

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): 17 December 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:

[Omaha District – NDDOT - NWO-2012-2733-BIS Form 1 of 2](#)

[\(Form 1 = Isolated, Nonjurisdictional / Form 2 = Jurisdictional waters of the US\)](#)

WETLAND NUMBER	LATITUDE NORTH	LONGITUDE WEST	SIZE (ACRES)
#4	47.07193	-103.20134	0.02
#5	47.06298	-103.20166	0.03
#6	47.062	-103.2017	0.01
#7	47.06084	-103.20162	0.16
#8	47.04568	-103.20223	0.01
#9	47.03597	-103.2022	0.04
#10	47.03117	-103.20232	0.31
#11	47.0316	-103.20171	0.57
#12	47.03473	-103.2014	0.08
#13	47.0339	-103.20161	0.01
#14	47.02053	-103.20229	0.04
#15	47.02039	-103.20179	0.04
#20	46.98058	-103.19069	0.02
#21	46.98	-103.18957	0.03
#22	46.97579	-103.18912	0.09
#23	46.97543	-103.18976	0.21
#24	46.96466	-103.1899	0.50
#26	46.93636	-103.18934	0.13
#27	46.9343	-103.18939	0.03
#28A	46.92712	-103.1899	5.75
#28B	46.92712	-103.1899	0.97
#29	46.92454	-103.18989	0.71
#30	46.92473	-103.18936	0.82
#31	46.92381	-103.19015	0.24
#32	46.92096	-103.19005	0.33
#33	46.92	-103.18935	0.15
#34	46.90286	-103.18994	0.01

WETLAND NUMBER	LATITUDE NORTH	LONGITUDE WEST	SIZE (ACRES)
#35	46.9014	-103.18942	0.20
TOTALS:			11.51

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Isolated depressional basin wetlands and isolated wetland pockets developed within roadside ditches constructed in uplands.

State: North Dakota County/parish/borough: Stark and Billings City: Belfield
Center coordinates of site (lat/long in degree decimal format): Lat. 46.93636° N, Long. -103.18934° W.
Universal Transverse Mercator: 13

Name of nearest waterbody: Green River

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

Name of watershed or Hydrologic Unit Code (HUC): Upper Heart (10130202)

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: 3 December 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):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: _____ linear feet: _____ width (ft) and/or _____ acres.

Wetlands: _____ acres.

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

Elevation of established OHWM (if known): _____.

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).

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:** FORM 1: This JD is for twenty-eight (28) isolated depressional

wetlands consisting of depressional basin and isolated ditch wetlands located within the existing US Highway 85 right-of-way (ROW). While heavily disturbed by roadway construction, the natural wetland basins are very similar to the naturally occurring prairie pothole wetlands located east of the Missouri River. These natural wetlands are closed depressions that lack discernable surface outlets or connectivity to any potential waters of the US. The isolated ditch wetlands consist of “pockets” of low lying areas that trap and pond water within the constructed ditch segments. These low-lying areas developed wetland characteristics although constructed entirely within uplands (Preamble Waters/NON-Waters). In all cases, the delineated wetlands, identified in the table in Section I. above, lack discernable hydrological and ecological connections to waters of the US; thereby, constituting an “isolated” determination.

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.

Based upon these principle considerations, it is determined that the 28 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):⁴** 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 : 11.51 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).

³ Supporting documentation is presented in Section III.F.

⁴ 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: [Wetland Delineation 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 – Belfield, Rattlesnake Creek, Fairfield - ND](#)
- 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): [NAIP/Google Earth Pro](#).
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):. [JD FORM 2 consists of jurisdictional waters of the US.](#)

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

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): 17 December 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:

Omaha District – NDDOT - NWO-2012-2733-BIS Form 2 of 2

Form 1 = Isolated, Nonjurisdictional / Form 2 = Jurisdictional waters of the US

WETLAND NUMBER	LATITUDE NORTH	LONGITUDE WEST	SIZE (ACRES)
#1A	47.08761	-103.20137	0.75
#1B	47.08827	-103.20203	0.11
#2A	47.07125	-103.20229	1.26
#2B	47.06442	-103.20217	0.55
#3	47.07152	-103.20218	0.01
#16A	47.01829	-103.20166	0.26
#16B	47.01659	-103.20228	0.48
#16C	47.01957	-103.20231	1.13
#17A	47.018278	-103.20204	0.14
#17B	47.01318	-103.20223	1.93
#18	46.99146	-103.20096	0.01
#19	46.9915	-103.20083	0.01
#25	46.9502	-103.18992	0.12
TOTALS:			6.76

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Tributaries to Green River; Tributaries to South Fork Green River and Tributaries to No Creek; & Wetlands abutting RPWs

State: North Dakota County/parish/borough: Stark and Billings City: Belfield & Fairfield
 Center coordinates of site (lat/long in degree decimal format): Lat. 46.93636° N, Long. -103.18934° W.
 Universal Transverse Mercator: 13

Name of nearest waterbody: Green River

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

Name of watershed or Hydrologic Unit Code (HUC): Upper Heart (10130202)

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: 3 December 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** "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: _____ linear feet: _____ width (ft) and/or _____ acres.
Wetlands: 6.76 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

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: *****SEE FORM 1 of 2*****.

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):

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: In the cases of the jurisdictional waters identified in the table in Section I above, all of these waters either exhibit a year-round flow regime as evidence by USGS perennial mapping legend, stream flow data, or inferences made based upon large drainage basins and associated perennial flows during normal years. In all cases, these waters have a direct physical (contiguous) surface connection to downstream RPWs (South Fork Green River, Green River and No Creek) as well as the first downstream TNW (Heart River). Therefore, at minimum, it is determined that these identified waters flow directly into RPWS through the tributary system of the Heart River.

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.

- 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: [See section 4 below for acreage of delineated wetland areas for these linear systems.](#)

3. Non-RPWs⁴ 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: _____ linear feet _____ width (ft).

Other non-wetland waters: _____ acres.

Identify type(s) of waters: _____.

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: [The wetlands identified in the table \(Section I, above\) are field delineated wetlands that exhibit contiguous, linear surface connections to downstream tributaries, including RPWs and TNWs. All of these wetlands have a direct, physical connection to RPWs. This direct/contiguous relationship constitutes an “abutting” determination. Wetlands abutting 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: 6.76 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: _____ acres.

7. Impoundments of jurisdictional waters.⁵

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):⁶ N/A

⁴See Footnote # 3.

⁵To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

⁶Prior 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): N/A

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 Delineation 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 – Belfield, Rattlesnake Creek & Fairfield; ND](#).
- 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): [NAIP / Google Earth Pro](#).
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): [JD FORM 1 consists of isolated, nonjurisdictional waters](#).

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