

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): 3 December 2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWT-2021-00439 - 1

C. PROJECT LOCATION AND BACKGROUND INFORMATION: This AJD form identifies features within the western property's boundary. SWT-2021-00439 - 2 identifies features within the eastern property's boundary.

State: Texas County/parish/borough: Wilbarger City: Vernon
Center coordinates of site (lat/long in degree decimal format): Lat. 34.057216° **N**, Long. -99.19074° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Boggy Creek

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

Name of watershed or Hydrologic Unit Code (HUC):

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 16 November 2021
 Field Determination. Date(s): 27 October 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: 32,611 linear feet: 2.5 width (ft) and/or acres.
Wetlands: 20.60 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):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: **Within the review area, Channels 27, 28 29, 30, 31, 32a, 32b, 13a, 13b, 15, 16, 17, 24b, and 25 were determined to be ephemeral swales, not considered waters of the U.S. These features combined for a total of 14,490 linear feet. Within the review area, Features 14, 18, 19, 21, 22, 24, 26, 27, 33, 34, 35, 36, 37, 38, 39, and 40 were identified as**

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.

wetlands that were not considered adjacent or abutting to jurisdictional waters of the U.S and lacked a substantial link to navigable waters or interstate commerce. These features combined amount to 3.75 acres. Within the review area, Ponds 5, 6, 7, and 8 were located entirely in the uplands and considered non-jurisdictional. These features equal a total of 2.81 acres.

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: 18,411 acres

Drainage area: 1,050 acres

Average annual rainfall: 29 inches

Average annual snowfall: 2 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 2-5 river miles from RPW.

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

Project waters are 5-10 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 unknown tributaries flow into Boggy Creek which flows into Beaver Creek which flows into Turkey Creek which flows into the Wichita River which flows into the Red River, a Traditionally Navigable Water (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: .

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

Average width: 2.5 feet

Average depth: 1.5 feet

Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|---|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input checked="" type="checkbox"/> Vegetation. Type/% cover: Herbaceous 25-30% | |
| <input type="checkbox"/> Other. Explain: Red Clay. | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream channels identified within the review area exhibited bank erosion at different rates throughout the reach. The tributaries are likely used by cattle to travel across the property. Erosion was observed in areas where vegetation was not as prevalent along the stream channels.

Presence of run/riffle/pool complexes. Explain: N/a.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): 0-2 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: During periods of heavy precipitation flow likely exceeds the banks and conveys sheetflow across the adjacent landscape. The stream channel substrate likely absorbs the precipitation shortly after the rain event subsides.

Other information on duration and volume: Duration of precipitation events within the review area are likely few and brief, but may bring large amounts of precipitation in a short period of time.

Surface flow is: **Discrete and confined**. Characteristics: Flow is likely directly related to precipitation events and is confined to the existing stream channels.

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

- Dye (or other) test performed: .

Tributary has (check all that apply):

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

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

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |

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.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

- tidal gauges
- other (list):

(iii) Chemical Characteristics:

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

Explain: Water was not observed within the stream channels in the review area during the site visit conducted on 27

October 2021. Photographs provided by the consultant show water color to be stained red due to the clay substrate.

Identify specific pollutants, if known: .

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

- Riparian corridor. Characteristics (type, average width): Riparian area along the stream channels identified within the review area consist of mesquite trees and native grasses. Riparian area averages 25-50 feet along the unnamed tributaries where present.
- 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 unnamed tributaries identified within the review area are likely utilized by deer, hogs, and other wildlife as travel corridors. Crayfish shells were observed within stream channels during the site visit.

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: 20.60 acres

Wetland type. Explain: 21 jurisdictional, emergent wetlands were identified within the review area.

Wetland quality. Explain: Wetlands identified within the review area are undisturbed by construction activity or other unnatural occurrences. The emergent wetlands exhibited signs of hydrology, but likely only experience surface water during and immediately following a rain event..

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: During events of heavy precipitation the emergent wetlands within the review area likely contribute flow to jurisdictional Non-RPWs within the review area.

Surface flow is: **Discrete**

Characteristics: Flow is likely brief and only in direct response to rain events.

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: Several wetlands identified within the review area likely contribute an ephemeral, hydrologic connection in response to rain events.

Ecological connection. Explain: During periods of inundation, migratory birds and other wildlife likely utilize the wetlands as a water source and a loafing area along the migratory flyway.

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

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

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

Flow is from: **No Flow**.

Estimate approximate location of wetland as within the **100 - 500-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: Wetlands likely exhibit a stained, red water color as the soils are mostly red clay. Most wetland areas observed within the review area were vegetated with native grasses surrounded by mesquite on the outer fringe.

Identify specific pollutants, if known: Unknown.

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

Riparian buffer. Characteristics (type, average width): Wetlands within the review area were bordered by mesquite and other native trees and grasses along the upland boundaries. The wetlands within the review area exhibited an abrupt change in vegetation and soils from the abutting uplands.

Vegetation type/percent cover. Explain: 75-80 wetlands were mostly vegetated with native grasses.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: During periods of inundation, migratory birds and other wildlife likely utilize the wetlands as a water source and a loafing area along the migratory flyway.

