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): August 27, 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District, Nebraska Field Office, Scottsbluff West Viaduct STP-TMT-RRZ-92-1(121), CN 51250, NWO-2014-01440-WEH

C. PROJECT LOCATION AND BACKGROUND INFORMATION: This form covers one reach of contiuously connected irrigation ditches (S-16 and S-14) that function as a seasonal RPW tributary with abutting wetlands and flow into an unnamed natural tributary (S-46) to the North Platte River

State:Nebraska County/parish/borough: Scotts Bluff City: Scottsbluff
Center coordinates of site (lat/long in degree decimal format): Lat. 41.865818° **N**, Long. -103.735552° **W**.
Universal Transverse Mercator: 14
Name of nearest waterbody: unnamed tributary (S-46) to North Platte River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: North Platte River
Name of watershed or Hydrologic Unit Code (HUC): Middle North Platte-Scotts Bluff 10180009

- ☒ 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. The unnamed natural RPW tributary (S-46), the TNW, North Platte River with adjacent wetlands, and other reaches of irrigation ditch RPWs are captured on other JD Forms.

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

- ☒ Office (Desk) Determination. Date: August 4, 2015
- ☒ Field Determination. Date(s): September 18, 2014 and May 18, 2015

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: 2,290 linear feet: 2 to 4 width (ft) and/or acres.
   Wetlands: 0.57 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: **The ditches identified as S-30 and S-51 are non-jurisdictional irrigation ditches lacking relatively permanent**

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[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.

flow into waters of the U.S.. Irrigation ditch S-30 is a concrete-lined irrigation supply ditch that may receive seasonal flows, however, it terminates in uplands and does not flow into a water of the U.S. Irrigation ditch S-51 is an irrigation drainage ditch that receives flows from irrigation return flows and precipitation events, but does not consist of relatively permanent flow. Unlike S-30, ditch S-51 does not receive the constant seasonal flow of irrigation supply flows because it is not directly connected to an irrigation supply pipe or ditch. These two ditches do not carry relatively permanent flow into waters of the U.S. or between two (or more) waters of the U.S., therefore ditches S-30 and S-51 are non-regulated features that meet the criteria of "preamble waters" for irrigation ditches constructed in uplands.

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: 68.5 (HUC 12 - 101800090606) **square miles**
Drainage area: 0.34 **square miles**
Average annual rainfall: 14.38 inches
Average annual snowfall: 34.9 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **3** tributaries before entering TNW.

Project waters are **1-2** river miles from TNW.

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

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: .

Identify flow route to TNW[5]: Drainage S-16 flows from the diversion supply pipe off of the Mitchell-Gering Canal through the review area for approximately 0.3 mile into a connector pipe, which flows for approximately 0.3 miles and discharges into drainage S-14, which flows for approximately 0.1 mile into tributary S-46 which flows for approximately 0.9 mile into the North Platte River (TNW).
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☒ Artificial (man-made). Explain: The RPW irrigation canals/ditches (S-16 and S-14) are man-made irrigation ditches functioning as a continuous tributary with relatively permanent flow, which receive the primary flows from a diversion supply pipe off of the "Mitchell-Gering Canal". The "Mitchell-Gering Canal" is the main irrigation supply canal for this area, flowing out of and into the North Platte River, a TNW. The main canal was constructed to divert water off of the North Platte River into smaller irrigation canals and ditches, such as those functioning as tributaries within the review area. Under Page 36 of the JD Instructional Guidebook : "If a ditch has relatively permanent flow into waters of the U.S. or between two (or more) waters of the U.S., the ditch is jurisdictional under the CWA.".
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: 2 feet
Average side slopes: **2:1.**

