



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): December 2, 2020

ORM Number: NWP-2020-00404

Associated JDs: N/A

Review Area Location<sup>1</sup>:

State/Territory: OR City: North Powder County/Parish/Borough: Union County

Center Coordinates of Review Area: Latitude 45.036863 Longitude -117.902449

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)<sup>3</sup>

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/A	N/A	N/A

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 3	2.38 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland 3 is adjacent to an a(2) water.

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Ditch 1	630 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water do not satisfy the conditions of (c)(1)	Ditch 1 within the review area is not an a(1) or a(2) water because it was constructed in an area that appears to have been uplands at the time of construction. Ditch 1 within the review area does not relocate an a(2) water.
Wetland 1	2.45 acres	(b)(1) Non-adjacent wetland	Wetland 1 is not adjacent to Ditch 1 and is also not adjacent to the North Powder River. A ditch constructed in uplands cannot render a wetland “adjacent.”
Wetland 2	0.07 acre	(b)(1) Non-adjacent wetland	Wetland 2 extends out of the review area to the east and does not appear to be adjacent to any a(1)-a(3) waters.

**III. SUPPORTING INFORMATION**

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: *City of North Powder Wetland Delineation Report. Anderson Perry & Associates, Inc., 2020.*

This information is sufficient for purposes of this AJD.

Rationale: *The delineator completed a wetland delineation which followed the U.S. Army Corps of Engineers 1987 wetland delineation manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region to determine the boundaries of the waters within the review area. The delineation included site photos, vegetation and soil surveys, and site plans provide sufficient documentation to assess the review area under the Navigable Waters Protection Rule.*

\_\_\_\_ Data sheets prepared by the Corps: *N/A.*

Photographs: *Aerial: Google Earth 1994, 2001, 2006, 2013, 2018. USGS 1946.*

Corps Site visit(s) conducted on: *October 30, 2020.*

\_\_\_\_ Previous Jurisdictional Determinations (AJDs or PJDs): *N/A.*

Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide and included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

- USDA NRCS Soil Survey: <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>, accessed November 16, 2020.
- USFWS NWI maps: <https://www.fws.gov/wetlands/data/mapper.html>, accessed October 24, 2020.
- USGS topographic maps: 1:24k North Powder OR, 2017.

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	State of Oregon LIDAR viewer, <a href="https://gis.dogami.oregon.gov/maps/lidarviewer/">https://gis.dogami.oregon.gov/maps/lidarviewer/</a> , accessed October 23, 2020.
Other Sources	FEMA flood zone mapper, <a href="https://msc.fema.gov/portal/home">https://msc.fema.gov/portal/home</a> , accessed October 26, 2020.

- B. Typical year assessments:** The antecedent precipitation tool (APT) was used to determine that the conditions of the review area during the Corps’ site visit on October 30, 2020 were drier than normal and that conditions were also drier than normal during the wetland delineation performed on July 10, 2018.
- C. Additional comments to support AJD:** A Corps site visit of the review area was conducted on October 30, 2020. Surface water was observed flowing from south to north in Ditch 1, an artificially constructed ditch that runs along the west side of the review area. Ditch 1 appears to divert water from the North Powder River south of the project area and to discharge that water north of the project area. Historic aerial imagery indicates that the segment of Ditch 1 located within the review area is a b(5) exclusion as it does not relocate a former tributary and was likely constructed in uplands. As Ditch 1 continues north out of the review area, it joins with and relocates a tributary that connects by way of a culvert or pipe under the railroad tracks on the western boundary of the review area. This tributary appears to have continued across the review area historically, but it is now relocated into Ditch 1 outside of the review area. Surface water was observed in remnant scars of this former tributary near the northern boundary of the review area during the Corps’ site visit. Wetland 3 is adjacent to this former tributary and appears to continue outside of the review area to abut the ditch segment into which the tributary was relocated, therefore, Wetland 3 is an a(4) water of the U.S.

Wetland 1 abuts the segment of Ditch 1 that is not a relocated tributary and was likely constructed in uplands. Wetland 1 is separated from the North Powder River by both the bank of the river and an area of uplands. Wetland 1 does not appear on the National Wetlands Inventory map and is not located in the 100-year floodplain of the North Powder River, strongly suggesting that it is not

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

inundated by flooding from the river in a typical year. Wetland 1 is therefore a non-adjacent wetland and a b(1) exclusion under the NWPR. Wetland 2 is located at the eastern boundary of the review area. While it may continue offsite, there is no evidence to suggest it is adjacent to the North Powder River or any other a(1)-a(3) water. Aerial photos, LIDAR, and topographic maps show that Wetland 2 is on a terrace containing uplands between the wetland and the North Powder River and showing no channelized surface water connections between Wetland 2 and the river.

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.