

**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): 9 April 2012**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:**

Omaha District – Wenck Associates, Inc - NWO-2012-0726-BIS Approved Form 1 of 1

WATERS NAME	AREA (ACRE)	LATITUDE	LONGITUDE
NWO-2012-0726-BIS #1	0.20599199513	48.35726315370	-101.72540261600
NWO-2012-0726-BIS #2	1.32677829236	48.35666243100	-101.72318803800
NWO-2012-0726-BIS #3	0.86476262308	48.35658591060	-101.72135880400
NWO-2012-0726-BIS #4	0.22734792064	48.35729909610	-101.72039034200
NWO-2012-0726-BIS #5	0.79387839288	48.35825398410	-101.72385702000
NWO-2012-0726-BIS #6	0.24656247933	48.35871074780	-101.72499372700
NWO-2012-0726-BIS #7	0.10821320483	48.35637693470	-101.71744140600
NWO-2012-0726-BIS #8	0.27868266697	48.35992074460	-101.72194761900
NWO-2012-0726-BIS #9	1.26949157863	48.35887789820	-101.72124148200
NWO-2012-0726-BIS #13	0.02782491724	48.35663825170	-101.72761092100
NWO-2012-0726-BIS #14	0.05677984482	48.35664368810	-101.72615188400
NWO-2012-0726-BIS #15	0.01787701733	48.35659000570	-101.72523096700
NWO-2012-0726-BIS #16	0.07260633778	48.35735199660	-101.72473330200
NWO-2012-0726-BIS #17	0.05575140844	48.35756592300	-101.72313166600
NWO-2012-0726-BIS #18	0.03552549323	48.35630050310	-101.72498920200
NWO-2012-0726-BIS #19	0.14501587600	48.35668533530	-101.72778980000
NWO-2012-0726-BIS #20	0.02083535897	48.35683879920	-101.72047975900
NWO-2012-0726-BIS #21	0.07451719793	48.35669058470	-101.71963723600
NWO-2012-0726-BIS #22	0.21788413374	48.35771117230	-101.72210616700
NWO-2012-0726-BIS #23	0.03742019110	48.35811023680	-101.72113561000
NWO-2012-0726-BIS #24	0.04039920833	48.35812893490	-101.71972084900
NWO-2012-0726-BIS #25	0.02474027150	48.35802944900	-101.71905271400
NWO-2012-0726-BIS #26	0.04637421731	48.35781216290	-101.72530202400
NWO-2012-0726-BIS #27	0.06854285853	48.35756805910	-101.71785392000
NWO-2012-0726-BIS #28	0.19088831647	48.35953728420	-101.71753239800
NWO-2012-0726-BIS #29	0.02413139932	48.35993266490	-101.71826739800
NWO-2012-0726-BIS #30	0.05872654896	48.35999089410	-101.72305212800
NWO-2012-0726-BIS #31	0.12972131557	48.35989803480	-101.72769678500

WATERS NAME	AREA (ACRE)	LATITUDE	LONGITUDE
NWO-2012-0726-BIS #32	0.31421267309	48.36074288390	-101.72677989200
NWO-2012-0726-BIS #33	0.08777318399	48.36087246880	-101.72770621400
NWO-2012-0726-BIS #34	0.09158361680	48.36102730260	-101.72402170900
NWO-2012-0726-BIS #35	0.15784258792	48.36300434450	-101.71765258000
NWO-2012-0726-BIS #36	0.02367605178	48.36287121130	-101.71975539600
NWO-2012-0726-BIS #37	0.12213191187	48.36285951210	-101.72102813700
NWO-2012-0726-BIS #38	0.06181687549	48.36334217290	-101.72230600800
NWO-2012-0726-BIS #39	0.05136878697	48.36330832860	-101.72063693000
NWO-2012-0726-BIS #40	0.01201363863	48.36325179930	-101.72131970300
NWO-2012-0726-BIS #41	0.05577802150	48.36326478850	-101.72432936900
NWO-2012-0726-BIS #42	0.02536987517	48.35682729370	-101.71807597000
NWO-2012-0726-BIS #43	0.01863880856	48.36304823620	-101.72456995400
NWO-2012-0726-BIS #44	0.02853256683	48.36280720260	-101.72702448200

**C. PROJECT LOCATION AND BACKGROUND INFORMATION: Isolated pothole & potential farmed  
depressional wetlands**

State: **North Dakota** County/parish/borough: **Ward** City: **Berthold**

Center coordinates of site (lat/long in degree decimal format): Lat. **48.357565° N**, Long. **-101.72313° W** Universal Transverse Mercator: **14**

Name of nearest waterbody: **GNIS = Des Lacs River (5.16 mi.)**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **None (hydrologically isolated)**

Name of watershed or Hydrologic Unit Code (HUC): **Des Lacs (9010002)**

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: **26 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):<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: \_\_\_\_\_ width (ft) and/or \_\_\_\_\_ acres.

Wetlands: \_\_\_\_\_ acres.

**c. Limits (boundaries) of jurisdiction based on: Pick List**

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:** This JD form is for forty-one (41) isolated depression wetlands consisting of pothole basins and very shallow farmed depressions. These wetlands are located in the Missouri Coteau region of North Dakota where the landscape is dotted with small, closed basins, subject to disturbance and manipulation for agricultural purposes. For this particular parcel, all of the identified wetlands (table) are seasonal pothole wetlands and very shallow depressions. USGS Topographic maps indicate the presence of closed basins and slight upland swales. There is no discernable outlet or surface connection from these wetlands to potential waters of the United States.

With regard to these isolated basins, there is no documentation that these waters: 1) are used by interstate or foreign travelers for recreational or other purposes; 2) support fish or shellfish that could be taken and sold in interstate or foreign commerce; and 3) are used for industrial purposes by industries in interstate commerce. Lastly, ecological connectivity to WOUS is undocumented and inconclusive.

Based upon these principle considerations, it is determined that the subject waters (identified in the TABLE under Section I(B)) are *isolated and nonjurisdictional* under the auspices of Section 404 of the Clean Water Act.

**NOTE:** The linear drainage features (Nos. 10 and 12) appear to be First Order Tributary reaches that off the property to form Arnold Coulee. Wetland No. 11 is considered wetlands adjacent to waters of the U.S.. These three (3) waters are identified as potential waters of the United States on a separate Preliminary Jurisdictional Determination Form.

**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):<sup>4</sup> N/A**

<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.

**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: APPROXIMATELY : **7.7** 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: [Multiple delineation maps, soil maps, and USFWS NWI mapping.](#)
- 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 – BERTHOLD, NORTH DAKOTA.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: \_\_\_\_\_.
- National wetlands inventory map(s). Cite name: **USFWS NWI.**
- State/Local wetland inventory map(s): \_\_\_\_\_.
- FEMA/FIRM maps: \_\_\_\_\_.
- 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): **NAIP 2003, 2004, 2005 & 2009.**  
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): **Preliminary JD issued for Waters No. 10, 11 & 12.**

**B. ADDITIONAL COMMENTS TO SUPPORT JD: [See Delineation Map.](#)**

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<sup>4</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.