

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): 13 June 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I, McWhorter Properties, SAM-2008-0312-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Petal, Mississippi; northwest of intersection of Hwy 42 and new Evelyn Gandy Parkway

State: Mississippi County/parish/borough: Forrest City: Petal
Center coordinates of site (lat/long in degree decimal format): Lat. 31.353888° N, Long. -89.23722° W.
Universal Transverse Mercator: Zone 16 X: 287189.0295 Y: 3470985.3096

Name of nearest waterbody: Tributary to Dry Prong Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 03170005 - Lower Leaf

- 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: 10 June 2008
 Field Determination. Date(s): 8 April 2008 and 18 April 2008

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: 0.44 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

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.

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

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: 1167114.09 acres
Drainage area: Approximately 226 acres
Average annual rainfall: 50 inches
Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
 Tributary flows through 3 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 5-10 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: Project waters Do Not cross or serve as State boundaries.

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

Identify flow route to TNW⁵: Wetland flows in a northeasterly direction to an un-named tributary to Dry Prong Creek, that flows into Dry Prong Creek, which flows into Lotts Creek, which then flows into the Leaf River which is identified as a traditionally navigable water (TNW).

Tributary stream order, if known:

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

Tributary is:

Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: Portions of this tributary to Dry Prong Creek have been

culverted and piped and its flow path confined by construction of road crossings and surrounding new retail/commercial development.

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

Average width: 3 feet

Average depth: 0.5 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: Fairly stable with minimal sloughing of banks, minor evidence of scouring. Tributary channel has defined banks.

Presence of run/riffle/pool complexes. Explain: Tributary still exhibits some natural channel morphology features such as presence of run/riffle/pool complexes despite significant new development related disturbance of adjacent uplands and piping and culverting of some segments of the tributary downstream of this specific project area.

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: 11-20

Describe flow regime: The tributary is shown on USGS topographic quadrangle maps as a broknet blue line which typically indicates an intermittent or seasonally flowing RPW, and based previous observations of this tributary by other Mobile District Regulatory Division technical staff, the flow regime appears to be at least seasonal (minimum of 3 months out of the year) but very likely may be perennial. Seasonal RPWs primarily depend on groundwater sources to maintain base flow, however flow volume is also influenced by rain events with overland sheetflow and discrete points of runoff from adjacent hills and wetlands, and runoff from developed impervious surfaces also contributing to the stream flow.

Other information on duration and volume: No other tributary specific information, such as USGS gage data, on flow and volume is available.

Surface flow is: Confined. Characteristics: The tributary drainage channel has a small (approximately 3 feet wide) but defined drainage channel.

Subsurface flow: Unknown. Explain findings: Not evaluated.

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

changes in the character of soil

shelving

vegetation matted down, bent, or absent

leaf litter disturbed or washed away

sediment deposition

water staining

other (list):

Discontinuous OHWM.⁷ Explain:

the presence of litter and debris

destruction of terrestrial vegetation

the presence of wrack line

sediment sorting

scour

multiple observed or predicted flow events

abrupt change in plant community

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.

⁷ Ibid.

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: Water color is relatively clear with no film or staining.

Identify specific pollutants, if known: No known identified pollutants.

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

Riparian corridor. Characteristics (type, average width): The riparian corridor consist of both hardwood forested and shrub wetland lands as well as developed and undeveloped natural upland lands. The width of naturally vegetated riparian corridor along the tributary varies significantly from over 300 feet in total width upstream of this project review area to as little as 45 or 50 feet in more intensively developed areas and along some brief reaches no natural riparian corridor due to installation of culverting or piping.

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 helps convey organic carbon and nutrients from decaying forest canopy plant material downstream to resident amphibians, reptiles, and aquatic vertebrates and invertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently or temporarily in Dry Prong Creek, its tributaries, and adjacent riparian lands. The area also provides a water source which mammals can utilize for hydration on at least a seasonal and possibly a perennial, basis.

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: 0.44 acres

Wetland type. Explain: Bay Head Drain with heavy shrub/mid-story cover and generally desirable wetland canopy trees, drain appears to convey ephemeral flow to downstream tributary to Dry Prong Creek.

Wetland quality. Explain: Wetlands within project area are of moderately low to low quality due to commercial/retail development impacts on surrounding lands, impacts of repeated disturbance associated with maintenance of a natural gas line that crosses the drain and run-off impacts from the large amount of spoil material that has been previously disposed on the property.

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: Ephemeral flow. Explain: Overland water flow concentrates toward the bayhead wetland which provides an naturally ditch-like conveyance for water, flow passes through the forested drain after rain events until the run-off flows into the Tributary to Dry Prong Creek, is absorbed into the ground, or is taken up in the evapo-transpiration process.

Surface flow is: Discrete

Characteristics: Bayhead drains are typically found in the valley or lowest topographic point between hills and provide a natural discrete ditch-like conveyance point for rainfall run-off to concentrate then flow into the nearest stream for transport into the water budget of larger downstream waterbodies.

Subsurface flow: Unknown. Explain findings: Not evaluated.

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: Wetland provides organic carbon and nutrients down stream.

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 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: Water standing in the wetland drain, due to impounding effect of a fill road across the wetland, was very chalky or milky colored with a heavy suspended sediment load due to runoff from an extremely large mound of un-stabilized spoil dirt that has been placed on the property with the permission of a previous owner of the land.

Identify specific pollutants, if known: No known or identified chemical, radioactive, or biological pollutants. Significant post-rainfall sediment run-off coming from mound of spoil located on the property.

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

Riparian buffer. Characteristics (type, average width): The riparian buffer wetlands consist of predominantly hardwood forested and shrub wetland lands with some segments in areas of intensive development being very narrow areas immediately along the

tributary channel due to development encroachment. The segments within developed areas downstream appear to be dominated by *Sambucus canadensis* and *Salix nigra*. The width of naturally vegetated riparian buffer along the tributary varies significantly from and estimated 300 or more feet in total width upstream of this review area to as little as 45 or 50 feet of total width in more intensively developed areas downstream.

Vegetation type/percent cover. Explain: The wetland buffer contains vegetative cover that includes *Magnolia virginiana*, *Nyssa biflora*, *Liriodendron tulipifera*, *Acer rubrum*, *Myrica cerifera*, *Woodwardia aerolata*, *Osmunda cinnamomea*, *Osmunda regalis*, and *Cyrilla racemiflora*, vegetative coverage is approximately 80%.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The wetlands provide resting, nesting, refuge, and foraging habitat for small amphibians, reptiles, birds, and mammals that may reside in or periodically pass through or utilize the area.

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

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

Approximately (11.7.) 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	11.7		

Summarize overall biological, chemical and physical functions being performed: The estimated 11.7 acres of similarly situated wetlands being considered in the cumulative analysis (which includes the 0.44 acres within the proposed project area) is within the riparian corridor along the entire reach (from headwater of the unnamed tributary to Dry Prong Creek to its convergence into Dry Prong Creek) of the Unnamed Tributary to Dry Prong Creek. This wetland system provides a water source/water recharge area to the unnamed tributary, Dry Prong, and other downstream waterbodies, it provides capacity to receive, retain, and convey rainfall run-off that cannot immediately infiltrate, and provides removal of sediment that may be picked up in overland sheet flow across lands disturbed by development prior to entering Dry Prong Creek. Detritus and decomposition of organic matter from the abutting wetlands also provide nutrients and organic carbon for use by wildlife and fish in downstream food chains. These areas also provide natural lands adjacent to a 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 *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 hardwood forested wetland directly abutting the seasonal RPW in combination with the seasonal RPW have a significant nexus to the downstream TNW by providing 1)- shading of the seasonal RPW helping prevent/reduce increase of water temperature in the tributary and downstream waters 2)- a water source/contributing source of water recharge to Dry Prong Creek and other downstream waterbodies 3)- provides capacity to receive, retain and treat rainfall run-off, and provides removal of sediment that may be picked up in overland sheet flow across lands disturbed by commercial and residential development activities or road and utility right of way maintenance prior to entering the downstream tributary system and TNW 4)- detritus and decomposition of organic matter conveyed from the wetlands by the seasonal RPW also provide nutrients and organic carbon to the downstream waters for use by wildlife and fish in the downstream aquatic system and food chains 5)- the seasonal RPW drainage and its abutting wetlands create a wildlife habitat area that provides access to a flowing water source, resting, nesting, refuge, and foraging habitat for amphibians, reptiles, birds, fish, and mammals that may live in or periodically utilize the system .
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:
 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: The tributary is shown on USGS topographic quadrangle maps as a brokent blue line which typically indicates an intermittent or seasonally flowing RPW, and based previous observations of this tributary by other Mobile District Regulatory Division technical staff, the flow regime appears to be at least seasonal (minimum of 3 months out of the year) but very likely may be perennial.

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: .

3. Non-RPWs⁸ 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: N/A 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: .
 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 hardwood forested wetlands abutting the seasonal RPW tributary to Dry Prong Creek are not physically separated from the tributary channel by upland berms, roadways or other physical barriers.

Provide acreage estimates for jurisdictional wetlands in the review area: 0.44 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.

⁸See Footnote # 3.

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: .
- 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: Barry Vittor & Assoc., dated June 27, 2007.
- 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.

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.

- 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: 1:2,000 and 1:24,000 Cartersville, MS.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey 2.0, Forrest County, Mississippi. Available online at <http://websoilsurvey.nrcs.usda.gov/> accessed [04/08/2008].
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:Forrest County, Mississippi and Incorporated Areas Map No. 28035C0075 C effective April 2, 1990.
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):i3 Nationwide Prime color aerial photography accessed on ORM2 database 04/08/2008.
or Other (Name & Date):Color digital photographs taken by Corps project manager 8 April 2008.
- 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: Authority for regulatory jurisdiction of these waters is found at 33 CFR Section 328.3(a)(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section and 33 CFR Section 328.3(a)(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1) through (a)(6) of this section.