



**DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, TULSA DISTRICT
2488 EAST 81ST STREET
TULSA, OKLAHOMA 74137-4290**

October 28, 2021

Regulatory Office

Mr. Roger Willis
ECS Southwest, LLP
3033 Kellway Drive, Suite 110
Carrollton, TX 75006

Dear Mr. Willis:

This is in reference to your correspondence dated December 16, 2020, concerning a request for jurisdictional determination for the East Texas Logistics Facility. The review area is located at Latitude: 33.472214, Longitude: -94.347921, Bowie County, Texas. The area marked in red on the enclosed map denotes the limits of the property examined under this request. We have reviewed the submitted data relative to Section 404 of the Clean Water Act (CWA).

Due to the vacatur and remanding of the Navigable Water Protection Rule by the U.S. District Court for the District of Arizona on August 30, 2021, the Corps was directed on September 2, 2021, by the Acting Assistant Secretary of the Army for Civil Works to resume conducting AJD's nationwide, consistent with the pre-2015 waters of the U.S. (WOTUS) regulatory regime. The pre-2015 WOTUS regulatory regime is the 1986 WOTUS, as informed by the 2003 SWANCC and 2008 Rapanos Guidance documents. The Environmental Protection Agency has posted additional information on their webpage at: <https://www.epa.gov/wotus/current-implementation-waters-united-states>. Consequently, this AJD was evaluated using the pre-2015 WOTUS regulatory regime and guidance documents for the presence or absence of "waters of the United States" for this review area.

We have examined the property and concluded that it contains two jurisdictional tributaries depicted as blue lines on the enclosed map, as well as three jurisdictional wetlands depicted as green shapes. Panther Creek, its tributary (S-1), and the 3 forested wetlands have been determined jurisdictional WOTUS, subject to Section 404 of the CWA. Therefore, the placement of fill material or heavy mechanized land clearing within these depicted areas would require a Department of the Army (DA) authorization pursuant to Section 404 CWA prior to commencement of work.

The review area also contains a non-jurisdictional stream (S-2), as depicted on the enclosed map in yellow. Therefore, this stream is not subject to regulation pursuant to Section 404 of the CWA, and a DA permit would not be required within this non-jurisdictional feature.

The basis for this determination is that the unnamed stream flows into Panther Creek, which flows into Barkman Creek, then into McKinney Bayou, which flows into the Red River (TNW).

We believe this determination to be an accurate assessment of the presence of jurisdictional wetlands and other waters on the site which are subject to Section 404 of the CWA. This is a final determination of federal jurisdiction on the property pursuant to Section 404 of the CWA. This determination is valid for 5 years from the date of this letter unless new information warrants revision of the determination before the expiration date.

This determination has been conducted to identify the limits of the Corps CWA jurisdiction for the site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This final determination constitutes an approved JD subject to the optional Corps Administrative Appeal Process. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed is a copy of the Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Southwestern Division Office at the following address:

Mr. Jamie Hyslop
Appeals Review Officer
U.S. Army Corps of Engineers
1100 Commerce Street, Suite 831
Dallas, TX 75242-1731
Tel: 469-487-7061
Fax: 469-487-7199

In order for a RFA form to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit a RFA form, it must be received at the above address by December 26, 2021. It is not necessary to submit a RFA form to the Division Office if you do not object to the determination in this letter.

Your project has been assigned Identification Number SWT-2021-109. Please refer to this number during future correspondence. If further assistance is required, contact Mr. Bryan Noblitt at (918) 669-4904.

