

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): January 8, 2018

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB-1991-99478, Hakes C&D Disposal, JD Form 1 of 2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Steuben City: Painted Post
Center coordinates of site (lat/long in degree decimal format): Lat. 42.211236 ° N, Long. 77.107842 ° W
Universal Transverse Mercator: 18

Name of nearest waterbody: Erwin Hollow Brook

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

Name of watershed or Hydrologic Unit Code (HUC): 02050105

- 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: [Click here to enter a date.](#)
- Field Determination. Date(s): November 16, 2017

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 and are not “*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: Stream 7 to 270 linear feet: 6 width (ft)

Wetlands: Wetland H (0.08-acre)

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:

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.

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: 734 acres

Drainage area: 734 acres

Average annual rainfall: 35 inches

Average annual snowfall: 50 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 4 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 30 (or more) 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: N/A

Identify flow route to TNW⁵: Stream 7 flows into Tributary 4 of Erwin Hollow Brook, then into Erwin Hollow Brook, then into the Cohocton River, the Chemung River then into the Susquehanna River, a TNW.

Tributary stream order, if known: first

(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: 6 feet

Average depth: 4 feet

Average side slopes: 2:1

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.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input checked="" type="checkbox"/> Cobbles | <input checked="" type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: Click here to enter text. | |
| <input type="checkbox"/> Other. Explain: Click here to enter text. | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: appears stable

Presence of run/riffle/pool complexes. Explain: absent

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): 15%

(c) Flow:

Tributary provides for: Intermittent but not Seasonal Flow

Estimate average number of flow events in review area/year: 20 (or greater)

Describe flow regime: intermittent when ground water levels are high and during storm events

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

Surface flow is: Discrete and Confined Characteristics: flow is discrete and confined to the channel

Subsurface flow: Yes Explain findings: groundwater seeps were observed through the area and were observed to directly contribute to the flow of Stream 7

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

Tributary has (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Bed and banks | |
| <input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community Click here to enter text. |
| <input type="checkbox"/> other (list): Click here to enter text. | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: Click here to enter text. | |

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 watershed is relatively undisturbed, water appeared clear during site visit

Identify specific pollutants, if known: unknown

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

- Riparian corridor. Characteristics (type, average width): [Click here to enter text.](#)
- Wetland fringe. Characteristics: Wetland H directly abuts Stream 7 and occurs within a densely vegetated portion of the stream channel.
- Habitat for:
 - Federally Listed species. Explain findings: northern long-eared bat
 - 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: Stream 7 is located within a diverse forest habitat and the stream provides habitat for a variety of aquatic species, such as salamanders and other amphibians and invertebrates; and the stream increases habitat diversity within the forest supporting upland species as well.

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.

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 H (0.08-acre)

Wetland type. Explain: palustrine forested

Wetland quality. Explain: Although Wetland H does not support a particularly high diversity of plant species, it does provide habitat for sensitive aquatic species such as amphibians, contributes to the diversity of the forest by providing additional habitat types, serves as a specific water source for Stream 7 and serving to contribute to the headwaters of Erwin Hollow Brook in general, and is within a relatively undisturbed, large forested area.

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

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent Flow Explain: Wetland H is fed by precipitation and groundwater seeps, which fluctuates throughout the year, thus providing intermittent flow directly into Stream 7.

Surface flow is: Confined

Characteristics: Wetland H is located within and around the channel of Stream 7.

Subsurface flow: Yes Explain findings: groundwater seeps provide flow to the wetland, which is located within and around the channel of Stream 7, therefore subsurface flow directly enters the stream when the ground water is high enough

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

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 30 (or more) river miles from TNW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

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

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Surface water was clear at the time of the site visit, the watershed is largely undisturbed and so water quality can be expected to be good

Identify specific pollutants, if known: unknown

(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: emergent and forested vegetation

Habitat for:

Federally Listed species. Explain findings: northern long-eared bat

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: the wetland is located within a stream in a dense forested habitat, increasing the diversity of the forest and available types of habitat for a variety of wildlife.

