

**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): 20 APR 2022**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWT-2021-00451**

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

State: Oklahoma County/parish/borough: Mayes City: Pryor  
Center coordinates of site (lat/long in degree decimal format): Lat. 36.215123°  N, Long. -95.2299596°  W. Universal  
Transverse Mercator:

Name of nearest waterbody: Choteau Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Neosho River Name of watershed or Hydrologic Unit Code (HUC): 11070209, Lower Neosho, Arkansas, Oklahoma

- 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: 20 APR 2022  
 Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

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

- Waters subject to the ebb and flow of the tide.  
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: .

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [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: SEE ATTACHED SPREADSHEET  
linear feet: width (ft) and/or acres.  
Wetlands: SEE ATTACHED SPREADSHEET acres.

**c. Limits (boundaries) of jurisdiction based on: Established by OHWM.**

Elevation of established OHWM (if known): .

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

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: S1, S2, S3, S8, S11, S12, S13, S16, S18, S19, S20, S21, S22, S25, S26, S27, S28, S35 and S36 are not mapped on USGS topographic map. Based on the delineation and historic aerial and topographic maps, the flow paths are linear in shape and were not created in WOTUS. Therefore, have been determined to be ditches excavated in the uplands and

<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.

not regulated pursuant to Section 404 of the Clean Water Act. S5, S6, and S31 are not mapped on topographic map. Based on the delineation, historic aerials, and topographic maps, the flow paths are not well-defined channels. While the features do provide flow to downstream waters, the features do not contain indications of an OHWM or bed and banks. Therefore, S5, S6, and S31 have been determined to be erosional features and are not jurisdictional pursuant to Section 404 of the Clean Water Act. Based on observation as noted in the delineation report, W1, W4, and W6 exhibited all three parameters of a wetland, but did not have indirect or direct connectivity to downstream waters. Therefore, W1, W4, and W6 has been determined to be an isolated wetland, not jurisdictional or regulated by Section 404 of the Clean Water Act. P-2 is mapped on USGS topographic map. Based on the delineation, aerial photographs, and topographic maps, P2 is part of ponds excavated in the uplands with no connectivity to downstream waters.

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. **TNW**

Identify TNW: **Neosho River**.

Summarize rationale supporting determination: AJD was completed determining that the Neosho River is a traditionally navigable water.

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: 426 **acres**  
Drainage area: 426 **acres**  
Average annual rainfall: 45 inches  
Average annual snowfall: 10 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

- Tributary flows directly into TNW.  
 Tributary flows through **3** tributaries before entering TNW.

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

Project waters are **2-5** river miles from RPW.

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

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

Project waters cross or serve as state boundaries. Explain: The on-site waters do not cross or serve as a state boundary.

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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>: S7, S14, S15, S17, S24, S30, S32, S33, S34 (RPWs), S4, S9, S23, S29 (Non-RPWs), W2, W3, and W5 (Adjacent Wetlands), and P1 (impoundment) flow into unnamed tributaries, which flow into Choteau Creek and Pryor Creek, which flow into the Neosho River, a TNW.

Tributary stream order, if known: .

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain: .  
 Manipulated (man-altered). Explain: On-site waters have been heavily manipulated and straightened due to the construction of several roads and industrial development.

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

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

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

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Although the on-site waters have been altered and manipulated, the on-site waters are currently in stable condition as indicated by the well-developed riparian corridors and/or bed and banks, which are staying in the same position within the landscape.

Presence of run/riffle/pool complexes. Explain: On-site waters contained riffle pool complexes.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): 2 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: S7, S14, S15, S17, S24, S30, S32, S33, and S34 are mapped on USGS topographic map as an intermittent streams and on aerial photographs showing evidence of seasonal flow (March of 2017, 2016, 2012, 1995, September 2021, and October 2021). S4, S9, S23, and S29 are indicated on USGS topographic map with contour lines, indicating a channel and on aerial photographs showing evidence of seasonal flow (March 2012 and 2016).

Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: S7, S14, S15, S17, S24, S30, S32, S33, S34, S4, S9, S23, and S29 contain well defined bed and banks and are evident on topographic maps and aerial photographs.

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

Dye (or other) test performed: .

Tributary has (check all that apply):

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

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

High Tide Line indicated by:  Mean High Water Mark indicated by:  
 oil or scum line along shore objects  survey to available datum;

<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.

