



**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, FORT WORTH DISTRICT**  
**P. O. BOX 17300**  
**FORT WORTH, TEXAS 76102-0300**

May 12, 2020

Regulatory Division

SUBJECT: Project Number SWF-2019-00328, Intersection of Rockhill Parkway and County Road 26 (202-acre study area)

Mr. David Fogel  
Rockhill Legacy I, L.P.  
4303 West Lovers Lane, Suite 200  
Dallas, Texas 75209  
david@dsfcapital.com

Dear Mr. Fogel:

This letter is in regard to the information received September 6, 2019, and subsequent submittal dated April 28, 2020, concerning the proposal by Rockhill Legacy I, L.P. to request an approved jurisdictional determination for 202-acres of property located in the Frisco, Collin and Denton Counties, Texas. This project has been assigned Project Number SWF-2019-00328. Please include this number in all future correspondence concerning this project.

We have reviewed the site in question in accordance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Under Section 404, the USACE regulates the discharge of dredged and fill material into waters of the United States, including wetlands. Our responsibility under Section 10 is to regulate any work in, or affecting, navigable waters of the United States.

Based on the report that you submitted, and other information available to us, waters of the United States under Section 404 do exist on the site. We concur with the delineation of waters that is made in the above referenced report. This approved jurisdictional determination (JD) is valid for a period of no more than five years from the date of this letter unless new information warrants revision of the delineation before the expiration date.

This determination does not convey any property rights, either in real estate or material or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations. This determination does not eliminate the requirements to obtain State or local permits or approvals as needed.

Department of the Army authorization would be required for the discharge of dredged or fill material into any areas identified as waters of the United States. If you anticipate a discharge, please provide us with a detailed description of the proposed project, a suitable map of the proposed project area showing the location of proposed discharges, the type and amount of material (temporary or permanent), if any, to be discharged, and plan and cross-section views of

the proposed project. Please note that it is unlawful to start work without a Department of the Army permit if one is required.

The Applicant may accept or appeal this approved JD or provide new information in accordance with the enclosed Notification of Administration Appeal Options and Process and Request for Appeal (NAAOP-RFA). If the Applicant elects to appeal this approved JD, the Applicant must complete Section II (Request for Appeal or Objections to an Initial Proffered Permit) of the enclosure and return it to the Division Engineer, ATTN: CESWD-PD-O Appeals Review Officer, U.S. Army Corps of Engineers, Suite 831, 1100 Commerce Street, Dallas, Texas 75242-1317 within 60 days of the date of this notice. Failure to notify the USACE within 60 days of the date of this notice means you accept the approved JD in its entirety and waive all rights to appeal the approved JD.

Thank you for your interest in our nation's water resources. If you have any questions concerning our regulatory program, please refer to our website at <http://www.swf.usace.army.mil/Missions/Regulatory> or contact Ms. Katie Roeder at the address above, by telephone 817-886-1740, or by email [Katie.O.Roeder@usace.army.mil](mailto:Katie.O.Roeder@usace.army.mil).

Please help the regulatory program improve its service by completing the survey on the following website: [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey)

Sincerely,

For Brandon W. Mobley  
Chief, Regulatory Division

Enclosures

Copies Furnished

Mr. Larry Clendenen  
Kimley-Horn and Associates, Inc.  
13455 Noel Road  
Two Galleria Office Tower, Suite 700  
Dallas, Texas 75240  
[Larry.clendenen@kimley-horn.com](mailto:Larry.clendenen@kimley-horn.com)

David Madden  
[David.E.Madden@usace.army.mil](mailto:David.E.Madden@usace.army.mil)

**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):** May 7, 2020

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:**

Fort Worth

Approved Jurisdictional Determination on Approximately 202-acres in Frisco, Texas

SWF-2019-00328

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Texas County/parish/borough: Collin and Denton City: Frisco

Center coordinates of site (lat/long in degree decimal format): Lat. 33.209° N, Long. -96.834° W.

Universal Transverse Mercator: 1983 North American Datum (NAD) Coordinates Name of nearest waterbody: Panther Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Trinity River Name of watershed or Hydrologic Unit Code (HUC): Elm Fork Trinity River-Little Elm Reservoir (1203010309)

☒ 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): 12/10/2019

**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):<sup>1</sup>**

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☒ Relatively permanent waters<sup>2</sup> (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: 5,975 linear feet: 1-2; 15 width (ft) and/or acres.

