

**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): November 28, 2022**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWP-2021-511, Avangrid Renewables - Tower Solar Project**

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

State: Oregon County/parish/borough: Morrow City: Boardman

Center coordinates of site (lat/long in degree decimal format): Lat. 45.812545° N, Long. 119.865063° E.

Universal Transverse Mercator: see Lat./Long. above

Name of nearest waterbody:

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

Name of watershed or Hydrologic Unit Code (HUC): Poverty Ridge-Sixmile Canyon (170701010905); Crow Butte-Lake Umatilla (170701011401)

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: November 28, 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 – **ST-02**

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs – **WET-02, WET-03**

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: 353 linear feet: 16 width (ft) and/or acres.

Wetlands: 0.54 acres.

**c. Limits (boundaries) of jurisdiction based on: Established by OHWM.**

Elevation of established OHWM (if known): .

**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: See Section III.F below. **WET-01 and ST-01 were determined to be non-waters of the U.S.**

<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.

**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: 42.5 acres (Poverty Ridge-Sixmile Canyon HUC); 39.5 acres (Crow Butte-Lake Umatilla HUC)

Drainage area: 42.5 acres (Poverty Ridge-Sixmile Canyon HUC); 39.5 acres (Crow Butte-Lake Umatilla HUC)

Average annual rainfall: 9.38 inches

Average annual snowfall: 4 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 0 tributaries before entering TNW.

Project waters are 2-5 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: .

Identify flow route to TNW<sup>5</sup>: ST-02 flows approximately 3 miles to the northwest where it crosses under Interstate 84 and enters the Columbia River (TNW) near river mile 259. ST-02 meanders through a wetland complex upstream of the

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

<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.

Corps Review area and impounds at the existing railroad fill prism. ST-02 is routed through four 4-foot diameter, 312-foot long CMP culverts located under an existing railroad fill prism. ST-02 then discharges to a 41 foot long, daylit stream channel northwest and downstream of the railroad fill prism within the Corps Review Area. Surface flow in ST-02 is confined within the Corps Review Area.

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: Approximately 351 linear feet of ST-02 within the Corps

Review Area is contained within culvert pipes underneath a railroad fill prism. The portion of the tributary within a culvert under the railroad fill prism was anthropogenically constructed in the past. In the Review Area, the portion of ST-02 located west and downstream of the railroad fill prism was also anthropogenically constructed when the tributary was routed under the railroad.

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

Average width: 33 feet

Average depth: 3 feet

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: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The condition of ST-02 is relatively stable with the upstream portion of ST-02 acting as a wetland impoundment and the downstream portion meandering downstream through a wetland complex to the Columbia River located outside of the Corps Review Area. ST-02 is routed through four 4-foot diameter, \_\_\_ long corrugated metal pipe (CMP) culverts located under an existing railroad fill prism within the Corps Review Area. ST-02 then discharges to form a wider, daylit stream channel northwest and downstream of the railroad fill prism within the Corps Review Area.

Presence of run/riffle/pool complexes. Explain: Due to the impounded and highly modified nature of ST-02 within the Corps Review Area run/riffle/pool complexes do not exist.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 2%

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: Seasonal flow.

Other information on duration and volume: The Corps determined ST-02 has seasonal flow because the U.S. Geologic Survey (USGS) StreamStats report for the basin denotes surface water flow is present within ST-02 for eight months of the calendar year. The volume ranges from a monthly average 2 year low flow value in June of 0.0189 cubic feet per second (cfs) to a monthly average 2 year low flow value of 3.4 cfs in April of the calendar year. The USGS Crow-Butte quadrangle Washington-Oregon 7.5-minute series (2020) denotes ST-02 as a solid blue line which equates to a perennial flow regime. The wetland delineation for the site denotes ST-02 as a perennial waterway. The Corps determined that because surface water flow within ST-02 must first pond within WET-03 (discussed below) before entering the four culvert pipes located under the railroad fill prism the flow regime of ST-02 is intermittent and flows seasonally when surface waters are elevated within ST-02 and WET-03.

Surface flow is: **Confined**. Characteristics: ST-02 meanders through a wetland complex upstream of the Corps Review area and impounds at the existing railroad fill prism. ST-02 is routed through four 4-foot diameter, 312-foot long CMP culverts located under an existing railroad fill prism. ST-02 then discharges to a 41 foot long, daylit stream channel northwest and downstream of the railroad fill prism within the Corps Review Area. Surface flow in ST-02 is confined within the Corps Review Area.

Subsurface flow: **No**. Explain findings: The USGS StreamStats report for the basin denotes surface water is present within ST-02 for eight months of the calendar year. ST-02 abuts WET-02 (discussed below) and acts as the surface water transport pathway from ST-02 through WET-02 and the downstream wetland complex, ultimately connecting to the Columbia River.

