

**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): 1 July 2009**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District - 53 Acre Site, Washington County, AL, Mike Tew - JD-1**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: AL County/parish/borough: Washington City: McIntosh  
Center coordinates of site (lat/long in degree decimal format): Lat. 31.21709° N, Long. -88.01044° W.  
Universal Transverse Mercator: Zone 16 X: 403480.50 Y: 3453969.62

Name of nearest waterbody: Bilbo Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 8-digit Lower Tombigbee - 03160203; 10-digit 0316020310

- 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: 1 July 2009  
 Field Determination. Date(s): 14 May 2009

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There Pick List "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):<sup>1</sup>**

- TNWs, including territorial seas  
 Wetlands adjacent to TNWs  
 Relatively permanent waters<sup>2</sup> (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: 100 linear feet: 4 width (ft) and/or          acres.  
Wetlands: 10.14 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):<sup>3</sup>**

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

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> 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 waterbody<sup>4</sup> 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: 1,033,578 acres

Drainage area: 50 acres

Average annual rainfall: ~57 inches

Average annual snowfall: 0 inches

###### (ii) Physical Characteristics:

###### (a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through Pick List tributaries before entering TNW.

Project waters are 1-2 river miles from TNW.

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

Project waters are 1-2 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 a State boundary.

Identify flow route to TNW<sup>5</sup>: Unnamed Tributary to Bilbo Creek flows NE to Bilbo Creek.

Tributary stream order, if known: First.

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

<sup>5</sup> 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.

(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: 4 feet  
Average depth: 1 feet  
Average side slopes: Vertical (1:1 or less).

Primary tributary substrate composition (check all that apply):

- |   |  |                                   |
|---|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands          | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles          | <input type="checkbox"/> Gravel                    | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock          | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain:  |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The tributary is relatively stable. No segments of significantly sloughing or highly eroding stream banks were observed.

Presence of run/riffle/pool complexes. Explain: The unnamed tributary contains run and pool areas. The unnamed tributary has segments that exhibit defined channel of flow interspersed with broad braided segments that don't have a distinct flow channel.

Tributary geometry: Relatively straight

Tributary gradient (approximate average slope): 2 %

(c) Flow:

Tributary provides for: Seasonal flow

Estimate average number of flow events in review area/year: 11-20

Describe flow regime: Intermittent or seasonally flowing stream which was flowing on the day of field review.

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

Surface flow is: Overland sheetflow. Characteristics: The unnamed tributary to Bilbo Creek exhibits areas where overland sheetflow from surrounding land concentrates into a braided system of water flow and also exhibits segments with a discrete channel having defined bed and bank.

Subsurface flow: Unknown. Explain findings: Subsurface flow was not evaluated.

Dye (or other) test performed:

Tributary has (check all that apply):

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Bed and banks  |   |
| <input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input type="checkbox"/> clear, natural line impressed on the bank                       | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input checked="" type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> destruction of terrestrial vegetation        |
| <input type="checkbox"/> shelving  | <input checked="" type="checkbox"/> the presence of wrack line        |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                             |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away                 | <input type="checkbox"/> scour  |
| <input type="checkbox"/> sediment deposition   | <input type="checkbox"/> multiple observed or predicted flow events   |
| <input checked="" type="checkbox"/> water staining                                       | <input checked="" type="checkbox"/> abrupt change in plant community  |
| <input type="checkbox"/> other (list):   |   |

Discontinuous OHWM.<sup>7</sup> Explain:

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

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> High Tide Line indicated by:   | <input checked="" type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                               |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input checked="" type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input checked="" type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |   |
| <input type="checkbox"/> other (list):                             |   |

(iii) **Chemical Characteristics:**

<sup>6</sup>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.

<sup>7</sup>Ibid.

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

Explain: The water in the tributary is clear.

Identify specific pollutants, if known: No known pollutants and no 303(d) impaired water listings for the Unnamed Tributary to Bilbo Creek .

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

- Riparian corridor. Characteristics (type, average width): >200 feet.  
 Wetland fringe. Characteristics: Magnolia virginiana, Carpinus carolinianus, Quercus nigra, Ilex glabra, Andropogon virginicus, Sarracenia rubra.  
 Habitat for:

- Federally Listed species. Explain findings:  
 Fish/spawn areas. Explain findings:  
 Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Reptiles, Amphibians, Raccoons, Deer, Birds, Rabbits, etc. The tributary helps convey organic carbon and nutrients from decaying riparian plant material and woody debris downstream to the resident amphibians and aquatic invertebrates, and aquatic and terrestrial vertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently in the stream and adjacent riparian lands. Leopard frogs and bobcat were observed during field review, also, deer and raccoon tracks as well as rabbit scat were observed during field review.

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: 10.14 acres

Wetland type. Explain: Forested Hardwood Bottomland & Wet Pine Savannah wetland directly abutting unnamed tributary to Bilbo Creek.

Wetland quality. Explain: High.

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: Run-off from rainfall events flows from the wetlands and surrounding uplands within the JD review area to the unnamed tributary to Bilbo Creek.

Surface flow is: Overland sheetflow

Characteristics: Rainfall and high water flows (during rainfall events run-off water flows over the landscape toward and through the wetlands to the tributary to Bilbo Creek).

Subsurface flow: Unknown. Explain findings: Subsurface flow was 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:  
 Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 1 (or less) river miles from TNW.

Project waters are 1 (or less) 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: Water flowing from the wetlands is clear.

Identify specific pollutants, if known: None Known.

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

- Riparian buffer. Characteristics (type, average width): >200 feet.  
 Vegetation type/percent cover. Explain: Magnolia virginiana, Carpinus carolinianus, Quercus nigra, Ilex glabra, Andropogon virginicus, Sarracenia rubra.  
 Habitat for:

- Federally Listed species. Explain findings:  
 Fish/spawn areas. Explain findings:  
 Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Reptiles, Amphibians, Raccoons, Deer, Birds, Rabbits, etc. The wetlands provide a source of plant material and woody debris that decay and provide organic carbon and nutrients to the resident amphibians and invertebrates, and aquatic and terrestrial vertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently in the

wetlands and adjacent streams and uplands. Leopard frogs and bobcat were observed during field review, also, deer and raccoon tracks as well as rabbit scat were observed during field review.

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

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

Approximately ( 30+/- ) 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	10.14		
Y	20+/-		

Summarize overall biological, chemical and physical functions being performed: Provides habitat for wildlife, functions as a water filter, absorbs flood water. The estimated 30+/- acres of wetlands being considered in the cumulative analysis is within the riparian corridor along the reach of the Unnamed Tributary to Bilbo Creek that extends from the approximate origin of a segment of the seasonal tributary within a 10.14 acre wetland on the east side of the 53-acre review area to Bilbo Creek. This wetland system provides a water source/water recharge area to the unnamed tributary and to Bilbo Creek; it provides capacity to receive and retain floodwater, and provides removal of sediment that may be picked up in overland sheet flow across lands disturbed by development and silvicultural activities that have a history of occurring on adjacent lands prior to entering Bilbo 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~~ <sup>seasonal RPW that has</sup> 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: The wetlands and seasonal RPW receive runoff water from adjacent undeveloped natural lands, silvicultural lands, residentially developed lands, and railroad track alignment. The seasonal-RPW in combination with its directly abutting hardwood forested and pine savannah wetlands have a significant nexus to the downstream RPWs and TNW by providing 1)- shading of the seasonal-RPW helping prevent/reduce increase of water temperature in waters feeding into downstream RPWs and TNWs helping to keep these waters more habitable to aquatic wildlife and reducing the potential for in-stream algal and/or blooms/growth spikes that often result from increase light exposure and water temperature 2)- a water source/contributing source of water recharge to Bilbo 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 silvicultural and agricultural activities, commercial and residential development activities, and road/railroad 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 seasonal-RPW flows 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 corridor that provides access to a source of water, resting, nesting, refuge, and foraging habitat for amphibians, reptiles, birds, and mammals that reside permanently in or periodically utilize this system of streams, wetlands, and uplands surrounding the unnamed tributary to Bilbo Creek.

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:
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: Flow was observed in the channel over 24 hours after a rain event. The Unnamed Tributary to Bilbo Creek is shown as a broken blue line on USGS topographic quadrangle maps, which typically indicates the presence of an intermittently or seasonally flowing stream. On the date of field review on 14 May 2009 the tributary contained a small volume of flowing water although there had been no appreciable precipitation recorded by the NOAA National Weather Service office at Mobile Regional Airport, other than one recorded approximately 0.03 inch event, in the Mobile/southwest Alabama region since a 1.03 inch rainfall event recorded on 4 May 2009.

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

- Tributary waters: **100** linear feet **4** width (ft).  
 Other non-wetland waters: acres.  
 Identify type(s) of waters:

3. **Non-RPWs<sup>8</sup> 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:  
 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: Wetland and RPW share a border.

Provide acreage estimates for jurisdictional wetlands in the review area: **10.14** 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.

<sup>8</sup>See Footnote # 3.

**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.<sup>9</sup>**

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):<sup>10</sup>**

- 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.

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

<sup>10</sup> 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:
- 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 Calvert, AL 7.5 min USGS quad.
- USDA Natural Resources Conservation Service Soil Survey. Citation: No soil survey mapping currently exists for Washington County, AL.
- National wetlands inventory map(s). Cite name: Calvert, AL (digital map data).
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Color aerial photography from Google Earth and the NCSS Web Soil Survey accessed 15 May 2009, although no soil mapping is available.  
or  Other (Name & Date): Digital photographs taken by Corps project manager during 14 May 2009 field review.
- 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:** Significant Nexus determination has been included in this JD pursuant to the 11th Circuit Court decision in U.S. v. McWane, Inc., 505 F.3d 1208 (11th Cir. 2007) which requires all "approved jurisdictional determinations" within the 11th Circuit to employ the significant nexus standard of the Kennedy test.