Wetlands: 1.38 acres.

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

Elevation of established OHWM (if known): .

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

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

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

**Swales SW1-SW3 were assessed within the review area. These swale features lacked an observable OHWM, lacked observable flow, and were vegetated. These swales (SW1, SW2, and SW3) are not waters of the U.S. because they do not have an OHWM and do not have a direct downstream surface connection to a jurisdictional feature.**

**Erosional Features EF1-EF3 were assessed within the review area. These erosional features lacked an observable OHWM and seemed to be characterized by low volume, infrequent flows, draining uplands. These erosional features (EF1, EF2, and EF3) are not waters of the U.S. because they do not have an OHWM.**

**Relict Channels RC1-RC2 were assessed within the review area. These relict channel features lacked observable flow and lacked a direct downgradient surface water connection to a water of the U.S., therefore they are not waters of the U.S. These relict channels appear to be cut off via natural processes over an extended period of time.**

### **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:

No TNWs are located within the study area. The nearest USACE designated navigable water is the Trinity River.

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<sup>4</sup> 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: 241 square miles

Drainage area: 25 square miles

Average annual rainfall: 40 inches

Average annual snowfall: 0.5 inches

###### **(ii) Physical Characteristics:**

###### **(a) Relationship with TNW:**

☐ Tributary flows directly into TNW.

☒ Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

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

Project waters are 2-5 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: .

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

Identify flow route to TNW<sup>5</sup>: Panther Creek flows southwest into Lewisville Lake which is an impoundment of Elm Fork Trinity River. Unnamed ephemeral and intermittent tributaries flow into Panther Creek which then flows into Lewisville Lake and impoundment of Elm Fork Trinity River.  
Tributary stream order, if known: Varies.

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

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

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

Average width: 35 feet  
Average depth: 12 feet  
Average side slopes: **2:1**.

**Primary tributary substrate composition (check all that apply):**

<input checked="" type="checkbox"/> Silts	<input checked="" type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input type="checkbox"/> Cobbles	<input type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Bank erosion observed due to flow and, channel incised with little access to floodplain.

Presence of run/riffle/pool complexes. Explain: No run/riffle/pool complexes were observed.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): Dependent on tributary 0.1 %

(c) Flow:

Tributary provides for: **Seasonal flow**

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

Describe flow regime: Panther creek has a perennial flow regime, the intermittent channel flows are flashy after rainfall events but maintain some level of flow through large portions of the year, likely due to stormwater from the surrounding area.  
Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: Flashy with lower more regular flows. Ephemeral tributaries are flashy.

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

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

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

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):	

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Ibid.

**(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: .

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

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☒ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☒ Aquatic/wildlife diversity. Explain findings: Limited invertebrates observed, some fish species observed.

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: 1.38 acres

Wetland type. Explain: Emergent wetland 0.17-acres (W2) and Forested Wetlands 1.21-acres (W1, W3-W6).

Wetland quality. Explain: Detailed functional assessments of the wetlands was not assessed. Emergent wetland (W2) and forested wetlands (W1, W3-W6) are expected to rate as average quality based on species and size.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **No Flow**. Explain: Flow from the wetlands would occur as sheet flow during flooding events.

Surface flow is: **Overland sheetflow**

Characteristics: .

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

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☒ Not directly abutting

☒ Discrete wetland hydrologic connection. Explain: Wetlands located within the FEMA mapped 100-year floodplain.

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

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

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

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

Estimate approximate location of wetland as within the **50 - 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: .

Identify specific pollutants, if known: .

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

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

☐ Vegetation type/percent cover. Explain: .

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Variation in Vegetation communities provide minor habitat for occasional use of wetland and water dependent species.

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

All wetland(s) being considered in the cumulative analysis: **6**

Approximately ( 1.38 ) 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>
W1	N	0.41-acres		
W2	N	0.17-acres		
W3	N	0.18-acres		
W4	N	0.35-acres		
W5	N	0.17-acres		
W6	N	0.10-acres		

Summarize overall biological, chemical and physical functions being performed: The capacity to carry or reduce pollutants or flood waters. Nutrient transfer and organic carbon transfer that support downstream foodwebs.

