

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

Form 1 of 2

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 28 March 2022.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, NCS Lands, NWS-2021-572.
Name of water being evaluated on this JD form: Pond 2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Klickitat City: Goldendale
Center coordinates of site (lat/long in degree decimal format): Lat: 45.746526 N, Long: -120.733405 W
Universal Transverse Mercator:

Name of nearest waterbody: Swale Creek.

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

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

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: 18 March 2022.

Field Determination. Date(s): 22 July 2021.

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: **Pond 2 is not a water of the U.S. per the preamble to the 1986 regulations defining Waters of the United States (Section 328.3). See Section III.F below for details.**

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.

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:

- 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): **The preamble of the 1986 U.S. Army Corps of Engineers (Corps) implementing regulations comments that certain waters are generally not considered waters of the U.S (WOTUS). These include: (c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. "Pond 2" was created in dry lands to serve as a cattle pond for the associated rangeland and has no surface water connection (e.g., a pipe or surface channel) to other waters of the U. S. The subject pond is not an impoundment of a tributary to a water of the U.S.**

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: _____ 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: "Goldendale Energy Storage Hydroelectric Project, Federal Energy Regulatory Commission Project No. 14861", dated June 2020.
 - Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.

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.

- Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: _____.
- 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: _____
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- National wetlands inventory map(s). Cite name: <https://www.fws.gov/wetlands/data/mapper.html>.
- State/Local wetland inventory map(s): _____
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): _____
or Other (Name & Date): Agent Photos, 24 March 2021; Corps photos, Jim Carsner, 22 July 2021.
- Previous determination(s). File no. and date of response letter: _____.
- Applicable/supporting case law: _____.
- Applicable/supporting scientific literature: _____.
- Other information (please specify): _____.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Site Description: The roughly 117-acre irregularly shaped review area is situated on the northern portion of the roughly 900-acre project property near John Day Dam, north of the Columbia River (Figure 1). The review area is situated on rolling hills that is bounded on the north, south, east, and west by rangeland used as a wind farm (Figure 2). Two draws, one on the east and one on the west portion of the review area. These draws provide surface drainage corridors through the review area with an east draw and west draw drainage feature being identified as Stream 7 (S7) and Stream 8 (S8), respectively (see Form 2 of 2). Water drains northward in these draws through incised channels, across the Review Area, into Swale Creek, located roughly 2.1 miles north of the review area. The water then flows west, roughly 2.5 miles into the Klickitat River, then south, roughly 15 miles into the Columbia River, a TNW. A constructed cattle watering pond, Pond "2" is located near the southeast boundary of the review area. Several unimproved gravel and dirt access/farm roads cross the review area with one road crossing immediately downslope of Pond "2" and another crossing S8. Historic aerial photographic dating back to 1954, provided by NETROnline, show Pond "2" was constructed in the late 1990s. Another cattle watering pond, Pond "1", also constructed in uplands, located north of the review area is not included in this assessment.

Pond "2" is a constructed depression, created in dry land, to serve as a cattle watering pond for the associated rangeland. The pond has no surface or piped connection to S7, located roughly 1,000 feet downslope from the pond and is not an impoundment of a water of the U. S., including wetlands. Pond 2 is not a water of the U. S. per the preamble to the 1986 regulations defining Waters of the United States (Section 328.3)