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

All wetland(s) being considered in the cumulative analysis: **20-25**

Approximately (20.60) 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>
Y	0.06	Y	0.09
Y	0.08	Y	6.25
Y	0.91	Y	3.07
Y	0.17	Y	0.09
Y	2.24	Y	1.53
Y	0.15	Y	0.24
Y	0.34	Y	0.13
Y	2.82	Y	0.43
Y	0.76	Y	0.13
Y	0.13	N	0.03
N	0.05	Y	0.79

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:
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 subject ephemeral tributaries Boggy Creek, Channel 1a, Channel 1b, Channel 3, Channel 6a, Channel 7, Channel 8, Channel 9, Channel 10a, Channel 11a, Channel 14a, Boggy Creek 2, Channel 2, Channel 4, Channel 5, Channel 6b, Channel 10b, Channel 11b, Channel 14b, Channel 19, Channel 20, Channel 21, Channel 22, Channel 23, Channel 24a, and Channel 26 each provide storage and filtration during precipitation events for adjacent and abutting wetlands. It has been determined that the ephemeral non-Relatively Permanent Waters (non-RPWs) possess a hydrologic connectivity to the Red River (Traditional Navigable Water) into which it indirectly flows. Hydrologic connectivity refers to the flow that transports organic matter and nutrients, energy, and aquatic organisms throughout the system (Freeman et al. 2007). Evidence of this connection and, consequently, a significant nexus is supported by the observations and scientific literature in the following paragraphs. The non-RPWs consist of ephemeral tributaries with a defined bed and bank. Average onsite dimensions are 2.5 feet wide and 1-2 feet deep. Solid Organic Matter (OM), such as leaves and other detrital material, is processed by a feeding group referred to as "shredders", which includes crayfish, larvae of crane flies, caddisflies, and nymphs of stoneflies. Shredders break down this coarse material, and allow the material to be utilized by a secondary group known as "collectors". Collectors further process the OM and produce dissolved OM and fine particulate matter, which flow downstream. Generally, as the solid OM identified on the subject property is processed and translocated downstream, so are the microorganisms and invertebrates which utilize the material (Smith and Smith 2001). As such, headwater tributaries like this ephemeral streams identified in this paragraph represent the base of the food chain and, therefore, comprise one of the most important components of a watershed (Meyer et al.

2007). That is, the diversity of aquatic fauna in this headwater stream contributes to the biodiversity of the Red River by fitting into the complex foodweb of the river basin. Furthermore, the frequency of major rainfall events in the watershed results in pulsating hydrology, which sustains the local waterways, and subsequently, the Red River system. This influences the chemistry of the Red River basin via the transport of sediments and nutrients and geochemical cycling which occur during these pulses. Various pollutants are likely present since this stream is located in close proximity to roads and ranches. Typical pollutants, such as oil, become suspended in storm water and, without adequate filtration, are transported downstream. At times, after water is conveyed through the tributary, drying occurs in the headwater stream. This process of drying produces natural chemical and physical changes in the headwater stream. According to Izbicki (2007), even while headwater streams are drying, they remain an integral part of the overall stream because of this influence on the chemistry of the river downstream. Finally, headwater streams, such as the subject tributaries, have been documented as providing necessary habitat for birds, mammals, reptiles, and amphibian populations (Meyer et al. 2007). The small catchment area of headwater streams results in some of the most diverse habitats within a lotic system. Since the channels are greatly affected by precipitation events, the physical and chemical state of the stream changes rapidly and frequently which allows the habitat to be utilized by a large variety of species. Headwater streams are utilized not only by species which are unique to headwater streams, but also by animals which depend on such an environment for certain stages of their life cycles and those which migrate between headwater environments and larger waters. The non-RPWs and their adjacent/abutting wetlands Features 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 15, 28, 29, 40, 31, 32, 41, 42, 43, 44, and 45 possess a hydrologic connection to the Red River through an open and defined channel. Due to this hydrologic connection, the 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 non-RPWs and the adjacent wetlands possess a significant nexus to the Red River.

LITERATURE CITED:

Axt, J.R., and M.R. Walbridge. 1999. Phosphate removal capacity of palustrine forested wetlands and adjacent uplands in Virginia. *Soil Science Society of American Journal* 63:1019-1031.
 Freeman, M. C., C. M. Pringle, and C. R. Jackson. 2007. Hydrologic Connectivity and the Contribution of Stream Headwaters to Ecological Integrity at Regional Scales. *Journal of the American Water Resources Association*. 43: 5-14.
 Izbicki, J. A. 2007. Physical and Temporal Isolation of Mountain Headwater Streams in the Western Mojave Desert, Southern California. *Journal of the American Water Resources Association*. 43: 26-40.
 Meyer, J. L., D. L. Strayer, J. B. Wallace, S. L. Eggert, G. S. Helfman, and N. E. Leonard. 2007. The Contribution of Headwater Streams to Biodiversity in River Networks. *Journal of the American Water Resources Association*. 43: 86-103.
 Smith, R. L. and T. M. Smith. 2001. *Ecology and Field Biology*. Benjamin Cummings, New York. Pp. 644-650.

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:

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:

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: **32,611** linear feet **2.5** width (ft).
- Other non-wetland waters: **11.51** acres.

⁸See Footnote # 3.

Identify type(s) of waters: **Ponds 1, 2, 4 and 9 are impoundments of jurisdictional waters of the U.S.**

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: **20.60** 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.
- 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.

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

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- 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): .

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): **14,490** linear feet, **2** width (ft).
- Lakes/ponds: 2.80 acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: 3.75 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: Jurisdictional Waters of the U.S. Assessment, June 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: 111302070303.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: USGS 7.5 Minute Boggy Creek Quadrangle.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: USFWS NWI Wetlands Mapper.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth/Digital Globe 1995-2021.
or Other (Name & Date): Delineation, June 2021, Site Visit October 27, 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: Within the review area, there were 13 ephemeral features that did not meet the definition of a jurisdictional water of the U.S. 15 emergent wetlands within the review area lacked adjacency or a link to interstate commerce and were determined to be non-jurisdictional. 4 man-made impoundments were observed within the review area and determined to be non-jurisdictional, created entirely in the uplands.