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): 24 January 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2010-00764, Wetland A1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:Texas County/parish/borough: Brazoria City: Surfside
Center coordinates of site (lat/long in degree decimal format): Lat. 28.9578° **N**, Long. -95.2797° **W**.
Universal Transverse Mercator: NAD 83, Zone 15N: 277,829mE, 3,205,279mN
Name of nearest waterbody: Oyster Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Oyster Creek
Name of watershed or Hydrologic Unit Code (HUC): 12040205, Austin-Oyster. Texas.

- ☒ 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: 7 September 2010
- ☒ Field Determination. Date(s): 2 September 2010

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

- ☐ Waters subject to the ebb and flow of the tide.
- ☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☐ TNWs, including territorial seas
   - ☒ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: linear feet: width (ft) and/or acres.
   Wetlands: 1 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
   Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   - ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: .

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[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.

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: **Oyster Creek**.

Summarize rationale supporting determination: Oyster Creek is subject to the ebb and flow of the daily tide and is listed on the Galveston District Navigable Waters List. Oyster Creek is a navigable water of the United States.

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent":
Wetland A1 is bordering Oyster Creek, which is a Traditional Navigable Water subject to the ebb and flow of the daily tide.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. **Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.**

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

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

Identify flow route to TNW[5]: .
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank
☐ changes in the character of soil
☐ shelving
☐ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ the presence of litter and debris
☐ destruction of terrestrial vegetation
☐ the presence of wrack line
☐ sediment sorting
☐ scour
☐ multiple observed or predicted flow events
☐ abrupt change in plant community
☐ 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:
☐ 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: .

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[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.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

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

☐ Riparian corridor. Characteristics (type, average width): .
☐ Wetland fringe. Characteristics: .
☐ Habitat for:
  ☐ Federally Listed species. Explain findings: .
  ☐ Fish/spawn areas. Explain findings: .
  ☐ Other environmentally-sensitive species. Explain findings: .
  ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
  Wetland size: acres
  Wetland type. Explain: .
  Wetland quality. Explain: .
Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain: .

Surface flow is**: Pick List**
  Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
  ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
  ☐ Discrete wetland hydrologic connection. Explain: .
  ☐ Ecological connection. Explain: .
  ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .
Identify specific pollutants, if known: .

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

☐ Riparian buffer. Characteristics (type, average width): .
☐ Vegetation type/percent cover. Explain: .
☐ Habitat for:
  ☐ Federally Listed species. Explain findings: .
  ☐ Fish/spawn areas. Explain findings: .
  ☐ Other environmentally-sensitive species. Explain findings: .
  ☐ Aquatic/wildlife diversity. Explain findings: .

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

All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☐ TNWs: linear feet width (ft), Or, acres.
   ☒ Wetlands adjacent to TNWs: 1 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-RPWs[8] 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 jurisidictional. 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: .

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[8] See 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.*

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: .
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☐ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
☒ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☒ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:1:24,000, Freeport, Texas.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Brazoria County, Texas.
☒ National wetlands inventory map(s). Cite name:Freeport, Texas.
☐ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps: Panel 48039C0675 I, published 5/4/92.
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☐ Photographs: ☒ Aerial (Name & Date): 1995 CIR, 2010 CIR.
or ☐ Other (Name & Date): .
☐ 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: Wetland A1 meets the 3 criteria for a wetland set forth in the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region. Wetland A1 is bordering and contiguous with Oyster Creek. Oyster Creek is a Traditional Navigable Water subject to the daily tide. Therefore, Wetland 1 is adjacent to Oyster Creek and is jurisdictional under Section 404 of the Clean Water Act.

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): 27 January 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2010-00764, Intertidal Ponds

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:Texas County/parish/borough: Brazoria City: Surfside
Center coordinates of site (lat/long in degree decimal format): Lat. 28.9585° **N**, Long. -95.2818° **W**.
Universal Transverse Mercator: NAD 83, Zone 15N: 277,629 mE, 3,205,522 mN
Name of nearest waterbody: Oyster Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Oyster Creek
Name of watershed or Hydrologic Unit Code (HUC): 12040205, Austin-Oyster. Texas.

- ☒ 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: 7 September 2010
- ☒ Field Determination. Date(s): 2 September 2010

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

- ☒ Waters subject to the ebb and flow of the tide.
- ☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☒ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: linear feet: width (ft) and/or 1 acres.
   Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
   Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   - ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: .

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[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.

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: **Oyster Creek**.

