

**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): 11 August 2010**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I-S, South Mississippi Electric Power Association (SMEPA) Blowdown Pond, SAM-2010-0893-LET**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:** JD Form 2 for wetlands around south, southwest and eastern perimeter of blowdown pond which drain to man-made tributary to Black Creek and wetlands abutting Black Creek.

State: Mississippi County/parish/borough: Lamar City: Okahola, north of Purvis

Center coordinates of site (lat/long in degree decimal format): Lat. 31.20181° N, Long. -89.395257° W.

Universal Transverse Mercator: Zone 16 X: 272042.37 Y: 3454434.28

Name of nearest waterbody: Black Creek

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

Name of watershed or Hydrologic Unit Code (HUC): (8-digit) 03170007 Black Creek, MS

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: 21 July 2010

Field Determination. Date(s): 9 July 2010

**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):<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: linear feet: approximately width (ft) and/or 0.065 acres.

Wetlands: 0.50 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>**

<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.

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 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: (8 digit HUC) 811,268.86 acres

Drainage area: Approximately 140 acres

Average annual rainfall: approximately 62 inches

Average annual snowfall: <0.5 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 **30 (or more)** river miles from TNW.

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

Project waters are **30 (or more)** 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: The project waters DO NOT cross or serve as State boundaries.

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<sup>4</sup> 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 TNW<sup>5</sup>: The wetlands and unnamed tributary/ditch at the northwest corner of the SMEPA blowdown pond flow directly into Black Creek near river mile 102 then Black Creek becomes a designated Section 10 TNW approximately 73 miles downstream in George County, MS south of Benndale near river mile 29.  
Tributary stream order, if known:

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

Tributary is:  Natural

Artificial (man-made). Explain: The shallow, narrow, approximately 4:1 sloped drainage swales/ditches containing wetlands flowing along the east side of the blowdown pond drain to a man-made upland drainage channel, which has developed stream characteristics, at the south end of the blowdown pond. The man-made drainage channel conducts perennial flow from the SMEPA facilities, wetlands and drainage swales within the 7.0 acre review site through an area of uplands into natural wetlands abutting Black Creek.

Manipulated (man-altered). Explain:

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

Average width: Approximately 10 feet

Average depth: Depth of tributary/ditch from top of bank is approximately 5 - 6 feet

Average side slopes: **2:1**.

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: The tributary includes a combination of shallow, narrow, approximately 4:1 sloped wetland swales that drain directly into a man-made narrow, deep channelized drainage channel with approximately 5 to 6-foot high banks that have a steep slopes estimated to be between 2:1 and 1:1; however the banks appear to be relatively stable with no excessive undercutting of the banks and having good shrub and tree cover on the tops of the banks which helps shield the channel slopes from the full erosive impact of rainfall and run-off. Approximately 0.065 acre of the ditch/tributary is within the JD review area and was delineated. The depth of the water flowing in the tributary was less than 1 foot deep. The shallow drainage swales are stabilized with emergent herbaceous wetland vegetation.

Presence of run/riffle/pool complexes. Explain: The tributary has run/riffle/pool complexes.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: **Pick List**

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

Describe flow regime: The wetland drainage swales and man-made ditch/tributary into the wetlands abutting Black Creek is a continually flowing perennial drain which contained flowing water on the day of field evaluation.

Other information on duration and volume: No other tributary specific information or gage station data is available for Bennett Creek.

Surface flow is: **Discrete and confined**. Characteristics: The man-made ditch/tributary exhibits a defined bed and bank morphology with a pine and hardwood forested wetland riparian corridor within the 100-year floodplain of Black Creek.

Subsurface flow: **Pick List**. Explain findings: Subsurface flow was not evaluated.

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM<sup>6</sup> (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):

<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.

<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.

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 type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

**(iii) Chemical Characteristics:**

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

Explain: The water observed flowing in the eastern swales and man-made ditch/tributary at the time of field review was clear with no turbidity or cloudiness from suspended sediment, no film or sheen, and no discoloration other than natural orange staining along the margins of the water indicative of activity by bacteria that help process iron.

Identify specific pollutants, if known: No known chemical pollutants to the tributary have been identified.

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<sup>7</sup>Ibid.

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

Riparian corridor. Characteristics (type, average width): The riparian corridor of the man-made ditch/tributary is also within the 100-year floodplain of Black Creek. The riparian corridor of ditch/tributary consists of hardwood and pine forested uplands with wetlands abutting Black Creek located to the south and west, and the blowdown pond with associated previously disturbed and filled areas to the north. There is over 1,000 feet of naturally forested buffer northwest of the man-made ditch/tributary which is within the Black Creek floodplain. On the southeast side of the tributary there is also over 1,000 feet of naturally forested buffer which is within the Black Creek floodplain.

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 ditch/tributary conveys organic carbon and nutrients from decaying riparian plant material downstream to the resident amphibians and aquatic invertebrates, and aquatic and terrestrial vertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently in Black Creek and its abutting riparian lands.

**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: 0.50 acres

Wetland type. Explain: Predominantly palustrine emergent herbaceous wetlands and wetland swales that primarily drains stormwater run-off and seepage from the blowdown pond structure and associated roads. One small area (0.08 acre) of hardwood forested and scrub-shrub wetland was identified within the 7.0 acre review area at the southern end of the blowdown pond.

Wetland quality. Explain: Wetland quality is low due to the historic land manipulation to construct the SMEPA facility and repeated on-going human disturbance from maintenance and routine mowing of the SMEPA facilities adjacent to the wetland swale and at the upper end of the man-made ditch/tributary segment.

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: Water flows from the wetland areas through a discrete overland wetland drainage swale system and several levee toe seepage wetlands then flows into the man-made ditch/tributary before discharging into wetlands directly abutting Black Creek. Hydrology of the wetland swales and seepage wetlands originates from a combination of seasonal high water table and soil saturation, seepage from the blowdown pond structure, and from stormwater run-off and drainage from the site. Water also flows through these wetlands when Black Creek rises out of its banks across its floodplain.

Surface flow is: **Overland sheetflow**

Characteristics: Water flow through the wetlands is most commonly overland flow of run-off from precipitation events or from sufficient groundwater saturation to the soil surface that the water forms shallow flows across the ground down gradient toward the creek.

Subsurface flow: **Pick List**. 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 **30 (or more)** river miles from TNW.

Project waters are **30 (or more)** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **50 - 100-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: Areas of water seepage flowing through the wetland swales consisted of clear water but in some locations there was orange staining along the margins of the water indicative of activity by bacteria that help process iron.

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

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: The dominant plant species in the wetland area are herbaceous and have Fac to Obl Region 2 wetland indicator status and include species such as *Juncus effusus*, *J. validus*, *Elyocharis* sp., and *Andropogon* sp.
- 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 refuge from predators and foraging habitat for small amphibians, reptiles, birds, and small mammals (rodents) that periodically utilize the area. This wetland area is too small, lacks canopy cover, and is too routinely disturbed by humans to support more than passing forage or temporary refuge for small wildlife.

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

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

Approximately ( 25+/- ) 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                            | 25+/-                  |                              |                        |

Summarize overall biological, chemical and physical functions being performed: The estimated 25 acres of wetlands being considered in the cumulative analysis for the relevant reach of the man-made ditch/tributary to Black Creek for this jurisdictional determination consist of the forested riparian wetland system directly abutting Black Creek into which the ditch/tributary drains, the wetland seepage and swale areas that drain to the ditch/tributary, and wetland areas to the south and east adjacent to the wetland swales. This area is being considered as a single wetland system which drains to both the ditch/tributary and to Black Creek. This wetland system provides a groundwater discharge source/area of water recharge to the tributary and Black Creek, it provides water purification functions to downstream RPWs and TNWs by moderating the flow of water and providing capacity to receive and retain floodwater resulting in removal of sediment, fertilizers, pesticides, chemicals, etc. that may be picked up in stormwater run-off from SMEPA facilities and periodic silvicultural activities on surrounding lands that can enter the creek. The ability to receive and retain stormwater also provides flood attenuation functions, the vegetation provides roughness to slow the velocity of floodwater that may flow across the floodplain. The similarly situated wetlands along the tributaries in this system also provide a natural corridor for wildlife to utilize while carrying out their daily functions such as foraging for food and water and seeking shelter for nesting or as refuge from predators. The fruits, nuts, and seeds of plants, and detritus and decomposition of organic matter from the wetlands also provide nutrients and organic carbon to the RPWs and downstream TNWs for use by wildlife and fish in downstream food chains.

### 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:
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 man-made ditch/tributary to Black Creek at the southern end of the blowdown pond was constructed to convey water from the property, contained flowing water on the date of field review and exhibits bed and bank features of a stream drainage .
- 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: linear feet width (ft).  
 Other non-wetland waters: **0.065** acres.

Identify type(s) of waters: **man-made drainage ditch/tributary south of blowdown pond.**

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: **The wetland seepage drains from the toe of the pond and wetland drainage swales within this review area either drain directly into wetlands abutting to Black Creek or they abut and drain directly into the man-made perennial ditch/tributary which flows directly into Black Creek and the wetlands abutting Black Creek.**
- 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: **0.50** 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.

7. **Impoundments of jurisdictional waters.<sup>9</sup>**

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

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

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.

**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: \_\_\_\_\_

<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.

- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 7.5 minute Purvis, MS.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey, Lamar County, Mississippi. Available online at <http://websoilsurvey.nrcs.usda.gov/> accessed [5/12/2010 and 6/24/2010].
- National wetlands inventory map(s). Cite name: Purvis, MS scanned data from USFWS NWI on-line wetlands mapper at <http://www.fws.gov/wetlands/Data/mapper.html>.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:Lamar County, Mississippi and Incorporated Areas, Map No.28073C0235E Maps Revised March 2, 2010.
- 100-year Floodplain Elevation is:approximately 232 feet (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date):Color aerial photography available with NCSS web soil survey mapping, NWI on line mapping, and black & white aerial photography available with the FEMA on line FIRM mapping.  
or  Other (Name & Date):Color digital photographs taken by wetland delineation consultant during 7 May 2010 delineation field work and photos taken by USACE project manager during 9 July 2010 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: .**