Sincerely,

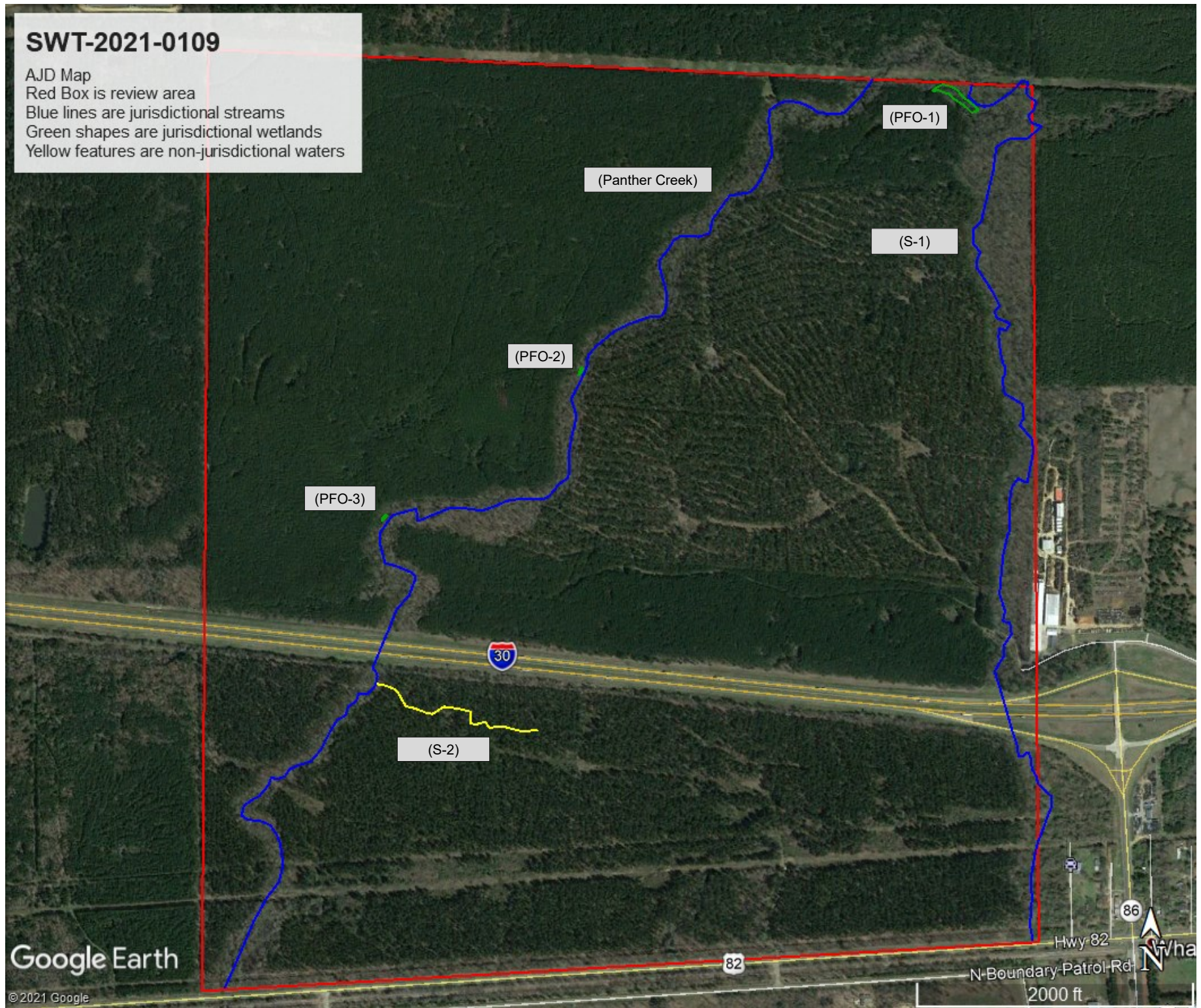
for

Andrew R. Commer
Chief, Regulatory Office

Enclosures

SWT-2021-0109

AJD Map
Red Box is review area
Blue lines are jurisdictional streams
Green shapes are jurisdictional wetlands
Yellow features are non-jurisdictional waters



Google Earth

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Hwy 82
N-Boundary Patrol Rd
2000 ft



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

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): October 28, 2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Tulsa District, ECS Southwest LLP Proposed East Texas Logistics Facility Bowie County TX, SWT-2021-109

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Texas County/parish/borough: Bowie County City: Click here to enter text.

Center coordinates of site (lat/long in degree decimal format): Lat. 33.472214397254 ° **N**,
Long. -94.3479205975621 ° **W**.

Universal Transverse Mercator: N/A

Name of nearest waterbody: Panther Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 11140106

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: September 15, 2021

Field Determination. Date(s): August 20, 2021.

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 and are not** "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: 33,466 linear feet: 8 width (ft) and/or acres.

Wetlands: 0.437 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: **The site contains an ephemeral stream (S-2) which is depicted on NWI maps as an unnamed tributary to**

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.

Panther Creek, however, this feature lacks sufficient functions/benefits to result in a significant nexus with the Red River (TNW). This feature is not depicted on the USGS Topographic map as a blue line feature.

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: 37005.16 acres

Drainage area: 15 acres

Average annual rainfall: 48 inches

Average annual snowfall: 1 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 3 tributaries before entering TNW.

Project waters are 20-25 river miles from TNW.

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

Project waters are 15-20 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: N/A.

Identify flow route to TNW⁵: This unnamed stream (Stream 2) flows into Panther Creek, which flows into Barkman Creek, then into McKinney Bayou, which flows into the Red River (TNW).

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: S-2 is a first order stream (headwater).

(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: 5 feet
Average depth: 1 feet
Average side slopes: **Vertical (1:1 or less).**

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: unknown.

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: **20 (or greater)**

Describe flow regime: Based on the limited drainage area (15 acres) and the stream not likely being influenced by groundwater, the stream has been determined to flow only in direct response to rain events (ephemeral).

Other information on duration and volume: Based on the stream bed being only approximately 1 foot deep, the water flow in this stream would likely be limited in volume and duration sufficient to transport sediment.

Surface flow is: **Confined**. Characteristics: S-2 has a defined bed and bank, which confines the surface flow within the channel of this feature.

Subsurface flow: **Unknown**. Explain findings: N/A.

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain:

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

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

(iii) **Chemical Characteristics:**

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

Explain: No visible water was observed during the agents site visit, the report states that S-2 was dry. I did not directly

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

⁷Ibid.

observe this water during my site visit due to time constraints, however, the agent's report provides a sufficient description.

Identify specific pollutants, if known: There are no expected pollutants associated with S-2.

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

- Riparian corridor. Characteristics (type, average width): Although S-2 is located within a forested upland area, the forest is a monoculture Pine forest for wood/pulp harvesting.
- Wetland fringe. Characteristics: None.
- 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: The review area contains 1 forested wetland (PFO-1) which is adjacent to an RPW (Panther Creek). This wetland is not depicted on the USGS Topographic map, but the NWI map does show this area as a wetland habitat. The agent's delineation resulted in this feature meeting the three criteria to be a forested wetland.

Wetland size: 0.41 acres

Wetland type. Explain: This is a forested wetland.

Wetland quality. Explain: This wetland is unaltered from silviculture activities, which represents the major land use within the review area. This wetland would be considered fully functioning providing several key functions within the drainage area.

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: **No Flow**. Explain: As an adjacent wetland, this feature would not likely exhibit a flow regime. This wetland is likely to be inundated during flooding of Panther Creek.

Surface flow is: **Discrete**

Characteristics: No evidence of flow was seen during the site visit.

Subsurface flow: **Unknown**. Explain findings: N/A.

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: This forested wetland is likely hydrologically connected to Panther Creek mainly due to flooding events where Panther Creek provides surface hydrology to this wetland.

Ecological connection. Explain: This wetland exhibited a depressional shape and was inundated during the site visit, small aquatic organisms were visible using the wetland for rearing, or permanent habitat.

Separated by berm/barrier. Explain: No barriers besides dry land.

(d) Proximity (Relationship) to TNW

Project wetlands are **20-25** river miles from TNW.

Project waters are **15-20** aerial (straight) miles from TNW.

Flow is from: **No Flow**.

Estimate approximate location of wetland as within the **2 - 5-year** 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: This wetland was inundated with water; the water was clear, and the bottom substrate was visible where no vegetation was present. The review area is comprised of pine tree silviculture activities outside of riparian buffers.

Identify specific pollutants, if known: No evidence of pollutants was observed or anticipated within the wetland.

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

Riparian buffer. Characteristics (type, average width): This forested wetland was part of the forested riparian buffer associated with Panther Creek.

Vegetation type/percent cover. Explain: .

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: Small fish were visible within the wetland during the site visit.

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: Aquatic organisms were present, including reptiles, amphibians, insects, and fish.

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

All wetland(s) being considered in the cumulative analysis: **3**

Approximately (0.437) 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>
(PFO-1) No	0.41		
(PFO-02) Yes	0.014		
(PFO-3) Yes	0.013		

Summarize overall biological, chemical and physical functions being performed: These 3 forested wetlands likely provide water quality benefits due to nutrient cycling, filtration, and reducing flood water energy associated with Panther Creek. The wetlands aid in water table recharge, as well as providing seasonal to annual aquatic habitat for aquatic species.

