

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): 2/5/13

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWO-2012-2743-PIE, South Dakota Regulatory Office, Regulator: Matt Sailor, Applicant: Iron Horse Industrial Park, Kimball, SD

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Construction of an Industrial Park in Brule County near Kimball, South Dakota.

State: South Dakota County/parish/borough: Brule City: Kimball
Center coordinates of site (lat/long in degree decimal format): Lat. 43.741514 N; Long. -98.85911°W
Universal Transverse Mercator: 14

Name of nearest waterbody: Platte Creek, ~5.9 mi East

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A

Name of watershed or Hydrologic Unit Code (HUC): 10140101

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. **An Additional JD Form has been completed for 3 jurisdictional wetlands associated with this project.**

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

Office (Desk) Determination. Date: 1/22/12

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. Waters of the U.S.

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

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

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

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

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): ³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: Several wetland areas exist on this project site, all depressional. These areas were identified by the project proponents consultant on a wetland delineation report dated 12/20/12. This report identified 10 wetland areas, 7 of these areas showed no

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.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Several wetland areas exist on this project site, all depressional. These areas were identified by the project proponents consultant on a wetland delineation report dated 12/20/12. This report identified 10 wetland areas, 7 of these areas showed no fluvial connection to the Platte Creek or its tributaries, and are therefore isolated due to the apparent lack of hydrologic or topographic connection to waters of the United States. Furthermore the wetlands are depressional and lack a direct or indirect, non-speculative, linkage to adjacent waters based on historic aerial imagery in both wet and dry cycles.

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: 12.44 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: Maps, Figures, Data Sheets submitted by applicant .
- 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. 10140101, Fort Randall Reservoir. South Dakota.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24K, SD-PLATTE LAKE.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: ORM2, MISSOURI-WHITE.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth, 12/31/2009, 8/20/2006.
 - or Other (Name & Date): Sayre and Associates 12/20/12.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Seven affected wetlands are isolated and show no hydrologic or topographic connection to waters of the United States. Furthermore the wetlands lack a direct or indirect, non-speculative, linkage to adjacent waters based on historic aerial imagery in both wet and dry cycles. It is also determined that the wetlands have no documented use by interstate or foreign travelers relating to waterborne commerce activities, does not support fish or shellfish that could be taken and sold in interstate or foreign commerce, and is not used for industrial purposes by industries in interstate commerce.

See attached maps of the review area.

Based off of the delineation the following wetlands are isolated:

Wetland A 43.73952 , -98.85678

Wetland C 43.74045 , -98.86272

Wetland E 43.74358 , -98.86093

Wetland G 43.74448 , -98.85721

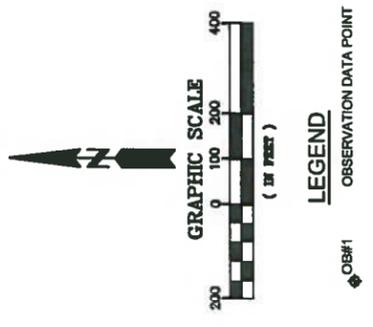
Wetland H 43.74260 , -98.85652

Wetland I 43.74213 , -98.86207

Wetland K 43.74437 , -98.85521.



WETLAND DELINEATION MAP SHOWING NON-JURISDICTIONAL WETLANDS



IRON HORSE INDUSTRIAL PARK
MHC LAND AND CATTLE, LTD
WETLAND DELINEATION

PROJECT NO.:	18686
SURVEYED BY:	RMP
CREATED BY:	RMP
APPROVED BY:	RMP
REVISION DATE:	
WETLAND EXHIBIT	

MAP OF WETLANDS DURING A
AVERAGE MOISTURE YEAR



© 2013 Google
Image USDA Farm Service Agency

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Google earth
Earth Point

Imagery Date: 12/31/2009

lat 43.741941° lon -98.858808° elev 1693 ft

Eye alt 7542 ft



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45 Image USDA Farm Service Agency

lat 43.741941° lon -98.858808° elev 1693 ft

Google earth
Earth Point

Eye alt 7542 ft

Imagery Date: 7/4/2006