Summarize rationale supporting determination: The intertidal pond complex is subject to the ebb and flow of the daily tide and is a navigable water of the United States. The intertidal pond complex is also contiguous with Oyster Creek. Oyster Creek is subject to the ebb and flow of the daily tide and is listed on the Galveston District Navigable Waters List. Oyster Creek is a navigable water of the United States.

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 waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

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

Identify flow route to TNW[5]: .
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank
☐ changes in the character of soil
☐ shelving
☐ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ the presence of litter and debris
☐ destruction of terrestrial vegetation
☐ the presence of wrack line
☐ sediment sorting
☐ scour
☐ multiple observed or predicted flow events
☐ abrupt change in plant community
☐ 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:
☐ 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: .

---

[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.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

Identify specific pollutants, if known: .

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

☐ Riparian corridor. Characteristics (type, average width): .
☐ Wetland fringe. Characteristics: .
☐ Habitat for:
  ☐ Federally Listed species. Explain findings: .
  ☐ Fish/spawn areas. Explain findings: .
  ☐ Other environmentally-sensitive species. Explain findings: .
  ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
  Wetland size: acres
  Wetland type. Explain: .
  Wetland quality. Explain: .
Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain: .

Surface flow is**: Pick List**
  Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
  ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
  ☐ Discrete wetland hydrologic connection. Explain: .
  ☐ Ecological connection. Explain: .
  ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .
Identify specific pollutants, if known: .

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

☐ Riparian buffer. Characteristics (type, average width): .
☐ Vegetation type/percent cover. Explain: .
☐ Habitat for:
  ☐ Federally Listed species. Explain findings: .
  ☐ Fish/spawn areas. Explain findings: .
  ☐ Other environmentally-sensitive species. Explain findings: .
  ☐ Aquatic/wildlife diversity. Explain findings: .

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

All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☒ TNWs: linear feet width (ft), Or, 1 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-RPWs[8] 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 jurisidictional. 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: .

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[8] See 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.*

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: .
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☐ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
☒ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☒ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:1:24,000, Freeport, Texas.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Brazoria County, Texas.
☒ National wetlands inventory map(s). Cite name:Freeport, Texas.
☐ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps: Panel 48039C0675 I, published 5/4/92.
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☐ Photographs: ☒ Aerial (Name & Date): 1995 CIR, 2010 CIR.
or ☐ Other (Name & Date): .
☐ 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 intertidal pond complex associated with this jurisdictional determination is subject to the ebb and flow of the daily tide and is a navigable water of the United States. The intertidal pond complex is contiguous with Oyster Creek wich is a TNW subject to the ebb and flow of the daily tide. Therefore the intertidal pond complex is subject to both Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. .

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): 3 February 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2007-01814, Galveston Bay Aquaculture

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Texas County/Parish: Galveston City: Galveston
Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 29.30405° N, Long. -94.827609° W;
Universal Transverse Mercator: UTM: 15, 3243058 N., 322498 E.,NAD: 83
Name of nearest water body: Galveston Bay
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Galveston Bay
Name of watershed or Hydrologic Unit Code (HUC): 12040204
☒ 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: 3 February 2011
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** *"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: **Galveston Bay at this location is navigable, listed on the Galveston District's Navigable Waters list, and is traversed by commercial and recreational fisherman.**

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[*Required*]**

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   ☒ TNWs, including territorial seas
   ☐ Wetlands adjacent to TNWs
   ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   ☐ Non-RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   ☐ Impoundments of jurisdictional waters
   ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: linear feet: width (ft) and/or **9.5** acres
   Wetlands: acres

   c. **Limits (boundaries) of jurisdiction** based on: **Established by mean (average) high waters.**
   Elevation of established OHWM (if known):

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

[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.

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: Galverston Bay

Summarize rationale supporting determination: **Galveston Bay at this location is navigable, listed on the Galveston District's Navigable Waters list, and is traversed by commercial and recreational fisherman.**

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, fill out Section III.D.2 and 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 water body[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body 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: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]:

[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:

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

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain:
- ☐ Manipulated (man-altered). Explain:

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

Average width: feet
Average depth: feet
Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):

- ☐ Silts
- ☐ Sands
- ☐ Concrete
- ☐ Cobbles
- ☐ Gravel
- ☐ Muck
- ☐ Bedrock
- ☐ Vegetation. Type/% cover:
- ☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:
Surface flow is: **Pick List**. Characteristics:
Subsurface flow: **Pick List**. Explain findings:
- ☐ Dye (or other) test performed:

