

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): 29 October 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:

Omaha District – NDDOT - NWO-2012-2210-BIS Approved JD Form 1 of 1 (Preliminary JD prepared for jurisdictional waters)

\*\*\*\*\*WETLAND TABLE ATTACHED\*\*\*\*\*

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Isolated pothole and ditch wetlands.

State: North Dakota County/parish/borough: Williams City: Belden  
Center coordinates of site (lat/long in degree decimal format): Lat. 48.153627° N, Long. 102.273674° W.  
Universal Transverse Mercator: 13

Name of nearest waterbody: Little Muddy Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Little Muddy (10110102)

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: 5 Oct 2012

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>

<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.

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The JD is for twenty-nine (29) isolated depressional wetlands consisting of basin and ditch wetlands located within the existing road right-of-way (ROW). These wetlands are located in the Missouri Coteau and Missouri Coteau Slope region of North Dakota. While heavily disturbed by roadway construction, the natural wetland basins are typical pothole wetlands. Ditch wetlands are areas that formed where the road bisected natural wetlands, or low areas in the ditch that do not drain. For the most part, all of these wetlands are very shallow, seasonal depressions. USGS Topographic maps indicate the presence of closed basins and slight upland swales. There is no discernable outlet or surface connection from these wetlands to potential waters of the United States.

In addition, there is no documentation that these waters: 1) are used by interstate or foreign travelers for recreational or other purposes; 2) support fish or shellfish that could be taken and sold in interstate or foreign commerce; and 3) are used for industrial purposes by industries in interstate commerce. Lastly, the waters do not exhibit sufficient proximity and/or connectivity to jurisdictional other waters; whereby, nonspeculative ecological connection(s) could be made that would constitute adjacency.

Based upon these principle considerations, it is determined that the subject waters are *isolated and nonjurisdictional* under the auspices of Section 404 of the Clean Water Act.

### 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

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<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.

**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: APPROXIMATELY : 9.81 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: [Wetland consultant provided location maps.](#)
- 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: [1 : 24,000 – TWIN LAKES, NORTH DAKOTA.](#)
- USDA Natural Resources Conservation Service Soil Survey. Citation: \_\_\_\_\_.
- 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 2009, 2011 & NAIP 2012.](#)  
or  Other (Name & Date): \_\_\_\_\_.
- Previous determination(s). File no. and date of response letter: \_\_\_\_\_.
- Applicable/supporting case law: \_\_\_\_\_.
- Applicable/supporting scientific literature: \_\_\_\_\_.
- Other information (please specify): \_\_\_\_\_.

**B. ADDITIONAL COMMENTS TO SUPPORT JD: [See attached maps.](#)**

## WETLAND TABLE

ISOLATED NONJURISDICTIONAL WETLANDS (APPROVED JD FORM 1 OF 1)

JURISDICTIONAL WATERS (PRELIMINARY JD FORM 1 OF 1)

Wetland Number	Test Hole (in Wetland)	Location	Long/Lat (Dec. Deg.)	Cowardin Classification	Wetland Type	Wetland Size (acres)	Wetland Feature	Physical Characteristics of Potential Tributary
S1E	0	T156N, R101W, Section 12	-103.625585128 48.3501268048	R4UB3	Stream	0.14	Natural	N/A
S1W	0	T156N, R101W, Section 11	-103.626503237 48.3500151894	R4UB3	Stream	0.14	Natural	N/A
S2E	0	T157N, R100W, Section 28	-103.623927419 48.3878071613	R4UB3	Stream	0.06	Natural	N/A
S6E	0	T157N, R100W, Section 28	-103.624066743 48.3983871021	R4UB3	Stream	0.18	Natural	N/A
S6W	0	T157N, R100W, Section 29	-103.62477113 48.3983937018	R4UB3	Stream	0.14	Natural	N/A
W1E	1EW	T156N, R101W, Section 12	-103.625234087 48.3513493357	PEMA	Basin	0.03	Natural	N/A
W2E	2EW	T156N, R101W, Section 1	-103.625757625 48.366238858	PEMA	Basin	0.02	Natural	N/A
W2W	2EW	T156N, R101W, Section 2	-103.626426429 48.3662153271	PEMA	Basin	0.35	Natural	N/A
W3E	3EW	T156N, R101W, Section 1	-103.625492889 48.3681785147	PEMC	Basin	0.95	Natural	N/A
W3W	3EW	T156N, R101W, Section 2	-103.626368083 48.3685314645	PEMA	Basin	0.42	Natural	N/A
W4E	4EW	T157N, R100W, Section 28	-103.624146481 48.3920864987	PEMA	Basin	0.08	Natural	N/A
W4W	4EW	T157N, R100W, Section 29	-103.624692002 48.3919194603	PEMA	Basin	0.07	Natural	N/A
W5E	5EW	T157N, R100W, Section 28	-103.624003338 48.3979466764	PEMC	Basin	0.14	Natural	N/A
W6E	6EW	T157N, R100W, Section 28	-103.623737932 48.3995882284	PEMC	Basin	0.04	Natural	N/A

