

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): 4 Oct 2012**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District; KLJ / C12 Energy; NWO-2012-1935-BIS.**

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

State: North Dakota. County/parish/borough: Dunn County. City: Halliday.  
Center coordinates of site (lat/long in degree decimal format):  
Lat. 47.399473 Long. -102.321596 - 13.7-acres - wetland #1  
Lat. 47.375562 Long. -102.337789 - 0.60-acres - wetland #3  
Lat. 47.372234 Long. -102.334470 - 0.04-acres - wetland #4  
Lat. 47.378669 Long. -102.336123 - 0.22-acres - wetland #5  
Lat. 47.370938 Long. -102.311009 - 0.08-acres - wetland #6  
Lat. 47.372241 Long. -102.308611 - 0.99-acres - wetland #7  
Lat. 47.372890 Long. -102.306978 - 1.36-acres - wetland #8  
Lat. 47.375557 Long. -102.304364 - 0.16-acres - wetland #9  
Lat. 47.369953 Long. -102.304348 - 0.54-acres - wetland #10  
Lat. 47.365320 Long. -102.322170 - 0.03-acres - wetland #11  
Lat. 47.378267 Long. -102.317072 - 0.03-acres - wetland #12  
Lat. 47.376637 Long. -102.315778 - 0.15-acres - wetland #13  
Lat. 47.375111 Long. -102.319867 - 0.37-acres - wetland #14  
Lat. 47.370966 Long. -102.315900 - 0.03-acres - wetland #15  
Lat. 47.370695 Long. -102.313202 - 0.06-acres - wetland #16

Name of nearest waterbody: Knife River.

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

Name of watershed or Hydrologic Unit Code (HUC): Knife - 10130201.

- 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: September 11, 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

<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).

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:

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: **These are 15 isolated wetland identified within the project area. Wetlands identified are not jurisdictional. Not used for recreation or industrial purposes. There is no nexus to interstate commerce. The wetlands lack a discernable surface connection to WoUS. The wetlands also lack sufficient evidence of hydrologic and ecological interaction with a WoUS.**

**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 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": .

**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:
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: **15 wetlands - +/-18.41-acres within project review area.**

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:
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: **15 wetlands.**

**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.

<sup>3</sup> Supporting documentation is presented in Section III.F.

- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **Halliday NE, Halliday - 1:24,000.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: **Halliday NE, Halliday - 1:24,000.**
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & 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):**Google Earth Pro.**

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** See attached aerial maps/photos.