production Company's Response to March 19, 2014 Clean Water Act Section 308 Information Request regarding Southern Ute Tribal Y #1 Lateral Pipeline Leak

Dear Ms. Davis:

BP America Production Company (BP) is in receipt of the Environmental Protection Agency's (EPA) letter dated March 19, 2014, regarding a release of produced water from a lateral pipeline coming from the Southern Ute Y #1 well (hereinafter, the pipeline). BP submits this letter in response to your request for information made under the authority of Section 308 of the Clean Water Act (the Response). We have restated your questions, followed by our responses. We also enclose a CD containing the documents referenced herein as attachments to the Response.

1. Provide the latitude/longitude coordinates of the exact location of the leak.

Response: Lat. 37. 1038814397022 / Long. -107.564245845185

2. Provide any photographs taken of the leak or the location of the leak, including both upstream and downstream view of the location of the leak.

Response: Please see photographs of the leak location (pre-restoration and post restoration) at Attachments A1 & A2.

3. On what date did the leak start and how did you determine this date?

Response: Southern Ute Water Resource personnel reported the leak to Kyle Kerr, Field Environmental Advisor on March 15, 2013. BP had no knowledge of the leak prior to this notification.

4. On what date did you discover the leak? Provide copies of the spill reports placed with local, state, or federal authorities.

Response: Southern Ute Water Resource personnel reported the leak to Kyle Kerr, Field Environmental Advisor on March 15, 2013. BP had no knowledge of the leak prior to this notification. See Attachment B for a copy of the March 15, 2013 Southern Ute Environmental Program Division Spill / Release Report.

5. How did you discover the leak? Describe the process by which you became aware of the leak. Describe and include the documentation regarding any information you received from the local landowners, tribal members, or others concerning the leak and any data showing a loss in pressure or other automated information that may have informed you of the leak.

   On what dates did you initiate and complete the repairs of the pipeline that was the source of the leak? In your response, include dates when you decided to apply for the permit to conduct the repairs, dates the contractor proposal was requested and accepted and dates you initiated phone calls or emails with regulatory entities with the Southern Ute Tribe, the Army Corps of engineers, the EPA, etc. Provide copies of any documents, contracts, websites, emails, or information otherwise showing when the repair of the leak occurred.

Response: Southern Ute Water Resource personnel reported the leak to Kyle Kerr, Field Environmental Advisor on March 15, 2013. BP had no knowledge of the leak prior to this notification. BP received no other documentation from landowners or tribal officials concerning the leak.

The leak occurred in a carbon steel section of the Southern Ute Tribal Y #1 full well stream production flow line. This line carries a two phase gas and water stream consisting of coal bed methane and produced water with no liquid hydrocarbons. The damaged segment of carbon steel flow line was blown down, capped and abandoned in place. The flow line was replaced with a new 316L stainless steel pipe segment. The corrosion resistant properties of the stainless steel replacement are designed to provide protection for this segment based on guidance from ANSI/NACE MR0175/ISO 15156 and NACE TPC5 documents. The damaged pipe was abandoned in place and a boring method was utilized in the replacement process in order to minimize impact to the creek crossing.

Construction to replace the pipe segment began on or about July 15, 2013 and concluded on or about August 2, 2013. The U.S. Army Corps of Engineers (USACE) section 404/401 permit to replace the line was applied for on May 17, 2013. See Attachment C1. A Certificate of Compliance, indicating the completion of the project, was submitted to the USACE on August 14. 2013. See Attachment C2.

A request for proposal from the contractor was not initiated for this project as the contractor was already retained by BP on a time and materials basis. See Attachments D1-D5 for the purchase orders and work orders associated with the pipeline replacement work.

6. What was the cause of the leak? Include schematic of the pipeline, any specifications on parts that were damaged or missing and any other information showing what caused it.

Response: BP neither excavated nor examined the pipeline. As such, the cause of the leak is undetermined. Please see Attachment E for a general pipeline schematic of the area. BP has no information showing the cause of the leak.

7. How did you determine the cause of the leak? Describe the process by which you became aware of what caused the leak. Include information received by local landowners, tribal members, or others that may have informed you of the leak or any data showing a loss in pressure or other automated information that may have informed you of the cause of the leak.

Response: The cause of the leak is undetermined. Beyond the initial notification from Southern Ute Water Resource personnel, BP received no communication from the landowners or tribal members relevant to the start or cause of the leak. Operating pressures on this pipeline did not indicate a loss of pressure that would signify a leak.

8. How much water was released from the pipeline during the leak? Provide information on how much produced water flows through this location on a given day, the size of the leak, the pressure in the line, or any other information that would indicate how much produced water was lost during this time.

Response: BP is unable to quantify the precise amount of water released from the pipeline during the leak. Based on the location of the leak relative to the location of the well site, BP reasonably assumed that the release could not have occurred more than a few days prior to March 15, 2013, because a release would likely have been seen or heard by a well technician in the preceding days. Based on daily average water production rates, BP assumed the spill could not have exceeded 5 barrels. The average daily water production for this pipeline was 2.1 bbls/day for the week immediately before the spill and 1.5 bbls/day for the two months immediately before the spill. Flow rate and line pressure data for the preceding two months do not indicate a breach in the line. The normal operating pressure for the pipeline is approximately 100 psig.

9. How much water was released during repairs of the leak?

Response: The supplying well was shut in upon discovery of the leak, stopping the flow to the pipeline. The damaged pipeline segment was isolated by a valve at the Southern Ute Y #1 well site upstream of the release point and from a 4" rising stem valve where the pipeline joins the other well lines flowing into this section of the gathering system downstream of the leak location. No water was released during the replacement of the line.

10. What other pollutant(s), and how much of these pollutant(s), were released from the pipeline during the leak and during repairs of the leak?

Response: This line is a two phase well stream flow line carrying coal bed methane gas and produced water with no liquid hydrocarbons. No other liquids were released during the leak. No produced water or other pollutants were released during replacement of the line.

11. Describe quality of produced water and any other pollutant(s) released from the pipeline during the leak. Provide any analytical data you have from any well(s) that are a source of produced water in the pipeline or from other nearby produced water testing that was conducted that is representative of the produced water released in the leak. Include

location the samples were taken, dates, methods, and laboratory information where the samples were analysed.

Response: The Bureau of Land Management (BLM) produced a report in 1999 showing that water from the Fruitland formation in the vicinity of the Southern Ute Tribal Y #1 well had a range of 250 – 500 mg/l of chloride. See Attachment F at Appendix B (see map titled, Chloride in Groundwater, Fruitland Formation, Northern San Juan Basin). A water analysis was conducted in the drainage the day the spill was reported. Results did not indicate significant water quality variations between the upstream and downstream sample points. See Attachment G for the Analytical Report. The "source" sample ID was taken from the water pooled in the depression shown on the photograph produced as Attachment A1. There are no known additional pollutants in the produced water. BP is not aware of any other samples taken from comparative wells in the area.

12. Attachment A to the May 17, 2013 letter from the URS Corporation states, in part, "Water may be used for hydrostatic pressure testing of the new section of pipeline and for equipment washing during operations. The water may be obtained from the Pine River Water Supply Intake or local irrigation ditches within a current water right. Disposal and use of the above waters is subject to applicable standards." Describe whether and how any such water was used and disposed of.

Response: No water from the Pine River Water Supply Intake or local irrigation ditches was used for hydrostatic pressure testing of the new section of pipeline or for equipment washing during operations. Equipment arrived clean on the project and was not washed on location. Water for hydro-testing the new segment of pipe was trucked to the location by the contractor. After the pressure testing, the water was pushed back through the pipe and collected in the water truck. The contractor drove the test water to a permitted facility for disposal.

13. As a result of the leak, was any film, sheen, or discoloration, or iridescent appearance observed on any surface waters? If so, describe the location and the size of the sheen and provide the name, title and business telephone number of each person making the observation.

Response: No film, sheen, discoloration, or iridescent appearance was observed.

14. List each stream, creek, river, wetland, or other surface water the produced water or any other pollutant from the leak or from the repair of the pipeline reached.

Response: The leak occurred on a wetland bench adjacent to an unnamed tributary to Spring Creek. The tributary flows into Spring Creek approximately 450 feet to the southeast of the leak location. These drainages primarily carry irrigation runoff. It is unclear whether, and, if so, what quantity, of the released produced water may have reached these waters.

15. Provide a copy of any National Pollutant discharge Elimination System permit that authorized any discharge of pollutants from the leak or from any repairs of the leak and any application you have made for such a permit.

Response: This event was an accidental release and therefore no National Pollutant Discharge Elimination System (NPDES) permit was obtained. No NPDES permit was required for any repairs of the leak.

Should you have any questions or comments concerning the information contained in this letter, please contact Gabrielle Sitomer, Counsel-HSSE, by telephone at 713-323-3189 or email gabrielle.sitomer@bp.com.

Sincerely,

Christy Hard

Christy Hard
BP America Production Company, Western Operations Manager

Enclosure:

- Attachment A1 – Photograph of Leak Location Pre-restoration
- Attachment A2 – Photograph of Leak Location Post-restoration
- Attachment B – Southern Ute Spill Report Form
- Attachment C1 – Request for Section 401 Water Quality Certification
- Attachment C2 – Certificate of Compliance
- Attachment D1-D5 – Purchase Orders and Work Orders
- Attachment E – Area Schematic
- Attachment F – Coalbed Methane Development in The Northern San Juan Basin of Colorado
- Attachment G – Analytical Report

CC:

Steve Collins, San Juan Onshore Site Manager (w/ enclosure)
Tankard Floyd, Field Environmental Advisor (w/enclosure)

STATEMENT OF CERTIFICATION

I certify under penalty of law that this response and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system of those persons directly responsible for gathering the information, the information submitted is, the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

Christy Hard 4-16-14

Signature Date

Christy L. Hard

Printed Name

BP America Production Company, Western Operations Manager

Official Title

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF	)	
	)	Docket No. CWA-08-2014-0037
BP America Production Company,	)	**DECLARATION OF PETE NYLANDER**
Respondent.	)	

1. My name is Pete Nylander. Since February 2010, I have been employed by the Southern Ute Indian Tribe in the capacity of Senior Water Quality Specialist – Section 319. Before being employed as a Senior Water Quality Specialist, I was employed by the Tribe for ten months as a Water Quality Technician. I have experience and specialized training in river system morphology, assessment and monitoring. In 2007, I earned a Bachelor of Science degree in Environmental Biology from Fort Lewis College in Durango, Colorado.

2. I have personal knowledge of all matters stated in this Declaration.

3. My duties as a Water Quality Technician and in my present position require that I be familiar with the water bodies on the Southern Ute Indian Reservation (Reservation). My responsibilities include management of the nonpoint source pollution control program. Those responsibilities include identifying, assessing, and prioritizing water bodies and lands which could use nonpoint source best management practices (BMPs) to improve water quality on the Reservation. Approximately sixty percent of my time on an annual basis is spent in the field on the Reservation assessing, implementing, and monitoring existing or potential projects. Once potential projects are identified, I prepare EPA grant proposals to fund the BMPs. Stream bank restoration is one of the most common BMPs implemented on the Reservation to reduce sedimentation which can adversely affect water quality.

4. According to records kept in the usual and ordinary course of business by the Tribe, on March 15, 2013, the Tribe discovered a leak of produced water from BP America Production Company's Y-1 Lateral Pipeline on the Reservation, adjacent to an unnamed tributary of Spring Creek. I visited the leak site around the end of September, 2014.

5. In the course of my employment, I have observed the unnamed tributary referenced above. In July or August 2010, I hiked that tributary starting at its intersection with State Highway 151, heading downstream (south and southeast) to the confluence with Spring Creek. Water was flowing throughout the length of this segment of the unnamed tributary during that time. This segment of the unnamed tributary includes the place where I later observed the leak site mentioned above. I then hiked back up Spring Creek to the highway. Other times during the years 2010 through 2014, whenever I've driven along Highway 151 at its crossing with the unnamed tributary, I have observed the unnamed tributary because of my concern about eroding cut banks due to an undersized culvert. I've driven by the unnamed tributary during all four seasons between the years 2010 and 2014 during my employment with the Tribe (at least a dozen times per year). Each time I observed this unnamed tributary, water was flowing in it upstream and downstream of Highway 151 (in winter, I've observed ice and snow cover along the unnamed tributary). I have also observed the presence of a perennial wetland located on the unnamed tributary immediately upstream of its intersection with Highway 151.

6. Other indications that water flows in the unnamed tributary include:

a. The March 15, 2013, Southern Ute Environmental Programs Division Spill/Release Report, a copy of which (including four pages) is attached as Exhibit 1, stating that BP's contractor Envirotech, Inc. collected an "Upstream Sample," "Source Sample," and a "Downstream Sample." I infer from the Spill/Release Report there was water in the unnamed tributary, and at the location of the "Downstream Sample" below the confluence of the unnamed tributary and Spring Creek, sufficient to draw samples.

