

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17-Oct-2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2012-00730-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : NY - New York
County/parish/borough: Albany
City: Bethlehem
Lat: 42.58484
Long: -73.79476
Universal Transverse Mercator
Folder UTM List
UTM list determined by folder location

- NAD83 / UTM zone 18N

Waters UTM List
UTM list determined by waters location

- NAD83 / UTM zone 18N

Name of nearest waterbody: Unnamed
Name of nearest Traditional Navigable Water (TNW): Hudson River
Name of watershed or Hydrologic Unit Code (HUC):

- 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

- Office Determination Date:
 Field Determination Date(s): 16-Jul-2012

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

- 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 "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:¹

Water Name	Water Type(s) Present
Wetland 1, 2012-00730 (A)	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m²)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual.
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

Wetland 1 is located at least 0.02 mile from the nearest jurisdictional water of the United States. The wetland is located within a topographic depression and is encompassed by upland vegetation and non-hydric soils. Wetland 1 extends north, off of the property, but terminates approximately 20 feet from NYS Route 9W. No culverts under 9W were observed within the vicinity of Wetland 1. No evidence of any past connections between Wetland 1 and any other surface waterbody was observed. There is no man-made or natural discrete and/or confined surface water connection between the wetland and any other jurisdictional water. The wetland is not located within a mapped 100-year flood plain. Therefore, during times of heavy precipitation, there is very low probability that floodwater would reach an elevation necessary for water to flow from other jurisdictional waters into the subject wetland. The wetland would not be considered a traditional navigable water in that it does not have the necessary water depth to support navigation of any kind, and it does not have any surface hydrologic connection to a waterbody that would. The wetland does not cross any state boundary and does not have a use that would associate it with interstate commerce.

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size:

Drainage area:

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are river miles from TNW.

Project waters are river miles from RPW.

Project Waters are aerial (straight) miles from TNW.

Project waters are aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

Tributary Stream Order, if known:

Not Applicable.

(b) General Tributary Characteristics:

Tributary is:

Not Applicable.

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

Not Applicable.

Primary tributary substrate composition:

Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):

Not Applicable.

(c) Flow:

Not Applicable.

Surface Flow is:

Not Applicable.

Subsurface Flow:

Not Applicable.

Tributary has:

Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:**High Tide Line indicated by:**

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Not Applicable.

(iv) Biological Characteristics. Channel supports:

Not Applicable.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

(b) General Flow Relationship with Non-TNW:**Flow is:**

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

3. Characteristics of all wetlands adjacent to the tributary (if any):**All wetlands being considered in the cumulative analysis:**

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Significant Nexus: **Not Applicable**

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wetland 1, 2012-00730 (A)	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wetland 1, 2012-00730 (A)	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 1, 2012-00730 (A)	Isolated (interstate or intrastate) waters, including isolated wetlands	-	40.46856
Total:		0	40.46856

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

- 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):

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:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 1, 2012-00730 (A)	Isolated (interstate or intrastate) waters, including isolated wetlands	-	40.46856
Total:		0	40.46856

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.

Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Wetland Map	Map entitled "Wetland Delineation Map, 678 Route 9W, Harrison and Burrowes Bridge Constructors", prepared by Bagdon Environmental, dated April 2012, and last revised on September 4, 2012.
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	Wetland Report	Report entitled "Wetland Delineation Report, Waters of the United States, Harrison and Burrowes Bridge Constructors, Inc.", dated June 2012, and prepared by Bagdon Environmental
---Office concurs with data sheets/delineation report	-	-
--Corps navigable waters study	Hudson River Study	-
--U.S. Geological Survey map(s).	USGS Quadrangle	-
--USDA Natural Resources Conservation Service Soil Survey.	Albany County Soil Survey	-
--National wetlands inventory map(s).	Web Printout	-
--State/Local wetland inventory map(s):	Web Printout	-
--Photographs	Air and Site Photographs included in delineation report	-
----Aerial	-	-
----Other	-	-
--Applicable/supporting case law	SWANCC	-
--Other information	Site Visit	Visit conducted on July 16, 2012.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Description

