

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 31, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Alaska District, POA-2014-375

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Alaska Borough: Denali City:

Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 63.8652° N, Long. 148.7747° W;

Universal Transverse Mercator: N/A; Within section(s) 21-28, T. 12 S., R. 7 W., sections 17-20, T. 12 S., R. 6 W., Fairbanks Meridian

Name of nearest water body: Healy Creek

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

Name of watershed or Hydrologic Unit Code (HUC): N/A

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: October 22, 2014

Field Determination. Date(s):

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 waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: linear feet: width (ft) and/or **Healy Creek & floodplain = 61 acres, other streams = 2.765 acres,**
ponds = **9.135** acres

Wetlands: **15.3** 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: A total of 0.3 acres of intermittently flowing streams, 0.7 acres of apparently permanently inundated ponds and 1.8 acres of wetlands are geographically, ecologically and hydrologically isolated from any waters including relatively permanent waters and traditional navigable waters. These waters apparently drain to groundwater that is not connected to Healy Creek

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.

due to underlying strata pitched away from the creek . These waters are not within close proximity of the Nenana River and cannot be presumed to have an ecological interconnection with the river.

The use, degradation or destruction of these waters would not affect interstate commerce. The ditches are not used by interstate or foreign travelers for recreational or other purposes. No fish or shellfish are or could be taken and sold in interstate or foreign commerce. The waters are and could not be used for industrial purposes that would result in interstate or foreign commerce. Therefore, pursuant to the federal guidance on the Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers and the guidance following the Rapanos v. United States & Carabell v. United States, the on-site waters are non-jurisdictional.

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, fill out Section III.D.2 and 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 water body⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body 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: Healy Creek watershed: 134,000 acres

Drainage area: project area drainage (entirely within Healy Creek watershed): 40,500 acres

Average annual rainfall: 2-4 inches

Average annual snowfall: 60 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

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

Project waters are 2-5 aerial (straight) miles from TNW.

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

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵: wetlands to Healy Creek tributaries to Healy Creek to Nenana River

Tributary stream order, if known: Healy Creek tributaries = 1st order, Healy Creek = 3rd order

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.

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

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: **all tributaries to Healy Creek lead through culverts**

under the access road

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

Average width: **2** feet
Average depth: **0.5** feet
Average side slopes: **Vertical (1:1 or less)**

Primary tributary substrate composition (check all that apply):

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

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

Presence of run/riffle/pool complexes. Explain: **minimal in-channel complexity**

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): **Healy Creek = 1-2% & tributaries = 20-35 %**

(c) Flow:

Tributary provides for: **Seasonal flow**

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

Describe flow regime: **Healy Creek and 4 perennial tributaries are relatively permanent though tributaries are likely frozen entirely for several months of the year. Of the 8 intermittent streams in the project area, 3 are seasonally flowing tributaries, 1 is an intermittently flowing tributary (non-RPW) with a significant nexus to Healy Creek, and 4 have no continuous surface connection with Healy Creek and are therefore not tributaries.**

Other information on duration and volume: **Healy Creek is estimated to convey average of 20 cfs; perennial tributaries estimated to convey average of 2 cfs; intermittent tributaries estimated to convey average of 0.5 cfs**

Surface flow is: **Discrete and confined.** Characteristics: **All 3 perennial tributaries and all 4 intermittent tributaries sustain a continuous surface connection with Healy Creek support flow through culverts that traverse the existing road running north of the Healy Creek floodplain. The other four intermittent streams do not sustain a continuous surface connection with Healy Creek and are thereby not considered to be tributaries of Healy Creek (non-jurisdictional waters).**

Subsurface flow: **Yes.** Explain findings: **The tributaries likely convey some shallow subsurface flow to Healy Creek**

Dye (or other) test performed:

Tributary has (check all that apply):

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

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

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

(iii) **Chemical Characteristics:**

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

⁷Ibid.

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

Explain: **Healy Creek varies from being fairly clear in winter to fairly turbid during high flows in spring and summer; tributaries generally have clear water except during very high flow**

Identify specific pollutants, if known:

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

- Riparian corridor. Characteristics (type, average width): **coniferous and deciduous broad-leaved trees and shrubs**
- Wetland fringe. Characteristics: **a few wetlands directly abutting tributaries**
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings: **probably some arctic grayling in Healy Creek**
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: **muskrat, shorebirds, waterfowl, wood frogs, etc.**

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: **15.3 acres**

Wetland type. Explain: **scrub-shrub, scrub-emergent, and emergent wetland communities**