Tributary has (check all that apply):

- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):
  - ☐ clear, natural line impressed on the bank
  - ☐ changes in the character of soil
  - ☐ shelving
  - ☐ vegetation matted down, bent, or absent
  - ☐ leaf litter disturbed or washed away
  - ☐ sediment deposition
  - ☐ water staining
  - ☐ other (list):
  - ☐ the presence of litter and debris
  - ☐ destruction of terrestrial vegetation
  - ☐ the presence of wrack line
  - ☐ sediment sorting
  - ☐ scour
  - ☐ multiple observed or predicted flow events
  - ☐ abrupt change in plant community
- ☐ 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:
  - ☐ 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:

[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body'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.
[7] Ibid.

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

☐ Riparian corridor. Characteristics (type, average width):
☐ Wetland fringe. Characteristics:
☐ Habitat for:
  ☐ Federally Listed species. Explain findings:
  ☐ Fish/spawn areas. Explain findings:
  ☐ Other environmentally-sensitive species. Explain findings:
  ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: acres
Wetland type. Explain:
Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain:

Surface flow is**: Pick List**
Characteristics:

Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
  ☐ Discrete wetland hydrologic connection. Explain:
  ☐ Ecological connection. Explain:
  ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

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

☐ Riparian buffer. Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
☐ Habitat for:
  ☐ Federally Listed species. Explain findings:
  ☐ Fish/spawn areas. Explain findings:
  ☐ Other environmentally-sensitive species. Explain findings:
  ☐ Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☒ TNWs: linear feet width (ft), Or, **9.5**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-RPWs[8] that flow directly or indirectly into TNWs.

☐ Water body 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 jurisidictional. 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:

---

[8] See 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.*

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: **Nasir Kureshy**
☐ 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: **1:24,000; Galveston, TX**
☐ USGS NHD data
☒ USGS 8 and 12 digit HUC maps
☒ Galveston District's Approved List of Navigable Waters
☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24,000; Galveston, TX**
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☐ National wetlands inventory map(s). Cite name:
☐ State/Local wetland inventory map(s):
☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): **Google Earth, February 16, 2010**
or ☐ Other (Name & Date):
☐ 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: Galveston Bay at this location is navigable, listed on the Galveston District's Navigable Waters list, and is traversed by commercial and recreational fisherman.

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): 02/10/2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2010-00955,

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Texas County/Parish: San Jacinto City: Coldspring
Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 30.66080° N, Long. -95.12151° W;
Universal Transverse Mercator: UTM: Z15, 3393930 N., 296731 E.,NAD: 83
Name of nearest water body: Lake Livingston
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lake Livingston
Name of watershed or Hydrologic Unit Code (HUC): 12030202
- ☒ 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: 02/10/2011
- ☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** *"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: **This waterbody is listed on the USACE Galveston District Navigable Waters within the Galveston District Regulatory Boundaries table as being subject to Section 10 of the Rivers and Harbors Act of 1899.**

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Pick List** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[*Required*]**

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☒ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: **35** linear feet: **10** width (ft) and/or acres
   Wetlands: acres

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
   Elevation of established OHWM (if known): **6'**

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:

[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.

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: Lake Livingston

Summarize rationale supporting determination: **Lake Livingston is listed on the Galveston District Navigable Waters List.**

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, fill out Section III.D.2 and 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 water body[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body 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: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]:
Tributary stream order, if known:

[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.

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

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain:
- ☐ Manipulated (man-altered). Explain:

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

Average width: feet
Average depth: feet
Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):

- ☐ Silts
- ☐ Sands
- ☐ Concrete
- ☐ Cobbles
- ☐ Gravel
- ☐ Muck
- ☐ Bedrock
- ☐ Vegetation. Type/% cover:
- ☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:
Surface flow is: **Pick List.** Characteristics:
Subsurface flow: **Pick List**. Explain findings:
- ☐ Dye (or other) test performed:

Tributary has (check all that apply):

- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):
  - ☐ clear, natural line impressed on the bank
  - ☐ changes in the character of soil
  - ☐ shelving
  - ☐ vegetation matted down, bent, or absent
  - ☐ leaf litter disturbed or washed away
  - ☐ sediment deposition
  - ☐ water staining
  - ☐ other (list):
  - ☐ the presence of litter and debris
  - ☐ destruction of terrestrial vegetation
  - ☐ the presence of wrack line
  - ☐ sediment sorting
  - ☐ scour
  - ☐ multiple observed or predicted flow events
  - ☐ abrupt change in plant community
- ☐ 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:
  - ☐ 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:

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body'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.
[7]Ibid.

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

☐ Riparian corridor. Characteristics (type, average width):
☐ Wetland fringe. Characteristics:
☐ Habitat for:
  ☐ Federally Listed species. Explain findings:
  ☐ Fish/spawn areas. Explain findings:
  ☐ Other environmentally-sensitive species. Explain findings:
  ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: acres
Wetland type. Explain:
Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain:

Surface flow is**: Pick List**
Characteristics:

Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
  ☐ Discrete wetland hydrologic connection. Explain:
  ☐ Ecological connection. Explain:
  ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

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

☐ Riparian buffer. Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
☐ Habitat for:
  ☐ Federally Listed species. Explain findings:
  ☐ Fish/spawn areas. Explain findings:
  ☐ Other environmentally-sensitive species. Explain findings:
  ☐ Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☒ TNWs: **35** linear feet**10** 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-RPWs[8] that flow directly or indirectly into TNWs.

☐ Water body 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 jurisidictional. 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:

---

[8] See 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.*

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:
☐ 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: **12030202**
☐ USGS NHD data
☒ USGS 8 and 12 digit HUC maps
☒ Galveston District's Approved List of Navigable Waters
☒ U.S. Geological Survey map(s). Cite scale & quad name: **Blanchard, Texas**
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☐ National wetlands inventory map(s). Cite name:
☐ State/Local wetland inventory map(s):
☒ FEMA/FIRM maps: **48407C0175C**
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): **Google Earth**
or ☐ Other (Name & Date):
☐ 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:

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): 18 JAN 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2011-00019, EOG Resources

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: TX County/Parish: Karnes City: Falls City
Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 28.953° N, Long. 98.078° W;
Universal Transverse Mercator: UTM: Zone 14, 3,203,128 N., 589,830 E.,NAD: 83
Name of nearest water body: San Antonio River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: San Antonio River
Name of watershed or Hydrologic Unit Code (HUC): 12100303, Lower San Antonio, Texas
☒ 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: 18 Jan 2011
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** "*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: **The project site crosses the San Antonio River, a federally listed navigable body of water.**

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[*Required*]**

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   ☒ TNWs, including territorial seas
   ☐ Wetlands adjacent to TNWs
   ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   ☐ Non-RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   ☐ Impoundments of jurisdictional waters
   ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: linear feet: width (ft) and/or **1** acres
   Wetlands: **0** acres

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
   Elevation of established OHWM (if known):

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain:

[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.

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: San Antonio River

Summarize rationale supporting determination: **The project site crosses the San Antonio River, a federally listed navigable body of water.**

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, fill out Section III.D.2 and 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 water body[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body 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: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]:

[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:

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

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain:
- ☐ Manipulated (man-altered). Explain:

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

Average width: feet
Average depth: feet
Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):

- ☐ Silts
- ☐ Sands
- ☐ Concrete
- ☐ Cobbles
- ☐ Gravel
- ☐ Muck
- ☐ Bedrock
- ☐ Vegetation. Type/% cover:
- ☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:
Surface flow is: **Pick List**. Characteristics:
Subsurface flow: **Pick List**. Explain findings:
- ☐ Dye (or other) test performed:

Tributary has (check all that apply):

- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):
  - ☐ clear, natural line impressed on the bank
  - ☐ changes in the character of soil
  - ☐ shelving
  - ☐ vegetation matted down, bent, or absent
  - ☐ leaf litter disturbed or washed away
  - ☐ sediment deposition
  - ☐ water staining
  - ☐ other (list):
  - ☐ the presence of litter and debris
  - ☐ destruction of terrestrial vegetation
  - ☐ the presence of wrack line
  - ☐ sediment sorting
  - ☐ scour
  - ☐ multiple observed or predicted flow events
  - ☐ abrupt change in plant community
- ☐ 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:
  - ☐ 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:

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body'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.
[7]Ibid.

