

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 13, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWP-ODG, Hamaker PV 1 Klamath County, NWP-2022-292

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Klamath City: Unincorporated
Center coordinates of site (lat/long in degree decimal format): Lat. 42.13593° N, Long. 121.9843° W.
Universal Transverse Mercator:

Name of nearest waterbody: Klamath River

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

Name of watershed or Hydrologic Unit Code (HUC): 180102060201 (Klamath River watershed)

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: September 27, 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** "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 *Streams 1, 2*

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 *Wetland 3*

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 acres.

Wetlands: 0.022 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual and Established by OHWM.

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: **Wetlands 1, 2, and Ditch 1.**

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.

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 waterbody⁴ 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 *Streams 1 and 2*

(i) General Area Conditions:

Watershed size: 123.54 square miles

Drainage area: 1.12 square miles

Average annual rainfall: 52.5 inches

Average annual snowfall: 19.05 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

Project waters are 1-2 river miles from RPW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Project waters are 1-2 aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: Stream 1 flows north under Oregon Route 66 via a culvert and then continues offsite outside of the study area toward the Klamath River (RPW). Stream 2 flows offsite outside of the study area to the west to

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.

the Klamath River. The Klamath River becomes a TNW downstream of river mile 39.0/Tulley Rapids. The Klamath River measures approximately 257 miles in length from Klamath Falls, Oregon to the Pacific Ocean.

Tributary stream order, if known: 2

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

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: .

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

Average width: Stream 1 varies from 1 to 4 feet, Stream 2 varies from 1.5 to 4 feet

Average depth: less than 1 foot

Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain: Stream 1 and Stream 2 contain substrate consisting of gravel and mud.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Erosion and deposition noted.

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): varies 2-15 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

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

Describe flow regime: Stream 1 and 2 flow during the rainy season as well as in response to snow melt.

Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

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:**

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

Explain: The study area is an actively managed commercial forest with recent harvest of trees within the study area.

Surface water would be clear or carry sediment to the Klamath River.

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 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.

⁷Ibid.

Identify specific pollutants, if known: .

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

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: Stream 1 supports Wetland 3 adjacent to the stream.
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: Streams 1 and 2 provide habitat to amphibians and other wildlife which

require access to surface water throughout the calendar year.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW** *Wetland 3*

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: Wetland 3 = 0.022 acres

Wetland type. Explain: PEM.

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Waters would flow to Stream 1 during rain or snow melt events.

Surface flow is: **Discrete and confined**

Characteristics: This wetland surrounds Stream 1. Surface flow from surrounding uplands contributes to hydrology of this wetland as well as surface water from Stream 1.

Subsurface flow: Unknown. Explain findings: .

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: .

(d) Proximity (Relationship) to TNW

Project wetlands are **30 (or more)** river miles from TNW.

Project waters are **30 (or more)** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **500-year or greater** 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 study area is an actively managed commercial forest with recent harvest of trees within the study area. Surface water would be clear or carry sediment to Stream 2.

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: The dominant vegetation is tapper-tipped rush (*Juncus acuminatus*) and tufted hairgrass (*Deschampsia cespitosa*).

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: Wetland 3 provides habitat to amphibians and other wildlife which

require access to surface water throughout the calendar year.

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **1**

Approximately (0.022) 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>
Wetland 3 (Y)	0.022 acres		

Summarize overall biological, chemical and physical functions being performed: The wetland would help slow down stream water as it passes through the wetland, allowing for sediment to be dropped out of the water column as water is filtered. The wetland would provide a nutrient storage area as well as store detritus as it decomposes. The wetland would provide habitat, food, and lifecycle support for wildlife.

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:

Streams 1 and 2 are ephemeral drainages that drain across the project area and empty into the Klamath River. The waters would flow in response to rain and snow melt events carrying water downstream to the Klamath River. Stream 1 has a mean annual runoff estimate (MA) of 0.24 cubic feet per second, Stream 2 has a mean annual runoff estimate (MA) of 0.89 cubic feet per second. Wetland 3 is a 0.022-acre palustrine emergent (PEM), slope wetland associated with Stream 1.

The tributaries of Streams 1 and 2 have the capacity to carry pollutants including sediment, fire retardant chemicals, and carbon from tree burn to the Rogue River (RPW/TNW). The tributaries have the capacity to capture pollutants to reduce the amount of pollutants, sediments or flood waters from reaching the RPW/TNW. The tributaries provides detention for water and reduces velocity of water entering the RPW/TNW. The tributaries in combination with its adjacent wetlands create and transfer organic carbon which supports the downstream food web of the RPW/TNW. The tributaries in combination with the adjacent wetlands create a riparian corridor for animals to get to the RPW/TNW. The effects to the TNW are more than insubstantial or speculative.