Exhibit 1

Declaration of Pete Nylander

Southern Ute Environmental Programs Division Spill / Release Report

Report Date: 3/15/2013 **Time:** 10:30 (military time)

Spill Date: 3/15/2013 **Spill Time:** 11:00 (military time)

Company Name: BP America **Phone Number:** 970-382-3690

Reported By: Kyle Kerr **Title:** Field Environmental Advisor

Facility Name: Southern Ute Tribal Y #1

Location: 1/4 NE/SW (K) Section: 13 Township: 33N Range: 7W **Spill Reports Must be Accompanied by a Site Map (GIS)**

Type of Spill (*Circle One*): (Produced Water) Oil, Gas, Other

Estimate spilled: 5 *barrels* **Estimate recovered:** 0 **Hazardous:** *Y* / (N)

Is the Spill Contained: *Y* / (N) **If No, is it within the property "footprint":** *Y* / (N) **Wind Speed** NA

Extent of spill (area) 200 ft^2 **Surrounding Land Use** Grazing/Farming **Wind Direction** NA

Ground Water impacted: Y__ N X **Surface Water impacted:** Y_X_ N___ **Soil Type:** Clay Loam **Slope** 3%

IF LESS THAN A MILE, report distances IN FEET to the nearest…

Surface water: 0 Wetlands: 0 Water wells: 2,360 ft Dry arroyo: NA Residence: 2,500 ft

Cause Of Spill: Pipeline leak of produced Fruitland Coal Water

Describe Immediate Response/Clean up Efforts: BP contacted Southern Ute Tribal Environmental Division, Pipeline was shut down, and water samples were collected from the surface water (please see site map for Sample Collection Points). Three (3) water samples were collected for Cation/Anion analysis.

Tribal Actions & Notes: Mr. Gus Westerman was on-site at 13:00 to meet with BP Representatives Kyle Kerr and Tankared Floyd. Envirotech representative Toni Mcknight was on location to collect water samples.

(continued on back if necessary)

Does this facility require an SPCC plan: *Yes* / (No) **If yes, is there one in place:** *Yes / No*

Is there a remediation plan in place for clean up: *Yes* (No)

Follow-up Report Being Sent: *Yes* / (No) **Due By the Following Date:** _____, 20____

Closure Report Being Sent: *Yes* / (No) **Due By the Following Date:** _____, 20____

OTHER NOTIFICATIONS

Date	Agency	Contact Person	Type of notification	Comments:
			Written / Verbal / Both	
			Written / Verbal / Both	
			Written / Verbal / Both	
			Written / Verbal / Both	

For EPD Office Use Only:

Report Completed By: _____ **Title:** _____

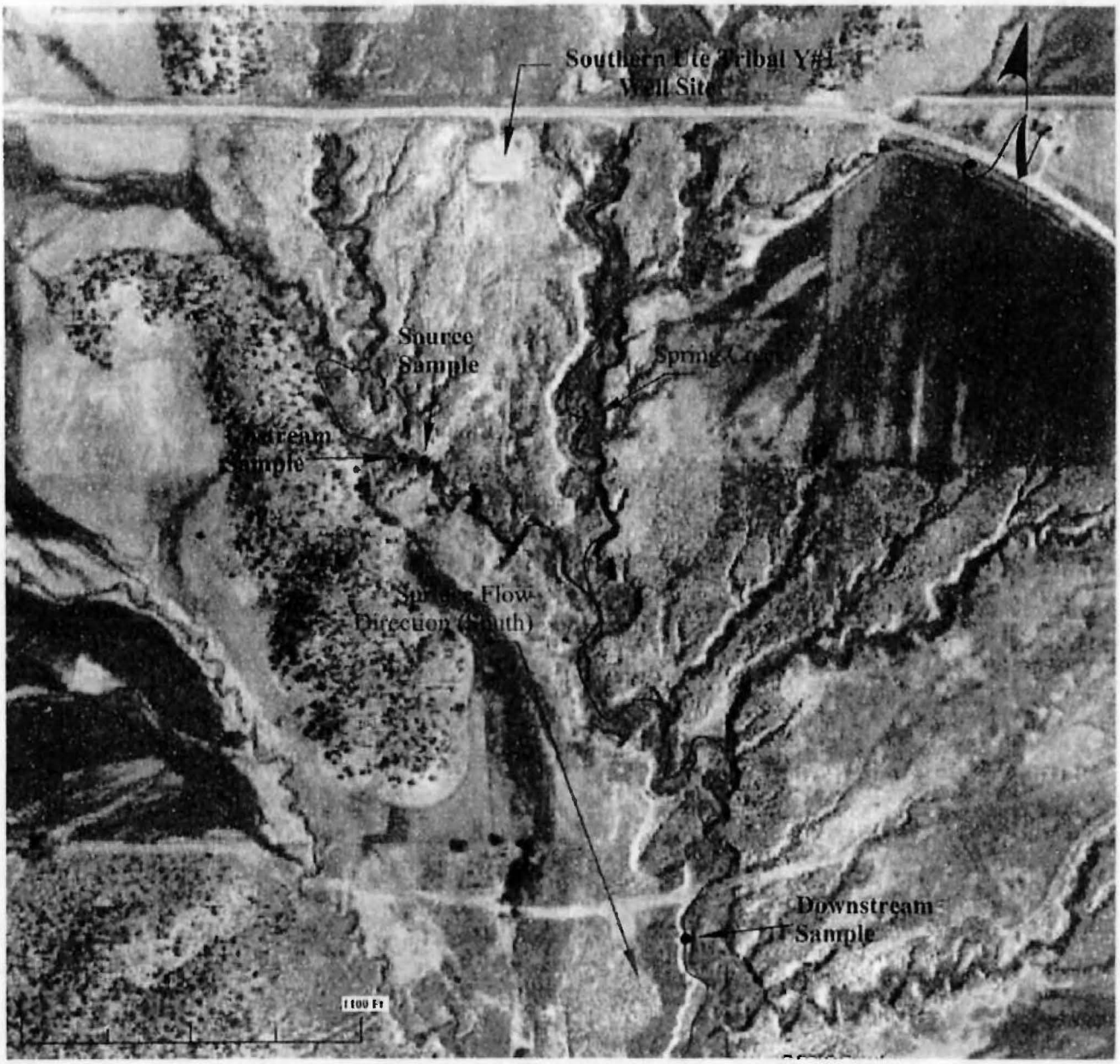
Cc: EPD Division Head EC WQP AQP GAP----->Entered & filed on: / /

Updated: May 10, 2010

EXHIBIT
tabbies 1

Southern Ute Environmental Programs Division Spill / Release Report

SUIT ID Team Notes



LEGEND

● SAMPLE LOCATIONS

Upstream Sample: N37°06'14.38", W107°33'52.42"
pH: 8.06; EC: 0.73 mS; Temp: 54.6°F

Source Sample: N37°06'14.00", W107°33'51.50"
pH: 8.02; EC: 7.22 mS; Temp: 54.1°F

Downstream Sample: N37°05'58.13", W107°33'39.66"
pH: 8.10; EC: 0.87 mS; Temp: 57°F

Site Map

BP America Production Company
Southern Ute Tribal Y #1 Well Site
La Plata County, Colorado

