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): January 15, 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Walla Walla, Green, B Triple J LLC, NWW-2007-1028-I02

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Idaho County/parish/borough: Teton City: Near Driggs
Center coordinates of site (lat/long in degree decimal format): 43.73640676° Lat. -111.06640278° Long.
Universal Transverse Mercator: Zone 12 Northing 4842383.047 **Pick List**, Easting 494652.550 **Pick List**.
Name of nearest waterbody: Teton Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Teton River
Name of watershed or Hydrologic Unit Code (HUC): Teton. Idaho, Wyoming.
☒ 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: January 15, 2008
☐ 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** "*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: linear feet: width (ft) and/or 3.2 acres.
      Wetlands: 9.0 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] **- Not Applicable**

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs - Not Applicable

[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.

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.

SECTION NOT APPLICABLE

C. SIGNIFICANT NEXUS DETERMINATION - NOT APPLICABLE

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Not Applicable

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: Teton Creek is perennial near its terminus at the Teton River. Upper Teton Creek (Wyoming) and Lower Teton Creek are perennial based on personal observation and review of relevant USGS Quads and aerial photographs. The middle section of Teton Creek is dewatered by irrigation withdrawals, but would likely be perennial if not for those withdrawals. A historic survey of the area, conducted prior to irrigation withdrawals even refers to the creek as perennial. The 9th Circuit Court of Appeals in its decision regarding Lynne Moses' appeal of a lower district court decision advised that regardless the creek was jurisdictional as it was an interstate water and flowed for at least some portion of the year giving it the ability to transport polluntants downstream to the Teton River, the Snake River, the Columbia River and ultimately to the Pacific Ocean. The Teton River is a navigable water of the U.S. for purposes of Section 404 of the Clean Water Act. The river is used by recreational boaters for fishing, floating, and sight-seeing. There are commercial outfitters that offer these services. There are many public and private boat launches and rampsThis decision occurred after the Supreme Court's Rapanos and Carabell decision.
   - ☐ 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: **~2200** linear feet **Unknown** width (ft).
     - ☐ Other non-wetland waters: acres.
       Identify type(s) of waters: .

3. **Non-RPWs[5] that flow directly or indirectly into TNWs. - Not Applicable**

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

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] See Footnote # 3.

directly abutting an RPW: **Wetlands delineated by Biota appear on wetland delineation maps abutting Teton Creek, e.g. there is no upland barrier between wetlands that were mapped and the creek. Wetlands mapped by Biota are part of a woody riparian corridor.**

☐ 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: **9.0** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. - Not Applicable**

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. - Not Applicable**

7. **Impoundments of jurisdictional waters.[6] - Not Applicable**

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):[7] - NOT APPLICABLE

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): - NOT APPLICABLE

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: Contour Map.
- ☒ 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.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24K (Driggs).
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Teton County.
- ☒ National wetlands inventory map(s). Cite name: Driggs.
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): 2004, 2006, and Unknown (ORM Database and Applicant).
  or ☒ Other (Name & Date): Unknown (provided by the applicant).
- ☐ Previous determination(s). File no. and date of response letter: .
- ☒ Applicable/supporting case law:United States v. Moses No. 06-30379 (9th Circuit Court of Appeals, 2007).
- ☐ Applicable/supporting scientific literature: .
- ☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: Wetlands are abutting Teton Creek as part of its natural woody riparian corridor. Teton Creek flows to the Teton River, even though this section flows intermittently due to irrigation withdrawals. It would likely flow year round if not for those withdrawals. The Teton River is a navigable water of the U.S. for purposes of Section 404 of the Clean Water Act. The river is used by recreational boaters for fishing, floating, and sight-seeing. There are commercial outfitters that offer these services. There are many public and private boat launches and ramps.

[6] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[7] **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.***