

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): December 13, 2007

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City - Martens, John - NWK-2007-2167

C. PROJECT LOCATION AND BACKGROUND INFORMATION: FARMED NON RPW

State: Kansas County/parish/borough: McPherson City: Inman

Center coordinates of site (lat/long in degree decimal format): Lat. 38.241899° **N**, Long. -97.810013° **W**.

Universal Transverse Mercator:

Name of nearest waterbody: **Blaze Fork**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Arkansas River (70+ miles downstream)

Name of watershed or Hydrologic Unit Code (HUC): **Little Arkansas**

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: **December 13, 2007**

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 no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

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

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

Wetlands: acres.

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

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: **A farmed, nonRPW is located within the project area. The system is a first order stream with 448 acres of drainage in a flat landscape. The relevant reach is 5,648 linear feet in length and the project reach is 1,231 linear feet in length. The drainage area consists mostly of well-drained to moderately well-drained soils with 0-1 percent slopes. This provides for insufficient flow frequency, duration and volume to have a more than insubstantial impact on the nearest TNW, 70+ miles downstream. Above the project area, a 2.19 acre open water impoundment, also non-jurisdictional, is located on the 1st Order stream. It is estimated that the impoundment may have approximately 0.18 acres of fringe wetlands that would be considered adjacent to the stream. These 0.18 acre wetlands, when reviewed with the nonRPW, provide insufficient functions and values to demonstrate any evidence of having more than an**

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.

insubstantial affect on the Arkansas River, which has 37,913 square miles of drainage above the review area and a total drainage basin of 195,000 square miles. As such, any ecological or chemical link between the farmed, 1st Order reach and the potential 0.18 acre wetlands, to the Arkansas River, would be purely speculative, minuscule and insubstantial. Therefore, by applying current guidance and instruction on significant nexus criteria, we are unable to demonstrate a significant nexus between these waters and TNWs.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: .

Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

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

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

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

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

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

(i) **General Area Conditions:**

Watershed size: 448 (entire 1st order reach) **acres**
Drainage area: 335 (above the project area) **acres**
Average annual rainfall: 26-28 inches
Average annual snowfall: 14.2-19.0 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 **2-5** river miles from RPW.
Project waters are **30 (or more)** aerial (straight) miles from TNW.
Project waters are **2-5** 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 TNW⁵: 1st Order nonRPW flows directly into a 2nd Order nonRPW, that flows into a 3rd Order nonRPW, that flows into Blaze Fork, a seasonal RPW, that flows into the Little Arkansas River, RPW, that flows over 50 miles into the Arkansas 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: Approximately 3/4 of the reach is farmed or vegetated, the remaining 1/4 is impounded or otherwise in an unnatural state.

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: Annual crops and potentially tame, cool season grass.
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Appears to be eroding due to continued farming of the drainage.

Presence of run/riffle/pool complexes. Explain: NONE.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): <1 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: Infrequent flows, only occurring during and shortly after a significant runoff event..

Other information on duration and volume: Duration and volume is dependent upon precipitation rates and ground saturation. Given the fact that the soils are well drained to moderately well drained and the topography is relatively flat, it would appear that flow, duration, and volume are insufficient to have a substantial ecological or chemical affect on TNWs or prevent normal farming practices from occurring within the ephemeral system.

Surface flow is: **Discrete and confined.** Characteristics: It appears that flow is located within a defined channel in some areas and completely farmed drainageways, in others.

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

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank 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: Aerial imagery indicates the potential for a discontinuous OHWM due to current land use (farming). No field investigation has been conducted.

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;

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.

⁷Ibid.

- physical markings/characteristics
- tidal gauges
- other (list):
- vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

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

Explain:

Identify specific pollutants, if known:

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

Riparian corridor. Characteristics (type, average width): 75% farmed. Very limited amount of permanent vegetative cover and woody corridor located within homestead locations.

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: (Potential, unconfirmed) 0.18 acres

Wetland type. Explain: wetland fringe along the perimeter of a 2.19 acre pond.

