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): 2/17/2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWW-RD, NWW-2021-00210

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Idaho County/parish/borough: Ada County City: N/A
Center coordinates of site (lat/long in degree decimal format): 43.508° Lat. -116.314° Long.
Universal Transverse Mercator: Zone 11, Northing 4817458 N, Easting 555451 W
Name of nearest waterbody: Tenmile Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Boise River
Name of watershed or Hydrologic Unit Code (HUC): 1705011402, Tenmile Creek-Fifteen Mile Creek

☒ 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: 11/20/2021
☒ Field Determination. Date(s): 5/21/2021

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
☐ Rrelatively permanent waters[2] (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: **Pick List**
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 multiple parcels extending from the New York Canal at the western boundary, southeast to Cole Road. The review area entails approximately 709 acres. The setting is located within the Tenmile Creek drainage to the southeast of the city of Boise within the Snake River Plain Ecoregion, and consists of Sagebrush-steppe hillslopes and agricultural/rangeland uses in the valley floor. Potentially regulated resources identified within the review area include irrigation ditches, wetlands, and Tenmile Creek. All potentially eligible resources were considered and evaluated for jurisdiction and are more thoroughly described below.

Irrigation Ditches: Approximately 4.75 miles of irrigation ditches constructed in uplands extend across the property. These ditches appear to have been periodically relocated across the properties, and generally terminate as flood irrigation feeder lines or diked dry land for stock water. Hydrology for the irrigation water exclusively comes from ground water pumps within the property which pump water into the supply ditches and then flow across the properties. Some portions of the irrigated water utilize historic segments of Tenmile Creek and are addressed separately below. The irrigation ditches identified within the property were constructed in uplands, are exclusively used for irrigation or stock water, do not receive water from a WOTUS (Pumped Groundwater), do not connect as "tributaries" to other water, and will be abandoned upon development. Therefore, irrigation ditches within the review area are considered "preamble waters" as "Non-tidal drainage and irrigation ditches excavated on dry land" and are non-jurisdictional features. Upland terminal impoundments within the irrigation system are also considered non jurisdictional "preamble waters as "Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing".

Irrigation Induced Wetlands: Approximately 10 acres of Palustrine Emergent (PEM) wetlands were delineated within the property. Wetlands are generally located along the western boundary of the property where irrigation water backs up against the New York Canal prism or are located within depressional drainages such as Tenmile Creek or other swales. All potentially regulated wetlands are limited in location and extent to where irrigation water is diverted or applied across the landscape, and areas not irrigated are clearly uplands. 12 Groundwater Piezometers were installed throughout the property in representative locations and were monitored from February 2019 through May 2020. Existing irrigation practices continued through the monitoring period. During that time only 2 Test pits demonstrated ground water elevations within 2 feet of the surface TP1, and TP8. TP1 is located in the northwest corner of the property adjacent to the New York Canal, where flood irrigation backs up New York Canal embankment prism. A seasonal highwater table was only measured at this site between June and October (irrigation season). TP8 is located adjacent to an excavated storage pond on a parcel not within the project area. Groundwater levels generally hovered around 2 feet below the surface for the majority of the monitoring period until April and May of 2020 at which time it rose to the surface. During a site visit in May 2021 areas of similar elevation and geomorphic position that did not have irrigation water applied were observed and found to be uplands. Given the arid setting of the property, that the primary source of hydrology appears to be limited to irrigation water, and that groundwater levels do not reach within 2 feet of the surface (outliers have a direct irrigation practice applicable), wetlands delineated within the property are considered non jurisdictional "preamble waters" as "Artificially irrigated areas which would revert to upland if the irrigation ceased".

[3] Supporting documentation is presented in Section III.F.

Isolated Segment of Tenmile Creek: Tenmile Creek has been historically manipulated within the upper watershed effectively bisecting the property from upstream hydrologic influence at Cole Road. Restrictions to connectivity include small dams, roadways relocations, and the filling of the historical channel. Tenmile Creek within the review area can be further broken into two independent segments separated along “S 5 Mile Road” near 43.5073 Lat, -116.3107 Long. The following description and determination apply only to the upper portion of Tenmile Creek within the review area, approximately 2.4 miles in length south-east of that location. The lower portions of Tenmile Creek which has the potential to connect downstream is assessed in Section III C.

The historical channel within this upper portion is utilized intermittently to carry irrigation water between ditches and has multiple constructed impoundments bisecting the full channel to act as stock ponds. Given the arid environment, and limited geomorphic processes, these relic channels are visible within the landscape as a semi-continuous linear depressional feature. However, segments not utilized for irrigation do not exhibit an ordinary high water mark and are uplands in character. Channel Form within this area varies between 20- 50 feet across from top of bank, with gentle slopes flattened by historical cattle use. Of the 2.4 mile reach considered in this section approximately 1 mile is utilized for irrigation. Review of aerial imagery, and a subsequent site visit confirmed consistent breaks where irrigation water is diverted into the old channel, flows for a small segment to where a dike or fill has been placed and then terminates. This pattern continues through the upper reach with intermittent usage until the lower impoundment crosses the overall floodplain (approximately 1000 ft long dike).

The upper segment of Tenmile Creek within the review area was evaluated and it was determined that the feature has been effectively disconnected from the upper watershed from historical uses, and only flows in certain portions when irrigation water is diverted into it. These segments are continually blocked by historical impoundments and the segments in between do not exhibit the characteristics of a tributary (uplands with no OHWM), making this feature an upland swale that is intermittently engaged with irrigation water which is directly pumped from groundwater wells. There is also no evidence that these segments act as a “loosing stream” from upgradient flow or contributes to a downstream shallow surface connection. This segment is a isolated segment of the historic channel and is not a jurisdictional feature.

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 non-navigable, isolated reach of Tenmile Creek. 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 2.4-mile section of Tenmile Creek has been isolated from upstream contributions, and downstream connectivity, and is only intermittently utilized to carry irrigation water throughout the private properties. There is no evidence that this reach provides reasonable migratory bird habitat nor furbearer habitat. There is no documented recreation including bird watching, hunting, or trapping within the reach. Also, no fish production, shellfish production or industrial uses are documented within this segment of Tenmile Creek.

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**:**
   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[4] 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: **53** square miles
Drainage area: **3** square miles
Average annual rainfall: Approximately 12 inches of annual precipitation
Average annual snowfall:

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐Tributary flows directly into TNW.
☒Tributary flows through **2** tributaries before entering TNW.
Project waters are **15-20** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **15-20** 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: No
Identify flow route to TNW[5]: Water within the lower section of Tenmile Creek within the review area may discharge into the New York Canal, a major canal carrying over 2000 cfs to various laterals across the valley. Water may continue to the Boise River, a navigable in fact waterway either by flowing across the canal to a diversion point for the downstream reach of Tenmile (near vicinity),or return through a series of lateral and return drains which ultimately discharge into the Boise River.
Tributary stream order, if known: 1

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

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

Tributary is: ☐Natural

☐Artificial (man-made). Explain:

☒Manipulated (man-altered). Explain: See Section II B2 for a full description. This section assesses the lower reach of Tenmile within the review area which is to the west of the assement break located at 43.5073 Lat, and -116.3107 Long. This segment carries return flows from flood irrigation practices prior to being impounded by the New York Canal Prism. The canal eliminates a direct downstream contribution to the remaining portions of Tenmile Creek which is a tributary to the Boise River. There is a check structure within the prism which could allow excess flows (when they occur) to discharge into the canal.

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

Average width: 15 feet

Average depth: 4 feet

Average side slopes: **3:1**

Primary tributary substrate composition (check all that apply):

☒Silts	☒ Sands	☐ Concrete
☐ Cobbles	☒ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	

☒ Other. Explain: Cattle use how resulted in highly disturbed banks and variable compositions.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable due to highly consistent historic degradation which has reduced any dynamic stream processes.

Presence of run/riffle/pool complexes. Explain: None

Tributary geometry: **Relatively Striaght**

Tributary gradient (approximate average slope): 1.2 %

(c) Flow:

Tributary provides for: **Season flow when irrigaiton water is pumped into the streambed, or runs off from flood irigation. Ponding could occur in low evelation depressions when water is turned off.**

Estimate average number of flow events in review area/year: 1 continual event when water is turned on.

Describe flow regime: Controlled and continual once irrigation season begins

Other information on duration and volume: Information submitted to the Corps regarding the amount of water pumped to the site was approximately 7 Million Gallons per Day (10.8 cfs). These pumps will no longer be utilized for the existing practices should the properties be developed.

Surface flow is: Discrete and confined**.** Characteristics: Flow occurs within the channel where irrigation water is diverted into it, or where overland flow from flood irrigation returns. This water flows to the New York Canal where it backs up and ponds along the toe of slope against a check structure that can regulate interaction with the water in the canal.

Subsurface flow: **Unknown**. Explain findings: Analysis of the groundwater levels determined they are generally several feet below the surface, and the area contains what was categorized as a limiting layer similar to an aquitard which may exist due to a change in parent material at depth.

☐ Dye (or other) test performed:

Tributary has (check all that apply):

☒ Bed and banks

☒ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☒ changes in the character of soil	☐ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour

[6]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.

☐ sediment deposition ☐ multiple observed or predicted flow events
☐ water staining ☒ abrupt change in plant community: Areas that receive water were delineated as wetlands above the OHWM was uplands.
☐ other (list):

☒ Discontinuous OHWM.[7] Explain: Only portions activated by irrigation flow contain evidence for OHWM, continual cattle use have degraded most channels.

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

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

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: The water is generally clear, with minor turbidity from cattle use.
Identify specific pollutants, if known: None

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

☐ Riparian corridor. Characteristics (type, average width):
☒ Wetland fringe. Characteristics: Irrigation induced wetlands are found within and around the channel. These areas are sustained solely from irrigation water, and generally exhibit water tables several feet below the surface.
☐ Habitat for:
☐ Federally Listed species. Explain findings:
☐ Fish/spawn areas. Explain findings:
☐ Other environmentally-sensitive species. Explain findings:
☐ Aquatic/wildlife diversity. Explain findings:

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: acres
Wetland type. Explain:
Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain:
Surface flow is**:** **Pick List**
Characteristics:
Subsurface flow: **Pick List**. Explain findings:
☐ 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:

[7]Ibid.

