UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	Docket No. CWA-06-2012-2710
	§	
Paco Swain Realty, L.L.C.,	§	
a Louisiana Corporation,	§	
	§	Motion to Supplement
Respondent	§	Complainant's Prehearing Exchange

MOTION TO SUPPLEMENT COMPLAINANT'S PREHEARING EXCHANGE

COMES NOW COMPLAINANT, the Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6, by and through its attorney, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1–22.52, hereby moves the Administrative Law Judge to supplement Complainant's Prehearing Exchange filed on June 28, 2013. In support thereof, Complainant states the following:

A. Jurisdiction and Legal Authority

1. This is a proceeding to assess a Class II Civil Penalty under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). In accordance with 40 C.F.R. § 22.16, any party may seek relief from the Administrative Law Judge by motion.

2. By Prehearing Order dated April 19, 2013, the Administrative Law Judge ordered submission of Complainant's Prehearing Exchange. The Prehearing Order provided that any supplement to the Prehearing Exchange shall be accompanied by a motion to supplement the Prehearing Exchange explaining why the exhibit was not provided in the Prehearing Exchange.

B. Factual Background

3. On October 19, 2009, William Nethery, as part of his duties as a Senior Botanist with the United States Army Corps of Engineers ("Corps"), completed an "Approved Jurisdictional Determination Form" ("JD Form") for the property owned by Paco Swain Realty, L.L.C. ("Respondent") known as the Megan's Way subdivision ("subject property"). The JD Form was submitted as part of Complainant's Prehearing Exchange as Exhibit 11.

4. On September 3, 2013, Mr. Nethery discovered a clerical error on the JD Form regarding the acreage of the jurisdictional wetlands on the subject property. Specifically, Sections II.B.1.b. and III.D.6 provide an incorrect estimate of two acres of jurisdictional wetlands on the subject property. Both sections should include an estimate of eight acres of jurisdictional wetlands on the subject property. Additionally, Section III.B.3 incorrectly states that three wetlands are considered in the cumulative analysis and provides a chart listing the acreage of each wetland. Section III.B.3 should state that four wetlands were considered in the cumulative analysis and an additional wetland greater than six acres in size should be included on the chart.

5. As stated in the declaration of William Nethery (Attachment A), which is incorporated herein by reference, the incorrect acreage was the result of a clerical error. Initially, Mr. Nethery prepared two JD Forms, the second of which considered only the additional six acres of wetlands. Mr. Nethery later decided to combine the all wetlands on the subject property onto one JD Form. The data and analysis contained in Exhibit 11 is correct and accounts for all of the wetlands on the subject property; however, Mr. Nethery failed to add the additional acreage onto the three sections listed in Paragraph 4. This error does not affect the conclusions

of the JD Form, the Jurisdictional Determination (Exhibit 6 to Complainant's Prehearing Exchange) or the penalty calculation.

6. On September 3, 2013, Mr. Nethery prepared a corrected JD Form (Attachment B) addressing the errors in the three sections noted in Paragraph 4. The corrected JD Form is marked as "Complainant's Ex. 22, CWA-06-2012-2710" for inclusion into the record.

7. As the clerical error was not discovered and the revised JD Form was not prepared until September 3, 2013, Complainant could not provide the document in its original Prehearing Exchange.

8. Complainant contacted Respondent's counsel prior to filing this motion; however, as of the time of filing, Respondent's counsel had not responded to indicate whether Respondent objects to the relief requested in this motion.

C. Request for Relief

Pursuant to 40 C.F.R. § 22.16, Complainant hereby moves the Administrative Law Judge to enter an Order allowing Complainant to supplement its Prehearing Exchange with the revised JD Form referenced in Paragraph 6.

DATED this 4th day of September, 2013.

RESPECTFULLY SUBMITTED,

Tucker Henson
Assistant Regional Counsel (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Tel.: (214) 665-8148
Fax: (214) 665-3177

CERTIFICATE OF SERVICE

I certify that on the 4th day of September, 2013, the original of the foregoing MOTION TO SUPPLEMENT COMPLAINANT'S PREHEARING EXCHANGE was filed with the **Headquarters Hearing Clerk**, U.S. Environmental Protection Agency, Office of Administrative Law Judges, 1300 Pennsylvania Avenue, NW, Mail Code 1900R, Washington, DC 20460, and a true and correct copy was sent to the following on this 4th day of September, 2013, in the following manner:

VIA FIRST CLASS U.S. MAIL:

M. Lisa Buschmann, Administrative Law Judge
U.S. EPA, Office of Administrative Law Judges
1300 Pennsylvania Avenue, NW
Mail Code 1900R
Washington, DC 20460

Robert W. Morgan
Attorney at Law
212 North Range Avenue
Denham Springs, LA 70726

Tucker Henson

ATTACHMENT A

Declaration of William Nethery

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	Docket No. CWA-06-2012-2710
	§	
Paco Swain Realty, L.L.C.,	§	
a Louisiana Corporation,	§	
	§	Declaration of
Respondent	§	William Nethery

DECLARATION OF WILLIAM NETHERY

In support of its Motion to Supplement Complainant's Prehearing Exchange, the Complainant, the United States Environmental Protection Agency, Region 6 ("EPA"), hereby submits the following declaration of William Nethery, Senior Botanist, United States Army Corps of Engineers ("Corps").

I, William Nethery, make the following statement truthfully from personal knowledge and review of Corps documents in accordance with 28 U.S.C. § 1746:

1. I make this statement in my capacity as Senior Botanist employed in the Regulatory Branch, Surveillance and Enforcement Section of the Corps, New Orleans District.

2. I have been employed with the Corps from 2001 to the present. In my capacity as Senior Botanist, I regularly conduct jurisdictional determinations, which includes preparing Approved Jurisdictional Determination Forms ("JD Forms"). I prepared the JD Form included as Exhibit 11 in Complainant's Prehearing Exchange ("Exhibit 11") filed in the current enforcement action against Paco Swain Realty, L.L.C. ("Respondent").

3. The statements included herein are based upon a review of my notes, Corps' files and my recollection from inspections of the property owned by Respondent known as the

Megan's Way Subdivision in Walker, Louisiana, the activities upon which form the basis for this action

4. On September 3, 2013, I discovered a clerical error on Exhibit 11 regarding the acreage of the jurisdictional wetlands on the subject property. Specifically, Sections II.B.1.b. and III.D.6 provide an incorrect estimate of two acres of jurisdictional wetlands on the subject property. Both sections should include an estimate of eight acres of jurisdictional wetlands on the subject property. Additionally, Section III.B.3 incorrectly states that three wetlands are considered in the cumulative analysis and provides a chart listing the acreage of each wetland. Section III.B.3 should state that four wetlands were considered in the cumulative analysis and an additional wetland greater than six acres in size should be included on the chart.

5. The incorrect acreage was the result of a clerical error. Initially, I prepared two JD Forms, the second of which considered only the additional wetland greater approximately six acres in size. I later decided to combine the all wetlands on the subject property onto one JD Form. The data and analysis contained in Exhibit 11 is correct and accounts for the eight acres of wetlands on the subject property; however, I did not add the additional acreage onto the three sections listed in Paragraph 4. This error does not affect the conclusions of Exhibit 11 or the Jurisdictional Determination (Exhibit 6 to Complainant's Prehearing Exchange).

6. On September 3, 2013, I prepared a revised JD Form correcting the three sections noted in Paragraph 4. The revised JD form is included with this declaration and marked as "Complainant's Ex. 22, CWA-06-2012-2710."

Dated: 9-3-2013

William R. Nethery
William Nethery
U.S. Army Corps of Engineers

ATTACHMENT B

Complainant's Exhibit No. 22, CWA-06-2012-2710

Approved Jurisdictional Determination Form (corrected)

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 19, 2009

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:MVN 2007-04022-SQ Harrison-Swain

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:LA County/parish/borough: Livingston City:
Center coordinates of site (lat/long in degree decimal format): Lat. 30.54423° N, Long. 90.84398° W.
Universal Transverse Mercator:
Name of nearest waterbody: tributary of Dick Hill Branch/Middle Colyell Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Colyell Bay/Amite River
Name of watershed or Hydrologic Unit Code (HUC): 8070202
☒ 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:
☒ Field Determination. Date(s): 01/29/2009

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: 5000 linear feet: 5-8 width (ft) and/or acres.
   Wetlands: 8 acres.

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

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

Complainant's Ex. 22
CWA-06-2012-2710

[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: 1890 **square miles**
   Drainage area: 77 **acres**
   Average annual rainfall: 65+ inches
   Average annual snowfall: inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through **3** tributaries before entering TNW.

   Project waters are **10-15** river miles from TNW.
   Project waters are **1-2** river miles from RPW.
   Project waters are **10-15** 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: no.

   Identify flow route to TNW[5]: Wetland to unnamed tributary (non-RPW) to Dick Hill Branch (seasonal RPW) to Middle Colyell Creek to Colyell Creek to Colyell Bay/Amite River.

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

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: .

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

Tributary is:
- ☒ Natural
- ☐ Artificial (man-made). Explain: .
- ☒ Manipulated (man-altered). Explain: partly channelized during silviculture activities.

Tributary properties with respect to top of bank (estimate):
Average width: 5-8 feet
Average depth: 2-3 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: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: relatively stable.
Presence of run/riffle/pool complexes. Explain: no.
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): 1-2 %

(c) Flow:
Tributary provides for: **Intermittent but not seasonal flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: flow during and after rain events after soil saturation, trickling between rain events, overbank flooding and inundation during high water periods in Middle Colyell Creek.
Other information on duration and volume: development in area increased volume and decreased duration, channelized areas have increased volume downstream.

Surface flow is: **Discrete.** Characteristics: overbank flooding during high water.

Subsurface flow: **Unknown**. Explain findings: not determined at this time.
☐ 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.
☐ 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: slightly cloudy.
Identify specific pollutants, if known: silt and clay sediments, oil & grease from roads, fertilizer and pesticides, organics.

