

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): October 27, 2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWT-2021-177, residential development AJD request

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oklahoma County/parish/borough: Oklahoma City: Oklahoma City
Center coordinates of site (lat/long in degree decimal format): Lat. 35.57643° N, Long. -97.50079° W.
Universal Transverse Mercator: N/A

Name of nearest waterbody: Unnamed tributary to Deep Fork

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

Name of watershed or Hydrologic Unit Code (HUC): 111003030102

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 4, 2021

Field Determination. Date(s): May 6, 2021

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

Waters subject to the ebb and flow of the tide.

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

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 5,252 linear feet: 5 width (ft) and/or (impoundments 4.18) acres.

Wetlands: 0.078 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):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The review area contains 5 aquatic resources (AR) which exhibit indicators of a swale or erosional feature and have ephemeral flow (AR-08, AR-09, AR-10, AR-11, AR-13). These combined features have a total of 1,270 linear feet. The review area also contains two depressional features (AR-14, AR-17), and an upland pond (AR-15). Based on various factors which will be discussed in Section F, these listed waters are considered either lacking significant nexus or are defined as non-jurisdictional (swales, erosional features). AR-14 and AR-17 are both non-wetland, depressional**

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.

features. Neither meet all three criteria within the 1987 wetland manual to result in meeting the definition as jurisdictional wetlands.

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 waterbody⁴ 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: 22237 **acres**

Drainage area: 230 **acres**

Average annual rainfall: 40 inches

Average annual snowfall: 6 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through **4** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.

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

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

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

Project waters cross or serve as state boundaries. Explain: N/A.

⁴ 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 TNW⁵: The primary tributary (AR-02) which all waters within the review area flow into is a tributary to an unnamed tributary of the Deep Fork, which flows into another unnamed tributary to the Deep Fork, which flows into the Deep Fork, which flows into Lake Eufaula, then into the Canadian River (TNW).
Tributary stream order, if known: The primary unnamed tributary (AR-02) within the review area is a 3rd order stream.

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

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

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

Average width: 8 feet
 Average depth: 8 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 and vertically cut banks were visible within the tributary (AR-02).

Presence of run/riffle/pool complexes. Explain: none were visible.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): 3 %

(c) Flow:

Tributary provides for: **Seasonal flow**

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

Describe flow regime: AR-02 would likely exhibit seasonal flow throughout the wettest period of the year, and become intermittent during other periods of the year.

Other information on duration and volume: Due to the 230 acre drainage area and the numerous waters coming together within the review area, tributary (AR-02) would have the potential to result in localized flooding and likely receives supplemental flow due to groundwater recharge during wet periods.

Surface flow is: **Confined**. Characteristics: Tributary AR-02 has a somewhat incised channel and sits approximately 8 feet deep into the existing landscape.

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

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain: .

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

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges

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.

other (list):

(iii) Chemical Characteristics:

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

Explain: The water color throughout the review area was slightly transparent with a green hue. Along the eastern boundary of the review area, recent road construction resulted in the water (AR-12) being an orange/red color with no transparency due to suspended solids and sediment. This color dissipates as I observed the water downstream (AR-04).

The drainage area was mostly sited within the review area, and is best characterized as undeveloped pasture/grazing land. Identify specific pollutants, if known: None were anticipated or observed.

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

Riparian corridor. Characteristics (type, average width): AR-02 has a riparian buffer along the most downstream portion within the review area, the majority of this tributary has a discontinuous riparian corridor. The average width of the corridor is 25 linear feet along each side of the stream banks.

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: The riparian corridor likely supports various species as a habitat for feeding, nesting/bedding, and travel.

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: No.

(b) General Flow Relationship with Non-TNW:

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

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: N/A.

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: In the Southwest corner of the review area, there are 3 swales which are similar in character, i will discuss them as a group. Swale (AR-09) and (AR-11) are depicted on the USGS Topographic Map as a blue line tributary above the on-channel pond (AR-07). Swale (AR-10) is not depicted on any resource maps, however upon review of aerial imagery the feature is connected to AR-11, and can be distinguished from the immediate uplands. AR-10 has a depressional feature which does not meet the definition of a jurisdictional wetland (AR-14), which was excavated in the uplands. These features all exhibit no bed/bank, and have a distinct vegetation type as compared to the uplands surrounding these features. Upon review of aerial imagery, no soil manipulation appears to be the reason these swale don't have a bed/bank. The soils are best characterized as non-hydric, well drained, upland soils. 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 Canadian 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.
- 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 Southeastern region of the review area contains an ephemeral tributary (AR-12), which is not depicted on any resource maps, however, can be easily identified on aerial imagery. The tributary has an associated emergent wetland (AR-16), which directly abuts the tributary near North Kelley Avenue. 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 10-acre drainage area, comprised primarily of undeveloped uplands. 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 starts at the edge of the review area where roadside ditches converge in a culvert. Based on the guidebook, the relevant reach for this NRPW and its associated wetland include these waters as well as (AR-04; RPW and its impoundment AR-06) down to the confluence of AR-04 and AR-03. This is due to both waters (AR-04 and AR-12) being classified as first order streams. Within the relevant reach there is only one identified wetland, stated above (AR-16). This emergent wetland occurs directly in the channel. These aquatic resources likely provide suitable habitat during the spring rain season, however these both likely become dry during most of summer and winter. This ephemeral stream along with its wetland

habitat may provide some reductions in peak flood flows going into the Deep Fork, the Deep Fork is less than five river miles from the review area. This stream has a limited riparian corridor at the upper extent of the headwater, thus would be limited in its contributions of organics/nutrients to downstream waters. The water quality is likely suitable for supporting aquatic organisms, due to the limited sources of 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 wetland does flow, this tributary has been determined to have a significant nexus to the Canadian River (TNW), which is over 200 river miles from this water. This NRPW and its wetland meet the SigNex standard set within the Rapanos Guidance document and is supported within the agent's delineation report as well as this AJD. .

