

**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):** 18 February 2020

**B. DISTRICT OFFICE, FILE NUMBER, FILE NAME:** JD Form 1 of 1; SAC-2018-01507 SCANA Tract 9

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: South Carolina County/parish/borough: Lexington County City: **Cayce**  
Center coordinates of site (lat/long in degree decimal format): Lat. 33.9355155226632°, Long. -81.0459066936683 °.  
Universal Transverse Mercator:

Name of nearest waterbody: **Congaree Creek**

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

Name of watershed or Hydrologic Unit Code (HUC): **03050110-03**

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: **February 12, 2020**

Field Determination. Date(s): **various since 2018**

**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):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (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: **1,727.1** linear feet: width (ft) and/or acres.

sRPW 1 = 931.1 lf; sRPW 2 = 479.0 lf; sRPW 3 = 316.95

Wetlands: **5.53** acres.

**c. Limits (boundaries) of jurisdiction based on:** **1987 Delineation Manual**, **Established by OHWM**, **Pick List**

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup> [Including potentially jurisdictional features that upon assessment are NOT waters or wetlands]**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Six stormwater ponds are located within the review area, and total 14.84 acres. These ponds were excavated entirely from uplands for the purpose of retaining and treating stormwater from the site. The ponds consist of open water, do not meet the three factors of a wetland, and were constructed to meet the requirements of CWA Section 402. For these reasons, these ponds were determined to be non-jurisdictional and not subject to regulation under Section 404 of the CWA.

**Drawing labels (and acreage):**

Non-jurisdictional upland dug stormwater feature 1 – 6.41 acres  
Non-jurisdictional upland dug stormwater feature 2 – 1.54 acres  
Non-jurisdictional upland dug stormwater feature 3 – 0.49 acre  
Non-jurisdictional upland dug stormwater feature 4 – 1.98 acres  
Non-jurisdictional upland dug stormwater feature 5 – 1.75 acres  
Non-jurisdictional upland dug stormwater feature 6 – 2.67 acres

The site includes five upland excavated non-jurisdictional ditches. All are depicted on a supplemental ditch map which is included in the project file. Two of these ditches serve as the outfall connections for Non-jurisdictional upland stormwater features 5 and 6 mentioned above. Three of the ditches serve as non-jurisdictional connections between on-site adjacent wetlands 2, 3, and 4, and their respective downstream waters.

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<sup>4</sup> 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**

This Form documents three sRPW tributaries which are similar in location, length, setting, flow characteristics, substrate, etc. The information and analysis in the sections below apply equally to all three tributaries and their adjacent wetlands.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

(i) **General Area Conditions:**

Watershed size: **232,276 acres** ;  
Drainage area: **143 square miles**  
Average annual rainfall: **47 inches**  
Average annual snowfall: **1 inches**

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **1 (or less)** river miles from TNW.  
Project waters are **1 (or less)** river miles from RPW.  
Project waters are **1 (or less)** 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 TNW<sup>5</sup>: **sRPW tributaries 1, 2, and 3 flow to pRPW Congaree Creek. pRPW Congaree Creek flows directly to the TNW Congaree River.**  
Tributary stream order, if known: **First Order**.

(b) General Tributary Characteristics (check all that apply): information for all three tributaries is similar

Tributary is:  Natural  
 Artificial (man-made). Explain: .  
 Manipulated (man-altered). Explain: **Straightened and channelized**.

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

Average width: **6** feet  
Average depth: **4** feet  
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **stable**.  
Presence of run/riffle/pool complexes. Explain: **N/A**.  
Tributary geometry: **Relatively straight**.  
Tributary gradient (approximate average slope): **0-2 %**

(c) Flow:

Tributary provides for: **Seasonal flow**  
Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: **Seasonal**.

Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

- Dye (or other) test performed: .

Tributary has (check all that apply):

- Bed and banks
- OHWM<sup>6</sup> (check all indicators that apply):
  - clear, natural line impressed on the bank
  - changes in the character of soil
  - shelving
  - vegetation matted down, bent, or absent
  - leaf litter disturbed or washed away
  - the presence of litter and debris
  - destruction of terrestrial vegetation
  - the presence of wrack line
  - sediment sorting
  - scour

<sup>5</sup> 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.

<sup>6</sup>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.

