



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): January 28, 2021  
 ORM Number: NWP-2020-477  
 Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)  
 Review Area Location<sup>1</sup>:  
 State/Territory: OR City: Nyssa County/Parish/Borough: Malheur County  
 Center Coordinates of Review Area: Latitude 43.926877° Longitude -116.985182°

**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 or describe rationale.
- 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

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

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) 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 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.



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**D. Excluded Waters or Features**

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

<b>Exclusion Name</b>	<b>Exclusion Size</b>	<b>Exclusion<sup>5</sup></b>	<b>Rationale for Exclusion Determination</b>
Wetland N-1	0.03 acre	(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 that do not satisfy the conditions of (c)(1)	Wetland N-1 meets criteria for both (b)(1) and (b)(5) exclusions. Wetland N-1 does not abut an a(1)-a(3) water and is not inundated by flooding from an a(1)-a(3) water in a typical year. Wetland N-1 is located within an abandoned irrigation canal constructed along a railroad right-of-way.
Wetland N-2	0.02 acre	(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 that do not satisfy the conditions of (c)(1)	Wetland N-2 meets criteria for both (b)(1) and (b)(5) exclusions. Wetland N-2 does not abut an a(1)-a(3) water and is not inundated by flooding from an a(1)-a(3) water in a typical year. Wetland N-2 is located within an abandoned irrigation canal constructed along a railroad right-of-way.
Wetland N-3	0.07 acre	(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 that do not satisfy the conditions of (c)(1)	Wetland N-3 meets criteria for both (b)(1) and (b)(5) exclusions. Wetland N-3 does not abut an a(1)-a(3) water and is not inundated by flooding from an a(1)-a(3) water in a typical year. Wetland N-3 is located within an abandoned irrigation canal constructed along a railroad right-of-way.
Wetland N-4	0.09 acre	(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 that do not satisfy the conditions of (c)(1)	Wetland N-4 meets criteria for both (b)(1) and (b)(5) exclusions. Wetland N-4 does not abut an a(1)-a(3) water and is not inundated by flooding from an a(1)-a(3) water in a typical year. Wetland B is located within an abandoned irrigation canal constructed along a railroad right-of-way.

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**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: *Wetland Delineation Report: North Study Area, Treasure Valley Reload Center. Anderson Perry & Associates, September 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, historic aerial photographs, vegetation and soil surveys, and site plans that provide sufficient documentation to assess the review area under the Navigable Waters Protection Rule (NWPR).*
- Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: *Google Earth Pro Aerial imagery: 1994, 2002, 2016, 2019 reviewed by Corps staff on January 15, 2021.*
- Corps Site visit(s) conducted on: *Date(s).*
- Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>, reviewed by Corps staff on January 25, 2021.*
- USFWS NWI maps: *<https://www.fws.gov/wetlands/data/mapper.html>, reviewed by Corps staff on January 12, 2021.*
- USGS topographic maps: *Nyssa OR, 1:24K, 2020; Nampa OR 1898 reviewed by Corps staff on January 12, 2021.*

**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	DOGAMI LIDAR, <a href="https://gis.dogami.oregon.gov/maps/lidarviewer/">https://gis.dogami.oregon.gov/maps/lidarviewer/</a> , reviewed by Corps staff on January 15, 2021.
Other Sources	N/A.

**Typical year assessment(s):** The Corps ran a typical year analysis for April 30, 1994, December 2, 2002, April 1, 2016, and April 27, 2019 (dates of Google Earth Pro aerial imagery that demonstrate the presence and absence of surface water) utilizing the Corps' "Antecedent Precipitation Tool (APT)" (<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.13>).

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04/27/2019 (Google Earth Pro Aerial Image) – “Wetter Than Normal Conditions.” Based on Google Earth imagery surface water ponding is visible in Wetland N-2 within the abandoned irrigation canal. All surface water is within the linear signature of the canal. There is no visible surface water feature connecting Wetland N-2 to any downstream waters.

04/01/2016 (Google Earth Pro Aerial Image) – “Normal Conditions.” Based on Google Earth imagery surface water ponding is visible in Wetland N-1, Wetland N-2, and Wetland N-3 within the abandoned irrigation canal. All surface water is within the linear signature of the canal. There is no visible surface water feature connecting the wetlands to any downstream waters.

12/02/2002 (Google Earth Pro Aerial Image) – “Normal Conditions.” Based on Google Earth imagery surface water ponding is visible in Wetland N-2 within the abandoned irrigation canal. All surface water is within the linear signature of the canal. There is no visible surface water feature connecting Wetland N-2 to any downstream waters.

04/30/1994 (Google Earth Pro Aerial Image) “Normal Conditions.” Based on Google Earth imagery surface water ponding is visible in Wetland N-2 within the abandoned irrigation canal. All surface water is within the linear signature of the canal. There is no visible surface water feature connecting Wetland N-2 to any downstream waters.

**Additional comments to support AJD:** The review area is 8.69 acres located 2.5 miles north of Nyssa, Malheur County, Oregon. The entire review area is within Union Pacific Railroad right-of-way.

The Review Area contains four wetlands located in a linear swale that runs parallel to an existing railroad. The swale is straight and uniform in profile and was likely constructed to carry water for irrigation to nearby properties. The swale’s alignment along the railroad to the east and a farm road to the west indicate the swale is an artificially constructed feature and therefore a b(5) ditch exclusion under the NWPR. While historic U.S. Geologic Survey topographic maps indicate the presence of historic drainage channels in the area, these appear to have been relocated to other ditches, not to the artificially constructed feature containing the wetlands in the Review Area. Site photos submitted with the wetland delineation clearly indicate these wetlands formed in an irrigation canal. Soils in the Review Area are mapped in the U.S. Department of Agriculture Natural Resources Conservation Service soil survey as Umapine Silt Loam, a non-hydric soil which is generally located on terraces. The irrigation canal was not likely to have been originally constructed in wetlands. The review area borders agricultural lands under extensive agricultural use, including irrigation. As the review area is located in an arid climate, irrigation water entering the feature is most likely responsible for the ponding visible in aerial photos across multiple years.

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