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

All wetland(s) being considered in the cumulative analysis: 2

Approximately (0.1) 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>
Yes	0.08 Wetland H	Y/N	#
Yes	0.02 Wetland I (delineated, but not part of JD request)	Y/N	#
Y/N	#	Y/N	#
Y/N	#	Y/N	#

Summarize overall biological, chemical and physical functions being performed: Wetlands H and I are located within the channel of Stream 7 and are they only similarly situated wetlands along the relevant reach of Stream 7. They provide ground water recharge/discharge, flood flow attenuation, sediment retention, production export, and wildlife habitat. Wetland H is the larger of the two and provides much of the hydrology for Stream 7.

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:

There is a direct and continuous path for the flow of water from Wetland H into Stream 7, which flows into Tributary 4 of Erwin Hollow Brook (a perennial stream), which flows into the Cohocton River, to the Chemung River and finally into the Susquehanna River, which is a TNW. Therefore, Stream 7 and Wetland H have hydrologic connectivity to the Susquehanna River, thereby providing a significant nexus between the stream and its adjacent/abutting wetlands and the downstream TNW.

Hydrologic connectivity refers to the flow that transports organic matter and nutrients, energy, and aquatic organisms throughout the system. The wetland receives water from the surrounding watershed and thus directly affects the nature of the water entering the tributary and its downstream receiving waters, both in quantity and chemical/physical attributes. This occurs through the reduction of runoff rates of water received by the tributary resulting from attenuation and storage of floodwaters; capture of water through evapotranspiration; storage of runoff; and filtering and/or storage of nutrients, chemicals, and sediments contained in rainfall, runoff, or other hydrologic inputs. Ultimately, this affects the downstream TNW, the Susquehanna River, as the stream and wetland alter the amount of flow reaching the TNW and furthermore, any additional matter such as nutrients, chemicals, sediments, and pollutants carried in that flow. The Erwin Hollow Creek watershed is relatively undisturbed with the exception of the landfill near its headwaters thus reducing stream function, increased erosion, sediment which impairs aquatic life and widens flood areas, habitat loss, and loss of wetlands. Since the wetland is located in close proximity to a landfill and it receives some of its hydrology from runoff associated with that development and roads, it provides an important function of reducing the effects of runoff on the downstream TNW. The tributary conveys water that has been filtered from the wetland to the downstream TNW. The wetland also attenuates sediment, nutrients, and pollutants contained in its received water. Combined, the wetland supplies the downstream TNW with a cleaner source of water that will aid in reducing impairments. Due to the physical, biological, and chemical connectivity of the wetland as described above, it has been determined that Stream 7 and Wetland H have a significant nexus with the downstream TNW, the Susquehanna River, as the functions and services provided by the stream and its adjacent wetlands provide more than a speculative effect on the physical integrity of the river.

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

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.**

⁸See Footnote # 3.

- 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: Stream 7 to 270 linear feet: 6 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 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: # 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: Wetland H (0.08-acre)

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.](#)

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, 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: # 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: [Click here to enter text.](#)
- 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: [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: Corning
- USDA Natural Resources Conservation Service Soil Survey. Citation: Steuben County
- National wetlands inventory map(s). Cite name: USFWS
- 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 Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth, various years
 - or Other (Name & Date): [Click here to enter text.](#)
- Previous determination(s). File no. and date of response letter: [Click here to enter text.](#)
- 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: [Click here to enter text.](#)

SIGNED

Heather Adams
Project Manager

January 8, 2018

Date

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): January 8, 2018

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB-1991-99478, Hakes C&D Disposal, JD Form 2 of 2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Steuben City: Painted Post
Center coordinates of site (lat/long in degree decimal format): Lat. 42.211236 ° N, Long. 77.107842 ° W
Universal Transverse Mercator: 18

Name of nearest waterbody: Erwin Hollow Brook

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

Name of watershed or Hydrologic Unit Code (HUC): 02050105

- 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: [Click here to enter a date.](#)
- Field Determination. Date(s): November 16, 2017

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 and are not “*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: Stream 8 (175 linear feet and 6 feet wide) Stream 9 (250 linear feet and 10 feet wide)

Wetlands: Wetland K (0.35-acre), Wetland L (0.02-acre), Wetland M (0.59-acre), Wetland N (0.23-acre)

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: Wetland J (0.12-acre) was determined to be isolated. The factors at 328.3(a)(i-iii) were considered and determined there is no substantial nexus to interstate or foreign commerce. The following is a summary of the physical characteristics that were reviewed for this jurisdictional determination.

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.

