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 7, 2023.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Walla Walla District, Idaho Falls Regulatory Office, Solimar, LLC Request for Approved JD, NWW-2021-439-I02

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Idaho County/parish/borough: Teton City: Tetonia
Center coordinates of site (lat/long in degree decimal format): Lat. 43.804640° **N**, Long. -111.185833° **E**.
Universal Transverse Mercator:
Name of nearest waterbody: Spring Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Teton River
Name of watershed or Hydrologic Unit Code (HUC): Packsaddle Creek-Teton River (HUC 12)

☒ 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 7, 2023.
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

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

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☒ Wetlands adjacent to TNWs
      ☒ Relatively permanent 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

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 940 (Spring Creek) and 800 (D4) linear feet: variable width (ft) and/or acres.
      Wetlands: W1 (8.08), W2 (2.54), W4 (3.23) acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The delineation results indicate that a majority of the review area is wetlands. However, the land within the**

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

review area has been irrigated agricultural land for many years prior to the delineation being performed. Through installation of shallow groundwater monitoring wells and the review of that data, it was determined that a large part of the wetlands within the review area are irrigation induced wetlands that would revert to uplands with the discontinuation of irrigation practices. Wetland W3 on the aquatic resource inventory map has been determined to be irrigation induced wetlands and therefore are not considered to be jurisdictional wetlands

There are a series of ditches that run throughout the subject property. These have been determined to be ditches that are solely used for irrigation and drainage purposes. They only flow when water is diverted into them and/or when the irrigation water is draining from the subject property. All of the irrigation ditches have a headgate structure that allows water to be diverted into the ditches from Spring Creek, and they would cease to flow if the headgates were closed. These ditches flow across W3 and area that is solely wetland due to irrigation practices. Thus the ditches would have been constructed in uplands. These ditches have been named D1, D2, and D3 on the aquatic resource summary.

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: **Teton River**.

Summarize rationale supporting determination: The Teton River can be classified as a Traditionally Navigable Water (TNW) due to the markets and businesses that utilize it. The Teton River is frequently used for guided fishing and floating trips, with several lodges and recreational businesses in the valley being supported by these float trips. The Teton River very clearly has a large commercial influence on the local economy, supporting recreational navigation with users from across the country and world.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": The Teton valley is situated at the base of the Teton Range. The topography flattens very quickly from the Teton Range to the valley floor, with several tributaries flowing off the Teton Range into the Teton valley. Due to the sudden change in topography and flowing water of the tributaries, alluvial fan-like conditions are formed, which contributes to the springs and spring channel features on the valley floor. These springs and spring channels create a vast wetland complex that stretches throughout the Teton valley. The wetland complex begins to form on the west side of Highway 33 and is all interconnected, especially the closer in proximity to the Teton River.

The wetlands on the subject parcel, named W4, are part of a larger wetland complex that extends into the adjacent properties and becomes more prevalent the closer to the Teton River. This wetland complex appears to be formed from surface water and high groundwater coming from Spring Creek and South Leigh Creek, which then flows west through the subject property and continues to the Teton River. The years of available aerial imagery (Google Earth: 07/1992, 06/2003, 09/2006, 08/2009, 07/2012, 10/2014, 06/2017, and 10/2021) shows surface water and wet signatures on the subject parcel, which clearly continues onto the adjacent properties and into the Teton River. The W4 wetlands within the subject parcel are part of this continuous wetland complex that is adjacent to the Teton River.

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: **Pick List**

Drainage area: 0.67 for Spring Creek **Pick List**

Average annual rainfall: 15 inches

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

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☒ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **2-5** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **1-2** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: Spring Creek flows from the east to the west through the most northern portion of the property. Spring Creek flows directly into a side channel of the Teton River, which is considered a Traditionally Navigable Water (TNW).

Ditch D4 orignates at a diversion from Spring Creek on the subject parcel. Shortly after leaving the property the ditch splits in many different directions, however many of those channels ultimately return water to the Teton River.
Tributary stream order, if known: 3 for Spring Creek.

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

Tributary is: ☒ Natural

☒ Artificial (man-made). Explain: This only for D4. In some locations D4 is meandering and appears somewhat natural, however most of its length is clearly straight and man-made..

