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): DATE

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Walla Walla District; NWW-2015-00521, Rule Steel Facility Improvements, Wetland Delieation South

C. PROJECT LOCATION AND BACKGROUND INFORMATION: .

State: Idaho County/parish/borough: Canyon City: Middleton
Center coordinates of site (lat/long in degree decimal format): 43.411840° Lat. -116370846° Long.
Universal Transverse Mercator: Zone 11 Northing N, Easting E.
Name of nearest waterbody: unnamed irrigation ditches
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Boise River(RPW) to Snake River (TNW)
Name of watershed or Hydrologic Unit Code (HUC): 17050114

- ☒ 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: 12-22-2015
- ☒ Field Determination. Date(s): December 22, 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: 4007 linear feet: 3-4 width (ft) and/or 0.6 acres.
   Wetlands: 0.68 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: **. A wetland delineation was conducted on the Rule Steel property(south) from 8 to 11 September 2015 to determine the amount wetlands and waters on the property. Two water features on the property have been evaluated and determined not to be a waters of the United States. These features include a small 2.3 acre pond constructed in**

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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.

dry land as a fire protection/aesthetic pond and a reach of man-made irrigation ditch identified as D1 which flows to a man made pond located north of the property (See Exhibit 2).

The fire protection/aesthetic pond is roughly 2.3 acre in size to include the 0.31 acre wetland fringe as measured from a Google Earth aerial photo dated April 29, 2015. The pond was constructed sometime between 1992 and 1996. A review of aerial photos from 1984 through present day shows the history of the property at the fire pond location. A review of a 1984 photo shows the location of the fire pond as agricultural crop land. A July 1988 aerial photo shows that during the past four years the land owner constructed three small rectangular ponds immediately to the east of the present day fire pond. The land at the fire pond location was now in pasture. An aerial dated 1992 shows the project area to the east of the fire pond location has now been developed into a series of small rectangular ponds and number 14 in total. The west side of the project area is still in pasture. A 1996 aerial shows the fire pond has been constructed within the pasture area and incorporated one of the smaller ponds. Between 1996 and present day the fire pond has not changed in size or configuration. It has developed a narrow wetland fringe composed mostly of cattail and some scattered willow. The site was viewed on 12-22-2015. The small ponds to the east have been filled in over the past 20 years and only two with water remain. These smaller ponds are not part of the project and are not being assessed for jurisdiction. The wetland fringe constitutes about 0.31 acre.

Using the measuring tool on Google Earth the west side of the pond is 1100 linear feet from the Boise River with lands between the pond and the river being agricultural. The pond as measured from the north side to the Boise River is roughly 940 linear feet from the Boise River and is separated from the river by upland and a large elongated pond. The soil survey for the area was consulted and the site of the fire pond is within an area shown to have a Moulton fine sandy loam which is not a hydric soil. The water table at seasonal high water in the Boise River is 2-3 feet below the surface which is not high enough to support wetlands under a natural condition. This supports the aerial photo's which show the area as dry land prior to construction of the fire pond. A 2006 aerial photo was also viewed to see if the area was influenced when the river is at normal high water. The photo does not show any over bank flooding affecting the pond or areas immediately adjacent the fire pond. The area remained dry and showed no signed of soil saturation or ponding. In accordance with Section 328.3 definitions in the pre-amble of the 1986 Department of Defense, Regulatory Program, artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and or diking dry land for primarily aesthetic reasons are not considered to be waters of the United States. This pond although built for fire protection/aesthetic appears to fall into this category and is therefore not a waters of the United States. The fire pond also has no direct surface connection to the Boise River. The wetlands around the pond are also not waters of the United States as they constitute a very small percentage of the pond and are not within a reasonable distance to the Boise River to be considered adjacent. They also do not appear to be affected by the river either by over bank flooding or though the shallow ground water table as observed on the 2006 aerial photo which was taken when the river was at normal high water.

The second feature on the property which has been determined not to be a jurisdictional water is a reach of irrigation ditch that parallels the east side of the property along Middleton Road. This ditch receives irrigation water from a lateral that orginates on the east side of Middleton Road and crosses under the road via a pipe. Water is then directed either north or south via an irrigation structure shown on Exhibit 2 as irrigation box-source of irrigation water. The ditch that extends from the irrigation box north along the property line is 727 feet long. It is then piped under Bass Lane and the adjacent developed property for 350 feet, then opens up into a ditch that extends for 250 feet, turns west for another 495 feet before ending in a large elongated pond used for water skiing. The ski pond although adjacent the Boise River has no direct surface connection to the river and has no wetland fringe. Therefore the irrigation ditch does not connect to another waters of the United States and is therefore isolated and not a waters of the United States.

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: **square miles**
   Drainage area: **acres**
   Average annual rainfall: inches
   Average annual snowfall: inches

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

   Project waters are **Pick List** river miles from TNW.
   Project waters are **Pick List** river miles from RPW.
   Project waters are **Pick List** aerial (straight) miles from TNW.
   Project waters are **Pick List** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: No.

   Identify flow route to TNW[5]: .
   Tributary stream order, if known: .

[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.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

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

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: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: .

Subsurface flow: **Pick List**. 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
☐ 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: .

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: .
Identify specific pollutants, if known: .

[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.

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

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ 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: acres

Wetland type. Explain: .

Wetland quality. Explain: .

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

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 **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** 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: .

Identify specific pollutants, if known: .

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

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

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

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

Approximately ( ) 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)

Summarize overall biological, chemical and physical functions being performed: .

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: .

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: Unnamed irrigation ditch located parallel to east side of property, flows for 221 linear feet to the south then turns west and flows for 3403 linear feet before leaving the property and eventually discharging to the Boise River a perennial river with a watershed of 2600 square miles. A second irrigation ditch enters the property from the south, parallels the the unnamed ditch identified as D2 for 604 feet then discharges to D2 at the southwest corner of the property. These two irrigation ditches carry water from April through October of each year. In accordance with Headwaters Inc. v Talent Irrigation District, 243 F.3d 526 (9th Cir. 2001), the court held that canals, ditches and drains that are capable of carrying pollutants to navigable waters are jurisdictional as tributaries under the Clean Water Act. Northwest Division of the US Army Corps of

Engineers views that court case as binding in the geographic jurisdiction of the US Court of Appeals for the Ninth Circuit which includes Idaho. Thus, irrigation ditches D2 and D3 are a water of the United States as a category(5) water.

☐ 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: 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: **A wetland delineation was conducted from September 8 to September 11, 2015 with the final report submitted to the Walla Walla District, Boise Regulatory Field Office on November 19, 2015. The delineation surveyed a 73 acre parcel located south of the Boise River as shown on Exhibit 2. The delineation identified 0.68 acres of emergent wetlands within and adjacent irrigation ditches D2 and D3. The delineation was conducted in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and the Arid West Regional Supplement, Version 2, dated September 2008. A field inspection by the Corps was conducted on December 22, 2015 and the wetlands were confirmed to be abutting the irrigation ditches. Photos were taken see attached photos .**

☐ 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: 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).

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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.

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): **Fire pond is a open water pond excavated in dry land and thus is not considered to be a waters of the United States.**

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: 2.0acres.
☒ Other non-wetland waters: 0.08acres. List type of aquatic resource: irrigation ditch 727 feet.
☒ Wetlands: 0.02acre associated with D1 and 0.31 acre wetlands associated with fire pond 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:Wetland Delineation titled" A Report Documenting an Identification, Classification and Delineation of Wetlands and the Jurisdictional Status of Waterways and Wetlands, Properties both North and South of the Boise River owned by Rule Steel, Inc., Canyon County, Idaho, dated Ocotber 23, 2015. Report was submitted by T-O Engineers on Novemnber 19, 2015.
☒ 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: .

[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.***

☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:Middleton, Idaho .
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:USDA Custom Report, Soil Survey.
☒ National wetlands inventory map(s). Cite name:Middleton, Idaho.
☐ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps:Canyon County, Idaho effective date May 24, 2011.
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):July 1984; July 1988; August 1992; February 1996; April 2006 aerial photo taken at OHWM 6500 cfs; April 2015.
or ☒ Other (Name & Date):December 22, 2015 on-site.
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☒ Other information (please specify): The project area located south of Boise River was reviewed and found that much of the 73 acre site is developed dry land. Aerial photos as listed above were used to get a history of the project site and the past uses through the present. Soil survey was also consulted and it supported the aerial photos which show the area is dry land and that all of the jurisdictional and non jurisdictional features were developed in dry land.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Based on the above discussion irrigation ditches D2 and D3 are waters of the United States. They receive water from the Boise River and discharge irrigation return water back to the Boise River at River Mile 25.6, left bank. Irrigation ditch D1is an isolated water as it ends in a large pond located north of the project site. The large pond has no direct surface connection with the Boise River. The fire pond is not a water of the United States in accordance with 33CFR Part 328.3 definitions" ponds excavated and or diked in dry land" are not considered to be a waters of the United States. In addition the pond has no direct surface connection with the Boise River. Wetlands that have developed around the fringe of the fire pond are also not jurisdictional as they are more than a reasonable distance from the Boise River and thus cannot be considered to be adjacent. The pond fringe wetlands are therefore isolated and not a waters of the United States.