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

☐ Riparian corridor. Characteristics (type, average width):
☐ Wetland fringe. Characteristics:
☐ Habitat for:
  ☐ Federally Listed species. Explain findings:
  ☐ Fish/spawn areas. Explain findings:
  ☐ Other environmentally-sensitive species. Explain findings:
  ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
  Wetland size: acres
  Wetland type. Explain:
  Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain:

Surface flow is**: Pick List**
  Characteristics:

Subsurface flow: **Pick List**. Explain findings:
  ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
  ☐ Discrete wetland hydrologic connection. Explain:
  ☐ Ecological connection. Explain:
  ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

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

☐ Riparian buffer. Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
☐ Habitat for:
  ☐ Federally Listed species. Explain findings:
  ☐ Fish/spawn areas. Explain findings:
  ☐ Other environmentally-sensitive species. Explain findings:
  ☐ Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☒ TNWs: linear feet width (ft), Or, **1**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-RPWs[8] that flow directly or indirectly into TNWs.

☐ Water body 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 jurisidictional. 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:

---

[8] See 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.*

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:
☐ 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
☒ Galveston District's Approved List of Navigable Waters
☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24,000; FALLS CITY, Texas**
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☒ National wetlands inventory map(s). Cite name: **FALLS CITY, Texas**
☐ State/Local wetland inventory map(s):
☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): **Texas OrthoImagery Program, 2009**
or ☐ Other (Name & Date):
☐ 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 project site crosses the San Antonio River, a federally listed navigable body of water.

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): 7 February 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2011-00025 Harvey Smith Boathouse and Pier

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Texas County/Parish: Galveston City: Bacliff

Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 29.51331° N, Long. -94.98217° W;

Universal Transverse Mercator: UTM: 15, 3266495 N., 307878 E.,NAD: 83

Name of nearest water body: Galveston Bay

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

Name of watershed or Hydrologic Unit Code (HUC): 12040204

- ☒ 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: 7 February 2011
- ☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** "*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: Galveston Bay is on the Galveston District's list of Navigable waters. It is subject to the ebb and flow of the tide and supports commerical and interstate commerce and therefore is subject to section 10 of the Rivers and Harbors Act.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[*Required*]**

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☒ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

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

   Non-wetland waters: linear feet: width (ft) and/or 0.06 acres
   Wetlands: acres

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

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:

[3] Supporting documentation is presented in Section III.F.

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: **Galveston Bay**

Summarize rationale supporting determination: Galveston Bay is on the Galveston District's list of Navigable waters. It is subject to the ebb and flow of the tide and supports commerical and interstate commerce and therefore is subject to section 10 of the Rivers and Harbors Act.

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, fill out Section III.D.2 and 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 water body[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body 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: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

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

Identify flow route to TNW[5]:
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:
Surface flow is: **Pick List**. Characteristics:
Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank
☐ changes in the character of soil
☐ shelving
☐ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ the presence of litter and debris
☐ destruction of terrestrial vegetation
☐ the presence of wrack line
☐ sediment sorting
☐ scour
☐ multiple observed or predicted flow events
☐ abrupt change in plant community
☐ 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:
☐ 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:

[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.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body'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.
[7] Ibid.

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

- ☐ Riparian corridor. Characteristics (type, average width):
- ☐ Wetland fringe. Characteristics:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is**: Pick List**

Characteristics:

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

- ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain:
  - ☐ Ecological connection. Explain:
  - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

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

- ☐ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **Pick List**

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

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☒ TNWs: linear feet width (ft), Or, 0.06 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-RPWs[8] that flow directly or indirectly into TNWs.

☐ Water body 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 jurisidictional. 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:

---

[8] See 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.*

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: Sam Hoover (agent)
☐ 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: ORM
☐ USGS NHD data
☒ USGS 8 and 12 digit HUC maps
☒ Galveston District's Approved List of Navigable Waters
☒ U.S. Geological Survey map(s). Cite scale & quad name: 1.0 in : 0.5 mile - Bacliff, Texas
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☒ National wetlands inventory map(s). Cite name: Bacliff, Texas
☐ State/Local wetland inventory map(s):
☒ FEMA/FIRM maps: 485470 0035 C May 2, 1983
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date):
or ☐ Other (Name & Date):
☐ 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:

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):

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, SWG-2011-00071

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Texas County/parish/borough: DeWitt City: Hochheim
Center coordinates of site (lat/long in degree decimal format): Lat. 29.2661° **N**, Long. -97.3323° **W**.
Universal Transverse Mercator: 14; 662000, 3238500
Name of nearest waterbody: Guadalupe River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Guadalupe River
Name of watershed or Hydrologic Unit Code (HUC): 12100204

- ☒ 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: 27 January 2011
- ☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** "*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: This river is considered to be navigable by the Galveston District Engineer up to River Mile 176, which is near Gonzales, Texas.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☒ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: linear feet: width (ft) and/or acres.
   Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
   Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   - ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: .

