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): 11/3/2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Fort Worth District, SWF-2021-00132 Gunter Rail Facility

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Texas County/parish/borough: Grayson City: Gunter
Center coordinates of site (lat/long in degree decimal format): Lat. 33.484118° **N**, Long. -96.742095° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Little Elm Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Trinity River
Name of watershed or Hydrologic Unit Code (HUC): 120301030701
☒ 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): 4/27/2021; 7/1/2021; 9/2/2021

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.
There **Are No** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are 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 waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☒ Non-RPWs that flow directly or indirectly into TNWs (ST-02, 03, 04, 05, 06, 07, 08, 09, 10, 11, Q2, Q3 & Q4)
      ☐ 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 (WET-Q2, 4, 10 & 12)
      ☐ 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: 7,534 linear feet: width (ft) and/or 1.20 acres contained in 11 ephemeral stream reaches (ST-03, 04, 06, 07, 08, 09, 10, 11, Q-2, Q-3 and Q-4) and 2 intermittent stream reaches (ST-02 and 05).
      Wetlands: 1.23 acres in 3 adjacent wetlands.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
      Elevation of established OHWM (if known): Not known and not delineated using 1987 Manual.

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

[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.

☒ Waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **Preamble waters are present with 5 upland stock tanks (OW-1 thru OW-5). There are 11 isolated depressional wetlands (WET-1, 2, 3, 5, 6, 7, 8, 9, 11, 13 and Q-1) present. Lastly, there is an ephemeral ditch/stream combination (ST-1 & ST-Q1) that captures an apparent previous ephemeral stream that is not connected to any surface waters.**

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. **TNW**
   Identify TNW: .
   Summarize rationale supporting determination: .
2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met. The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4. A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law. If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

(i) General Area Conditions:

Watershed size: 27036 **acres**
Drainage area: unknown **acres**
Average annual rainfall: 42 inches
Average annual snowfall: 2 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.
☒ Tributary flows through **2** 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 TNW[5]: ST-02 (and its tributaries ST-10, ST-Q2 thru Q4) flows north offsite into another small unnamed stream with an east-west orientation. The stream system then flows southwest beneath Bounds Road, before turning south and flowing into Little Elm Creek. Little Elm Creek flows into Soil Conservation Service Site 1 Reservoir approximately 1.7 miles from the Project site. The outfall from Soil Conservation Service Site 1 Reservoir, Little Elm Creek, generally flows south, southwest and into Soil Conservation Service Site 2 Reservoir approximately 1.4 miles from Site 1 Reservoir. The outfall of Soil

[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.

Conservation Service Site 2 Reservoir, Little Elm Creek, then flows south and eventually into Soil Conservation Service Site 3 Reservoir approximately 2.2 miles south of Site 2 Reservoir. The outfall from Soil Conservation Service Site 3 Reservoir, Little Elm Creek, then flows south, southwest for approximately 20 miles before flowing into Lake Lewisville. Outfall from Lake Lewisville then flows into Elm Fork, which flows into the Trinity River approximately 15.0 from the point where Little Elm Creek flows into Lake Lewisville. The Trinity River is a TNW. Ephemeral streams ST-Q3 and ST-Q4 both have OHWM and flow directly into stream ST-02; and therefore, are also jurisdictional. Ephemeral stream ST-Q2 has an OHWM and flows into ST-Q4, which flows into stream ST-02; therefore, stream ST-Q2 is also jurisdictional. Ephemeral stream ST-10 flows into wetland WET-Q2, which is directly connected to stream ST-Q4 which is directly connected to stream ST-02; therefore stream ST-10 (and wetland WET-Q2) are both jurisdictional.

Stream ST-05 (and its tributaries ST-03, 04, 06, 07, 08, 09, 11) flows generally west through the Project area then flows south, southwest for approximately 1.0 mile where it flows into an unnamed tributary of Little Elm Creek. Flow then proceeds through the unnamed tributary for 0.8 mile then flows into Soil Conservation Service Site 2 Reservoir. The outfall of Soil Conservation Service Site 2 Reservoir, as described above, is Little Elm Creek. Flow from the outfall of Soil Conservation Service Site 2 Reservoir is described above. Streams ST-03, ST-04, ST-06, ST-07, ST-08, ST-09, and ST-11 are all ephemeral streams with OHWMs that flow into stream ST-05 (ST-03 and ST-04 flow into ST-05 off-site) and would be considered jurisdictional.

Tributary stream order, if known: 1st order or less.

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

Tributary is: ☒ Natural. Explain:
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 4 feet
Average depth: 1 feet
Average side slopes: **4:1 or greater.**

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: Moderately stable banks with occasional areas of erosion.

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Presence of run/riffle/pool complexes. Explain: None present.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 3 %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**
Estimate average number of flow events in review area/year: **2-5**
Describe flow regime: The Survey Area contained tributaries with intermittent and ephemeral flow regimes. ST-05 has greater flow events given the size of its contributing watershed and number of tributaries. ST-02 does not appear to have seasonal flow and is driven more by precipitation although it has delayed hydrological contributions. Other information on duration and volume: Consideration of NM Hydrology protocol indicators occurred and included hydric soils in channel bottom and banks, iron reducing bacteria discharge in ST-02 while ST-05 have greater sinuosity and channel development. The streams within the Project boundary are in the upper reaches of the watershed. Streams ST-05 and ST-02 have a flow frequency that would classified as intermittent.
Other information on duration and volume: .

Surface flow is: Discrete and confined to channels. Overland sheet flow also contributes to channels.
Characteristics:.

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

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

☒ Bed and banks

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

☒ clear, natural line impressed on the bank	☒ the presence of litter and debris
☒ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☒ vegetation matted down, bent, or absent	☐ sediment sorting
☒ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☒ water staining	☐ 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 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: Water within the tributaries was discolored, likely due to sedimentation from runoff and disturbance from onsite cattle. The water likely contains higher than average nutrient levels due to cattle and agricultural practices within the Survey Area and surrounding properties. The tributaries likely contain elevated flow levels during and after storm events.

Identify specific pollutants, if known: sediment and fecal coliform.

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

☒ Riparian corridor. Characteristics (type, average width): Forested areas developed along the intermittent creek reaches and vary in width.

☒ Wetland fringe. Characteristics: Forested wetland at upper end of ST-02, forested and emergent wetlands contributing to reach on the north end of ST-02, and multiple isolated channel remnants with wetland vegetation along ST-05.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Insects and occasional amphibians were observed within the tributaries.

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

(i) Physical Characteristics:

(a) <u>General Wetland Characteristics:</u>

Properties:

Wetland size: 1.23 acres

Wetland type. Forested and emergent wetlands present as described above. Explain:

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

[7]Ibid.

Wetland quality. Explain: All jurisdictional wetlands within the Survey Area are of moderate quality. Each has been impacted to some degree by agricultural practices and cattle use, with cattle trails observed in all three jurisdictional wetlands during field reconnaissance. Compacted soils were observed in high use cattle trails. Roads and a railroad cross these feature and non-point source contributions also occur.
Project wetlands cross or serve as state boundaries. N/A

(b) General Flow Relationship with Non-TNW:
Flow is: intermittent and ephemeral depending on feature. Explain: Wetlands WET-4 and WET-10 directly connect to Stream Q3 and likely provide occasional flow due to groundwater seepage from large dam upstream (no surface outlet) as well as overland flow to the stream during and immediately following rain events. Similarly, Wetland WET-Q2 is likely the result of inflow and retention from upstream watershed flows from ST-10 and provides delayed flows and occasional overland flow to Stream Q4 during and immediately following periods of rainfall. ST-05 has a larger watershed and substantially developed channel characteristics compared to ST-02.

Surface flow is**: Discrete and confined in combination with contributions of overland flow.**
Characteristics: .