Wetland quality. Explain: Undetermined. The potential wetland area is located on adjacent lands, not owned by the applicant.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Dependent upon stream flow.

Surface flow is: **Discrete**

Characteristics: Fringe is dependent upon water level stability and climatic conditions.

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: The POTENTIAL fringe wetlands are connected hydrologically as they are a product of the stream being impounded by an earthen embankment.

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

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

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

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **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): Located within a small tract of grassland and woody vegetation. Vegetation composition is unknown.

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: **1**

Approximately (0.18) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
n	0.18		

Summarize overall biological, chemical and physical functions being performed: **This potential wetland was identified utilizing desktop investigation techniques (remote sensing); it appears that wetlands may only exist along a narrow band aligning an existing 2.19 acre farm pond. Functions that are being performed are undetermined due to the lack of a field investigation. However, it is likely that any fringe wetlands will provide, at minimum, some localized habitat or micro-habitat, aquatic and terrestrial foraging opportunities, and limited nutrient uptake. None of the functions are expected to have more than an insubstantial affect on downstream rivers, including the nearest TNW, 70+ miles downstream.**

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: **The stream in question is a farmed, ephemeral nonRPW. The system is a first order stream with 448 acres of drainage in a flat topographical setting. The relevant reach is 5,648 linear feet in length and the project reach is 1,231 linear feet in length. The drainage area consists mostly of well-drained to moderately well-drained soils with 0-1 percent slopes. This provides for insufficient flow frequency, duration and volume to have a more than insubstantial impact on the nearest TNW, 70+ miles downstream. Above the project area, a 2.19 acre open water impoundment, also non-jurisdictional, is located on the 1st Order stream. It is estimated that the impoundment may have approximately 0.18 acres of fringe wetlands that would be considered adjacent to the stream. These 0.18 acre wetlands, when reviewed with the nonRPW, provide insufficient functions and values to demonstrate any evidence of having more than an insubstantial affect on the Arkansas River, which has 37,913 square miles of drainage above the review area and a total drainage basin of 195,000 square miles. To put this in perspective, the tributary drainage area is 0.002% of the nearest TNW watershed, within the project review analysis (the TNW drains an additional 110,000 square miles below the project). As such, any ecological or chemical link between the farmed, 1st Order reach with the potential 0.18 acre**

wetlands, to the Arkansas River, seventy miles downstream, would be purely speculative and minuscule. Based on EPA/Corps joint guidance and instruction on significant nexus criteria, this tributary, the 2.19 acre farm pond and the potential 0.18 acre of adjacent, fringe wetlands, are not jurisdictional waters of the United States.

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

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

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

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

Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters:

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

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

Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

⁸See Footnote # 3.

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: **The 1st Order, ephemeral nonRPW, its impounded open water, and the potential 0.18 acre fringing wetlands, account for 0.002% of the Arkansas River watershed above 37.69082583 N / -97.34888720 W. In addition, the subject waters are located approximately 70 stream miles from the Arkansas River (TNW). In consideration of these circumstances and current guidance, the case for significant nexus is purely speculative.**
- 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): **1231** linear feet, width (ft).
- Lakes/ponds: 2.19 acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: (potential) 0.18 acres.

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

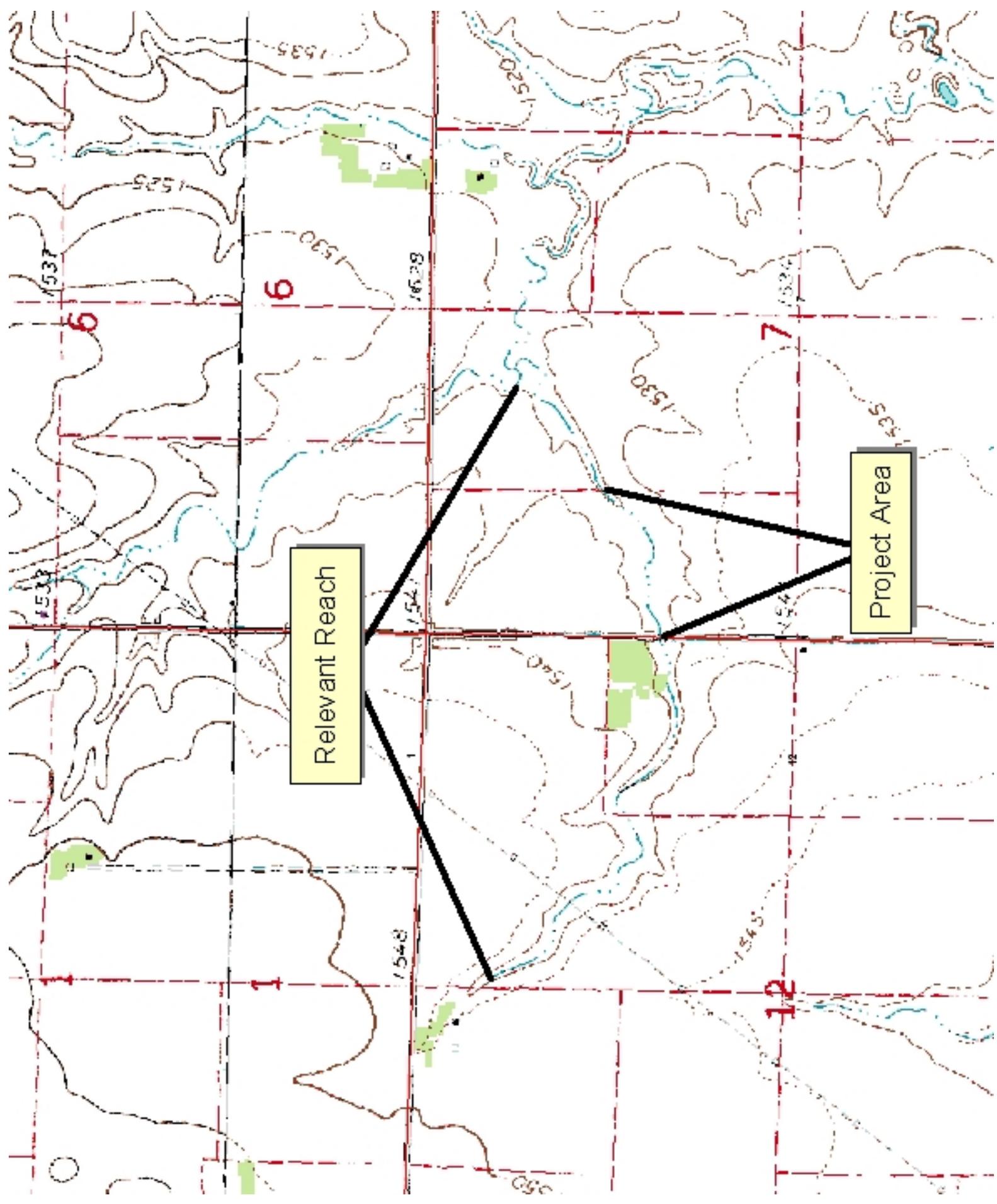
¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

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 KS 7.5 Minute Quad Map.
- 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 Geodetic 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): Kansas City District's October 2007 designation of the Arkansas River as a TNW.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Given the subject nonRPW's drainage area, relative to the TNW (0.002% at the Little Arkansas River confluence with the Arkansas River), its proximity to TNWs (estimated 70+ stream miles), and its ephemeral flow regime within a >75% cultivated basin, it is highly unlikely that the nonRPW, in combination with its 2.19 acre farm pond and potential 0.18 acre fringe wetlands, has more than a speculative and insubstantial affect on TNWs. The U.S. Army Corps of Engineers Jurisdictional Form Instructional Guidebook, prepared jointly by EPA and USACE, states that "a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or an insubstantial effect on the chemical, physical, and/or biological integrity of a TNW." All of the principle considerations of a significant nexus analysis are documented in this form and indicate that this individual nonRPW tributary, in combination with the 2.19 acre farm pond and its potential 0.18 acre fringe wetlands, cannot have more than an insubstantial and speculative affect on the nearest TNW. Therefore, based on current guidance and instruction on significant nexus criteria, we are unable to demonstrate a significant nexus between these waters and TNWs.

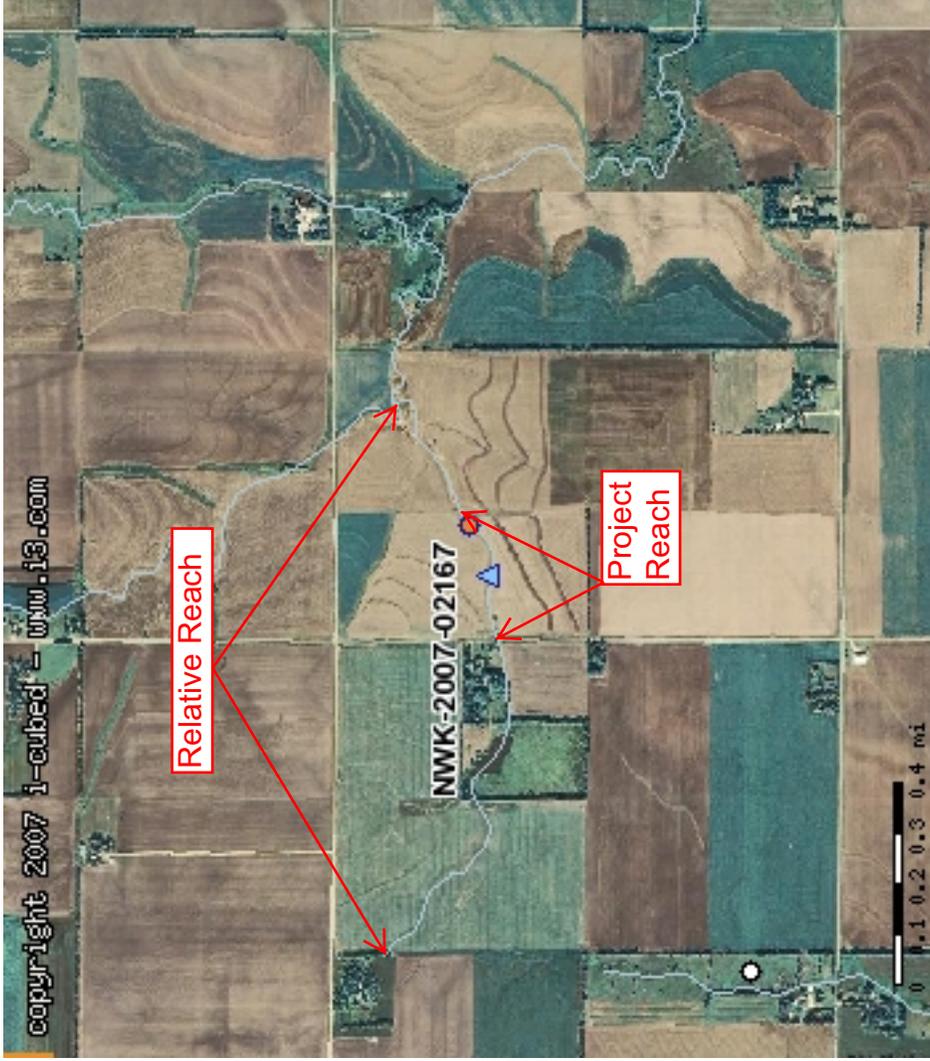


Relevant Reach

Project Area



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Image © 2007 TerraMetrics
Image © 2007 DigitalGlobe
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Tables — Drainage Class — Summary By Map Unit

Summary by Map Unit — McPherson County, Kansas

Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
2266	Tobin silt loam, occasionally flooded	Well drained	33.1	3.3%
3824	Crete silt loam, 0 to 1 percent slopes	Moderately well drained	381.4	38.3%
3825	Crete silt loam, 1 to 3 percent slopes	Moderately well drained	549.2	55.2%
3921	Smolan silty clay loam, 1 to 3 percent slopes	Well drained	31.8	3.2%
Totals for Area of Interest (AOI)			995.5	100.0%