

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): October 19, 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Walla Walla District; NWW-2014-302-I01; P4 Productions, LLC, Caldwell Canyon Phosphate Mine.

ISOLATED WATERS

C. PROJECT LOCATION AND BACKGROUND INFORMATION: See Figure 3 and Appendix B-Plates 6,7 and 8 for the location of the subject waters:.

State: Idaho County/parish/borough: Caribou City: NA

Center coordinates of site (lat/long in degree decimal format):

Caldwell Creek/Wet 9, 10, 11, 12, 22 and 23
8 Digit Huc 17040207
Latitude (NAD83) 42.74592, Longitude (NAD83) -111.37433
UTM Zone 12, X Coordinate 469363.71, Y Coordinate 4732668.50
PLSS Meridian Boise, Township 8 S, Range 43 E, Section 24
USGS 1:24K Quad Name ID-JOHNSON CREEK

Wet 13 and drainage
8 Digit Huc 17040207
Latitude (NAD83) 42.70859, Longitude (NAD83) -111.36188
UTM Zone 12, X Coordinate 470365.03, Y Coordinate 4728518.42
PLSS Meridian Boise, Township 8 S, Range 44 E, Section 19
USGS 1:24K Quad Name ID-DRY VALLEY

Wet 3 and Wet 18
8 Digit Huc 17040207
Latitude (NAD83) 42.77405, Longitude (NAD83) -111.37811
UTM Zone 12, X Coordinate 469068.24, Y Coordinate 4735792.97
PLSS Meridian Boise, Township 7 S, Range 43 E, Section 36
USGS 1:24K Quad Name ID-LOWER VALLEY

Wet 4
8 Digit Huc 17040207
Latitude (NAD83) 42.75959, Longitude (NAD83) -111.37228
UTM Zone 12, X Coordinate 469538.03, Y Coordinate 4734185.26
PLSS Meridian Boise, Township 8 S, Range 43 E, Section 1
USGS 1:24K Quad Name ID-UPPER VALLEY

Name of nearest waterbody: **None**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **None**

Name of watershed or Hydrologic Unit Code (HUC):

HUC Region Name Pacific Northwest Region
HUC Subregion Name Upper Snake
HUC Acc Name Upper Snake
HUC Cat Name Blackfoot
8 Digit Huc 17040207

- 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: **September 23, 2015**
- Field Determination. Date(s): **April 29, 2015 and October 8, 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 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: 0 linear feet: 0 width (ft) and/or 0 acres.
Wetlands: 0 acres.

c. Limits (boundaries) of jurisdiction based on: Not applicable

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:

WETLANDS (WET) 9 AND 22.

Wet 9 includes Caldwell Creek. Caldwell Creek extends approximately 8,750 feet from its source until it disappears into alluvium near Slug Creek. Caldwell Creek has a bed/bank and an ordinary high water mark. It is reported to be perennial. It supports 6.37 acres of shrub-scrub and emergent wetlands along its length. Two small man-made stock water ponds occur in its headwaters which contain water all year. Caldwell Creek’s drainage area is estimated to be 2.2 square miles. It originates on the west slope of Schmidt Ridge. Three springs contribute to flow that ultimately forms Wet 22 before surface flow sinks into the ground. There is no surface channel or wetland connection to Slug Creek. From the (draft) Final Wetlands Baseline Report 09-02-2015 see the location on Figure 3 and the description on page 19. See aerial images at Appendix B, Plates 6, 7 and 8, and ground photographs 17 to 23 at Appendix C, pages C-9 to C-12.

Wet 22 is a 2.23 acre emergent wetland. The distance from Wet 22 to the wetlands adjacent to Slug Creek is approximately 580 feet and 1000 feet to the Slug Creek channel. Between Slug Creek wetlands and Wet 22 the ground is non-wetlands. There is no discrete surface water connection between Wets 9 and 22 to Slug Creek. NRCS soil survey maps were not available for review. From the (draft) Final Wetlands Baseline Report 09-02-2015 see the location on Figure 3 and the description on page 25. See aerial images at Appendix B, Plate 8 and ground photographs 44 to 48 at Appendix C pages C-22 to C-25.

The consolidated wetlands of Wet 9 and 22 have no surface water connection to Slug Creek and are not proximate to Slug Creek. They are isolated waters and are not waters of the U.S.

WET 10, 11, 12 AND 23.

These wetlands are within the Caldwell Creek or Wet 9/Wet 22 watershed. Wet 10 (0.02 acres) and Wet 23 (0.04 acres) are contiguous and consist of a single channel with a defined bed and bank that includes emergent wetlands above and below the ordinary high water mark. Wet 10 and Wet 23 are fed by discrete springs and collectively flow into Wet 9/Caldwell Creek. Wet 11 (0.04 acres) is an emergent wetland upslope of Wet 10 and is also fed by a spring. It has no surface channel or contiguous wetland to connect it to Wet 10. Wet 11 is isolated from Wet 10. Wet 12 (0.06 acres) is created by a spring that has been developed into two stock water ponds. It supports emergent wetlands that drain into a distinct channel of 2,910 linear feet. The channel does not support wetlands and appears to be ephemeral. The channel disappears approximately 100 to 150 feet from Wet 9/Caldwell Creek. During the Corps 2015 inspections there was no flow evident in the lower channel and no overland flow was observed reaching Caldwell Creek. Due to the channel slope, proximity to, and lack of any barrier between it and Caldwell Creek, ephemeral overland (non-

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.

wetland) flow may connect the Wet 12 channel it to Caldwell Creek. Further, the 100 to 150 foot separation between the Wet 12 channel and Caldwell Creek channel is a dirt road, the use of which may have eliminated any channel features.

From the (draft) Final Wetlands Baseline Report 09-02-2015 see Figure 3 for the location and pages 21, 22 and 26 for a description of each wetland. See aerial images at Appendix B, Plates 6, 7, and 8, and ground photographs 24 to 29, 49 and 50 at Appendix C- 12 -15 and C-25.

Caldwell Creek as described earlier is isolated and not a water of the U.S. Wet 10, 11, 12, and 23 are within an isolated system and are not waters of the U.S.

WET 13

Wet 13 is a 0.3 acre emergent wetland. It lies within an unnamed drainage. It drains the west slopes of Schmidt Ridge. The flow at the investigation site is ephemeral. Wet 13 itself is an emergent wetland that appears to be a shallow man-made excavation with a push-up soil berm, possibly constructed to retain surface water for stock. There was no ordinary high water mark, or bed and bank found at Wet 13. The upstream drainage was not inspected as it is offsite. The onsite flow is thought to be ephemeral and sinks into alluvium below Wet 13 where there is a poorly defined surface feature a few inches wide and deep without a visible bed/bed or ordinary high water mark. This poorly defined surface feature meanders through densely grassed non-wetlands downstream from Wet 13 for approximately 1000 feet before it ends. The distance from Wet 13 to Slug Creek is approximately 2000 feet (scaled from Figure 3). From the (draft) Final Wetlands Baseline Report 09-02-2015 see Figure 3 for a location and pages 22 and 23 for a description of Wet 13. See aerial images at Appendix B, Plate 10, and ground photographs 30 to 32 at Appendix C-15 and C-16. Wet 13 has no surface water connection to Caldwell Creek/Wet 9. Wet 13 is isolated and is not a water of the U.S.

WET 3 AND 18

Wet 3 is an emergent wetland approximately 0.04 acres and Wet 18 is a shrub-scrub wetland of approximately 0.1 acres. They lie in the same narrow valley that drains easterly off Schmidt Ridge toward Dry Valley Creek, a tributary of the Blackfoot River. They are both fed by spring discharges. Wet 3 flows through a forested aspen non-wetland area with no visible channel toward Wet 18 which is approximately 600 feet down slope. Wet 18 is a ground water discharge location whose origin may be natural or man-made. Water discharges from a pipe in wetlands and is immediately captured in stock water troughs that overflow overland into narrow valley bottom supporting wetlands and then disappears into a stand of aspens with no visible channel downstream. From the (draft) Final Wetlands Baseline Report 09-02-2015 see Figure 3 for their location and Pages 21 and 24 for a description. Also see the aerial images at Appendix B, Plate 2, and ground photographs 5 and 38 to 40 at Appendix C- 3 and C19 and C-20. Wet 3 has no surface connection to Wet 18 and is isolated from Wet 18. Wet 3 and Wet 18 have no surface water connection to downstream waters of the U.S. and are therefore isolated waters and are not waters of the U.S.

WET 4

Wet 4 is 1.34 acres and consists of a mosaic of aquatic types. Wet 4 lies within the Chicken Creek watershed and is in a narrow valley up slope of Wet 5. It is supported by a spring and is believed to maintain perennial flow. It includes raised fens at its upper end and downstream a small shallow pond with surrounding and downstream emergent wetlands mixed with forested/shrub-scrub wetlands. Larvae of tiger salamander were found in the shallow pond in 2014. Down slope of the pond the wetland narrows and continues approximately 1600 linear feet before surface flow sinks into the substrate within a small aspen glade. Several hundred feet downstream of the aspen forest a dry channel with no wetlands or ordinary high water mark is evident. Trees were observed growing within the channel. Brush and fallen trees lay across the channel in locations. The dry channel continues for several hundred feet before it disappears into a mixed meadow of sagebrush and a few scattered willows. The area between Wet 4 and 5 was reviewed in April 2015 and October 2015 to ascertain any potential surface connection them. From the (draft) Final Wetlands Baseline Report 09-02-2015 see Figure 3 for a location and page 19 for a description. Aerial images can be found at Appendix B, Plate 4, and ground photographs 6, 7, 8, 9 and 10 at Appendix C-3 to C5. Wet 4 has no surface water connection to Wet 5 or downstream waters of the U.S. and is therefore an isolated water and are not a waters of the U.S.

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: NA

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 waterbody⁴ 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:

Identify flow route to TNW⁵:
Tributary stream order, if known:

(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):

- | | | |
|---|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> 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**

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.

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

OHWM⁶ (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):

Discontinuous OHWM.⁷ Explain:

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

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:

(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:.

⁶A 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.

⁷Ibid.

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:
 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-RPWs⁸ 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:.

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 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.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:

⁸See Footnote # 3.

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

¹⁰Prior 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 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).

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): **Caldwell Creek is approximately 8,750 linear feet (ft) and 1 to 2 ft wide. It ends approximately 1000 feet east of Slug Creek. Caldwell Creek has a defined bed and bed with an ordinary high water mark (ohwm). Caldwell Creek supports wetlands within its ordinary ohwm as well as immediately outside and abutting the ohwm. Wet 12 channel is approximately 2910 feet long and 6 inches deep by 1 foot wide.**

- Lakes/ponds: ____acres.
- Other non-wetland waters: ____acres. List type of aquatic resource.
- Wetlands: **10.44 acres.**

- Wet 3 - 0.04 acres**
- Wet 4 - 1.34 acres**
- Wet 9 - 6.37 acres**
- Wet 10 - 0.02 acres**
- Wet 11 - 0.04 acres**
- Wet 12 - 0.06 acres**
- Wet 13 - 0.3 acres**
- Wet 22 - 2.23 acres**
- Wet 23 - 0.04 acres**
- Wet 18 - 0.10 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: **(draft) "Final Wetlands Baseline Technical Report 9/2/2015"**.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Office concurs with data sheets/delineation report. **(draft) Final Wetlands Baseline Technical Report, Caldwell Canyon**

Project, Caribou County, Idaho September 2, 2015.

- 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: **ID, Johnson Creek 1:24K**
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name: **ID, Johnson Creek 1:24K**
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: _____(National Geodectic Vertical Datum of 1929)
- Photographs: Aerial: **Google Earth Pro imagery viewed: 8/25/1992, 7/24/1999, 6/2003, 6/15/2004/22/2006, 6/23/2009, 9/24/2010, 9/4/2012, 6/3/2013, 8/1/2013, 8/2/2013, 10/7/2014. 6/23/2009 is the imagery with most visible water on the surface.**
 - or Other: **Ground photographs of various dates within Appendix B of draft Final Wetlands Baseline Technical Report, September 2, 2015.**
- 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:

This project is a proposed phosphate mine. The BLM is the lead federal agency preparing an EIS for the project. A draft wetland baseline report was submitted to the Corps and other agencies to review in February 2015. The Corps conducted an inspection on 29 April 2015 and again on 8 October 2015 to verify the determinations made by the consultant regarding the jurisdictional status. Subsequent to the 29 April 2015 inspection, the consultant collected additional field data and revised the wetland mapping and their recommendation for jurisdiction for several waters: Several sites that had been initially considered to be isolated were found to be connected to downstream waters of the U.S. These changes are being incorporated a pending final baseline report to be submitted to the EIS team.

23 distinct wetland and/or channel locations have been identified within or adjacent the proposed phosphate mine. This approved jurisdictional determination only addresses sites Wet 9, 10, 11, 12, 13, 22 and 23 within the Slug Creek watershed and Wet 3, 4 and 18 in the Dry Valley Creek watershed.

It should be noted that Wets 11 and 12 have no channel or wetland connectivity to Wet 9/Caldwell Creek. Wet 11 has no channel connecting it to the downstream waters and is surrounded by non-wetlands. The downstream end of Wet 12 is a non-wetland channel that does not connect via a channel to Caldwell Creek or its adjacent wetlands. Due to their position on the landscape where they are within narrow valleys, proximate to, and upslope of Caldwell Creek it is possible that during snow melt and intense rainfalls they would be connected briefly by intermittent overland flows and/or shallow subsurface connection. However such a connection was not observed in the spring of 2015 when other similar watersheds were observed with surface flows.