

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): 12 July 2007

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District, Gulf South Pipeline Company, LP, SAM-2007-876-LET Segment 34

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Mississippi County/parish/borough: Forrest City: southwest of Eatonville, north of Hattiesburg
Center coordinates of site (lat/long in degree decimal format): Lat. 31.399444° N, Long. -89.342778° W.
Universal Transverse Mercator: Zone 16 NAD83 Datum

Name of nearest waterbody: UT to Bowie/Bouie River

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

Name of watershed or Hydrologic Unit Code (HUC): 03170004

- 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: 29 June 2007
 Field Determination. Date(s): 21 June 2007

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: 14,784 linear feet: 8 width (ft) and/or acres.
Wetlands: 40 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: .

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

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 waterbody⁴ 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: 1121090.52 ~~acres~~

Drainage area: Indeterminate/unknown ~~acres~~

Average annual rainfall: Approximately 50 inches

Average annual snowfall: None inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are ~~5=10~~ river miles from TNW.

Project waters are ~~Pick List~~ river miles from RPW.

Project waters are ~~5=10~~ aerial (straight) miles from TNW.

Project waters are ~~Pick List~~ aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: Project waters do not cross or serve as state boundaries.

Identify flow route to TNW⁵: The unnamed tributary flows to the Bowie/Bouie River which flows into the Leaf River .

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

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.

Tributary stream order, if known: The unnamed tributary is a 1st order stream, the Bowie/Bouie River is a 3rd order or greater stream, and the Leaf River is a 4th order or greater stream.

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

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: 8 feet
Average depth: 4 feet
Average side slopes: 3:1

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Tributary banks appear stable but are excessively flat and regular like a broad ditch at the maintained pipeline right-of-way creating an area wider than the immediately upstream and downstream channel that pools water but also allows the tributary to flow.

Presence of run/riffle/pool complexes. Explain: The tributary appears to have natural run/riffle/pool complexes. The typical dimension and expected number per stream meander segment are unknown.

Tributary geometry: Meandering

Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: Seasonal flow

Estimate average number of flow events in review area/year: 20 (or greater)

Describe flow regime: Presence/flow of water in the tributary is perennial.

Other information on duration and volume: No other information available.

Surface flow is: Discrete. Characteristics: The tributary likely originates from a combination of a groundwater driven spring or seepage from surrounding lands and overland sheetflow from rainfall events upstream of the project impact site and exhibits a defined bed and bank drainage channel.

Subsurface flow: Yes. Explain findings: Groundwater moves laterally toward the tributary drainage, seeps into and becomes part of the surface water flowing downstream within the tributary.

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (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
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 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: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

⁶A 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.

⁷Ibid.

(iii) Chemical Characteristics:

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

Explain: Water was tannic and clear such that the bottom of the channel was visible, there was a slight cloudiness but not enough to significantly impact water clarity/visibility.

Identify specific pollutants, if known: No specific pollutants known, however tributary is down hill from a cattle/livestock grazing pasture therefore associated nutrients and animal waste pathogens are a potential.

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

Riparian corridor. Characteristics (type, average width): Mixed pine and hardwood forest composed primarily of wetland habitat with an average total width of 200+/- feet. The area of the tributary corridor at the pipeline R-O-W crossing appears to have been historically timbered/disturbed therefore vegetation in that immediate area is predominantly scrub shrub and wetland grasses of approximately 200 +/- feet in width.

Wetland fringe. Characteristics: .

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: The tributary conveys organic carbon and nutrients downstream to the resident aquatic vertebrates and invertebrates spawning and feeding in the Bowie/Bouie River, and the Leaf River. The tributary also provides a smaller more protected water that provides a constant water source for spawning, growth, and foraging by juvenile fishes, reptiles and amphibians.

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: Unknown total wetland acres

Wetland type. Explain: Mixed pine and hardwood forested riparian wetlands and scrub-shrub with emergent/herbaceous wetland where the existing approximately 30 foot maintained pipeline right-of-way is located .

Wetland quality. Explain: Overall wetland quality along this analysis segment is predominantly medium quality, there is establishment and colonization of the exotic, invasive vegetative species *Sapium sebiferum* and *Ligustrum sinense*, particularly along the edges of the existing maintained natural gas pipeline corridor .

Project wetlands cross or serve as state boundaries. Explain: Project wetlands do not cross or serve as state boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: Periodic sheet flow from rainfall runoff waters to the tributary.

Surface flow is: Overland sheetflow

Characteristics: Wetland receives runoff from adjacent uplands and slows the overland flow of the water to the tributary allowing for treatment, and infiltration of the waters.

Subsurface flow: Pick List. Explain findings: Groundwater moves laterally toward the tributary drainage, seeps into and becomes part of the surface water flowing downstream within the tributary .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: There is an additional wetland impact across a non-RPW bayhead drain that converges with the RPW unnamed tributary. The drain does not exhibit a defined channel but is a low and sloping valley area on the landscape surrounded by upland hills that converges with the RPW unnamed tributary. The bayhead shows evidence of flow in response to rain events such as flow related scour and sediment deposition in the non-RPW drain.

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are ~~5~~10 river miles from TNW.

Project waters are ~~5~~10 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the ~~100~~500-year 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: There was no standing water in the wetland area, however these are riparian wetlands on a gentle broad slope that receive, filter, and retain floodwater/run-off prior to its discharge into the perennial tributary..

