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): 7/20/2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District, Nebraska Field Office, Lancaster/Saunders Counties Agnew North and South STPD-BR-79-2(108) CN 10584A, NWO-2014-00512-WEH

C. PROJECT LOCATION AND BACKGROUND INFORMATION: This form covers an unnamed tributary (non-RPW channel S138) and abutting/adjacent wetlands (Wetland NN), that discharges into North Oak Creek (RPW).

State:Nebraska County/parish/borough: Saunders City: Valparaiso
Center coordinates of site (lat/long in degree decimal format): Lat. 41.054926° **N**, Long. -96.830225° **W**.
Universal Transverse Mercator: 14
Name of nearest waterbody: unnamed tributary to North Oak Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Salt Creek
Name of watershed or Hydrologic Unit Code (HUC): Salt 10200203

- ☒ 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. North Oak Creek (RPW) and other tributaries documented on separate forms.

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

- ☒ Office (Desk) Determination. Date: February 24, 2015
- ☒ Field Determination. Date(s): May 8, 2014; June 4, 2014; September 11, 2014

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 waters[2] (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: 700 linear feet: 3 width (ft) and/or acres.
   Wetlands: ~0.08 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: **Other non-regulated waters in the project area include artificial ditch wetlands, identified in the consultant's "study area" as "wetlands OO and PP". The ditch wetlands were constructed in uplands and drain only uplands, and do not have a direct hydrologic connection to waters of the U.S.. These wetlands meet the criteria of preamble waters which require no coordination "** .

---

[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 waterbody[4] 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: 29,454 **acres** HUC12 - 102002030404
Drainage area: 0.52 **square miles**
Average annual rainfall: 29.91 inches
Average annual snowfall: 28.3 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **3** 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 **10-15** 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: .

Identify flow route to TNW[5]: The manipulated natural unnamed tributary (non-RPW S138) flows through the review area then east of Highway 79 for approximately 200 feet and discharges into North Oak Creek (RPW) which flows for approximately 12 miles and discharges into Oak Creek (RPW) which flows for approximately 20 miles and discharges into Salt Creek (TNW).
Tributary stream order, if known:.

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .

[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.

☒ Manipulated (man-altered). Explain: This unnamed tributary is a manipulated natural drainage with abutting/adjacent wetlands. Two tributaries combine just upstream (west) of the study area to form the single non-RPW S138. Portions of the upstream segments are channelized or currently being farmed through.

Tributary properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: 1 feet
Average side slopes: **Vertical (1:1 or less).**

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 and its upstream contributing segments have been channelized and manipulated through agricultural fields. The tributary has moderately vegetated banks in some areas and is eroding and scouring in other areas.
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): unknown %

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **6-10**
Describe flow regime: Channel feature S138 is a manipulated natural drainage with abutting/adjacent wetlands. The drainage and wetlands flow through agricultural fields to the Highway 79 culvert crossing where it flows for 200 feet and directly discharges into the RPW North Oak Creek. The tributary carries flows which include contaminants from agricultural and paved highway stormwater run-off. Contaminants include herbicides, pesticides, insecticides, fertilizers, salts, oils, sediment, etc. The majority of the land use in this rural watershed consists of row crop agriculture with rangeland and pasture. The Corps visited this site on May 8, June 4, and September 11, 2014. During the site visits, indicators of OHWM were observed and flow was observed during the May 8, June 4, and September 11, 2014 site visits. The U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Soil Survey Maps for Saunders County depict the non-RPW with four intermittent drainages from the northwest and southwest converging into two drainages that converge into a single drainage that discharges into North Oak Creek .
Other information on duration and volume: Actual precipitation data for the Village of Valparaiso in the month of May 2014 was 5.26 inches; the normal average for May is 4.29 inches. Actual precipitation data for the Village of Valparaiso in the month of June 2014 was 5.9 inches; the normal average for June is 4.35 inches. Actual precipitation data for the Village of Valparaiso in the month of September 2014 was 6.89 inches; the normal average for September is 3.02 inches..

Surface flow is: **Confined.** Characteristics: Stream morphology is such that most flows will stay within the existing banks of the manipulated tributaries and only leave the channel during extremely high flows..

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (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):	

☐ Discontinuous OHWM.[7] Explain: .

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

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:

[6]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.
[7]Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The non-RPW is a manipulated natural drainage with abutting/adjacent wetlands. The water is relatively clear with some turbidity. The tributary carries flows which include contaminants from agricultural and paved highway stormwater run-off. Contaminants include herbicides, pesticides, insecticides, fertilizers, salts, oils, sediment, trash etc. The majority of the land use in this rural watershed consists of row crop agriculture with rangeland and pasture .
Identify specific pollutants, if known: Herbicides, pesticides, insecticides, fertilizers, agricultural run-off, salts, oils, sediment, trash etc.