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

<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.

- |   |  |
|---|--|
| <input type="checkbox"/> changes in the character of soil                   | <input type="checkbox"/> destruction of terrestrial vegetation       |
| <input checked="" type="checkbox"/> shelving                                | <input type="checkbox"/> the presence of wrack line                  |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting                            |
| <input type="checkbox"/> leaf litter disturbed or washed away               | <input checked="" type="checkbox"/> scour                            |
| <input type="checkbox"/> sediment deposition                                | <input type="checkbox"/> multiple observed or predicted flow events  |
| <input type="checkbox"/> water staining                                     | <input checked="" type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> 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):

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <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: The water color in ST-02 appears clear and is likely highly filtered due to the upstream wetland complex southwest of the Corps Review Area. The surrounding landscape is largely rangeland and agricultural production. Local agricultural practices may result in nitrate, phosphate, or other chemicals entering this wetland complex and ST-02 associated with nearby agricultural activities.

Identify specific pollutants, if known: Unknown.

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

Riparian corridor. Characteristics (type, average width): Well vegetated with trees and shrub species. The riparian corridor is wide, varying from approximately 360 to 470 feet within and immediately abutting the Corps Review Area on the upstream and downstream extents. ST-02 meanders through a valley floor and is impounded within the Review Area

Wetland fringe. Characteristics: Wide; similar to the riparian corridor the wetland fringe is affected by the geomorphic position of ST-02 and the existing railroad fill prism.

Habitat for:

- Federally Listed species. Explain findings: .
- Fish/spawn areas. Explain findings: .
- Other environmentally-sensitive species. Explain findings: .
- Aquatic/wildlife diversity. Explain findings: ST-02 provide seasonal breeding and foraging habitat for amphibians

and aquatic insects, and provide water and forage for mammals (e.g., foxes, coyotes, rodents). Insect drop from the riparian corridor provides prey as a food source for amphibians and avian species. Avian species utilize ST-02 and its riparian corridor for habitat, food acquisition, and water.

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

**(i) Physical Characteristics:**

**(a) General Wetland Characteristics:**

Properties: WET-02 and WET-03 are palustrine emergent (PEM)/scrub-shrub wetlands (PSS) per the Cowardin classification system. WET-02 is located northwest and downstream of the existing railroad fill prism within the Corps Review Area and abuts ST-02. WET-03 is located southeast and upstream of the existing railroad grade within the Corps Review Area, abuts ST-02, and acts as an impoundment of ST-02. During seasonal flow events within ST-02, surface water in WET-03 rises in elevation and conveys flow through four existing culverts under the railroad fill prism which act as the ST-02 stream channel.

Wetland size: 0.07 acres (WET-02); 0.47 acres (WET-03)

Wetland type. Explain: WET-02 and WET-03 are PEM/PSS per the Cowardin classification system.

Wetland quality. Explain: WET-02 and WET-03 are moderate to high in quality. The geomorphic position of these wetlands is a valley floor within an arid environment. The wetlands provide habitat and food and water sources for amphibians, mammals, and avian species that does not otherwise exist in the surrounding upland areas.

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

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

Flow is: **Intermittent flow**. Explain: WET-02 and WET-03 abut ST-02 which contain surface water for eight months during the calendar year. These wetlands become drier during the remaining four months rendering them intermittent in flow regime.

Surface flow is: **Discrete and confined**

Characteristics: The flow path between the wetlands to ST-02 is discrete and confined where micro-channels have formed providing a direct wetland-to-waterway surface water transportation pathway.

<sup>7</sup>Ibid.

Subsurface flow: **Yes**. Explain findings: During the calendar year when surface water is not present in WET-02 subsurface flow acts as the surface water transport pathway from this wetland to the downstream wetland complex, ultimately connecting to the Columbia River. WET-03 is impounded by an existing railroad fill prism and is unable to transmit subsurface flow to WET-02 and the downstream wetland complex located outside of the Corps Review Area.

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 **2-5** 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 water color in WET-02 and WET-03 appears clear and is likely highly filtered due to the upstream wetland complex southwest of the Corps Review Area. The surrounding landscape is largely rangeland and agricultural production. Local agricultural practices may result in nitrate, phosphate, or other chemicals entering this wetland complex and WET-02 and WET-03 associated with nearby agricultural activities.

Identify specific pollutants, if known: Unknown.

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

Riparian buffer. Characteristics (type, average width): The riparian buffer is vegetated with trees and shrub species. The riparian buffer is wide, varying from approximately 360 to 470 feet within and immediately abutting the Corps Review Area on the upstream and downstream extents. WET-02 and WET-03 within the Corps Review Area are portions of a larger wetland complex located upstream and downstream of the existing railroad fill prism within the Corps Review Area.

Vegetation type/percent cover. Explain: Based on aerial photographs in the wetland delineation and Google Earth Pro aerial imagery the wetlands are 90% or more vegetated with a herb, shrub, or tree stratum. The wetland delineation denotes WET-02 and WET-03 largely contain herb and shrub strata. The dominant wetland plant species within WET-02 and WET-03 consist of Coastal salt grass (*Distichlis spicata*), Foxtail barley (*Hordeum jubatum*), Reed canary grass (*Phalaris arundinacea*), Peachleaf willow (*Salix amygdaloides*), Three-square bullrush (*Schoenoplectus pungens*), broadleaf cattail (*Typha latifolia*).

Habitat for:

- Federally Listed species. Explain findings:
- Fish/spawn areas. Explain findings:
- Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: WET-02 and WET-03 provide seasonal breeding and foraging habitat for amphibians and aquatic insects, and provide water and forage for mammals (e.g., foxes, coyotes, rodents). Insect drop from the riparian corridor provides prey as a food source for amphibians and avian species. Avian species utilize ST-02 and its riparian corridor for habitat, food acquisition, and water.

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

All wetland(s) being considered in the cumulative analysis: **2**

Approximately (0.54) 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>
WET-02 (Y)	0.07 acre		
WET-03 (Y)	0.47 acre		

Summarize overall biological, chemical and physical functions being performed: .

### 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: .

### 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: The USGS StreamStats report for the basin denotes surface water flow within ST-02 8 out of 12 months of the calendar year. The volume ranges from a monthly average 2 year low flow value in June of 0.0189 cubic feet per second (cfs) to a monthly average 2 year low flow value of 3.4 cfs in April of the calendar year. The USGS Crow-Butte quadrangle

Washington-Oregon 7.5-minute series (2020) denotes ST-02 as a solid blue line which equates to a perennial flow regime. The wetland delineation for the site denotes ST-02 as a perennial waterway. The Corps determined that because surface water flow within ST-02 must first pond within WET-03 (discussed below) before entering the four culvert pipes located under the railroad fill prism the flow regime of ST-02 is intermittent and flows seasonally when surface waters are elevated within ST-02 and WET-03.

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

- Tributary waters: **353** linear feet **16** 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: WET-02 and WET-03 are PEM/PSS per the Cowardin classification system. WET-02 is located northwest, downstream of the existing railroad fill prism within the Corps Review Area and abuts ST-02. WET-03 is located southeast and upstream of the existing railroad grade within the Corps Review Area and acts as an impoundment of ST-02. During seasonal surface water precipitation and flow events within ST-02, WET-03 (and ST-02) rise in elevation and provides surface water flow through four existing culverts under the railroad fill prism which act as the ST-02 stream channel.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.54** 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:        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

USGS quadrangle maps from 1962 (Crow Butte, OR 1:24,000K) and 1984 Hermiston, OR (1:100,000K) denote a canyon feature within the Corps Review Area but do not identify a stream channel. The USGS quadrangle map from 1993 (Crow Butte, WA 1:24,000K) denotes a solid blue line within the Corps Review Area which connects through a wetland complex upstream and downstream of the railroad fill prism impoundment.

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

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

Historical aerial imagery obtained from USGS Earth Explorer does not identify the railroad fill prism impoundment in 1960 aerial imagery. Historical aerial imagery obtained from Google Earth Pro depicts a wetland complex above and below the railroad fill prism which acts as an impoundment in December 1985. Historical aerial imagery obtained from Google Earth Pro from July 1996 denote that a stream channel formed upstream and downstream of the fill prism impoundment and the culvert inlets and outlets are visible under the railroad fill prism.

The evidence indicates the impoundment was constructed in a wetland complex, impounded a wetland complex, and that a stream channel formed sometime before July 1996. The evidence indicates the railroad fill prism acts as an impoundment of an intermittent stream channel; this is evident by the need for the private railroad company to have located and maintained up to four, 4-foot diameter culverts under the railroad fill prism as to pass surface water flow under the fill prism. The culverts under the fill prism act to pass surface water flow under the fill prism to avoid affecting the structural integrity of the fill prism from surface water saturation and subsequent structural failure. The evidence indicates the culverts under the railroad fill prism have existed on the landscape within the Corps Review Area since approximately 1996.

The 1986 definition of waters of the U.S. in 33 CFR Part 328.3(a)(4) includes all impoundments of waters otherwise identified as waters of the U.S. In general, the impoundment of waters of the U.S. does not affect the water’s jurisdictional status.

