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): **2 January 2013**

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:
Omaha District – NDDOT US 85 Improvements at Watford City - NWO-2012-2871-BIS

C. PROJECT LOCATION AND BACKGROUND INFORMATION: **Along 8.4 miles of US Highway 85**
State: **North Dakota** County/parish/borough: **McKenzie** City: **Watford City**
Center coordinates of site (lat/long in degree decimal format): Lat. **47.781889°** **N**, Long. **-103.282599°** **W**.
Universal Transverse Mercator: **13**
Name of nearest waterbody: **Cherry Creek**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Little Missouri River**
Name of watershed or Hydrologic Unit Code (HUC): **Lower Little Missouri River (10110205)**
☒ 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: **17 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 waters[2] (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: **600** feet: width (ft) and/or **0.23** acres (Cherry Creek #2OW & Unnamed tributary #POW1).
      Wetlands: **24.41**acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
      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: **The JD review area contains a 0.32 acre manmade borrow ditch depressional wetland (Wetland No. 3) along US Highway 85. This wetland was constructed wholly in uplands and does not drain waters of the US to any waters of the US. Therefore, it is determined that this isolated ditch wetland is not a waters of the US pursuant information found in the Preamble of the Federal Register pertaining to the USACE Clean Water Act Regulatory Program, 33 CFR Parts 320 through 332, Section 328.3: *Definitions.***

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 waterbody[4] 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: **1,800 (Lower Little Missouri) square miles**
Drainage area: **9.4** **_square miles**
Average annual rainfall: **16.02** inches
Average annual snowfall: **32.4** inches

[3] Supporting documentation is presented in Section III.F.
[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☒ Tributary flows through **1** tributaries before entering TNW.

Project waters are **25-30** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **10-15** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]: **POW#1 (Unnamed Tributary (NonRPW)) > Cherry Creek (RPW) > Little Missouri River (TNW)**
Tributary stream order, if known: **Third Order**

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: _____.
☒ Manipulated (man-altered). Explain: **Unnamed Tributary is both natural and manipulated. It has been affected by road construction, agriculture practices and the construction of what appears to be stock watering embankment structures.**

Tributary properties with respect to top of bank (estimate):
Average width: **8** feet
Average depth: **4** feet
Average side slopes: **Unknown.**

Primary tributary substrate composition (check all that apply):

☒ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☒ Vegetation. Type/% cover: **Herbaceous hydrophytes**	
☐ Other. Explain: _____.		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **Tributary appears to be in a state of equilibrium given the past manipulations to the system.**
Presence of run/riffle/pool complexes. Explain: **N/A**
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): 1 %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**
Estimate average number of flow events in review area/year: **2-5**
Describe flow regime: **This stream appears to have more than an ephemeral regime, with an influence from groundwater resources; therefore, it is believe that it exhibits abbreviated intermittent hydroperiods.**
Other information on duration and volume: **With an estimated 9.4 square mile drainage area, this tributary has the capacity to convey extended duration (nearly seasonal to perennial) flow events during very wet cycles. However, it is most likely to have abbreviated flows for less than 2 months during a normal year. The large drainage area of this stream can result in very large/high volume flow events during rapid runoff events.**

Surface flow is: **Discrete.** Characteristics: **This stream exhibits a bed and bank channel.**

Subsurface flow: **Unknown**. Explain findings: **Groundwater influence is not known, but likely.**
☐ Dye (or other) test performed: _____.

Tributary has (check all that apply):
☒ Bed and banks
☐ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation

[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.
[6] A 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.

☐ shelving
☒ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list): _____
☐ the presence of wrack line
☐ sediment sorting
☒ scour
☐ multiple observed or predicted flow events
☒ abrupt change in plant community

☐ Discontinuous OHWM.[7] Explain: _____.

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

☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other (list):

☐ Mean High Water Mark indicated by:
- ☐ survey to available datum;
- ☐ physical markings;
- ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

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

Explain: **Normal characteristics for this stream, with silty bottom and mixed land use drainage area.**

Identify specific pollutants, if known: **Potential for nutrients from grazing operations, agricultural applications, fertilizer, hydro carbons and other pollutants associated with industrial / energy related activities in the basin.**

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

☒ Riparian corridor. Characteristics (type, average width): **Combination of prairie grass (native & tame spp) & cultivated lands.**

☒ Wetland fringe. Characteristics: **Herbaceous riverine wetlands are present throughout the reach.**

☒ Habitat for:
- ☐ Federally Listed species. Explain findings: _____.
- ☐ Fish/spawn areas. Explain findings:
- ☐ Other environmentally-sensitive species. Explain findings: _____.
- ☒ Aquatic/wildlife diversity. Explain findings: **This intermittent stream and its adjacent wetlands provide habitat for both aquatic and terrestrial species, as well as micro and macro-organisms.**

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties: **PEMAx & PEMA (Wetland Nos 6 & 7).**

Wetland size: **1.63** acres

Wetland type. Explain: **Wetland No. 6 is a manipulated segment of roadside ditch wetlands that was constructed with the highway and connects the western reach of the tributary to the eastern reach. Wetland No. 7 is a wetland area that has developed within the footprint of an earthen embankment that was likely constructed for stock watering purposes .**

Wetland quality. Explain: **These two wetlands were determined to be "adjacent" to the unnamed tributary to Cherry Creek. These wetlands generally consist of low to moderate quality palustrine herbaceous wetlands, with shallow – abbreviated surface inundation in the road ditch, but persistent hydroperiods above and below the embankment. The wetlands provide suitable habitat for a variety of wildlife including aquatic life and terrestrial species that utilize these wetlands for food, cover and reproductive habitat. In addition, these wetlands provide some function in water quality and biochemical processes by trapping pollutants and other materials.**

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: **An intermittent flow pattern through these wetlands to correlate with the tributary characteristics.**

Surface flow is: **Discrete**

Characteristics: **These adjacent wetlands flow into the unnamed tributary and receive hydrology from the nearly 8 square miles of drainage above their location.**

Subsurface flow: **Unknown**. Explain findings: **No testing of groundwater flows; however, subsurface influence is likely during periods of high water table and aquifer activity.**

[7] Ibid.

☐ Dye (or other) test performed: _____.

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting

☐ Not directly abutting

☒ Discrete wetland hydrologic connection. Explain: **These wetlands (Nos. 6 & 7) are directly connected to (contiguous with) the unnamed tribuatary to Cherry Creek. This contiguous surface connection constitutes an adjacency determination.**

☐ Ecological connection. Explain: _____.

☐ Separated by berm/barrier. Explain: _____.

(d) Proximity (Relationship) to TNW

Project wetlands are **25-30** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **500-year or greater** 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: **No abnormal water attributes have been observed or reported.**

Identify specific pollutants, if known: **No specific pollutants have been documented; however, agricultural runoff, sediment and other pollutants within the Cherry Creek watershed are expected to be present within the project waters.**

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

☒ Riparian buffer. Characteristics (type, average width):**Both, prairie grass (native and non-native spp.) and cultivated lands with highly variable widths.**

☒ Vegetation type/percent cover. Explain:**Herbaceous upland and wetlands species, as well as, commodity crops.**

☒ Habitat for:

☐ Federally Listed species. Explain findings:_____.

☐ Fish/spawn areas. Explain findings:_____.

☐ Other environmentally-sensitive species. Explain findings:_____.

☒ Aquatic/wildlife diversity. Explain findings:**These adjacent wetlands increase biodiversity within the watershed and ecoregion. Both aquatic and terrestrial life utilize these riparian corridors and wetlands.**

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

All wetland(s) being considered in the cumulative analysis: **2**

Approximately (**1.63**) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)		Size (in acres)	Directly abuts? (Y/N)		Size (in acres)
No. 6	**Yes**	**0.53 acres**	**No. 7**	**Yes**	**1.10 acres**