(iv) Biological Characteristics. Channel supports (check all that apply):
☒ Riparian corridor. Characteristics (type, average width): A forested corridor with hydrophitic vegetation in the understory and overstory; average width of 75 feet, connecting to North Oak Creek's riparian corridor.
☒ Wetland fringe. Characteristics: PFOA wetlands are abutting/adjacent to the manipulated non-RPW drainage. The wetlands are dominated by FACW and FAC species. The Wetland Delineation Data Form (dated August 27, 2013) included in the request provided by the consultant identifies the area as wetlands with Ambrosia trifida and Phalaris arundinacea as the dominant species present along with Morus alba and Ulmus americana overstory. This was verified by Corps site visits.
☒ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☒ Aquatic/wildlife diversity. Explain findings Typically, wetlands in the area are known to support habitat for small mammals, birds, insects, reptiles and amphibians. Specifically, redwing blackbirds and sparrows were observed, as well as, anurans (bullfrogs and chorus frogs) were observed and heard calling within the review area during the May 2014 and June 2014 site visits.

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:0.08 acres
Wetland type. Explain:PFOA.
Wetland quality. Explain: Low/Medium. The wetlands are dominated by FACW and FAC species. The Wetland Delineation Data Form (dated August 27, 2013) included in the request provided by the consultant identifies the area as wetlands with Ambrosia trifida and Phalaris arundinacea as the dominant species present along with Morus alba and Ulmus americana overstory. These low/medium quality wetlands in this watershed are typical for highly manipulated/disturbed areas within rural agricultural settings where wetlands have previously been removed, manipulated, or are currently being farmed through. The wetlands that remain in this watershed, regardless of quality, provide important water quality benefits to the watershed, including filtration of pollutants and sediment trapping.
Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:
Flow is: **Ephemeral flow**. Explain: : The wetlands and tributary are located within and adjacent to agricultural fields. Precipitation events and run-off in the agricultural fields introduce pesticides, herbicides, fertilizers, and sediment as pollutants to the wetlands and tributary. The wetlands associated with the non-RPW filter pollutants and sediment before they are discharged downstream into the RPW and TNW. The majority of the land use in this rural watershed consists of row crop agriculture with rangeland and pasture. During the May 8, June 4, and September 11, 2014 site visits, flow was observed through the tributary .

Surface flow is**: Confined**
Characteristics: Located within the channelized and incised drainage.

Subsurface flow: **Pick List**. Explain findings: .
☐ 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 **10-15** aerial (straight) miles from TNW.
Flow is from: **Wetland to navigable waters.**
Estimate approximate location of wetland as within the **500-year or greater** 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: The wetlands and tributary are located within and adjacent to agricultural fields. Precipitation events and run-off in the agricultural fields introduce pesticides, herbicides, fertilizers, and sediment as pollutants to the wetlands and tributary. The wetlands associated with the non-RPW filter pollutants and sediment before they are discharged downstream into the RPW and TNW. The majority of the land use in this rural watershed consists of row crop agriculture. Water color is relatively clear, some turbidity is present.

Identify specific pollutants, if known: Herbicides, pesticides, insecticides, fertilizers, agricultural run-off, salts, oils, sediment, trash etc.

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

☒ Riparian buffer. Characteristics (type, average width): . A forested corridor with hydrophitic vegetation in the understory and overstory; average width of 75 feet, connecting to North Oak Creek's riparian corridor.

☒ Vegetation type/percent cover. Explain: The wetlands are 90 to 100% vegetated and are dominated by FACW and FAC species. The Wetland Delineation Data Form (dated August 27, 2013) included in the request provided by the consultant identifies the area as wetlands with Ambrosia trifida, Phalaris arundinacea, Morus alba and Ulmus americana as the dominant species present.

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Small mammals, birds, insects, reptiles and amphibians, specifically anurans (bullfrogs and chorus frogs) were observed and heard calling within the review area during the May 2014 and June 2014 site visits..

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

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

Approximately (0.08) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y (Wetland "NN")	0.08 acres		

Summarize overall biological, chemical and physical functions being performed: The abutting wetlands provide a water filtration function to the non-RPW, downstream RPW and TNW. The abutting wetlands may provide habitat, food, and refuge for wildlife and aquatic life including small mammals, birds, reptiles, amphibians, insects, thereby enhancing the biological integrity of the downstream TNW. The abutting wetlands contribute to downstream water quality by capturing sediment and pollutants. The abutting wetlands have the capacity to transport and reduce the amount of pollutants and sediment to the downstream TNW, which ultimately affects the biological integrity of the TNW and the species that use it. Although these wetlands are not of high quality, they are typical for a highly manipulated/disturbed area within a rural agricultural setting where wetlands have been removed, manipulated or are being farmed through, however, the wetlands still provide important water quality benefits to the area as described above.