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

**ST-01 is a 0.009 acre (83 foot long) ephemeral ditch located in the western portion of the Corps Review Area. The channel is incised, approximately 5 feet wide, and 5 feet deep from the top of the channel bank. The channel is largely unvegetated and comprised of tumbleweeds (*Amaranthaceae sp.*) (Upland species). Russian thistle (*Salsoloideae sp.*) (Facultative upland species) is present at the top of the channel bank. Wetland delineation data captured in the channel demonstrated no saturation or signs of water at 12 inches in depth where rock refusal occurred. ST-01 is located within Kohler loamy fine sand, 5 to 12 percent slopes; this soil type is a non-hydric, somewhat excessively well-drained, loamy fine sand associated with rangelands. Google Earth Pro aerial imagery denotes ST-01 was constructed between July and September 2001. ST-01 is an excavated ditch which possesses non-RPW flow. There is no evidence that ST-01 was constructed in waters of the U.S. and the feature does not relocate a tributary. ST-01 is not identified as a surface water feature in the USGS National Hydrography Dataset (NHD) or the Streamnet map. The source of hydrology for ST-01 is irrigation water from agricultural application south of the Review Area, precipitation, and associated overland sheetflow. In accordance with the preamble to the 1986 regulatory definition of Waters of the U.S., ditches excavated in uplands, draining uplands, and carrying non-RPW flow are not considered waters of the U.S. ST-01 is not a water of the U.S.**

<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.

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: 0.009 acres. List type of aquatic resource: Ephemeral channel.
- Wetlands: 0.08 acres.

**WET-01 is a 0.08 acre palustrine emergent wetland located in the eastern portion of the Review Area. The wetland is depressional, entirely contained within the Corps Review Area, and does not have a surface or subsurface water connection to other aquatic features. WET-01 is located approximately 1.25 miles southeast of the Columbia River (TNW) and approximately 2.25 miles east of the downstream reach of ST-02, outside of the Corps Review Area. WET-01 is located in Prosser-Rock outcrop complex, 1 to 20 percent slopes soil type; this soil type is a coarse-loamy, well-drained, non-hydric soil associated with plateaus, hills, and structural benches. WET-01 is not located within a mapped floodplain. WET-01 is located on private property and lacks an interstate or foreign commerce connection. The Corps determined WET-01 is isolated and is not a water of the U.S.**

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: “Tower Solar Project Wetland Delineation Report” prepared by Tetra Tech dated September 2022.
- 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: Corps Portland District 1993 list of Navigable Riverways within the State of Oregon ([https://www.nwp.usace.army.mil/Portals/24/docs/regulatory/jurisdiction/Navigable\\_US\\_Waters\\_Oregon\\_1993.pdf?ver=b\\_nFS0XJ1YwCARFvh9kNbw%3d%3d](https://www.nwp.usace.army.mil/Portals/24/docs/regulatory/jurisdiction/Navigable_US_Waters_Oregon_1993.pdf?ver=b_nFS0XJ1YwCARFvh9kNbw%3d%3d)).
- U.S. Geological Survey Hydrologic Atlas:          .
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Crow-Butte quadrangle Washington-Oregon 7.5-minute series (2020) as accessed by Corps staff on October 14, 2022.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil survey information as found in the wetland delineation report.
- National wetlands inventory map(s). Cite name: As found in the wetland delineation report.
- State/Local wetland inventory map(s):          .
- FEMA/FIRM maps: Federal Emergency Management Agency Flood Insurance Rate Map Panel 0125 of 1500 as accessed by Corps staff on October 13, 2022.
- 100-year Floodplain Elevation is:          (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Aerial photographs as found in the wetland delineation report.  
or  Other (Name & Date): Ground-level photographs as found in the wetland delineation report.
- Previous determination(s). File no. and date of response letter:          .
- Applicable/supporting case law:          .
- Applicable/supporting scientific literature:          .
- Other information (please specify): Oregon Rapid Wetland Assessment Protocol & Stream Function Assessment Method viewer as accessed by Corps staff on October 13, 2022. Streamnet map as accessed by Corps staff on October 13, 2022. USGS StreamStats web tool, including the USGS NHD, as accessed by Corps staff on October 13, 2022. Google Earth Pro aerial imagery as accessed by Corps staff on October 13, 2022, October 14, 2022, and November 8, 2022. USGS Earth Explorer historic aerial imagery as accessed by Corps staff on November 8, 2022. USGS quadrangle maps as referenced in III.D.7 described above.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The Corps Review Area is 742 acres in size. On November 9, 2022, the Corps initiated coordination for the review of this AJD with the U.S. Environmental Protection Agency (EPA) Region 10 and Corps Headquarters (HQ). On November 14, 2022, the EPA concurred with the Corps determination. On November 28, 2022, Corps HQ concurred with the Corps Portland District determination.