

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 15 May 2013.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Sunnyside, Port of, NWS-2003-1245.
Name of water being evaluated on this JD form: "Field G" Wetland

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Yakima City: Sunnyside

Center coordinates of site (lat/long in degree decimal format): Lat: 46.29341 **N**, Long: -120.01523 **W**

Universal Transverse Mercator: _____

Name of nearest waterbody: Sulphur Creek Wasteway.

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

Name of watershed or Hydrologic Unit Code (HUC): 17030003.

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. List other JDs: _____

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 11 March 2013.

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 no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: _____ linear feet _____ width (ft) and/or _____ acres.

Wetlands: _____ acres.

c. Limits (boundaries) of jurisdiction based on: **Pick List and **Pick List****

Elevation of established OHWM (if known): _____.

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: **A JD for this wetland was completed by the U.S. Army Corps of Engineers (Corps) on 7 July 2004. The site was visited by Mr. Joseph Brock of the Corps on 24 June 2004; Mr. Brock determined that the wetland was isolated**

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

and therefore not a water of the U.S. Since more than five years have passed since the JD completion date, the property owner has requested that the JD be approved for 5 more years.

The wetland is located in the midst of an agricultural field. The soils at the site are mapped as Hezel Loamy Fine Sand in the Soil Survey of Yakima County Area Washington. The Hezel series is not listed as a hydric soil. The only outlet for the wetland is a perched culvert that passes through a railroad grade on the west side of the property. The culvert is perched on both sides of the railroad tracks. The date that the culvert was installed is unknown. However, Mr. Bob Farrell, Port Engineer, who has been employed with the Port of Sunnyside for 16 years, has never seen water flowing through the culvert. In the very unlikely event that water were to flow through the culvert, it would either infiltrate into the fields or follow the natural topography and flow south along the railroad grade toward the Sulphur Creek Wasteway which is located approximately 0.15 of a mile away. The Sulphur Creek Wasteway is a tributary of the Yakima River. The Yakima River is located approximately three miles south of the wetland. There are no streams or ditches between the wetland and the Sulphur Creek Wasteway. When Mr. Brock visited the site in 2004, he did not see an ordinary high water mark on either side of the railroad tracks. This further supports Mr. Farrell's observation that water does not flow through the culvert or along the railroad grade.

The wetland is surrounded by agricultural fields, sprayfields for treated wastewater effluent, and a wastewater treatment plant. The wetland was in agricultural production until 1992 and has remained fallow until present. There is an established 50-foot buffer around the wetland. From 1992 until 2011, the portions of the field outside of the wetland buffer were used as part of the Port of Sunnyside's land application system.

There are no surface or subsurface connections to a water of the U.S. There is no interstate use by interstate or foreign travelers for recreational purposes and there is a lack of habitat and resources of special significance which would attract interstate or foreign travelers, lack of bird and wildlife species of special significance which would attract interstate or foreign travelers, lack of fish or shellfish which could be taken or sold in interstate or foreign commerce, lack of industrial purposes, lack of agriculture which would be sold interstate/foreign, and lack of silviculture which would be sold interstate/foreign. The wetland does not have an interstate or foreign commerce connection. Therefore, the wetland is not a water of the U.S.

SECTION III: CWA ANALYSIS

- A. TNWs AND WETLANDS ADJACENT TO TNWs: NOT APPLICABLE
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS: NOT APPLICABLE
- C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: NOT APPLICABLE
- 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):⁴
 - 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:

⁴ 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.

- 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): _____.

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: _____ acres. List type of aquatic resource: _____.
- Wetlands: 2.5 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: See "Other information" below.
- 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: Dated 24 June 2004.
- Corps navigable waters' study: _____.
- 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: From ORM database
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- National wetlands inventory map(s). Cite name: _____.
- State/Local wetland inventory map(s): _____
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth Pro 2013
 - or Other (Name & Date): 31 January 2013 provided by Bob Farrell, Port of Sunnyside.
- Previous determination(s). File no. and date of response letter: NWS-2003-1245, 15 July 2004.
- Applicable/supporting case law: Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers and Rapanos v. United States.
- Applicable/supporting scientific literature: _____.
- Other information (please specify): The following documents were provided to the Corps to help determine whether the wetland is a water of the U.S: Wetland Study for the Port of Sunnyside, Field G Area, Land Profile, Inc., August, 1998; Wetland Update for the Port of Sunnyside Field G Area, Biology Soil & Water, Inc., March 21, 2004; and Wetland Update Report for the Port of Sunnyside Field G Area, Biology Soil & Water, Inc., July 7, 2009.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The Corps' Seattle District Regulatory Branch coordinated this JD with Corps headquarters and the Environmental Protection Agency. Both concurred with our determination that the wetland is isolated.