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:

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: .
- 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: .

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: .

3. **Non-RPWs⁸ 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: **Stream 1 - 2800 linear feet, 1 to 4 feet width.**
Stream 2 – 1500 linear feet, 1.5 to 4 feet width
 - 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: .

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

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: **0.022** 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).

⁸See Footnote # 3.

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

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: .
- Other: (explain, if not covered above): .

Wetland 1 is a 0.21-acre PEM, slope wetland located adjacent to a spring. The dominant vegetation is toad rush (*Juncus bufonius*) and common rush (*Juncus effusus*). The wetland initiates at a spring located south of an access road. The spring water is ponded at the source and surface flows extend northwest. The primary source of hydrology in this location is groundwater, runoff from surrounding uplands as well as precipitation. The wetland expands away from the spring to the northwest before dissipating into the ground. At the point where the wetland ceases at the northwest end, no hydrological indicators were located and vegetation is dominated by upland species. The wetland boundary follows higher elevation around the spring and slight elevation changes to the north. The upland has a distinct shift in vegetation from toad rush to cheatgrass and upland forbs as well as a lack of wetland hydrology. The nearest water of the U.S. is approximately 400 feet away. The Corps has determined Wetland 1 is a non-jurisdictional wetland.

Wetland 2 is a 0.019-acre PEM, slope wetland. The wetland forms within and below an excavated depressional channel. Groundwater ponds in the excavated pit and gradually flows downgradient until it infiltrates downslope (PP13b). The dominant vegetation is toad rush, common rush, and narrow-leaf-blue-eyed grass (*Sisyrinchium idahoense*). The source of hydrology in this location is groundwater, surface flow from surrounding uplands, as well as precipitation. The channel width ranges from 1 to 2 feet and is moderately vegetated. The channel becomes less vegetated to the north and the channel bed consists mostly of gravel and mud. The wetland drains north, goes downslope and disappears. Water loss is primarily due to subsurface saturation and evapotranspiration. The wetland boundary follows higher elevations above the ponded spring water along with a distinct shift in vegetation from toad rush to upland forbs as well as a lack of wetland hydrology. The nearest water of the U.S. is approximately 300 feet away. The Corps has determined Wetland 2 is a non-jurisdictional wetland.

Ditch 1 is a roadway ditch associated with the adjacent roadway culverts. At this point, no ordinary high water mark is present nor are other indications of flow present. The nearest water of the U.S. is approximately 3,500 feet away. The Corps has determined Ditch 1 is a non-jurisdictional surface feature.

For Wetlands 1, 2, and Ditch 1, there are no surface drainage features between the isolated water and the nearest water of the U.S. There are no berms between Wetlands 1, 2, and Ditch 1, however there is a change in topography preventing any water flow from the features to the nearest water of the U.S. During extreme floods/storms, Wetlands 1 and 2 would not overflow into a water of the U.S., nor would a water of the U.S. overflow into the wetland due to topography changes. Ditch 1 may have enough water to fully connect to Stream 2 during high water events, however Stream 2 would not overflow into Ditch 1. The soils are mapped as well drained with hydric ratings between 1-3. The wetlands and ditch are not in any designated floodplain. Wetlands 1, 2, and Ditch 1 are not used by interstate or foreign travelers for recreational purposes. There are no resources, habitat, bird/wildlife species of special significance that would attract interstate or foreign travelers to the site. The sites do not support fish and shellfish which could be

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*.

taken or sold for interstate or foreign commerce. There are no industrial, agricultural, or silviculture supported by Wetlands 1, 2, and Ditch 1 of which the products would be sold for interstate or foreign commerce.

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: 0.001 acres. List type of aquatic resource: ditch.
- Wetlands: 0.29 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: .
- Wetlands: 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: Wetland and Nonwetland Waters Delineation Report for the Hamaker PV1 Solar Energy Project by Jacobs Engineering. Delineation field work conducted on June 28-29, 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: SanFranDistrict_Sec10Waters_2Aug1971.
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data. Corps EGIS maps accessed 9-23 and 9-26 2022.
 - USGS 8 and 12 digit HUC maps. Corps EGIS maps accessed 9-23 and 9-26 2022.
- U.S. Geological Survey map(s). Cite scale & quad name: .
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: Corps EGIS maps accessed 9-23 and 9-26 2022..
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: ORM layer accessed on 9-23-2022.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Corps EGIS maps accessed 9-23 and 9-26 2022.
or Other (Name & Date): Ground photos from Delineation Report.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: On September 29, 2022 we coordinated this JD with EPA Region 10 and USACE Headquarters. On October 12, 2022, neither party had comments on the JD.