The entire perimeter of the wetland was walked during the November 16, 2017, site visit. The wetland is on a flat terrace with no inlets or outlets observed and based on the topography it appears the wetland's hydrology is primarily fed by a seep, but also by precipitation and overland sheet flow from the surrounding area. It is unlikely that the wetland receives sufficient surface water to overcome the change in topography and distance to the nearest tributary, which is an unnamed tributary (Stream 8) to Erwin Hollow Brook, approximately 170 feet to the east. Due to landscape position and soil characteristics, a shallow subsurface connection is unlikely. Therefore, the wetland is unlikely to have a chemical nexus to the downstream TNW, the Susquehanna River. The wetland does not receive or maintain enough surface water of sufficient frequency, duration, or depth to sustain amphibian egg masses or aquatic insect larvae, for example. Therefore, the wetland's hydrological characteristics, combined with the distance between the wetland and the nearest conveyances, preclude the possibility of a biological nexus.

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: 734 acres

Drainage area: 734 acres

Average annual rainfall: 35 inches

Average annual snowfall: 50 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 4 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 30 (or more) 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: N/A

Identify flow route to TNW⁵: Stream 9 flows into Stream 9 which flows into Tributary 4 of Erwin Hollow Brook, then into Erwin Hollow Brook, then into the Cohocton River, the Chemung River then into the Susquehanna River, a TNW.

Tributary stream order, if known: first

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

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.

- 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: 6-10 feet
Average depth: 4 feet
Average side slopes: 2:1

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: relatively stable

Presence of run/riffle/pool complexes. Explain: absent

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): 15%

(c) **Flow:**

Tributary provides for: Intermittent but not Seasonal Flow

Estimate average number of flow events in review area/year: 20 (or greater)

Describe flow regime: intermittent when ground water levels are high and during storm events

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

Surface flow is: Discrete and Confined Characteristics: Flow is discrete and confined to the channel

Subsurface flow: Yes Explain findings: groundwater seeps were observed through the area and were observed to directly contribute to the flow of Stream 7

- 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.](#)

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
 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 watershed is relatively undisturbed, water appeared clear during site visit

Identify specific pollutants, if known: unknown

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

- Riparian corridor. Characteristics (type, average width): [Click here to enter text.](#)

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.

- Wetland fringe. Characteristics: [Click here to enter text.](#)
- Habitat for:
 - Federally Listed species. Explain findings: northern long-eared bat
 - 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: Streams 8 and 9 are located within a diverse forest habitat and the streams provides habitat for a variety of aquatic species, such as salamanders and other amphibians and invertebrates; and the streams increase habitat diversity within the forest supporting upland species as well.

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 K (0.35-acre), Wetland L (0.02-acre), Wetland M (0.59-acre), Wetland N (0.23-acre)

Wetland type. Explain: palustrine forested

Wetland quality. Explain: Although the wetlands do not support a particularly high diversity of plant species, it does provide habitat for sensitive aquatic species such as amphibians, contributes to the diversity of the forest by providing additional habitat types, serves as a specific water source for Streams 8 and 9, and serve to contribute to the headwaters of Erwin Hollow Brook in general, and is within a relatively undisturbed, large forested area.

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

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent Flow Explain: All of the wetlands are fed by precipitation and groundwater seeps, which fluctuates throughout the year, thus providing intermittent flow directly into Streams 8 and 9.

Surface flow is: Discrete and Confined

Characteristics: Flow from Wetlands N and K is discrete and confined to channels that drain directly into the stream, Wetland M directly abuts Stream 9, and Wetland L has discrete flow over the short distance to Stream 9 that was observed in the field.

Subsurface flow: Yes Explain findings: groundwater seeps provide flow to the wetlands, and given their direct connection and proximity to the streams, there is subsurface flow during seasons when the ground water is high

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

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting Wetland M directly abuts Stream 9

Not directly abutting

Discrete wetland hydrologic connection. Explain: Wetlands K, L, and N have discrete and/or confined connection to the streams

Ecological connection. Explain: The wetlands' direct connection and close proximity to the streams indicate an ecological connection as the nutrients carried in the water would be shared, as well as both wetland and stream habitats are used by the same individuals of a variety of wildlife species

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

(d) Proximity (Relationship) to TNW

Project wetlands are 30 (or more) river miles from TNW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

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

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Surface water was clear at the time of the site visit, the watershed is largely undisturbed and so water quality can be expected to be good

Identify specific pollutants, if known: unknown

(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: emergent and forested vegetation

Habitat for:

Federally Listed species. Explain findings: northern long-eared bat

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: the wetland is located within a stream in a dense forested habitat, increasing the diversity of the forest and available types of habitat for a variety of wildlife.