Identify specific pollutants, if known: No specific pollutants known, however tributary is down hill from a cattle/livestock grazing pasture therefore associated nutrients and animal waste pathogens are a potential.

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

Riparian buffer. Characteristics (type, average width): Mixed pine and hardwood forest composed primarily of wetland habitat with an average total width of 200+/- feet. The area of the tributary corridor at the pipeline R-O-W crossing appears to have

been historically timbered/disturbed therefore vegetation in that immediate area is predominantly scrub shrub and herbaceous/emergent vegetation of approximately 200 +/- feet in width.

Vegetation type/percent cover. Explain: Forested wetland -Liquidambar styraciflua 5% , Liriodendron tulipifera 35%, Magnolia virginiana 30%, Acer rubrum 10% Sapium sebiferum 5%in the canopy, Myrica cerifera 15% and Ligustrum sinense 35% in the shrub/midstory; Scrub shrub/herbaceous- Salix nigra 5%, Sambucus canadensis 15%, Carex sp 5%., Juncus sp 5%., Sagittaria latifolia 5% .

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The tributary and its associated wetlands convey organic carbon and nutrients downstream to the resident aquatic vertebrates and invertebrates spawning and feeding in the Bowie/Bouie River, and the Leaf River. The tributary also provides a smaller more protected water that provides a constant water source for spawning, growth, and foraging by juvenile fishes, reptiles, amphibians, and mammals as evidenced by the observation of a snake in the wetland preparing to catch and eat a frog and observation of racoon tracks along the scrub-shrub/herbaceous riparian segment of the RPW.

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

All wetland(s) being considered in the cumulative analysis: 1

Approximately (40) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Y	40		

Summarize overall biological, chemical and physical functions being performed: The estimated 40 acres of wetlands considered in the cumulative analysis for this tributary consist of mixed pine and hardwood forested wetland system that directly abuts the tributary including a non-RPW drainage with directly abutting wetlands that converges with the RPW tributary. This wetland system provides a water source/water recharge to the tributary, retention of floodwater, and initial treatment and removal of pollutants and sediment from the run-off from agriculture/silviculture and low density residential activities prior to entering the tributary and waterbodies further downstream. Detritus and decomposition of organic matter from the wetlands also provide nutrients and organic carbon to the tributary for use by wildlife and fish in downstream food chains. These areas also provide natural lands adjacent to a consistent water source where wildlife may rest, forage, nest, or seek refuge from predators.

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 *Rapans* 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 adjacent wetlands directly abutting the non-RPW which flows into the RPW with directly abutting wetlands receive, reduce the flow velocity of, and convey runoff from adjacent lands that consist of low density single-family residential development, agricultural/livestock grazing lands, and silvicultural land uses. The non-RPW and its wetland areas provide 1) pollutant filtration and sediment retention for stormwater runoff entering the RPW which is critical to health of the Bowie/Bouie River and Leaf River due to the fact those waterbodies are currently listed on Mississippi's 303(d) list of impaired waters (the impairment parameters include nutrients, sedimentation/siltation, organic enrichment and low dissolved oxygen). 2) buffering along the RPW helping prevent/reduce the increase of water temperature in the tributary 3) a water retention and recharge source for the tributary, Bowie/Bouie River, and Leaf River 4) resting, forage, and refuge area for wildlife such as songbirds, wading birds and raptors, mammals such as rabbits, racoons, and deer, amphibians, and reptiles such as turtles and snakes 5) the detritus and decomposition of organic material from the wetlands also provides a source of organic carbon and nutrients to the downstream foodchain that includes benthic invertebrates, fishes, birds, deer, squirrel, and eventually humans.
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 UT to Bowie/Bouie River that would be crossed by the natural gas pipeline replacement Segment 34 is shown on the Estabuchie MS USGS Topographic Quadrangle Map as being a broken blue line, seasonally flowing waterbody for the entire length of the UT to its convergence with Bowie/Bouie River which flows into the Leaf River; however based on field verification of the area it was found that the tributary actually appears to be a perennially flowing waterbody which contained water and was flowing on 21 June 2007 which was the date of field inspection.
- 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: 14,784 linear feet 8 width (ft).
 Other non-wetland waters: 12 acres.

Identify type(s) of waters: **Impoundment (upstream of the project impact area) through which the RPW flows to Bowie/Bouie River based on the fact that aerial photography, USGS topographic maps and local soil survey data consistently depict the tributary flowing into one end of an area shown as an open water and exiting the other end of the open water to continue its channel flow downstream to the Bowie River.**

3. Non-RPWs^b 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: 792 linear feet 3 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: **These are riparian wetlands associated with the unnamed perennial tributary which is depicted on the Estabuchie MS USGS Topographic Quadrangle Map as being a broken blue line or intermittent/seasonally flowing waterbody for the entire length of the UT to its convergence with Okatoma Creek which flows into the Bowie or Bouie River which flows into the Leaf River. The wetlands along this tributary do not generally appear to be separated from the tributary by natural upland depositional stream levees.**
- 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: **Undetermined total number of wetland acres along tributary reach but temporary wetland impacts of proposed project are 0.06 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.

^bSee Footnote # 3.

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: **Undetermined number of wetland acres in review area adjacent to non-RPW drainage; however proposed project would impact 0.01 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).

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): .

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: 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: .

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

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.

