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): 8/9/2021
ORM Number: NWP-2021-29
Associated JDs: N/A
Review Area Location[1]: State/Territory: Oregon City: Malin County/Parish/Borough: Klamath
Center Coordinates of Review Area: Latitude 42.054912 Longitude -121.487953

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)[2]

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

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	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.	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.	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.	N/A.

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] 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.
[3] 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 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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Stream A	2,866	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream A is located in the northeast quadrant of the Review Area and flows south, outside of the Review Area. The Streamflow Duration Assessment Method for the Pacific Northwest (SDAM), Antecedent Precipitation Tool (APT) and a review of aerial photos were used to determine Stream A is an ephemeral channel which does not contribute surface water flows to an (a)(1) – (a)(3) water in a typical year.
Stream B	684	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream B is located in the northeast quadrant of the Review Area and possesses a hydrologic surface water connection with Stream A. The SDAM, APT and a review of aerial photos were used to determine Stream B is an ephemeral channel which does not contribute surface water flows to an (a)(1) – (a)(3) water in a typical year.
Stream C	13,580	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream C is centrally located within the Review Area and possesses two impoundments (Pond A and Pond B) as well as Wetland A, identified as a wetland reach of Stream C. The SDAM, APT and a review of aerial photos were used to determine Stream C is an ephemeral channel which does not contribute surface water flows to an (a)(1) – (a)(3) water in a typical year. Stream C does not impound jurisdictional waters.
Stream D	3,360	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream D is located in the central portion of the Review Area west of Stream C and possesses a hydrologic surface connection with Stream C near the southern end of the Review Area. The SDAM, APT and a review of aerial photos were used to determine Stream D is an ephemeral channel which does not contribute surface water flows to an (a)(1) – (a)(3) water in a typical year.
Stream E	3,840	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream E is located to the west of Stream C and possesses a hydrologic surface connection with Stream D within the Review Area. The SDAM, APT and aerial photos were used to determine Stream E is an ephemeral channel which does not contribute surface water flows to an (a)(1) – (a)(3) water in a typical year.
Stream F	200	linear feet	(b)(3) Ephemeral feature, including	Stream F is located in the southwest corner of the Review Area and is a small segment of a

[4] 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.
[5] 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.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
			an ephemeral stream, swale, gully, rill, or pool.	much longer (b)(3) surface water channel above and below the boundaries of the Review Area. Stream F flows south, outside of the Review Area. The SDAM, APT and a review of aerial photos were used to determine Stream F is an ephemeral channel which does not contribute surface water flows to an (a)(1) – (a)(3) water in a typical year.
Pond A	1.33	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	Pond A is a constructed surface water feature which is used to provide livestock water located within Stream C. As stated above, Stream C is an ephemeral channel which does not contribute surface water flows to an (a)(1) – (a)(3) water in a typical year. Pond A is excluded from jurisdiction under the Navigable Waters Protection Rule (NWPR) because it does not impound jurisdictional waters and is otherwise not a jurisdictional aquatic resource feature.
Pond B	1.40	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	Pond B is a constructed surface water feature which is used to provide livestock water located within Stream C. As stated above, Stream C is an ephemeral channel which does not contribute surface water flows to an (a)(1) – (a)(3) water in a typical year. Pond B is excluded from jurisdiction under the NWPR because it does not impound jurisdictional waters and is otherwise not a jurisdictional aquatic resource feature.
Wetland A	0.25	acre(s)	(b)(1) Non-adjacent wetland.	Wetland A is a palustrine emergent wetland feature located immediately south and downslope of the earthen berm that forms Pond B. The source of hydrology for Wetland A is direct precipitation and seepage from the base of Pond B's earthen berm. Wetland A is isolated from Stream C and is not inundated by Stream C under typical conditions. Wetland A would not be inundated or saturated by (a)(1) – (a)(3) waters under typical conditions. Wetland A was not constructed in a tributary, did not relocate a tributary and was not constructed in an adjacent wetland, as defined by the NWPR, at the time of construction.

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 and Other Waters Delineation Report, Skysol Solar Project, Malin, Oregon" prepared by Stantec and dated 1 July 2020 using the "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Regional Supplement, version 2.0 (2008). Revised coordinates provided by Stantec on 27 May 2021 titled "Supplemental Table B-2 Feature Coordinates and Areas for NWP-2021-29 Skysol, LLC (05/07/2021)"

This information is sufficient for purposes of this AJD.
Rationale: N/A

☐ Data sheets prepared by the Corps: N/A

☒ Photographs: Aerial: Google Earth Pro photos accessed by the Corps on 23 July 2021 and 27 July 2021; Google Earth Pro photos dated 16 June 2006, 1 August 2011, 4 July 2014, and 27 July 2017.

☐ Corps site visit(s) conducted on: N/A

☐ Previous Jurisdictional Determinations (AJDs or PJDs): N/A

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

☐ USDA NRCS Soil Survey: N/A

☐ USFWS NWI maps: N/A

☒ USGS topographic maps: Soda Mountain, Oregon 1988

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Streamer mapping tool available at https://txpub.usgs.gov/DSS/streamer/web/
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	U.S. Army Corps of Engineers GeoPortal Tool layers for National Hydrographic Dataset
State/Local/Tribal Sources	Oregon Department of Geology and Mineral Industries (DOGAMI) LiDAR Data Viewer, Bare Earth Hillshade data accessed by Corps staff on 22 July 2021.
Other Sources	SDAM data collected between 6-8 April 2020 and included in the wetland delineation package.

B. Typical year assessment(s): The Corps used the APT to evaluate the Review Area via a single point method for the dates that correlate with field work conducted by the requestor aand the dates the Corps investigated aerial imagery. The APT analysis is used to determine if the date-specific observatons fall within the normal periodic range for the geographic area based on a rolling thirty-year period. The APT includes information from the Web-based Water-Budget Interactive Modeling Program (WebWIMP) and Palmer Drought Severity Index (PDSI). A single point method using latitude and longitude coordinates identified in Section (1) above were utilized because the single point method adequately represents the data sources available via the ATP to conduct an analysis of climatic conditions within the study area. The APT is available online (https://github.comjDeters-USACE/Antecedent-Precipitation-Tool).

Assessments were made were made on Streams A through F at each location where the applicant collected SDAM data. All assessment and delineation occurred during periods of Incipient to Moderate drought on land actively grazed and where irrigation was occurring near (e.g. Segment 1 of Stream D). All assessment was conducted from 6-8 April 2020, straddling the end of the APT wet and dry time of year.

The APT returned Normal Conditions during the Dry Season on four of seven locations in Stream C and Stream D. Streams A, B, E, and F experienced dryer than normal conditions. The data provided occurred during moderate to incipient drought under atypical conditions.

Based on the Corps' review of the APT and Google Earth Pro aerial photos of the area as far back as 3 June 2003, surface water flows within Stream A through F would be ephemeral under typical conditions. The following list identifies APT results for all streams. Segment 0 refers to a streams that were contiguous (Streams A, E, and F) while streams with multiple segments were either discontinuous (Stream D) or which had in-channel impoundments (Stream C):

Stream A Segment 0 – Dryer than Normal Conditions during the Dry Season (WebWIMP) during Moderate Drought (PDSI);
Stream B Segment 0 – Dryer than Normal Conditions during the Wet Season (WebWIMP) during Moderate Drought (PDSI);
Stream C Segment 1 – Normal Conditions during the Dry Season (WebWIMP) during Incipient Drought (PDSI);
Stream C Segment 2 – Normal Conditions during the Dry Season (WebWIMP) during Incipient Drought (PDSI);
Stream C Segment 3 – Normal Conditions during the Wet Season (WebWIMP) during Incipient Drought (PDSI);
Stream C Segment 4 – Normal Conditions during the Wet Season (WebWIMP) during Incipient Drought (PDSI);
Stream D Segment 1 – Normal Conditions during the Wet Season (WebWIMP) during Moderate Drought (PSDI);
Stream D Segment 2 – Normal Conditions during the Dry Season (WebWIMP) during Moderate Drought (PDSI);
Stream D Segment 3 – Normal Conditions during the Dry Season (WEBWIMP) during Moderate Drought (PSDI);
Stream E Segment 0 – Dryer than Normal Conditions during the Wet Season (WebWIMP) during Moderate Dought (PDSI);
Stream F Segment 0 – Dryer than Normal Conditions during the Dry Season (WebWIMP) during Moderate Drought (PDSI).

C. **Additional comments to support AJD:** The requestor utilized the SDAM developed by a partnership between the Environmental Protection Agency, U.S. Army Corps of Engineers and Oregon Department of State Lands to determine stream flow duration due to the lack of stream gage data. This data was reviewed and considered in light of topography, land use and APT conditions.