

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): 5/5/2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Fort Worth District, SWF-2022-00167; Hopewell Grand Prairie Site

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Texas** County: **Dallas** City: **Grand Prairie and Irving**

Center coordinates of site (lat/long in degree decimal format): Lat. 32.782609 **N**, Long. -96.997483 **W**.

Universal Transverse Mercator:

Name of nearest waterbody: **Bear Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **West Fork Trinity River**

Name of watershed or Hydrologic Unit Code (HUC): **120301020705**

☒ 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:

☒ Field Determination. Date(s): **4/21/2022**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

☐ Waters subject to the ebb and flow of the tide.

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

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

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** total for -- distinct streams (Streams -- thru --- see table in file). **There is 1 open water/aquatic bed area (abandoned gravel pit) totaling 3.93 acres that is contiguous with wetlands that are abutting Bear Creek.**

Wetlands: **11.16 acres for 5 distinct wetlands (wetlands 1 thru 3 are portions of the same wetland polygon - see table in file).**

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

Elevation of established OHWM (if known): Unknown.

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).

2. **Non-regulated waters/wetlands (check if applicable):**³

- ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to not be jurisdictional. Explain:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: .

Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": .

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met. The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4. A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law. If the 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.

INFORMATION CONTAINED IN SECTION 1 BELOW IS TO ASSIST WITH DESCRIBING CONNECTIVITY OF WATER FEATURES ON SITE TO TNW

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

(i) **General Area Conditions:**

Watershed size: -- **acres**

Drainage area: **acres**

Average annual rainfall: **39 inches**

Average annual snowfall: **1.2 inches**

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

☒ Tributary flows directly into TNW.

☐ Tributary flows through -- tributaries before entering TNW.

Project waters are -- river miles from TNW.

Project waters are -- river miles from RPW.

Project waters are **1.14** aerial (straight) miles from TNW.

Project waters are **0.45** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. **No** Explain: .

Identify flow route to TNW⁵: **The site is located within the floodplain and floodway of the West Fork of the Trinity River and floodplain of Bear Creek although neither tributary is located on the project site. The on-site wetlands/pond have split connectivity with the West Fork to the west and south as well as Bear Creek to the north which flows east into the West Fork 2.45 miles from the site.**

Tributary stream order, if known:.

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

³ Supporting documentation is presented in Section III.F.

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. Explain: **Portions of Bear Creek between the site and the West Fork Trinity River are in the original location and have intact floodplain areas.**
☐ Artificial (man-made). Explain:
☒ Manipulated (man-altered). Explain: **Bear Creek has been historically channelized and relocated.**

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

Average width: **50** feet

Average depth: -- feet

Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):

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

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

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Pick List

Tributary gradient (approximate average slope): -- %

(c) Flow:

Tributary provides for: Perennial Flow

Estimate average number of flow events in review area/year: Pick List

Describe flow regime:

Other information on duration and volume:

Surface flow is: Pick List Characteristics:

Subsurface flow: Unknown. Explain findings:

☐ Dye (or other) test performed:

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 | ☒ a abrupt change in plant community |
| ☐ other (list): | |

☐ Discontinuous OHWM.⁷ Explain:

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

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

(iii) Chemical Characteristics:

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

Identify specific pollutants, if known: unknown.

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

☐ Riparian corridor. Characteristics (type, average width):

☐ Wetland fringe. Characteristics:

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.

- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings: .
 - ☐ Fish/spawn areas. Explain findings: .
 - ☐ Other environmentally-sensitive species. Explain findings: .
 - ☐ Aquatic/wildlife diversity. Explain findings: .

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

(i) **Physical Characteristics:**

(a) General Wetland Characteristics: All wetland and open water/aquatic bed water features are the result of excavation occurring in upland areas as demonstrated by aerial photographs back to the late 1950s. The features were worked on and off until the 1990s when they were abandoned. Most wetlands have been colonized by woody vegetation further supporting the abandoned condition (as well as described in the delineation report). The open water/aquatic bed area is too deep and continuously inundated to allow for forested vegetation to occur but is covered with herbaceous vegetation when water levels are low enough. The Corps does not concur with the delineation report characterization that the features are not jurisdictional. The resulting water features are in abandoned areas and meet the definition of waters of the US.