- |  |  |
|--|--|
| <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):                             |  |

**(iii) Chemical Characteristics:**

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

Explain: S7, S14, S15, S17, S24, S30, S32, S33, S34, S4, S9, S23, and S29 do not contain any evidence of pollution.

Identify specific pollutants, if known: .

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

- Riparian corridor. Characteristics (type, average width): Forested riparian, 50 ft.
- 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: S7, S14, S15, S17, S24, S30, S32, S33, S34, S4, S9, S23, and S29

contain well defined bed and bank with evidence of OHWM. S7, S14, S15, S17, S24, S30, S32, S33, S34, S4, S9, S23, and S29 are either surrounded by well developed forested riparian corridors and/or directly abutting wetlands, which provide diverse habitats for a variety of species.

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:SEE ATTACHED SPREADSHEET

acres

Wetland type. Explain:SEE ATTACHED SPREADSHEET.

Wetland quality. Explain:W2, W3, and W5 directly abut RPWs, and appear to be in stable condition. Therefore, W2, W3, W5 have been determined to of medium quality.

Project wetlands cross or serve as state boundaries. Explain: None of the on-site wetlands cross or serve as state boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: W2, W3, and W5 directly abut RPWs, which are mapped on USGS topographic map as intermittent streams.

Surface flow is: **Confined**

Characteristics: W2, W3, and W5 directly abut RPWs.

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:

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: W2, W3, and W5 did not contain any evidence of pollution.

Identify specific pollutants, if known:

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

Riparian buffer. Characteristics (type, average width):50 ft.

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: W2, W3, and W5 directly abut RPWs, which provide diverse habitats

for a variety of species.

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

All wetland(s) being considered in the cumulative analysis: **3**

Approximately ( 0.676 ) 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>
W2	Y	0.165			
W3	Y	0.09			
W4	Y	0.421			

Summarize overall biological, chemical and physical functions being performed: Each of these wetlands act as a small catchment area for sediments carried via storm water toward the abutting tributary. Sediments and attached nutrients, pollutants, and/or other elements become deposited and captured within the wetland, as opposed to flowing directly to the tributary in question and ultimately to the Neosho River, a TNW. Due to the wetland's location (directly abutting tributary systems), the hydrologic conditions, and the diverse vegetation present, the wetlands will host a diverse group of organisms. .

### 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: These RPWs and non-RPWs possess a hydrologic connection to the Neosho River through open and defined channels. Due to this hydrologic connection, the unnamed tributaries have the capacity to contribute hydrology, carry pollutants, provide habitat for aquatic life cycles, and provide food in the form of organic matter to waters downstream, all of which illustrates that the unnamed non- RPWs possess a significant nexus to Neosho River. All jurisdictional wetlands directly abut the RPWs..
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: .
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:
- 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: S7, S14, S15, S17, S24, S30, S32, S33, and S34 are mapped on USGS topographic map as an intermittent streams and on aerial photographs showing evidence of seasonal flow (March of 2017, 2016, 2012, 1995, September 2021, and October 2021). S4, S9, S23, and S29 are indicated on USGS topographic map with contour lines, indicating a channel and on aerial photographs showing evidence of seasonal flow (March 2012 and 2016). SEE ATTACHED SPREADSHEET.

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

- Tributary waters: **3,549** linear feet **3** width (ft).
- Other non-wetland waters: \_\_\_\_\_ acres.

Identify type(s) of waters: \_\_\_\_\_

**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: **4,397** linear feet **3** width (ft).
- Other non-wetland waters: **0.059** acres.

Identify type(s) of waters: **P1 is an impoundment of S29, a Non-RPW with direct downstream connectivity to the TNW.**

**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: W2, W3, and W5 are located directly adjacent (and touching) RPWs. Therefore, W2, W3, and W5 have been determined to directly abut RPWs.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.676** acres.

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

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

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

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

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

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

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

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

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

<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.