Wetland quality. Explain: **moderate functioning; some with artificial disturbance history and some relatively**

undisturbed

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **intermittent flow**. Explain: **Flow from the adjacent wetlands to their associated streams is via intermittent surface flow and shallow subsurface with occasional surface flow.**

Surface flow is: **Overland sheetflow**

Characteristics:

Subsurface flow: **Yes**. Explain findings: **Shallow subsurface flow within 5 to 10 feet of the ground surface likely occurs in late summer and fall as inferred by limited surface outflow in some wetland areas, topographic slope and seasonal thaw of frost .**

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: **The four wetlands in the project area that are adjacent to, but do not directly abut Healy Creek sustain continuous surface connections with the creek via swales and other runoff channels.**

Ecological connection. Explain: **The wetlands provide life-cycle support for wetland-dependent and aquatic organisms present in and along the Chena River.**

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **2-5** aerial (straight) miles from TNW.

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

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: **water appears clear; contributing drainage area includes one lightly traveled gravel road, some barren scarps and little human activity.**

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: **varies from alder, willow and stunted white spruce or a mix of 2 or more of these dominant species**

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings: **likely some wood frogs use one or more of these**

wetlands

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: **25-30**
Approximately (**15.3 acres wetlands**) 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>
	14.7 acres of wetland directly abut RPWs		0.6 acres of wetland adjacent but do not directly abut RPWs

Summarize overall biological, chemical and physical functions being performed: **Adjacent wetlands are storing water (in some circumstances, storing flood flow), trapping sediments, transforming nutrients, exporting organic matter to streams, and providing forage and cover for wetland-dependent and aquatic species.**

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: **The significant nexus for the one intermittent tributary that does not have relatively permanent flow (non-RPW) stems from the hydrologic and ecological connections between this water and Healy Creek. The hydrologic connection is sustained mainly by surface flow through a culvert and to some degree via subsurface flow. The ecological connection is provided by the hydrologic connection and the influence that this stream, in combination with Healy Creek, has upon the Nenana River via supporting base-flow, supplying dissolved organic carbon and nutrients, suppressing water temperatures, and supporting aquatic and wetland-dependent organisms. Accordingly, the unnamed intermittent, non-seasonal tributary must be considered jurisdictional and thereby regulated under Section 404 of the Clean Water Act.**
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 significant nexus for the four wetlands adjacent to, but not directly abutting Healy Creek stems from the hydrologic and ecological connections between these waters and Healy Creek. The hydrologic connections are sustained mainly by surface flow through naturally occurring swales and to some degree via subsurface flow through coarse substrate. The ecological connection is provided by the hydrologic connections and the influence that these wetlands, in combination with Healy Creek, has upon the Nenana River via supporting base-flow, trapping sediment and pollutants, supplying dissolved organic carbon, and supporting aquatic and wetland-dependent organisms. Accordingly, these wetlands must be considered jurisdictional and thereby regulated under Section 404 of the Clean Water Act.**

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: **Healy Creek, Alaska Creek, French Gulch and Suntrana Creek are the named creeks in the project area. In addition to these creeks, one unnamed creek has been observed to be perennially flowing.**
- 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: **Four intermittent streams that sustain continuous surface connections with Healy Creek, a tributary of the Nenana River, which is a TNW, were observed in the project area.**

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

- Tributary waters: 17,200 linear feet width (ft)
 Other non-wetland waters: 9.135 acres
 Identify type(s) of waters: ponds

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- Water body 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: **The wetlands that directly abut perennial RPWs are continuous with these waters; the wetlands extend to the ordinary high water mark of the various RPWs with which they are associated.**
- 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: **The wetlands that directly abut seasonal RPWs are continuous with these waters; the wetlands extend to the ordinary high water mark of the various RPWs with which they are associated.**

Provide acreage estimates for jurisdictional wetlands in the review area: wetlands that have the characteristics described above (directly abutting RPWs) total 14.7 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.

⁸See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area: wetlands that have the characteristics described above (adjacent but not abutting RPWs) total 0.6acres

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.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain:
- Other factors. Explain:

Identify water body and summarize rationale supporting determination:

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

- Tributary waters: linear feet width (ft)
- Other non-wetland waters: acres
- Identify type(s) of waters:
- Wetlands: acres

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: The non-jurisdictional waters are geographically, ecologically and hydrologically isolated from RPWs. These waters, which total 3.06 acres, include four intermittent streams, three ponds and a few wetlands. These waters are situated outside the 10-year floodplain of Healy Creek, do not have surface outlets and appear to drain to coal seams that are pitched to lead subsurface flow away from the RPWs in the project area vicinity.
- 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): 3,500linear feet 5width (ft).
- Lakes/ponds: **0.86**acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: **1.8**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):

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

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

