**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): November 12, 2015**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, Marmaton Watershed Joint District # 102, NWK-2014-00061-I-5-2**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:** Unnamed tributary to Hinton Creek (NRPW) in the E 1/2 of the SE 1/4 of Section 30, Township 26 South, Range 22 East.

State: Kansas County/parish/borough: Bourbon City:
Center coordinates of site (lat/long in degree decimal format): Lat. 37.75072° **N**, Long. -95.03673° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Unnamed tributary to Hinton Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Osage River
Name of watershed or Hydrologic Unit Code (HUC): Marmaton 10290104

- ☒ 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: November 12, 2015
- ☒ Field Determination. Date(s): April 2, 2015

## SECTION II: SUMMARY OF FINDINGS

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

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

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

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☐ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent 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: 315 linear feet: 4 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: .

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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: .

Summarize rationale supporting determination: .

**2. Wetland adjacent to TNW**
Summarize rationale supporting conclusion that wetland is "adjacent": .

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

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

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

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

**If the 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: 27 **acres**
Drainage area: 27 **acres**
Average annual rainfall: 44 inches
Average annual snowfall: approximately 15 inches

**(ii) Physical Characteristics:**
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **5** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **30 (or more)** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: The unnamed tributary (ephemeral NRPW) flows into another unnamed tributary to Hinton Creek (seasonal RPW). The unnamed tributary to Hinton Creek then flows into Hinton Creek (Perennial RPW). Hinton

[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.

Creek flows (5.6 miles) into Paint Creek (Perennial RPW). Paint Creek flows (12 miles) into the Marmaton River (Perennial RPW). The Marmaton River flows (56.6 miles) into the Little Osage River (Perennial RPW). The Little Osage River then flows (12.9 miles) into the Osage River (TNW).
Tributary stream order, if known: 1st order.

(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: 4 feet
Average depth: 2 feet
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable.
Presence of run/riffle/pool complexes. Explain: No.
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): approximately 3 %

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: Although the stream has less than 30 acres of drainage, due to the high average rainfall in this portion of the state and the topographic gradient within the drainage area, it is estimated that the stream has greater than 20 flow events in an average year. Runoff potential is likely somewhat high within this drainage area due to the rather steep topographic relief. The stream had flowing water during the April 2, 2015 site visit even though the area received less than 0.25 inches of rain the previous day and less than 1" of rain the entire month preceeding the site visit. It is also probable that a direct connection with groundwater is present as the consultant noted during the site visit that springs/seeps likely contribute to the flows observed within the streams located within the proposed project area.
Other information on duration and volume: .

Surface flow is: **Confined.** Characteristics: .

Subsurface flow: **Unknown**. 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 | ☐ the presence of litter and debris |
| ☐ changes in the character of soil | ☒ destruction of terrestrial vegetation |
| ☐ shelving | ☐ the presence of wrack line |
| ☐ vegetation matted down, bent, or absent | ☐ sediment sorting |
| ☐ leaf litter disturbed or washed away | ☐ scour |
| ☐ sediment deposition | ☐ multiple observed or predicted flow events |
| ☐ water staining | ☐ abrupt change in plant community |
| ☐ other (list): | |

- ☐ Discontinuous OHWM.[7] Explain: .

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

| | |
|---|---|
| ☐ High Tide Line indicated by: | ☐ Mean High Water Mark indicated by: |
| ☐ oil or scum line along shore objects | ☐ survey to available datum; |
| ☐ fine shell or debris deposits (foreshore) | ☐ physical markings; |
| ☐ physical markings/characteristics | ☐ vegetation lines/changes in vegetation types. |

[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.

☐ tidal gauges
☐ other (list):

**(iii) Chemical Characteristics:**
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The tributary conveys and filters sediments, herbicides, pesticides, and other pollutants from the adjacent cultivated cropland and rangeland.
Identify specific pollutants, if known: .

**(iv) Biological Characteristics. Channel supports (check all that apply):**
☒ Riparian corridor. Characteristics (type, average width): The majority of the drainage area is heavily timbered. This corridor necks down to a width of approximately 140' for the 200' long segment of the stream that runs between the 2 small crop fields, otherwise the wooded riparian corridor exists along both sides of the stream to virtually the entire topographic limits of the drainage area.
☐ Wetland fringe. Characteristics: .
☒ Habitat for:
☒ Federally Listed species. Explain findings: The proposed project area contains habitat suitable for the federally threatened Northern Long-eared Bat. The U.S. Fish and Wildlife Service (FWS), in a letter dated April 20, 2015, recommends that the habitat and surrounding trees be saved wherever possible and that if trees must be cut in this area then further coordination with their office is requested to determine if surveys are warranted. The FWS also recommended that a qualified botanist inspect the proposed site in early June to determine if the federally threatened Mead's Milkweed plant or its suitable habitat is present on site. .
☐ Fish/spawn areas. Explain findings: .
☒ Other environmentally-sensitive species. Explain findings: Kansas Dept. of Wildlife, Parks, & Tourism (KDWPT) staff evaluated the immediately surrounding area for the presence of Broadhead Skink (Plestiodon laticeps) critical habitat. Within the riparian buffer of this stream there are a considerable number of mature oak trees, representing multiple species, which would provide habitat for the skink. KDWPT will require an action permit for impacts, inundating mature oak forest, to Broadhead Skink critical habitat..
☒ Aquatic/wildlife diversity. Explain findings: Numerous frogs were observed on-site including along the riparian corridor of this stream. Spring peepers were observed along this reach specifically..

**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: This unnamed 1st order non-RPW exhibits sinuosity and timber alignment. Taking into consideration the drainage area, average precipitation, topographic relief of the adjacent landscape, and the close proximity to the downstream perennial stream, this stream has a definite capacity to carry pollutants downstream into the TNW. This stream currently maintains a high quality riparian habitat that intercepts and filters pollutants. The tributary and its riparian area also provide in-stream habitat, food, and refuge for wildlife enhancing the biological integrity of the downstream TNW's. Additionally the stream exhibited flowing water and highly saturated soils the day of the site inspection, even though the area received less than 1" of rain throughout the entire month preceeding the site visit. With these factors in mind and due to the stream's quality riparian area, the Corps has concluded that the tributary provides water quality filtration to the TNW downstream that would likely otherwise convey increased levels of pollutants, organic carbons and other biotic or abiotic materials into the Osage River, approximately 90 miles downstream. It should also be noted that the Osage River has been placed on the 303(d) Impaired Waterbodies list by the Missouri Dept. of Natural Resources for excessive E. coli levels as well as for low levels of dissolved oxygen. The Missouri Dept. of Conservation (MDC) has documented that water

quality problems are common throughout the Osage River basin, noting specifically: "threats to base flows by future watershed developments (especially in Kansas which has plans for developing over 60% of the Marmaton River watershed)", "extensive impoundments and channelization in some subbasins", "inadequate riparian corridors", and "maintenance of already low base flows". MDC noted that cooperation with Kansas agencies to preserve the natural hydrograph, especially base flows of the Marmaton River, and the protection of wetlands and riparian corridors would be key elements in improving water quality conditions in the Osage River Basin. Additionally, in a letter dated April 17, 2015, MDC commented that a 2007 USGS study concludes that the continued construction of watershed impoundments along the Marmaton River would result in several additional no-flow days annually which "could exacerbate Missouri's problem of Low Dissolved Oxygen levels".Based on these factors and the current guidance and instruction on significant nexus, the Corps has determined that the subject non-RPW exhibits a significant nexus to TNW's and is a jurisdictional Water of the United States.

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: .

4. **Significant nexus findings for seasonal RPW and its adjacent wetlands, where the 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: .

**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: **315** linear feet **4**width (ft).
   ☐ Other non-wetland waters: acres.
   Identify type(s) of waters: **Riverine.**

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.

[8]See Footnote # 3.

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:** .

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: **See III.C.2..**
☐ 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).

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[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.***

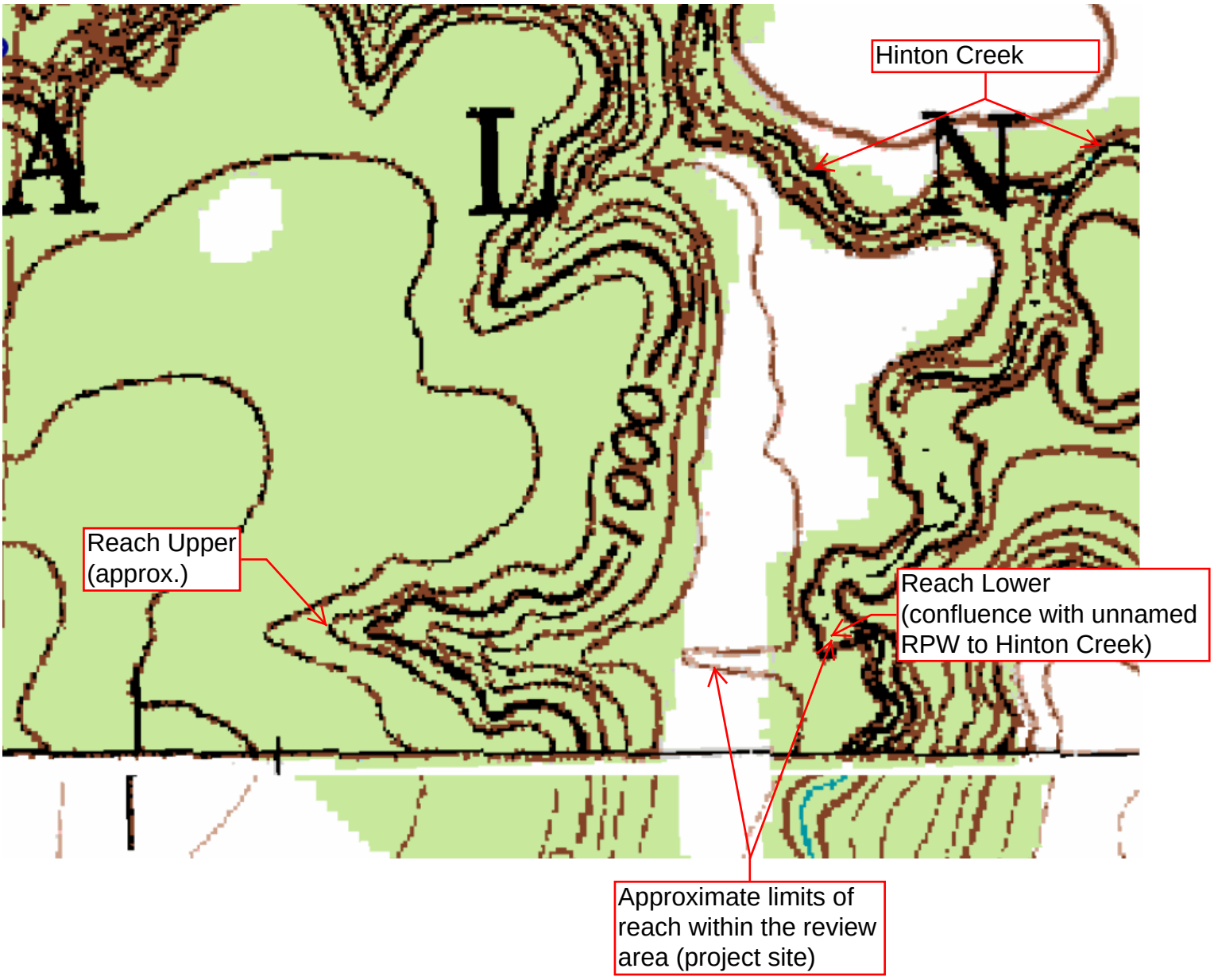
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

**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 MORAN SE.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name:MORAN SE quad.
☐ 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 - 1991, 2002, 2003, 2004, 2005, 2006, 2008, 2010, 2012, and 2013
Digital Globe - 2011, 2013, and 2014
USDA - 1957 and 1970
or ☒ Other (Name & Date):Digital Camera pics - 01 through 65 (this includes all photos of the I-5 site).
☒ Previous determination(s). File no. and date of response letter: NWK-2014-00061 (PJD dated April 2, 2015).
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☒ Other information (please specify): KGS data on registered wells in the vicinity of the project site indicate that static water levels consistently fall within the range of less than 10' deep to nearly 40' deep, indicating a shallow water table and higher propensity for interchange with streams.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** This reach supports quality riparian habitat.


Hinton Creek
Reach Upper
(approx.)
Reach Lower
(confluence with unnamed
RPW to Hinton Creek)
Approximate limits of
reach within the review
area (project site)