**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 August 2012**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Omaha District, Guschewsky Living Trust, NWO-2012-01006

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:** Wetlands abutting a perennial tributary to Squaw Creek.
State: Wyoming County/parish/borough: Fremont City: Lander
Center coordinates of site (lat/long in degree decimal format): Lat. 42.84365 N; Long. -108.75067 W
Universal Transverse Mercator: NAD83
Name of nearest waterbody: Squaw Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Wind River
Name of watershed or Hydrologic Unit Code (HUC): Popo Agie, Wyoming, 8 Digit Huc10080003

☒ 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: July 16, 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: linear feet: -width (ft) and/or acres.
   Wetlands: An estimated 8.0 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Not established at this time.**
   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: .

[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.

**SECTION III: CWA ANALYSIS**

**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.

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

**(i) Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size:8.0 acres

Wetland type. Explain:Herbaceous palustrine emergent (marsh) depressional wetlands influenced by irrigation ditches which function as tributaries, upland drainage and highwater tables.

Wetland quality. Explain:No wetland function assessment completed.

Project wetlands cross or serve as state boundaries. Explain: Project entirely within the state of Wyoming.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: dependent upon irrigation season, there also appears to be some sub-surface connectivity..

Surface flow is**: Discrete and confined**

Characteristics: .

Subsurface flow: **Yes**. Explain findings: The wetland occurs adjacent to the RPW, some subsurface flow is expected due to the presence of saturated soils and shallow agriculturally-influenced aquifers.

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **30 (or more)** river miles from TNW.

Project waters are **20-25** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

**(ii) Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

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

☐ Riparian buffer. Characteristics (type, average width): .

☒ Vegetation type/percent cover. Explain:PEM dominated by Carex, Salix, and Typha species.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings:This portion of the waterway supports a wetland marsh habitat. Wildlife (terrestrial, avian, amphibian and some seasonal aquatic invertebrates) are observed within this common area.

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

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

Approximately (8) 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) |
|---|---|---|---|
| Y - PEM wetland | 8.0 | | |

Summarize overall biological, chemical and physical functions being performed: Nutrient cycling, chemical buffering, sediment trapping, wildlife habitat, flood attenuation/storage, ground water recharge.

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: .

☒ 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: Personal observations from the area report that water flows through irrigation ditches roughly from May 15 - Sept. 15. The drainage/irrigation ditches identified is functional and flowing during the irrigation season. Aerial imagery, the agent's report and a subdivision representative confirm the presence of surface water .

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet-width (ft).

☒ Other non-wetland waters: **8.0** acres.

Identify type(s) of waters: .

**3. Non-RPWs[5] 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: .

[5]See Footnote # 3.

☒ 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: The irrigation dithes were determined to be seasonal in a JD for the Indian Hills Subdivision (2010-02212) Tri-Hydro field visit indicated all three wetland indicators were present. The review of aerial imagry shows the wetland areas to start right next to the ditches. .

Provide acreage estimates for jurisdictional wetlands in the review area: **8.0**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: acres.

7. **Impoundments of jurisdictional waters.**[6]
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).

**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:Jurisdictional Determination request with maps and photos of the site.
☐ 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:7.5 minute topographic map: WY-Mount Arter SE & Lander.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name:WY-Mount Arter SE & Lander.
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):2009 Naip - true color and false-infrared, and Google Earth.
or ☒ Other (Name & Date):Recent satellite imagery of the area available at Google Earth.
☐ Previous determination(s). File no. and date of response letter:2010-02212, .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☒ Other information (please specify):personal communication with Jane Van Valkenburg, representative for Indian Lookout Subdivision.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**
Excerpt from Trihydro Corp. Report: "Based on the results of this evaluation, the property appears to have hydrologic connectivity to both Squaw Creek and Baldwin Creek via the irrigation ditches which are located adjacent to the property. Additionally, the desktop evaluation and on-site visit verified the presence of wetland hydrology, hydric soils, and hydrophytic vegetation."

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