

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

This form should be completed by following the instructions provided in
Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12/10/2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWW-RD-BOISE, Dry Creek AJD, NWW-2021-00411

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Idaho County/parish/borough: Murtaugh City: Twin Falls
Center coordinates of site (lat/long in degree decimal format): 42.475068° Lat.-114.147948° Long.
Universal Transverse Mercator: Zone 11T, Northing 4706439.23 **N**, Easting 734443.20 **E**

Name of nearest waterbody: Dry Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Snake River

Name of watershed or Hydrologic Unit Code (HUC): Upper Snake-Rock (17040212)

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form.

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

- Office (Desk) Determination. Date: 12/10/2021
- Field Determination. Date(s): [REDACTED]

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

- Waters subject to the ebb and flow of the tide.
- Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

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

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

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

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

Non-wetland waters: 1,932 linear feet; various, see Section(D)(ii) width (ft.) and/or 0.633 acres.

Wetlands: 0.92 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

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

Unnamed Ditch 1 is 0.002 acres (112 sqft.) in the review area and receives water from Dry Creek south of the study area. Once it enters the study area, it flows north for approximately 75 feet. Unnamed Ditch 1 is used to irrigate the agricultural field located west of the ditch and no outlet was identified. No hydrologic surface connection was identified to connect Dry Creek to Unnamed Ditch 1. The headgate to Unnamed Ditch 1 can manually stop irrigation water flow to the review area therefore the duration of flow is reduced to a non-relatively permanent water. Unnamed Ditch 1 of the Aquatic Resources Delineation Report dated August 5, 2021 was constructed within uplands. The USFWS national wetland inventory, USDA soil survey maps, USGS topographical maps and aerial imagery support the upland construction of the ditch and also support that the ditch drains only uplands, see Section IV(A) for document references.

Wetland 3 identified in the Aquatic Resources Delineation Report, dated August 5, 2021 is receiving hydrology from Unnamed Ditch 5. The National Wetlands Inventory and USDA Soil Surveys reports support the determination that an average of 10.4 inches of mean annual precipitation within Twin Falls area would not produce enough natural hydrology within the well-draining soils (i.e. Portneuf Silt Loam) to sustain Wetland 3, also the drainage area is limited for wetland 3 at approximately 2.88-acre. Wetland 3 is a confined aquatic resource as approximately 480 feet of uplands separate Dry Creek from Wetland 3. Hydrology at wetland 3 is not derived from Dry Creek as it is located above the top terrace of Dry Creek which is approximately 5-8 feet higher in elevation than Dry Creek. Hydrology from Unnamed Ditch 5 follows the hill slope to the southwestern portion of the flood irrigated pasture lands where Wetland 3 is confined by the E 3300 N and a residential house, no outlet to Dry Creek was identified during onsite field visits by Bionomics Environmental INC. The boundary of wetland 3 is dictated by site topography aggregating surface hydrology in depressional areas while the extent of the wetland does not reach Dry Creek due to the obstructions in the flow path such as the roadway and residential development. Non-hydric soils dominate the review area (i.e. Portneuf Silt Loam), that surround wetland 3. The hydric soils associated with wetland 3 are confined by depressional features which aggregate the surface hydrology applied to the site for flood irrigation practices. The Corps' Engineering Research and Development Center (ERDC) guidance generally recommends turning off irrigation for a year or more and installing piezometers to determine the source of hydrology for irrigation induced wetland(s). However, in this specific case, aerial imagery, precipitation data, soils mapping data, site topography, and irrigation practices provide sufficient information to determine that wetland 3 is irrigation induced. Wetland 3 is two separate wetland cells that total 0.22 acres in size.

Unnamed Ditch 5 identified in the Aquatic Resources Delineation Report, dated August 5, 2021 is piped and would not qualify as a tributary because it lacks an ordinary high water mark, defined in 33 CFR 328.3(e). However, the piped segment does not sever jurisdiction to downstream waters (e.g., Unnamed Pond 2).

