

**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):** Feb 11, 2022

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CENWW-RD-BOISE, MIDDLETON ROAD 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 (Case Specific Navigable-In-Fact TNW)

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: 95 linear feet; 20 width (ft.) and/or 0.04 acres.

Wetlands: Palustrine Forested wetlands non-abutting South Middleton Drain 0.03 acres  
Palustrine Emergent wetlands non-abutting South Middleton Drain 0.008 acres  
Palustrine Forested wetlands abutting South Middleton Drain 0.14 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: [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 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

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

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

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: 4.48 square miles  
Drainage area: 4.48 square miles  
Average annual rainfall: 10 inches  
Average annual snowfall: 16 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 (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: South Middleton Drain does not cross the Idaho state boundary.

Identify flow route to TNW<sup>5</sup>: Portion of South Middleton Drain (Seasonal RPW) in the review area flows for 0.44 miles before flowing into the Mill Slough (RPW) which flows for 0.95 miles to the Boise River (case specific Navigable-In-Fact TNW).

Tributary stream order, if known: South Middleton Drain receives diverted water from the Boise River via Lawrence Kennedy Canal. Hydrology and stream order within South Middleton Drain is not typical of a natural stream due to irrigation system regulating the hydrology at the review area by diversion, headgates, and check dams etc. No stream order is determined for this site.

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

Tributary is:  Natural

Artificial (man-made). Explain: South Middleton Drain was constructed within uplands to relay irrigation waters to users. The 1898 USGS Topo map supports the upland construction of South Middleton Drain.

Manipulated (man-altered). Explain:

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

Average width: 20 feet

Average depth: 8 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: Banks are maintained by local irrigation district. The South Middleton Canal are 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:

<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.

Tributary provides for: **Seasonal flow**

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

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

Other information on duration and volume: N/A

Surface flow is: **Confined**. Characteristics: Flows are confined to the linear constructed irrigation drain.

Subsurface flow: **Unknown**. Explain findings: N/A

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM<sup>6</sup> (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):

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:

Discontinuous OHWM.<sup>7</sup> Explain:

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 such as South Middleton Drain. 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, livestock fecal matter.

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

Riparian corridor. Characteristics (type, average width): Narrow riparian corridor of approximately 30 foot width is present along 3,160 linear feet of the 9,350 linear feet of South Middleton Drain within the relevant reach.

Wetland fringe. Characteristics: Reed Canary grass (*Phalaris arundinacea*) dominates the fringe wetlands abutting the South Middleton Drain. PFO wetlands comprised of native and invasive species of trees, shrubs and herbaceous vegetation about the South Middleton Drain. Invasive tree species along the section of the South Middleton Drain include Russian Olive trees (*Elaeagnus angustifolia*).

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

<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 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.

<sup>7</sup>Ibid.

- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings: South Middleton Drain provides aquatic habitat for waterfowl, macroinvertebrates, amphibians, and other species of wildlife endemic to the region. Aquatic habitat provided in the South Middleton Drain 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 Forested wetlands abutting South Middleton Drain 0.14 acres

Palustrine Forested wetlands non-abutting South Middleton Drain 0.03 acres

Palustrine Emergent wetlands non-abutting South Middleton Drain 0.008 acres

Wetland type. Explain: PEM and PFO wetlands.

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

However, wetland quality is limited due to the surrounding agricultural and domestic uses of the landscape which fragment wetlands, defoliate wetland vegetation, and alter the soil and hydrology present in the wetlands.

Project wetlands cross or serve as state boundaries. Explain: The wetlands do not cross of sever the Idaho border.

**(b) General Flow Relationship with Non-TNW:**

Flow is: **Intermittent flow**. Explain: The main source of hydrology provided to the wetlands is through the South Middleton Drain. Hydrology draining from precipitation and overland runoff is consolidated in the nonabutting wetland and then drains to the South Middleton Drain.

Surface flow is: **Discrete and confined**

Characteristics: The wetlands identified within the review area are contiguous and neighboring to the South Middleton Drain and are confined topographic features draining through a small swale to South Middleton Drain, per Sample 5 field photo (pg. 26) of the Aquatic resources delineation report, dated March 2019

Subsurface flow: **Unknown**. Explain findings: N/A

Dye (or other) test performed: N/A

**(c) Wetland Adjacency Determination with Non-TNW:**

Directly abutting

Palustrine Forested wetlands abutting South Middleton Drain 0.14 acres

Not directly abutting

Palustrine Forested wetlands non-abutting South Middleton Drain 0.03 acres

Palustrine Emergent wetlands non-abutting South Middleton Drain 0.008 acres

Discrete wetland hydrologic connection. Explain: Confined topographic feature (i.e. small upland trench or swale) connects the wetland cell comprised of PFO and PEM wetlands to the South Middleton Drain, see Figure 8 of the March 2019 Aquatic Resources Delineation Report. The snowpack melting during the spring along or spring precipitation events are concentrated through the upland swale providing a hydrologic connection between the neighboring wetland to South Middleton Drain through the less than 50 linear foot of uplands.

