

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): XXXX

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWW-2021-00468, Fearn- Canyon Canal Wetland Conversion

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Idaho County/parish/borough: Canyon City: Middleton
Center coordinates of site (lat/long in degree decimal format): 43.70527° Lat.-116.5920° Long.
Universal Transverse Mercator: Zone 11, Northing 4839220.41 N, Easting 532867.94 E
Name of nearest waterbody: Canyon Canal
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Boise River
Name of watershed or Hydrologic Unit Code (HUC): 170501140410; Mill Slough -Boise River
 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: 2019-08-12, 2022-03-07
- Field Determination. Date(s): May 30, 2019

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

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

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. Waters of the U.S.

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

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

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: [] linear feet; [] width (ft.) and/or [] acres.

Wetlands: [] acres.

c. Limits (boundaries) of jurisdiction based on:

Elevation of established OHWM (if known):

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

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

Explain: The review area consists of a residential parcel located northeast of State Highway 44 and Duff Lane, east of the town of Middleton. The property and general setting is located within the Mill Slough Sub-watershed to the Boise River, and land-uses within the area have been historically utilized for agricultural practices with a general transitioned to low density residential/homestead uses. Potentially jurisdictional features are limited to an emergent wetland depression within the property. This feature extends outside of the review area and portions within the adjacent property were previous determined non-jurisdictional and associated with NWW-2019-00263.

The delineated resource within the review is approximately 0.7 acres of a 1.7-acre wetland depression. At one point in time, this resource was part of the Canyon Canal which likely utilized natural depression and swales upon construction, (USGS Middleton Quadrangle 7.5-minute, Rev. 1971). However, the canal was relocated to the south at an unknown date. Remaining portions of the old alignment were also filled in at an unknown date (Between 1992 and 2002) effectively isolating the remnant channel from the new alignment. The Canyon Canal remains the closest feature (RPW) to delineated wetland and is separated by upland fills/ pasture by approximately 250-300 linear feet.

On May 30, 2019, USACE personnel completed a wetland delineation of this parcel and the adjacent property (NWW-2019-00263), including a full survey of the 2-acre complex for surficial connection to include culverts in or out of the wetland depression. The relative elevation of the wetland was approximately 5-6 feet below much of the surrounding landscape. Areas adjacent to this waterline at similar elevation were dominated by various rushes (i.e., spike rush, cattails, etc.) ranging from "OBL" to "FAC". Soils in these areas also had evidence of redox. The transition to uplands was abrupt and controlled by elevation. Hydrology appears to be controlled by a seasonal high water table during irrigation season and augmented by flood irrigation from unnamed user ditches within adjacent parcels when and if it occurs (not every year). This wetland is a receiving system which does not have an outlet to other waters.

The nearest TNW to wetlands within the property would be the Boise River, which is approximately 0.90 miles to the southwest at its closest point (as the crow flies). The nearest RPW is the Canyon Canal, which currently flows approximately 250-300 feet to the south. Therefore, it was determined that the wetland does not abut but was adjacent to an RPW, and a significant nexus determination is considered and further described in Section III C. It has been determined that this wetland does not have a significant nexus to a downstream TNW.

In addition, the current use, past use, or susceptible use in interstate or foreign commerce has been considered, evaluated, and determined that no reasonable contribution to current, past, or future interstate or foreign commerce occurs within the wetlands. Per 33 CFR 328.3(a)(3)(i-iii), the evaluation included recreational activities, fish and shellfish production, industrial uses, and other uses. As described above, the wetlands have been isolated from downstream connectivity and are only filled throughout irrigation practices on the surrounding private properties. There is no evidence that these wetlands provide reasonable migratory bird habitat nor furbearer habitat. There is no documented recreation, including bird watching, hunting, or trapping within the wetlands. Also, no fish production, shellfish production or industrial uses are documented within the wetlands.

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW

Identify TNW: [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: 40533 acres

Drainage area: Unknown, Season RPW is a controlled feature utilized for irrigation. Wetland

Resources within the review area is a closed basin.

Average annual rainfall: 12 inches

Average annual snowfall: 20 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

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

- Tributary flows directly into TNW.
- Tributary flows through 1 tributaries before entering TNW.

Project waters are **2-5** river miles from TNW.
 Project waters are **1 (or less)** river miles from RPW.
 Project waters are **1 (or less)** 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

Identify flow route to TNW⁵: The feature is an irrigation feature with multiple diversions and potential flow paths to a TNW. The shortest plausible route would be the Canyon Canal flowing west past to the review area before discharging return flow into the Mill Slough, which is a tributary to the Boise River
 Tributary stream order, if known: N/A

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

- Tributary is:** Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: The Canyon Canal is an irrigation feature

which has been constructed, relocated and maintained since establishment

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

Average width: 15 feet
 Average depth: 5 feet
 Average side slopes: **3:1**

Primary tributary substrate composition (check all that apply):

- Silts
- Sands
- Concrete
- Cobbles
- Gravel
- Muck
- Bedrock
- Vegetation. Type/% cover: Estimated to be reed canary grass and

other vegetation typical of irrigation canals in the area. A survey was not completed in Canyon Canal, but a survey was conducted in adjacent wetlands; see below for more details on the vegetation found in that area.

Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Canyon Canal is an irrigation feature maintained by Canyon County Water Co.; therefore, it is expected to have a roughly trapezoidal form and have flow strictly managed (i.e., limited if any flooding/floodplain, no flows in irrigation off-season)

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

Tributary geometry: **Relatively Straight**

Tributary gradient (approximate average slope): 0.17 % (Drops approximalty 45 feet in elevation over approximalty 22,500 linear feet).

(c) Flow:

Tributary provides for: **Seasonal Flow**

Estimate average number of flow events in review area/year: **Multiple, however 1 primary event during irrigaiton season.**

Describe flow regime: Flows are expected to be consistent in Canyon Canal from April through October as dictated by irrigation districts.

Other information on duration and volume: The volume is unknown but expected to remain relatively consistent throughout irrigation season (i.e., is managed by the irrigation districts according to appropriated water rights.

Surface flow is: **Discrete and confined.** Characteristics: Flow is likely to remain relatively constant throughout irrigation season of April through October, ceasing altogether during the irrigation off-season.

Subsurface flow: **Unknown.** Explain findings: Landowners claim that water in the wetland on their property appears and recedes with the irrigation season, inferring a likely influence by regional irrigation practices. Canal seepage such as the Canyon Canal, generally contribute to elevated water tables, however it is unknown if it directly contributes to the wetland given its distance of approximately 250-300 linear feet.

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.

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
 - changes in the character of soil
 - shelving
 - vegetation matted down, bent, or absent
 - leaf litter disturbed or washed away
 - sediment deposition
 - water staining
 - other (list):
- Discontinuous OHWM.⁷ Explain:

- the presence of litter and debris
- destruction of terrestrial vegetation
- the presence of wrack line
- sediment sorting
- scour
- 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: Turbidity is variable depending on the inputs from a multitude of upstream activities.

Identify specific pollutants, if known: Unknown, however aquatic features such as this generally are affected by agricultural pollutants.

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: Generally observed to be reed canary grass and other vegetation typical of irrigation canals in the area. A survey was not completed in Canyon Canal, but a survey was conducted in adjacent wetlands; see below for more details on the vegetation found in that area.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: Potential habitat for waterfowl, amphibians, and other species typically found near irrigation features.

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: 1.7 acres

Wetland type. Explain: Palustrine Emergent Wetlands

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.

⁷Ibid.

Wetland quality. Explain: Common. Wetlands consist of common emergent wetlands consisting of Bullrush and cattails at the lowest point and Reed Canary Grass along the fringe. Active management such as mowing and burning appear to be absent given the maturity of the vegetation.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **No Flow**. Explain: The wetland is a closed basin that is supported by seasonal high water tables (irrigation season), and potentially from unnamed user ditches to the wetland.

Surface flow is: **Not Present**

Characteristics:

Subsurface flow: **Unknown**. Explain findings: Property owners state that the wetland water level recedes when irrigation flows cease.

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain: Wetland is a depressional feature historically serving as the Canyon Canal, which was relocated to the South at an unknown date. The wetland is located 300 feet away however it is assumed remaining portions of the old alignment were filled between 1992 and 2002 by previous property owners (based on satellite imagery).

(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: **No Flow**.

Estimate approximate location of wetland as within the **100–500-year** 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: Water is mildly turbid to clear

Identify specific pollutants, if known: Unknown

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain: Various rushes, cattail, curly dock, spike weed, veronica, wild rye, dandelion, clover, and unknown grasses (mowed); vegetation was densely present in water below water mark.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: General Habitat for waterfowl, amphibians, and other species typically found near irrigation features.

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

All wetland(s) being considered in the cumulative analysis: **2, Wetland are limited to abutting emergent fringe along the Canyon Canal, and the adjacent emergent wetland discussed above.**

Approximately 2.25 acres in total are being considered in the cumulative analysis. The adjacent wetland within the property and approximately 10 linear feet of emergent wetland fringe running along the canal within the assessed reach (0.8 miles)

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y	0.5		
N	1.7		

Summarize overall biological, chemical, and physical functions being performed: The overall function of wetland abutting and adjacent to the RPW (Canyon Canal) are limited to general function of nutrient uptake by vegetation, general habitat for birds and amphibians, and general contributions to shallow aquifers.

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: A site assessment identified several unnamed user ditches constructed in uplands of various construction methods (earthen/concrete) within the review area. These features are intermittently engaged for flood irrigation; however, they are not perennial and are controlled by the property owners. They are located south and west of the wetland area, elevated above the wetland, and do not contain a direct connection. On the eastern edge of the wetland, there is another elevated user ditch that runs adjacent to the wetland that apparently was recently modified to be able to

discharge into the wetland along the property boundary. This unnamed user ditch was not flowing at the time of the delineation, which was during the irrigation season. If used at all, this eastern unnamed user ditch is expected to minimally contribute hydrology in the wetland. No other potential sources of hydrology were identified. According to the property owner, the wetland goes dry when adjacent irrigation resources are “turned off” for the season (between October and April), and water returns with the return of irrigation flows in the spring, which indicates a wetland influenced by a seasonally high-water table (i.e., groundwater influence). Considering the above information, the wetland may receive limited, occasional surficial input from the RPW, but discharges from the wetland to any waters of the U.S would not be possible.

The assessment reach of the RPW (Canyon Canal), for which this wetland is adjacent, entails approximately 0.80 miles between the upstream confluence of the Canyon Canal and the McHenry Lateral downstream to where the Canyon Canal joins the Mill Slough. A determination of stream order was not concluded, on account of irrigation systems having numerous, complex diversions that do not necessarily follow the pattern of a natural stream system. The wetland in this determination is the only non-abutting aquatic resource identified.

Canyon Canal has approximately 0.5 acres of abutting emergent wetlands within this reach (an average of 10 feet of wetland fringe per linear foot) and has the capacity to carry pollutants or nutrients to the Boise River during the irrigation season (it is assumed that flows are not present during the irrigation off-season of October through April, as described by the landowner). The adjacent wetland may receive some irrigation water from the user ditch within the property, however it is not consistently applied. It is presumed that some of the general pollutants within the Canyon Canal could be carried to the cell to act as a sink, however there is no more than a speculative and insubstantial effect that it could have to the downstream TNW.

Physically this wetland is separated by roughly 300 feet and are at equal elevations on average. Due to the seasonal flow of Canyon Canal and seasonal inundation of the adjacent wetland, neither resource offers fish habitat. This feature is also not an Assessed System for IDEQ’s integrated report however the Mill Slough is listed as not supporting beneficial uses. The adjacent wetland is separated from Canyon Canal by agricultural development (crops and corrals) and residential uses, which severely inhibits or severs ecological connectivity between these resources.

Given the above factors, such as lack of consistent surficial connection to the wetland, no connection from the wetland to the RPW, the absence of common functions such as floodplain storage or specific habitat, and a minor plausible effect to reducing nutrients or sedimentation as a sink, it is determined that there is **not a significant nexus** between this wetland and the adjacent RPW, Canyon Canal, which is a tributary to a TNW, the Boise River.

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

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

- TNWs: linear feet; width (ft); or, acres.
- Wetlands adjacent to TNWs: acres.

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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

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

Identify type(s) of waters:

3. Non-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:
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:Provide acreage estimates for jurisdictional wetlands in the review area: acres.

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

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are 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.

⁸See Footnote # 3.

⁹To 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.

Identify type(s) of waters:

- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

(check all that apply):

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

Explain: No outlet was observed for the entire wetland area, though there had historically been an outlet draining the wetland to the south up until at least 1992, which was plugged sometime between 1992 and 2002 (according to Google Earth satellite imagery accessed June 24, 2019). Additionally, while the wetland has been observed by landowners to dry up during the irrigation off-season (i.e., are likely influenced by irrigation features), there is no evidence that the wetlands release this water directly into Canyon Canal, an RPW that connects to the Boise River, which is a TNW. Furthermore, the wetlands are disconnected from the Boise River by nearly a mile and are disconnected from Canyon Canal by 300 feet of crops or stock corrals; no significant ecological connection is evident. Therefore, as there is no known connection to either Canyon Canal or the Boise River directly, the wetlands present no more than a speculative effect on the chemical, biological, and physical integrity of the Boise River.
- 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: 0.7 acres.

SECTION IV: DATA SOURCES

A. SUPPORTING DATA

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: May 30, 2019, for adjacent property which has portion of wetland
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data. Accessed March 7, 2022
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Middleton Quadrangle (7.5 minute, Rev. 1971)

- USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Web Soil Survey for Canyon County, Idaho
- National wetlands inventory map(s). Cite name: USFWS National Wetland Inventory Mapper
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth satellite imagery (1992-2018)
or Other (Name & Date): EVWHS Digital Globe satellite imagery (2015-2019)
- Previous determination(s). File no. and date of response letter: NWW-2019-00263; AJD issued June 16, 2020
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: On April 27, 2020, USACE completed an AJD (DA No.: NWW-2019-00263) for the remaining 1.0 acres of wetlands on this site, reaching the determination that the wetlands in that parcel were not a WOTUS. The wetlands considered in this evaluation are physically connected to the wetlands previously evaluated, separated from them only by a property line which prevented the inclusion of the wetlands in this evaluation from being considered in the previous evaluation, as the landowner for this evaluation had not yet provided permission to determine jurisdiction on their property. Based on the information provided in this evaluation as well as the determination previously reached for abutting wetlands, it has been determined that the aquatic resources found within the review area are not jurisdictional under Section 404 of the Clean Water Act.