Subsurface flow: Unknow. Explain findings: Given general clay soil conditions minimal opportunity exists for subsurface flow contributions. Channel reaches with sandy deposits have greater ability to provide such flow conditions under limited circumstances.
☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☒ Directly abutting (WET Q2, 04 and 10)
☒ Not directly abutting
☒ Discrete wetland hydrologic connection. Explain: WET – 12 has non-JD surface drainage connecting feature to ST-05. Other wetland features along ST-05 are more distant.
☐ Ecological connection. Explain: .
☐ Separated by berm/barrier. Explain:

(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 RPW to TNW.**
Estimate approximate location of wetland as within the **100 year** floodplain.

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Similar to the tributaries observed within the Survey Area, water within the wetlands, when present, was typically discolored and contained sediment. This is likely a result of ranching/agricultural processes that occur onsite, as well as the presence of cattle that traverse the wetland and compact or disturb its soils.\

Identify specific pollutants, if known: Sediment and fecal coliform from cattle.

(iii) Biological Characteristics. Wetland supports (check all that apply):
☒ Riparian buffer. Characteristics (type, average width): Wetlands in floodplains and forested areas adjacent to intermittent streams.
☐ Vegetation type/percent cover. Explain:.
☐ Habitat for:
☒ Federally Listed species. Explain findings:Located in drainage basin of proposed listed mussel species. Water from wetland contributes to flow conditions and quality of said species.
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☒ Aquatic/wildlife diversity. Explain findings: See previous discussion for streams above.

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: 4
Approximately (1.23) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
WET-04: Y	0.41	WET-12: N	0.01
WET-10: Y	0.4		
WET-Q@: Y	0.41		

Summarize overall biological, chemical and physical functions being performed: Biological function is habitat for wetland plants and provides surface water filtration.

C. SIGNIFICANT NEXUS DETERMINATION (FOR NON-RPWS)

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: Both intermittent non-RPWs have contiguous and/or adjacent wetlands.

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: Multiple ephemeral streams contribute to stream ST-05 which is an intermittent stream. Stream ST-05 and these onsite tributaries described above flow offsite and eventually flow into Little Elm Creek. Given channel conditions and flow as seen on aerial photography, as well as the land use of the surrounding areas in the watershed, this stream coveys moderate levels of hydrology and associated nutrients into Little Elm Creek at the connection southwest of the Survey Area. Additionally, these stream features receive overland flow during rain and flood events, which is ultimately conveyed into Little Elm Creek, Soil Conservation Service Lakes (Site 2 and Site 3), Lake Lewisville, and eventually to the Trinity River. Wetlands and tributaries to ST-02 (an intermittent stream) have similar characteristics as ST-05 but on a smaller scale but with higher acreage of contributing wetlands.

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: Wetland WET-12 does not abut stream ST-05; however, this wetland has a direct surface hydrologic connection to stream ST-05 through a non-jurisdictional flow channel.

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

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

2. **RPWs that flow directly or indirectly into TNWs.**

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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

3. Non-RPWs[8] that flow directly or indirectly into TNWs.

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

Provide estimates for jurisdictional waters within the review area (check all that apply):
☒ Tributary waters: 7534 linear feet 5 width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

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

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

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

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

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

Provide acreage estimates for jurisdictional wetlands in the review area: **0.05**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: **1.23** 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]

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

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

Identify water body and summarize rationale supporting determination: .

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

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

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. **(REQUIRES HQ COORDINATION)**
☐ 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. **(REQUIRES EPA REGION COORDINATION)** Explain: **.**
☐ Other: (explain, if not covered above): **PREAMBLE WATERS.**

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): **1704** linear feet **1** width (ft).
☒ Lakes/ponds: **2.0** acres. **These are preamble waters (stock tanks in uplands)**.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: **0.9** acres. **Isolated pockets.**

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/delineation report.
☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☒ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: .
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):All Google Map aerials.

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: .