**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: .
- Other: (explain, if not covered above): **S1, S2, S3, S8, S11, S12, S13, S16, S18, S19, S20, S21, S22, S25, S26, S27, S28, S35 and S36 are not mapped on USGS topographic map. Based on the delineation and historic aerial and topographic maps, the flow paths are linear in shape and were not created in WOTUS. Therefore, have been determined to be ditches excavated in the uplands and not regulated pursuant to Section 404 of the Clean Water Act. S5, S6, and S31 are not mapped on topographic map. Based on the delineation, historic aerials, and topographic maps, the flow paths are not well-defined channels. While the features do provide flow to downstream waters, the features do not contain indications of an OHWM or bed and banks. Therefore, S5, S6, and S31 have been determined to be erosional features and are not jurisdictional pursuant to Section 404 of the Clean Water Act. Based on observation as noted in the delineation report, W1, W4, and W6 exhibited all three parameters of a wetland, but did not have indirect or direct connectivity to downstream waters. Therefore, W1, W4, and W6 has been determined to be an isolated wetland, not jurisdictional or regulated by Section 404 of the Clean Water Act. P-2 is mapped on USGS topographic map. Based on the delineation, aerial photographs, and topographic maps, P2 is part of ponds excavated in the uplands with no connectivity to downstream waters.**

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

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

**SECTION IV: DATA SOURCES.**

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: "Approved Jurisdictional Determination Request Report, 263 acre Proposed Project Area, Mayes County, Oklahoma" dated July 21, 2021.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.

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<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.

- 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:USGS Topographic Map, 7.5 minute Quad, 1:24,000, Chouteau, Ok.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: <https://www.fws.gov/wetlands/data/mapper.html>.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth and Digital Globe (2012, 2016, 2017, 2016, 2012, 1995, 2021, 2021).
  - or  Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** S7, S14, S15, S17, S24, S30, S32, S33, and S34 are mapped intermittent streams on a topographic map. Based on the submitted delineation report, USGS topographic map, and aerial photography, the flow paths are natural, well-defined channels with connectivity to the downstream waters, indirectly to the Arkansas River, a TNW. Therefore, S7, S14, S15, S17, S24, S30, S32, S33, and S34 have been determined to be RPWs, jurisdictional pursuant to Section 404 of the Clean Water Act. S4, S9, S23, and S29 are mapped on a topographic map as headwaters of mapped intermittent streams. Based on the submitted delineation report, USGS topographic map, and aerial photography, the flow paths are natural, well-defined channels with connectivity to the downstream waters, indirectly to the Arkansas River, a TNW. Therefore, S4, S9, S23, and S29 have been determined to be non-RPWs, jurisdictional pursuant to Section 404 of the Clean Water Act.

Based on observation noted in the delineation report, W2, W3, and W5 exhibited all three parameters of a wetland and to directly abut RPWs, which were indirectly connected to downstream waters and the Arkansas River, a TNW. Therefore, W2, W3, and W5 have been determined to be adjacent wetlands, jurisdictional pursuant to Section 404 of the Clean Water Act.

P1 is not mapped on USGS topographic map. Based on the delineation, aerial photographs, and topographic maps, P1 contains water and is connected to downstream waters through an ephemeral stream, which flows onto the adjacent property. Therefore, P1 has been determined to be a impoundment of a jurisdictional water and jurisdictional pursuant to Section 404 of the Clean Water Act

S1, S2, S3, S8, S11, S12, S13, S16, S18, S19, S20, S21, S22, S25, S26, S27, S28, S35 and S36 are not mapped on USGS topographic map. Based on the delineation and historic aerial and topographic maps, the flow paths are linear in shape and were not created in WOTUS. Therefore, have been determined to be ditches excavated in the uplands and not regulated pursuant to Section 404 of the Clean Water Act.

S5, S6, and S31 are not mapped on topographic map. Based on the delineation, historic aerals, and topographic maps, the flow paths are not well-defined channels. While the features do provide flow to downstream waters, the features do not contain indications of an OHWM or bed and banks. Therefore, S5, S6, and S31 have been determined to be erosional features and are not jurisdictional pursuant to Section 404 of the Clean Water Act.

Based on observation as noted in the delineation report, W1, W4, and W6 exhibited all three parameters of a wetland, but did not have indirect or direct connectivity to downstream waters. Therefore, W1, W4, and W6 has been determined to be an isolated wetland, not jurisdictional or regulated by Section 404 of the Clean Water Act.

P2 is mapped on USGS topographic map. Based on the delineation, aerial photographs, and topographic maps, P2 is part of ponds excavated in the uplands with no connectivity to downstream waters. Therefore, P2 have been determined to be a pond excavated wholly in the uplands and not jurisdictional pursuant to Section 404 of the Clean Water Act.