

**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):** April 21, 2020 revised May 14, 2020.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Detroit District, Michiana Branch, Niespodziany Ditch Relocation, LRE-1994-1715120-A20-2

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:** Sections 1 and 12, Township 37 North, Range 1 West, and Section 7, Township 37 North, Range 1 East.

State: Indiana County/parish/borough: St. Joseph City: New Carlisle  
Center coordinates of site (lat/long in degree decimal format): Lat. 41.67721° N, Long. -86.473248° W.  
Universal Transverse Mercator: Zone 16, X543844, Y4614072

Name of nearest waterbody: Niespodziany Ditch

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

Name of watershed or Hydrologic Unit Code (HUC): 071200

- 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: April 7, 2020  
 Field Determination. Date(s): July 9, 2019 and October 17, 2019

**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: 9440 linear feet: averages 10 to 15 width (ft) and/or          acres.  
Wetlands:          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):<sup>3</sup>**

<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:

A 0.28 acre area located south of S.R. 2 and west of the Niespodziany Ditch (where the ditch aligns north-south along Strawberry Road) was delineated as an emergent wetland by Christopher Burke Engineering, LLC on November 2, 2017. No vegetation was recorded on the November 2, 2017 data sheet because none was present according to the consultant. Additionally, no photographs of the area of the data point were provided. The site was investigated by the Corps on October 17, 2019. The area had been planted to soybeans (*Glycine max* – UPL), which had been harvested by the time of inspection. In addition to the vegetation, there was no discernable difference between the delineated area and the rest of the farm field in the vicinity with respect to landscape position, or elevation changes that would indicate water potentially ponding or pooling in the delineated area. A review of available aerial photography depicts this area as having been consistently in agricultural production dating back to 1998. Historical aerials dated 1939, 1951, 1957, 1965, and 1973 also show the area being farmed. A review of growing season aerials (with crops in the field) do not show evidence of stunted or stressed plants, which would typically indicate prolonged saturation of the site during the growing season (Google Earth Images 9/2003, 9/2005, 7/2006, 8/2007, 10/2008, 8/2010, 9/2015). Average October rainfall for the review area is approximately 3.4 inches. In October 2017 the area received over 9 inches of rainfall. Additionally, the area received another 0.78 inches of rain on November 1st and 2nd of 2017, which likely contributed to the site saturation noted by the consultant. The average first frost date of the area occurs between October 22nd and October 27th, therefore the observations of the consultant were likely made outside of the growing season. Because this feature does not meet the three parameter wetland test as described in the US ACOE 1987 Wetland Delineation Manual and the Northcentral and Northeast Regional Supplement, the 0.28 acre area was determined not to be a wetland.

Also within the review area is a woodlot immediately north of S.R. 2 (located between Willow Road and the Niespodziany Ditch) that is depicted on the USFWS NWI map as primarily forested wetland (PFO), with a small section of emergent wetland (PEM). This area was investigated by Cardno on October 24, 2017. Their report states that the site lacked all three wetland parameters and does not exhibit indicators of hydrophytic vegetation, hydrology, or hydric soils. The Corps investigated this area on July 9, 2019 and determined that it does not exhibit a dominance of wetland (hydrophytic) vegetation, and no wetland hydrology indicators were observed. Additionally, a review of available Google Earth Images does not show the site being inundated, nor do the aerials reveal a consistent pattern of saturation or wet signatures. The Corps concurs with the Cardno Regulated Waters Delineation Report dated May 29, 2018. The woodlot currently does not meet the three wetland parameter test as described in the US ACOE 1987 Wetland Delineation Manual and the Northcentral and Northeast Regional Supplement and therefore is not considered wetland..

**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**

**(i) General Area Conditions:**

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: 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 **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW<sup>5</sup>: .

Tributary stream order, if known: .

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

<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.

(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: \_\_\_\_\_ feet  
Average depth: \_\_\_\_\_ feet  
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: \_\_\_\_\_

Presence of run/riffle/pool complexes. Explain: \_\_\_\_\_

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): \_\_\_\_\_ %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: \_\_\_\_\_

Other information on duration and volume: \_\_\_\_\_

Surface flow is: **Pick List**. Characteristics: \_\_\_\_\_

Subsurface flow: **Pick List**. 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  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.<sup>7</sup> 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: \_\_\_\_\_

Identify specific pollutants, if known: \_\_\_\_\_

<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.

<sup>7</sup>Ibid.

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

- 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:        acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

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

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: .

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

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

- Riparian buffer. Characteristics (type, average width): .
- Vegetation type/percent cover. Explain: .
- Habitat for:
  - Federally Listed species. Explain findings: .
  - Fish/spawn areas. Explain findings: .
  - Other environmentally-sensitive species. Explain findings: .
  - Aquatic/wildlife diversity. Explain findings: .

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

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

Approximately (        ) 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)

Summarize overall biological, chemical and physical functions being performed:

### 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:

### 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 Niespodziany Ditch (8,898 linear feet within the current AJD request area) is depicted as a solid blue line on the USGS Topographic Map and is a St. Joseph County open, legal drain. The Niespodziany is a perennial RPW that exhibits a defined bed and bank with an OWHM. Water was present in the Niespodziany Ditch during December 6, 2017, July 9, 2019, and October 17, 2019 Corps site inspections. Multiple ground photos provided by the project agent and consultants depict water in the Niespodziany Ditch throughout the year. Water is present in Niespodziany Ditch in multiple aerial photos indicating perennial flow. Huckleberry Ditch (542 linear feet within the current AJD request area) becomes Rogers Clark Ditch, a St. Joseph County open, legal drain, south of S.R. 2. Water was present in the ditch when inspected on

July 9, 2019; the perennial RPW exhibits a defined bed and bank with an OHWM. Water is present in Huckleberry Ditch in multiple aerial photos indicating perennial flow. The Cardno delineation report (dated May 29, 2018) describes both Niespodziany Ditch and Huckleberry Ditch as perennial RPWs.

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

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

- Tributary waters: **9440** linear feet **10 to 15 average** 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:        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).

**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>**

<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.

- 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: Niespodziany Ditch Relocation Project Site Map by Lawson-Fisher Associates, dated February 11, 2020. Niespodziany Ditch Regulated Waters Delineation Report prepared for Lawson-Fisher Associates by Cardno, dated May 29, 2018. Supplemental Surface Waters and Wetland Assessment for the IEC Project Area surrounding the Niespodziany Ditch prepared by Christopher Burke Engineering, LLC for St. Joseph County dated November 2017 and September 2019; revised November 2019.
- 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: October 17, 2019.
- Corps navigable waters’ study: .
- U.S. Geological Survey Hydrologic Atlas: 071200.
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24K, Lydick, Ind. Quad..
- USDA Natural Resources Conservation Service Soil Survey. Citation: Hydric Rating by Map Unit, St Joseph County, Indiana. Web Soil Survey.

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<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.



- National wetlands inventory map(s). Cite name:USFWS Online Wetlands Mapper.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date):St. Joseph County MACOG, 2019 aerials. Google Earth Images dated 5/1997, 4/1998, 9/2003, 3/2005, 9/2005, 7/2006, 8/2007, 10/2008, 8/2010, 4/2011, 9/2015, 10/2016, and 3/2019. USA NAIP 2012 and 2014, Indiana Historical Aerial Photo Index (IHAPI): 1939, 1951, 1957, 1965, and 1973.  
or  Other (Name & Date):Ground photos submitted by Lawson-Fisher and Associates (undated), Cardno and Christopher Burke Engineering, LLC delineation photos (various dates), Corps site inspection photos dated December 6, 2017, July 9, 2019, and October 17, 2019. .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): Corps of Engineers Wetlands Delineation Manual, Wetlands Research Program Technical Y-87-1 (on-line edition), January 1987. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (version 2.0), U.S. Army Corps of Engineers, ERDC/EL TR-12-1, January 2012. St. Joseph County, Ditch, Tile and Watershed Boundaries Map;  
<http://stjocgis.maps.arcgis.com/apps/PublicInformation/index.html?appid=888fba60a1f34d609ed2451d65084698>, Indiana State Climate Office, Climatology Toolbox, <https://climate.itap.purdue.edu/toolbox.asp>. Record of Climatological Observations, South Bend Airport, IN, US, October 2017 and November 2017, U.S. Dept. of Commerce, NOAA.  
Corps site inspections December 6, 2017, July 9, 2019, and October 17, 2019

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

This office concurs with the delineation of the aquatic resources as shown on the project location map dated February 11, 2020. The delineation reports referenced in Section IV.A depict aquatic resources beyond the February 11, 2020 project area and those resources may not be accurately mapped. Therefore, this office does not concur with those delineation reports in their entirety, further evaluation would be required prior to making a jurisdictional determination for aquatic resources in areas beyond the extent of the project boundaries indicated on the February 11, 2020 map. The requestor is advised to request a jurisdictional determination for potential aquatic resources prior to starting work in those areas beyond the scope of this jurisdictional determination.

The Niespodziany Ditch (8,898 linear feet within the current AJD request area) is depicted as a solid blue line on the USGS Topographic Map and is a St. Joseph County open, legal drain. The Niespodziany is a perennial RPW that exhibits a defined bed and bank with an OWHM. Water was present in the Niespodziany Ditch during the December 6, 2017, July 9, 2019, and October 17, 2019 site inspections. Multiple ground photos provided by the project agent and consultants depict water in the Niespodziany Ditch throughout the year. Water is present in Niespodziany Ditch in multiple aerial photos indicating perennial flow. Huckleberry Ditch (542 linear feet within the current AJD request area) becomes Rogers Clark Ditch, a St. Joseph County open, legal drain, south of S.R. 2. Water was present in the ditch when inspected on July 9, 2019; the perennial RPW exhibits a defined bed and bank with an OWHM. Water is present in Huckleberry Ditch in multiple aerial photos indicating perennial flow. The Cardno delineation report (dated May 29, 2018) describes both Niespodziany Ditch and Huckleberry Ditch as perennial RPWs.

The Niespodziany Ditch, a perennial RPW, flows directly into the Kankakee River, a TNW. Huckleberry Ditch (also known as the Roger Clark Ditch county regulated drain), a perennial RPW, flows into County Line Ditch which flows directly into the Kankakee River, a TNW.