



Regulatory Program

INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 27 December 2018

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NWP-2018-541

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Lake County City: Fort Rock
Center coordinates of site (lat/long in degree decimal format): Lat. 43.397428°, Long. -120.949947°.
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 .
 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: 6 December 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: Wetland Delineation Report for Fort Rock North Solar Farm/27 October 2018.
- 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: Wetland Delineation Report for Fort Rock North Solar Farm/27 October 2018.
 - 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: NHD maps from ARCGIS/6 December 2018.
- USGS, NHD, or WBD data/maps. Title/Date: USGS, NHD maps from ARCGIS/6 December 2018.
- USGS 8, 10 and/or 12 digit HUC maps. HUC number: HUC #171200050712.
- USGS maps. Scale & quad name and date: 1:24K Cougar Mountain.
- USDA NRCS Soil Survey. Citation: .
- USFWS National Wetlands Inventory maps. Citation: .
- State/Local wetland inventory maps. Citation: .
- FEMA/FIRM maps. Citation: .

- Photographs: Aerial. Citation: Delineation aerial photographs. or Other. Citation: .
- LiDAR data/maps. Citation: .
- Previous JDs. File no. and date of JD letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

SECTION III: SUMMARY OF FINDINGS

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.¹
 - (b)(4)(iv): Small ornamental waters created in dry land.¹
 - (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

¹ 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.

definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹

- (b)(4)(vii): Puddles.¹
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- (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).
 - **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: The delineation performed for both the north study area and south study area identified no wetlands, tributaries or other waters in the review area. Soils in the area are non-hydric. A shovel probe was taken in two locations that were suspect of containing wetlands due to a visually observed change in the plant communities and soil cracks (a primary indicator for wetland hydrology in the arid west). The plant communities at both locations were comprised of upland species. Shovel probes at both locations did not find hydric soils nor any additional indicators of hydrology. This region receives limited rainfall and snowfall. The annual rainfall is seven to 10 inches in the region. Snowfall is approximately 10 to 12 inches per year. The topography in the watershed containing the project boundaries for both the north and south study areas is flat and flows terminate into Beasley Lake which has no outlet. Beasley Lake was determined to not be a jurisdictional waterway in an earlier assessment (COE#NWP-2018-482). The NWI maps indicate the entire site is upland, and both test plots for the delineation confirmed those areas to be uplands due to the lack of hydrophytic vegetation, hydric soils, and hydrology. The reasoning for only the two plots being dug was to observe whether or not hydric soils were present due to a primary indicator of hydrology (soil cracks) and an observed change in the vegetation community. The vegetation community consisted of upland plant species such as *Artemisia tridentata* (sagebrush - upland) which was fairly covered and consistent over the north and south study areas except in areas that were cropped. At the Plot 1 location the delineator observed an area where the sagebrush covered approximately 40 percent ground cover. At the Plot 2 location the area was part of a cropped operation that had 70 percent ground cover with 60 percent being *Medicago sativa* (alfalfa - upland) and the remaining 10 percent was split between *Taraxacum officinale* (dandelion – facultative-upland) and *Bromus tectorum* (cheatgrass - upland). These two shovel probe locations also correlated with a change in elevation, bare ground, and the presence of a primary hydrology indicator. The delineator observed soil cracks at both locations, however the delineator failed to find hydric soils or a hydrophytic vegetative community.

Plot 1 is found on the delineation drawings (figure 6B) in a flat terrace region where soil cracks were found. Plot 2 is found on the delineation drawings (figure 6H) next to an actively irrigated and cropped area where soil cracks were found. The delineator failed to identify any other field indicators in the north and south review areas. The coordinates of both plots were mapped with ARCGIS and the maps created of the locations reflect there are no wetlands shown on the NWI maps (ARCGIS Plot 1 and Plot 2) near Plot 1 and Plot 2 reflects wetlands over 300 feet outside of the southern study area. The water table in the region is drawn down to levels well over 50 feet below the surface. The soils in the north and south study areas are mapped upland and are nonhydric. Primary indicators for hydrology were observed in several areas that do not support hydrophytic vegetation. Delineation photos of the study areas clearly reflect sagebrush (upland plant species) as the prevalent species throughout the site. Aerial photos in Google Earth from as far back as 1994 reflect no changes in plant communities or agricultural uses.

Dry Land Table

Dry Land Site	Cowardin Code	Hgm Code	Amount	Units	Latitude	Longitude	Site Name
NWP-2018-541 North	U-UPLANDS	Mineral Soil Flats	325.2	ACRES	43.39494	-120.951	North Study Area
NWP-2018-541 South	U-UPLANDS	Mineral Soil Flats	33	ACRES	43.34268	-120.996	South Study Area

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

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

Table 2. (a)(2) Interstate Waters

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

Table 3. (a)(3) Territorial Seas

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

Table 4. (a)(4) Impoundments

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

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	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.
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	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.
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	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.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	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.
N/A	N/A	N/A	N/A
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

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	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.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 10. Non-Waters/Excluded Waters and Features

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

Table 11. Non-Waters/Other

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

Waters_Name	State	Cowardin Code	Hgm Code	Meas Type	Amount	Units	Waters_Type
NWP-2018-541 North	OR	U-UPLANDS	Mineral Soil Flats	AREA	325.2	ACRES	DRYLAND
NWP-2018-541 South	OR	U-UPLANDS	Mineral Soil Flats	AREA	33	ACRES	DRYLAND

Latitude	Longitude	Local Waterway
43.39494	-120.9508	North Study Area
43.34268	-120.99579	South Study Area