☒ Manipulated (man-altered). Explain: Although Spring Creek is largely a natural stream system, there is evidence of manipulation by human activities, which mostly consists of agricultural activities.

Tributary properties with respect to top of bank (estimate):
Average width: 10 feet (Spring Creek) 10 feet (D4) feet
Average depth: 2 (Spring Creek and D4) feet
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

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

☒ Other. Explain: D4 bed and bank consists of native gravel and loams as it was excavated.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): %

(c) Flow:

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

Describe flow regime: Spring Creek has intermittent flow with most of the streamflow occuring early in the year due to runoff and later in the year after irrigation diversions have been shutoff. Spring Creek is listed several places, including USGS topographic maps and IDEQ's list of 305(b) streams, as perennial. It is possible that flows would be perennial if it wasn't for the diversion of flows during the summer months for irrigation use. However, since there is no data to support this, it is considered to be an intermittent stream.
D4 is a larger irrigation ditch coming off Spring Creek serving mutiple users. Most irrigation ditches flow during irrigation season from mid-April to mid-October (6 months), if there is sufficient water. Ditches coming off of Spring Creek are unlikely to carry water for six months as Spring Creek itself is typically dry later in the season. However, Spring Creek and ditches carrying irrigation water from it are likely to flow at least three months out of the year.

Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: Spring Creek goes from a single strand with confined flow to multiple threads with overland flows throughout its lower length. D4 flows occur in a confined, single thread channel..

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

[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.

Tributary has (check all that apply):

- ☒ Bed and banks
- ☒ OHWM[6] (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.[7] 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: Spring Creek is moslty clear water, with some anticipated turbidity during seasonal runoff and precipitation events.

Identify specific pollutants, if known: Specific pollutants within Spring Creek is unknown. However, it is reasonable to assume that the surrounding land uses around Spring Creek would result in some pollutants being introduced into the tributary. Some of these pollutants may include manure from livestock, nitrate from fertilizer application, and some contaminants from road crossings (e.g. salt, oil, fuels, etc.). Despite some of the above-mentioned pollutants likely being present, it is unlikely to assume that these pollutants are in high enough quantities to consider the waterway "polluted".

Ditch D4, since it traverses similar ground likely contains similar pollutants from agricultural related activities..

[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.

[7]Ibid.

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

☒ Riparian corridor. Characteristics (type, average width): The riparian corridor is comprised mostly of palustrine scrub-schrub wetlands, approximately 200 feet in width along Spring Creek, none along D4.

☒ Wetland fringe. Characteristics: The wetland fringe is made up of palustrine scrub-shrub (PSS) and palustrine emergent (PEM) wetlands that are bolstered by flood stage waters in Spring Creek from runoff events and seasonal high groundwater. Wetlands along D4 are largely PEM wetlands that exist due to proximity to the Teton River and landform location..

☐ 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: 10.62 acres

Wetland type. Explain: 2.54 acres of Palustrine Scrub-Shrub (PSS-A) within the floodplain and directly adjacent to Spring Creek, and 8.08 acres of Palustrine Emergent (PEM-A/C) wetlands within the floodplain and directly adjacent to Spring Creek.

Wetland quality. Explain: Unknown.

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Spring Creek has intermittent flow with most of the streamflow occuring early in the year due to runoff and later in the year after irrigation diversions have been shutoff. Spring Creek is listed several places, including USGS topographic maps and IDEQ's list of 305(b) streams, as perennial. It is possible that flows would be perennial if it wasn't for the diversion of flows during the summer months for irrigation use. However, since there is no data to support this, it is considered to be an intermittent stream. Wetlands adjacent to the stream receive water from Spring Creek during high flows. During other times of the year wetlands receive shallow groundwater from Spring Creek as well as adjacent areas due to landscape position being low in the Teton River valley.

D4 is a larger irrigation ditch coming off Spring Creek serving mutiple users. Most irrigation ditches flow during irrigation season from mid-April to mid-October (6 months), if there is sufficient water. Ditches coming off of Spring Creek are unlikely to carry water for six months as Spring Creek itself is typically dry later in the season. However, Spring Creek and ditches carrying irrigation water from it are likely to flow at least three months out of the year. No wetlands on the subject site are conisdered adjacent to D4.

Surface flow is**: Overland sheetflow**

Characteristics: Any flow from Spring Creek to adjacent wetlands would occur as flood flows in early season (overland flooding). Waters later moving from adjacent wetlands to Spring Creek would typically occur from a regional shallow groundwater with no surface presence .

Subsurface flow: **Unknown**. 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: .

(d) Proximity (Relationship) to TNW

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

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

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

Estimate approximate location of wetland as within the **5 - 10-year** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

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

☒ Riparian buffer. Characteristics (type, average width): Palustrine scrub-shrub and palustrine eme.

☐ 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: **2**
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: .

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: 3.23 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: USGS topographic maps classify Spring Creek as perennial. Although the upper reaches of Spring Creek likely have perennial flow, it appears that it typically has intermittent flows each year at the project site. Spring Creek is is a tributary that is highly influenced by snow runoff and precipitation events, which results in a majority of the flow events occuring early in the year (approximately April/May) and flowing through early summer (approximately July), depending on various

environmental factors. There are many diversions on Spring Creek, which divert a majority of the flows in Spring Creek into canals and ditches for irrigation uses during the summer months. Most of these diversions occur just upstream from the project area, which subsequently leave the reach within the project area dry during certain times of the year. These irrigation diversions are likely the reason why Spring Creek has an observed intermittent flow pattern at the project location. Review of aerial imagery shows that there is surface water present (and presumably flow) during the months of 06/2003, 09/2006, 08/2009, 07/2012, and 06/2017. The stretch of time of observed surface water flows within Spring Creek each year appears to be greater than 3 months.

D4 appears to be a relatively permanent water (RPW) that flows indirectly into the Teton River, which is a Traditionally Navigable Water (TNW). Aquatic resource D4 is a larger canal/ditch that is named and locally referred to as "Breckenridge 2", and will be referred to as that for the remainder of this report. Breckenridge 2 is diverted from Spring Creek within the subject property and flows through approximately 900 linear feet of the subject property. Breckenridge 2 flows through the PEM and PSS wetlands that were delineated within this ARD report. According to the Idaho Department of Water Resources (IDWR) website, Breckenridge 2 diverts water to a total of 12 different water users for irrigation purposes; those 12 water uses that divert water through Breckenridge 2 have a combined diversion rate of 72.75 cubic feet per second (cfs). Irrigation season runs from mid-April to mid-October (6 months). Flows in Spring Creek would not persist long enough to allow D4 to carry water during the entire irrigation season. However, it is reasonable to assume that Breckenridge 2 has a relatively permanent flow regime (at least 3 months). Breckenridge 2 flows off the subject property and continues west to adjacent properties where it eventually splits into smaller laterals/ditches. It is unclear if any of these smaller ditches have a direct surface water connection to the Teton River. However, Breckenridge 2 and these smaller ditches flow through a series of wetlands that are directly abutting the Teton River. The wetlands directly abutting the Teton River that Breckenridge 2 and it's smaller lateral ditches run through have a capacity to carry pollutants and/or flood waters to the Teton River. Several aerial imagery years (Google Earth: 06/2017, 07/2012, and 08/2009) clearly show surface water within these wetlands, which appear to be conveying flood waters to the the Teton River. These wetlands are likely reducing and buffering the amount of pollutants, specifically fertilizers and other agricultural chemicals, that are flowing through Breckenridge 2 to the Teton River

.

Provide estimates for jurisdictional waters in the review area (check all that apply):
☒ Tributary waters: **940 (Spring Creek) and 800 (D4)** linear feet **10 and 5, respectively** 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: There are two delineated wetlands within the review area that are directly abutting Spring Creek. These wetlands are named W1 and W2 within the submitted Aquatic Resource Delineation (ARD) report. W1 is palustrine emergent (PEM A/C) wetland that is situated within the floodplain and directly abutting Spring Creek. Hydrologic support for W1 appears to be provided by seasonal overbank flow and shallow groundwater from Spring Creek. The delineated boundary for W1 shows that the wetlands directly abut the main stream channel and side channels of Spring Creek. W2 is a palustrine scrub-shrub (PSSA) wetland that is within the floodplain and directly abutting Spring Creek. Hydrologic support for W2 appears to be entirely provided by surface water associated with Spring Creek. The hydrologic regime appears to be temporarily and seasonally flooded. The delineated boundary for W2 on the ARD indicates that the wetland directly abuts the main channel of Spring Creek.

Provide acreage estimates for jurisdictional wetlands in the review area: **10.62** acres.

[8]See Footnote # 3.

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 [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☒ Other: (explain, if not covered above): **There are wetlands delineated within the review area that appear to be irrigation-induced. These wetlands have been named W3 within the ARD report. W3 wetland boundary (64.18 acres) is classified as palustrine emergent (PEMA) wetlands. However, the subject property has been used for agricultural purposes and flood irrigated for decades. Shallow groundwater monitoring wells were installed and irrigation practices ceased during the 2022 growing season. The results of the data collected in connection with the shallow groundwater monitoring wells indicated that the hydrology within the W3 boundary appeared to be supported by intensive flood-irrigation from the numerous lateral ditches on the property. Data associated with these wells indicated that the groundwater levels within W3 never came within 12 inches of the ground surface. Additionally, the agricultural meadow land within the W3 boundary is located approximately 1 to 8 feet above the natural floodplain associated with Spring Creek. The wetlands within W3 boundary appears to be entirely supported by the application of irrigation water, and would revert to uplands in the absence of that irrigation water. There are a series of ditches that run through the subject property**

[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.*

and convey irrigation water to the agricultural meadow land within the review area. It has been determined that D1, D2, and D3, along with all associated lateral ditches, are non-jurisdictional features. These ditches are all excavated within uplands, only convey irrigation water to the subject property, and terminate within the review area.

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

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

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

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

SECTION IV: DATA SOURCES.

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

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: "ARI - Exhibit 6" (December 21, 2022).
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  ☒ Office concurs with data sheets/delineation report.
  ☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
  ☐ USGS NHD data.
  ☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: USGS topoView - Tetonia, ID (2020).
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: USDA-NRCS, Web Soil Survey - Hydric Rating by Map Unit.
☒ National wetlands inventory map(s). Cite name: US Fish and Wildlife Services, National Wetlands Inventory (NWI) - Wetlands Mapper.
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Google Earth: 07/1992, 06/2003, 09/2006, 08/2009, 07/2012, 10/2014, 06/2017, and 10/2021.
  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): "Revised Aquatic Resources Summary - Solimar LLC Property (December 21, 2022)", "Aquatic Resource Delineation, Rosewood Ranch Project Area, Solimar LLC Property" (June 29, 2021), and "2022 Groundwater Monitoring Project - Rosewood Ranch Study Area, Teton County, Idaho".

B. ADDITIONAL COMMENTS TO SUPPORT JD: The subject property has many aquatic features and some uplands. The review area is comprised of approximately 100 acres of private agricultural land that is owned by Solimar, LLC. The total area of delineated wetlands within the review area is approximately 78.03 acres. Of the delineated wetlands within the review area, approximately 13.85 acres of those have been deemed to be wetlands that are subject to Clean Water Act (CWA) Section 404 jurisdiction. The wetland boundaries associated with W1, W2, and W4 are jurisdictional Waters of the U.S. (WOTUS). The wetlands within W3 boundary (totaling 64.18 acres) have been determined to be irrigation-induced, and therefore are not subject to CWA Section 404 jurisdiction. Please see the document titled, "ARI - Exhibit 6" (December 21, 2022) to see the delineated boundaries of these wetlands. There are also several non-wetland aquatic features that were delineated within the review area. Of those aquatic resources, only three (3) have been deemed to be subject to CWA Section 404 jurisdiction; Spring Creek ("Mainstem"), Spring Creek ("Side Channel"), and D4 ("Breckenridge 2") are jurisdictional WOTUS. There are also three (3) main ditches and numerous associated lateral ditches within the review area. The irrigation ditches named D1, D2, and D3, along with all associated lateral ditches, are all non-jurisdictional features. Please see the document titled, "ARI - Exhibit 6" (December 21, 2022) to see the delineated boundaries of these non-wetland waters.