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

All wetland(s) being considered in the cumulative analysis: 4

Approximately (1.19) 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>
No	0.35 (Wetland K)	Y/N	#
No	0.02 (Wetland L)	Y/N	#
Yes	0.59 (Wetland M)	Y/N	#
No	0.23 (Wetland N)	Y/N	#

Summarize overall biological, chemical and physical functions being performed: Wetlands K, L, M, and N are they only similarly situated wetlands along the relevant reach of Stream 9. Wetland K has a discrete flow to Stream 8, but it's close proximity and slope towards Stream 9 indicate it may also directly drain to Stream 9 as well, so due to this closeness and for simplicity they will all be used for the cumulative analysis. The wetlands provide ground water recharge/discharge, flood flow attenuation, sediment retention, production export, and wildlife habitat. Wetland M supports sediment and shoreline stabilization as it directly abuts Stream 9. Combined the wetlands provide much of the hydrology for Stream 9.

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: There is a direct and continuous path for the flow of water from Stream 8 and Wetlands K, L, M, and N into Stream 9, which flows into Tributary 4 of Erwin Hollow Brook (a perennial stream), which flows into the Cohocton River, to the Chemung River and finally into the Susquehanna River, which is a TNW. Therefore, the streams and wetlands have hydrologic connectivity to the Susquehanna River, thereby providing a significant nexus between the stream and its adjacent/abutting wetlands and the downstream TNW.

Hydrologic connectivity refers to the flow that transports organic matter and nutrients, energy, and aquatic organisms throughout the system. The wetland receives water from the surrounding watershed and thus directly affects the nature of the water entering the tributary and its downstream receiving waters, both in quantity and chemical/physical attributes. This occurs through the reduction of runoff rates of water received by the tributary resulting from attenuation and storage of floodwaters; capture of water through evapotranspiration; storage of runoff; and filtering and/or storage of nutrients, chemicals, and sediments contained in rainfall, runoff, or other hydrologic inputs. Ultimately, this affects the downstream TNW, the Susquehanna River, as the stream and wetland alter the amount of flow reaching the TNW and furthermore, any additional matter such as nutrients, chemicals, sediments, and pollutants carried in that flow. The Erwin Hollow Creek watershed is relatively undisturbed with the exception of the landfill near its headwaters thus reducing stream function, increased erosion, sediment which impairs aquatic life and widens flood areas, habitat loss, and loss of wetlands. Since the wetland is located in close proximity to a landfill and it receives some of its hydrology from runoff associated with that development and roads, it provides an important function of reducing the effects of runoff on the downstream TNW. The tributary conveys water that has been filtered from the wetland to the downstream TNW. The wetland also attenuates sediment, nutrients, and pollutants contained in its received water. Combined, the wetland supplies the downstream TNW with a cleaner source of water that will aid in reducing impairments. Due to the physical, biological, and chemical connectivity of the wetland as described above, it has been determined that Streams 8 and 9 and Wetlands K, L, M, and N have a significant nexus with the downstream TNW, the Susquehanna River, as the functions and services provided by the stream and its adjacent wetlands provide more than a speculative effect on the physical integrity of the river.

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

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: Stream 8 (175 linear feet and 6 feet wide) Stream 9 (250 linear feet and 10 feet wide)
- 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 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: # 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: Wetland K (0.35-acre), Wetland L (0.02-acre), Wetland M (0.59-acre), Wetland N (0.23-acre)

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.](#)

⁸See 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.

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: Wetland J (0.12-acre)

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: [Click here to enter text.](#)
- 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: [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: Corning
- USDA Natural Resources Conservation Service Soil Survey. Citation: Steuben County
- National wetlands inventory map(s). Cite name: USFWS
- 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, various years
 or Other (Name & Date): [Click here to enter text.](#)
- Previous determination(s). File no. and date of response letter: [Click here to enter text.](#)
- 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:

SIGNED

Heather Adams
Project Manager

January 8, 2018

Date