

**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):** December 6, 2012

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:**

Omaha District – Wal-Mart - NWO-2012-2722-BIS Form 1 of 1

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

Central Legal Description: S2, T153N, R64W

State: North Dakota County/parish/borough: Ramsey City: Devils Lake

Center coordinates of site (lat/long in degree decimal format): Lat. 48.09763° N, Long. -98.84305° W.

Universal Transverse Mercator: 14

Name of nearest waterbody: Devils Lake

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

Name of watershed or Hydrologic Unit Code (HUC): Devils Lake (9020201)

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: November 21, 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): \_\_\_\_\_.

<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).

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 is for an isolated wetland located landward of a series of roadway and levee embankments surrounding Devils Lake. The wetland is a slightly depressional wet meadow. This wetland, was field delineated and does not exhibit any contiguous surface connection to Devils Lake or other waters of the US. A ditch is located on the west boundary of the wetland and drains towards the north where it intercepts Highway 2 road ditches and embankments. This immediate segment of road ditch was delineated in previous JD and found to have no connectivity or waters of the US (NWO-2010-1686-BIS #1). It is believed that this wetland was isolated prior to the construction of highway and levee embankments as well. Therefore, it is concluded that the identified wetland lacks a discernable hydrologic surface connection to any waters of the US. This constitutes an “isolated” determination.

It is further determined that the wetland: 1) is not used by interstate or foreign travelers for recreational or other purposes; 2) does not support fish or shellfish that could be taken and sold in interstate or foreign commerce; and 3) is not used for industrial purposes by industries in interstate commerce. Lastly, the wetland does 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
- 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 : 1.0 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

<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.

- 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: [Field Delineation Wetland Report](#).
- 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 – Devils Lake, ND](#).
- USDA Natural Resources Conservation Service Soil Survey. Citation: [Mapping and Hydric Rating](#).
- 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 2012](#).  
or  Other (Name & Date): [Onsite Photographs 2012](#).
- Previous determination(s). File no. and date of response letter: [NWO-2010-1686-BIS #1 \(20 Aug 2010\)](#).
- Applicable/supporting case law: \_\_\_\_\_.
- Applicable/supporting scientific literature: \_\_\_\_\_.
- Other information (please specify): \_\_\_\_\_.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** [Map attached for applicant illustrating general location and isolated position of wetland.](#)