

**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): November 17, 2021**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWT-2017-650**

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

State: Oklahoma County/parish/borough: Kiowa City: Near Snyder  
Center coordinates of site (lat/long in degree decimal format): Lat. 34.619322° **N**, Long. -98.985719° **W**.  
Universal Transverse Mercator: N/A

Name of nearest waterbody: Otter Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Red River

Name of watershed or Hydrologic Unit Code (HUC): 11120303

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: October 20, 2021

Field Determination. Date(s): September 17, 2021

**SECTION II: SUMMARY OF FINDINGS**

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

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

Waters subject to the ebb and flow of the tide.

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

Explain: .

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

There **are and are not** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<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: (Streams 10,800) linear feet: 6 width (ft) and/or (Ponds 0.85) acres.

Wetlands: acres.

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

Elevation of established OHWM (if known):N/A.

**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: **The review area contains 4 NRPW's (S2, S3, S4,S6) which are best characterized as agricultural drainage ditches with ephemeral flow. These features are all mapped as blue line tributaries on the USGS Topographic map, however, they only exhibit ephemeral flow. The review area also has two ponds (P3, P4) which are associated with an upland swale, these waters were determined to not meet the significant nexus standard. The review area also has two ponds (P9, P10) which were excavated in the uplands and are considered non-jurisdictional pre-amble waters<sup>62</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.

### SECTION III: CWA ANALYSIS

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

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

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<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: 42769 acres

Drainage area: 900 acres

Average annual rainfall: 30 inches

Average annual snowfall: 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 30 (or more) river miles from TNW.

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

Project waters are 30 (or more) aerial (straight) miles from TNW.

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

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

Identify flow route to TNW<sup>5</sup>: The unnamed tributary (S7) of Otter Creek flow into Otter Creek, which flows into the North Fork Red River, which flows into the Red

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

<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.

River, which becomes a TNW downstream.

Tributary stream order, if known: The unnamed tributary (S7) is a 1st order stream.

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain: .  
 Manipulated (man-altered). Explain: The unnamed tributary (S7) has been channelized due to agricultural activities within the review area, the channel is nearly perfectly straight except for a few hard turns.

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

Average width: 20 feet  
Average depth: 5 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: bank sloughing is evident where no crops or vegetation is present, this is relatively minor.

Presence of run/riffle/pool complexes. Explain: None.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 1 %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: This stream may have discrete continuous flow during the wettest periods of the year, other than that it would likely flow only directly following rain events in the immediate area.

Other information on duration and volume: N/A.

Surface flow is: **Discrete and confined**. Characteristics: The flow is confined within the channelized streambed. The flow may be discrete during the wet season when the stream likely flows somewhat continuously.

Subsurface flow: **Unknown**. Explain findings: N/A.

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;  
 fine shell or debris deposits (foreshore)  physical markings;  
 physical markings/characteristics  vegetation lines/changes in vegetation types.  
 tidal gauges  
 other (list):

(iii) **Chemical Characteristics:**

<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.

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

Explain: During the site visit no water was observed to determine the color, however the water color is likely influenced by the parent material of the primary soils in the drainage area.

Identify specific pollutants, if known: The review area is entirely within an agricultural cropland, which is most likely routinely treated with pesticides and fertilizers.

(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: .

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:        acres

Wetland type. Explain: .

Wetland quality. Explain: .

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. 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 **Pick List** river miles from TNW.

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

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** 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: .

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

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

Approximately (        ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)      Size (in acres)      Directly abuts? (Y/N)      Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

### 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: The review area contains 4 NRPW's (S2, S3, S4,S6) which are best characterized as agricultural drainage ditches with ephemeral flow. These features are all similar in appearance and landscape configuration. The streams (S2, S3, S4, and S6) are NRPW's, and are best characterized as agricultural drainage ditches with ephemeral flow. Stream S3 also has an on-channel pond (P2) at the top of its drainage, this pond is very small. These features have been determined as exhibiting ephemeral flow based on the limited frequency and volume of flow anticipated from these features. Streams S2 and S3 come together to form S4, these features combined have an estimated 315-acre drainage area. Stream S6 has an estimated 35-acre drainage area. These waters do not likely have any ground water influence due to the well-drained soils and the estimated annual rain fall. These features are sited within agricultural croplands and lack any riparian corridor. These features likely perform little to no ecological functions due to their straightened-ditch like configuration and lack of in-stream habitat. These streams may likely provide limited benefits to Otter Creek; however, it is unlikely that these functions/benefits equate to a more than speculative or insubstantial benefit to the Red River (TNW), which is over 200 river miles from this water. These NRPW's do not meet the SigNex standard set within the Rapanos Guidance document and is supported within the agent's delineation report as well as this form..
- 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: The review area contains a swale (Swale 1) which is the headwater of a NRPW (S5) which is best characterized as a swale with ephemeral flow. Upon review of aerial imagery dating back to 1995, there is no evidence of soil disturbance which would alter an existing natural stream channel to result in the current condition for this swale. The swale is mapped on the USGS Topographic map as a blue line tributary to Otter Creek. This feature is consistent with other swales in appearance and landscape configuration. This swale did not exhibit more than one indicator of an ordinary high-water mark or a formed bed/ bank and did not have a distinct vegetation type as compared to the uplands surrounding it. The entire area was covered in upland herbaceous vegetation, and little evidence of flow could be seen where confined flow would be expected to occur. This feature has ephemeral flow based on the limited frequency and volume of flow anticipated from its associated drainage area. The drainage area is approximately 150 acres. Higher in the drainage of this swale are two ponds (P3, P4) which are also depicted on the USGS Topographic map as being part of the blue line tributary that is mapped in this portion of the review area. Upon review of the aerial imagery, both ponds have water present most years dating back to 1995. These ponds likely provide