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

³ Supporting documentation is presented in Section III.F.

adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: [redacted]

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

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

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

(i) **General Area Conditions:**

Watershed size: 20260 acres - 170402120303 Lower Dry Creek

Drainage area: 220.06 square miles

Average annual rainfall: 10 inches

Average annual snowfall: 18 inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 1-2 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1-2 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: N/A

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵:

- Unnamed Ditch 2 flows to Unnamed Pond 1 which flows to Dry Creek.
- Unnamed Ditch 3 flows to a confined topographic feature (swale) to Dry Creek
- Unnamed Ditch 4 flows to Dry Creek
- Unnamed Ditch 6 flows to Unnamed Ditch 5 to Unnamed Pond 2 to Dry Creek
- Unnamed Pond 1 flows to a confined topographic feature (Unnamed Ditch) to Dry Creek
- Unnamed Pond 2 flows to a confined topographic feature (Unnamed Ditch) to Dry Creek

Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural

Artificial (man-made). Explain: Unnamed Ditches (2, 3, 4, & 6) and Ponds (1 and 2) are upland constructed irrigation ditches and ponds. Hydrology is derived from the Snake River by redirecting flows to the Twin Falls Main Canal and then through various irrigation ditches, pipes and pumps to the review area aquatic resources.

Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: 2 feet

Average depth: 2 feet

Average side slopes: **2:1**

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete

Cobbles Gravel Muck

Bedrock Vegetation. Type/% cover:

Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Irrigation ditches with vegetated and denuded banks.

Presence of run/riffle/pool complexes. Explain: N/A

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 2-5 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: Flows are dictated by the irrigation systems which generally flow from April to October. Irrigation headgates and pumps restrict the amount of flow within the irrigation system for the unnamed ditches and ponds.

Other information on duration and volume: Flows occur from April to October

Surface flow is: **Confined**. Characteristics:

Subsurface flow: **Pick List**. Explain findings: N/A

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM⁶ (check all indicators that apply):

clear, natural line impressed on the bank

the presence of litter and debris

changes in the character of soil

destruction of terrestrial vegetation

shelving

the presence of wrack line

vegetation matted down, bent, or absent

sediment sorting

leaf litter disturbed or washed away

scour

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

- sediment deposition
- water staining
- other (list):
- Discontinuous OHWM.⁷ Explain:
- multiple observed or predicted flow events
- abrupt change in plant community:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- High Tide Line indicated by:
 - oil or scum line along shore objects
 - fine shell or debris deposits (foreshore)
 - physical markings/characteristics
 - tidal gauges
 - other (list):
- Mean High Water Mark indicated by:
 - survey to available datum;
 - physical markings;
 - vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: The water within the unnamed ditches has high sediment content due to returns from agricultural flood irrigation. Brown water color is common observed in ditch systems. Identify specific pollutants, if known: Agricultural pollutants (i.e. insecticides, herbicides, fertilizers, fungicides, livestock fecal matter)

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: Unnamed Ditch 4 has a 1-2 foot wide fringe PEM wetlands along the irrigation ditch.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.8 acres – Wetland 1 (abuts perennial RPW)

0.12 acres – Wetland 2 (abuts seasonal RPW)

Wetland type. Explain: Wetlands within the review area are disturbed due to agricultural practices such as grazing, ditch relocation, ditch burying, and herbicide application.

Wetland 1 is a palustrine scrub shrub (PSS) and palustrine emergent (PEM) wetland community which abuts Dry Creek and Unnamed Ditch 4 (see Appendix B, Suspected Jurisdictional Aquatic Resources Maps 1 and 2). Invasive species (i.e. Russian Olive) dominate the PSS sections of wetland 1. Wetland 2 is comprised of Palustrine emergent wetlands which abut the seasonally RPW (Unnamed Ditch 4).

Wetland quality. Explain: No functional assessment was conducted for the wetlands. Wetlands are degraded due to local agricultural practices (i.e. grazing, farming).

Project wetlands cross or serve as state boundaries. Explain: N/A

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Irrigation system which includes Unnamed Ditches 2, 3, 4, 6, Unnamed Ponds 1, and 2 all flow from approximately April-October. Flows are dictated by artificially manipulated systems (headgates, weirs, dams).

⁷Ibid.

Surface flow is: **Confined**

Characteristics: Flows are confined with excavated or constructed cement bottom channels that range from 0.5 to 4 feet in width. Vertical or 2:1 slope constructed bank confine flows from one irrigation user to the next.

Subsurface flow: **Pick List**. Explain findings: N/A

Dye (or other) test performed: N/A

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **1-2** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **2-year or less** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Palustrine Emergent wetlands are located along the banks or fringes of the irrigation ditches. Palustrine Scrub Shrub wetlands are located within the floodplain of Dry Creek. The 0.2 acres of wetlands should aid to reduce pollutants such as fertilizers and nitrogen, phosphorus, and other agricultural pollutants.

Identify specific pollutants, if known: Agricultural pollutants (i.e. insecticides, herbicides, fertilizers, fungicides, livestock fecal matter).

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain: 100% vegetative cover was present for Wetland 1 and Wetland 2. For vegetation composition see wetland data sheet W1P2 and W2P1 found within the ARDR dated August 4, 2021.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Wetland 1 provides woody cover and shading of Dry Creek. Wetland 1 provided habitat for species utilizing the riparian corridor. Wetland 2 provides herbaceous cover, forage and shading along the fringe of the Unnamed Ditch 4.

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

All wetland(s) being considered in the cumulative analysis: **2**

Approximately 0.92 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y	0.12		
Y	0.8		

Summarize overall biological, chemical and physical functions being performed: The wetlands perform minor flood retention value due to the artificially manipulated irrigation being controlled by headgates and dams. The wetlands within the review area would retain and utilize agricultural pollutants such as nitrogen, phosphorus, and settle sediments if overbank flows occur.

C. SIGNIFICANT NEXUS DETERMINATION

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

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

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

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

- 1. TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet; width (ft); or, acres.
 Wetlands adjacent to TNWs: acres.
- 2. RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Dry Creek receives water diverted from the Snake River

that flows through Murtaugh Lake for one mile before entering the review area. Outside of the study area, Dry Creek flows for an additional two miles where it reenters the Snake River. The section of Dry Creek within the review area is a perennial creek per USGS topographical maps, NWI maps, Stream Stats, and the National Hydrography Database.

Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Unnamed Ditches 2, 3, 4, & 6, Unnamed Ponds 1, & 2 carry relatively permanent flow, display an OHWM, bed, bank, and connect to a downstream traditionally navigable water. Unnamed Ditches 2, 3, 4, & 6, Unnamed Ponds 1, & 2 are tributaries. To provide consistency and clarity the naming convention provided in the Aquatic Resources Delineation Report, dated August 5, 2021 is carried forward to this AJD form.

Also, per the *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526 (9th Cir. 2001) the geographic jurisdiction of the U.S. Court of Appeals for the Ninth Circuit court held that irrigation canals that receive water from natural streams and lakes, and divert water to streams and creeks, are connected as "tributaries" to those other waters. Unnamed Ditches 2, 3, 4 and 6 as well as Unnamed Ponds 1 and 2 receive water from and divert water to the Snake River, a navigable water under Section 10 of the Rives and Harbors Act up to river mile 445.5.

Unnamed Ditch 2 occupies 0.007 acres (337 sqft.) of the review area and receives water from the Snake River through the Twin Falls Main Canal and then through various pipes and unnamed ditches. Unnamed Ditch 2 flows to Unnamed Pond 1 which discharges to Dry Creek and back to the Snake River. Unnamed Ditch 2 flows seasonally from April through October. Although Unnamed Ditch 2 was constructed within uplands, it carries relatively permanent flow into navigable waters of the US. Additionally, per *Headwaters Inc. vs Talent Irrigation District*, the 0.007 acres of Unnamed Ditch 2 is determined to be a tributary, more specifically a seasonal RPW, because it receives water from natural streams and diverts water to streams, per *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526 (9th Cir. 2001). The National Wetland Inventory, USDA Soil Survey, USGS Topographical maps and aerial imagery support the upland construction of Unnamed Ditch 2, see Section IV(A) for document references.

Unnamed Ditch 3 occupies 0.003 acres (170 sqft.) of the review area and receives water from the Snake River via Twin Falls Main Canal to Unnamed Ditch 4 which is piped under US-30. After flowing through the review area the Unnamed Ditch 3 flows to the northwest for approximately 250 feet and continues outside of the review area where it reconnects to Dry Creek. Unnamed Ditch 3 has relatively permanent flows that are seasonal during the irrigation season from April through October when the headgate is open. No flows were observed at the time of the June 28, 2021 site visit conducted by the consultant, however aerial imagery indicate a topographically confined feature provides hydrologic surface connection outside the review area to Dry Creek. Unnamed Ditch 3 is a ditch lateral intended to provide irrigation water to pasture lands. Although Unnamed Ditch 3 was constructed within uplands it receives and connects to waters of the US, per *Headwaters Inc. vs Talent Irrigation System*. Therefore the 0.003 acres of Unnamed Ditch 3 is determined to be a seasonal RPW. The National Wetland Inventory maps, USDA soil survey, USGS topographical maps, and aerial imagery support the upland construction of Unnamed Ditch 3, see Section IV(A) for document references.

Unnamed Ditch 4 receives water from the Snake River via Twin Falls Main Canal located 170 feet east of the study area. Water from the canal is pumped underground and enters Unnamed Ditch 4 via pipe. Unnamed Ditch 4 flows west for approximately 895 feet. The ditch is then piped under an access road for approximately 50 feet, then flows as open water for an additional 150 feet and enters Dry Creek. Unnamed Ditch 4 is a relatively permanent water flowing seasonal, from April through October. Although Unnamed Ditch 4 was constructed within uplands it receives and connects to waters of the US, per *Headwaters Inc. vs Talent Irrigation System*. Therefore the 0.06 acres of Unnamed Ditch 4 is determined to be a seasonal RPW. The National Wetland Inventory maps, USDA soil survey, USGS topographical maps, and aerial imagery support the upland construction of Unnamed Ditch 4, see Section IV(A) for document references.

Unnamed Ditch 6 receives water from the Snake River via Twin Falls Main Canal and unnamed ditches outside the review area. Unnamed Ditch 6 flows to Unnamed Ditch 5 and then through Unnamed Pond

2 until discharging into Dry Creek. Unnamed Ditch 6 has relatively permanent season flows, from April through October. Although Unnamed Ditch 6 was constructed within uplands it receives and connects to waters of the U.S., per Headwaters Inc. vs Talent Irrigation System. Therefore the 0.01 acres of Unnamed Ditch 6 is determined to be a seasonal RPW. The National Wetland Inventory maps, USDA soil survey, USGS topographical maps, and aerial imagery support the upland construction of Unnamed Ditch 4, see Section IV(A) for document references.

Unnamed Pond 1 receives water from the Snake River via Twin Falls Main Canal and Unnamed Ditch 2. Flows from Unnamed Pond 1 flow south and reenter Dry Creek which flows downstream to the Snake River, a TNW. Unnamed Pond 1 has seasonal relatively permanent flows, from April through October. Although Unnamed Pond 1 was constructed within uplands it receives and connects to waters of the U.S., per Headwaters Inc. vs Talent Irrigation System. Therefore the 0.46 acres of Unnamed Pond 1 is determined to function as a seasonal RPW. The National Wetland Inventory maps, USDA soil survey, USGS topographical maps also support the upland construction. Unnamed Pond 1 is located to the west of Dry Creek at the top of the natural stream terrace which is approximately 5-8 feet higher in elevation above Dry Creek.

Unnamed Pond 2 receives water from the Snake River via Twin Falls Main Canal that then flows into Unnamed Ditch 6, which flows to Unnamed Ditch 5 and into Unnamed Pond 2. Flows from Unnamed Pond 2 flow northwest and enter Dry Creek which flows to a downstream TNW. Unnamed Pond 2 has relatively permanent season flows from April through October. Although Unnamed Pond 2 was constructed within uplands it receives and connects to waters of the U.S., per Headwaters Inc. vs Talent Irrigation System. Therefore the 0.02 acres of Unnamed Pond 2 is determined to function as a seasonal RPW. The National Wetland Inventory maps, USDA soil survey, USGS topographical maps also support the upland construction of Unnamed Pond 2. Unnamed Pond 2 is located to the east of Dry Creek at the top of the natural stream terrace which is approximately 5-8 feet higher in elevation above Dry Creek.