Properties:

Wetland size: **11.16 acres for 5 distinct wetlands. Wetlands 1 thru 3 (single wetland with 3 portions on the north side of the tract) and wetland 4 as well as 3.93 acres of open water/aquatic bed are contiguous with a much larger wetland polygon that abuts Bear Creek. Wetlands 5, 6 and 7 are not contiguous with Bear Creek but are determined to be adjacent to Bear Creek and the West Fork Trinity River as described below.**

Wetland type. **Herbaceous and forested.** Explain: Wetlands 1 thru 3 are herbaceous and 4 thru 7 are forested.

Wetland quality. **Average to above average.** Explain: Although not executed, anticipated scores from district conditional assessment would be in the upper 50s to 70s based on vegetation types, composition, location, connectivity, and other factors.

Project wetlands cross or serve as state boundaries. N/A Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent when flood conditions (more than 10-year event) exist.** Explain: The floodway and floodplain of the West Fork Trinity River was split to flow by and through this site associated with historic permit actions in the area.

Surface flow is: **Discrete and confined when flood events occur.**

Characteristics: Aerial photography shows wetlands 5 thru 7 ponded on multiple occasions during wetter conditions. Out of bank flooding into the feature is not occurring which indicates that groundwater connection exists with water coming from the West Fork Trinity River through the site and into Bear Creek. Bear Creek can have its own flood events not related to West Fork conditions which also can influence local groundwater and relate to these 3 wetland polygons. These wetlands are the result of borrow activities that occurred starting in the 1950s but were abandoned in the 1990s. On-site soil investigations reveal that soils in borrow areas are clay to loam with mixed materials.

Subsurface flow: **Unknown.** Explain findings: See description above.

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting – **Wetlands 1 thru 3 and 4 as well as open water/aquatic bed 1 are part of a larger wetland complex that is contiguous with Bear Creek to the north.**

☒ Not directly abutting

☒ Discrete wetland hydrologic connection. Explain: Aerial photography shows wetlands 5 thru 7 ponded on multiple occasions during wetter conditions. Out of bank flooding into the feature is not occurring which indicates that groundwater connection exists with water coming from the West Fork Trinity River through the site and into Bear Creek. Bear Creek can have its own flood events not related to West Fork conditions which also can influence local groundwater and relate to these 3 wetland polygons. These wetlands are the result of borrow activities that occurred starting in the 1950s but were abandoned in the 1990s. On-site soil investigations reveal that soils in borrow areas are clay to loam with mixed materials.

☒ Ecological connection. Explain: Given the proximity of the site to both Bear Creek and the West Fork Trinity River, wildlife utilization of the site as it relates to the corridor of both tributaries is evident. Overall development of the region between Fort Worth and Dallas has confined natural

corridors which support wildlife movements to floodplain areas. The West Fork is the corridor for connectivity between the 2 major cities. SWF undertook an extensive evaluation of the overall Trinity River floodplain and contributing watersheds in the 1980s due to the development that had historically occurred and was expected to occur to address flooding issues as well as floodplain functionality, including ecological considerations, to maintain the suite of functions for the corridor. The evaluation of the onsite wetlands and those that are similarly situated for the corridor support the ecological connectivity and function of the TNW (WF Trinity).

☒ Separated by berm/barrier. Explain: There is an earthen berm/barrier west of the site to the WF Trinity river that contains a culvert and is also overtopped during certain flooding events well less than a 100-year event. Coordination with SWF H&H revealed 25+ year events should have influence on the wetland features on site including those (5 thru 7) that do not have a direct surface tributary or contiguous connection to Bear Creek.

(d) Proximity (Relationship) to TNW

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

Project waters are **slightly over 1** aerial (straight) miles from TNW.

Flow is from: **Navigable water to wetland as well as from wetland through 1 tributary to TNW.**

Estimate approximate location of wetlands as within the **5-10 and 25+** 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: Ponded water in depressional areas on arials is clear under some circumstances while connected wetlands and open water/aquatic bed areas are turbid during low flood events. Other times all water features are turbid.

Identify specific pollutants, if known: Non-point source pollutants are well documented in the WF Trinity River. The site is located downstream from a major wastewater treatment plant for Fort Worth which allows for elevated pollutants to exist including hormones, pharmaceuticals, phosphorus, nitrates, metals and other contaminants.