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: The unnamed tributary (AR-02) is depicted on the USGS Topographic Map as a blue line intermittent tributary to the Deep Fork. This tributary has an on-channel pond (AR-05) in the middle of the segment in the review area. This stream is a 3rd order stream. The drainage area is approximately 230 acres and has two sub-drainage areas that combine within the center of the review area. Based on available data, this stream is characterized as intermittent flow during a typical year of rainfall.

Tributary (AR-01) is depicted on the USGS Topographic Map as a blue line intermittent tributary to the Deep Fork. This feature appears to have been routed in a roadside ditch within the review area and represents the far Northwest corner of the review area, and is likely composed of silts, sands, and gravel. Due to the tributary being contained within a ditch, it is straight within the review area and has nearly vertical banks and is incised. This stream is a second order stream. The drainage area is approximately 700 acres. Based on these factors, the tributary flows seasonally during the wet period of the year and intermittent flow the remainder of the year. The stream has confined flow within the ditch in the review area. The tributary exhibits several indicators of the OHWM, such as shelving, sediment deposition, and multiple observed or predicted flow events. The tributary likely has similar water-color and quality to AR-02. The drainage area associated with AR-01 has several residential and commercial developments which contribute storm water into this tributary, thus there is a likelihood of pollutants associated with these developments may be present within the water. The tributary has a continuous riparian corridor which likely supports nesting/bedding, feeding, and travel for local wildlife. This stream flows into another unnamed tributary, which flows into the Deep Fork, which flows into Canadian River (TNW).

Tributary (AR-03) is depicted on the USGS Topographic Map as a blue line intermittent tributary to the Deep Fork. This tributary has an on-channel pond (AR-05) at the top of the stream. The drainage area is approximately 100 acres. The streambed is likely composed of silts, sands, gravel, and bedrock. The stream has numerous meanders and has vertical banks at the downstream half, as well as bank sloughing where water energy is highest at meanders. This is a first order stream. Based on these factors, the tributary flows intermittently during the wet periods of the year. The stream has confined flow within the bed/banks, which is approximately 4 feet deep into the existing landscape. The tributary likely exhibits several indicators of the OHWM, such as shelving, sediment deposition, and multiple observed or predicted flow events. The tributary has the same, green-tinged water color and quality to AR-02, due to it being a tributary of AR-02. The tributary has no riparian corridor. This stream flows through three unnamed tributaries, which flows into the Deep Fork, which flows into Canadian River (TNW).

Tributary (AR-04) is not depicted on the USGS Topographic Map as a blue line tributary, it is also not depicted on other resource maps. This tributary has an on-channel pond (AR-07) at the top of the segment. The drainage area is approximately 100 acres. The streambed is likely composed of silts, sands, gravel, and bedrock. The stream has meanders and has vertical banks at the downstream half, as well as bank sloughing where water energy is highest at meanders. This is a first order stream. Based on these factors, the tributary flows intermittently during the wet periods of the year. The stream has confined flow within the bed/banks, which is approximately 3 feet deep into the existing landscape. The tributary exhibits several indicators of the OHWM, such as shelving, sediment deposition, and multiple observed or predicted flow events. The tributary has the same, green-tinged water color and quality to AR-02, due to it being a tributary of AR-02. The tributary has no riparian corridor. This stream flows through three unnamed tributaries, which flows into the Deep Fork, which flows into Canadian River (TNW).

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

- Tributary waters: (AR-01; 640LF) (AR-02; 1,400LF) (AR-03; 1,550LF) (AR-04; 1,170LF) linear feet 8 width (ft).
 Other non-wetland waters: acres.

Identify type(s) of waters: .

3. **Non-RPWs⁸ 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: AR-12; 1200 linear feet 5 width (ft).
 Other non-wetland waters: acres.

Identify type(s) of waters: AR-12 is an NRPW tributary which is a contributing water to AR-04 through pond AR-06, which indirectly flows to Canadian River (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: .

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: (AR-16; 0.078) acres.

7. **Impoundments of jurisdictional waters.⁹**

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

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

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰**

- 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.

⁸See Footnote # 3.

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

¹⁰Prior 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.

- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

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

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

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

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: **The review area contains 3 swales (AR-09, AR-10, AR-11), and an associated depressional feature (AR-14) which were determined to lack sufficient findings of the Significant Nexus to Canadian River (TNW), see section above for details.**
- Other: (explain, if not covered above): **The review area contains 2 erosional features (AR-08, AR-13) which do not show up on resource maps, however, the agents report illustrates these features. Both have very limited drainage areas and do not exhibit sufficient flow duration and frequency to result in a well formed bed/bank or similar physical characteristics of a typical tributary. Both of these features are ephemeral. AR-13 also has an associated impoundment (AR-15), which was constructed in the uplands and likely used for agricultural purposes in the past. AR-17 is a non-wetland depressional feature which neighbors (AR-03), however does not meet the definition of a jurisdictional wetland. AR-17 is consistent with the pre-amble waters which are generally excluded from jurisdiction.**

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): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: 850 linear feet and 0.014 acres. List type of aquatic resource: (AR-09, AR-10, AR-11) are all swales, AR-15 is a non-wetland, depressional feature.
- 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: Agents jurisdictional report dated March 17, 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 October 7, 2021.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Britton and Spencer 1:24,000.
- USDA Natural Resources Conservation Service Soil Survey. Citation: ORM data accessed October 7, 2021.
- National wetlands inventory map(s). Cite name: ORM data accessed October 7, 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, 2010-2020.
or Other (Name & Date): Site Photos dated May 6, 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 128 acres.