[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.

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: **Guadalupe River**.

Summarize rationale supporting determination: This river is considered to be navigable by the Galveston District Engineer up to River Mile 176, which is near Gonzales, Texas.

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 waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: .

[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: .

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

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain: .
- ☐ Manipulated (man-altered). Explain: .

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

Average width: feet
Average depth: feet
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):

- ☐ Silts
- ☐ Sands
- ☐ Concrete
- ☐ Cobbles
- ☐ Gravel
- ☐ Muck
- ☐ Bedrock
- ☐ Vegetation. Type/% cover:
- ☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
- ☐ Dye (or other) test performed: .

Tributary has (check all that apply):
- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):
  - ☐ clear, natural line impressed on the bank
  - ☐ changes in the character of soil
  - ☐ shelving
  - ☐ vegetation matted down, bent, or absent
  - ☐ leaf litter disturbed or washed away
  - ☐ sediment deposition
  - ☐ water staining
  - ☐ other (list):
  - ☐ the presence of litter and debris
  - ☐ destruction of terrestrial vegetation
  - ☐ the presence of wrack line
  - ☐ sediment sorting
  - ☐ scour
  - ☐ multiple observed or predicted flow events
  - ☐ abrupt change in plant community
- ☐ 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:
  - ☐ 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: .

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

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

☐ Riparian corridor. Characteristics (type, average width): .
☐ Wetland fringe. Characteristics: .
☐ Habitat for:
  ☐ Federally Listed species. Explain findings: .
  ☐ Fish/spawn areas. Explain findings: .
  ☐ Other environmentally-sensitive species. Explain findings: .
  ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
  Wetland size: acres
  Wetland type. Explain: .
  Wetland quality. Explain: .
Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain: .

Surface flow is**: Pick List**
  Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
  ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
  ☐ Discrete wetland hydrologic connection. Explain: .
  ☐ Ecological connection. Explain: .
  ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .
Identify specific pollutants, if known: .

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

☐ Riparian buffer. Characteristics (type, average width): .
☐ Vegetation type/percent cover. Explain: .
☐ Habitat for:
  ☐ Federally Listed species. Explain findings: .
  ☐ Fish/spawn areas. Explain findings: .
  ☐ Other environmentally-sensitive species. Explain findings: .
  ☐ Aquatic/wildlife diversity. Explain findings: .

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

All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs[8] 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 jurisidictional. 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: .

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[8] See 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.*

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: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24000; , Texas.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): NAIP 2010.
or ☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: This river is considered to be navigable by the Galveston District Engineer up to River Mile 176, which is near Gonzales, Texas.

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): 7 February 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2011-00073

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Texas County/Parish: Montgomery City: Montgomery

Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 30.42377° N, Long. -95.60938° W;

Universal Transverse Mercator: UTM: 15, 3368635 N., 249365 E.,NAD: 83

Name of nearest water body: Lake Conroe

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: San Jacinto River

Name of watershed or Hydrologic Unit Code (HUC): 12040101

- ☒ 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: 7 February 2011
- ☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. **[*Required*]**

- ☐ Waters subject to the ebb and flow of the tide.
- ☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[*Required*]**

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☒ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☒ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: linear feet: width (ft) and/or 0.07 acres
   Wetlands: acres

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
   Elevation of established OHWM (if known): 201' msl

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

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[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: **Lake Conroe**

Summarize rationale supporting determination: Lake Conroe is an impoundment of the San Jacinto River. The San Jacinto River is on the Galveston District's List of Navigable Waters.

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, fill out Section III.D.2 and 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 water body[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body 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: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

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

Identify flow route to TNW[5]:
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:
Surface flow is: **Pick List**. Characteristics:
Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank
☐ changes in the character of soil
☐ shelving
☐ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ the presence of litter and debris
☐ destruction of terrestrial vegetation
☐ the presence of wrack line
☐ sediment sorting
☐ scour
☐ multiple observed or predicted flow events
☐ abrupt change in plant community
☐ 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:
☐ 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:

[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.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body'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.
[7] Ibid.

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

- ☐ Riparian corridor. Characteristics (type, average width):
- ☐ Wetland fringe. Characteristics:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is**: Pick List**

Characteristics:

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

- ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain:
  - ☐ Ecological connection. Explain:
  - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

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

- ☐ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **Pick List**

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

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☒ TNWs: linear feet width (ft), Or, 0.07 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-RPWs[8] that flow directly or indirectly into TNWs.

