

**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):** August 29, 2012

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Omaha, NWO-2012-1829-BIS, BNSF Siding near Palermo

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

State: North Dakota

County/parish/borough: Mountrail City: Palermo

Center coordinates of site (lat/long in degree decimal format): Lat. SEE ATTACHED WETLAND TABLEN; Long. W  
Universal Transverse Mercator:

Name of nearest waterbody: Isolated Wetlands

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None

Name of watershed or Hydrologic Unit Code (HUC): Lake Sakakawea - 10110101

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: August 15, 2012 (July 2012 by Houston Engineering, Inc.)

Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

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

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

Waters subject to the ebb and flow of the tide.

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

Explain: .

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

There **Are no** "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: linear feet: width (ft) and/or acres.

Wetlands: acres.

**c. Limits (boundaries) of jurisdiction based on: Pick List**

Elevation of established OHWM (if known): .

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

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

Explain: The JD review area contains seventeen (17) isolated depressional pothole wetlands. The wetlands are located within

entirely closed drainage basins with no discernible surface outlets. Further, these wetlands: 1) are not used by interstate or foreign travelers for recreational or other purposes; 2) do not support fish or shellfish that could be taken and sold in interstate or foreign commerce; and 3) are not used for industrial purposes by industries in interstate commerce. Based upon these principle considerations, it is determined that the subject wetlands are isolated and nonjurisdictional under the auspices of Section 404 of the Clean Water Act.

<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 **N/A**
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): **N/A**
- C. SIGNIFICANT NEXUS DETERMINATION **N/A**
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): **N/A**
- 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>4</sup> **N/A**

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

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): .

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: **13.98** 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: 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: **Houston Engineering, Inc. as part of jd request.**
- 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: .
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **USGS 1:24K Quad - Stanley SE.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Websoil Survey/GIS.**
- National wetlands inventory map(s). Cite name: **USFWS/NWI.**
- 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; aerials provided by Houston Engineering, Inc. for jd request.**  
or  Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .

<sup>4</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.

- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** [See Attached Map and Wetland Table.](#)

## BNSF Railroad Siding Project

NWO-2012-1829-BIS

## Wetland Table

Wetland ID	Lat/Long	Size (ac)
BNSF #1	48.330701 -102.287641	0.147557
BNSF #2	48.331027 -102.287641	4.976250
BNSF #3	48.330978 -102.285608	0.684206
BNSF #4	48.331555 -102.284359	0.187134
BNSF #5	48.331268 -102.282832	1.384544
BNSF #6	48.332701 -102.280797	1.552755
BNSF #7	48.332569 -102.278764	0.268452
BNSF #8	48.332492 -102.277480	0.270661
BNSF #9	48.332100 -102.277747	0.715347
BNSF #10	48.333011 -102.276092	0.129339
BNSF #11	48.333592 -102.273360	2.316934
BNSF #12	48.333642 -102.270848	0.467534
BNSF #13	48.333396 -102.270730	0.289108
BNSF #14	48.333904 -102.267384	0.141349
BNSF #16	48.336728 -102.254315	0.064550
BNSF #17	48.337219 -102.254433	0.184931
BNSF #18	48.337535 -102.230432	0.198398
<b>TOTAL</b>		<b>13.979112</b>