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List**.
Estimate approximate location of wetland as within the **Pick List** 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:
Identify specific pollutants, if known:

(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:

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: **Wetlands were determined to be irrigation induced and would return to uplands should irrigation water cease.**
Approximately acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

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

Summarize overall biological, chemical and physical functions being performed:

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: The TNW considered for this analysis is the Boise River, which is the receiving water for the remaining downstream portions of Tenmile Creek. The Boise River is a navigable in fact waterway which has consistent and documented commerce throughout the system. This segment of Tenmile Creek is considered a non-RPW and is approximately 2000 linear feet in length, This portion extends from "South 5 Mile Road" to the New York Canal. Historical manipulation of the watershed and the physical channel upstream from this segment has eliminated naturally sustained sources of hydrology, and the flow regime is limited to when irrigation water is pumped to the site. Downstream flows are regulated by a check structure that would discharge into the canal and should water enter the canal, will flow into the overall Treasure Valley System. The area is actively utilized for grazing, and irrigation appears to be relocated through the property frequently enough that vegetation diversity within delineated wetlands is limited to mono-type PEM. Although Tenmile Creek does have a mapped floodplain, this segment has not provided functions such as floodplain storage likely since the construction of the upstream Reservoir (Blacks Creek). There are no identified sources of contamination within the property, and beneficial uses identified for Tenmile Creek by IDEQ are assessed downstream of the New York Canal where it flows as an RPW, and is a continual tributary to the Boise River (outside and disconnected from the portions within the review area). Downstream contributions or the potential to contribute could only occur through the New York Canal, at which point there is no definitive path to where water or pollutants could go to reach the nearest TNW. There is no known chemical, biological or physical function that is more than speculative or insubstantial that this reach of Tenmile Creek provides to a TNW, and therefore is determined that it does not have a Significant Nexus.

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet; width (ft); or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
   - ☐ 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-RPWs[8] 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 jurisidictional. 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:

[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ 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.
The upper segment of TenMile Creek within the review area (2.4 miles) is isolated from the remaining segments and does not exhibit any nexus to interstate commerce (See Section II B 2 For further discussion).
☐ 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: The portions of Tenmile Creek determined to be a Non-RPW (approximate 2200 Linear Feet) did not meet the Significant Nexus standard (See Section III C 1).
☒ Other: (explain, if not covered above): Approximately 4.7 miles of ditches constructed in uplands and 10 acres of irrigation induced wetlands were determined to be non-jurisdictional features. (See Section II B 2).

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): 2200 linear feet; 10 width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource:
☐ Wetlands: acres.

SECTION IV: DATA SOURCES

A. SUPPORTING DATA
Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: *Ten Mile Creek Development Site, Final Aquatic Resource Delineation Report, Dated April 2021*
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets/delineation report.
☒ Office does not concur with data sheets/delineation report. Portions of the assumptions and narrative described in the report are not concurred with by the Corps, however the delineated boundaries have been agreed with.
☐ Data sheets prepared by the Corps:
☐ Corps navigable waters' study:
☐ U.S. Geological Survey Hydrologic Atlas:
☐ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name: USGS Quad Map, 1:24K Cloverdale, ID (1953) 1:24K Mora, ID (1958)

☒ USDA Natural Resources Conservation Service Soil Survey. Citation: USDA Web Soil Survey

☒ National wetlands inventory map(s). Cite name: USFWS Online Wetlands Mapper

☐ State/Local wetland inventory map(s):

☒ FEMA/FIRM maps: *SPF Water Engineering, Hydrologic and Hydraulic Analysis, CLOMR Report Dated August 9, 2019*

☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): Google Earth Aerial Imagery Dated 5/31/1992, 5/18/2002, 4/23/2013, 6/29/2017, 6/30/2021;

or ☐ Other (Name & Date):

☐ Previous determination(s). File no. and date of response letter:

☐ Applicable/supporting case law:

☐ Applicable/supporting scientific literature:

☒ Other information (please specify): *Forsgren Associates, Groundwater Wells Summary Memorandum, Dated March 29, 2021; MTI, Borings, and Piezometers Data, and Addendum*

B. ADDITIONAL COMMENTS TO SUPPORT JD: The assessment area consists of a historically manipulated relic segment of the Tenmile Creek Drainage, that receives irrigation water as the primary source of all hydrology. This segment is bisected from upstream contributions to the east at Cole Road, and physically disconnected by the New York Canal to the west. Multiple analysis and reports were completed to support the development of the property, and given the information submitted and available to our office to include observations during a site visit it was determined that the aquatic resources identified within the review area are physically controlled and established by existing and historical agricultural practices. The lower segment of Tenmile Creek within the review area, was assessed separately and it was determined that there was not a significant nexus to a TNW.