

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): 5/22/12

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWO-2012-570-PIE Wetland D, NWO-2012-570-PIE Wetland E, NWO-2012-570-PIE Wetland F

C. PROJECT LOCATION AND BACKGROUND INFORMATION: 2 miles North of Harrisburg, SD, at the SE corner of the intersection of SD HWY 115 & 106

State: South Dakota

County/parish/borough: Lincoln City: Harrisburg

Center coordinates of site (lat/long in degree decimal format): Lat. 43.460063N; Long. -96.723023W

Universal Transverse Mercator: 14

Name of nearest waterbody: Spring Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 10170203

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: 5/3/12

Field Determination. Date(s):

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): .

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: Several isolated wetland areas exist on this project site, Wetlands D and E are linear (i.e. field drainage/waterway) and Wetland F is depressional (i.e. prairie pothole). These areas were identified by the proponent's consultant on a wetland

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.

delineation report dated 3/30/2012. This report identified 6 wetland areas; 3 of which areas showed no fluvial connection to an unnamed trib to the Big Sioux River, and are therefore isolated due to the apparent lack of hydrologic or topographic connection to waters of the United States and identified in this JD (a JD for the 3 jurisdictional wetlands can be found on Approved JD NWO-2012-570-PIE Wetlands A,B,C dated 5/3/12). Furthermore these wetlands lack a direct or indirect, non-speculative, linkage to adjacent waters based on historic aerial imagery in both wet and dry cycles. One could speculate that these wetlands flow north and then along Co. HWY 106 but there is no evidence to conclusively claim that water flows through/under several upland breaks in the roadside ditch .

SECTION III: CWA ANALYSIS

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: 0.03acres.

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: 0.2acres.

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 by applicant's consultant.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report. Delineation boundaries appear to be accurate
 - Office does not concur with data sheets/delineation report. his office does not concur with the preliminary quantitative assessments provided by the consultant. Some wetlands had been recently disturbed, additionally the delineation was conducted extremely early in the growing season (March).
- 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. 10170203, Lower Big Soiux. Iowa, Minnesota, South Dakota
- U.S. Geological Survey map(s). Cite scale & quad name:1:24 K, SD-HARRISBURG.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name:Missouri-Big Sioux.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):Google Earth 7/14/2010, 4/22/1996.
 - 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: Three affected wetlands are isolated and show no hydrologic or topographic connection to waters of the United States. Furthermore the wetlands lack a direct or indirect, non-speculative, linkage to adjacent waters based on historic aerial imagery in both wet and dry cycles. It is also determined that the wetlands have no documented use by interstate or foreign travelers relating to waterborne commerce activities, does not support fish or shellfish that could be taken and sold in interstate or foreign commerce, and is not used for industrial purposes by industries in interstate commerce. See attached maps of the review area.