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 reach of continuously connected man-made irrigation ditches/canals includes ditches with moderately vegetated banks and concrete-lined canals.
Presence of run/riffle/pool complexes. Explain: none.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Seasonal flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: Flows from the North Platte River (TNW) are diverted seasonally for approximately 4+ months into Mitchell-Gering Canal which then diverts flows into a irrigation supply pipe that discharges into the relevant reach of continuously connected irrigation ditches (S-16 and S-14), which flows for approximately 0.7 miles before discharging into a natural unnamed tributary (S-46) of the North Platte River. The seasonal flows take place when the diversion is opened, receiving direct irrigation supply flows in combination with irrigation return flows and precipitation events. The drainage and abutting wetlands flow directly through agricultural fields and into the natural unnamed RPW tributary (S-46). In addition to irrigation supply and return flows, this tributary receives overland surface flows from a natural drainage, as depicted by the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Soil Survey Maps for Scotts Bluff County showing an intermittent tributary flowing from the southeast into the location where S-16 begins. The US Geological Survey (USGS) National Hydrography Dataset (NHD) blue line representing an intermittent tributary that flows into the S-16 tributary and S-14 wetlands also provides evidence of this natural drainage that contributes flow to the tributary.
Other information on duration and volume: Mitchell-Gering Canal supplies flows to the tributary for 4+ continuous months during the year (typically May through September) .

Surface flow is: **Discrete and confined.** Characteristics: .

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

Tributary has (check all that apply):
☒ Bed and banks

[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.

☒ OHWM[6] (check all indicators that apply):

- ☐ clear, natural line impressed on the bank
- ☐ changes in the character of soil
- ☐ shelving
- ☒ vegetation matted down, bent, or absent
- ☐ leaf litter disturbed or washed away
- ☒ sediment deposition
- ☒ water staining
- ☐ other (list):
- ☒ the presence of litter and debris
- ☐ destruction of terrestrial vegetation
- ☐ the presence of wrack line
- ☒ sediment sorting
- ☒ scour
- ☒ multiple observed or predicted flow events
- ☐ abrupt change in plant community

☒ Discontinuous OHWM.[7] Explain:Where S-16 flows north into a connector pipe, the OHWM is lost within the pipe, however, where the connector pipe discharges into S-14, the OHWM continues again up to where S-14 flows into the unnamed tributary S-46.

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

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

(iii) Chemical Characteristics:

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

Explain: Water color is relatively clear with some turbitity. The majority of the land use in this watershed consists of row crop agriculture. The consultant's photos (from June 2014) show turbid water in S-16. During the Corps' September 18, 2014 and May 18, 2015 site visits, flow was not observed in the ditches, however, a representative of the Mitchell Irrigation District confirmed that these ditches typically have a constant flow during irrigation season, which typically runs from May through September. The seasonal flows take place when the diversion is opened, receiving direct irrigation supply flows in combination with irrigation return flows and precipitation events.

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

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

☐ Riparian corridor. Characteristics (type, average width): .

☒ Wetland fringe. Characteristics: PEMA/C wetlands S-14 directly abut the tributary and continue outside the consultant's "study area".

☐ Habitat for:

- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings:.

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:0.57 acres

Wetland type. Explain:PEMA/C.

Wetland quality. Explain:Medium. The wetlands are 50% vegetated and are dominated by FACW/FAC species. The Wetland Delineation Data Forms included in the request provided by the consultant identifies the areas as wetlands with Phalaris arundinacea and Persecaria maculosa as the dominant species present. Equisetum hyemale was the dominant species in the wetlands outside of the consultant's "study area" as observed by the Corps' site visit on May 18, 2015. These wetlands are typical for a highly manipulated/disturbed review area within a rural agricultural setting, however they still provide important water quality benefits to the area including filtration and sediment trapping.

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral Flow**. Explain: Wetlands directly abut the tributary within the review area.

Surface flow is**: Discrete and confined**

Characteristics: Confined within the drainage.

[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.

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 **1-2** river miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from TNW.
Flow is from: **Wetland to/from 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: The majority of the land use in this watershed consists of row crop agriculture. During the September 18, 2014 and May 18, 2015 site visits, standing surface water in S-14 wetlands was brown. The consultant's photos (from June 2014) show turbid water in S-16. The Google Earth Aerial imagery shows brown surface water in S-16 and S-14 during the September 2011 image, inferring turbid water was likely flowing within the tributary.
Identify specific pollutants, if known: Herbicides, pesticides, insecticides, fertilizers, agricultural run-off, salts, oils, sediment, etc.

(iii) Biological Characteristics. Wetland supports (check all that apply):
☐ Riparian buffer. Characteristics (type, average width): .
☒ Vegetation type/percent cover. Explain: Phalaris arundinacea, Persecaria maculosa, Equisetum hyemale / 50% cover .
☒ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☒ Aquatic/wildlife diversity. Explain findings:crawfish, insects and other macroinvertebrates.

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: **1**
Approximately (0.57) 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)
Wetland S-14 - Yes	0.57 acre		

Summarize overall biological, chemical and physical functions being performed: The abutting wetlands provide a water filtration function to the RPW and 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 that enter the downstream TNW, which ultimately affects the biological integrity of the TNW and the species that use it.

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: Per page 52 of the JD Instructional Guidebook, the following information is provided to document the significant nexus between a seasonal RPW with abutting wetlands, and a TNW. The seasonal RPW includes ditches S-16 and S-14 which are jurisdictional per Page 36 of the JD Instructional Guidebook: "If a ditch has relatively permanent flow into waters of the U.S. or between two (or more) waters of the U.S., the ditch is jurisdictional under the CWA." This seasonal RPW receives flows from the Mitchell-Gering Canal, which typically flows for a continuous 4 to 5 months out of the year. This seasonal RPW carries flows that are diverted from the North Platte River, in combination with irrigation return flows and precipitation events that contain contaminants from agricultural run-off. Contaminants include herbicides, pesticides, insecticides, fertilizers, sediment, trash, etc. In addition to irrigation supply and return flows, this tributary receives overland surface flows from a natural drainage, as depicted by the NRCS Soil Survey Maps for Scotts Bluff County showing an intermittent tributary flowing from the southeast into the location where S-16 begins. The USGS NHD blue line representing an intermittent tributary that flows into the S-16 tributary and S-14 wetlands also provides evidence of this natural drainage that contributes flow to the tributary and wetlands. The wetlands associated with the ditch filter pollutants before they are discharged downstream into the TNW.The interconnected ditches forming the RPW tributary and abutting wetlands provide a water filtration function to the downstream TNW. The RPW and abutting wetlands contribute to downstream water quality by capturing sediment and pollutants. In conclusion, this RPW and abutting wetlands have the capacity to transport and reduce the amount of pollutants and sediment to the downstream TNW, which ultimately effects the biological integrity of the TNW and the species that use it, thereby demonstrating a significant nexus between the RPW and abutting wetlands to the downstream TNW.

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: According to Mitchell Irrigation District, who manages the irrigation ditches within the review area, the tributaries (irrigation ditches) have continuous water flowing during the typical irrigation season, which runs from May through September each year. These interconnected irrigation ditches function as one continuous seasonal RPW tributary that recieves supply flows diverted directly from the Mitchell-Gering Canal and receives return flows from irrigated fields throughout the typical 4 to 5 months of irrigation season, per Mitchell Irrigation District staff. In addition to irrigation supply and return flows, this tributary receives overland surface flows from a natural drainage, as depicted by the NRCS Soil Survey Maps for Scotts Bluff County showing an intermittent tributary flowing from the southeast into the location where S-16 begins. The USGS NHD blue line representing an intermittent tributary that flows into the area where the S-16 tributary and S-14 wetlands begin provides further evidence of a natural (NHD) drainage that contributes flow to the S-16 tributary.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   ☒ Tributary waters: **2,290** linear feet **2 to 4** 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: 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: .

☒ 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: Wetlands S-14 are within and directly abutting the S-16 drainage southwest of the railroad and currently function as part of the continuous RPW tributary to the northeast outside of the consultant's study area.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.57** 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: 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.

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[8] See Footnote # 3.

[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.***

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.

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 conultant's delineation report does not identify the portions of the tributaries / irrigation ditches and wetlands outside of the review area. The consultant's delineation report incorrectly identifies the tributary (S-16 and S-14) and wetlands as potentially non-jurisdictional.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☒ U.S. Geological Survey Hydrologic Atlas: Middle North Platte-Scotts Bluff 10180009.
  ☒ USGS NHD data.
  ☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: Scottsbluff North, Scottsbluff South, Roubadeau Pass - 1:24,000.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Scotts Bluff County Soil Survey.
☒ National wetlands inventory map(s). Cite name: Scottsbluff North, Scottsbluff South - 1:24,000.
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps:.
☒ 100-year Floodplain Elevation is: Nebraska Department of Natural Resources Floodplain Map
(National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): ArcGIS - Scottsbluff 199x B&W Ortho & 2009 USDA Color Ortho.
  or ☒ Other (Name & Date): Google Earth Pro - 1993, 1999, 2003, 2004, 2005, 2006, 2009, 2010, 2011, 2014.
☐ Previous determination(s). File no. and date of response letter: .
☒ Applicable/supporting case law: *Rapanos; Headwaters, Inc. v. Talent Irrigation District*.
☐ Applicable/supporting scientific literature: .
☒ Other information (please specify): Photographs and Wetland Delineation submitted by applicant/agent. JD Instructional Guidebook (2007). Site Visits were conducted by the Corps on September 18, 2014 and with Mitchell Irrigation District on May 18, 2015. AccuWeather and NOAA precipitation data. The U.S. Bureau of Reclamation "Hydromet" (hydrologic and meteorologic monitoring station) http://www.usbr.gov/gp/hydromet/arcplt_form.html .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

In accordance with Page 36 of the US Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook we are asserting jurisdiction over these irrigation ditches because: "If a ditch has relatively permanent flow into waters of the U.S. or between two (or more) waters of the U.S., the ditch is jurisdictional under the CWA". The ditches receive seasonal RPW flows from the Mitchell-Gering Canal (which flows out of and into the North Platte River) and flow into a natural tributary (S-46) of the North Platte River. The U.S. Bureau of

Reclamation "Hydromet" (hydrologic and meteorologic monitoring station) for the Mitchell-Gering Canal was accessed to provide the approximate dates of continuously diverted flows for the selected 5 years (2010 - 2014), as a representation of the typical flows within the lateral irrigation supply ditches that the Mitchell-Gering Canal supplies to in the review area. Based off interpretation of the "Hydromet" graphs, the approximate duration of continuous flow within Mitchell-Gering Canal, and inferably the lateral irrigation ditches, are as follows:

2010 - May 5 to September 30
2011 - May 1 to October 30
2012 - April 28 to September 15
2013 - May 1 to September 29
2014 - May 18 to September 15

The Corps' site visit on May 18, 2015 was accompanied by a representative of Mitchell Irrigation District. During the site visit, the representative explained that flow was not observed in the ditches and canals during the site visit due to a damaged portion of the main supply canal (Mitchell-Gering Canal) needing repairs. The Irrigation District representative confirmed that during a typical irrigation season, all the irrigation canals and ditches within the review area would have continous flow through them from May through September. The representative also confirmed the flow paths of the ditches within the review area as flowing from Mitchell-Gering Canal and into the unnamed natural tributary (S-46) to the North Platte River.

In review of Google Earth Aerial imagery, surface water is visible in S-16 and S-14 during the September 2011 image, inferring water was likely flowing within the tributary and wetlands. Additionally, the connector pipe is visible in the aerial, showing where S-16 connects and discharges into the S-14 ditch to the north, outside of the conultant's "study area".

See Maps that have been provided with this JD.