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

☒ Riparian buffer. Characteristics (type, average width): .

☒ Vegetation type/percent cover. Explain: Wetlands are forested with black willow, cottonwood, sugarberry trees while herbaceous wetlands include Polygnum, Carex and other hydrophytic species.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☒ Other environmentally-sensitive species. Explain findings: The WF Trinity corridor provides habitat for neo-tropical migrants, game (deer) and non-game (skunk, racoon, possum, etc.) wildlife.

☒ Aquatic/wildlife diversity. Explain findings: Given the highly developed condition of the drainage basin, the corridor provides intact large and connected areas of cover for wildlife species compared to small disjointed pockets.

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

All wetland(s) being considered in the cumulative analysis: **More than 30 wetlands totaling more than 750 acres as identified in USFWS NWI mapper for reach of the TNW (WF Trinity River) from Greenbelt Road downstream to the confluence of Bear Creek with the TNW and also includes the Bear Creek reach near the project area to the confluence with the TNW since they are within the floodplain of the TNW and receive flow from the split floodway/floodplain of the TNW into the Bear Creek watershed.**

Approximately **765 wetland** acres within in total area of **8000 acres** being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Total directly abutting</u>	<u>Size (in acres)</u>	<u>Total Not Directly Abut</u>	<u>Size (in acres)</u>
Onsite polygons	4 polygons (1 thru 4)	8.71 acres	3 polygons (5 thru 7)	6.38 acres
Offsite polygons	More than 20 polygons	650 acres	More than 10 polygons	150 acres

Summarize overall biological, chemical and physical functions being performed: **These wetlands provide natural moderation of floods (regulate water volume, release during lower flow conditions, etc.), reduction in flow velocity and cause deposition of sediments which improves water quality. They also support nutrient cycling, increase productivity and improve fish habitat due to contributions of nutrients and carbon to receiving waters. Assist with water quality maintenance and groundwater recharge. Living resource values relative to**

vegetation are also provided in addition to wildlife habitat. The WF Trinity River, Bear Creek and other tributaries in the reach provide refugia and travel corridors in a watershed that has been heavily developed.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
2. **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: **There is a significant nexus associated with those wetland polygons that do not abut Bear Creek as supported above as well as when considered in conjunction with the limited amount of wetland that exists (less than 10%) of the undeveloped area within the floodplain of the WF Trinity River.**

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
☐ TNWs: linear feet width (ft), Or, acres.
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
☐ Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .
Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
3. **Non-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: linear feet width (ft).
☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **8.71 acres of wetlands on site are part of a much larger wetland complex totaling approximately 120 acres as supported by NWI imagery assessment, Google Earth aerial imagery, historic permit actions in the area, USGS quad map information and an onsite visit. This overall complex connects directly with Bear Creek via a 675-foot bridge on S. Belt Line Road that allows an unnamed channel within the wetland complex to discharge into Bear Creek as well as the wetlands directly touching Bear Creek.**
- ☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

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

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

- ☒ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.B & C.
Provide acreage estimates for jurisdictional wetlands in the review area: **6.38** 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, a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain:.

Identify water body and summarize rationale supporting determination:

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

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

Identify type(s) of waters: .

- ☐ Wetlands: acres.

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.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - ☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☐ Other: (explain, if not covered above):

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

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

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

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

SECTION IV: DATA SOURCES.

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

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☒ Office concurs with data sheets **but not the delineation report conclusions relative to jurisdictional status. The consultant was apprised that the wetlands and open water/aquatic bed areas are jurisdictional since they are abandoned gravel pit areas that have been reclaimed by woody vegetation and are either contiguous with Bear Creek or are adjacent due to proximity and inter-relationship with TNW and RPW.**
 - ☒ Office does not concur with data sheets/delineation report. **See above.**
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☒ U.S. Geological Survey Hydrologic Atlas: .
 - ☒ USGS NHD data.
 - ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: .
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☒ National wetlands inventory map(s). NWI Mapper.
- ☐ State/Local wetland inventory map(s): .
- ☒ FEMA/FIRM maps: Online viewer.
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): All Google Earth and Historical Aerials.com imagery.
or ☐ Other (Name & Date): .
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: .