****Supporting Information is the same for Wetland 2 & 3 and Stream 1****

- 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.
- 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.
- 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.
- 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.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17-Oct-2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2012-00730-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : NY - New York
County/parish/borough: Albany
City: Bethlehem
Lat: 42.58484
Long: -73.79476
Universal Transverse Mercator
Folder UTM List
UTM list determined by folder location

- NAD83 / UTM zone 18N

Waters UTM List
UTM list determined by waters location

- NAD83 / UTM zone 18N

Name of nearest waterbody: Unnamed
Name of nearest Traditional Navigable Water (TNW): Hudson River
Name of watershed or Hydrologic Unit Code (HUC):

- 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

- Office Determination Date:
 Field Determination Date(s): 16-Jul-2012

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

- 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 "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:¹

Water Name	Water Type(s) Present
Wetland 2, 2012-00730 (B)	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m²)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual.
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

Wetland 2 is located at least 0.02 mile from the nearest jurisdictional water of the United States. The wetland is located within a topographic depression and is encompassed by upland vegetation and non-hydric soils. No evidence of any past connections between Wetland 2 and any other surface waterbody was observed. There is no man-made or natural discrete and/or confined surface water connection between the wetland and any other jurisdictional water. The wetland is not located within a mapped 100-year flood plain. Therefore, during times of heavy precipitation, there is very low probability that floodwater would reach an elevation necessary for water to flow from other jurisdictional waters into the subject wetland. The wetland would not be considered a traditional navigable water in that it does not have the necessary water depth to support navigation of any kind, and it does not have any surface hydrologic connection to a waterbody that would. The wetland does not cross any state boundary and does not have a use that would associate it with interstate commerce.

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:****Watershed size:****Drainage area:****Average annual rainfall:** inches**Average annual snowfall:** inches**(ii) Physical Characteristics****(a) Relationship with TNW:**

- Tributary flows directly into TNW.
 Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are river miles from TNW.**Project waters are** river miles from RPW.**Project Waters are** aerial (straight) miles from TNW.**Project waters are** aerial(straight) miles from RPW.

- Project waters cross or serve as state boundaries.

Explain:**Identify flow route to TNW:⁵****Tributary Stream Order, if known:**

Not Applicable.

(b) General Tributary Characteristics:**Tributary is:**

Not Applicable.

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

Not Applicable.

Primary tributary substrate composition:

Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):

Not Applicable.

(c) Flow:

Not Applicable.

Surface Flow is:

Not Applicable.

Subsurface Flow:

Not Applicable.

Tributary has:

Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:**High Tide Line indicated by:**

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Not Applicable.

(iv) Biological Characteristics. Channel supports:

Not Applicable.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

(b) General Flow Relationship with Non-TNW:**Flow is:**

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

3. Characteristics of all wetlands adjacent to the tributary (if any):**All wetlands being considered in the cumulative analysis:**

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Significant Nexus: **Not Applicable**

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wetland 2, 2012-00730 (B)	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wetland 2, 2012-00730 (B)	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 2, 2012-00730 (B)	Isolated (interstate or intrastate) waters, including isolated wetlands	-	80.93712
Total:		0	80.93712

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

- 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):

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

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 2, 2012-00730 (B)	Isolated (interstate or intrastate) waters, including isolated wetlands	-	80.93712
Total:		0	80.93712

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.

Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Not Applicable.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Description
*****NOTE - the supporting data is the same as Wetland 1*****

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.

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.

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.

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.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17-Oct-2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2012-00730-JD3

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : NY - New York
 County/parish/borough: Albany
 City: Bethlehem
 Lat: 42.58484
 Long: -73.79476
 Universal Transverse Mercator: Folder UTM List
UTM list determined by folder location
 • NAD83 / UTM zone 18N
Waters UTM List
UTM list determined by waters location
 • NAD83 / UTM zone 18N
 Name of nearest waterbody: Unnamed
 Name of nearest Traditional Navigable Water (TNW): Hudson River
 Name of watershed or Hydrologic Unit Code (HUC):

- 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

- Office Determination Date:
 Field Determination Date(s): 16-Jul-2012

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

- 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 "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:¹

Water Name	Water Type(s) Present
Wetland 3, 2012-00730 (C & D)	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m²)
 Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual.
 OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