Summarize overall biological, chemical and physical functions being performed: **These wetlands, in combination with the 9 square mile drainage area of the unnamed tributary (NonRPW), have the capacity to store/absorb water, transform nutrients, grow biotic matter and diversify the plant communities and wildlife of the ecotype. Broadly characterized, the functions provided by these wetlands can be grouped by habitat, hydrologic and water quality. In terms of habitat, these wetlands provide food, water and refuge for fish, invertebrates, birds and mammals. Hydrologically, these wetlands reduce flow velocity, aid in ground water recharge and/or discharge, and influence the hydrologic cycle's atmospheric processes. The wetlands improve water quality by trapping sediment and pollutants, and by the biochemical processes within the wetlands and their soils.**

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 3rd Order unnamed tributary to Cherry Creek (NonRPW) and its adjacent wetlands (Nos 6 & 7) have the cumulative capacity to affect the Little Missouri River (TNW). Given the fact that this 9 square mile watershed is directly connected to the Little Missouri River through the unnamed tributary and Cherry Creek, it is anticipated that the volume, frequency and duration of flows are sufficient to cause substantial effects to the aquatic ecosystem. This large system has the capacity to store ag-waste byproduct, nutrients, sediments, bacteria, pathogens, floodwaters, and other materials that can be harmful to the Little Missouri River, which is listed on the 303(d) list of impaired waters for fecal coliform. Based upon the principle considerations outlined in the EPA/USACE joint guidance and instruction on jurisdiction under the Clean Water Act, it is determined that the unnamed 3rd order tributary and its adjacent wetlands, have more than an insubstantial and speculative effect on the ecological, chemical and physical integrity of the downstream TNWs. This functional & physical capacity to affect the Little Missouri River constitutes a significant nexus. As such, NonRPW and its adjacent wetlands are waters of the US.**

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: **The JD area contains a reach of Cherry Creek. Cherry Creek has a watershed draining over 300 square miles of land. This basin receives sufficient snowfall and annual precipitation to provide**

perennial flows in accordance with a typical North Dakota year. The USGS 7.5 minute topographic map identifies Cherry Creek as a solid blue line perennial stream.

☐ 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: **310** linear feet **20** width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters:

3. Non-RPWs[8] 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: **290** linear feet **11** 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 project area contains four (4) wetlands (Nos 1, 2, 4 & 5) that were field delineated in June 2012. These wetland were either proven to exhibit a contiguous/continuous surface connection to the banks of the Cherry Creek, or appear to exhibit a continuous flow patter into Cherry Creek based upon best available information. This direct physical relationship to the perennial flowing reach of Cherry Creek, constitutes an "abutting" relationship (Wetlands abutting RPWs)..**

☐ 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: **22.3** 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 jurisidictional. 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: **1.63** 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).

[8] See Footnote # 3.

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

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.
☐ 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): **Manmade borrow ditch area that has developed wetlands (Non-Waters) per Preamble guidance as referenced in Section II (B)(2) above. A case specific determination has been made that this feature, constructed wholly in uplands, is not a waters of the US.**

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: **0.32** acres. List type of aquatic resource: **Artificial, manmade ditch wetland area constructed wholly in uplands during construction of US 85 highway.**
☐ 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): _____linear feet, _____width (ft).
☐ Lakes/ponds: _____acres.
☐ Other non-wetland waters: _____acres. List type of aquatic resource: _____.
☐ Wetlands: _____acres.

[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.*

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:**Submitted wetland delineation report and JD request received 11 December 2012.**

☒ 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 – WATFORD CITY, NORTH DAKOTA.**

☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **NRCS Soils Map Provided As Part of the Delineation Report**.

☒ National wetlands inventory map(s). Cite name: **US Fish and Wildlife Service NWI Map provided on behalf of the applicant.**

☐ State/Local wetland inventory map(s):_____.

☐ FEMA/FIRM maps:_____.

☐ 100-year Floodplain Elevation is:_____(National Geodectic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): **NAIP & Google Earth Pro (Numerous Years & Dates).**
or ☒ Other (Name & Date): **Onsite photographs provided in the delineation report (June 2012).**

☒ Previous determination(s). File no. and date of response letter:
NWO-2009-1955-BIS – 17 August 2009
NWO-2010-0717-BIS – 8 July 2010
NWO-2012-0218-BIS – 12 June 2012

☐ Applicable/supporting case law:_____.

☐ Applicable/supporting scientific literature:_____.

☒ Other information (please specify): **See attached table with descriptors of the identified waters.**

B. ADDITIONAL COMMENTS TO SUPPORT JD: Reference is made to the USACE & EPA Joint Guidance and Instruction on CWA 404 Jurisdiction and December 2008 Revised Guidance which indicate that all RPWs that flow directly or indirectly into TNW are WOUS. Further, wetlands abutting these RPWs are also WOUS. NonRPWs and adjacent wetlands are WOUS if they have the cumulative capacity to have more than a speculative effect on TNWs.

The field wetland delineations for PCN 19972, Project ID # NH-7-085(079)138 (Multi-Lane US Highway 85 West & South of Watford City), were conducted on September 28, 2012 by and ; however, portions of the study area were previously surveyed as part of the Watford City Bypass/Truck Reliever Route project (PCN 19845, Project ID # 7-085(072)142) on June 12, 25 and 26, 2012. The wetland delineations were conducted in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and the 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region (Version 2.0). Observations at each sample location were recorded on standard Corps of Engineers data sheets. Wetland boundaries and paired sample locations were recorded by GPS. The project is located within the Lower Little Missouri (10110205) Hydrologic Unit Code (HUC).

Table 1, Wetland Table

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*
1	1a	Sec. 30, T150N, R98W	-103.282756 W 47.781526 N	Abutting RPW		0.05	Artificial	N/A
2	2a	Sec. 30, T150N, R98W	-103.282599 W 47.781889 N	Abutting RPW Cherry Creek Oxbow		0.67	Natural	8, 10, 18, 25
2-OW	N/A	Sec. 25, T150N, R99W & Sec. 30, T150N, R98W	N/A	Jurisdictional RPW Cherry Creek		0.16	Natural	6, 8, 10, 11, 12, 13, 15, 16, 18, 20, 21, 22, 25
3	3a	Sec. 25, T150N, R99W	-103.283693 W 47.788623 N	Nonjurisdictional Borrow Ditch		0.32	Artificial	N/A
4	4a	Sec. 24, T150N, R99W	-103.283577 W 47.796968 N	Abutting RPW		0.86	Natural	8, 25
5 (1)*	1a	Sec. 23, T150N, R99W	-103.321481 W 47.800713 N	Abutting RPW		20.72	Natural	N/A
6 (61)*	61a	Sec. 1, T149N, R99W	-103.283483 W 47.758943 N	Adjacent to NonRPW		0.53	Artificial	N/A
7 (70)*	70a	Sec. 6, T149N, R98W	-103.272090 W 47.747079 N	Adjacent to NonRPW		1.10	Natural	8, 10, 21, 25
					TOTAL	24.41		

* The sample points for wetlands 5, 6 and 7 were previously inventoried for the Watford City Bypass Project wetland delineation (PCN 19845/7-085(072)142). Portions of these wetlands occurred within this project study area. The wetland numbers were updated for the purpose of this project, and the number in the parenthesis denotes the previous wetland number.

Table 2, POWUS Table

Number	Location	LONG/LAT (Dec. Deg.)	Type	Size		Feature	Physical Characteristics of Potential Tributary *
				Acres	Linear Feet		
POWUS 1	Sec.1, T149N, R99W	-103.286492 W 47.764759 N	Jurisdictional NonRPW	0.07	290	Natural	8, 10, 15, 18, 21, 25
TOTALS				**0.07**	**290**		

*Physical Characteristics of Potential Tributary:

Substrate Composition:
1) Silts
2) Sands
3) Concrete
4) Cobbles
5) Gravel
6) Muck
7) Bedrock
8) Vegetation
9) Other

Other Tributary Features:
10) Bed and banks
11) Ordinary high water mark
12) Clear, natural line impressed on the bank
13) Presence of litter and debris
14) Changes in the character of soil
15) Destruction of terrestrial vegetation
16) Shelving
17) Presence of wrack line
18) Vegetation matted down, bent, or absent
20) Leaf litter disturbed or washed away
21) Scour
22) Sediment deposition
23) Multiple observed or predicted flow events
24) Water staining
25) Abrupt change in plant community