☐ Water body 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 jurisidictional. 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:

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[8] See 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.*

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: Roy Van den Heuvel - Brand R. Constuction, 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: ORM
☐ USGS NHD data
☒ USGS 8 and 12 digit HUC maps
☐ Galveston District's Approved List of Navigable Waters
☒ U.S. Geological Survey map(s). Cite scale & quad name: 1 in : 0.5 mile - Shepard Hill, Texas
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☒ National wetlands inventory map(s). Cite name: Shepard Hill, Texas
☐ State/Local wetland inventory map(s):
☒ FEMA/FIRM maps: 48339C0215 F December 19, 1996
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date):
or ☐ Other (Name & Date):
☐ 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:

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): 2/8/2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2011-00089-IBWC #172 Structure

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Texas County/Parish: Hidalgo City: Mercedes

Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 26.1195° N, Long. 97.8894° W;

Universal Transverse Mercator: UTM: 14, 2889392 N., 6110378 E.,NAD: 83

Name of nearest water body: Arroyo Colorado

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

Name of watershed or Hydrologic Unit Code (HUC): 12110208

- ☒ 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: 2/8/2011
- ☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. **[*Required*]**

- ☐ Waters subject to the ebb and flow of the tide.
- ☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[*Required*]**

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☐ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: 6,000 linear feet: width (ft) and/or acres
   Wetlands: 4.0 acres

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual.**
   Elevation of established OHWM (if known): greater of OWWM or upper wetlands boundary

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

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[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":

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, fill out Section III.D.2 and 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 water body[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body 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: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]:
Tributary stream order, if known:

[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.

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

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain:
- ☐ Manipulated (man-altered). Explain:

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

Average width: feet
Average depth: feet
Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):

- ☐ Silts
- ☐ Sands
- ☐ Concrete
- ☐ Cobbles
- ☐ Gravel
- ☐ Muck
- ☐ Bedrock
- ☐ Vegetation. Type/% cover:
- ☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:
Surface flow is: **Pick List.** Characteristics:
Subsurface flow: **Pick List**. Explain findings:
- ☐ Dye (or other) test performed:

Tributary has (check all that apply):

- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):
  - ☐ clear, natural line impressed on the bank
  - ☐ changes in the character of soil
  - ☐ shelving
  - ☐ vegetation matted down, bent, or absent
  - ☐ leaf litter disturbed or washed away
  - ☐ sediment deposition
  - ☐ water staining
  - ☐ other (list):
  - ☐ the presence of litter and debris
  - ☐ destruction of terrestrial vegetation
  - ☐ the presence of wrack line
  - ☐ sediment sorting
  - ☐ scour
  - ☐ multiple observed or predicted flow events
  - ☐ abrupt change in plant community
- ☐ 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:
  - ☐ 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:

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body'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.
[7]Ibid.

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

☐ Riparian corridor. Characteristics (type, average width):
☐ Wetland fringe. Characteristics:
☐ Habitat for:
  ☐ Federally Listed species. Explain findings:
  ☐ Fish/spawn areas. Explain findings:
  ☐ Other environmentally-sensitive species. Explain findings:
  ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
  Wetland size: acres
  Wetland type. Explain:
  Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain:

Surface flow is**: Pick List**
  Characteristics:

Subsurface flow: **Pick List**. Explain findings:
  ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
  ☐ Discrete wetland hydrologic connection. Explain:
  ☐ Ecological connection. Explain:
  ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

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

☐ Riparian buffer. Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
☐ Habitat for:
  ☐ Federally Listed species. Explain findings:
  ☐ Fish/spawn areas. Explain findings:
  ☐ Other environmentally-sensitive species. Explain findings:
  ☐ Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☐ TNWs: linear feet width (ft), Or, acres.
   ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: The USGS Quadrangle for Progresso, Texas, depicts this as rectified tributary that flows and outfalls into the Arroyo Colorado approximately 1,500 feet downstream. Most years of aerial photography depicts the presence of water and an incised channel and therefore connincing evidence that this a RPW, with a direct hydrologic connection to the Arroyo Colorado. The Arroyo Colorado is an RPW in Hidalgo County, however, as it flow east, the

Arroyo becomes a recognized TNW by the USACE Galveston District and flows into the Gulf of Mexico.