- sediment deposition
- water staining
- other (list):
- Discontinuous OHWM.<sup>7</sup> Explain: .
- multiple observed or predicted flow events
- abrupt change in plant community

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

- High Tide Line indicated by:
  - oil or scum line along shore objects
  - fine shell or debris deposits (foreshore)
  - physical markings/characteristics
  - tidal gauges
  - other (list):
- Mean High Water Mark indicated by:
  - survey to available datum;
  - physical markings;
  - 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: **Water clarity is high, with no apparent signs of oily film or excessive silt.**

Identify specific pollutants, if known: .

**(iv) Biological Characteristics. Channel supports (check all that apply): No riparian corridor or wetland fringe present.**

- Riparian corridor. Characteristics (type, average width): .
- 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: **5.53** acres

Wetland type. Explain: **Palustrine forested, seasonally flooded.**

Wetland quality. Explain: **moderate.**

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

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

Flow is: **Intermittent flow**. Explain: **Seasonally flooded wetlands with direct surface connection to the sRPW tributaries.**

Surface flow is: **Discrete and confined**

Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

Dye (or other) test performed: .

**(c) Wetland Adjacency Determination with Non-TNW:**

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: **Wetlands 2, 3, and 4 are connected via on-site surface ditching and crossdrains at on-site road crossings.**

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

**(d) Proximity (Relationship) to TNW**

Project wetlands are **1 (or less)** river miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

**(ii) Chemical Characteristics:**

<sup>7</sup>Ibid.

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: **Wetland water quality appears high based on clarity, lack of oily sheen or other discoloration.**

Identify specific pollutants, if known:

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: **Forested cover, varying from 50 to 100%.**
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: **Habitat for small fish and amphibians, as well as foraging habitat for birds and mammals.**

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

All wetland(s) being considered in the cumulative analysis: **30 (or more)**

Approximately ( **500** ) 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>
Off-site (Y) On-site (N)	400 5.53		

Summarize overall biological, chemical and physical functions being performed: **The forested and emergent palustrine wetlands which are similarly situated and adjacent (both directly abutting and non-abutting) to the pRPW (also applicable to the sRPW tributaries) are collectively performing functions consistent with the following: Biological – wetlands adjacent to the RPWs include riparian and otherwise bottomland swamp, as well as emergent marsh and depressional wetlands. As such, a broad variety of biological functions are being performed which include providing breeding grounds and shelter for aquatic species, foraging areas for wetland dependent species, and in particular, floodplain wetlands provide important spawning areas for species that inhabit the main channel as adults. These wetlands are essential in providing organic carbon in the form of their collective primary productivity to downstream waters, resulting in the nourishment of the downstream food web. Chemical – Wetlands in the review area are providing the important collective functions of removal of excess nutrients which are contributed by runoff from the surrounding uplands, reducing nitrogen and phosphorus loading downstream, and effectively preventing oxygen depletion that can result from eutrophication. Some of the adjacent wetlands in this review area have been ditched which likely has reduced the effectiveness of some of the wetlands’ nutrient removal function. Physical – Wetlands in the review area are collectively performing flow maintenance functions, including retaining runoff inflow and storing flood water temporarily. Flow maintenance results in the reduction of downstream peak flows (discharge and volume), helping to maintain seasonal flow volumes.**

**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:
- 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 and emergent palustrine wetlands which are similarly situated and adjacent (both directly abutting and non-abutting) to the RPW are collectively performing functions consistent with the following: Biological – wetlands adjacent to this RPW include riparian and otherwise bottomland swamp, as well as emergent marsh and depressional wetlands. As such, a broad variety of biological functions are being performed which include providing breeding grounds and shelter for aquatic species, foraging areas for wetland dependent species, and in particular, floodplain wetlands provide important spawning areas for species that inhabit the main channel as adults. These wetlands are essential in providing organic carbon in the form of their collective primary productivity to downstream waters, resulting in the nourishment of the downstream food web. Chemical – Wetlands in the review area are providing the important collective functions of removal of excess nutrients which are contributed by runoff from the surrounding uplands, reducing nitrogen and phosphorus loading downstream, and effectively preventing oxygen depletion that can result from eutrophication. Some of the adjacent wetlands in this review area have been ditched which likely has reduced the effectiveness of some of the wetlands’ nutrient removal function. According to SCDHEC Bureau of Water, Congaree Creek and its tributaries have been on the 303(d) list of impaired waters since 2004. Nutrient loads that affect established TMDLs arise from equal portions of agricultural cropland and urban uses. Four water quality monitoring stations on Congaree Creek consistently show elevated levels of fecal coliform which reaches the Congaree River, ultimately highlighting the importance of wetland water residence time in this watershed and drainage area. Physical – Wetlands in the review area are collectively performing flow maintenance functions, including retaining runoff inflow and storing flood water temporarily. Flow maintenance results in the reduction of downstream peak flows (discharge and volume), helping to maintain seasonal flow volumes. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the traditional navigable waters of the Congaree River, this office has determined that there is a Significant Nexus between the review area Relevant Reaches and their adjacent wetlands and the downstream TNW.

**Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs:**

**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: **Congaree Creek is a pRPW which is named and mapped as a blue line stream on USGS quad maps, can be seen clearly with water permanently present via aerial images, and is very familiar to the investigators of this determination. Congaree Creek is NOT located on the project site, but is the relevant reach for some adjacent wetlands on the site that are not directly abutting.**
  - 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: **sRPW tributaries 1, 2, and 3 are on the project site and exhibit seasonal flow. Flow determination was based on strength of OHWM characteristics and direct observations in the field made by the delineators over a period of more than 3 years. The delineators are employees (biologists) of Dominion Energy where this site happens to be located.**

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

- Tributary waters: **1,727.1** linear feet width (ft).
  - Other non-wetland waters: acres.
- Identify type(s) of waters:

**3. Non-RPWs<sup>8</sup> 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: **5.53** acres.

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

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

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

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

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).

**Explain:**

**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):<sup>10</sup>**

- 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.

<sup>8</sup>See Footnote # 3.

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

<sup>10</sup> 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.

**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): **Six stormwater ponds are located within the review area, and total 14.84 acres. These ponds were excavated entirely from uplands for the purpose of retaining and treating stormwater from the site. The ponds consist of open water, do not meet the three factors of a wetland, and were constructed to meet the requirements of CWA Section 402. For these reasons, these ponds were determined to be non-jurisdictional and not subject to regulation under Section 404 of the CWA.**

**Drawing labels (and acreage):**

- Non-jurisdictional upland dug stormwater feature 1 – 6.41 acres**
- Non-jurisdictional upland dug stormwater feature 2 – 1.54 acres**
- Non-jurisdictional upland dug stormwater feature 3 – 0.49 acre**
- Non-jurisdictional upland dug stormwater feature 4 – 1.98 acres**
- Non-jurisdictional upland dug stormwater feature 5 – 1.75 acres**
- Non-jurisdictional upland dug stormwater feature 6 – 2.67 acres.**

**The site includes five upland excavated non-jurisdictional ditches. All are depicted on a supplemental ditch map which is included in the project file. Two of these ditches serve as the outfall connections for Non-jurisdictional upland stormwater features 5 and 6 mentioned above. Three of the ditches serve as non-jurisdictional connections between on-site adjacent wetlands 2, 3, and 4, and their respective downstream waters.**

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: **SCE&G (Dominion Energy).**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report. Office concurs with report conclusions.
  - 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; Cayce Quad.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Lexington County.**
- National wetlands inventory map(s). Cite name: **Cayce quad.**
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is:          (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): **Digital Globe 2018.**
  - or  Other (Name & Date): **Site Photographs.**
- 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: **This jurisdictional determination basis form documents the jurisdictional status of three seasonal RPWs on the site and six wetlands which are adjacent to the sPRWs and to the perennial RPW Congaree Creek. This form also documents the non-jurisdictional status of six stormwater ponds located within the review area, and which total 14.84 acres. These ponds were excavated entirely from uplands for the purpose of retaining and treating stormwater from the site. The ponds consist of open water, do not meet the three factors of a wetland, and were constructed to meet the requirements of CWA Section 402. For these reasons, these ponds were determined to be non-jurisdictional and not subject to regulation under Section 404 of the CWA.**

**Drawing labels (and acreage):**

**Non-jurisdictional upland dug stormwater feature 1 – 6.41 acres**

**Non-jurisdictional upland dug stormwater feature 2 – 1.54 acres**

**Non-jurisdictional upland dug stormwater feature 3 – 0.49 acre**

**Non-jurisdictional upland dug stormwater feature 4 – 1.98 acres**

**Non-jurisdictional upland dug stormwater feature 5 – 1.75 acres**

**Non-jurisdictional upland dug stormwater feature 6 – 2.67 acres.**

**The site includes five upland excavated non-jurisdictional ditches. All are depicted on a supplemental ditch map which is included in the project file. Two of these ditches serve as the outfall connections for Non-jurisdictional upland stormwater features 5 and 6 mentioned above. Three of the ditches serve as non-jurisdictional connections between on-site adjacent wetlands 2, 3, and 4, and their respective downstream waters.**