

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): 30 November 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I-S, City of Jackson - Jackson Municipal Airport, SAM-2011-01466-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Alabama County/parish/borough: Clarke City: Jackson
Center coordinates of site (lat/long in degree decimal format): Lat. 31.47783° N, Long. -87.894651° W
Universal Transverse Mercator: Zone 16 X: 415030.21 Y: 3482912.36

Name of nearest waterbody: Bassett Creek

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

Name of watershed or Hydrologic Unit Code (HUC): (12-digit) 03160203 Lower Tombigbee, Alabama

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: 18 November 2011

Field Determination. Date(s): September 20, 2011; field verified by USACE 28 November 2011

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: approximately width (ft) and/or acres.

Wetlands: 4.6 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

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

Explain:

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

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW:

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) **General Area Conditions:**

Watershed size: (8 digit HUC) 1,033,578 acres

Drainage area: Approximately 950 acres

Average annual rainfall: approximately 60 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 **1-2** river miles from TNW.

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

Project waters are **1 (or less)** 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 a State boundary.

Identify flow route to TNW⁵: Bassett Creek flows into the Section 10 TNW Tombigbee River near river mile 42.5.

Tributary stream order, if known:

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

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

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

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

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

Average width: 8 to 10 feet
Average depth: Depth unknown feet
Average side slopes: 3:1.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|--|
| <input type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input checked="" type="checkbox"/> Gravel | <input checked="" 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: Bassett Creek has a stable channel with banks that have minimal slope and it is situated within the 100-year floodplain of the much larger TNW Tombigbee River.

Presence of run/riffle/pool complexes. Explain: The tributary has observable glide/pool complexes and periodic riffle areas that form around standing trees and root structure within and along the banks of the channel.

Tributary geometry: **Meandering**

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: Bassett Creek is a continually flowing perennial stream which contained flowing water on the day of field evaluation.

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

Surface flow is: **Discrete and confined**. Characteristics: Bassett Creek exhibits a defined bed and bank morphology with a predominantly hardwood forested wetland riparian corridor within a 100-year floodplain.

Subsurface flow: **Pick List**. 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 ⁶ (check all indicators that apply): | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input checked="" type="checkbox"/> destruction of terrestrial vegetation |
| <input checked="" type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input 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 type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: | |

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

- | | |
|---|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input 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:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

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

Explain: The water flowing in Bassett Creek is naturally slightly tannic and dark colored as a result of release of tannic acid during the natural decomposition of organic material and vegetation in the creek and along its floodplain. The water observed flowing in the tributary at the time of field review showed slight turbid as a result of increased flow and run-off inputs from multiple rainfall events which occurred between the nights of 26 November and 28 November 2011. There was no oily sheen or film or significant discoloration of the water.

Identify specific pollutants, if known: No known chemical pollutants to Bassett Creek have been identified.

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

Riparian corridor. Characteristics (type, average width): Cypress-Gum hardwood forested wetland riparian corridor within the much larger 100-year floodplain of the Tombigbee River. Riparian corridor has natural forested vegetative cover and on average is approximately 840 or more feet wide (approximately 420 ft. wide each side of the creek).

Wetland fringe. Characteristics:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings: The perennial flow regime of the creek and natural woody in-stream structure provides appropriate habitat for fish foraging and refuge as well as spawning and nursery areas.

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The tributary helps convey 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 the stream and adjacent 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: 4.6 acres

Wetland type. Explain: Cypress-Gum hardwood forested wetlands.

Wetland quality. Explain: Presence of the airport facility requires that wetlands in the JD area be maintained by mowing and or herbicide application to keep vegetation low to the ground as part of the airport safety clear zone. However, despite the vegetative controls used the wetlands remain high quality wetlands within the 100-year floodplain of Bassett Creek and the Tombigbee River. The wetlands do not show evidence of invasive species presence and show good recruitment of native wetland seedlings and saplings such as *Nyssa biflora*, *Acer rubrum*, *Salix nigra*, and *Taxodium distichum* although the young plants cannot be allowed to mature into trees.

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 across the wetland surface as overland sheetflow to Bassett Creek when there is sufficient saturation and/or inundation from rainfall and the winter seasonal high water table; additionally, when there is significant rainfall the wetlands receive extended floodwater inundation (at least 5-feet deep based on observed water lines on adjacent trees) from over bank flooding of the Tombigbee River and Bassett Creek.

Surface flow is: **Overland sheetflow**

Characteristics: Water flow through the wetlands is most commonly overland flow from run-off from precipitation events or from sufficient groundwater saturation to the soil surface that the water forms shallow flow across the ground down gradient toward the creek. When the Tombigbee River and Bassett Creek experience overbank flooding the flow of floodwater dominates the wetland surface flow regime.

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 **1-2** 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

Identify specific pollutants, if known: No known identified chemical pollutants to the wetlands.

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

Riparian buffer. Characteristics (type, average width): The wetlands function as part of a very broad Cypress-Gum hardwood forested wetland buffer along Bassett Creek and the Tombigbee River within the 100-year floodplain of the Tombigbee River.

The riparian corridor and buffering provided to Bassett Creek consists of natural forested vegetative cover and on average is approximately 840 or more feet wide (approximately 420+ ft. wide each side of the creek).

Vegetation type/percent cover: Explain: The dominant plant species in the project area have Fac to Obl Region 2 wetland indicator status and include species such as *Taxodium distichum*, *Nyssa biflora*, *Nyssa sylvatica*, *Acer rubrum*, *Salix nigra*, and *Scirpus cyperinus*.

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 from predators, and foraging habitat for small amphibians, reptiles, water fowl, and small to medium sized mammals that reside in or periodically utilize the area. Because the wetlands are maintained without a tree canopy, they provide very good foraging habitat for wading birds and large mammals but would not be adequate for their longterm reproduction and nesting needs.

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

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

Approximately (643+) 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	643+		

Summarize overall biological, chemical and physical functions being performed: The estimated 643 acres of wetlands being considered in the cumulative analysis for relevant reach of the wetlands abutting Bassett Creek for this jurisdictional determination consist of the forested riparian wetland system directly abutting the creek and the Tombigbee River which are also within the 100-year floodplain of the Tombigbee. This area is being considered as a single wetland system abutting to and buffering both the Bassett Creek drainage and the Tombigbee River. This wetland system provides 1) a groundwater discharge source or area of water recharge to the tributary, 2) it provides water purification functions to the RPW and TNW by moderating the flow of water entering those streams 3) provide capacity to receive and retain floodwater resulting in removal of sediment, trash, fertilizers, pesticides, other chemicals, animal and other biological wastes, etc. that may be picked up in stormwater run-off from commercial/industrial properties, silvicultural lands, and roadways that can enter the creek. The ability to receive and retain stormwater also provides flood attenuation functions for developed upland areas and the vegetation provides roughness to slow the velocity of floodwater that may flow across the floodplain. The similarly situated wetlands in this system along the Tombigbee and Bassett Creek 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 and reproduction, 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 TNW for use by wildlife and fish on-site and 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:
 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: 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: 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 maintained herbaceous wetlands (formerly hardwood forested wetlands) within the airport clear zone review area are situated within the FEMA mapped 100-year floodplain directly abutting to both Bassett Creek and the Tombigbee River. contain discrete wetland seepage conveyances that . The wetlands within the review area and are not physically separated from the tributary by upland berms, roadways or other physical barriers and direct water flow directly into the creek. See attached topo map.**

Nexus discussion addressing 11th Circuit Court decision from United States v. McWane case concluding that Justice Kennedy's "significant nexus" test provides the governing rule of Rapanos: The wetlands receive and naturally remove pollutants from runoff water from adjacent undeveloped natural buffer lands, the airport, commercial/industrial developed lands (Boise Cascade mill), silviculture lands, and roadways. The perennial Bassett Creek, in combination with its directly abutting palustrine forested wetlands in the JD area have a significant nexus to the nearest TNW which is 1 +/- mile downstream by providing 1)- shading of the perennial-RPW helping prevent/reduce increase of water temperature in waters feeding into the downstream TNW helping to keep these waters more habitable to aquatic wildlife and reducing the potential for in-stream algal blooms/growth spikes that often result from increased light exposure and water temperature 2)- a groundwater discharge source contributing to the water recharge of Bassett Creek and other downstream waterbodies 3)- provides capacity to receive, retain and treat rainfall run-off, and provides removal of sediment, trash, fertilizers, pesticides, animal wastes, etc. that may be picked up in stormwater run-off from commercial/industrial properties, the airport, silvicultural tracts, and roadways prior to entering the downstream tributary system and TNW 4)- detritus and decomposition of organic matter conveyed from the wetlands by the flow of Bassett Creek 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 abutting wetlands provide and maintain several hundreds of acres of natural wildlife habitat corridor along Bassett Creek and the Tombigbee River providing access to sources of water, resting, nesting, refuge, and foraging habitat for amphibians, reptiles, birds, and small to large mammals that reside permanently in or periodically utilize the system of smaller tributaries, wetlands, and uplands surrounding Bassett Creek that ultimately drain to the TNW Tombigbee River.

- 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: **4.6** acres.

⁸See Footnote # 3.

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.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.

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.

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:
 - 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 Prestwick, Alabama.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey, Clarke County, Alabama. Available online at <http://websoilsurvey.nrcs.usda.gov/> accessed [11/29/2011].
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Clarke County, Alabama and Incorporated Areas. Map No. 01025C0535C. Effective date: October 16, 2008.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Color aerial photograph submitted with delineation report and JD request, unknown date and color aerial photograph provided in downloaded Web Soil Survey reports, unknown date.
 - or Other (Name & Date): .
- 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: .