☐ 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: **6,000** linear feet width (ft)

☐ Other non-wetland waters: acres

Identify type(s) of waters:

3. Non-RPWs[8] that flow directly or indirectly into TNWs.

☐ Water body 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: **Wetlands are located in a riparan position on this rectified tributary with not visible hydrologic barriers.**

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 jurisidictional. 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]

---

[8] See 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.*

☐ 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: map & plans
☐ 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
☒ Galveston District's Approved List of Navigable Waters
☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 Progresso, Texas
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Hidalgo County, 1925 & 1981
☒ National wetlands inventory map(s). Cite name: 1:24,000 Progresso, Texas 2000
☐ State/Local wetland inventory map(s):
☐ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): NAIP 2010, Bing Live Maps, and Google Earth Imagery
or ☐ Other (Name & Date):
☒ Previous determination(s). File no. and date of response letter: SWG-2010-00333; 25 May 2010
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: This feature is depicted as a rectified trbutary on the USGS Quad maps for Progresso, Texas. The NWI maps from 2000, depict the project site as a PEM1C; however, aerial photography and historic USDA maps indicate otherwise that this tributary is a rectified permanent or seasonal natural water feature. The project site stream has a direct hydrologic connection to the Arroyo Colorado, an RPW that is a RPW in Hidalgo county; however, further east the Arroyo Colorado is recognized by the USACE Galveston district as a TNW the connects to the Gulf of Mexico. Due to the naturally meandering shape and historical data pertaining to the proposed project stream, and its direct hydrologic connection with an RPW that flows directly to a TNW, the USACE determined the site jurisdictional, including any of its adjacent wetlands; therefore, excavated materials discharged into this water feature would be jurisdictional.

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): 9 February 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2011-00108 Jimmy Utsey Boathouse and Pier

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Texas County/Parish: Galveston City: San Leon

Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 29.49942° N, Long. -94.92805° W;

Universal Transverse Mercator: UTM: 15, 3264867 N., 313099 E.,NAD: 83

Name of nearest water body: Galveston Bay

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

Name of watershed or Hydrologic Unit Code (HUC): 12040204

- ☒ 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: 9 February 2011
- ☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** "*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: Galveston Bay is on the Galveston District's list of Navigable waters. It is subject to the ebb and flow of the tide and supports commerical and interstate commerce and therefore is subject to section 10 of the Rivers and Harbors Act.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[*Required*]**

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☒ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

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

   Non-wetland waters: linear feet: width (ft) and/or 0.03 acres
   Wetlands: acres

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

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:

[3] Supporting documentation is presented in Section III.F.

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: **Galveston Bay**

Summarize rationale supporting determination: Galveston Bay is on the Galveston District's list of Navigable waters. It is subject to the ebb and flow of the tide and supports commerical and interstate commerce and therefore is subject to section 10 of the Rivers and Harbors Act.

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, fill out Section III.D.2 and 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 water body[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body 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: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

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

Identify flow route to TNW[5]:
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:
Surface flow is: **Pick List**. Characteristics:
Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank
☐ changes in the character of soil
☐ shelving
☐ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ the presence of litter and debris
☐ destruction of terrestrial vegetation
☐ the presence of wrack line
☐ sediment sorting
☐ scour
☐ multiple observed or predicted flow events
☐ abrupt change in plant community
☐ 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:
☐ 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:

[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.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body'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.
[7] Ibid.

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

- ☐ Riparian corridor. Characteristics (type, average width):
- ☐ Wetland fringe. Characteristics:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is**: Pick List**

Characteristics:

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

- ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain:
  - ☐ Ecological connection. Explain:
  - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

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

- ☐ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **Pick List**

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

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☒ TNWs: linear feet width (ft), Or, 0.03acres.
   ☐ 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-RPWs[8] that flow directly or indirectly into TNWs.

☐ Water body 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 jurisidictional. 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:

---

[8] See 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.*

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: Jimmy Utsey (applicant)
☐ 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: ORM
☐ USGS NHD data
☒ USGS 8 and 12 digit HUC maps
☒ Galveston District's Approved List of Navigable Waters
☒ U.S. Geological Survey map(s). Cite scale & quad name: 1.0 in : 0.5 mile - Texas City, Texas
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☒ National wetlands inventory map(s). Cite name: Texas City, Texas
☐ State/Local wetland inventory map(s):
☒ FEMA/FIRM maps: 485470 0105 C May 2, 1983
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date):
or ☐ Other (Name & Date):
☐ 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: