APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 05-May-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Kansas City District, NWK-2008-00036-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	KS - Kansas
County/parish/borough:	Ottawa
City:	
Lat:	39.05649434
Long:	-97.59974061
Universal Transverse Mercator:	[ ]
Name of nearest waterbody:	Tributary to Sand Creek
Name of nearest Traditional Navigable Water (TNW):	Soloman River
Name of watershed or Hydrologic Unit Code (HUC):	Soloman - 10260015

☑ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☑ Office Determination Date: 05-May-2008

☑ Field Determination Date (s): ☐ 30-Jul-2007

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

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

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

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
08-36-1	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs
08-36-2	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

Area: 2430 (m²)
Linear: 431 (m)

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual.
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

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

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:

Watershed size:	1505 acres
Drainage area:	1371 acres
Average annual rainfall:	29 inches
Average annual snowfall:	16 inches

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

☐ Tributary flows directly into TNW.

☑ Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are 2-5 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project Waters are 2-5 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 (RPW) and abutting wetlands, flows 0.3 miles to Sand Creek (RPW), which then flows 4.0 miles to the Soloman River (TNW).

Tributary Stream Order, if known:

Order	Tributary Name
2	08-36-1

(b) General Tributary Characteristics:
Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
08-36-1	-	-	-	X	This natural channel has been farmed and/or straightened in past years. Most notably, it was reshaped and ditched in 1943.

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
08-36-1	15	3	2:1

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
08-36-1	X	X	-	-	X	-	-	X	-

Vegetation Explained:

Tributary Name	Percent Cover	Vegetation Explained
08-36-1	-	trees and hydrophytes

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
08-36-1	The channel appears stable, however it has been straightened in 1943 and is experiencing some in-channel debris build up.	-	Relatively straight	1.5

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
08-36-1	Seasonal flow	11-20	The system provides for intermittent seasonal flow. Flow events are supported by stormwater runoff and from groundwater influences during seasonally high water tables. The reach is seepy and influenced by groundwater.	Duration is likely to correlate with seasonal flow of groundwater and runoff producing precipitation events.

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
08-36-1	Confined	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
08-36-1	Yes	Subsurface flow is evident by the saturated conditions of the soil and hydrophytic vegetation that is supported within the relevant reach. No dye test is necessary to determine grounwater movement.	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM[7]	Explain
08-36-1	X	X	-	-

Tributaries with OHWM[6] - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted\Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
08-36-1	X	X	X	X	X	X	X	X	X	X	X	X	-	X	X	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

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

Tributary Name	Explain	Identify specific pollutants, if known
08-36-1	During the July 30, 2007 site investigation, flowing water was observed and appeared clear, despite recent disturbance in the area.	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
08-36-1	X	A narrow band of riparian timber alignment. Cropland covers most of the reach watershed.	X	Wetland fringes and in-channel wetlands have been identified by NRCS throughout the reach.	X

Habitat for: (as indicated above)

Tributary Name	Habitat	Federally Listed Species	Explain Findings	Fish\Spawn Areas	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic\Wildlife Diversity	Explain Findings
08-36-1	X	-	-	-	-	-	-	X	Riverine wetland systems provide habitat functions for both aquatic and terrestrial species. These habitats enhance biodiversity in the mixed grass prairie biome of central Kansas.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
08-36-2	.6	In stream and fringe wetlands.	The site has been straightened, however, the riverine wetlands provide habitat and ecological functions.	-

(b) General Flow Relationship with Non-TNW:
Flow is:

Wetland Name	Flow	Explain
08-36-2	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
08-36-2	Discrete and confined	Seasonal intermittent flow primarily influenced by high water table/groundwater movement. Within channel features and channel fringes provide for discrete and confined flow situations.

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
08-36-2	Yes	No dye test warranted, the reach experiences groundwater influences and hydrophytic vegetation is apparent.	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
08-36-2	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
08-36-2	2-5	2-5	Wetland to navigable waters	-

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

Wetland Name	Explain	Identify specific pollutants, if known
08-36-2	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
08-36-2	X	Narrow band of timber alignment with a balance of cropland.	X	Hydrophytic vegetation is represented across all stratum.

Habitat for:

Wetland Name	Habitat	Federally Listed Species	Explain Findings	Spawn Area	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic\Wildlife Diversity	Explain Findings
08-36-2	X	-	-	-	-	-	-	X	Riverine wetland systems provide habitat functions for both aquatic and terrestrial species. These habitats enhance biodiversity in the mixed grass prairie biome of central Kansas.

3. Characteristics of all wetlands adjacent to the tributary (if any):
All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Findings for: 08-36-1, 08-36-2
This seasonal RPW and its abutting wetlands, with a relatively large drainage area (1371 acres), have the capacity to carry pollutants, floodwaters, organic carbon, and other biotic / abiotic material downstream to the Soloman River. This tributary to Sand Creek is less than 4.5 miles from the downstream TNW (Soloman River). This stream and its abutting wetlands also function in retarding the erosive power of flood waters, contributing to aquatic habitat through hydrologic connectivity to downstream relatively permanent waters, trophic strata, and refuge for wildlife, all of which enhance the biological integrity of the nearby TNWs. In conclusion, due to the stream's relatively large 2nd Order drainage area, biological and physical characteristics, close proximity to the TNW, and its seasonal flow regime, this stream has the capacity to have more than an insubstantial affect on TNWs.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
08-36-1	SEASONAL	The unnamed tributary to Sand Creek (RPW) and its abutting wetlands drain approximately 1371 acres in a moderate climate. This drainage area, combined with the moderate annual precipitation is conducive to seasonal flows based on runoff alone. In addition, this system is influenced by groundwater flow. The area contains wetland seeps that saturated the soil in the upper part and intercept the land surface. These subsurface influences also contribute to a relatively permanent flow regime.

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m²)
08-36-1	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	431.292	-
Total:		**431.292**	**0**

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

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

Wetland Name	Flow	Explain
08-36-2	SEASONAL	The NRCS identified wetlands consist of both, in-stream wetlands and connecting channel fringe wetlands. All wetlands are directly connected to the unnamed tributary which drains approximately 1,371 acres in a moderate climate. This drainage area, combined with the moderate annual precipitation is conducive to seasonal flows based on runoff alone. In addition, this system is influenced by groundwater flow. The area contains wetland seeps that saturate the soil in the upper part and intercept the land surface. These subsurface influences also contribute to a relatively permanent flow regime.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m²)
08-36-2	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	2428.1136
Total:		**0**	**2428.1136**

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

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]
Not Applicable.

Identify water body and summarize rationale supporting determination:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

☐ 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 soley 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):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--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	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
----Other	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Description
The subject waters consist of a RPW with abutting wetlands. Based upon current guidance and instruction on jurisdiction, these waters are jurisdictional water of the United States.

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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.

[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.

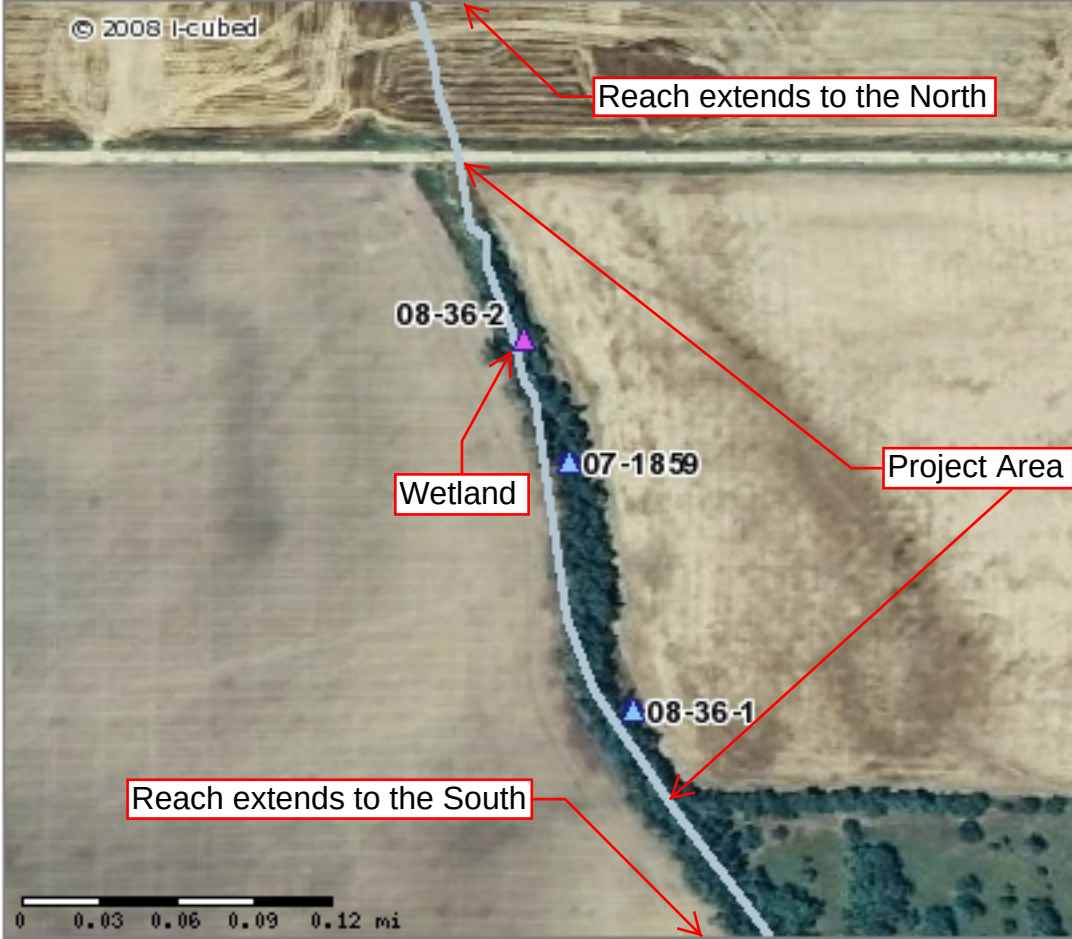
[6]-A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody¿s flow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

[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.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Reach extends to the North
08-36-2
07-1859
Wetland
Project Area
08-36-1
Reach extends to the South
0 0.03 0.06 0.09 0.12 mi