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

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

☒ Riparian corridor. Characteristics (type, average width): Forested 50 ft wide.
☐ 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: observed by neighbors- mosquitofish, amphibians, reptiles, birds, mammals.

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: 8 acres
Wetland type. Explain:Forested.
Wetland quality. Explain:disturbed by historical silviculture.
Project wetlands cross or serve as state boundaries. Explain: no.

(b) General Flow Relationship with Non-TNW:
Flow is: **Intermittent flow**. Explain: Flow in both directions between wetlands and non-RPW during saturated periods and high water table. Otherwise, flow during and after rain events, trickling to no flow between events.

Surface flow is: **Overland sheetflow**
Characteristics: .

Subsurface flow: **Unknown**. Explain findings: not determined at this time.
☐ 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 **10-15** river miles from TNW.
Project waters are **10-15** aerial (straight) miles from TNW.
Flow is from: **Wetland to navigable waters.**
Estimate approximate location of wetland as within the **50 - 100-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: slightly cloudy, Watershed moderately developed, still partly forested.
Identify specific pollutants, if known: silt and clay sediments, organic matter.

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

☐ Riparian buffer. Characteristics (type, average width): .
☒ Vegetation type/percent cover. Explain:Hardwood flat 100% cover.
☒ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☒ Aquatic/wildlife diversity. Explain findings:amphibians, crustaceans, birds, reptiles, mammals-sign or observed.

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

All wetland(s) being considered in the cumulative analysis: 4
Approximately (8+) 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)
y	0.7	y	1.0
y	0.3	y	6+

Summarize overall biological, chemical and physical functions being performed: Funtions include flood storage, sediment retention, pollutant retention, carbon retention and contribution, nutrient recycling, wildlife habitat.

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: Wetland on property is adjacent to a non-RPW onsite; the non-RPW is an RPW in its lower reaches. Floodwater storage and sediment and pollution retention functions acrue in wetlands here; remaining pollutants enter the non-RPW and the RPW downstream. Carbon and organisms are also carried to the RPW from the wetland. Contributions of wetlands to the biological, chemical, and physical makeup of TNWs is well-documented in the literature (see references below). Physical characteristics on the site, including sediment deposits, rack lines (including organic material and organisms), scoured areas, water marks, etc., are evidence of both retention in the wetland and suspension of pollutants in the water column at the point where water exits the wetland. Given the number and intensity of rain and flow events in this region (greater than 60 days annually, with more than 0.1 inch rainfall), sediments, pollutants, carbon, and organisms in excess of the assimilitive capacity of the RPWs will remain suspended in the water column long enough to reach the TNW. Thus the tributary, in combination with adjacent wetlands and other similarly situated wetlands, provide a direct and acute contribution to the chemical, physical, and biological makeup of the TNW.

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: Offsite tributary is backed up and floods forested wetlands every few years, repeated observations of flow by residents.

   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: **5000** linear feet **5-8** width (ft).
   ☐ Other non-wetland waters: acres.
   Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: **8** 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).

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

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: .
☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. **SUPPORTING DATA. Data reviewed for JD (check all that apply -** checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☐ Office concurs with data sheets/delineation report.
☒ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☒ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:Satsuma, LA.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:Soil Survey of Livingston Parish.
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .

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[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.***

☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):1998 IR, 2004 IR.
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): USDA NRCS National Water and Climate Center Web Page.

Zimmerman, R.J. and J.M. Nance, 2001. Effects of Hypoxia on the Shrimp Fishery of Louisiana and Texas. Coastal and Estuarine Sciences 58:293-310

Wipfli, M.S., J.S. Richardson, and R.J. Naiman, 2007. Ecological Linkages Between Headwaters and Downstream Ecosystems: Transport of Organic Matter, Invertebrates, and Wood Down Headwater Channels. Journal of the American Water Resources Association 43, DOI: 10.1111/j.1752-1688.2007.00007.x.

Alexander, R.B., E.W. Boyer, R.A. Smith, G.E. Schwartz, and R.B. Moore, 2007. The Role of Headwater Streams in Downstream Water Quality. Journal of the American Water Resources Association 43. DOI: 10.1111/j.1752-1688.2007.00005.x.

Mitsch, W.J., J.W. Day Jr, J.W. Gilliam, P.M. Groffman, D.L. Hey, G.W. Randall, and N. Wang, 2001. Reducing Nitrogen Loading to the Gulf of Mexico From the Mississippi River Basin: Strategies to Counter a Persistent Ecological Problem. Bioscience 51:373-388.

Tracie-Lynn Nadeau & Mark Cable Rains, Hydrological Connectivity Between Headwater Streams and Downstream Waters: How Science Can Inform Policy, 43(1) J. AM. WATER RESOURCES ASS'N 118–133 (2007)

B. ADDITIONAL COMMENTS TO SUPPORT JD: Wetlands on property are part of a system of wetlands on non-RPW tributaries that have been altered by siliviculture activities. These wetlands were likely more extensive on the property at one time.