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: The non-RPW S138 channel is a manipulated natural drainage, with abutting/adjacent wetlands, that flows directly into the RPW North Oak Creek. The tributary and wetlands receive flows from agricultural fields and stormwater runoff from the railroad and paved highway. The non-RPW carries flows which includes contaminants from agricultural and paved highway stormwater run-off. Contaminants include herbicides, pesticides, insecticides, fertilizers, salts, oils, sediment, trash etc. The majority of the land use in this rural watershed consists of row crop agriculture with rangeland and

pasture. The wetlands are dominated by FACW and FAC species. The Wetland Delineation Data Form included in the request provided by the consultant identifies the area as wetlands with Ambrosia trifida and Phalaris arundinacea as the dominant species present and an overstory of Morus alba and Ulmus americana. The non-RPW has a continuous hydrologic connection and discharges directly into the downstream RPW (North Oak Creek), approximately 140 feet from the project area. The tributary and abutting/adjacent wetlands provide a water filtration function to the downstream TNW. The tributary and abutting/adjacent wetlands provide habitat, food, and refuge for wildlife and aquatic life including amphibians (such as the chorus frogs and bullfrogs that were observed and heard during the May and June 2014 site visits), thereby enhancing the biological integrity of the downstream TNW. The drainage and abutting/adjacent wetlands contribute to downstream water quality by capturing sediment and pollutants. In conclusion, this non-RPW and abutting/adjacent wetlands have the capacity to transport and reduce the amount of pollutants and sediment to the downstream TNW, which ultimately affects the biological integrity of the TNW and the species that use it, thereby demonstrating a significant nexus exist from the non-RPW S138 and abutting/adjacent wetlands to the downstream TNW.

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-RPWs[8] 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: **700** linear feet **3** 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: **.**

   ☐ 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: 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 jurisidictional. 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: **0.08** acres.

---

[8]See Footnote # 3.

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): **Preamble Ditch Wetlands.**

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. The consultant's data sheet for these wetlands indicate FAC and FACW tree species as dominant, however, the consultant classified the wetlands as PEMA/C. This is a PFOA wetland not PEMA/C, as verified on the Corps site visits. The consultant's delineation map does not show the full extent of the non-RPW S-138 beyond the "study area", upstream and downstream.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☒ U.S. Geological Survey Hydrologic Atlas: Salt 10200203.
☒ USGS NHD data.
☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:Valparaiso - 1:24,000.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:Saunders County.

---

[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.***

☒ National wetlands inventory map(s). Cite name:Valparaiso - 1:24,000.
☐ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps: FEMA Region VII FIRM Map.
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): ArcGIS - Valparaiso 199x B&W Ortho & 2012 USDA Color Ortho.
or ☒ Other (Name & Date): Google Earth Pro - Valparaiso 1994, 1999, 2002, 2003, 2004, 2005, 2006, 2007, 2009, 2010, 2011, 2012, 2013. Photographs from Site Visits conducted by USACE on May 8, 2014, June 4, 2014 and September 11, 2014 .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☒ Other information (please specify): Photographs and Wetland Delineation submitted by applicant/agent. Site Visits were conducted by USACE on May 8, 2014, June 4, 2014 and September 11, 2014. AccuWeather and NOAA precipitation data reviewed

B. ADDITIONAL COMMENTS TO SUPPORT JD:

May 8, 2014 Site Visit.
Rainfall recorded for Valparaiso, NE
6 May: no rainfall
7 May: 0.30 inches of rainfall
8 May: 0.02 inches of rainfall
May 2014 Average: 5.26 inches of rainfall
Normal May Average: 4.29 inches of rainfall

June 4, 2014 Site Visit.
Rainfall recorded for Valparaiso, NE
2 June: no rainfall
3 June: 1.41 inches of rainfall
4 June: 0.13 inches of rainfall
June 2014 Average: 5.9 inches of rainfall
Normal June Average: 4.35 inches of rainfall

September 11, 2014 Site Visit.
Rainfall recorded for Valparaiso, NE
9 Sep.: 2.49 inches of rainfall
10 Sep.: no rainfall
11 Sep.: 0.10 inches of rainfall
September 2014 Average: 6.89 inches of rainfall
Normal September Average: 3.02 inches of rainfall

Although the rainfall that occurred during the months of the Corps' site visits were above average, the rain that occurred around the time of site visits was not the majority of rainfall that occurred during these months. The rain events provided for observed flow events that (in addition to OHWM indicators) confirmed the presence and flow route of the non-RPW and the continous hydrologic connection between the aquatic resources delineated within the conultants study area, and the Corps' review area that flow into the RPW (North Oak Creek). The channel features are evident on several years of aerial photos. See attached maps and aerial photos that have been provided with this JD. The USDA Soil Survey shows that the delineated wetlands and non-RPW drainage connections are located in NRCS-listed hydric soils for Lancaster County, Nebraska (map unit symbol 7750 and 7868, with hydric ratings of 2% and hydric criteria 2B3).

The non-RPW S138 and wetland NN are located within the North Oak Creek floodplain. The FEMA Floodplain map shows that the non-RPW and wetlands are located within the "High Risk Area" (Flood Zone A) for North Oak Creek.

Other non-regulated waters in the project area include artificial ditch wetlands, identified in the consultant's "study area" as "wetlands OO and PP". The ditch wetlands were constructed in uplands and drain only uplands, and do not have a direct hydrologic connection to waters of the U.S.. These wetlands meet the criteria of preamble waters which require no coordination "

Attachments: ArcGIS Map (with NHD and NWI) and Consultant Delineation Maps with USACE added comments.