

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): 28 AUGUST 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: WALLA WALLA DISTRICT: NWW-2015-00381, WATSON PROPERTY

C. PROJECT LOCATION AND BACKGROUND INFORMATION: 60 Clear Creek Road.

State: IDAHO County/parish/borough: ADA City: MERIDIAN

Center coordinates of site (lat/long in degree decimal format): 43.676235° Lat. -116.393263° Long.

Universal Transverse Mercator: Zone 11 Northing 4836092.83431629 N, Easting 548908.385690153 E.

Name of nearest waterbody: BOISE RIVER; WARM SPRING SLOUGH

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: SNAKE RIVER

Name of watershed or Hydrologic Unit Code (HUC): 17050114: Lower Boise River (1705011404: North Slough - Boise River)

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: 28 August 2015

Field Determination. Date(s): April 2015 and 21 August 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 waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: linear feet: width (ft) and/or 0.27 acres.

Wetlands: 0.49 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): approximately 2515 feet .

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: **On the Watson property/project area, there is one stock pond (PUBHx) excavated in uplands and constructed over 20 years ago that is supplied solely by ground water (capped artesian well). The wetland delineation found the hydrology to the 0.08 acre pond was eliminated and the wetland vegetation was dead/dying, resulting in less than 5% wetland vegetation present. Further, the delineation found the pond to be in too high of a position to sustain wetland soils/vegetation without inundation of ground water from the artesian well.**

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.

There is also a second ornamental pond/pool located within the Watson property/project area, also excavated entirely in uplands and constructed over 20+ years ago. This 0.10 acre pond is also supplied solely by groundwater (a separate capped artesian well). The wetland delineation found, and the Corps' April 2015 and August 2015 site visits, also verified that with hydrology eliminated the PEM wetland vegetation was dying/dead, also resulting in less than 5% vegetation, without the constant inundation of ground water from the artesian well. Historical aerial photos confirm that there are years with larger amounts of water and minimal wetland vegetation and years with smaller amounts of water and larger wetland vegetation present. This fluctuation may also be related to land and management practices by past property owners. The Corps' April and August site visits also confirm hydrology has been removed resulting in dry conditions within these two ponds/pools.

Per 33 CFR 328.3(c), an excavated stock pond, and 33 CFR 328.3(d) an ornamental aesthetic pond/pool supplied solely by groundwater with no surface flows/connections are non-regulated waters of the United States (reference map: Pond #2 stock pond and Pond #2 ornamental pool/pond); as such they are not subject to regulation under Section 404 of the Clean Water Act.

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 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: 1,290 **square miles**

Drainage area: 1,290 **acres**

Average annual rainfall: 11.66 inches

Average annual snowfall: 19-22 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 **1 (or less)** river miles from RPW.

Project waters are **25-30** aerial (straight) miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: N/A.

Identify flow route to TNW⁵: The Warm Spring Slough flows directly to the Boise River. The Boise River flows directly to the Snake River - a TNW from RM 445.5 to RM 0.

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.

Tributary stream order, if known: The Boise River is a Rosgen Type F from Lucky Peak Dam to Diversion Dam and Rosgen Type C from Diversion to its mouth. The Type F stream is characterized by a deeply entrenched channel, low gradient (<0.02), with a high width/depth ration, and a riffle/pool morphology. The Type C channel contains a low gradient (<0.002) and a meandering with a riffle/pool morphology, high width/depth ratio, and a broad, well-defined flood plain.

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

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: The Warm Spring Slough (also referenced as Thurmond Drain on the USGS/Topo maps) is a natural drain that flows directly to the Boise River just downstream of the Watson property/project area. Warm Spring Slough is a natural drain that is dually used for irrigation purposes during irrigation season, typically April - September. The Lower Boise River is a 64-mile stretch of river that flows from Lucky Peak dam, above Boise, Idaho to its confluence with the Snake River, below Parma, Idaho. The Snake River is a traditionally navigable water (TNW) from RM 445.5 to RM 0.

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

Average width: is approximately 88.0 feet at project location feet
Average depth: feet
Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain: The Lower Boise River substrate composition contains nutrient rich soils that are comprised of about one-half sand (0.07-2.0 mm) and silt (0.004-0.06 mm) with the other half comprising of largely small gravel (3-64 mm) and a very small amount of cobble (65-256 mm) which are readily and frequently shifted by high water velocities.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Lower Boise River is typical of a river with managed flow. Flow regulation has caused narrowing of the river channel with braiding and sinuosity rarely absent due to sediment supply and peak flows being reduced. Channelization and the construction of dikes and levees for irrigation purposes have also contributed to the loss of braiding and sinuosity.

Presence of run/riffle/pool complexes. Explain: see details above.

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): <0.02 %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: Perennial.

Other information on duration and volume: The regulated annual hydrograph of the Lower Boise River can be divided into three flow regimes: Low flow conditions generally begin in mid-October when irrigation diversions end. The low flow period extends until flood control releases begin, sometime between the end of January and March. Flood flows generally extend through June, and releases for irrigation control flows from July through mid-October..

Surface flow is: **Confined**. Characteristics: The Lower Boise River is a highly managed system. Managed flows increase discharge during summer months and decrease in winter for low flows. Irrigation ditches and irrigation practices have also altered drainage patterns in the Lower Boise River watershed with flows not following the natural drainage path(s) in much of the lower Boise valley. Winter flows range from a minimal 80 cfs, with a targeted 150 cfs and desited flows of 240 cfs. Normal high flows are 6,500+ cfs and irrigation seasonal flows range from 2,000 to 4,000 cfs (April - September).

Subsurface flow: **Pick List**. Explain findings:

Dye (or other) test performed: N/A.

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour

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.

- sediment deposition
- water staining
- other (list):
- Discontinuous OHWM.⁷ Explain: .
- 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: .

⁷Ibid.

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

Riparian corridor. Characteristics (type, average width): Along the Boise River within the Watson property, there are cottonwood, willow, and grasses along most of the property (south side of the river channel); across from project area (north side of channel) there is little to no vegetation. The Warm Slough has been altered along its channel over the years. Natural areas that have not been altered contains a meandering channel with wetland grasses and woody vegetation (willows) present. Altered sections contain some meander but are void of vegetation and appear mostly as rock-lined ponds.

Wetland fringe. Characteristics: PEM1C / PEM2J / PEM2K.

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: **Confined**

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:

*** See map ***

WL#1 PEM1C, abutting Warm Spring Slough, 0.07 acre

WL#2 OW/PEM1C, abutting Boise River, 0.11 acre

WL#3 PEM/PSS/PFO, abutting Boise River, 0.34 acre

WL#4 PEM2J/PEM2K, adjacent Boise River (old relic channel), 0.07 acre

WL#5 OW/PUBHx, ornamental pond, 0.10 acre WL, supplied only by groundwater

WL#6 OW/PUBHx, stock pond, 0.08 acre WL, supplied only by groundwater.

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: Warm Spring Slough flows directly to the Boise River, approximately 0.36 miles downstream of the Watson property/project location. The lower Boise River is a managed river with annual minimal flows of 80 cfs, average winter flows of 240 cfs, irrigation flows of 2,000-4,000 cfs, and normal high water flows of 6,500+ cfs. The Boise River flows directly to the Snake River, a TNW from RM 445.5 to RM 0.
- 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: **See map: WL#1 (0.07 acre) is directly abutting a section of the Warm Spring Slough, with a sub-surface (culvert) connection from the Watson property/project south (under) Clear Creek Road to additional wetlands directly abutting Warm Spring Slough. OW/WL#2 (0.10/0.01 acre) is an open water area with PEM WL's directly adjacent to the Boise River and is located approximately 85 feet from well established PSS/PFO wetlands (WL#3) . WL#3 are PEM/PSS/PFO wetlands directly abutting the Boise River. WL#4 (0.07 acre) is adjacent to the Boise River and flows when the river is at naturally high water (6,500+ cfs). WL#1, WL#2 and WL#4 are located within the 500-year flood plain; WL #3 is located within the floodway/100-year flood plain.**

- 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: **0.49** 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

⁸See Footnote # 3.

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

- 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: .

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): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: 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: Preliminary Delineation of Waters of the United States, including Wetlands; Watson Residence, E Clear Creek Lane; Lynn and Sandy Watson; dated August 3, 2015/August 20, 2015; Prepared by Resource Systems, Inc. .
- 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: 1705011404/04: Mason Creek-Boise River/North Slough Boise River.

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:43116:F4; STAR, IDAHO [1:24,000].
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:USFS ONLINE NWI MAPPER, dated 08/27/2015.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:FIRM MAP, ADA COUNTY IDAHO; PANEL 01420875; MAP #16001C0142H; 02/19/2003.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):GOOGLE EARTH MAP, VIEWED 08/27/2015; CORPS' AERIAL PHOTOS OF WATSON PROPERTY/BOISE RIVER (2006) WITH FLOWS OF 6,500+ CFS, VIEWED 09/02/2015.
or Other (Name & Date):ORM2 DATABASE MAP, VIEWED 08/27/2015.
- Previous determination(s). File no. and date of response letter: NWW-0-049130, October 1991; NWW-0-46400, June 1991; NWW-1996-2100380, January 2001 .
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL#1 (0.07 acre) is directly abutting a section of the Warm Spring Slough, with a sub-surface (culvert) connection from the Watson property/project area south (under) Clear Creek Road to wetlands directly abutting Warm Spring Slough. OW/WL#2 (0.11 acre) is an open water area with PEM WL's directly adjacent to the Boise River and is located approximately 85 feet from well established PSS/PFO wetlands (WL#3) and is within the 100-year flood plain. WL#3 (0.34 acre) is a well established PEM/PSS/PFO wetlands directly abutting the Boise River. WL#4 (0.07 acre) is found within what is believed to be an old relic channel of the Boise River and contains hydric soils and hydrophytic vegetation.

The Warm Spring Slough is a natural drain that is dually used for irrigation water (April - September) and flows directly to the Boise River approximately 0.63 miles downstream of the project area. The Boise River is a major tributary to the Snake River, a traditionally navigable water (TNW) from RM 445.5 to RM 0. Therefore, Per 328.3(a)(5), the Warm Spring Slough and the Boise River are both waters of the United States, including wetlands. Per 33 CFR Part 328.3(a)(7) the Corps of Engineers asserts jurisdiction under Section 404 of the Clean Water Act over WL#1, adjacent wetland to Warm Spring Slough, and WL #2, WL #3 AND wl#4 as adjacent wetlands to the Boise River. Further, per *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526 (9th Cir. 2001), the Ninth Circuit Court of Appeals held that irrigation canals that receive water from natural streams and lakes, and divert water to streams and creeks are connected as "tributaries" to those waters....even tributaries that flow intermittently are "waters of the U.S." (*Headwaters*, 243 F.3d at 534).

OW/WL#5 (0.10 acre) is an open water ornamental pond excavated entirely in uplands and is supplied solely by groundwater. Per 33 CFR 328.3(d), an ornamental aesthetic ponds/pools supplied solely by groundwater with no surface flow/connection is a non-regulated water. OW/WL#6 (0.08 acre) is an open water stock pond excavated entirely in uplands and also supplied solely by groundwater. Per 33 CFR 328.3(c), a stock pond supplied solely by groundwater with no surface flow/connect is a non-regulated water. Therefore, these two ponds/pools are not subject to regulation under Section 404 of the Clean Water Act.