functions for the immediate downstream waters flowing into Otter Creek, such as pollutant trapping, nutrient cycling, water table recharge, aquatic habitat, and water supply for wildlife. Although these functions are likely benefitting the immediate down gradient waters, including Otter Creek, they are not likely sufficient to be more than speculative or substantial to the Red River where it is a TNW. Based on the landscape setting and limited drainage areas associated with these features, they do not exhibit sufficient duration and frequency of flow, or support the necessary ecological functions to exceed the standards necessary to have a significant nexus with the Red River (TNW), which is approximately 100 miles away (over 200 river miles) from these aquatic resources. Also, the JD guidebook specifically states that swales are generally non-jurisdictional.

- 3.
4. The center of the review area contains an ephemeral tributary (S5), which is depicted on the USGS Topographic map as a blue line tributary. Swale1 sits up gradient of this tributary as the headwater of this ephemeral tributary. The tributary has 4 ponds (P5, P6, P7, P8) on-channel. This stream has been determined a NRPW based on the limited frequency and duration of flow. This stream is not likely to be influenced by ground water based on its landscape setting. This is a first order stream and has an approximate 180-acre drainage area, comprised primarily of undeveloped uplands and agricultural land. This ephemeral stream has a bed/bank and is approximately 5 feet wide and 2 feet deep, with non-hydric, well drained, upland soils. This tributary forms from discrete hydrology from the swale and upland ponds which contribute flow into this area. Based on the guidebook, the relevant reach for this NRPW and its associated ponds does not include the swell and ponds (P3, P4). The swale is not included, due to it not being considered a tributary. These ponds likely provide suitable habitat during the spring rain season and into summer, however these likely become nearly dry in the driest period of the year. This ephemeral stream along with its pond habitats may provide some reductions in peak flood flows going into Otter Creek, which is less than 1 river mile from the review area. This stream has a limited riparian corridor at the upper extent in proximity of the three ponds, thus would be limited in its contributions of organics/nutrients to downstream waters. The water quality is likely affected by agricultural practices in the vicinity, due to the agricultural pollutants which could influence this tributary and its downstream waters. Based on the potential for this tributary to provide various ecological benefits when the stream and ponds contribute flow, this tributary has been determined to have a significant nexus to the Red River (TNW), which is over 200 river miles from this water. This NRPW (S5) and ponds (P5, P6, P7, P8) meet the SigNex standard set within the Rapanos Guidance document and is supported within the agent's delineation report as well as this AJD.
5. **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: Based on the overall drainage area (900 Acres) for this stream (S7), as well as the presence of an OHWM, this tributary likely has somewhat continuous, discrete flow during the wettest period of the year. This seasonal flow regime is likely 2-3 months long.

Stream S1 flows in and out of the review area in the bottom Southwest corner of the review area. This feature has a moderately formed riparian area outside of the review area and is sited within a crop area within the review area. The feature is similar in appearance to Stream S7 and they both drain from east to west into Otter Creek. This feature likely exhibits the same seasonal flow as S7. Stream S1 also has an associated on-channel pond (P1) within the review area.

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

- Tributary waters: (S1; 1500LF) (S7; 4,300LF) linear feet 10 width (ft).
- Other non-wetland waters: (P1; 0.16 AC) acres.

Identify type(s) of waters: **The ponds (P1) is associated with stream S1.**

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.

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

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

- Tributary waters: **Stream S5; 5,000** linear feet    **5** width (ft).
- Other non-wetland waters: **(P5; 0.11 AC) (P6; 0.15 AC) (P7; 0.28 AC) (P8; 0.15 AC)** acres.

Identify type(s) of waters: **The ponds (P5, P6, P7, P8) are associated with stream S5.**

**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:        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).

**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.

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

<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.



**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 review area contains 4 NRPW's (S2, S3, S4, S6), a swale and two ponds (P3, P4) which were determined to lack sufficient findings of the Significant Nexus to the Red River (TNW). For detailed findings, refer to Section 3.C above.**
- Other: (explain, if not covered above): **There are two upland ponds which have no other connection to downstream waters , these waters were likely constructed in the uplands for agriculturla purposes (P9; 0.11 AC) (P10; 2.45 AC).**

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): **(S2; 2,760 LF) (S3; 3,300 LF) (S4; 3,100 LF) (S6; 2,400 LF)** linear feet, **4** width (ft).
- Lakes/ponds: **(P3; 1.6 AC) (P4; 0.83 AC)** 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: Aquatic Resource Report Dated September 16, 2021.
- 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: ORM data accessed on October 27, 2021.
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Tipton, OK 1:24,000.
- USDA Natural Resources Conservation Service Soil Survey. Citation: ORM Data accessed on October 27, 2021.
- National wetlands inventory map(s). Cite name: ORM Data accessed on October 27, 2021.
- 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 Pro, Dated October 2017.  
or  Other (Name & Date): Site visit photos taken September 17, 2021.
- 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: The review area is approximately 1,600 Acres.**