

**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): 11 March 2022**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Portland District, ODOT Foothill Road - Hillcrest to Dry Creek, NWP-2021-183**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Oregon County/parish/borough: Jackson City: Medford  
Center coordinates of site (lat/long in degree decimal format): Lat. 42.3527° **N**, Long. 122.82455° **W**.  
Universal Transverse Mercator: Refer to Lat./Long. above.

Name of nearest waterbody: Swanson Creek, Lone Pine Creek, Medford Irrigation District (MID) Canal  
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rogue River  
Name of watershed or Hydrologic Unit Code (HUC): 171003080110 & 171003080208

- 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: 10 February 2022  
 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 and are not** "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: 6,100 linear feet: 1-12 width (ft) and/or          acres.  
Wetlands: 0.59 acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual**

Elevation of established OHWM (if known): Varies.

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: Wetlands B, C, D, H, I, J, K, L, and M were delineated within the review area and all appear to be artificially induced by irrigation water as they are located downslope from irrigation water sources. This is based upon lack of landscape position (wetlands are located where wetlands don't naturally occur), the transition to upland downslope of water inputs (typically

<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.

wetlands are wetter further downslope), evidence of remnant irrigation toe ditches (wetland H), and the hydrology parameter being met with surface water and no ground water table present. Wetland N occurs in a broad swale with no surface connection to a receiving water and is induced by irrigation water inputs.

### **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: 25 square miles

Drainage area: 25 square miles

Average annual rainfall: 19 inches

Average annual snowfall: 1-2 inches

###### **(ii) Physical Characteristics:**

###### **(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 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: N/A.

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

Identify flow route to TNW<sup>5</sup>: There are three different tributaries that will be discussed: Swanson Creek flows to Whetstone Creek and discharges into the Rogue River. Upton Slough discharges directly to the Rogue River. Lone Pine Creek flows to Bear Creek and discharges into the Rogue River.  
Tributary stream order, if known: 1.

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain: .  
 Manipulated (man-altered). Explain: Due to manipulation from irrigation installations the flows in the tributaries vary and flows are manipulated by the season and irrigation withdrawals. Additional manipulation includes sections of these tributaries being culverted for roadways and residential developments.

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

Average width: Swanson Creek 8 feet, Upton Slough 1 feet, Lone Pine Creek 1 feet  
 Average depth: Swanson Creek 2 feet, Upton Slough 0.5 feet, Lone Pine Creek 0.5 feet  
 Average side slopes: **3:1**.

**Primary tributary substrate composition (check all that apply):**

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover:  
 Other. Explain: Culverts at the roadway crossings.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The tributaries are all long standing and have remained in the same location.

Presence of run/riffle/pool complexes. Explain: Riffle and pool complexes are found all along the three tributaries.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): Varies from 1 to 6 %

(c) Flow:

Tributary provides for: Swanson Creek is Perennial, Upton and Lone Pine are intermittent.

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: Flows in Swanson Creek are typically year round due to irrigation flows supplementing base flows during the growing season. Upton Slough and Lone Pine Creek typically flow when winter rains begin and taper off until irrigation season when the channels are used by the MID to provide water to downstream users.

Other information on duration and volume: N/A.

Surface flow is: **Discrete and confined**. Characteristics: Channels are clear and obvious during flow events which varies depending upon the precipitation for the year and the weather patterns for Upton Slough and Lone Pine Creek. Swanson Creek has year round flows.

Subsurface flow: **Unknown**. Explain findings: N/A.

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:

<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.

<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.

- |  |  |
|--|--|
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).  
 Explain: Water color in these tributaries is clear and no sources of contamination are found upstream.  
 Identify specific pollutants, if known: No known sources of pollution exist.

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

- Riparian corridor. Characteristics (type, average width): Varies from a few inches along Upton Slough and Lone Pine Creek to several feet around Swanson Creek.
- Wetland fringe. Characteristics: Areas where Upton Slough and Lone Pine Creek begin to show base flows and relatively permanent flows, these regions gather additional flows from direct precipitation and contains wetlands that abut the creeks.
- 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: 0.52 acres

Wetland type. Explain: Wetlands E and F are palustrine emergent wetlands.

Wetland quality. Explain: The wetlands are degraded due to agricultural uses and roadways constructed through the wetlands.

Project wetlands cross or serve as state boundaries. Explain: N/A.

**(b) General Flow Relationship with Non-TNW:**

Flow is: **Intermittent flow**. Explain: As the seasonal rains begin, the wetlands retain water until their capacity is reached and the flows continue from the wetlands to Swanson Creek. As the rainfall recedes, the wetlands dry up.

Surface flow is: **Overland sheetflow**

Characteristics: There are two culverts that direct flows from Wetland E and F directly to Wetland G and to Swanson Creek. The wetlands provide direct hydrological, biological, and food web connections to Swanson Creek. Hydrological connection is observed in the soils and water table of Wetland E and F to Wetland G.

Subsurface flow: **Yes**. Explain findings: The soil pits dug in these wetlands have water tables that match up with the gradient of to the adjacent Swanson Creek in which the flows from the wetlands are directed to with culverts under the roadways.

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: Wetlands E and F are separated by roadways and connected by culverts to Wetland G, which directly abuts Swanson Creek. Flows from the wetlands are contiguous to Swanson Creek.

**(d) Proximity (Relationship) to TNW**

Project wetlands are **5-10** 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 **2-year or less** 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: The delineation photos of the wetlands depict clear water and no sources of contamination.

Identify specific pollutants, if known: Specific sources of pollution nearby the wetlands are stormwater from the impervious surfaces of the existing roadways.

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

- Riparian buffer. Characteristics (type, average width): Tall willowherb, Pacific willow, and some have cattails.
- Vegetation type/percent cover. Explain: Typical palustrine emergent wetlands in the Jackson County. Vernal pool -

Agate Desert vegetation. Some of the wetlands are fed by seeps and springs.

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: **6**

Approximately ( 0.52 ) 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>
A - Y	0.027	E - N	0.006
F - N	0.513	G - Y	0.002
O - Y	0.008	P - Y	0.037

Summarize overall biological, chemical and physical functions being performed: The wetlands are in an arid landscape and provide functions such as water detention, stormwater treatment, and habitat for various species. Wetlands B, C, and D are located along the East side of Foothill Road and their culverts connecting to Wetland E are damaged. These wetlands do not provide flows across the roadway and ultimately to Swanson Creek and the Rogue River. Wetlands A and G, directly abut Swanson Creek and Wetlands O and P directly abut South Fork Upton Slough.

**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: Wetlands E and F directly connect to Wetland G via culverts underneath roadways. Wetland A and G directly abuts Swanson Creek. The wetlands in combination with Swanson Creek reduce the amount of stormwater and other non-point source

pollutants that reach the Rogue River. Wetlands O and P directly abut the South Fork Upton Slough. Culverts convey the flows of South Fork Upton Slough across Foothill Road and downstream to the Rogue River. Wetland A directly abuts Swanson Creek outside of the review area. Wetlands A, E, F, G, O, P, South Fork Upton Slough, and Swanson Creek have a lot of capacity to provide carbon sources needed for the foodwebs located downstream.

**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: Swanson Creek has year-round flows, including drier months when flows typically recede, there are flows from other agricultural inputs, seeps, and springs in the surrounding region. The MID canal is an RPW that captures perennial flows from Little Butte Creek and captures and releases flows into all of the other tributaries the canal crosses. Flows are observed in the MID canal typically year round due to the inputs along the entire length. These flows are returned to various tributaries and ultimately flow to the Rogue River. Excess flows in the canal discharge directly into Bear Creek, another perennial tributary of the Rogue River.
- 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: Upton Slough (aka-Upton Creek) and Lone Pine Creek typically flow during the winter months when rainfall picks up. The flows are continuous for a period after the rainfall ceases due to springs that keep flows until the water table recedes.

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

- Tributary waters: **50** linear feet ~**1-1.5**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: The wetland delineation performed reflects the continuation of the wetlands to the boundaries of Swanson Creek and Upton Slough.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.59** 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: **0.52** acres.

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

---

<sup>8</sup>See Footnote # 3.

- 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>**

- 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: **Wetlands B, C, D, H, I, J, K, L, and M were delineated within the review area and all appear to be artificially induced by irrigation water. This is based upon lack of landscape position (wetlands where wetlands don’t naturally occur), the transition to upland downslope of the wetlands and water inputs (typically wetlands get wetter further downslope), evidence of remnants of irrigation ditches that have been filled in (Wetland H), and hydrology parameters being met with surface water and no ground water table present. Wetland N occurs in a broad swale with no surface connection to a receiving water and appears to be induced by an overflow of irrigation water.**
- 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: B-0.039 acres, C-0.013 acres, D-0.074 acres, H-0.328 acres, I-0.009 acres, J0.0015 acres, K-0.070 acres, L-0.013 acres, M-0.106 acres, and N-0.046 acres, for a total of 0.70 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: \_\_\_\_\_

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

<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.

Wetlands: B-0.039 acres, C-0.013 acres, D-0.074 acres, H-0.328 acres, I-0.009 acres, J0.0015 acres, K-0.070 acres, L-0.013 acres, M-0.106 acres, and N-0.046 acres, for a total of 0.70 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: Delineation completed by ODOT dated April 2021.
- 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: .
- Corps navigable waters' study: Rogue River.
- U.S. Geological Survey Hydrologic Atlas: HUC #171003080202 & 171003080110.
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24K Medford East.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Provided with requestor delineation report.
- National wetlands inventory map(s). Cite name: Provided with requestor delineation report.
- State/Local wetland inventory map(s): Provided with requestor delineation report.
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth 2021.  
or  Other (Name & Date): Ground-level delineation photos dated April 2021.
- Previous determination(s). File no. and date of response letter: NWP-2021-183 AJD completed under the rescinded Navigable Water Protection Rule completed on June 3, 2021.
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** On [date] the Corps Portland District coordinated this JD with U.S. Environmental Protection Agency (EPA) Region 10 and Corps Headquarters (HQ). On 28 February 2022 Corps HQ concurred with our findings. EPA requested a copy of the wetland delineation on 28 February 2022 and concurred with the Corps findings on 9 March 2022.