### 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: Panther Creek (perennial flow) totals 1,596 linear feet within the study area. Parvin Branch (perennial flow) totals 4,025 linear feet within the study area. Additionally, one ephemeral tributary totaling 354 linear feet was observed within the study area. These tributaries have the capacity to reduce pollutants/flood waters to the Trinity River, a TNW. These tributaries provide habitat for species. Due to their downstream hydrologic connection to other jurisdictional features, these tributaries have the capacity to transfer nutrients that support downstream foodweb. The emergent wetland (W2, 0.17-acres) and the forested wetlands (W1, W3-W6; 1.21-acres) have the capacity to reduce pollutants/flood waters to the Trinity River, a TNW. These wetlands provides habitat for species. Due to their downstream hydrologic connection, via the FEMA mapped 100-year floodplain, to other jurisdictional features, these wetlands have the capacity to transfer nutrients that support downstream foodweb.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

**1. TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☐ TNWs: linear feet width (ft), Or, acres.  
☐ Wetlands adjacent to TNWs: 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: Based on Panther Creek's watershed size, field observations, the presence of large fish species, and well defined channel it appears this stream has a perennial flow regime.  
☒ 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: Based on field observations, the presence of small fish species, and well defined channel it appears there are two streams with an intermittent flow regime.

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

- ☒ Tributary waters: **5,621** linear feet **15** width (ft).  
☐ Other non-wetland waters: acres.

Identify type(s) of waters: **Two perennial streams.**

**3. Non-RPWs<sup>8</sup> 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: **354** linear feet **1-2** width (ft).  
☐ Other non-wetland waters: acres.

Identify type(s) of waters: **1 ephemeral stream.**

**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 jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **1.38 total** acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

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

<sup>8</sup>See Footnote # 3.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

- ☐ 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):<sup>10</sup>**

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

**Identify water body and summarize rationale supporting determination:** .

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

- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.  
Identify type(s) of waters: .
- ☐ Wetlands: acres.

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

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

**The swales (SW1-SW3) do not have a direct downgradient surface hydrologic connection to another jurisdictional features and do not have the capacity to carry or reduce pollutants or flood waters to the Trinity River, a TNW. These swales do not have the capacity to transfer nutrients and organic carbon that support downstream foodwebs.**

**The erosional features (EF1-EF3) do not have a direct downgradient surface hydrologic connection to another jurisdictional features and do not have the capacity to carry or reduce pollutants or flood waters to the Trinity River, a TNW. These erosional features do not have the capacity to transfer nutrients and organic carbon that support downstream foodwebs.**

**The relict channels (RC1-RC2) do not have a direct downgradient surface hydrologic connection to another jurisdictional features and do not have the capacity to carry or reduce pollutants or flood waters to the Trinity River, a TNW. These relict channels do not have the capacity to transfer nutrients and organic carbon that support downstream foodwebs.**

- ☐ Other: (explain, if not covered above): .

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

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

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

- ☒ Non-wetland waters (i.e., rivers, streams): **1,465** linear feet, **0-2** width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

<sup>10</sup> 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.

## **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: Frisco Quadrangles.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Collin and Denton Counties, Web Soil Survey, June 2019.
- ☒ National wetlands inventory map(s). Cite name: National Wetlands Inventory Mapper, June 2019.
- ☐ State/Local wetland inventory map(s): .
- ☒ FEMA/FIRM maps: 48085C0230J eff. 6/2/2009 and 48121C0430G eff. 4/18/2011.
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): TNIRIS 1996; Nearmaps June 2017.  
or ☒ Other (Name & Date): Ground Level: 05/13/19 and 05/16/19.
- ☐ 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:**

#### **Jurisdictional Features:**

Stream S3 has an ephemeral flow regime and totals 354-linear feet within the study area. This stream feature had an observable OHWM. This stream feature is a water of the U.S. because it has an OHWM and a direct surface water connection to a jurisdictional aquatic feature.

Streams S1 and S2 have a perennial flow regime and total 5,621-linear feet within the study area. These stream features had an observable OHWM and was generally located on a mapped USGS 'blue-line' feature. These stream features are waters of the U.S. because they have an OHWM and a direct surface water connection to a jurisdictional aquatic feature.