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Stream S-2 has been determined as an NRPW based on its estimated flow regime (ephemeral), as well as the likely limited volume of flow. Due to this stream being in a region of greater rain events per year, this stream may exhibit a higher frequency of flow events if it receives direct rain fall, this stream is not likely to be influenced by ground water based on its landscape setting within a planted pine forested. This stream may likely provide limited benefits to Panther Creek; however, it is unlikely that these functions/benefits equate to a more than speculative or insubstantial benefit to the Red River (TNW), which is over 25 river miles from this water. This stream has a very small drainage area of 15 acres confined entirely within the review area as well as within the silviculture area. This ephemeral stream may provide some reductions in peak flood flows going into Panther Creek; however, this is speculative in nature. This NRPW does not meet the SigNex standard set within the Rapanos Guidance document and is supported within the agent's delineation report as well as this form.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: The forested wetland (PFO-1) has been characterized and evaluated in the section above, and based on the overall biological, chemical, and physical functions and values that this wetland provides to Panther Creek and inevitably the Red River (TNW), this adjacent wetland exceeds the threshold of being speculative or insubstantial in its benefits to the TNW. This wetland likely receives flood water from Panther Creek on a routine basis during seasonal flooding periods, as well as a likely ground water influence due to the persistent inundation of this wetland. The functions described above include water quality benefits due to nutrient cycling and filtration for Panther Creek. The wetlands aid in water table recharge, as well as providing seasonal to annual aquatic habitat for aquatic species and reducing flood water energy for the receiving downstream waters.

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 Topographic map shows Panther Creek transitioning from intermittent to perennial within the review area. The agents report characterized Panther Creek by a defined bed and bank with riffles and runs. Based on my observations during the site visit, this stream had an intact floodplain, a mature riparian corridor, as well as observed flow. The drainage area associated with this water at the review area is approximately 1,500 acres. With consideration of the frequency and overall volume of rainfall in this region, this water has been determined to have continuous flow throughout most of the year based on the consideration of all the information presented/observed.

Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: The USGS Topographic map does not depict this tributary (Stream-1) as a blue line feature within the review area. However, based on site observations, the agents report characterized this unnamed tributary has a defined bed and bank with riffles and runs. This stream was incised up to 6 feet into underlying soil in parts of the southern portion, becoming shallower on the northern portion (downstream) with banks being 1 to 3 three feet deep, the report concluded that this stream would exhibit intermittent flow. Based on my observations during the site visit, this stream had a functioning floodplain, and extensive riparian corridor, as well as observed low flow. The drainage area associated with this water is approximately 625 acres. With consideration of the frequency and overall volume of rainfall in this region, this water has been determined to have continuous flow seasonally throughout most of the year based on the consideration of all the information presented/observed.

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

- Tributary waters: **(Panther Creek 21,594LF) ((S-1) 11,872LF)** linear feet **(Panther Creek 10ft) ((S-1) 5ft)** 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: Two wetlands (PFO-2) and (PFO-3) were identified within the agent’s report as being directly abutting Panther Creek. These 2 forested wetlands are located within secondary shelves associated with the ordinary high-water mark for Panther Creek. The report states that these wetlands had observed direct connections to Panther Creek.

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: **(PFO-2, 0.014) (PFO-3, 0.013)** 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: **(PFO-1, 0.41)** acres.

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

⁸See Footnote # 3.

- 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: **S-2 was determined to not meet the SigNex standard as characterized and evaluated in Section III B and C.**
- 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): (**S-2, 2504**) linear feet, **5** width (ft).
- Lakes/ponds: _____ acres.
- Other non-wetland waters: _____ acres. List type of aquatic resource: _____.
- Wetlands: _____ acres.

SECTION IV: DATA SOURCES.

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.

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: Agent's delineation report dated December 16, 2020.
- 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 data accessed September 27, 2021.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Hooks.
- USDA Natural Resources Conservation Service Soil Survey. Citation: ORM data accessed September 27, 2021.
- National wetlands inventory map(s). Cite name: ORM data accessed September 27, 2021.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: ORM data accessed September 27, 2021.
- 100-year Floodplain Elevation is: present/unknown (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth Pro, Dated 1995-2019.
or Other (Name & Date): Site visit photos dated August 20, 2021, as well as site photos from agent's report.
- 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 review area is approximately 880 acres and comprised of silviculture land used for Pine Tree production and is bisected by a major highway.