

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 April 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District (ND) | McLean County/FEMA JD Request for Grade Raise Projects | NWO-2012-0659-BIS; NWO-2012-0661-BIS; NWO-2012-0662-BIS; NWO-2012-0663-BIS; NWO-2012-0664-BIS; and NWO-2012-0665-BIS

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Wetlands in Sections 7, 18, 30, and 31, Township 149 North, Range 82 West and Sections 13, 22, 23, 26, 27, 29 and 32, Township 149 North, Range 83 West

State: North Dakota County/parish/borough: McLean City: south and east of Max

Corps Number	McLean County/FEMA Number	Latitude	Longitude	Cowardin Classification	Basin Size (Approximate)
NWO-2012-0659-BIS	McLeBCG2 Site #3	47.688705	-101.333985	PABF PEM/ABF	37 acres
NWO-2012-0661-BIS	McLeCG21 Site #T	47.732237	-101.220195	PEMC	29 acres
NWO-2012-0662-BIS	McLeCG25 Site #BB	47.688720	-101.221997	PEMA PABF	20 acres
NWO-2012-0663-BIS	McLeCG28 Site #V	47.732187	-101.228778	PEMC	8 acres
NWO-2012-0664-BIS	McLeCG1 Site #2	47.703177	-101.286478	PEM/ABF	17 acres
NWO-2012-0665-BIS	McLeBCG1 Site	47.703119	-101.266822	L2ABG PEM/ABF	175 acres

Universal Transverse Mercator: 14

Name of nearest waterbody: Lake Audubon/Snake Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: none

Name of watershed or Hydrologic Unit Code (HUC): Lake Sakakawea | 10110101

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 29 March 2012

Field Determination. Date(s):

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 no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.

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).

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on:

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: Six (6) wetland basins are included in this jurisdictional determination. Each is slated to be impacted by FEMA funded grade raise projects. An offsite determination was made utilizing a series of aerial photographs, USGS topographic maps, NRCS soil survey information and NWI. Each basin is holding water at higher than normal levels and inundating sections of roadways. There is no discernible connection between any of the basins and either of the nearest waterways (Lake Audubon or Snake Creek), which are several miles from any of these basins.

The wetlands are isolated, intrastate and non-navigable. They are not utilized for recreational or industrial purposes. The closest TNW is the Missouri River (Lake Sakakawea, which is located approximately 10 miles to the south and west.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs – N/A

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

C. SIGNIFICANT NEXUS DETERMINATION – N/A

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): N/A

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):⁴ N/A

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: 270 acres approximately (See above table).

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):

³ Supporting documentation is presented in Section III.F.

⁴ 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.

- 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. 10110101 | Lake Sakakawea
- U.S. Geological Survey map(s). Cite scale & quad name: [1:24,000 | Garrison NE and Coleharbor NW, ND.](#)
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: [Garrison NE and Coleharbor NW, ND.](#)
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): [ArcGIS/ORM2/GoogleEarth/USFWS Wetlands Mapper](#)
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: