

**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):** February 11, 2022

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CENWW-RD-BOISE, MIDDLETON RD REALIGNMENT  
AJD, NWW-2019-00298

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Idaho County/parish/borough: Canyon City: Middleton  
Center coordinates of site (lat/long in degree decimal format): 43.699029° Lat. -116.60286° Long.  
Universal Transverse Mercator: Zone 8, Northing 4 **N**, Easting 2 **E**

Name of nearest waterbody: Boise River

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

Name of watershed or Hydrologic Unit Code (HUC): 17050114

- 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: February 11, 2022
- 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):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (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

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

<sup>2</sup> 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:

Watkins ditch 120 linear feet; 8 width (ft.) and/or 0.02 acres.

Wetlands: Palustrine Scrub shrub wetlands, abutting, Boise River, 0.22 acres.  
Palustrine Forested wetlands, non-abutting, Boise River, 0.04 acres.  
Palustrine Scrub shrub wetlands, non-abutting, Boise River, 0.06 acres.  
Palustrine Emergent wetlands, non-abutting, Boise River, 0.03 acres.  
Palustrine Emergent wetlands, non-abutting, Boise River, 0.15 acres  
Palustrine Emergent wetlands abutting Watkins Ditch 0.04 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):<sup>3</sup>**

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

**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: Boise River

Summarize rationale supporting determination:

The Boise River is a perennial traditionally navigable waterway which is located outside the review area. USGS topo maps and the National Hydrography database display the Boise River as a perennial waterway. USGS gauge (13210050, Boise River NR Middleton, ID) found the mean monthly flow to exceed 250 cubic feet per second on the Boise River year-round. USGS PROSPER analysis estimate the streamflow as a value of 5 indicating the highest probability that the waterway has permanent flow year-round. USGS StreamStats predicts the 7 day 10 year low flow value as 129 cubic feet per second. However, the USGS StreamStats tool does not account for the alterations in hydrology due to man-made dams (i.e. Lucky Peak, Arrowrock, and Anderson Ranch reservoirs) that artificially regulate stream flow on the Boise River. The Boise River has historically been a traditional navigable water providing commerce for fur trading, mining, and farming activities. Currently the Boise Rivers primary use is for recreational navigation in the form of non-motorized vessels floating the river. More than 100,000 visitors annually float sections of the Boise River, according to the Ada County Parks and Waterway website (<https://adacounty.id.gov/parksandwaterways/float-the-boise-river/>). Local fishing guides (i.e. Idaho Angler) provide guided fishing tours of the Boise River. Various non-motorized boat ramps are located on the Boise River (i.e. Barber Park, Ann Morrison Park, Willow Lane River Access) providing access to non-motorized boaters.

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

Roadside Drainage Area 1 is comprised of 0.22 acres of Palustrine Scrub Shrub (PSS) wetlands that abuts the Boise River. National Wetland Inventory (NWI) Map identifies Palustrine Forested (PFO) wetlands abutting the Boise River which connect to the delineated Palustrine Scrub Shrub (PSS) wetlands. USGS topo maps (dated 1958 and 2020) display a wetland complex abutting the Boise River for more than 1000 linear feet. The PFO wetlands and the PSS wetlands areas are classified as the same soil type (e.g. Moulton Loam) per the USDA soil survey maps. Moulton Loam has as a slow infiltration rate which

<sup>3</sup> Supporting documentation is presented in Section III.F.

consists of soils of moderately fine texture, these soils have a slow rate of water transmission. Various aerial images display a contiguous vegetative community abutting the Boise River to the delineated PSS wetlands, see Section IV below for aerial imagery references.

Roadside Drainage Area 2 is comprised of 0.28 acres of wetland complex (0.04 acres Palustrine Forested wetlands, 0.06 acres Palustrine Scrub shrub wetlands, 0.18 acres Palustrine Emergent wetlands) that has neighboring adjacency to the Boise River. The Roadside Drainage Area 2 wetland complex is inundated from high groundwater levels associated with the Boise River, per the Aquatic Resources Delineation Report, dated November 2021. The Roadside Drainage Area 2 wetland complex was inundated during the June 24, 2021 site visit when flows on the Boise River were reduced to 220 cubic feet per second (cfs) from the 2000 cfs flows that were recorded weeks prior at the USGS gauge (13211205). Water from the Boise River percolates through the soils to provide the seasonal hydrology to the wetland complex. The Roadside Drainage Area 2 wetland complex is separated by approximately 170 linear feet of uplands from the ordinary high water mark of the Boise River. The Roadside Drainage Area 2 wetland complex is at an equal or lower elevation than the Boise River. The non-abutting wetland complex was delineated with a 0.15 acre seasonally ponded section of PEM wetland within the center of the complex. Although the delineation included an ordinary high water mark for the seasonally flooded portion of the wetland complex, the 0.15 acres section of seasonally flooded wetland is not considered a ponded feature and functions as a wetland for the majority of the year. See Section IV for imagery supporting this determination.