Ecological connection. Explain: Contiguous and neighboring wetlands to the South Middleton Drain provide refugia or foraging habitat for aquatic organism such as amphibians, macroinvertebrates.

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 sink for various chemical applied to the agriculture and domestic dominated landscape.

Identify specific pollutants, if known: sediments, fertilizers (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: Macroinvertebrate habitat is present along portions of the fringe wetlands adjacent to South Middleton Drain. The palustrine forested wetland abutting South Middleton Drain provide fragmented refugia for other species of wildlife endemic to the region.

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

All wetland(s) being considered in the cumulative analysis: **4**  
 Approximately 3.338 acres of wetlands in the relevant reach is being considered in the cumulative analysis.

- Wetland 1 (Palustrine Forested wetlands abutting South Middleton Drain 0.14 acres, Palustrine Forested wetlands non-abutting South Middleton Drain 0.03 acres), delineated in the Aquatic Resources Delineation Report dated March 2019
- Wetland 2 (Palustrine Emergent wetlands non-abutting South Middleton Drain 0.008 acres), delineated in the Aquatic Resources Delineation Report dated March 2019
- Wetland 3 (Palustrine Emergent wetlands non-abutting South Middleton Drain 0.59 acres), delineated in the National Wetland Inventory Map
- Wetland 4 (Palustrine Emergent wetlands abutting South Middleton Drain 2.57 acres), estimated 6 foot fringe wetlands along each bank of the 9,350 linear foot relative reach of South Middleton Drain. 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	0.14		
N	0.038		
N	0.59		
Y	2.57		

Summarize overall biological, chemical and physical functions being performed: The wetlands in the relative reach are filtering pollutants from the surrounding landscape. Wetlands also reduce erosion at bank by reducing water velocities near the bank and anchoring the soils with the vegetative root zone. Shading is provided to the South Middleton Drain by the vegetated wetlands. Water storage is provided in

the neighboring and contiguous wetlands to the South Middleton drain which reduces flows during flooding. The wetlands provide habitat, refugia, organic matter for aquatic life.

### 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: The South Middleton Drain, the associated wetlands and riparian area provide water filtration function to the downstream waterways including the TNW. The riparian area along with the contiguous and neighboring wetlands provides rapid filtration of inorganic nitrogen and other contaminants present in the adjacent farm fields. South Middleton Drain and its wetlands also provide a role in abating flood waters by diverting flows from the TNW (Boise River) thus reducing flows for a section of the TNW before the flows re-enter the TNW. The South Middleton Drain reconnects diverted flows to the TNW which also supports the recharge of the downstream rivers, which is vital to downstream aquatic life. Although the change in flow is minor in comparison to the flows present in the TNW, the minor changes in flow velocities can disrupt the equilibrium of downstream waters, causing a chain reaction of channel degradation up and down stream. These affects could result in large adjustments in channel dimensions, loss of stream habitat and diversity, and damage delicate food webs resulting in impacts to the chemical, physical, and biological integrity downstream. The South Middleton Drain, its associated wetlands and riparian areas, provide in-stream habitat, food, and refuge for wildlife enhancing the biological integrity of the downstream TNWs. Taking into consideration the approximate 4.48 square mile drainage area, the average 10 inches of annual precipitation, the relatively permanent flows, and the

close proximity of 1.36 miles to the TNW which is the Boise River, this stream has a capacity to carry pollutants downstream into the TNW. In conclusion, this stream has more than an insubstantial or speculative effect on the chemical, physical and biological nexus to the downstream TNW.

**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: The Aquatic Resources Delineation Report entitled Middleton Road Realignment Project, dated March 2019 identified South Middleton Drain as a perennial flowing waterway. South Middleton Drain receives flows that are diverted from the Boise River from approximately May through October. The USGS topography maps dated 2020, and 1958 display the drain as a perennial waterway. 0.04 acres of South Middleton Drain is located within the review area.
- 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: South Middleton Drain 95 linear feet; 20 width (ft.) and/or 0.04 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.  
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 and dated March 2019 found 0.14 acres of palustrine forested wetlands to directly abut the South Middleton Drain. On-site field visits were conducted to evaluate the geographic relation of the wetland to the South Middleton Drain. Aerial imagery also support the abutting wetland determination.  
Provide acreage estimates for jurisdictional wetlands in the review area: 0.14 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: 0.038 acres.

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



**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):

- 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:
- 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):

<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.