Wetland 2 is located at least 0.02 mile from the nearest jurisdictional water of the United States. The wetland is located within a topographic depression and is encompassed by upland vegetation and non-hydric soils. No evidence of any past connections between Wetland 2 and any other surface waterbody was observed. There is no man-made or natural discrete and/or confined surface water connection between the wetland and any other jurisdictional water. The wetland is not located within a mapped 100-year flood plain. Therefore, during times of heavy precipitation, there is very low probability that floodwater would reach an elevation necessary for water to flow from other jurisdictional waters into the subject wetland. The wetland would not be considered a traditional navigable water in that it does not have the necessary water depth to support navigation of any kind, and it does not have any surface hydrologic connection to a waterbody that would. The wetland does not cross any state boundary and does not have a use that would associate it with interstate commerce.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW
 Not Applicable.

2. Wetland Adjacent to TNW
 Not Applicable.

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

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

(i) General Area Conditions:
 Watershed size:

Drainage area:

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

- Tributary flows directly into TNW.
 Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are river miles from TNW.

Project waters are river miles from RPW.

Project Waters are aerial (straight) miles from TNW.

Project waters are aerial(straight) miles from RPW.

- Project waters cross or serve as state boundaries.

Explain:Identify flow route to TNW:⁵**Tributary Stream Order, if known:**

Not Applicable.

(b) General Tributary Characteristics:**Tributary is:**

Not Applicable.

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

Not Applicable.

Primary tributary substrate composition:

Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):

Not Applicable.

(c) Flow:

Not Applicable.

Surface Flow is:

Not Applicable.

Subsurface Flow:

Not Applicable.

Tributary has:

Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:**High Tide Line indicated by:**

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Not Applicable.

(iv) Biological Characteristics. Channel supports:

Not Applicable.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
Wetland 3, 2012-00730 (C &D)	23.85	Palustrine emergent	Wetland 3 has been impacted by past agricultural use. The wetland does provide wildlife habitat and water quality function.	NA

(b) General Flow Relationship with Non-TNW:**Flow is:**

Wetland Name	Flow	Explain
Wetland 3, 2012-00730 (C &D)	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland 3, 2012-00730 (C &D)	Discrete and confined	Drainage patterns were observed within Wetland 3. Drainage within Wetland 3 is confined by topography.

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland 3, 2012-00730 (C &D)	Unknown	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland 3, 2012-00730 (C &D)	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland 3, 2012-00730 (C &D)	2-5	1-2	Wetland to navigable waters	100 - 500-year

(ii) Chemical Characteristics:

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

Wetland Name	Explain	Identify specific pollutants, if known
Wetland 3, 2012-00730 (C &D)	-	Possibly pesticides and fertilizers from current and past agricultural use.

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland 3, 2012-00730 (C &D)	-	-	X	90 percent emergent and 10 percent scrub-shrub.

Habitat for:

Wetland Name	Habitat	Federally Listed Species	Explain Findings	Spawn Area	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
Wetland 3, 2012-00730 (C &D)	X	-	-	-	-	-	-	X	Evidence of wildlife usage was observed within Wetland 3.

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Significant Nexus: **Not Applicable**

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Wetland Name	Flow	Explain
Wetland 3, 2012-00730 (C &D)	SEASONAL	Flow within Wetland 3 appears to occur after precipitation events and snow melt.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 3, 2012-00730 (C &D)	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	96517.5156
Total:		0	96517.5156

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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.¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

- 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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Not Applicable.

B. ADDITIONAL COMMENTS TO SUPPORT JD:**Description**

NOTE - the supporting data is the same as Wetland 1

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.

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.

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.