**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 waterbody<sup>4</sup> 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: <1 square mile – Watkins Ditch
- Drainage area: <1 square mile – Watkins Ditch
- Average annual rainfall: 10 inches
- Average annual snowfall: 16 inches

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

**(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 (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: Watkins Ditch does not cross the Idaho state boundary.

Identify flow route to TNW<sup>5</sup>:

The section of the Watkins Ditch (seasonal RPW) found within the review area flows for 0.66 miles before entering the Mill Slough (perennial RPW) which flows for 0.63 miles until it flows into the Boise River. Irrigation waters diverted to the Watkins Ditch come from the Lawrence Kennedy Canal (Lat. 43.699671° Long -116.565227°) which diverts water from the Boise River.

Tributary stream order, if known: The stream order of the Watkins Ditch is unknown since the Watkins Ditch does not function as a natural stream. The water received in the review area is diverted from the Boise River via Lawrence Kennedy Canal.

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

**Tributary** is:  Natural

Artificial (man-made). Explain: Watkins Ditch was constructed within uplands to relay irrigation waters to users.

Manipulated (man-altered). Explain:

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

Average width: 8 feet Watkins Ditch

Average depth: 4 feet Watkins Ditch

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: Banks are maintained by local irrigation district. The Watkins Ditch are maintained and dredged to ensure irrigation uses are provided for end users.

Presence of run/riffle/pool complexes. Explain: No presence of riffle pool complex

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): < 2%

**(c) Flow:**

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **1**

Describe flow regime: Flows the irrigation system waters typically start in Early May and flow until October.

Other information on duration and volume:

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

Subsurface flow: **Pick List**. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM<sup>6</sup> (check all indicators that apply):

<sup>5</sup> 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.

<sup>6</sup>A 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

- 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.<sup>7</sup> 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: Brown water is common for sediment laden irrigation systems. Portions of the tributaries are burned as a irrigation management practice to reduce vegetation along the banks. The tributary conveys and filters sediments, herbicides, pesticides, and other pollutants from the adjacent croplands and rangelands.

Identify specific pollutants, if known: sediments, fertilizers (i.e. nitrogen, phosphorus), insecticides, herbicides

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: Reed Canary grass dominated wetlands are present.
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: Watkin Ditch provides seasonal aquatic habitat (May through October) for waterfowl, macroinvertebrates, amphibians, and other species of wildlife endemic to the region. Aquatic habitat provided in the Watkins ditch is limited to the narrow, shallow, sediment laden, slow flowing irrigation system. The irrigation systems are commonly dredged providing limited aquatic habitat diversity since no stream complexity or diversity is present. Hydrology is regulated by the various diversions and headgates which also reduce aquatic diversity in the system.

**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:

Palustrine Emergent wetlands abutting Watkins Ditch 0.04 acres

Wetland type. Explain: PEM wetland are contiguous to the Watkins Ditch.

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.

Wetland quality. Explain: No functional assessment was conducted for the wetlands.

However, wetland quality is limited due to the surrounding agricultural and residential uses which have fragmented the landscape and associated natural habitats, degrade biodiversity, and alter hydrology.

Project wetlands cross or sever a states boundaries. Explain: The wetlands do not cross of sever the Idaho State boundary.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Hydrology is provided to the wetlands through the irrigation system which the Watkins Ditch is a part of.

Surface flow is: **Discrete and confined**

Characteristics: The wetland fringe along the Watkins Ditch is confined to the banks of the ditch.

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

Dye (or other) test performed: N/A

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

-Palustrine Emergent wetlands abutting Watkins Ditch 0.04 acres

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **1-2** river miles from TNW.

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

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

Estimate approximate location of wetland as within the **500-year or greater** 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: The wetlands are found on the periphery of the irrigation systems. Wetlands act as a sink for various chemicals applied to the agriculture and residential land uses on the landscape.

Identify specific pollutants, if known: sediments, fertilizers (i.e. nitrogen, phosphorus), insecticides, herbicides

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Fringe wetlands along Watkins Ditch provide seasonal aquatic habitat (i.e. May through October) for waterfowl, macroinvertebrates, amphibians, and other species of wildlife endemic to the region. The regulated irrigation system reduces variation in flows thus reducing variation in habitats and species diversity. Chemical applications along ditch banks or burning of ditch banks increases disturbance within the wetland fringes encourages encroachment of invasive species and reduces natural succession of plant communities.

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

All wetland(s) being considered in the cumulative analysis: **3**

Approximately 1.38 acres in total are being considered in the cumulative analysis.

- Approximately 0.08 acres of PEM fringe wetlands are located downstream of review area to Mill Slough. The downstream wetlands were estimated as 2 foot fringe wetlands along each bank for the 929 linear feet. Fringe wetland width was estimated based on aerial imagery.
- 0.04 acres of PEM fringe wetlands are located in the review area.
- Approximately 1.26 acres of PEM fringe wetlands are located upstream of review area. The upstream wetlands were estimated as 2 foot fringe wetlands along each bank for the 13,780 linear feet. Fringe wetland width was estimated based on aerial imagery.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y	0.08		
Y	0.04		
Y	1.26		

Summarize overall biological, chemical and physical functions being performed: The Watkins Ditch and adjacent wetlands conveys and filters sediments, herbicides, pesticides, and other pollutants from the adjacent croplands and rangelands. Wetlands abutting the Watkins Ditch act as a sink for various chemicals applied to the landscape.

**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: 0.5 acres.

Roadside Drainage Area 1 is comprised of 0.22 acres of Palustrine Scrub Shrub (PSS) wetlands that abuts the Boise River. National Wetland Inventory (NWI) Map identifies Palustrine Forested (PFO) wetlands abutting the Boise River which connect to the delineated Palustrine Scrub Shrub (PSS) wetlands. USGS topo maps (dated 1958 and 2020) display a wetland complex abutting the Boise River for more than 1000 linear feet. The PFO wetlands and the PSS wetlands areas are classified as the same soil type (e.g. Moulton Loam) per the USDA soil survey maps. Moulton Loam has as a slow infiltration rate which consists of soils of moderately fine texture, these soils have a slow rate of water transmission. Various aerial images display a contiguous vegetative community abutting the Boise River to the delineated PSS wetlands, see Section IV below for aerial imagery references.

Road Drainage Area 2 is comprised of 0.28 acres of wetland complex (0.04 acres Palustrine Forested wetlands, 0.06 acres Palustrine Scrub shrub wetlands, 0.18 acres Palustrine Emergent wetlands) that has neighboring adjacency to the Boise River. The non-abutting wetland complex was delineated with a 0.15 acre seasonally ponded section of PEM wetland within the center of the complex. The delineation included an ordinary high water mark for the seasonally flooded portion. The 0.15 acres section of seasonally flooded wetland is not considered a ponded feature and functions as a wetland for the majority of the year.

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:  
0.02 acres of Watkins Ditch is located within the review area. The Aquatic Resources Delineation Report entitled Middleton Road Realignment Project and dated March 2019 identified Watkins Ditch as a perennial flowing waterway. USGS topography maps dated 2020, and 1958 display the perennial tributary.
- 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: 120 linear feet, 8 width (ft); 0.02 acres
  - Other non-wetland waters:           acres.Identify type(s) of waters:

3. **Non-RPWs<sup>8</sup> 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.

<sup>8</sup>See Footnote # 3.



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: Aquatic Resources Delineation Report entitled Middleton Road Realignment Project, dated March 2019 found 0.04 acres of palustrine emergent wetlands to directly abut the Watkins Ditch.
- Provide acreage estimates for jurisdictional wetlands in the review area: 0.04 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.<sup>9</sup>**

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):<sup>10</sup>**

- 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):

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

<sup>10</sup> 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.



CENWW-RD (DA No.: NWW-2019-00298)

- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** South Middleton Drain and associated wetlands are evaluated in a separate AJD form, NWW-2019-00298.