

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): March 4, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Modern Corporation, 2014-01033, Form 1 of 1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Niagara County City: Lewiston
Center coordinates of site (lat/long in degree decimal format): Lat. 43.205 ° N, Long. -78.986 ° W
Universal Transverse Mercator: 17

Name of nearest waterbody: Sixmile Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 04130001

- 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: March 4, 2016
- Field Determination. Date(s): December 16, 2014

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: [Click here to enter text.](#)

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

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: 1.09 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): [Click here to enter text.](#)

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: Drainage 1 (1,678.2 linear feet), Drainage 2 (1,345 linear feet), Drainage 3 (383.9 linear feet), and Drainage 4 (662.5 linear feet) are located on a nearly flat slopes and are relatively shallow drainage features that were determined to be non-jurisdictional surface water conveyances. These swales are man-made drainages that were excavated in uplands and do not exhibit bed and bank features or ordinary

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.

high water mark indicators. Presence of low-lying vegetation was observed throughout these drainage features. Wetland 1 (0.03 acre), Wetland 2 (0.2 acre), and Wetland 3 (0.07 acre) are small depressional farmed wetlands. These wetland areas have no surface water outlets. They are surrounded by active agriculture. They are located approximately 1,000 linear feet to the east of the nearest RPW, which is Sixmile Creek. Wetland 1 is located approximately 23 linear feet north of a man-made drainage feature off-site, there were no observable connections to the man-made drainage feature. Wetland 2 is located approximately 183 linear feet north of a man-made drainage feature off-site, there were no observable connections to the man-made drainage feature. Wetland 3 is located approximately 90 linear feet east of Drainage 2, a man-made drainage feature, there were no observable connections to Drainage 2. The underlying soils are Rhinebeck silt loam. The deep, somewhat poorly drained soils preclude the possibility of a shallow sub-surface hydrological connection to downstream waters. The active agriculture prevents the possibility of a biological connection, and the distance to the nearest tributary prevents the possibility of a chemical connection to downstream waters. Therefore, Wetlands 1, 2 and 3 have been determined to be isolated and were determined to have no substantial nexus to interstate or foreign commerce (as per CFR Title 33 Part 328.3(a)(i-iii)).

Wetland 5 (0.12 acres) is a small depressional farmed wetland, it has no surface water outlets. Wetland 5 is located approximately 1,000 linear feet east of nearest RPW, Sixmile Creek. Wetland 5 is approximately 65 linear feet east of Drainage 1, a man-made drainage feature, there were no observable connections to either Drainage 1 or Drainage 3. The underlying soils are Madalin silt loam. The deep, poorly drained soils preclude the possibility of a shallow sub-surface hydrological connection to downstream waters. The active agriculture prevents the possibility of a biological connection, and the distance to the nearest tributary prevents the possibility of a chemical connection to downstream waters. Therefore, Wetland 5 has been determined to be isolated and was determined to have no substantial nexus to interstate or foreign commerce (as per CFR Title 33 Part 328.3(a)(i-iii)).

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: [Click here to enter text.](#)

Summarize rationale supporting determination: [Click here to enter text.](#)

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: [Click here to enter text.](#)

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 1,429 square miles,

Drainage area: 0.2 square miles

Average annual rainfall: 37.19 inches

Average annual snowfall: 85.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

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

Tributary flows through *Choose an item.* tributaries before entering TNW.

Project waters are *Choose an item.* river miles from TNW.

Project waters are *Choose an item.* river miles from RPW.

Project waters are *Choose an item.* aerial (straight) miles from TNW.

Project waters are *Choose an item.* aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: [Click here to enter text.](#)

Identify flow route to TNW⁵: [Click here to enter text.](#)

Tributary stream order, if known: [Click here to enter text.](#)

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

Tributary is: Natural

Artificial (man-made). Explain: [Click here to enter text.](#)

Manipulated (man-altered). Explain: [Click here to enter text.](#)

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

Average width: [Click here to enter text.](#)

Average depth: [Click here to enter text.](#)

Average side slopes: *Choose an item.*

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete

Cobbles Gravel Muck

Bedrock Vegetation. Type/% cover: [Click here to enter text.](#)

Other. Explain: [Click here to enter text.](#)

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: [Click here to enter text.](#)

Presence of run/riffle/pool complexes. Explain: [Click here to enter text.](#)

Tributary geometry: *Choose an item.*

Tributary gradient (approximate average slope): [Click here to enter text.](#)

(c) Flow:

Tributary provides for: *Choose an item.*

Estimate average number of flow events in review area/year: *Choose an item.*

Describe flow regime:

Other information on duration and volume: [Click here to enter text.](#)

Surface flow is: Discrete and Confined Characteristics: [Click here to enter text.](#)

Subsurface flow: Unknown Explain findings: Only surface flow was noted on the site

Dye (or other) test performed: [Click here to enter text.](#)

Tributary has (check all that apply):

Bed and banks

OHWM⁶ (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

sediment deposition multiple observed or predicted flow events

water staining abrupt change in plant community [Click here to enter text.](#)

other (list): [Click here to enter text.](#)

Discontinuous OHWM.⁷ Explain: [Click here to enter text.](#)

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.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

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

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): Click here to enter text. | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: The water was clear on the day of the site visit.

Identify specific pollutants, if known: No known pollutants

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

- Riparian corridor. Characteristics (type, average width): [Click here to enter text.](#)
- Wetland fringe. Characteristics: [Click here to enter text.](#)
- Habitat for:
 - Federally Listed species. Explain findings: [Click here to enter text.](#)
 - Fish/spawn areas. Explain findings: [Click here to enter text.](#)
 - Other environmentally-sensitive species. Explain findings: [Click here to enter text.](#)
 - Aquatic/wildlife diversity. Explain findings: [Click here to enter text.](#)

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: Wetland 4: 1.09 acres

Wetland type. Explain: Emergent

Wetland quality. Explain: Wetland 4 is a farmed depressional wetland. Due to the active agricultural activities, these wetlands are of low quality.

Project wetlands cross or serve as state boundaries. Explain: [Click here to enter text.](#)

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: Wetland 4 is connected to Sixmile Creek (Non-TNW) through approximately 2,800 linear feet of non-jurisdictional ephemeral drainage features. Wetland 4 directly abuts a man-made drainage feature (Drainage 3, 383.9 linear feet) which flows into Drainage 2 (man-made drainage feature, 1,345 linear feet), which flows into an off-site man-made drainage feature (~1,257 linear feet) that is emptying into Sixmile Creek.

Surface flow is: Discrete and Confined

Characteristics: Drainage 3 is a non-jurisdictional, man-made ephemeral feature that connects Wetland 4 to Sixmile Creek. At the time of the December 16 site visit, no surface flow was observed within the drainage channel. On-site observations and a review of aerial imagery indicates that flow occurs within the channel on an ephemeral basis. Drainages 2 and 3 are man-made drainage channels that were constructed to convey flow from adjacent cropland. These drainage channels carry flow on an ephemeral basis, and likely during the spring snowmelt period and after strong rain activity.

Subsurface flow: No Explain findings: [Click here to enter text.](#)

Dye (or other) test performed: [Click here to enter text.](#)

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Wetland 4 flows directly into Sixmile Creek via unregulated drainage features (See 2 (i) (b) above).

Ecological connection. Explain: [Click here to enter text.](#)

Separated by berm/barrier. Explain: [Click here to enter text.](#)

(d) Proximity (Relationship) to TNW

Project wetlands are 5-10 river miles from TNW.

Project waters are 2-5 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 100 - 500-year floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Wetland 4 is a farmed wetland that has been degraded through agricultural use. Small pools of clear water with small organic chemical staining were observed during the December 16 site visit.

Identify specific pollutants, if known: Possible liquids used for operating and maintenance of agricultural vehicles

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

- Riparian buffer. Characteristics (type, average width): [Click here to enter text.](#)
- Vegetation type/percent cover. Explain: [Click here to enter text.](#)
- Habitat for:
 - Federally Listed species. Explain findings: [Click here to enter text.](#)
 - Fish/spawn areas. Explain findings: [Click here to enter text.](#)
 - Other environmentally-sensitive species. Explain findings: Amphibians can use the depressional wetland for breeding and/or foraging habitat in the spring prior to plowing and/or seeding
 - Aquatic/wildlife diversity. Explain findings: [Click here to enter text.](#)

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

All wetland(s) being considered in the cumulative analysis: 1

Approximately (1.09) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland 4	Yes	1.09	Y/N	#
	Y/N	#	Y/N	#
	Y/N	#	Y/N	#
	Y/N	#	Y/N	#

Summarize overall biological, chemical and physical functions being performed: The headwater wetland serves as the primary collector and processor of organic matter for downstream waters. The December 16 site visit showed the wetland in a 25 percent inundated condition, slowly releasing water to its primary drainage. The wetland functions to moderate downstream flows and has the capacity to recharge local groundwater. The wetland functions include flood attenuation/run-off storage, pollutant trapping/water quality, removal of suspended solids, dissolved solids, toxins and treatment of nitrogen and phosphorus, functions are considered to be low. Wildlife habitat functions are considered to be low.

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: [Click here to enter text.](#)
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: [Click here to enter text.](#)

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:

Drainages 3 (Wetland 4 directly abuts Drainage 3) and 2 had no flow noted during the December 2014 site visits. Flow is from Wetland 4 into Drainage 3 to Drainage 2 to a man-made drainage feature off-site which directly abuts a perennial RPW (Sixmile Creek) to Lake Ontario, the flow through the on-site drainage features is ephemeral through these drainages and less than seasonal. Drainages 3 and 2 provide a surface hydrologic connection between Wetland 4 and Sixmile Creek (RPW).

Wetland 4 occurs entirely within the boundaries of the 70.34 acre site. The 1.09 acre wetland is characterized as a seasonally saturated palustrine emergent wetland dominated with narrowleaf cattail (*Typha angustifolia*) with some presence of green ash (*Fraxinus pennsylvanica*) and devil's beggartick (*Bidens frondosa*). Wetland 4 directly abuts a non-regulated man-made drainage feature (Drainage 3). The unregulated features carry water from Wetland 4 for approximately 2,800 feet before entering Sixmile Creek (RPW). The December 16, 2014 site visit showed the wetland in a 25 percent inundated condition, slowly releasing water to its primary drainage. The wetland was functioning well to moderate downstream flows and acts to recharge local groundwater. Flood attenuation/runoff storage, pollutant trapping/water quality, removal of suspended solids, dissolved solids, toxins and retention/treatment of nitrogen and phosphorus, functions are considered to be low for Wetland 4. The water quality of receiving waters is strongly influenced by the quality of water coming from the headwater streams and wetlands that feed into them. The storage and transformation of organic matter is important because it prevents downstream water quality degradation as a result of excess organic matter. Wetland 4 serves as the primary collector and processor of organic matter and nutrients for downstream waters. The storage and transformation of organic matter is important to these types of systems because it prevents downstream water quality degradation as a result of excess organic matter. It also transforms unusable organic matter into food for aquatic organisms, by breaking down large and complex organic molecules into smaller more useful forms, which are more readily usable by animal life. The conclusion that Wetland 4, located within an agricultural area, has the potential to reduce the amount of pollutants and floodwaters reaching a TNW was made on the direct observation of portions of the wetland having standing water and saturated soils occupying large sections of the wetland. Wildlife habitat functions are considered to be low to moderate.

Based upon the evaluation presented herein, there is a significant nexus between Wetland 4 and Lake Ontario. Therefore, Wetland 4 is a jurisdictional water of the US.

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: [Click here to enter text.](#)
- 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: [Click here to enter text.](#)

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: [Click here to enter text.](#)

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

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

Identify type(s) of waters: [Click here to enter text.](#)

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: [Click here to enter text.](#)
 - 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

⁸See Footnote # 3.

wetland is directly abutting an RPW: [Click here to enter text.](#)

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

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

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: 1.09 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: [Click here to enter text.](#)
- Other factors. Explain: [Click here to enter text.](#)

Identify water body and summarize rationale supporting determination: [Click here to enter text.](#)

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: [Click here to enter text.](#)
- 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: [Click here to enter text.](#)
- Other: (explain, if not covered above): [Click here to enter text.](#)

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: [Click here to enter text.](#)
- Wetlands: 0.42 acres.

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.

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): 4,069.6 linear feet # width (ft).
- Lakes/ponds: # acres.
- Other non-wetland waters: # acres. List type of aquatic resource: [Click here to enter text.](#)
- Wetlands: 0.42 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: [Click here to enter text.](#)
- 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: [Click here to enter text.](#)
- Corps navigable waters' study: [Click here to enter text.](#)
- U.S. Geological Survey Hydrologic Atlas: [Click here to enter text.](#)
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 24k:1; Ransomville
- USDA Natural Resources Conservation Service Soil Survey. Citation: Online Soil mapping
- National wetlands inventory map(s). Cite name: USFWS Online mapping
- State/Local wetland inventory map(s): [Click here to enter text.](#)
- FEMA/FIRM maps: [Click here to enter text.](#)
- 100-year Floodplain Elevation is: [Click here to enter text.](#) (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth Pro (2016) and Bing BirdsEye (2016)
 or Other (Name & Date): Earth Dimensions Inc. (2014)
- Previous determination(s). File no. and date of response letter: 1991-98611, 10/15/2001
- Applicable/supporting case law: [Click here to enter text.](#)
- Applicable/supporting scientific literature: [Click here to enter text.](#)
- Other information (please specify): [Click here to enter text.](#)

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The perimeters of Wetlands 1, 2, 3, and 5 were walked on the December 16 2014 site visit, and investigation of aerial photographs and topographic maps failed to yield any indications of any surface water connections to other waters.

Wetlands 1, 2, 3, and 5 are outside Department of the Army jurisdiction as they do not meet the criteria for jurisdictional waters of the United States according to 33 CFR Part 328.3(a)(1-7) as follows:

1. do not/have not supported interstate or foreign commerce;
2. are not interstate waters/wetlands;
3. the degradation or destruction of which would not affect interstate or foreign commerce and does not include such waters:
 - a. which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - b. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. which are used or could be used for industrial purpose by industries in interstate commerce
4. are not impoundments of water otherwise defined as WOUS under the definition;
5. are not tributaries of waters identified in paragraphs (a)(1)-(4) of this section;
6. are not territorial seas;
7. are not wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section.

Mikhail A. Boutsko
Project Manager

March 8, 2016

Date