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.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17-Oct-2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2012-00730-JD4

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : NY - New York
 County/parish/borough: Albany
 City: Bethlehem
 Lat: 42.58484
 Long: -73.79476
 Universal Transverse Mercator: Folder UTM List
 UTM list determined by folder location
 • NAD83 / UTM zone 18N
 Waters UTM List
 UTM list determined by waters location
 • NAD83 / UTM zone 18N

Name of nearest waterbody: Unnamed
 Name of nearest Traditional Navigable Water (TNW): Hudson River
 Name of watershed or Hydrologic Unit Code (HUC):

- 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

- Office Determination Date:
 Field Determination Date(s): 16-Jul-2012

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

- 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 "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:¹

Water Name	Water Type(s) Present
Stream 1 (2012-00730)	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m²)
 Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual.
 OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

Wetland 2 is located at least 0.02 mile from the nearest jurisdictional water of the United States. The wetland is located within a topographic depression and is encompassed by upland vegetation and non-hydric soils. No evidence of any past connections between Wetland 2 and any other surface waterbody was observed. There is no man-made or natural discrete and/or confined surface water connection between the wetland and any other jurisdictional water. The wetland is not located within a mapped 100-year flood plain. Therefore, during times of heavy precipitation, there is very low probability that floodwater would reach an elevation necessary for water to flow from other jurisdictional waters into the subject wetland. The wetland would not be considered a traditional navigable water in that it does not have the necessary water depth to support navigation of any kind, and it does not have any surface hydrologic connection to a waterbody that would. The wetland does not cross any state boundary and does not have a use that would associate it with interstate commerce.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW
 Not Applicable.

2. Wetland Adjacent to TNW
 Not Applicable.

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

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

(i) General Area Conditions:

Watershed size:
 Drainage area:
 Average annual rainfall: inches
 Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

- Tributary flows directly into TNW.
 Tributary flows through [] tributaries before entering TNW.
 :Number of tributaries

Project waters are river miles from TNW.
 Project waters are river miles from RPW.
 Project Waters are aerial (straight) miles from TNW.
 Project waters are aerial(straight) miles from RPW.

- Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

Tributary Stream Order, if known:

Order	Tributary Name
3	Stream 1 (2012-00730)

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
Stream 1 (2012-00730)	X	-	-	X	Portions of the stream have been impacted by past agricultural practices

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
Stream 1 (2012-00730)	6	1	3:1

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
Stream 1 (2012-00730)	X	X	-	-	-	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition/Stability	Run/Riffle/Pool Complexes	Geometry	Gradient (%)
Stream 1 (2012-00730)	The tributary has portions of bank which are eroding, but overall the stream is stable and has a riparian buffer along its banks.	Small pool areas were observed within Stream 1.	Relatively straight	1

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
Stream 1 (2012-00730)	Intermittent but not seasonal flow	11-20	Stream 1 appears to have both a ground and surface water component. Surface water likely provides the larger contribution to the system.	Water was observed in the channel during the July 16, 2012, site inspection conducted by this office.

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
Stream 1 (2012-00730)	Discrete and confined	Drainage within Stream 1 is confined by the streams bed and banks.

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Stream 1 (2012-00730)	Unknown	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
Stream 1 (2012-00730)	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
Stream 1 (2012-00730)	X	X	X	X	X	X	-	X	X	X	X	X	-	X	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
Stream 1 (2012-00730)	The water observed within Stream 1 during the July 16, 2012, site inspection was clear.	Possible fertilizers and/or pesticides from past and current agricultural use. Road salts from adjacent roadways may enter the stream as well.

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
Stream 1 (2012-00730)	X	10-20 feet wide along portions of the stream.	X	20-30 foot wide in along portion of the stream	X

Habitat for: (as indicated above)

Tributary Name	Habitat	Federally Listed Species	Explain Findings	Fish/Spawn Areas	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
Stream 1 (2012-00730)	X	-	-	X	Habitat to sustain a finfish population is present within Stream 1	-	-	X	Wildlife usage was observed within and around Stream 1.

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Significant Nexus: **Not Applicable**

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
Stream 1 (2012-00730)	SEASONAL	The tributary appears to be intermittent. Water was observed in the channel during the July 16, 2012, site inspection conducted by this office.

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Stream 1 (2012-00730)	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	1804.7208	-
Total:		1804.7208	0

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

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

(Listed items shall be included in case file and, where checked and requested, appropriately reference below):

Not Applicable.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Description
NOTE - the supporting data is the same as Wetland 1

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

²For 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).

³Supporting documentation is presented in Section III.F.

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

⁵Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over

a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷.Ibid.

⁸.See Footnote #3.

⁹-To complete the analysis refer to the key in Section II.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.