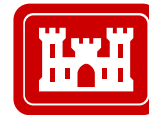




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## Regulatory Program



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### **INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM**

#### **U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

### **SECTION I: BACKGROUND INFORMATION**

**A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD):** September 10, 2018

**B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ):** NWP-2017-155

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

State: Oregon County/parish/borough: Umatilla County City: Hermiston

Center coordinates of site (lat/long in degree decimal format): Lat. 45.8514° N, Long. 119.2810° W.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are:  attached  in report/map titled Jurisdictional Wetland Delineation for Tax Lot 100, T4N, R28E, Section 2CD, Hermiston, Umatilla County, Oregon, October 2016.

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

#### **D. REVIEW PERFORMED FOR SITE EVALUATION:**

Office (Desk) Determination Only. Date: September 7, 2018.

Office (Desk) and Field Determination. Office/Desk Dates: Field Date(s): .

### **SECTION II: DATA SOURCES**

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: Pinnacle Engineering Associates Corporation: Aspen Estates Phase 2, 10-27-2017.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: Jurisdictional Wetland Delineation for Tax Lot 100, T4N, R28E, Section 2CD, Hermiston, Umatilla County, Oregon, October 2016.

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon: .

Revised Title/Date: .

Data sheets prepared by the Corps. Title/Date: .

Corps navigable waters study. Title/Date: .

CorpsMap ORM map layers. Title/Date: .

USGS Hydrologic Atlas. Title/Date: USGS Viewer and SFAM

<https://viewer.nationalmap.gov/basic/?basemap=b1&category=nhd&title=NHD%20View>.

USGS, NHD, or WBD data/maps. Title/Date: JD Viewer, SFAM, and USGS Viewer

<https://viewer.nationalmap.gov/basic/?basemap=b1&category=nhd&title=NHD%20View>.

USGS 8, 10 and/or 12 digit HUC maps. HUC number: Hermiston Ditch - Umatilla River (HUC170701031305).

USGS maps. Scale & quad name and date: .

USDA NRCS Soil Survey. Citation: USDA web soil survey website data

(<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>); SSURGO soil drainage class data via Corps JD viewer tool.

USFWS National Wetlands Inventory maps. Citation: Remote data feed served via arcGIS REST serviced by the U.S. Fish and Wildlife Service ([www.fws.gov/wetlands/](http://www.fws.gov/wetlands/)).

State/Local wetland inventory maps. Citation: .

- FEMA/FIRM maps. Citation: 41059C0270G, 9/3/2010 Area of Minimal Flood Hazard;https://msc.fema.gov.
- Photographs:  Aerial. Citation: Google Earth. or  Other. Citation: site photographs provided within the wetland delineation report prepared by Schott and Associates (October 2016).
- LiDAR data/maps. Citation: https://gis.dogami.oregon.gov/maps/lidarviewer/.
- Previous JDs. File no. and date of JD letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Oregon DSL wetland delineation concurrence maps June 22, 2017 and verbal discussion about this concurrence with Lauren Brown (DSL).

### **SECTION III: SUMMARY OF FINDINGS**

**Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required**

#### **A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:**

- "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

*NOTE:* If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

#### **B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. Check all that apply.**

- (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

- This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- (a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

- (a)(3): The territorial seas.

- **Complete Table 3 - Required**

- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

- Bordering/Contiguous.

Neighboring:

- (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

- (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

- (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

### C. NON-WATERS OF THE U.S. FINDINGS:

#### **Check all that apply.**

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.<sup>1</sup>
- (b)(4)(iv): Small ornamental waters created in dry land.<sup>1</sup>
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.<sup>1</sup>
- (b)(4)(vii): Puddles.<sup>1</sup>
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.<sup>1</sup>
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.<sup>1</sup>
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

<sup>1</sup> In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: Significant nexus evaluation for NWP-2017-155-AR2 (Wetland A) required delineation of a single point of entry (SPOE) watershed relative to the Columbia River (the nearest (a)(1) through (a)(3) water). Original determination of this watershed, based upon a drainage terminating on the Umatilla River just upstream of the Columbia River resulted in a drainage area of approximately 2360 square miles and encompassing the entire Umatilla River drainage basin. This drainage area encompassed more than 3 HUC 10 watersheds. Located within the Arid West, it was determined that modification of the SPOE was appropriate. Considering the geomorphic setting, it was determined that the entire Hunt Ditch-Umatilla River HUC 10 watershed (HUC 1707010313) sufficiently captured the subject water.

Hermiston Ditch receives its water from the Cold Springs Reservoir, part of the Cold Springs National Wildlife Refuge which supports interstate and international recreation usage and vending. It is noted that the October 2016 Schott and Associates wetland delineation report as well as the June 22, 2017 Oregon DSL wetland delineation concurrence letter refer to Hermiston Ditch as "Hermiston Drain".

Waters_Name	State	Cowardin Code	Hgm Code	Meas Type	Amount	Units	Waters_Type	Latitude	Longitude	Local Waterway
NWP-2017-155-AR1	OR	R5-RIVERINE, UNKNOWN PERENNIAL	Riverine	LINEAR	500	FEET	A5	45.85083	-119.281	Hermiston Ditch
NWP-2017-155-AR2	OR	PEM-PALUSTRINE, EMERGENT	Depressional	AREA	0.52	ACRES	OTHERA8F	45.85153	-119.28	Wetland A
NWP-2017-155-AR3	OR	PEM-PALUSTRINE, EMERGENT	Depressional	AREA	0.08	ACRES	A6N1WB	45.85107	-119.28	Wetland B

**Jurisdictional Waters of the U.S.**

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

**Table 1. (a)(1) Traditional Navigable Waters**

<b>(a)(1) Waters Name</b>	<b>(a)(1) Criteria</b>	<b>Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.</b>
N/A	Choose an item.	N/A

**Table 2. (a)(2) Interstate Waters**

<b>(a)(2) Waters Name</b>	<b>Rationale to Support (a)(2) Designation</b>
N/A	N/A

**Table 3. (a)(3) Territorial Seas**

<b>(a)(3) Waters Name</b>	<b>Rationale to Support (a)(3) Designation</b>
N/A	N/A

**Table 4. (a)(4) Impoundments**

<b>(a)(4) Waters Name</b>	<b>Rationale to Support (a)(4) Designation</b>
N/A	N/A

**Table 5. (a)(5) Tributaries**

<b>(a)(5) Waters Name</b>	<b>Flow Regime</b>	<b>(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows</b>	<b>Tributary Breaks</b>	<b>Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.</b>
NWP-2017-155-AR1	Perennial	Columbia River	No	<p>NWP-2017-155-AR1 (Hermiston Ditch) flows directly into the Umatilla River (a)(5) which flow directly into the Columbia River (a)(1).</p> <p>Hermiston Ditch is a permanently watered irrigation canal operated and maintained by the Hermiston Irrigation District that exhibits a bed and bank as well as ordinary high water mark indicators.</p>

**Table 6. (a)(6) Adjacent Waters**

<b>(a)(6) Waters Name</b>	<b>(a)(1)-(a)(5) Water Name to which this Water is Adjacent</b>	<b>Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.</b>
NWP-2017-155-AR3	NWP-2017-155-AR1	<p>NWP-2017-155-AR3 (Wetland B) meets the 328.3 (c)(2)(i) definition of neighboring as the majority of its delineated boundary is within 100 feet of the ordinary high water mark of NWP-2017-155-AR1 (Hermiston Ditch).</p>

**Table 7. (a)(7) Waters**

<b>SPOE Name</b>	<b>(a)(7) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.</b>
N/A	N/A	N/A	N/A

**Table 8. (a)(8) Waters**

<b>SPOE Name</b>	<b>(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.</b>
N/A	N/A	N/A	N/A

**Non-Jurisdictional Waters**

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

**Table 9. Non-Waters/No Significant Nexus**

<b>SPOE Name</b>	<b>Non-(a)(7)/(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus</b>	<b>Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.</b>
SPOE 1	NWP-2017-155-AR2	Columbia River	NWP-2017-155-AR2 (Wetland A) is a water located outside of any mapped floodplain but within 4,000 feet of NWP-2017-155-AR1 (Hermiston Ditch), an (a)(5) water. However, it does not contribute significantly to the chemical, physical or biological integrity of the Columbia River either alone or together with similarly situated waters in the area (SPOE 1).

		<p>Wetland A is a 0.52 acre palustrine emergent wetland located within the Hunt Ditch-Umatilla River watershed (HUC 1707010313). This wetland, along with a small number of other (small sized) similarly situated wetlands identified in the National Wetland Inventory, occur within well drained soils on the transition between smooth plains and irregular plains landforms and exhibit areas of past agricultural vegetation cover in between areas of expanding rural residential development. Similar to Wetland A, it is likely these similarly situated wetlands are maintained by groundwater hydrology as a result of the nearby irrigation ditches. Review of topography and aerial imagery show terrain that is depressional in nature with an absence of defined surface flow paths (channels, erosional features, differences in vegetation, etc) which indicate that these wetland areas receive only localized direct precipitation in addition groundwater influence. Evaluation of functions according to 328.3(c)(5) are provided below:</p> <p>(i) Sediment Trapping: Wetland A and similarly situated wetlands receive little to no overland surface flow. Any sediment accumulation and trapping would occur due to widespread wind transport across the larger region and would not serve any function in a greater hydrologic setting.</p> <p>(ii) Nutrient Recycling: Wetland A and similarly situated wetlands receive little to no overland surface flow. Any nutrient recycling would occur due to transfer via groundwater or wind transport. Without in-depth testing, such functions could not be considered significant or more than speculative.</p> <p>(iii) Pollutant trapping, transformation, filtering and transport: Wetland A and similarly situated wetlands reside in a setting where they are subject to minimal to no pollutant exposure from recent residential development. Exposure to pollutants and resulting trapping/transformation/filtering/transport is not expected.</p> <p>(iv) Retention and attenuation of flood waters: Wetland A and similarly situated wetlands are located in an area identified as an “area of minimum flood hazard” within the FEMA maps (41059C0270G, 9/3/2010) and receive little to no overland flow. Retention and attenuation of flood waters is not expected.</p> <p>(v) Runoff storage: Retention and attenuation of flood waters: Wetland A and similarly situated wetlands are located in an area identified as an “area of minimum flood hazard” within the FEMA maps (41059C0270G, 9/3/2010) and receive little to no overland flow. Runoff storage is not expected.</p> <p>(vi) Contribution of flow: Wetland A and similarly situated wetlands are located in settings in which they receive little to no overland flow and have a hydrology dominated by groundwater influenced solely by the presence of nearby irrigation ditches. These wetlands provide no significant contribution to downstream flow.</p> <p>(vii) Export of organic matter: Wetland A and similarly situated wetlands receive little to no overland surface flow. Any export of organic matter would occur due to transfer via groundwater or wind transport. Without in-depth testing, such functions could not be considered significant or more than speculative.</p> <p>(viii) Export of food resources: Wetland A and similarly situated wetlands receive little to no overland surface flow. Any export of food sources would occur due to transfer via groundwater or wind transport. Without in-depth testing, such functions could not be considered significant or more than speculative.</p>
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			(ix) Provision of life cycle dependant aquatic habitat for species located in (a)(1) through (a)(3) waters: Wetland A and similarly situated wetlands are connected to downstream tributaries (manmade irrigation ditches) only through groundwater and do not provide aquatic habitat to species located in the Columbia River.
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**Table 10. Non-Waters/Excluded Waters and Features**

<b>Paragraph (b) Excluded Feature/Water Name</b>	<b>Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.</b>
N/A	N/A

**Table 11. Non-Waters/Other**

<b>Other Non-Waters of U.S. Feature/Water Name</b>	<b>Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.</b>
N/A	N/A