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

- Tributary waters: Unnamed Ditch 2: 337 linear feet; 1 width (ft).
Unnamed Ditch 3: 170 linear feet; 1 width (ft).
Unnamed Ditch 4: 895 linear feet; 3 width (ft).
Unnamed Ditch 6: 140 linear feet; 2 width (ft).

- Other non-wetland waters: 0.48 acres.

Identify type(s) of waters: Unnamed Ponds 1 and 2 are sections of irrigation system that were widen and reduced the slopes to encourage livestock watering.

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

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

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

- Tributary waters: linear feet; width (ft).
- Other non-wetland waters: acres.

Identify type(s) of waters:

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

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

- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Aquatic Resources Delineation Report dated August 4, 2021 found Wetland 1 (0.8 acres) to abut Dry Creek and Wetland 2 (0.12 acres) to abut Unnamed Ditch 4. The June 28, 2021 onsite review conducted by Biomonic's Inc. found wetland 1 to abut Dry Creek and the onsite review of wetland 2 found it to abut Unnamed Ditch 4. Aerial imagery and photos taken during the onsite review confirm no uplands separate the wetland boundary from the tributary resources.

⁸See Footnote # 3.

- Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Aquatic Resources Delineation Report dated August 4, 2021 found Wetland 2 (0.12 acres) to abut Unnamed Ditch 4. The June 28, 2021 onsite review conducted by Biomonic’s Inc. found wetland 2 to abut Unnamed Ditch 4. Aerial imagery and photos taken during the onsite review confirm no uplands separate the wetland boundary from the tributary resources.

Provide acreage estimates for jurisdictional wetlands in the review area: Wetland 2 is 0.12 acres.

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

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

Provide acreage estimates for jurisdictional wetlands in the review area: _____ acres.

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

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

Provide estimates for jurisdictional wetlands in the review area: _____ acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED WATERS [INTERSTATE OR INTRA-STATE], INCLUDING ISOLATED WETLANDS THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain:
- Other factors. Explain:

Identify water body and summarize rationale supporting determination:

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

- Tributary waters: _____ linear feet; _____ width (ft).
- Other non-wetland waters: _____ acres.
Identify type(s) of waters:
- Wetlands: _____ acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

(check all that apply):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction.
Explain:
- Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

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

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

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

SECTION IV: DATA SOURCES

A. SUPPORTING DATA

Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Aquatic Resources Delineation Report, Dry Creek Bridge, Twin Falls County, Project No. A022(245), dated August 4, 2021
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Twin Falls, ID Quadrangle topographic map, dated 1955, Scale 1:125K; Twin Falls Quadrangle topographic map, dated 1955, Scale 1:125K; Murtaugh, ID Quadrangle topographic map, dated 2020
- USDA Natural Resources Conservation Service Soil Survey. Citation: Appendix E, Aquatic Resources Delineation Report, Dry Creek Bridge, Twin Falls County, Project No. A022(245), dated August 4, 2021
- National wetlands inventory map(s). Cite name: Appendix D, Aquatic Resources Delineation Report, Dry Creek Bridge, Twin Falls County, Project No. A022(245), dated August 4, 2021
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth (July 29, 1992; April 18, 2010, April 27, 2015, June 3, 2016)
 - or Other (Name & Date): Pages 8-18, Aquatic Resources Delineation Report, Dry Creek Bridge, Twin Falls County, Project No. A022(245), dated August 4, 2021
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): StreamStats Report and PROSPER map, dated August 6, 2021

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B. ADDITIONAL COMMENTS TO SUPPORT JD: All determination are limited to the section of the aquatic resource(s) within the review area.

The OHWM was determined in accordance with the OHWM in the Arid West Region of the Western United States (USACE, 2008b).