



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): 6/24/2020  
 ORM Number: NWP-2014-411  
 Associated JDs: N/A  
 Review Area Location<sup>1</sup>: State/Territory: Oregon City: Halfway County/Parish/Borough: Baker  
 Center Coordinates of Review Area: Latitude 44.954351 Longitude -117.188621

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

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

**C. Clean Water Act Section 404**

| Territorial Seas and Traditional Navigable Waters ((a)(1) waters): <sup>3</sup> |             |                 |                                    |
|---|-------------|-----------------|------------------------------------|
| (a)(1) Name   | (a)(1) Size | (a)(1) Criteria | Rationale for (a)(1) Determination |
| N/A.  | N/A.        | N/A.            | N/A.                               |

| Tributaries ((a)(2) waters): |             |                 |                                    |
|------------------------------|-------------|-----------------|------------------------------------|
| (a)(2) Name                  | (a)(2) Size | (a)(2) Criteria | Rationale for (a)(2) Determination |
| N/A.                         | N/A.        | N/A.            | N/A.                               |

| Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters): |             |                 |                                    |
|---|-------------|-----------------|------------------------------------|
| (a)(3) Name   | (a)(3) Size | (a)(3) Criteria | Rationale for (a)(3) Determination |
| N/A.  | N/A.        | N/A.            | N/A.                               |

| Adjacent wetlands ((a)(4) waters): |             |                 |   |
|------------------------------------|-------------|-----------------|---|
| (a)(4) Name                        | (a)(4) Size | (a)(4) Criteria | Rationale for (a)(4) Determination  |
| Wetland 4                          | 0.59        | acre(s)         | (a)(4) Wetland separated from an (a)(1)-(a)(3)  |
|                                    |             |                 | This wetland is located in the northern part of the study area and consists of a series of low areas interspersed between mine tailing piles. Wetland 4 |

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.  
<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.  
<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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| Adjacent wetlands ((a)(4) waters): |             |                                  |  |
|------------------------------------|-------------|----------------------------------|--|
| (a)(4) Name                        | (a)(4) Size | (a)(4) Criteria                  | Rationale for (a)(4) Determination   |
|                                    |             | water only by a natural feature. | formed in remnant mine settling ponds that were constructed during a mining operations in the area from 1988-1992. In accordance with the preamble to Navigable Waters Protection Rule dated April 21, 2020 on page 22323 that "once a feature subject to the (b)(9) exclusion is no longer used for the original purpose for which it was excluded, it no longer qualifies for the (b)(9) exclusion. This is consistent with the approach to other exclusions, such as waste treatment systems and artificially irrigated areas, and reaffirms the agencies' longstanding practice regarding this exclusion". Although the wetland is depicted as 5 separate sections (4a, 4b (outside review area), 4c, 4d, and 4e) these areas are connected to the east of the study boundary and constitute a single continuous wetland boundary. This wetland is supported by surface runoff, overbank and/or hyporheic flow from Pine Creek, and has a direct surface water connection to Pine Creek at the north end of the wetland. Portions of the wetland are separated only by a natural berm or bank of Pine Creek. |

**D. Excluded Waters or Features**

| Excluded waters ((b)(1) – (b)(12)): <sup>4</sup> |                |         |                              |   |
|--|----------------|---------|------------------------------|---|
| Exclusion Name                                   | Exclusion Size |         | Exclusion <sup>5</sup>       | Rationale for Exclusion Determination   |
| Wetland 6  | 0.15           | acre(s) | (b)(1) Non-adjacent wetland. | Wetland 6 is separated from the Pine Creek by a constructed berm. The berm does not include an artificial structure that allows for a surface water connection to Pine Creek in a typical year, therefore the wetland is not considered adjacent. |

**III. SUPPORTING INFORMATION**

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: "Rare Earth Resources Bonanza Mine Cornucopia, Oregon" dated 2015. Also included was a memo to Department of State Lands titled "Mine Settling Ponds, Wetland 4, DSL File 2015-0050" dated July 2017. Additional information and updated review area provided May 2020 to the Corps.

This information is sufficient for purposes of this AJD.

Rationale: N/A

Data sheets prepared by the Corps: Title(s) and/or date(s).

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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- Photographs: **Other:** Site photos submitted by applicant June 10, 2020.
- Corps site visit(s) conducted on: **Date(s)**.
- Previous Jurisdictional Determinations (AJDs or PJDs): **NWP-2014-411 PJD, June 14, 2018**
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: **Title(s) and/or date(s)**.
- USFWS NWI maps: **eGIS June 17, 2020**
- USGS topographic maps: **eGIS June 17, 2020**

**Other data sources used to aid in this determination:**

| Data Source (select)                       | Name and/or date and other relevant information    |
|--|--|
| <a href="#">USGS Sources</a>               | N/A.   |
| <a href="#">USDA Sources</a>               | N/A.   |
| <a href="#">NOAA Sources</a>               | N/A.   |
| <a href="#">USACE Sources</a>              | eGIS   |
| <a href="#">State/Local/Tribal Sources</a> | N/A.   |
| <a href="#">Other Sources</a>              | Google Earth Aerial Imagery reviewed June 17, 2020 |

**B. Typical year assessment(s):** [N/A](#)

**C. Additional comments to support AJD:** [Pine Creek is outside the study boundary and is a perennial tributary \(\(a\)\(2\) water\).](#)