Wetland features W1, W3-W6 are forested wetlands that total 1.21-acres within the study area. Wetland feature W2 is an emergent wetland and totals 0.17-acres within the study area. These wetland features were located within the FEMA mapped 100-year floodplain, therefore they have a surface water connection to another jurisdictional feature and are waters of the U.S.

#### **Non-Jurisdictional Features:**

Swales SW1-SW3 total 961-linear feet within the study area. These swales lacked an observable OHWM, lacked observable flow, and were vegetated. These swales are not waters of the U.S. because they do not have an OHWM and do not have a direct downstream surface connection to a jurisdictional feature.

Erosional Features EF1-EF3 total 504-linear feet within the study area. These erosional features lacked an observable OHWM and can be characterized by low volume, infrequent flows, draining uplands. These erosional features are not waters of the U.S. because they do not have an OHWM and lacked a direct downgradient surface water connection to a water of the U.S.

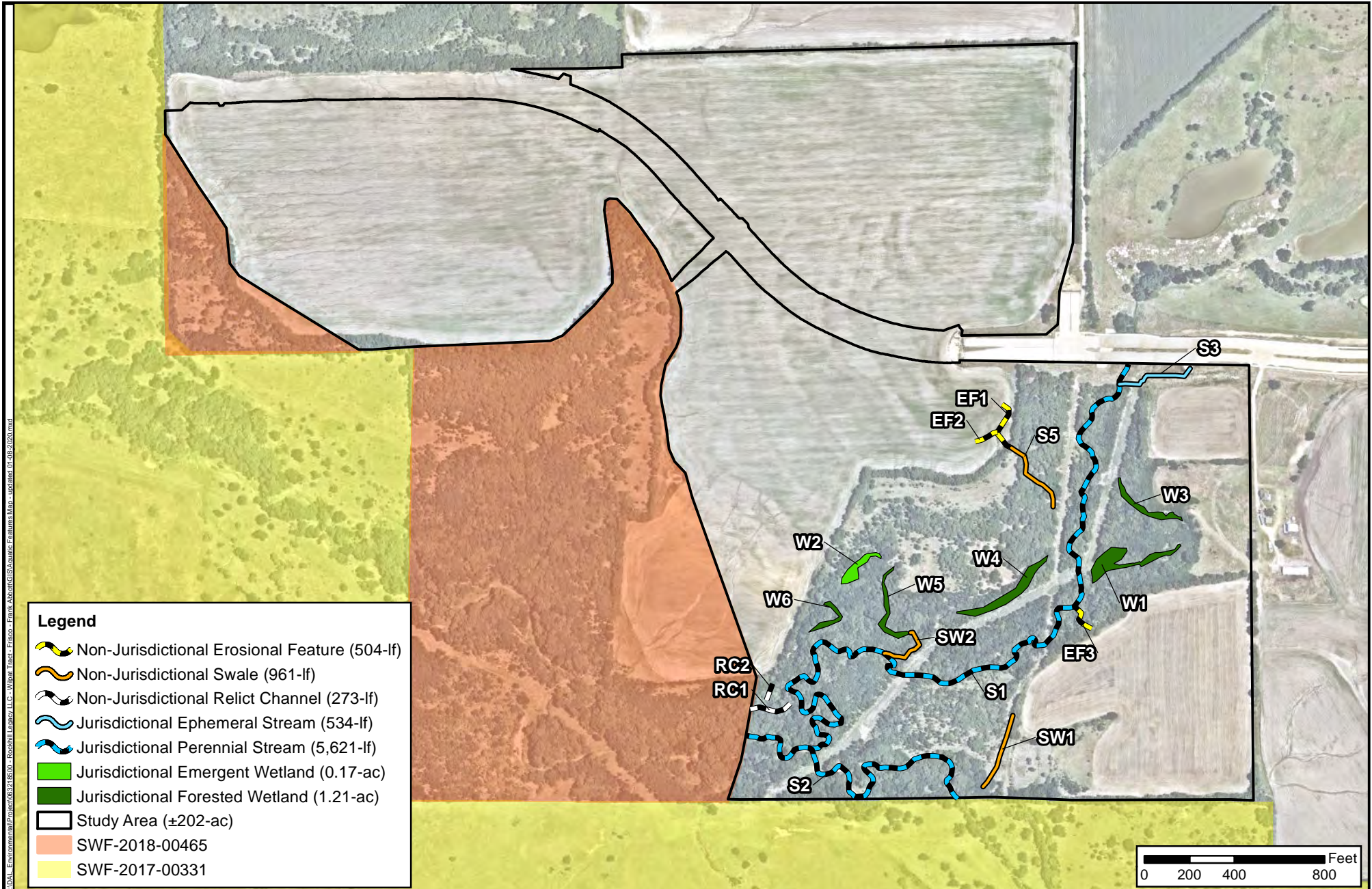
Relict Channels RC1 and RC2 total 273-linear feet within the study area. The relict channels appear to have been cut off stream beds that now longer connect to Parvin Branch. These relict channel features lacked observable flow and lacked a direct downgradient surface water connection to a water of the U.S., therefore they are not waters of the U.S.

Table 1. Table of all delineated aquatic features within the study area.

Feature ID	Latitude (Decimal Degrees)	Longitude (Decimal Degrees)	Resource Type	Amount of Aquatic Resource	Water of the U.S.?
Swales					
SW1	33.205	-96.833	Swale	347-linear feet No OHWM	No
SW2	33.207	-96.834	Swale	259-linear feet No OHWM	No
SW3	33.209	-96.832	Swale	355-linear feet No OHWM	No
			TOTAL (All Swale Features)	961-linear feet	n/a
			TOTAL (Jurisdictional Features)	0-linear feet	n/a
Erosional Features					
EF1	33.209	-96.833	Erosional Feature	252-linear feet No OHWM	No
EF2	33.209	-96.833	Erosional Feature	108-linear feet No OHWM	No
EF3	33.207	-96.832	Erosional Feature	144-linear feet No OHWM	No
			TOTAL (All Erosional Features)	504-linear feet	n/a
			TOTAL (Jurisdictional Features)	0-linear feet	n/a
Relict Channels					
RC1	33.206	-96.836	Relict Channel	194-linear feet No OHWM	No
RC2	33.206	-96.836	Relict Channel	79-linear feet No OHWM	No
			TOTAL (All Relict Channel Features)	273-linear feet	n/a
			TOTAL (Jurisdictional Features)	0-linear feet	n/a
Ephemeral					
S3	33.210	-96.831	Ephemeral Stream	354-linear feet 1-foot OHWM	Yes
			TOTAL (All Ephemeral Features)	354-linear feet	n/a
			TOTAL (Jurisdictional Features)	354-linear feet	n/a
Perennial					
S1	33.206	-96.833	Perennial Stream	4,025-linear feet 15-foot OHWM	Yes
S2	33.205	-96.835	Perennial Stream	1,596-linear feet 15-foot OHWM	Yes
			TOTAL (All Perennial Features)	5,621-linear feet	n/a
			TOTAL (Jurisdictional Features)	5,621-linear feet	n/a

Wetlands					
W1	33.208	-96.831	Forested Wetland	0.41-acres	Yes
W2	33.208	-96.835	Emergent Wetland	0.17-acres	Yes
W3	33.208	-96.831	Forested Wetland	0.18-acres	Yes
W4	33.207	-96.833	Forested Wetland	0.35-acres	Yes
W5	33.207	-96.835	Forested Wetland	0.17-acres	Yes
W6	33.207	-96.835	Forested Wetland	0.10-acres	Yes
			TOTAL (All Wetland Features)	1.38-acres	n/a
			TOTAL (Jurisdictional Features)	1.38-acres	n/a





## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Larry Clendenen		File Number: SWF-2019-00328	Date: 5/12/2020
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
x	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.



**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Katie Roeder  
Regulatory Specialist, Evaluation Branch Regulatory Division U.S.  
Army Corps of Engineers Ft. Worth District  
819 Taylor Street  
Fort Worth, Texas 76102-00300  
Phone: 817-886-1740

If you only have questions regarding the appeal process you may also contact:

Mr. Elliott Carman  
Administrative Appeals Review Officer (CESWD-PD-O)  
U.S. Army Corps of Engineers  
1100 Commerce Street, Suite 831  
Dallas , Texas 75242-1317  
469-487-7061

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number: