

**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 4, 2017

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CELRL-RDN, I65 US 50 to SR 58 widening, LRL-2017-54

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Indiana County/parish/borough: Bartholomew and Jackson Counties City: Columbus
Center coordinates of site (lat/long in degree decimal format): Lat. 39.122933°, Long. -85.957820°
Universal Transverse Mercator: 590089.27 Easting, 4330934.93 Northing, Zone 16S
Name of nearest waterbody: East Fork White Creek, Mutton Creek, East Fork White Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: White River
Name of watershed or Hydrologic Unit Code (HUC): 05120206 (Upper East Fork White)

- 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: April 27, 2017
 Field Determination. Date(s): October 22, 2016

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: # linear feet: # width (ft) and/or # acres.
Wetlands: # acres.

c. Limits (boundaries) of jurisdiction based on: *Choose an item.*

Elevation of established OHWM (if known): *Click here to enter text.*

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: A total of 53 roadside ditches (identified as wetlands in the delineation report) totaling 41,038 linear feet were excavated in uplands and drained only uplands. These features are identified as W-1, W-3, W-6, W-8, W-9, W-10, W-11, W-12, W-13, W-14, W-16, W-

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.

18, W-19, W-20, W-24, W-26, W-28, W-29, W-30, W-31, W-32, W-33, W-45, W-46, W-51A, W-54, W-55, W-56, W-57, W-58, W-60, W-61, W-63, W-64, W-72, W-73, W-74, W-75, W-76, W-78, W-80, W-81, W-83, W-84, W-85A, W-86, W-87, W-88A, W-88B, W-89, W-90, W-91, and W-92. These features are not jurisdictional 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:

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:

Drainage area:

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through tributaries before entering TNW.

Project waters are river miles from TNW.

Project waters are river miles from RPW.

Project waters are 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 TNW⁵:

Tributary stream order, if known:

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

Tributary is: Natural

Artificial (man-made). Explain:

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.

Manipulated (man-altered). Explain:

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

Average width: feet
 Average depth: feet
 Average side slopes:

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: *Choose an item.*
 Tributary gradient (approximate average slope): %

(c) **Flow:**

Tributary provides for:
 Estimate average number of flow events in review area/year:
 Describe flow regime: Other information on duration and volume:
 Surface flow is: Characteristics:

Subsurface flow: Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- Bed and banks
- OHWM⁶ (check all indicators that apply):
- | | |
|--|---|
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
- Discontinuous OHWM.⁷ 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; |
| <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: *Click here to enter text.*
 Identify specific pollutants, if known:

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.

(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: Explain:

Surface flow is:

Characteristics:

Subsurface flow: 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 river miles from TNW.

Project waters are aerial (straight) miles from TNW.

Flow is from:

Estimate approximate location of wetland as within the 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: *Choose an item.*

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:

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.

⁸See Footnote # 3.

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

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.

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): The aquatic features were roadside ditches excavated in uplands and draining only uplands.

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):
- 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: BLN-produced water resource map
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Office concurs with data sheets/delineation report.
- Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas:
- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5’ Scale. Quads: Columbus and Jonesville, Indiana
- USDA Natural Resources Conservation Service Soil Survey. Citation: SSURGO for Indiana, USDA, 2015
- National wetlands inventory map(s). Cite name: NWI Polygons by County in Indiana, USFWS, 2003
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: FIRM Floodplains and Flood Hazard Zones in Indiana, IDEM, 2016
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Indiana Map, 2013
- or Other (Name & Date): Ground-level photographs, August 24-26, 2016
- 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:

**LRL-2017-54 I65 added travel Lanes
Approved Jurisdictional Determination
Non-Jurisdictional Ditches**

| Resource Name | Lat/Long | Size (ft.) |
|----------------------|-------------------|-------------------|
| W-1 | 38.9658, -85.8431 | 750 |
| W-3 | 38.9682, -85.8430 | 575 |
| W-6 | 38.9685, -85.8439 | 87 |
| W-8 | 38.9710, -85.8439 | 400 |
| W-9 | 38.9730, -85.8438 | 125 |
| W-10 | 38.9751, -85.8439 | 1,350 |
| W-11 | 38.9782, -85.8428 | 2,965 |
| W-12 | 38.9787, -85.8432 | 165 |
| W-13 | 38.9788, -85.8438 | 100 |
| W-14 | 38.9781, -85.8442 | 120 |
| W-16 | 38.9833, -85.8432 | 310 |
| W-18 | 38.9852, -85.8432 | 125 |
| W-19 | 38.9856, -85.8438 | 325 |
| W-20 | 38.9868, -85.8438 | 285 |
| W-24 | 38.9945, -85.8470 | 300 |
| W-26 | 38.9978, -85.8521 | 412 |
| W-28 | 38.9998, -85.8552 | 587 |
| W-29 | 39.0002, -85.8570 | 1,590 |
| W-30 | 39.0055, -85.8641 | 37 |
| W-31 | 39.0062, -85.8661 | 51 |
| W-32 | 39.0086, -85.8689 | 1,588 |
| W-33 | 39.0086, -85.8681 | 622 |
| W-45 | 39.0405, -85.9060 | 474 |
| W-46 | 39.0416, -85.9064 | 644 |
| W-51A | 39.0609, -85.9195 | 750 |
| W-54 | 39.0597, -85.9192 | 20 |
| W-55 | 39.0628, -85.9209 | 473 |
| W-56 | 39.0676, -85.9232 | 66 |
| W-57 | 39.0693, -85.9241 | 29 |
| W-58 | 39.0706, -85.9248 | 116 |
| W-60 | 39.0813, -85.9313 | 559 |
| W-61 | 39.0821, -85.9312 | 168 |
| W-63 | 39.0908, -85.9376 | 452 |
| W-64 | 39.0926, -85.9390 | 340 |
| W-72 | 39.1064, -85.9495 | 1,435 |
| Resource Name | Lat/Long | Size (ft.) |
| W-73 | 39.1088, -85.9520 | 51 |
| W-74 | 39.1100, -85.9525 | 954 |
| W-75 | 39.1114, -85.9533 | 207 |
| W-76 | 39.1201, -85.9573 | 5,350 |
| W-78 | 39.1143, -85.9554 | 100 |
| W-80 | 39.1164, -85.9564 | 205 |
| W-81 | 39.1269, -85.9582 | 1,050 |
| W-83 | 39.1308, -85.9583 | 1,410 |
| W-84 | 39.1311, -85.9575 | 1,300 |
| W-85A | 39.1340, -85.9563 | 214 |
| W-86 | 39.1330, -85.9577 | 538 |
| W-87 | 39.1332, -85.9583 | 665 |
| W-88A | 39.1352, -85.9571 | 400 |

LRL-2017-54 Non-Regulated Waters

| | | |
|--------------|-------------------|--------|
| W-88B | 39.1392, -85.9577 | 2,664 |
| W-89 | 39.1353, -85.9578 | 600 |
| W-90 | 39.1353, -85.9583 | 712 |
| W-91 | 39.1385, -85.9581 | 2,865 |
| W-92 | 39.1379, -85.9587 | 3,358 |
| | Total | 41,038 |

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U.S. Army Corps of Engineers

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A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): [Click here to enter a date.](#)

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CELRL-RDN, I65 US 50 to SR 58 widening, Bartholomew and Jackson Counties, Indiana, LRL-2017-54

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Indiana County/parish/borough: Bartholomew and Jackson Counties City: Columbus
Center coordinates of site (lat/long in degree decimal format): Lat. 39.078849°, Long. -85.929758°
Universal Transverse Mercator: 592572.72 Easting, 4326070.84 Northing, Zone 16S
Name of nearest waterbody: East Fork White Creek, Mutton Creek, Thompson Slough, East Fork White River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: East Fork White River
Name of watershed or Hydrologic Unit Code (HUC): 05120206 (Upper East Fork White)

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
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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: 9,204 linear feet, 3 feet average width (total 0.589 acre). Includes S-1, S-1A, S-4, S-9, S-12, S-13, S-14, S-19, S-20, S-21, S-23A, S-25, S-27, S-29, S-32, S-33, S-34, S-35, S-37, S-38, S-39, S-40, S-41, S-45, S-46, S-48, S-49, S-52, S-53;
Wetlands: 9.717 acres. Includes W-2, W-4, W-5, W-34, W-40, W-41, W-47, W-48, W-49, W-50, W-59, W-77, W-85, and W-88.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM 1987 delineation manual with Midwest Supplement
Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

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.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

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”: *Click here to enter text.***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: 811 square miles

Drainage area: 518,721 acres

Average annual rainfall: 45 inches

Average annual snowfall: 11 inches

(ii) Physical Characteristics:**(a) Relationship with TNW:**

- Tributary flows directly into TNW.
 Tributary flows through 1-3 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 30 (or more) 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:

Identify flow route to TNW⁵: Non-RPWs flow to RPWs, which flow to the either the East Fork of White Creek, Mutton Creek, Thompson Slough or East Fork of White River (perennial streams) which flow to the East Fork of the White River (designated as TNW downstream).

Tributary stream order, if known:

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

- Tributary is:** Natural
 Artificial (man-made). Explain: *Click here to enter text.*
 Manipulated (man-altered). Explain: the unnamed tributaries have been impacted by the construction of I65, many have been relocated to run parallel to the road and some are crossed by the road in culverts. There is some wooded habitat along the road and streams.

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 properties with respect to top of bank (estimate):

Average width: 1.5-5 feet

Average depth: 3-10 inches

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:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: relatively stable with little erosion noted.

Presence of run/riffle/pool complexes. Explain: no riffle/run complexes noted.

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): negligible within review area.

(c) Flow:

Tributary provides for: Ephemeral Flow

Estimate average number of flow events in review area/year: 11-20

Describe flow regime: ephemeral, flows during storm events

Other information on duration and volume: flows during storm events

Surface flow is: Discrete and Confined Characteristics:

Subsurface flow: Unknown Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- Bed and banks
 OHWM⁶ (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 type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input checked="" type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input checked="" type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
- Discontinuous OHWM.⁷ 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; |
| <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): Click here to enter text. | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: The tributaries contained no flowing water but exhibited moist beds. The streams drain an interstate and its right-of-way, fields, and woodlands. Little erosion was observed.

Identify specific pollutants, if known:

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.

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

- Riparian corridor. Characteristics (type, average width): most streams have minimal riparian cover or only open field riparian zones.
- Wetland fringe. Characteristics:
- Habitat for:
- Federally Listed species. Explain findings: Indiana bat and northern long-eared bat summer roosting habitat
- Fish/spawn areas. Explain findings:
- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings: the tributaries and surrounding riparian corridor provide an array of suitable habitat for feeding and shelter for many species of birds, reptiles, invertebrates, and mammals.

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: 9.717 acres

Wetland type. Explain: there are 10 emergent, 2 scrub-shrub, and 2 forested wetlands adjacent to non-RPWs in the project area, connected via roadside ditches.

Wetland quality. Explain: All of the wetlands are located in close proximity to an interstate highway and are considered to be poor quality.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent Flow Explain: The wetlands would flow to the tributaries on an intermittent basis during wetter times of the growing season.

Surface flow is: Discrete

Characteristics: The wetlands are connected to unnamed tributaries through roadside ditches.

Subsurface flow: Unknown Explain findings:

 Dye (or other) test performed:**(c) Wetland Adjacency Determination with Non-TNW:** Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Wetlands are present adjacent to roadside ditches along I-65. Ecological connection. Explain: Separated by berm/barrier. Explain:**(d) Proximity (Relationship) to TNW**

Project wetlands are 30 (or more) river miles from TNW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 50 - 100-year floodplain. Not in 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: wetlands receive drainage from roadway embankments, fields, and woodlands. The water observed in the wetlands was generally clear.

Identify specific pollutants, if known:

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

- Riparian buffer. Characteristics (type, average width): The wetlands are generally present between the roadway embankment and sparsely wooded edges of fields, wooded buffers, where present, are under 50 feet wide.
- Vegetation type/percent cover. Explain:
- Habitat for:
- Federally Listed species. Explain findings: Indiana bat and Northern long-eared bat
- Fish/spawn areas. Explain findings:
- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings: the wetlands and surrounding areas provide an array of suitable habitat for feeding and shelter for many species of birds, reptiles, invertebrates, and mammals.

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

All wetland(s) being considered in the cumulative analysis: 14

Approximately (9.717) 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> |
|------------------------------|------------------------|------------------------------|------------------------|
| No | 0.079 (W-2) | No | 0.510 (W-4) |
| No | 0.026 (W-5) | Yes | 0.092 (W-34) |
| No | 0.007 (W-40) | No | 0.842 (W-47) |
| No | 0.012 (W-48) | Yes | 7.128 (W-49) |
| No | 0.838 (W-50) | No | 0.025 (W-41) |
| No | 0.027 (W-77) | No | 0.065 (W-88) |
| No | 0.044 (W-59) | Yes | 0.022 (W-85) |

Summarize overall biological, chemical and physical functions being performed: flood buffering, water filtration, nutrient storage and transport, supporting biodiversity of plant species, and providing habitat for animal species.

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: The non-RPWs provide sediment and nutrient transport functions and the wetlands provide nutrient cycling and sediment filtration functions, enhancing the downstream RPW tributaries. The non-RPWs and adjacent wetlands have substantial or more than speculative effect and this effect is transferred to the RPWs and the TNW, thereby contributing to the physical, chemical, and biological integrity of the TNW. The non-RPWs and adjacent wetlands therefore have a significant nexus to the RPWs and TNW.
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: 9,204 linear feet 3 ft. average width.
 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: 9.717 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:

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:

⁸See Footnote # 3.

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

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.

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: BLN-produced water resource map
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. Data sheets for sample points 80 and 82
- Office concurs with data sheets/delineation report.
- Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas:
- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5’ Scale. Quads: Jonesville, Indiana
- USDA Natural Resources Conservation Service Soil Survey. Citation: SSURGO for Indiana, USDA, 2015
- National wetlands inventory map(s). Cite name: NWI Polygons by County in Indiana, USFWS, 2003
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: FIRM Floodplains and Flood Hazard Zones in Indiana, IDEM, 2016
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Indiana Map, 2013
- or Other (Name & Date): Ground-level photographs, August 16-24, 2016
- 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: The non-RPWs in the study area are headwater streams that drain to RPWs and eventually to a TNW, the East Fork of the White River. The adjacent wetlands provide filtration, habitat, and nutrient transport functions. Functions performed by the non-RPWs and adjacent wetlands have substantial or more than speculative effect and this effect is transferred to the physical, chemical, and biological integrity of the TNW. The non-RPWs and adjacent wetlands therefore have a significant nexus to the TNW.

Deborah Duda Snyder
Project Manager

Date

Greg A. McKay
Chief, North Branch

Date

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): [Click here to enter a date.](#)

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CELRL-RDN, I65 US 50 to SR 58 widening, Bartholomew and Jackson Counties, Indiana, LRL-2017-54

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Indiana County/parish/borough: Bartholomew County City: Columbus

Center coordinates of site (lat/long in degree decimal format): Lat. 39.078849°, Long. -85.929758°

Universal Transverse Mercator: 592572.72 Easting, 4326070.84 Northing, Zone 16S

Name of nearest waterbody: East Fork White Creek - Lower

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: East Fork White River

Name of watershed or Hydrologic Unit Code (HUC): 05120206 (Upper East Fork White)

- 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: April 27, 2017
- Field Determination. Date(s): October 22, 2016

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: [Click here to enter text.](#)

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: Seasonally flowing: 11,319 linear feet, 7 ft. average width (1.53 acres) including S-2, S-3, S-5, S-6, S-7, S-8, S-10, S-11, S-16, S-17, S-18, S-22, S-23, S-24, S-26, S-28, S-30, S-31, S-36, S-42, S-43, S-44, S-47, S-50, S-51; and perennially-flowing: 371 linear feet with 290 foot with (2.47 acres) S-15 (East Fork White River).

Wetlands: 5.05 acres. Includes wetlands W-7, W-15, W-17, W-21, W-22, W-23, W-25, W-26A, W-27, W-28A, W-29A, W-43, W-39, W-42, W-44, W-51, W-52, W-53, W-62, W-65, W-66, W-67, W-68, W-69, W-70, W-71, W-79, W-82 adjacent to or abutting seasonally flowing streams; wetlands W-35, W-36, W-37 adjacent to perennially-flowing stream

c. Limits (boundaries) of jurisdiction based on: Established by OHWM, 1987 delineation manual with Midwest Supplement
Elevation of established OHWM (if known):

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).

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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: [Click here to enter text.](#)

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: 811 square miles

Drainage area: 518,721 acres

Average annual rainfall: 45 inches

Average annual snowfall: 11 inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 1-2 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

Project waters are less than 1 river miles from RPW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

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

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵: Intermittent RPWs flow to the East Fork White River, East Fork of White Creek, Thompson Slough, or Mutton Creek, which flow to the East Fork of the White River (TNW downstream).

Tributary stream order, if known:

³ Supporting documentation is presented in Section III.F.

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.

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

- Tributary is:** Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: The streams have been relocated and run parallel to an interstate highway or are crossed by the highway. There is some wooded area around the highway.

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

Average width: 7 feet
Average depth: 12 inches
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:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: relatively stable with little erosion noted.
Presence of run/riffle/pool complexes. Explain: no riffle/run complexes noted.
Tributary geometry: Relatively Straight
Tributary gradient (approximate average slope): negligible within review area.

(c) Flow:

Tributary provides for: Seasonal Flow,
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: seasonal
Other information on duration and volume:

Surface flow is: Discrete and Confined Characteristics:

Subsurface flow: Unknown 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 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
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain:

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

- High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list): [Click here to enter text.](#)

(iii) Chemical Characteristics:

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.

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Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: At the time of the field inspections, all the streams contained flowing water that was generally clear and slow-flowing.

Identify specific pollutants, if known:

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

- Riparian corridor. Characteristics (type, average width): the north sides of S-16 and S-17, the west sides of S-24, S-26, and S-30 have large (>150 ft.) wooded riparian zones. The remaining streams have minimal riparian cover or only open field riparian zones.
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings: Indian bat, northern long-eared bat
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: provides habitat for aquatic species and water source for terrestrial species

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: 5.05 acres

Wetland type. Explain: there are a total of 31 wetlands consisting 19 emergent, 4 scrub-shrub, and 8 forested wetlands, that are abutting or adjacent to RPWs in the project area:

Wetland quality. Explain: all the wetlands are located in close proximity to an interstate highway and are considered to be poor quality.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent Flow Explain: the wetlands would flow to the tributaries on an intermittent basis during wetter times of the growing season.

Surface flow is:

Characteristics:

Subsurface flow: Unknown Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: The wetlands flow through roadside ditches to the RPWs.

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 30 (or more) river miles from TNW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 50 - 100-year floodplain. W-35, W-36, and W-37 in 100 year floodplain of East Fork White River (S-15)

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Wetlands receive drainage from roadway embankments, fields, and woodlands. The water observed in the wetlands was generally clear.

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: the wetlands are generally fully covered in herbaceous vegetation, including a variety of grasses, sedges, and forbs.

Habitat for:

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- Federally Listed species. Explain findings: Indiana bat, northern long-eared bat
- Fish/spawn areas. Explain findings:
- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings: Habitat for terrestrial and some aquatic species.

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

All wetland(s) being considered in the cumulative analysis: 30 (or more)
 Approximately 5.05 acre 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> |
|------------------------------|------------------------|------------------------------|------------------------|
| Yes | W-7: 0.18 | Yes | W-15: 0.32 |
| Yes | W-17: 0.21 | Yes | W-22: 0.05 |
| Yes | W-23: 0.01 | Yes | W-28A: 0.05 |
| Yes | W-29A: 0.05 | No | W-21: 0.02 |
| No | W-25: 0.06 | No | W-26A: 0.03 |
| No | W-27: 0.11 | No | W-35: 0.09 |
| No | W-36: 0.41 | No | W-37: 0.014 |
| No | W-39: 0.027 | No | W-42: 0.024 |
| Yes | W-43: 0.05 | Yes | W-44: 0.047 |
| Yes | W-51: 1.078 | Yes | W-52: 1.042 |
| Yes | W-53: 0.516 | Yes | W-62: 0.151 |
| Yes | W-65: 0.289 | Yes | W-66: 0.225 |
| Yes | W-67: 0.081 | Yes | W-68: 0.551 |
| Yes | W-69: 0.031 | Yes | W-70: 0.178 |
| No | W-71: 0.060 | Yes | W-79: 0.08 |
| Yes | W-82: 0.017 | | |

Summarize overall biological, chemical and physical functions being performed: flood buffering, water filtration, nutrient storage and transport, supporting biodiversity of plant species, and providing habitat for animal species.

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: The wetlands provide nutrient cycling and sediment filtration functions. The wetlands have substantial or more than speculative effect

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and this effect is transferred to the RPWs and the TNW, thereby contributing to the physical, chemical, and biological integrity of the TNW. The wetlands therefore have a significant nexus to the RPWs and TNW.

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: East Fork White River is a perennially flowing river that is a TNW downstream and has a mapped 100 year floodplain..
- 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: The streams all exhibited bed and bank and OHWM. Free-flowing water was observed in all streams.

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

- Tributary waters 11, 690 linear feet (11,319 linear feet of UNTs, 371 linear feet of West Fork White River)
- 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: Wetland areas were field-identified at locations directly abutting the RPWs. Specifically, W-7 abuts S-2; W-15 abuts S-5; W-17 abuts S-6; W-22 and W-23 abut S-7; W-28A and W-29A abut S-8; W-30 abuts S-10; W-43 and W-44 abut S-22; W-52 and W-53 abut S-24; W-62 abuts S-36, W-65 and W-67 abut S-42; W-66 and W-68 abut S-43; and W-69 and W-70 abut S-44; W-79 abuts S-47; and W-82 abuts S-50

Provide acreage estimates for jurisdictional wetlands in the review area: 5.05 acres total, 4.2 acres abutting.

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: 5.05 acres total, 0.85 acre adjacent but not directly abutting.

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.

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- 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: BLN-produced water resource map
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:

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.

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- 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: 7.5' Scale. Quads: Jonesville, Indiana
- USDA Natural Resources Conservation Service Soil Survey. Citation: SSURGO for Indiana, USDA, 2015
- National wetlands inventory map(s). Cite name: NWI Polygons by County in Indiana, USFWS, 2003
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: FIRM Floodplains and Flood Hazard Zones in Indiana, IDEM, 2016
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Indiana Map, 2013
- or Other (Name & Date): Ground-level photographs, August 16-24, 2016
- 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: The RPWs identified in the field investigation drain to either East Fork White Creek Mutton Creek, Thompson Slough, or East Fork White River, USGS blue-line streams. Wetlands W-7, W-15, W-17, W-22, W-23, W-28A, W-29A, W-30, W-43, W-44, W-52, W-53, W-62, W65, W-66, W-67, W-68, W-69, W-70, W-79, and W-82 directly abut the RPWs; wetlands W-21, W-25, W-26A, W-27, W-35, W-36, W-27, W-39, W-42, W-59, and W-71 are adjacent to the RPWs. The wetlands provide filtration, habitat, and nutrient transport functions that would serve to benefit the RPWs to the East Fork of White Creek. The RPWs, abutting wetlands, and adjacent wetlands are therefore jurisdictional as Waters of the U.S.

Deborah Duda Snyder
Project Manager

Date

Greg A. McKay
Chief, North Branch

Date