Wetland Number	Test Hole (in Wetland)	Location	Long/Lat (Dec. Deg.)	Cowardin Classification	Wetland Type	Wetland Size (acres)	Wetland Feature	Physical Characteristics of Potential Tributary
W7E	7EW	T157N, R100W, Section 21	-103.623938973 48.4057097135	PEMA	Basin	0.03	Natural	N/A
W8E	8EW	T157N, R100W, Section 21	-103.62425195 48.4081847704	PEMC	Basin	0.64	Natural	N/A
W8W	8EW	T157N, R100W, Section 20	-103.625070529 48.4083584617	PEMC	Basin	0.60	Natural	N/A
W9E	9EW	T157N, R100W, Section 21	-103.624162099 48.4157280601	PEMC	Basin	0.80	Natural	N/A
W9W	9EW	T157N, R100W, Section 20	-103.625347848 48.4151371434	PEMC	Basin	2.00	Natural	N/A
W10E	10EW	T157N, R100W, Section 16	-103.624349073 48.4226999895	PEMA	Basin	0.02	Natural	N/A
W10W	10EW	T157N, R100W, Section 17	-103.625115239 48.4223414489	PEMA	Basin	0.12	Natural	N/A
W11E	11EW	T157N, R100W, Section 9	-103.624208304 48.4354777234	PEMC	Basin	0.35	Natural	N/A
W12E	12EW	T157N, R100W, Section 9	-103.624192678 48.4380992606	PEMC	Basin	0.40	Natural	N/A
W12W	12EW	T157N, R100W, Section 8	-103.625005542 48.4367754412	PEMA	Basin	0.30	Natural	N/A
W13E	13EW	T157N, R100W, Section 9	-103.624278184 48.441145672	PEMA	Basin	0.09	Natural	N/A
W14E	14EW	T157N, R100W, Section 4	-103.624023026 48.4461286845	PEMC	Basin	0.44	Natural	N/A
W14W	14WW	T157N, R100W, Section 5	-103.625320315 48.4495684749	PEM/ABF	Basin	3.05	Natural	N/A
W15E	15EW	T157N, R100W, Section 4	-103.624167551 48.446581854	PEMC	Basin	0.13	Natural	N/A

Wetland Number	Test Hole (in Wetland)	Location	Long/Lat (Dec. Deg.)	Cowardin Classification	Wetland Type	Wetland Size (acres)	Wetland Feature	Physical Characteristics of Potential Tributary
W16E	16EW	T157N, R100W, Section 4	-103.624482678 48.4520428732	PEMA	Basin	1.11	Natural	N/A
W17E	17EW	T158N, R100W, Section 33	-103.624227952 48.4605925618	PEMA	Basin	0.83	Natural	N/A
W18E	18EW	T158N, R100W, Section 28	-103.624206417 48.4769469294	PEMC	Basin	0.07	Natural	N/A
W18W	18EW	T158N, R100W, Section 29	-103.625142696 48.4765928272	PEMC	Basin	0.16	Natural	N/A
W19E	19EW	T158N, R100W, Section 28	-103.624176705 48.4853796647	PEMA	Basin	0.01	Natural	N/A
W19W	19EW	T158N, R100W, Section 29	-103.625152974 48.485123191	PEMC	Basin	0.66	Natural	N/A
W20E	20EW	T158N, R100W, Section 28	-103.624047166 48.4869742024	PEMC	Basin	0.29	Natural	N/A
W20W	20EW	T158N, R100W, Section 29	-103.62484848 48.4869953187	PEMA	Basin	0.01	Natural	N/A
W21E	21EW	T158N, R100W, Section 16	-103.62394974 48.5143826927	PEMA	Basin	0.16	Natural	N/A
W21W	21EW	T158N, R100W, Section 17	-103.62495363 48.5151551524	PEMA	Basin	0.13	Natural	N/A
W22E	22EW	T158N, R100W, Section 8	-103.625007703 48.5242672382	PEMC	Basin	0.25	Natural	N/A
W22W	22EW	T158N, R100W, Section 8	-103.625767306 48.5242381361	PEMA	Basin	0.01	Natural	N/A
W23E	23EW	T158N, R100W, Section 4	-103.623931223 48.537841231	PABF	Basin	1.63	Natural	N/A
W23W	23EW	T158N, R100W, Section 5	-103.625221894 48.5375585558	PEMC	Basin	0.78	Natural	N/A

