

**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): 5/15/08**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWW-2007-1060-C01, Western Federal Highway Division-**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Idaho County/parish/borough: Kootenai City: 0.4 mile Northeast from Coeur d' Alene  
Center coordinates of site (lat/long in degree decimal format): Lat. 47.6768 N, Long. 116.7133 W  
Universal Transverse Mercator: UTM 11 520524E 5280388N (NAD83/WGS84)

Name of nearest waterbody: **Fernan Lake, Fernan Creek, and adjacent wetlands.**  
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Coeur d'Alene, Lake  
Name of watershed or Hydrologic Unit Code (HUC):  
 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: 10/17/2007  
 Field Determination. Date(s): November 15, 2007

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are **not** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

- 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.

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas **-Fernan Lake**
- Wetlands adjacent to TNWs **-wetlands adjacent to Fernan Lake-**
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs **-Fernan Creek**
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs **-wetlands adjacent to Fernan Cr**
- 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 Fernan lake has a surface area of about 328 acres.  
Wetlands: approximatley 200+/- acres.

**c. Limits (boundaries) of jurisdiction based on: OHWM**

Elevation of established OHWM (if known): 2137 ft on Fernan Lake.

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: None

**SECTION III: CWA ANALYSIS**

<sup>1</sup>Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

## 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: Fernan Lake HUC= 17010305

Summarize rationale supporting determination: Fernan Lake is a tributary of Coeur d'Alene Lake. It is about 328 acres in size and originates in a 10,000 acre watershed in the surrounding Coeur d'Alene National Forest and some private lands lying mainly north of the lake. Fernan Lake is the most heavily utilized urban recreational fishery in the State of Idaho. Fernan Lake supports interstate commerce by out-of-state and foreign visitors using the lake for boating, fishing, hunting, ice skating and general recreation. Visitors use the public boat launch facilities available around the lake. Fernan Lake is on the U.S. Interstate Highway System corridor (I-90) allowing very easy access to inter-state and international travelers and local recreational users. Fernan Lake is part of an interstate tributary system that flows into Coeur d'Alene Lake, which flows into the Spokane River, which is an interstate water that flows to the Columbia River and the Pacific Ocean in Washington State, all navigable waters of the United States. Therefore, the degradation or destruction of Fernan Lake would affect interstate commerce and are jurisdictional under Section 404 of the Clean Water Act.

### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": On the north end of Fernan Lake there is a large complex of wetlands directly abutting and associated with Fernan Lake, therefore the wetlands are adjacent Fernan Lake. During spring high water, the lake rises to flood many of these wetlands and the creek spills out of bank to flood its adjacent wetlands above the influence of the lake. Numerous beaver dams also contribute to water level changes along the entire system, causing flooding of adjacent emergent wetlands creating a mosaic of water regimes and constantly-changing wetland conditions. All these wetlands are interrelated and intimately tied to one another due to direct water interchange and lack of isolating topographic features. Many fish species important to the Fernan Lake ecosystem use these wetlands for spawning and rearing. The degradation or destruction of these wetlands would impact interstate commerce and are jurisdictional under Section 404 of the Clean Water Act.

## 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<sup>4</sup> 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: 15.5  
Drainage area: 15.42  
Average annual rainfall: 27.7 inches  
Average annual snowfall: 27.7 inches

#### (ii) Physical Characteristics:

##### (a) Relationship with TNW:

- Tributary flows directly into TNW.  
 Tributary flows through tributaries before entering TNW.

Project waters are 0-5 river miles from TNW.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters are            river miles from RPW.  
Project waters are 1-5 aerial (straight) miles from TNW.  
Project waters are            aerial (straight) miles from RPW.  
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>: .  
Tributary stream order, if known:

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain: Much of Fernan Creek is natural, but several small sections of Fernan Creek were channelized in recent times resulting in abandonment of the natural channel (or small sections of it) through private holdings. Lower portion of Fernan Creek was straightened and channelized in about 1935

**Tributary properties with respect to top of bank (estimate):**

Average width:            5-10 feet  
Average depth:            2-3 feet  
Average side slopes:      2:1 or flatter

**Primary tributary substrate composition (check all that apply):**

Silts                             Sands                             Concrete  
 Cobbles                         Gravel                            Muck  
 Bedrock                         Vegetation. Type/% cover: alder, willow, spirea cpverd banks in alomost all areas.  
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: varies but generally stable to impacted at culvert crossing or in areas of livestock grazing.

Presence of run/riffle/pool complexes. Explain: yes

Tributary geometry: large meanders to straight

Tributary gradient (approximate average slope): 1-2%%

(c) Flow:

Tributary provides for: seasonal contribution to downstream water levels.

Estimate average number of flow events in review area/year: 10+

Describe flow regime: flows strongly during late fall and winter months through spring runoff in late May to late June depending on year.

Other information on duration and volume: 10-30 cfs or more and flows for 6 months or more in most years, longer in the lower sections of the creek due to year-around ground-water spring contributions.

Surface flow is: seasonal Characteristics: Flow during wet months gradually drying in late spring to early summer.

Subsurface flow: yes . Explain findings: Assumed due to valley topography and soil types.

Dye (or other) test performed: None

Tributary has (check all that apply):

Bed and banks

OHWM<sup>6</sup> (check all indicators that apply):

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

Discontinuous OHWM.<sup>7</sup> Explain:

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

<input type="checkbox"/> High Tide Line indicated by:	<input type="checkbox"/> Mean High Water Mark indicated by: *
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Ibid.

- |  |  |
|--|--|
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.)  
 Explain: generally clear but can be murky during high runoff events where suspended sediment may be carried.  
 Identify specific pollutants, if known: fine sediment

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

- Riparian corridor. Characteristics (type, average width): 20 feet, generally scrub shrub and reed canary grass dominated.
- Wetland fringe. Characteristics: dominated by reed canary grass and willow/red-osier dogwood/ alder shrub.
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings: West Slope Cutthroat use Fernan Creek for spawning.
  - Other environmentally-sensitive species. Explain findings: Excellent bald eagle foraging habitats in wetlands north of Fernan Lake and in Fernan Lake itself. Excellent waterfowl nesting and rearing habitat throughout the valley.
  - 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: seasonally flood or saturated  
 Wetland size: 200 acres  
 Wetland type. Explain: emergent and scrub-shrub wetlands  
 Wetland quality. Explain: Excellent water quality buffers and habitat for aquatic animals and birds. Degraded in grazed and channelized areas.  
 Project wetlands cross or serve as state boundaries. Explain: No

**(b) General Flow Relationship with Non-TNW:**

Flow is: seasonal but of large volume. Explain:  
 Surface flow is: seasonal  
 Characteristics: 6-9 months per year depending on precipitation  
 Subsurface flow: **yes**. Explain findings: many springs in the lower valley highly suggestive of strong underground flows..  
 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 0-4 river miles from TNW.  
 Project waters are 0-4 aerial (straight) miles from TNW.  
 Flow is from: late fall through early summer  
 Estimate approximate location of wetland as within the 2 year floodplain 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: generally excellent water quality but impacted by sedimentation from road building, livestock grazing, ORV use, and logging..  
 Identify specific pollutants, if known: sediment and turbidity

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

- Riparian buffer. Characteristics (type, average width): scrub-shrub/emergent 20 feet or more
- Vegetation type/percent cover. Explain: scrub-shrub/emergent 75% coverage
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings: westslope cutthroat spawn in this system
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: excellent and diverse habitat for aquatic animals and large ungulates.

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

All wetland(s) being considered in the cumulative analysis: The wetland in this system is contiguous through the valley from the lake to the top of the project area.

Approximately (200) acres in total are being considered in the cumulative analysis

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>

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, 328 acres.
  - Wetlands adjacent to TNWs: 100 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: Lower sections of Fernan Creek is year-around due to springs and beaver dams.
  - 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: large watershed and relatively high headwaters contribute heavy seasonal flow gradually tapering off in mid-summer. Fernan Creek flows from late fall through early summer and provides spawning and rearing habitat for fish and many aquatic animals.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 10,000 linear feet 20 width (ft).

Other non-wetland waters:          acres.  
Identify type(s) of waters:

**3. Non-RPWs<sup>8</sup> 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: Lower Fernan Creek is flooded by beaver dams and sheet flow from the lake in springtime. Water flow is contiguous and directly connect to the lake and Fernan Creek.

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: Tributaries of Fernan Creek flow seasonally from December through June except during very cold weather or periods of drought when the stream is snow-covered and frozen or dry.

Provide acreage estimates for jurisdictional wetlands in the review area: 200 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 jurisdictional. 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.<sup>9</sup>**

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):<sup>10</sup>**

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.

<sup>8</sup>See Footnote # 3..

<sup>9</sup>To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>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