SCALE: 1":515'	FIGURE NO. 1	REV
PROJECT NO03143-0628		

REVISIONS

NO.	DATE	BY	DESCRIPTION

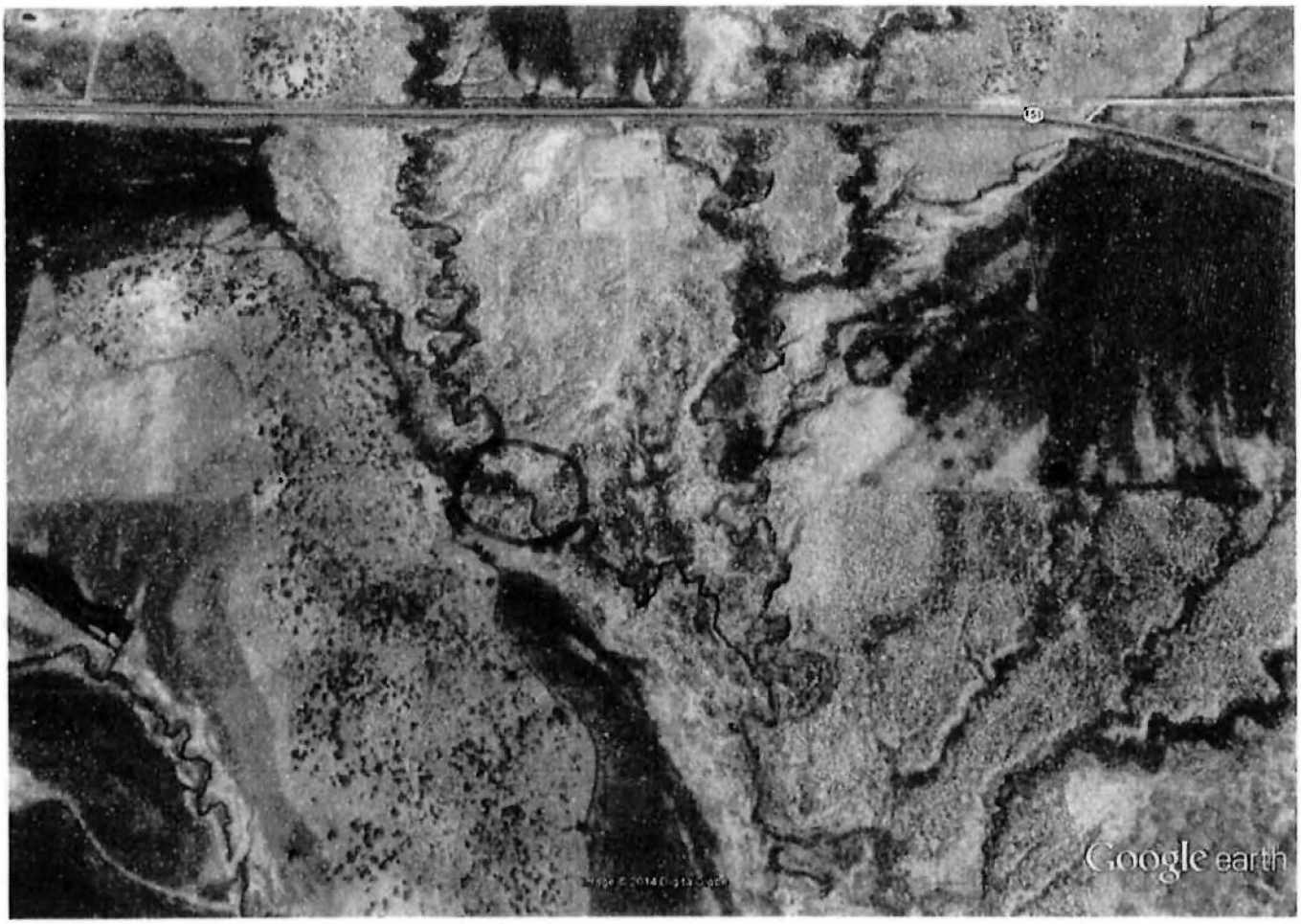
MAP DRWN	TM	DATE	3/18/13

envirotech

5796 U.S. HIGHWAY 64, FARMINGTON, NM 87401 505-632-0615

Exhibit 2

Declaration of Pete Nylander



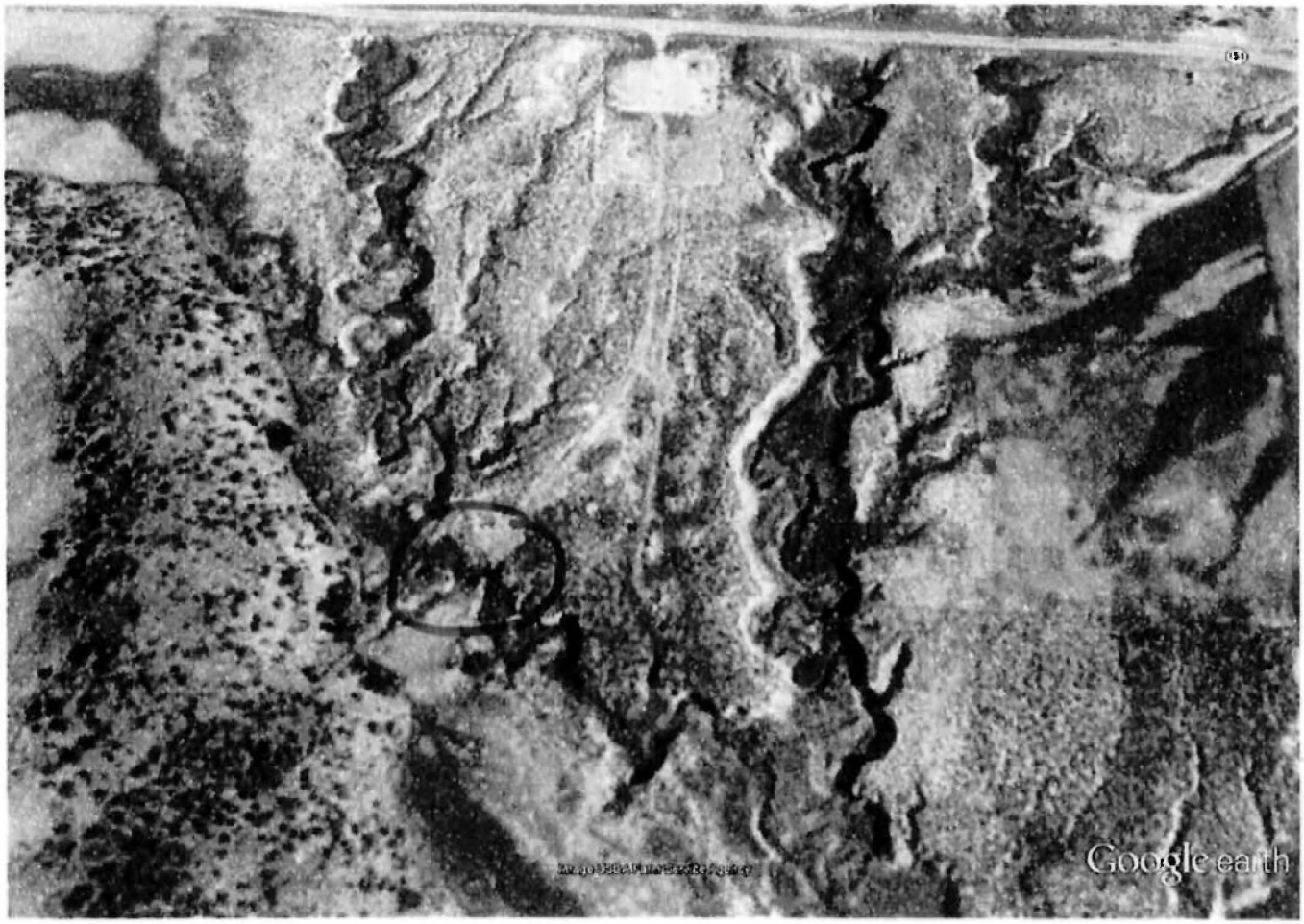
Google earth feet 1000 meters 400

9/10/2004

EXHIBIT 2

Exhibit 3

Declaration of Pete Nylander



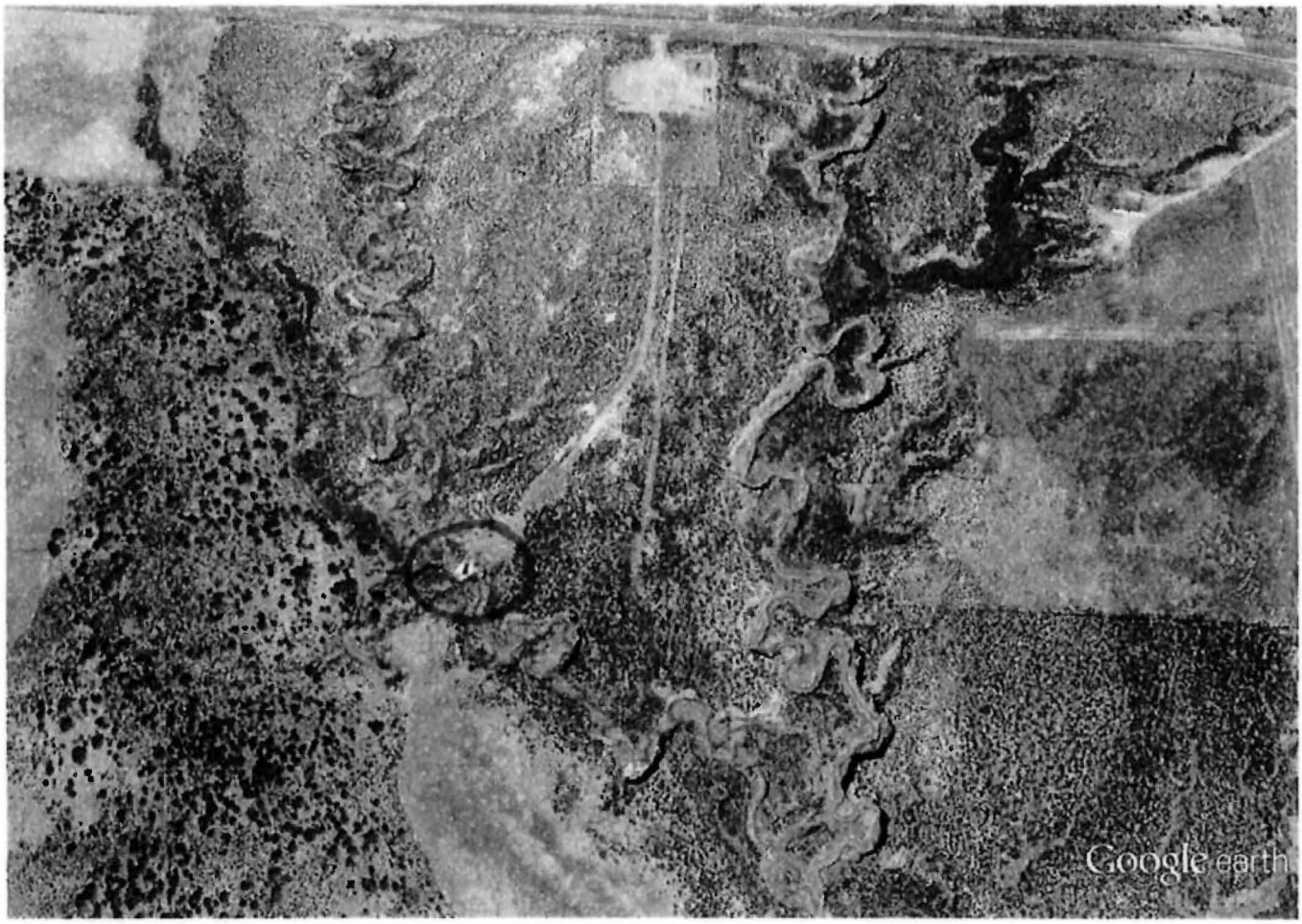
Google earth feet 900 meters 200

10/27/2011

EXHIBIT 3

Exhibit 4

Declaration of Pete Nylander



Google earth feet 900 meters 200

5/2/2013

EXHIBIT 4

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF	)	Docket No. CWA-08-2014-0037
BP America Production Company,	)	**DECLARATION OF KARA HELLIGE**
Respondent.	)	

2014 DEC 29 PM 3:14

1. My name is Kara Hellige. I have been employed since 2003 by the United States Army Corps of Engineers (Corps) in its Durango Regulatory Office, which is part of the Sacramento, California, District. My title is Senior Project Manager. I have a Bachelor of Science degree in Environmental Science from DePaul University in Chicago, Illinois. My responsibilities include assisting in the Corps' administration of the Regulatory program pursuant to section 404 of the Clean Water Act (CWA). I have personal knowledge of all matters stated in this Declaration.

2. In its usual and ordinary course of business, the Corps issues, and receives applications for, permits under section 404 of the CWA. These permits authorize discharges of dredge and/or fill materials, which are types of pollutants, to waters of the United States.

3. Sometime in approximately early April of 2013, I was contacted by a representative of BP America Production Company (BP) about a leak of produced water that had occurred from a pipeline known as the Y #1 Lateral (Pipeline) in March of 2013. The BP representative told me that BP was considering options for repairing the Pipeline.

4. On April 12, 2013, I visited the site of the leak with representatives of BP and BP's consultant, URS Consulting. The BP and URS representatives told me that the leak had caused a 10-foot deep sinkhole within a wetland next to a creek. The creek was, and is, an unnamed tributary of Spring

Exhibit 1

Declaration of Kara Hellige

Conversation Record

Date	April 12, 2013
Time	8:00 am
Setting	On-site
Person Contacted	Rick Stanley, Peter Jensen
Organization	BP America Production Company, URS
Subject	SPK-2013-00327-DC
Action Required	Need permit application
Summary	In 2009 BP experienced a leak at this same location. At that time they access the site from the south and bored a new line through the tributary of Spring Creek. A new leak was recently found. The new leak caused a 10 foot deep sink hole within a wetland next to the creek. They are planning to bore a new line similar to last time. They are also planning to fill and restore the sink hole and potentially provide bank stabilization. In order to access the site they will have to construct a temporary crossing either at this location or across Spring Creek to the south. They are currently considering their options in relationship to cost and time.
Documented By	Kara Hellige
Signature	[signature]
Signature Date	4/12/13

Figure 1Looking downstream - stream immediately downstream of impact

Figure 2 Looking upstream - stream immediately upstream of leak

Figure 3 Leak. Notice sink hole next to creek. One option is to provide access at this location which would require grading back the banks to a 3:1 and place toe rock along the bank

Figure 4 Leak site

Exhibit 2

Declaration of Kara Hellige

URS

May 17, 2013

Toney Ott
Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Re: Request for §401 Water Quality Certification under NWP 3 for the Southern Ute Y1 Lateral Leak Repair

Permit Applicant:
BP America Production Company
Attn: Rick Stanley

Applicant Address:
380 Airport Road
Durango, CO 81303
Phone: (970) 375-5734
Email: Richard.Stanley@bp.com

Agent Name:
URS
Attn: Cory Kindle

Agent Address:
211 Rock Point Drive
Durango, CO 81301
Phone: (970) 426-7026
Fax: (970) 375-7770
Email: cory.kindle@urs.com

Ms. Toney Ott,

As acting agent for BP America Production Company (BP), URS is requesting Water Quality Certification for the replacement of fill, temporary impact to an intermittent stream with palustrine emergent fringe wetland, and temporary access across a perennial stream (Spring Creek) and a second drainagefor the repair and replacement of the So Ute Y1 Lateral produced water pipeline. The proposed project is covered under Nationwide Permit (NWP) 3 for Maintenance.

The project is located on Southern Ute Indian Tribe land in La Plata County, Colorado. It is south off of Hwy 151 approximately 4.2 miles east of the Hwy 172/Hwy 151 intersection. The following table displays the adjacent land owners:

Property Owners	Address	City	State	Zip
United States of America in Trust for Southern Ute Tribe	PO Box 737	Ignacio	CO	81137

Sal Valdez who is the Water Quality Program Manager of the Southern Ute Indian Tribe was contacted on May 9, 2013 via phone message and email and is copied on this WQC request.

The USACE §404 Pre-Construction Notice is provided in Attachment A and includes all other required information for Water Quality Certification.

If further information is required, please email me at cory.kindle@urs.com or call me at (970) 426-7026.

Sincerely,

Cory Kindle

Cory Kindle

Attachment A: USACE §404 Pre-Construction Notice

cc: Sal Valdez, Southern Ute Indian Tribe
Kara Hellige, U.S. Army Corps of Engineers, Durango Regulatory Office
Rick Stanley, BP America Production Company
Tankard Floyd, BP America Production Company

URS

BP America Production Company
So Ute Lateral Leak
§401 Water Quality Certification

Attachment A
§404 Pre-Construction Notice

URS Corporation
211 Rock Point Dr.
Durango, Co 81301
Tel: 970-375-7767

URS

May 17, 2013

Kara Hellige
U.S. Army Corps of Engineers
Durango Regulatory Office
1970 E. 3rd Ave, Suite 109
Durango, Colorado 81301

Re: §404 Pre-Construction Notice for the Southern Ute Y1 Lateral Leak Repair (DA#SPK-201300327)

Permit Applicant:
BP America Production Company
Attn: Rick Stanley

Applicant Address:
380 Airport Road
Durango, CO 81303
Phone: (970) 375-5734
Email: Richard.Stanley@bp.com

Agent Name:
URS
Attn: Cory Kindle

Agent Address:
211 Rock Point Drive
Durango, CO 81301
Phone: (970) 426-7026
Fax: (970) 375-7770
Email: cory.kindle@urs.com

Ms. Kara Hellige,

This letter is to act as a pre-construction notice (PCN) under Section 404 of the Clean Water Act for the replacement of fill, temporary impact to an intermittent stream with palustrine emergent fringe wetland, and temporary access across a perennial stream (Spring Creek) and a second drainage for the repair and replacement of the So Ute Y1 Lateral produced water pipeline. The proposed project is covered under Nationwide Permit (NWP) 3 for Maintenance.

Project

The So Ute Y1 Lateral Leak Repair (Project) includes the repair of a produced water pipeline leak site within a tributary to Spring Creek and replacement of a section of the pipeline beneath the drainage just south of Hwy 151. The pipeline carries water produced from the So. Ute Y1 well location to the central gathering system in the area. The leak has created an open pit directly above the pipeline on a wetland bench within the drainage. BP proposes to repair the leak site by backfilling the pit with in-fill material and replace the leaking section by boring a new line beneath the drainage that will tie to the existing line in order to resume operations.

Location

The action area is located on tribal land in the Spring Creek Drainage and its tributaries south of Highway 151. It is within a highly erosive section of the drainage with very steep slopes. The legal description for the project is Section 13, Township 33N and Range 07W N.M.P.M. Attachment A contains a USGS Topographic Map of the project location and Attachment B contains an Aerial Photo showing the limits

of project disturbances. Average elevation is 6460 feet above MSL. The project area sits interior of the San Juan structural basin south of the Fruitland Coal formation and the Pictured Cliffs formation contact (The contact marks the west, north, and east limits of the geological basin). Geology consists of quaternary alluvium. These alluvial deposits include silt, sand, gravel, and cobbles deposited by streams and rivers in channels, fans, terraces, or floodplains.

Overlying the action areas geological formation is the NRCS mapped soil Bayfield silty clay loam, 1 to 3 percent slopes; Bayfield silty clay loam, gullied, 1 to 3 percent; Sili clay loam, 1 to 3 percent slopes; Sili clay loam 3 to 6 percent slopes; and Zyme clay loam, 3 to 25 percent slopes. Bayfield silty clay loam is a deep well drained soil in broad valleys. It formed in fine textured alluvium derived from shale. The permeability of this soil is slow with a high water capacity, medium runoff and a high hazard of erosion. Sili clay loam is a deep well drained soil on upland valley bottoms and fans. It formed in moderately fine textured alluvium derived from shale. Permeability is moderately slow with a high available water capacity, medium runoff, and a moderate hazard of erosion. Zyme clay loam is a shallow, well drained soil on ridges and hills. This soil formed in residuum derived from shale. Permeability is slow, available water capacity is low, runoff is rapid and the hazard of erosion is high (USDA 1982).

Hydrology of the region is influenced by regional precipitation events and surrounding irrigation practices. The action area is within an intermittent drainage tributary to Spring Creek and the proposed temporary access will cross Spring Creek as well as another small tributary to Spring Creek.

Spring Creek and its tributaries are carved through a sagebrush flat, surrounded by gently rolling hills occupied by pinion-juniper woodland. The waterways are greatly incised within steep, nearly vertical banks with 20 foot walls in some areas. A very narrow strip of riparian habitat occupies the stream edge along sandbars and the shallower bank slopes of the waterways. Small patches of willows and occasional cottonwoods and Russian olive occupy these narrow strips of riparian corridor. The upland is dominated by a relatively dense sagebrush shrubland with a scarce understory of native forbs and grasses. Knapweed was noted surrounding the leak site

Water Quality Certification

The project is located within the exterior boundaries of the Southern Ute Indian Reservation on tribal land, therefore §401 Water Quality Certification will come from EPA Region 8. The letter requesting certification was sent to the Region 8 office at the same time of this submittal.

Purpose and Need

BP needs to access and repair a water pipeline leak site within a tributary to Spring Creek just south of Hwy 151. The pipeline is a gathering line that carries water from the So. Ute Y1 well location to a central gathering system in the area. The existing water pipeline is leaking beneath the intermittent stream tributary to Spring Creek. The leak has created an approximate 25 ft. x 8 ft. open pit approximately 10 feet in depth on a point bar within the drainage. BP proposes to repair the open pit by backfilling it with in-fill material. The section of pipeline beneath the drainage needs be clear and blinded and replaced with a new section of pipeline bored beneath the drainage in order to resume operations. BP would need to

access the west bank of the action area along the existing pipeline ROW which would require a temporary crossing of Spring Creek and a drainage south of the leak site.

Description of Work and Disturbances

To access the leak site the east bank will be sloped back to a milder slope for equipment access. Material from the east bank would be used as in-fill material to backfill the open pit. A new line will be bored beneath the drainage and tied to the existing line on each side within upland. BP will clear and blind the portion of existing line beneath the drainage and abandon it in-place. In order to perform the bore and activities, BP needs to access both sides of the drainage with equipment to effect the bore. BP would access the west bank of the action area by utilizing a longer route within existing pipeline ROW from the south which would include implementing a temporary crossing of Spring Creek. The east bank of the action area would be accessed along the existing ROW beginning at the So Ute Y1 well location. The Project is planned to commence as soon as allowable and will take approximately two weeks to complete.

Erosion control and storm water flow diversion structures (e.g. ditching, wattles) would be implemented at and near flow areas and ditches, and/or in areas where sediment may leave the construction site prior to construction activities. Water may be used for hydrostatic pressure testing of the new section of pipeline and for equipment washing during operations. The water may be obtained from the Pine River Water Supply Intake or local irrigation ditches within a current water right. Disposal and use of the above waters is subject to applicable federal standards.

Repairing the open pit along the wetland bench will require it to be back filled with in-fill material from the adjacent bank to the east. The hole is approximately 25 ft. x 8 ft. and 10 ft. in depth, requiring an estimated 74 cubic yards of fill. Approximately 39 cubic yards of replacement fill will be within the wetland area. Equipment will access the leak site from the east bank, requiring the bank to be sloped back to an approximate 2:1 slope. Topsoil would be stripped and windrowed from an area approximately 75 ft. x 40 ft. within the ROW. The underlying spoil material would be removed to fill the open pit. Once the leak site has been repaired topsoil would be replaced back to its original location and reseeded with an upland seed mix specified by the Southern Ute Indian Tribe Range Department. Prior to back filling, the leak site will be dewatered and the water hauled away and disposed of appropriately. Once back filled the area will then be replanted with a specified wetland seed mix and willow plugs.

A new section of steel pipeline will be bored beneath the drainage and adjacent to the existing pipeline. BP would clear and blind the existing pipeline and abandon it in-place. The new section of pipeline will tie into the existing line within the upland areas on either side of the drainage. The west side of the drainage will be accessed along the existing ROW that comes from the south and will require the crossing of Spring Creek and another small drainage. The crossing would occur by 1) Installing two (2) 24" diameter steel pipes in the center of Spring Creek 2) Laying heavy duty mud mats from top of bank to top of bank of Spring Creek in a manner that allows continuous flow of the stream 3) Crossing on the bridge with a bore truck and excavator to access the bore location. Attachment C includes images that show the crossing as used in the past. Appropriate BMP's will be installed to avoid any off site siltation from any displaced material. There are small stormwater diversion berms along the top of the drainage banks, some of which may need to be bladed level for equipment access. These berms will be replaced upon completion of the Project. All access and construction will be done within BP's existing ROW. There will

be no new disturbance. Temporary disturbance within the ROW for the bore entrance and exit would be approximately 0.147 ac within the upland.

Water Bodies

The open pit is located within an identified wetland along a sandbar bench along the subject drainage. The drainage is classified as an intermittent stream. The wetland is palustrine emergent in nature and exists as fringe wetland along the drainage. Hydrology consisted of saturation within 9.5 inches from the soil surface and drift deposits. The water table was encountered at 17 inches. Vegetative wetland species identified in the area were difficult to identify down to species due to the individuals being in the early growth stage and missing floral parts. However, at least one sedge (*Carex spp.*), one rush (*Juncus spp.*), and *Salix exigua* were identified in the wetland area. Hydric soils were present, indicated as a depleted matrix appearing at 6.5 inches from the soil surface. Soils marginally met the indicator criteria based on the vegetated sand bar receiving seasonal or annual deposition of new soil material based on its location with the active floodplain within the drainage.

Formal wetland delineation procedures in accordance with the US Army Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0) were performed by URS on May 6, 2013 at the leak site per the request of the USACE. The wetland data pit forms are included in Attachment D.

Impacts

Of the delineated Wetland bench approximately 0.002 acres was disturbed by the leak and will need to be restored within the 40' pipeline right of way. The project will result in 39.26 cubic yards of replacement fill to the wetland. However, aside from the replacement fill, no new disturbance will occur to the wetland or within the OHWM of the drainage. Approximately 0.022 ac of temporary disturbance within the OHWM of Spring Creek will occur as a result of a temporary crossing. Disturbance to upland areas due to the leak repair and pipeline replacement are temporary in nature and no permanent loss of Waters of the US is anticipated.

Water Body	Replacement Fill	Affected Area within WOUS	Linear Feet of impacts
Wetland	39.26 cu. yd.	0.002 ac	N/A
Spring Creek	N/A	0.022 ac	49 ft.

Mitigation

Permanent losses to wetlands or aquatic resources are not anticipated for this project and the replacement of fill and temporary stream crossing will not exceed 1/10-acre; therefore compensatory mitigation is not necessary.

Restoration

The open pit will be backfilled, leveled and recontoured to pre-existing condition. The site will then be reseeded with the below specified wetland seed mix and approximately 40 willow plugs. Upon reseeding, erosion control matting will be secured over the restored area to secure seeding and assist in accumulation of sediment and establishment of nutrient rich wetland topsoil in the area. The upland areas will be reseeded with an upland seed mix specified by the Southern Ute Tribal Range Department in coordination with the assignment owner.

Wetland Seed Mix

Eleocharis macrostachya	common spikerush	15%
Juncus arcticus	arctic rush	15%
Juncus confuses	Colorado rush	15%
Equisetum arvense	field horsetail	5%
Carex nebrascensis	Nebraska sedge	25%
Agrostis gigantean	red top	20%
Salix exigua	sand bar willow	5% (planted as living plugs from property cuttings)

Monitoring

Monitoring will be conducted in accordance with Performance Standard 27, 28, and 29 of 12505-SPD Regulatory Uniform Performance Standards for Compensatory Mitigation Requirements. Monitoring will be conducted annually.

Threatened and Endangered Species

A Biological Assessment was prepared by URS on May 9, 2013 and has been submitted to the Southern Ute Tribe Division of Wildlife Resource Management for their concurrence with the findings. The concurrence letter from the Southern Ute Tribe Division of Wildlife Resource Management is included as Attachment E.

The United States Fish and Wildlife Service (USFWS) lists nine (9) species as threatened, endangered, or candidates for listing on the Southern Ute Indian Reservation as of 27 March 2013. The USFWS list for La Plata County, Colorado has been provided through the Bureau of Indian Affairs (BIA) forestry department for projects on tribal lands within the SUIR.

Historical Properties

Two Cultural Resource Inventories were performed for previous projects covering the same action area. Attachment F includes these two reports with negative finding illustrating that the area has received historical clearance, a map of the area surveyed and a concurrence letter.

Project Photos

Figure 1: View of leak site from the east bank.

Figure 2: Looking upstream of leak site and hillside to the east where the site will be accessed.

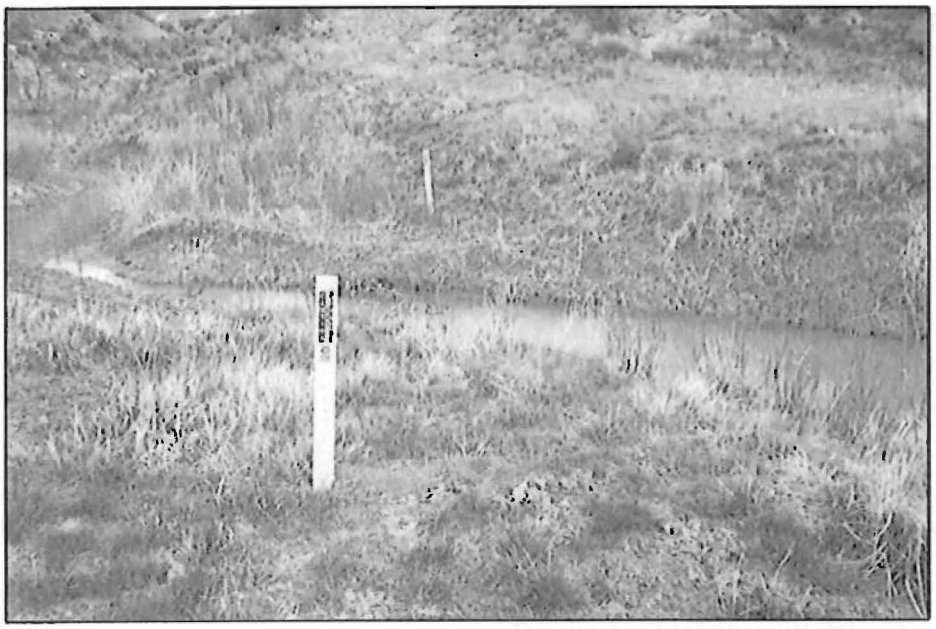


Figure 3: Temporary crossing at Spring Creek.

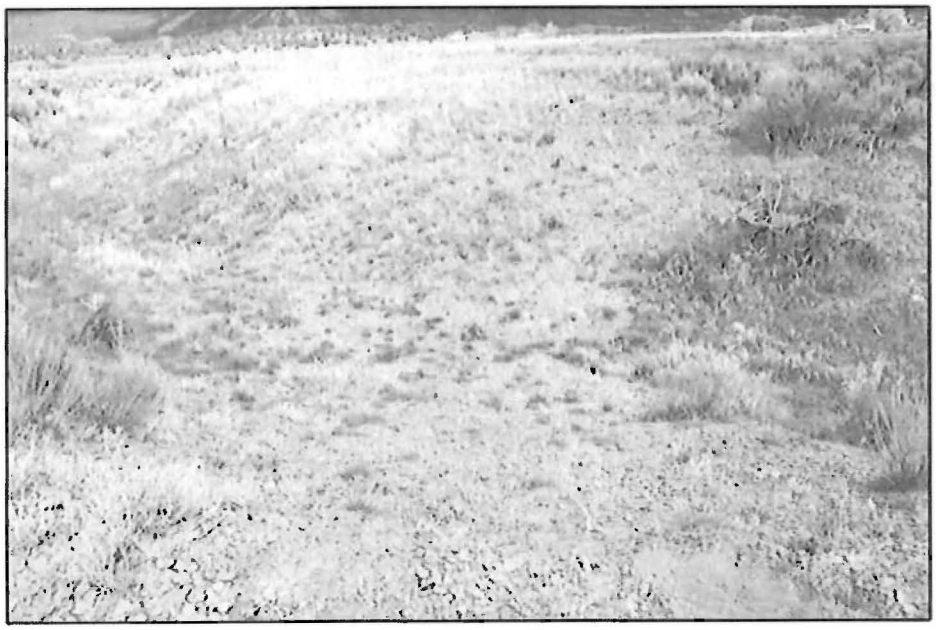


Figure 4: Temporary crossing of drainage to the east of Spring Creek.

If further information is required, please email me at cory.kindle@urs.com or call me at (970) 426-7026.

Sincerely,

Cory Kindle

Cory Kindle

Enclosures:
Attachment A: USGS Topographic Map of Location
Attachment B: Location Map
Attachment C: Detail Images
Attachment D: Wetland Data Sheets
Attachment E: Biological Assessment Concurrence Letter
Attachment F: Cultural Resource Inventory

cc: Rick Stanley, BP America Production Company
Tankard Floyd, BP America Production Company

References

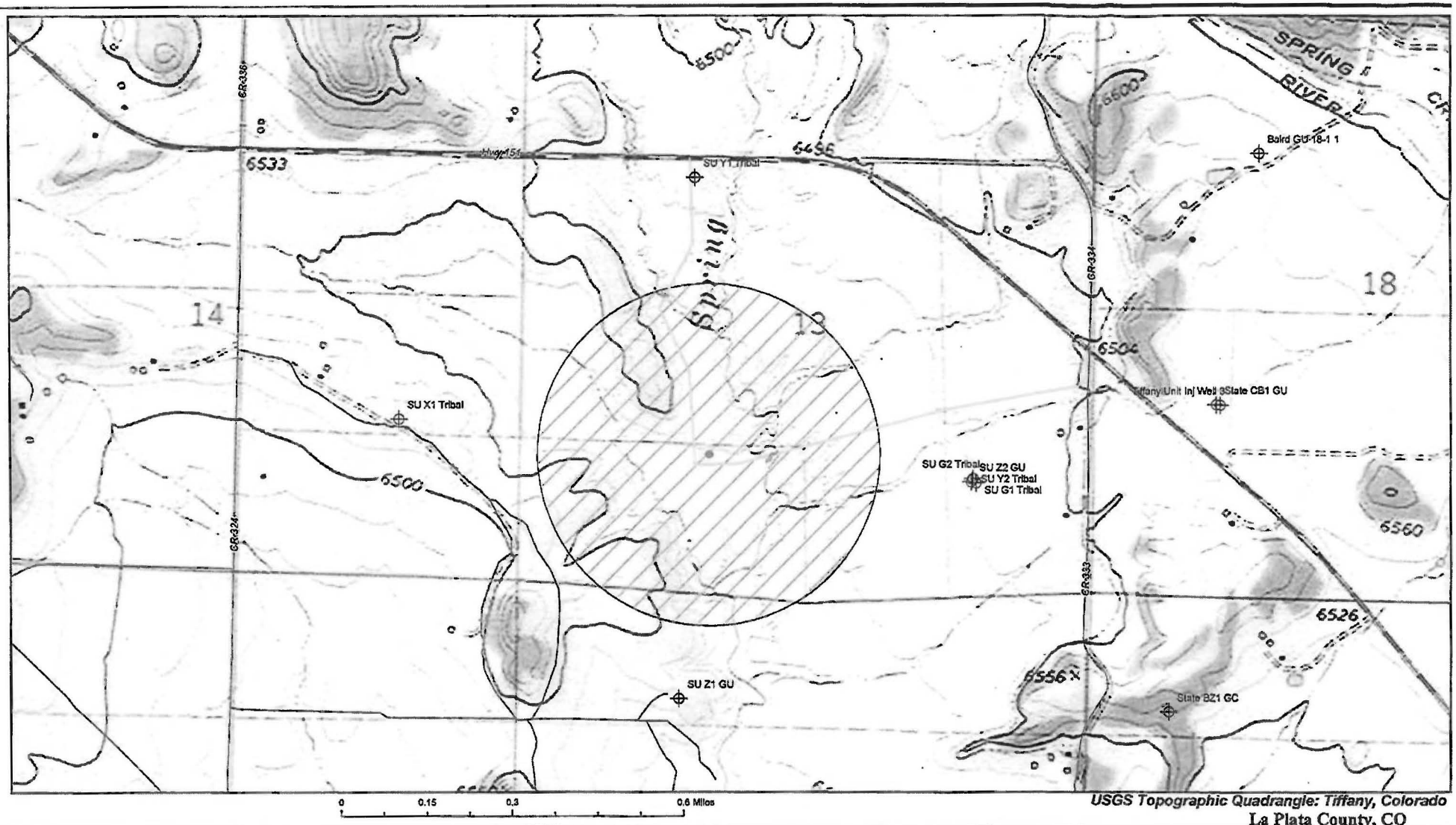
U.S. Dept. of Agriculture, and Soil Conservation Service. 1982. Soil Survey of La Plata County Area, Colorado. National Cooperative Soil Survey. 238 pp.

URS

BP America Production Company
So Ute Lateral Leak
§404 Pre-Construction Notice

Attachment A
USGS Topographic Map of Location

URS Corporation
211 Rock Point Dr.
Durango, Co 81301
Tel: 970-375-7767



USGS Topographic Quadrangle: Tiffany, Colorado
La Plata County, CO

NOTE: Data presented on this map has been obtained or modified from data available from different sources, including data gathered from field surveys conducted on multiple occasions by URS personnel. Outside data sources include the BLM, Chimi, Bing and the USGS.

Political boundaries may change. Drainage, precipitation and other natural events cause changes in vegetation distribution, environmental conditions, and the resulting use by wildlife inhabitants. As such the information provided in this map is only valid for the time period in which it was obtained and transcribed. Moreover, the information's accuracy, as presented, is only as accurate scale from which it was obtained. Care should be taken in interpreting these data. Written documents may accompany this map and should be referenced. The information portrayed on this map should not replace field verification necessary for route location planning efforts. Data discrepancies may become apparent at scales different than those at which data was created. The areas portrayed here are graphic representations of phenomena that are difficult to realize in two dimensions.

N
W
E
S

* These data have not been verified or groundtruthed. Data are for representation purposes only, no survey has been accomplished to verify these boundaries.

BP America Production Company
So Ute Y1 Lateral Leak
–Topographic Map–

Legend
- Active Nest
- 1/2mi Radius
- OHWM
- BP Well Facilities
- Access Route
- LPC Roadways

URS
211 Rock Point Drive
Durango, CO 81301
970-426-7000

Sheet No.
1

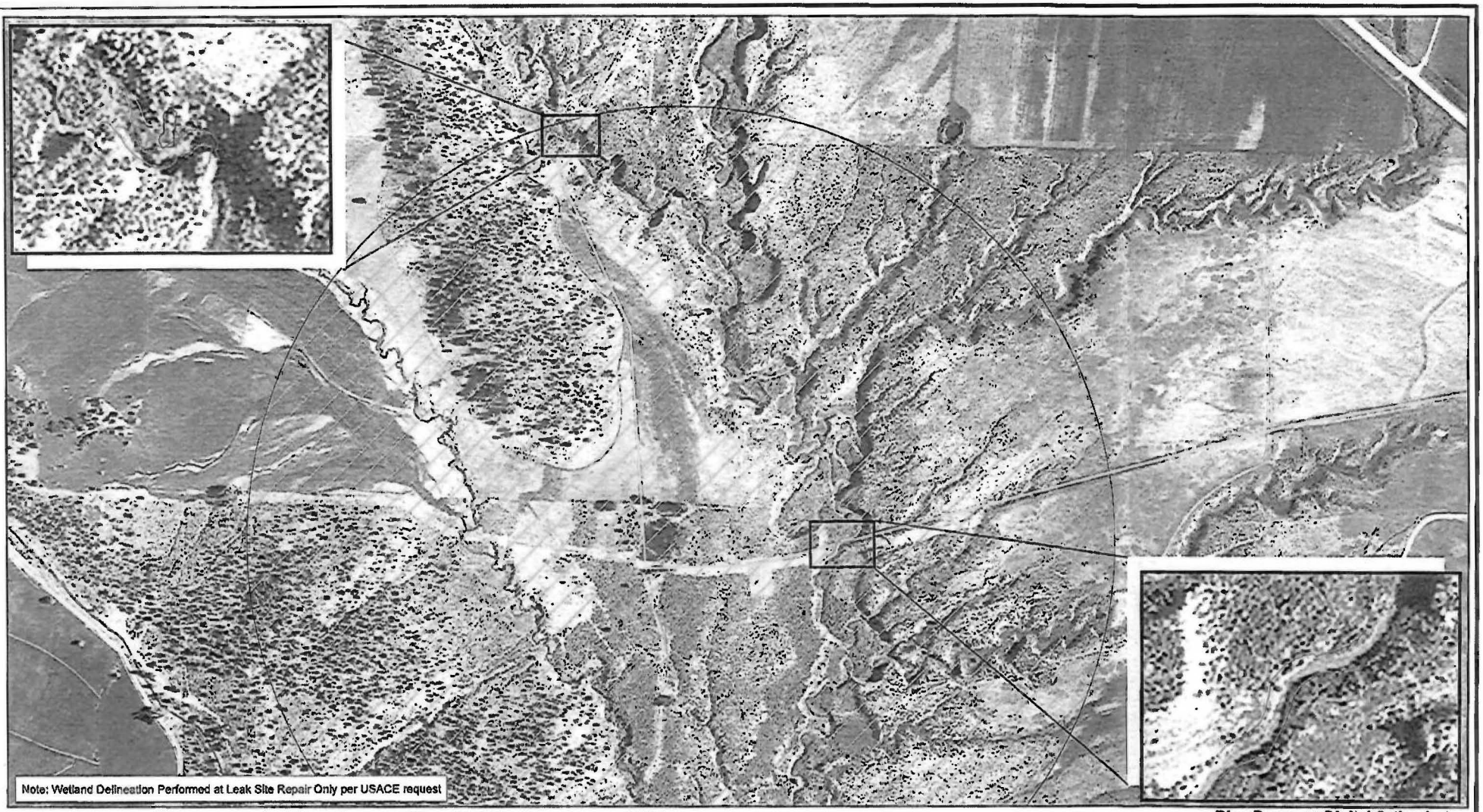
RECORDING
Cartography By: MP
Checked by: PJ
GP_SoUteY1LateralLeak_TopoMap_13-0806MP
Date: 08 May, 2013 Time: 1234 hrs

URS

BP America Production Company
So Ute Lateral Leak
§404 Pre-Construction Notice

Attachment B
Location Map

URS Corporation
211 Rock Point Dr.
Durango, Co 81301
Tel: 970-375-7767



Bing Basemap Digital Orthophoto
La Plata County, CO

NOTE: Data presented in this map has been obtained or modified from data available from different sources, including data gathered from field surveys conducted on multiple occasions by URS personnel. Outside data sources include the BLM, Client, Tetra and the USGS.

Political boundaries may change. Drought, precipitation and other natural events cause short changes in vegetation distribution, environmental conditions, and the resulting use by wildlife inhabitants. As such the information provided in this map is only valid for the time period in which it was obtained and transcribed. Moreover, the information's accuracy, or inversely, is only as accurate as the scale from which it was obtained. Care should be taken in interpreting these data. Written documents may accompany this map and should be referenced. The information portrayed on this map should not replace field studies necessary for more localized planning efforts. Data discrepancies may become apparent at scales different than those at which data was mapped. The areas portrayed here are graphic representations of phenomena that are difficult to reduce to true dimension.

N
W
E
S

*These data have not been verified or ground-truthed. Data are for representation purposes only, no survey has been conducted to verify these boundaries.

BP America Production Company
So Ute Y1 Lateral Leak
--Aerial Map--

Legend
- Active Nest
- 1/2mi Radius
- Leak Site Boundary
- OHWM
- Wetland Boundary
- Access Route

URS
211 Rock Point Drive
Durango, CO 81301
970-426-7000

Shoot No.
1

RECORDING

Cartography By: MP

Checked by: PJ

BP_SoUteY1LateralLeak_AerialMap_13-05-08.mxd

Date: 08 May, 2013 Time: 1200 hrs

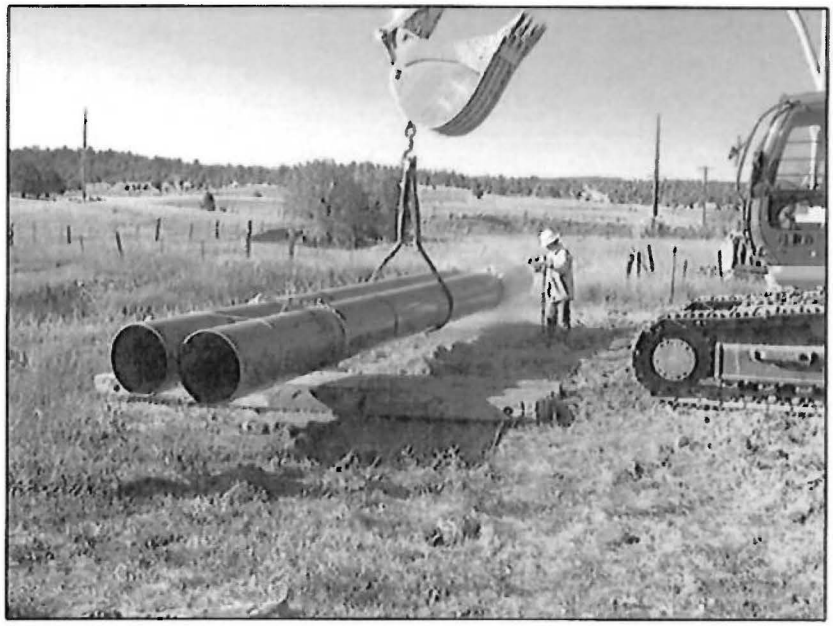
URS

BP America Production Company
So Ute Lateral Leak
§404 Pre-Construction Notice

Attachment C
Detail Images

URS Corporation
211 Rock Point Dr.
Durango, Co 81301
Tel: 970-375-7767

URS



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So Ute Lateral Leak
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Attachment D
Wetland Data Sheets

URS Corporation
211 Rock Point Dr.
Durango, Co 81301
Tel: 970-375-7767

WETLAND DETERMINATION DATA FORM – Arid West Region

Project/Site: So Ute Lateral Leak City/County: Ignacio, CO/La Plata Sampling Date: 5/6/13
Applicant/Owner: BP State: CO Sampling Point: #1
Investigator(s): Mindy Pavlek Section, Township, Range: 13, 33N, 7W
Landform (hillslope, terrace, etc.): sandbar beach Local relief (concave, convex, none): convex Slope (%): 0-2
Subregion (LRR): D Lat: 37°06'11.121" Long: 107°35'51.756" Datum: NAD83
Soil Map Unit Name: Barfield silty clay loam, gullied, 1-3% slopes NWI classification:
Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No ____ (If no, explain in Remarks.)
Are Vegetation ____, Soil ____, or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____, or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X No ____	Is the Sampled Area within a Wetland? Yes X No ____
Hydric Soil Present?	Yes X No ____	
Wetland Hydrology Present?	Yes X No ____	

Remarks:
Each indicator is marginal but meets criteria. May be marginal due to sand bar receiving frequent deposits

VEGETATION – Use scientific names of plants.

	Absolute % Cover	Dominant Species?	Indicator Status
Tree Stratum (Plot size: ____)			
1.			
2.			
3.			
4.			
	____ = Total Cover		
Sapling/Shrub Stratum (Plot size: ____)			
1. Salix sp.	3	Y	FACW
2.			
3.			
4.			
5.			
	____ = Total Cover		
Herb Stratum (Plot size: ____)			
1. Bromopsis inermis	50	Y	FACU
2. Carex sp.	15	N	
3. Juncus sp.	20	Y	FACW
4.			
5.			
6.			
7.			
8.			
	85 = Total Cover		
Woody Vine Stratum (Plot size: ____)			
1.			
2.			
	____ = Total Cover		

% Bare Ground in Herb Stratum ____ % Cover of Biotic Crust ____

Dominance Test worksheet:
Number of Dominant Species That Are OBL, FACW, or FAC: 2 (A)
Total Number of Dominant Species Across All Strata: 3 (B)
Percent of Dominant Species That Are OBL, FACW, or FAC: 2/3 (A/B)

Prevalence Index worksheet:

Total % Cover of:	Multiply by:
OBL species ____	x 1 = ____
FACW species ____	x 2 = ____
FAC species ____	x 3 = ____
FACU species ____	x 4 = ____
UPL species ____	x 5 = ____
Column Totals: ____ (A)	____ (B)

Prevalence Index = B/A = ____

Hydrophytic Vegetation Indicators:
X Dominance Test is >50%
___ Prevalence Index is ≤3.0[1]
___ Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)
___ Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Hydrophytic Vegetation Present? Yes X No ____

Remarks:

SOIL

Sampling Point: TP1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	%	Redox Features Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-1	10YR 4/2		10YR 3/6	3	C	M	silt	
1-6.5	10YR 4/2						loamy sand	
6.5-14	10YR 4/2		10YR 3/4	5	C	PL	Clay	very small concentration

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. [2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5) (LRR C)
- ___ 1 cm Muck (A9) (LRR D)
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Loamy Mucky Mineral (F1)
- ___ Loamy Gleyed Matrix (F2)
- X Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Vernal Pools (F9)

Indicators for Problematic Hydric Soils[3]:

- ___ 1 cm Muck (A9) (LRR C)
- ___ 2 cm Muck (A10) (LRR B)
- ___ Reduced Vertic (F18)
- ___ Red Parent Material (TF2)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if present):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes X No ___

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one required; check all that apply)

- ___ Surface Water (A1)
- ___ High Water Table (A2)
- X Saturation (A3)
- ___ Water Marks (B1) (Nonriverine)
- ___ Sediment Deposits (B2) (Nonriverine)
- X Drift Deposits (B3) (Nonriverine)
- ___ Surface Soil Cracks (B6)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
- ___ Salt Crust (B11)
- ___ Biotic Crust (B12)
- ___ Aquatic Invertebrates (B13)
- ___ Hydrogen Sulfide Odor (C1)
- ___ Oxidized Rhizospheres along Living Roots (C3)
- ___ Presence of Reduced Iron (C4)
- ___ Recent Iron Reduction in Tilled Soils (C6)
- ___ Thin Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (2 or more required)

- ___ Water Marks (B1) (Riverine)
- ___ Sediment Deposits (B2) (Riverine)
- ___ Drift Deposits (B3) (Riverine)
- ___ Drainage Patterns (B10)
- ___ Dry-Season Water Table (C2)
- ___ Crayfish Burrows (C8)
- ___ Saturation Visible on Aerial Imagery (C9)
- ___ Shallow Aquitard (D3)
- ___ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present? Yes ___ No X Depth (inches): ___

Water Table Present? Yes X No ___ Depth (inches): 7

Saturation Present? (includes capillary fringe) Yes X No ___ Depth (inches): 6.5

Wetland Hydrology Present? Yes X No ___

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

WETLAND DETERMINATION DATA FORM – Arid West Region

Project/Site: So Ute Yl Lateral Lak City/County: Ignacio/ La Plata Sampling Date: 05/06/13
Applicant/Owner: BP State: CO Sampling Point: #2
Investigator(s): Mindy Paulek Section, Township, Range: Sec 13; T33N, R7W
Landform (hillslope, terrace, etc.): hill slope Local relief (concave, convex, none): None Slope (%): 10
Subregion (LRR): D Lat: 37° 6' 14.23" Long: 107° 33' 51.61" Datum: NAD 83
Soil Map Unit Name: Bayfield silty clay loam, gullied, 1-3% slopes NWI classification: PEMC
Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No ____ (If no, explain in Remarks.)
Are Vegetation ____, Soil ____, or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____, or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes ____	No X	Is the Sampled Area within a Wetland? Yes ____ No X
Hydric Soil Present?	Yes ____	No ____	
Wetland Hydrology Present?	Yes ____	No ____	

Remarks:

VEGETATION – Use scientific names of plants.

Tree Stratum (Plot size: ____)	Absolute % Cover	Dominant Species?	Indicator Status
1.			
2.			
3.			
4.			
	= Total Cover		
Sapling/Shrub Stratum (Plot size: ____)			
1. Artemisia tridentata	30	Y	FACU
2.			
3.			
4.			
5.			
	30 = Total Cover		
Herb Stratum (Plot size: ____)			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
	30 = Total Cover		
Woody Vine Stratum (Plot size: ____)			
1.			
2.			
	= Total Cover		

% Bare Ground in Herb Stratum ____ % Cover of Biotic Crust ____

Dominance Test worksheet:
Number of Dominant Species That Are OBL, FACW, or FAC: 0 (A)
Total Number of Dominant Species Across All Strata: 1 (B)
Percent of Dominant Species That Are OBL, FACW, or FAC: 0 (A/B)

Prevalence Index worksheet:

Total % Cover of:	Multiply by:
OBL species ____	x 1 = ____
FACW species ____	x 2 = ____
FAC species ____	x 3 = ____
FACU species 30	x 4 = 120
UPL species ____	x 5 = ____
Column Totals: 30 (A)	120 (B)

Prevalence Index = B/A = 4

Hydrophytic Vegetation Indicators:
___ Dominance Test is >50%
___ Prevalence Index is ≤3.0[1]
___ Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)
___ Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Hydrophytic Vegetation Present? Yes ____ No X

Remarks:
No wetland vegetation present, no need to go further.

SOIL

Sampling Point: 2

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	%	Redox Features Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. [2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5) (LRR C)
- ___ 1 cm Muck (A9) (LRR D)
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Loamy Mucky Mineral (F1)
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Vernal Pools (F9)

Indicators for Problematic Hydric Soils[3]:

- ___ 1 cm Muck (A9) (LRR C)
- ___ 2 cm Muck (A10) (LRR B)
- ___ Reduced Vertic (F18)
- ___ Red Parent Material (TF2)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if present):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes _____ No _____

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one required; check all that apply)

- ___ Surface Water (A1)
- ___ High Water Table (A2)
- ___ Saturation (A3)
- ___ Water Marks (B1) (Nonriverine)
- ___ Sediment Deposits (B2) (Nonriverine)
- ___ Drift Deposits (B3) (Nonriverine)
- ___ Surface Soil Cracks (B6)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
- ___ Salt Crust (B11)
- ___ Biotic Crust (B12)
- ___ Aquatic Invertebrates (B13)
- ___ Hydrogen Sulfide Odor (C1)
- ___ Oxidized Rhizospheres along Living Roots (C3)
- ___ Presence of Reduced Iron (C4)
- ___ Recent Iron Reduction in Tilled Soils (C6)
- ___ Thin Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (2 or more required)

- ___ Water Marks (B1) (Riverine)
- ___ Sediment Deposits (B2) (Riverine)
- ___ Drift Deposits (B3) (Riverine)
- ___ Drainage Patterns (B10)
- ___ Dry-Season Water Table (C2)
- ___ Crayfish Burrows (C8)
- ___ Saturation Visible on Aerial Imagery (C9)
- ___ Shallow Aquitard (D3)
- ___ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present? Yes _____ No _____ Depth (inches): _____

Water Table Present? Yes _____ No _____ Depth (inches): _____

Saturation Present? (includes capillary fringe) Yes _____ No _____ Depth (inches): _____

Wetland Hydrology Present? Yes _____ No _____

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

URS

BP America Production Company
So Ute Lateral Leak
§404 Pre-Construction Notice

Attachment E
Biological Assessment Concurrence Letter

URS Corporation
211 Rock Point Dr.
Durango, Co 81301
Tel: 970-375-7767

Department of Natural Resources
Division of Wildlife Resource Management
Interoffice Memorandum

To: Diana Olguin, Manager, SUIT Dept. of Energy

From: Steve Whiteman, Wildlife Division Head

Subject: Biological Assessment Concurrence

Date: May 15, 2013

CC: Dave Swanson, BLM Natural Resource Specialist
Jim Friedley, BIA Forestry
Ed Trahan, SUIT Petroleum Land Manager
SUIT Wildlife Division Files

The Southern Ute Division of Wildlife Resource Management has recently received and reviewed a biological assessment, prepared by URS, addressing the following proposed water pipeline repair project on the Southern Ute Indian Reservation:

BP America Production / Southern Ute Y1 Lateral Leak

In reviewing this report, I have found it to be complete and accurate with regard to potential impacts to federal ESA-listed flora/fauna species and related habitats, and I concur with the determination that the proposed action will have *no effect* on these resources. In addition, due the proximity of the project to an active redtail hawk nest site, certain mitigation measures must followed. This mitigation is required as a condition of approval for this project, and includes:

1. *Active Raptor Nest Avoidance.* Construction activities may not begin until a qualified wildlife biologist has verified hatching (or failure) of eggs at the nest site. Project-related traffic in the vicinity of the nest site must be managed to minimize potential impacts, as specified in the biological assessment, and the project must be completed in the minimal amount of time necessary. The SUIT Wildlife Division Head must be notified when work on the project commences.

If you have any questions or need additional information, please feel free to contact me directly at 563-0130.

Steve Whiteman, Division Head
Division of Wildlife Resource Management
Southern Ute Indian Tribe

URS

BP America Production Company
So Ute Lateral Leak
§404 Pre-Construction Notice

Attachment F
Cultural Resource Inventory

URS Corporation
211 Rock Point Dr.
Durango, Co 81301
Tel: 970-375-7767

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
SOUTHWEST REGION
P.O. BOX 26567
Albuquerque, New Mexico 87125-6567

IN REPLY REFER TO:
380-Natural Resources Services
Southern Ute 2002-217

OCT 15 2002

Mr. Bill Wilkinson
Timberline Land Company
701 Camino Del Rio, Suite 203
Durango, Colorado 81301

Dear Mr. Wilkinson:

We have reviewed the Limited-Results Cultural Resource Survey Forms for three proposed projects for BP America Production Company on Southern Ute Tribal lands in La Plata County, Colorado. Ms. Susan Barnett and Mr. Todd Folmer, Archeologists, Muukui-ci Cultural and Environmental Services, prepared the report forms dated July 11, 2002, and July 23, 2002. The three report forms cover the following projects:

Southern Ute Tribal/TT/#2 Well Pad, Access Road and Pipeline (MCES Report 2002-081)

Jefferies Gas Unit A #2 Well Pad, Access Road and Pipeline (MCES Report 2002-082)

Access to Repair a Pipeline in Section 13, T33N, and R7W (MCES Report 2002-094)

We understand that you also have copies of these report forms.

The reports, dealing with Southern Ute Tribal lands, state that no surface evidence of potentially significant cultural resources was encountered during the requisite field inspections. Because the Southern Ute Tribe reviewed and approved these reports prior to our review, we are confident that no areas of traditional religious or cultural importance to the Southern Ute Tribe will be impacted by the proposed activities. Therefore, we have determined that no historic properties will be affected by the proposed actions. We have notified the Colorado State Historic Preservation Officer of our determination and provided copies of these report forms for their files.

The proposed undertakings are in compliance with the provisions of Section 106 of the National Historic Preservation Act and may proceed under the following stipulations:

1. All land-altering activities shall be confined to the area surveyed for cultural resources, and the project sponsor shall control the action of its agents at the job site to ensure that any archaeological sites will not be disturbed or damaged. Site

disturbance or damage is a violation of the Archaeological Resources Protection Act (16 U.S.C. § 470ee) which prohibits the excavation, removal, damage, alteration or defacement, or attempt to excavate, remove, damage, alter or deface any archaeological resources [cultural resources] located on Federal or Indian lands. Both criminal and civil penalties may be assessed (16 U.S.C. §§ 470ee and 470ff) for violations.

2. If subterranean cultural resources are encountered, all land-altering activities shall cease within 50 feet of the discovery and the Southern Ute Tribe and the Regional Archeologist shall be notified immediately for consultation on the treatment of the discovery.

These stipulations must be followed or project suspensions will be issued. The responsibility of the project sponsor is to notify subcontractors of the project boundaries and stipulations. Any change in project boundaries will require additional survey and repetition of the compliance procedures.

This letter only serves as notification that National Historic Preservation Act Section 106 compliance has been completed for the subject project. It does not constitute approval of right-of-way or concurrence in the proposed activities by the Bureau of Indian Affairs (BIA). This compliance is one of several legal requirements that must be accomplished before BIA approval of rights-of-way, easements, or other land use contracts for land modifying projects.

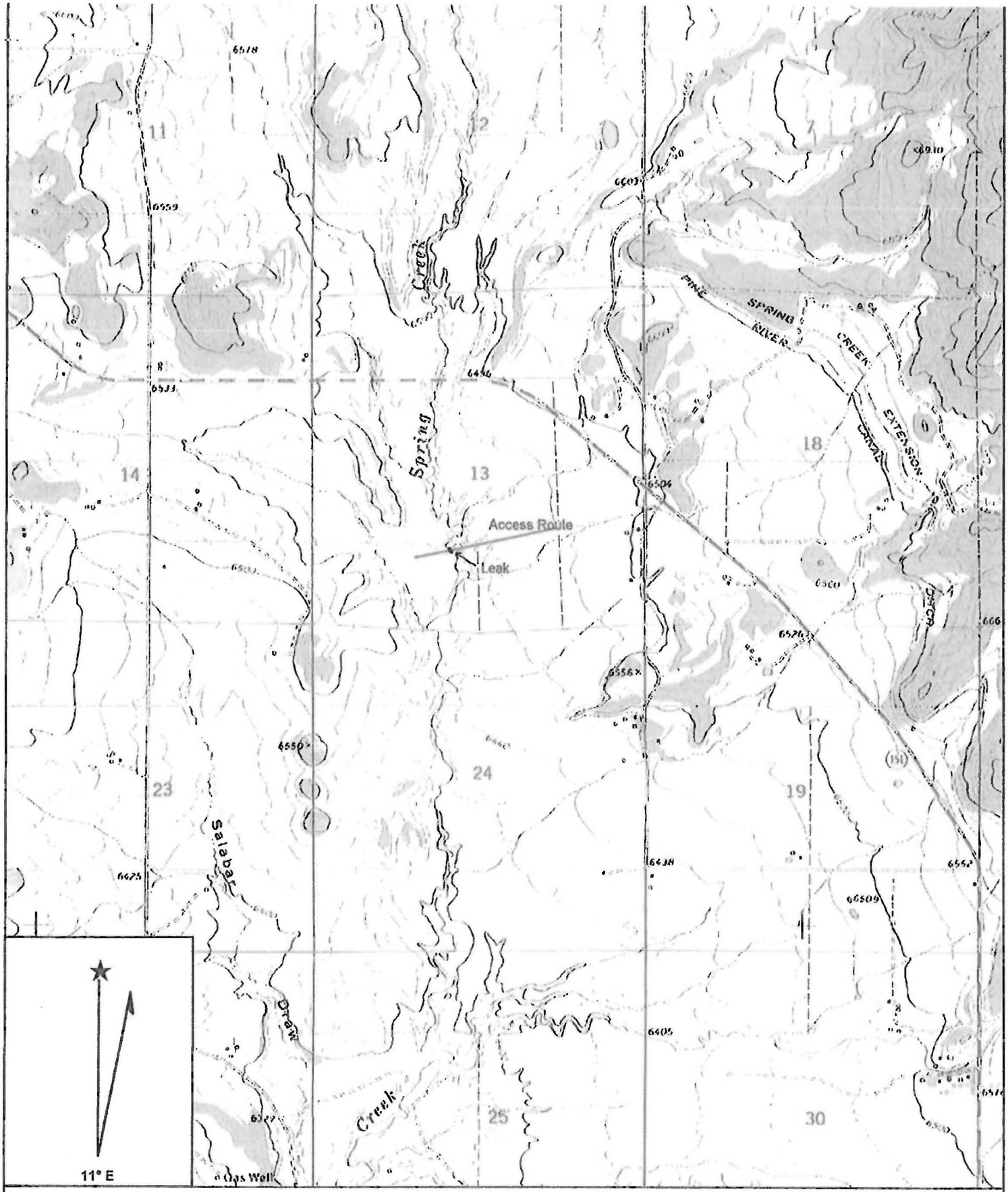
If you have any questions, please contact Dr. Bruce G. Harrill, Regional Archeologist, Natural Resources Services, at (505) 346-7111.

Sincerely,

John Woodard

ACTING Deputy Regional Director

cc: Superintendent, Southern Ute Agency, Attn: Realty
Mr. Jim Green, Colorado HPD w/reports
Ms. Susan Barnett, MCES
Natural Resources Department, Southern Ute Tribe ✓
Mr. Rex Richardson, Energy Department, Southern Ute Tribe



Name: TIFFANY
Date: 7/24/2002
Scale: 1 inch equals 2000 feet

Location: 13 272677 E 4108619 N
Caption: Access Route to Repair a Leak
T33N, R7W, Sec. 13; NMPM
La Plata County, Colorado

ARCHAEOLOGICAL CONSULTANTS

ROBERT W. BIGGS
303/259-1930

2803 MESA AVENUE
DURANGO, CO 81301

BIA-AAO Permit CRSA No. 87-1
Southern Ute Tribal Permit No. 89-35
A.C. Project Report No. 673d-u

MEMORANDUM

Date: July 3, 1989

To: John Montgomery, Bureau of Indian Affairs, Southern Ute Agency, Post Office Box 315, Ignacio, Colorado 81137

Hal Ozanne, United Teleplex, 2727 West 92nd Avenue, Denver, Colorado 80221

From: Robert W. Biggs, Director, Archaeological Consultants, 2803 Mesa Avenue, Durango, Colorado 81301

Subject: Cultural Resource Survey for Amoco Production Company's Proposed Southern Ute Gas Unit K No. 1, Southern Ute Gas Unit Z No. 1, Southern Ute Gas Unit BB No. 1, Southern Ute Tribal Y No. 1, Southern Ute Tribal X No. 1, Southern Ute Gas Unit M No. 1, Southern Ute Gas Unit P No. 1, Southern Ute Tribal L No. 1, Southern Ute Tribal F No. 1, Southern Ute Gas Unit R No. 1, Southern Ute Gas Unit N No. 1, Klusman A No. 1, Southern Ute Tribal V No. 1, Southern Ute Gas Unit O No. 1 Water Disposal And Gas Production Pipelines; the Southern Ute Salvadore Loop Pipelines; the Section 6U Segment of the East-West Medium Pressure Pipeline; and the Section 20 Segment of the East-West Medium Pressure Pipeline, Southern Ute Reservation, Colorado

Enclosed is the required number of copies of the reports for the cultural resource survey on the above projects conducted October 25 and November 8, 1988, and June 7, 1989. Reports were delayed until complete and corrected paperwork was received.

The surveyed areas are located on property under the jurisdiction of the Southern Ute Tribe, on privately owned property with minerals owned by the Southern Ute Tribe, and on allotted land. One Locus, L5LP2290, was encountered and recorded in conjunction with the Southern Ute Gas Unit Z No. 1 pipeline. The locus was avoided by rerouting the pipeline alignments approximately 75 feet to the west. No cultural resources are endangered by any of the proposed activities.

I hereby certify that the field work and report preparation were carried out by a qualified archaeologist and, to the best of my knowledge, meet the applicable Historic Preservation Laws and FEO 11593.

Robert W. Biggs
Director

Enclosures

cc: Howard Richards, Natural Resources Division, Southern Ute Tribe
Marvin Cook, Energy Resources Division, Southern Ute Tribe
Bruce Harrill, Area Archaeologist, Bureau of Indian Affairs, Albuquerque

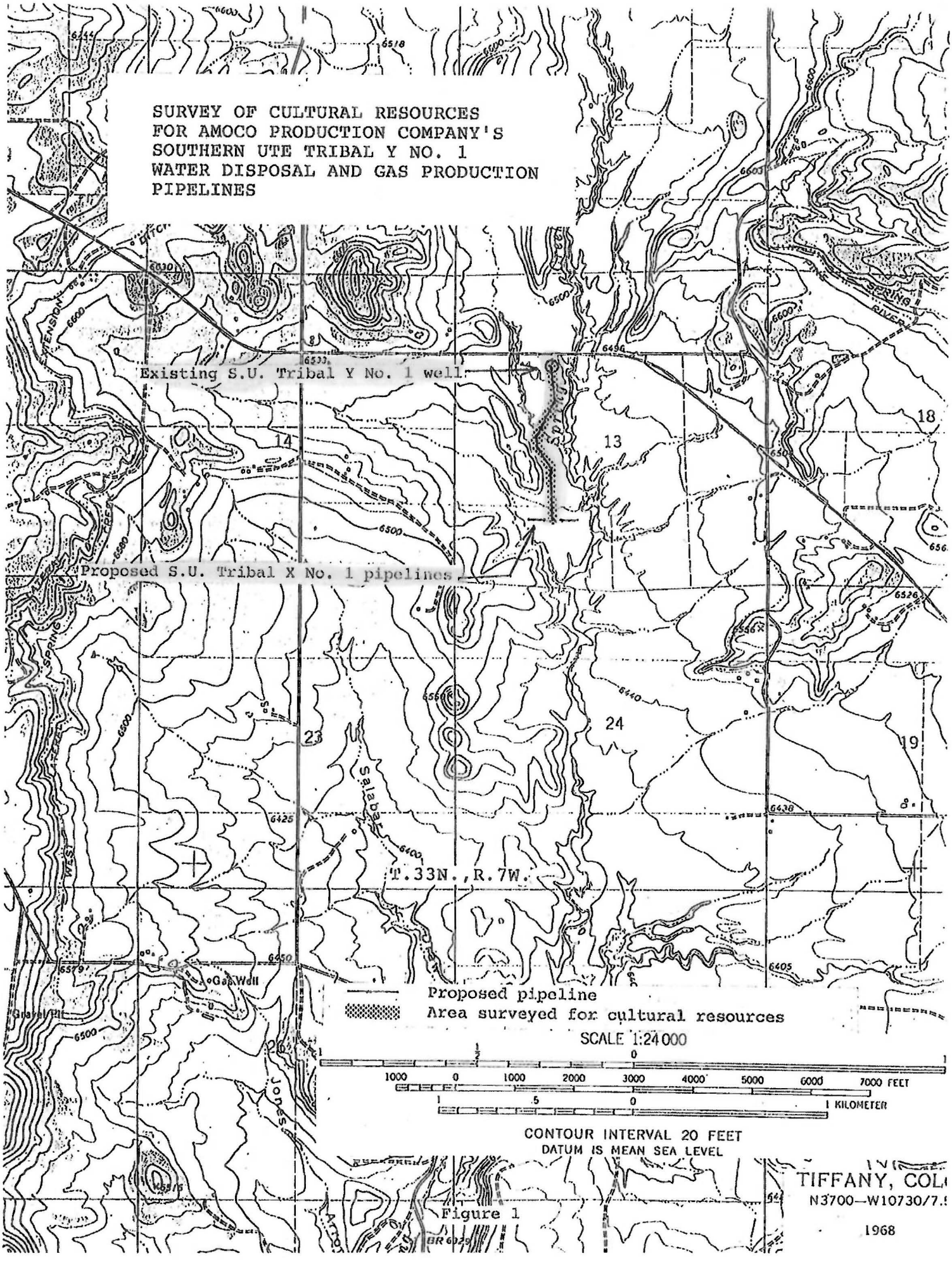

SURVEY OF CULTURAL RESOURCES
FOR AMOCO PRODUCTION COMPANY'S
SOUTHERN UTE TRIBAL Y NO. 1
WATER DISPOSAL AND GAS PRODUCTION
PIPELINES
Existing S.U. Tribal Y No. 1 well
Proposed S.U. Tribal X No. 1 pipelines
T.33N., R.7W.
Proposed pipeline
Area surveyed for cultural resources
SCALE 1:24 000
1000 0 1000 2000 3000 4000 5000 6000 7000 FEET
1 .5 0 1 KILOMETER
CONTOUR INTERVAL 20 FEET
DATUM IS MEAN SEA LEVEL
TIFFANY, COL
N3700—W10730/7.
1968

Figure 1

Exhibit 3

Declaration of Kara Hellige

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

REPLY TO
ATTENTION OF

June 20, 2013

Regulatory Division (SPK-2013-00327-DC)

Richard Stanley
BP America Production Company
380 Airport Road
Durango, Colorado 81301

Dear Mr. Stanley:

We are responding to your request for a Department of the Army permit for the BP Southern Ute Y#1 Lateral Leak project. This project involves activities, including discharges of dredged or fill material, in waters of the United States to repair a produced water pipeline. Activities within waters of the U.S. specifically involve the installation of a temporary access road, wetland restoration, and stream bank rehabilitation. The project is located on Spring Creek and within a tributary to Spring Creek within Section 13, Township 33 North, Range 7 West, New Mexico Principal Meridian, Latitude 37.1042209°, Longitude -107.56476°, La Plata County, Colorado.

Based on the information you provided, the proposed activity, resulting in the temporary impacts to approximately 0.022 acre of stream bed and 0.002 acre of wetlands, is authorized by Nationwide Permit Number 3. Your work must comply with the general terms and conditions listed on the Nationwide Permit information sheets and regional conditions found on our website listed below, and the following special conditions:

Special Conditions

1. To insure successful restoration of waters of the U.S., you shall submit to the Corps Durango Office a final monitoring report including photographs of all restored waters of the U.S. following the achievement of the performance standards provided within your preconstruction notification.

2. You must sign the enclosed Compliance Certification and return it to this office, along with post-construction photographs within 30 days after completion of the authorized work.

This verification is valid until March 18, 2017, when the existing Nationwide Permits are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified, reissued or revoked, you will have twelve (12) months from the date of the modification, reissuance or revocation of the NWP to complete the activity under the present terms and conditions. Failure to comply with the General and Regional Conditions of this Nationwide Permit, or the project-specific

Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We would appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey.*

Please refer to identification number SPK-2013-00327-DC in any correspondence concerning this project. If you have any questions, please contact me at the Durango Regulatory Office, 1970 E 3rd Ave., #109, Durango, Colorado 81301, email *Kara.A.Hellige@usace.army.mil*, or telephone 970-259-1604. For more information regarding our program, please visit our website at *www.spk.usace.army.mil/Missions/Regulatory.aspx.*

Sincerely,

Kara Hellige
Chief, Durango Office
Sacramento District

Enclosure
1) Compliance Certification
2) Maps and Plans

Copy Furnished without enclosure
Ms. Karen Hamilton, USEPA, 1595 Wynkoop St., Denver, Colorado 80202
Mr. Sal Valdez, SUIT, Water Quality Division, PO Box 737, Ignacio, Colorado 81137
Ms Cory Kindle, URS, 211 Rock Point Drive, Durango, Colorado 81301

COMPLIANCE CERTIFICATION

Permit File Number: SPK-2013-00327-DC; BP Southern Ute Y#1 Lateral Leak

Nationwide Permit Number: NWP 3

Permittee: Richard Stanley
BP America Production Company
380 Airport Road
Durango, Colorado 81301

County: La Plata

Date of Verification: June 20, 2013

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

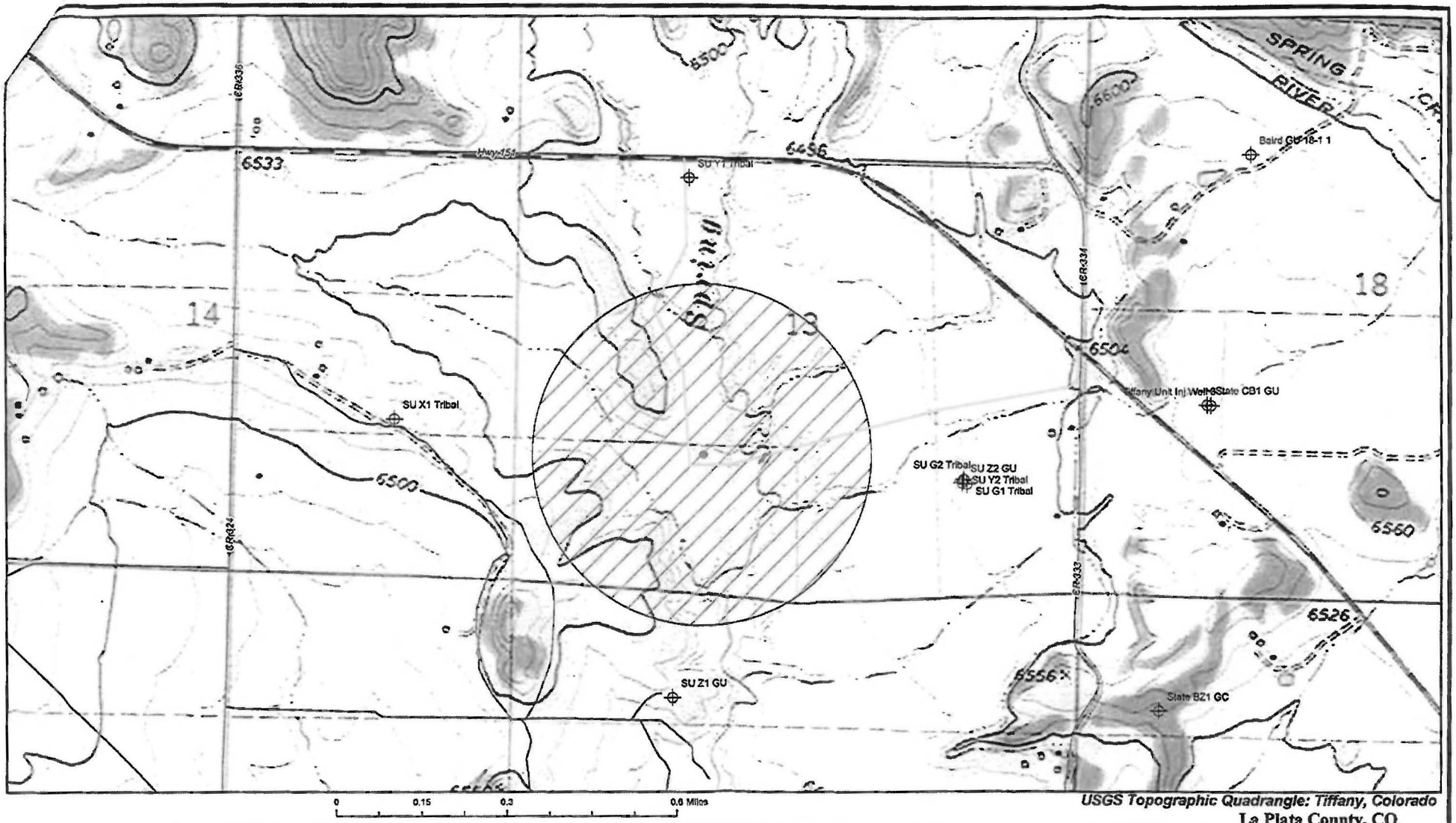
U.S. Army Corps of Engineers
Sacramento District
1970 E. 3rd Ave, #109
Durango, Colorado 81301
DLL-CESPK-RD-Compliance@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the Corps of Engineers.

* * * * * * * * *

I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.

_____ _____
Signature of Permittee Date



USGS Topographic Quadrangle: Tiffany, Colorado

La Plata County, CO

NOTE: Data presented on this map has been obtained or combined from data available from different sources, including data collected from field surveys conducted on multiple occasions by URS personnel. Outside data sources include the BLM, Client, Bing and the USGS.

Pictorial boundaries may change. Drought, precipitation and other natural events cause constant change to vegetation distribution, environmental conditions, and the resulting use by wildlife inhabitants. As such the information provided in this map is only valid for the time period in which it was obtained and transcribed. Moreover, the information's accuracy is, as presented, is only as accurate scale from which it was obtained. Care should be taken in interpreting these data. Written documents may accompany this map and should be referenced. The information portrayed on this map should not replace field studies necessary for more localized planning efforts. Data shown/points may/become apparent at scales different than those at which data was created. The areas portrayed here are graphic representations of phenomena that are difficult to reduce to two dimensions.

N
W E
S

* These data have not been verified or groundtruthed. Data are for representation purposes only, no survey has been accomplished to verify these boundaries

BP America Production Company
So Ute Y1 Lateral Leak
--Topographic Map--

Legend
- Active Well
- 10m Radius
- OHWM
- BP Well Facilities
- Access Route
- LPC Roadways

URS 211 Rock Point Drive Durango, CO 81301 970-426-7000	RECORDING
	Cartography By: MP
Sheet No. 1	Checked by: PJ
	BP_SoUteY1LateralLeak_TopoMap_12-0909MP

Exhibit 4

Declaration of Kara Hellige

PRELIMINARY JURISDICTIONAL DETERMINATION FORM
Sacramento District

This preliminary JD finds that there *"may be"* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Regulatory Branch: **Colorado West** File/ORM #: **SPK-2013-00327-DC** PJD Date: **June 20, 2013**

State: **CO** City/County: **, La Plata County**
Nearest Waterbody: **Spring Creek**

Location (Lat/Long): **37.1042209940748°, -107.564760358763°**

Size of Review Area: acres

Name/Address Of Property Owner/ Potential Applicant: **Richard Stanley**
BP America Production Company
380 Airport Road
Durango, Colorado 81301

Identify (Estimate) Amount of Waters in the Review Area
Non-Wetland Waters:
100 linear feet ft wide acre(s)
Stream Flow: **Perennial and Intermittent**

Wetlands: **0.002** acre(s) Cowardin Class: **Palustrine, emergent**

Name of any Water Bodies on the site identified as Section 10 Waters: Tidal: Non-Tidal:

☐ Office (Desk) Determination
☒ Field Determination:
Date(s) of Site Visit(s): **12 APR 2013**

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply – checked items should 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: **PCN**
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☐ Data sheets prepared by the Corps.
☐ Corps navigable waters' study.
☒ U.S. Geological Survey Hydrologic Atlas:
  ☐ USGS NHD data.
  ☒ USGS HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; CO-TIFFANY**
☐ USDA Natural Resources Conservation Service Soil Survey.
☐ National wetlands inventory map(s).
☐ State/Local wetland inventory map(s).
☐ FEMA/FIRM maps.
☐ 100-year Floodplain Elevation (if known):
☒ Photographs: ☒ Aerial ☐ Other
☐ Previous determination(s). File no. and date of response letter:
☐ Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and Date of Regulatory Project Manager (REQUIRED)

Signature and Date of Person Requesting Preliminary JD (REQUIRED, unless obtaining the signature is impracticable)

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:
1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.
2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.