Wetland Number	Test Hole (in Wetland)	Location	Long/Lat (Dec. Deg.)	Cowardin Classification	Wetland Type	Wetland Size (acres)	Wetland Feature	Physical Characteristics of Potential Tributary
W24W	24EW	T158N, R100W, Section 5	-103.624929005 48.5458059926	PEMF	Basin	1.08	Natural	N/A
W24E	24EW	T158N, R100W, Section 4	-103.623571495 48.5467173788	PEMF	Basin	0.56	Natural	N/A
W25E	25EW	T159N, R100W, Section 33	-103.624116637 48.5572364307	PEMF	Basin	0.37	Natural	N/A
W25W	25EW	T159N, R100W, Section 32	-103.624714084 48.5572481592	PEMF	Basin	0.21	Natural	N/A
W26E	26EW	T159N, R100W, Section 33	-103.624009332 48.558809957	PEMC	Basin	0.31	Natural	N/A
W26W	26EW	T159N, R100W, Section 32	-103.624889572 48.5589802313	PEMC	Basin	0.15	Natural	N/A
W27W	27WW	T159N, R100W, Section 32	-103.625024857 48.5516019778	PEMC	Basin	0.22	Natural	N/A
W28W	28WW	T159N, R100W, Section 32	-103.624898647 48.5483843424	PEMA	Basin	0.15	Natural	N/A
W29W	29WW	T158N, R100W, Section 5	-103.624969623 48.5399272488	PEMC	Basin	0.20	Natural	N/A
W30W	30WW	T157N, R100W, Section 5	-103.625334797 48.4531930632	PEMA	Basin	0.02	Natural	N/A
W31W	31WW	T157N, R100W, Section 5	-103.625323852 48.4456430906	PEMA	Basin	0.01	Natural	N/A
W32W	32WW	T157N, R100W, Section 8	-103.625324211 48.4331093212	PEMA	Basin	0.15	Natural	N/A
W33W	33WW	T157N, R100W, Section 17	-103.625166342 48.4302201032	PEMA	Basin	0.06	Natural	N/A
W34W	34WW	T157N, R100W, Section 20	-103.625293104 48.4130988432	PEMA	Basin	0.03	Natural	N/A

Wetland Number	Test Hole (in Wetland)	Location	Long/Lat (Dec. Deg.)	Cowardin Classification	Wetland Type	Wetland Size (acres)	Wetland Feature	Physical Characteristics of Potential Tributary
W35W	35WW	T157N, R100W, Section 29	-103.624954838 48.3961652745	PEMA	Basin	0.22	Natural	N/A
W36W	36WW	T157N, R100W, Section 29	-103.624954838 48.3961652745	PEMA	Basin	0.03	Natural	N/A



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Isolated, nonjurisdictional wetlands  
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NWO-2012-2210-BIS #W27W

NWO-2012-2210-BIS #W28W

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NWO-2012-2210-BIS #W24W

NWO-2012-2210-BIS #W24E

NWO-2012-2210-BIS #W29W

NWO-2012-2210-BIS #W23E

NWO-2012-2210-BIS #W23W

78th St NW

137th Ave NW

Go Hwy 9

135th Ave NW

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lat 48.549159° lon -103.630269° elev 1988 ft

Eye alt 12276 ft

Imagery Date: 12/31/2009 1995



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NWO-2012-2210-BIS #W8W

NWO-2012-2210-BIS #W8E

NWO-2012-2210-BIS #W7E

NWO-2012-2210-BIS #W35W

136th Ave NW

68th St NW

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Isolated, nonjurisdictional wetlands  
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NWO-2012-2210-BIS #W31W

NWO-2012-2210-BIS #W13E

NWO-2012-2210-BIS #W12E

NWO-2012-2210-BIS #W12W

NWO-2012-2210-BIS #W11E

NWO-2012-2210-BIS #W32W

NWO-2012-2210-BIS #W33W

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Isolated, nonjurisdictional wetlands  
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NWO-2012-2210-BIS #W20E

NWO-2012-2210-BIS #W20W

NWO-2012-2210-BIS #W19W

NWO-2012-2210-BIS #W19E

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136th Ave NW

NWO-2012-2210-BIS #W17E

NWO-2012-2210-BIS #W30W

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Isolated, nonjurisdictional wetlands  
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NWO-2012-2210-BIS #W22W

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