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): 10/23/2020
ORM Number: NWW-2020-00348
Associated JDs: N/A
Review Area Location[1]: State/Territory: Idaho City: Silver City County/Parish/Borough: Owyhee
Center Coordinates of Review Area: Latitude 42.851066° Longitude -116.722292°

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 or describe rationale.
- ☐ 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)[2]

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

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	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
North Fork Boulder Creek	180	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Per the Aquatic Resources Delineation Report (ARDR), North Fork Boulder Creek Br, Owyhee Co. Project No. A022(594), Key No. 22594, dated October 1, 2020, North Fork Boulder Creek was identified as a perennial flowing stream. USGS topographical maps (dated 1955 & 2020) and the National Hydrography Dataset display the reach of North Fork Boulder Creek within the review area as a perennial stream. USGS Stream Stats report confirms continuous flow within the reach via low flow statistics, monthly flow duration statistics and

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] 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.
[3] 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.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				the probability of stream flow permanence (PROSPER) model. The minimum flow derived from the regression analysis in the StreamStats report displays a minimum flow ranging from 1.08 to 1.98 cubic feet per second at the review area. The PROSPER output calculated the mean probability for North Fork Boulder Creek to run perennially at 52 percent. Both site visits for this delineation found flowing water within the review area on North Fork Boulder Creek. All imagery reviewed displayed a flowing creek, see Section III(A), Photographs. Google Earth imagery dated 2006 and 2014 display flowing water within North Fork Boulder Creek during the typical year.
N/A.	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.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 2 (North Fork Boulder Creek)	0.005	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Per the Aquatic Resources Delineation Report, North Fork Boulder Creek Br, Owyhee Co. Project No. A022(594), Key No. 22594, dated October 1, 2020, wetland 2 physically touches or abuts North Fork Boulder Creek which is an (a)(2) water. See section III.C below for flow path from North Fork Boulder Creek to a Section 10 water.
Wetland 3 (North Fork Boulder Creek)	0.032	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Per the Aquatic Resources Delineation Report, North Fork Boulder Creek Br, Owyhee Co. Project No. A022(594), Key No. 22594, dated October 1, 2020, wetland 3 physically touches/ abuts North Fork Boulder Creek which is an (a)(2) water. See section III.C below for flow path from North Fork Boulder Creek to a Section 10 water. The extent of the abutting wetland 3 which would occur without the augmented hydrology provided by the irrigation lateral was apparent in the August 13, 2020 site visit due the fluvial terrace which is displayed the map titled North Fork Boulder Creek Aquatic Resources Map dated September 15, 2020. Area above the fluvial terrace had various upland species and non-hydric soils to create an apparent break.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 4	0.01	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Per the Aquatic Resources Delineation Report, North Fork Boulder Creek Br, Owyhee Co. Project No. A022(594), Key No. 22594, dated October 1, 2020, wetland 4 physically touches or abuts North Fork Boulder Creek which is an (a)(2) water. See section III.C below for flow path from North Fork Boulder Creek to a Section 10 water.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland 1	0.02	acre(s)	(b)(7) Artificially irrigated area, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease.	Irrigation waters are diverted from North Fork Boulder Creek via Idaho Dept. Water Resources water right no. 55-4020A and 55-13658. The diversion dam is located at latitude 42.8566 and longitude -116.7131 which diverts irrigation water to wetland 1 above the fluvial terrace identified by the map titled North Fork Boulder Creek Aquatic Resources Map dated September 15, 2020.
Wetland 2 (Non-North Fork Boulder Creek)	0.055	acre(s)	(b)(1) Non-adjacent wetland.	No portion of Wetland 2 (Non - North Fork Boulder Creek) physically touches North Fork Boulder Creek. There is approximately 40 linear feet of uplands between the bank of North Fork Boulder Creek and Wetland 2 (Non- North Fork Boulder Creek). See the field notes from the August 13, 2020 USACE site visit for the apparent upland separation of the fluvial terrace which would also inhibit inundation from North Fork Boulder Creek. There is no hydrology surface connection between Wetland 2 (Non-North Fork Boulder Creek) and North Fork Boulder Creek, which is an (a)(2) water.
Wetland 3 (Non-North Fork Boulder Creek)	0.118	acre(s)	(b)(7) Artificially irrigated area, including fields flooded for agricultural production, that would revert to	Irrigation waters are diverted from North Fork Boulder Creek via Idaho Dept. Water Resources water right no. 55-4020A and 55-13658. The diversion dam is located at latitude 42.8566 and longitude -116.7131 which diverts irrigation water wetland 3 above the fluvial terrace identified by the map titled North Fork Boulder

[4] 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.
[5] 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.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
			upland should application of irrigation water to that area cease.	Creek Aquatic Resources Map dated September 15, 2020. USDA Web soil survey indicate no presence of hydric soils within the review area.
Unnamed Ditch	263	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	The reach of the Unnamed Ditch within the review area was constructed in uplands and was not constructed within or relocates an (a)(2) water. Per the topographical maps (dated 1955 and 2020) the reach of the Unnamed Ditch within the review area was constructed outside the channel of any tributary. The National Wetland Inventory map support the absences of wetlands occurrence in the constructed footprint of Unnamed Ditch within the review area. USDA soil survey maps also confirm that the reach of the Unnamed Ditch in the review area was not constructed in wetlands. The soil survey indicates non-hydric soils within the constructed footprint of Unnamed Ditch (Upcreek -Riverwash complex, 0 to 4 percent slope). The section of Unnamed ditch within the review area was constructed in uplands to irrigation lands for livestock grazing. Irrigation waters are diverted from North Fork Boulder Creek via Idaho Dept. Water Resources water right no. 55-4020A and 55-13658. The diversion dam is located at latitude 42.8566 and longitude -116.7131 which diverts within the unnamed irrigation ditch. The IDWR irrigation right 55-13658 set the priority date and use of the area including attenuate features such as ditch and point of diversion as 1886. On January 2, 1998 the Idaho State Attorney General confirmed this claim.

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: Aquatic Resources Delineation Report, North Fork Boulder Creek Br, Owyhee Co. Project No. A022(594), Key No. 22594, dated October 1, 2020

This information is sufficient for purposes of this AJD.
Rationale: N/A

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

☒ Photographs: Aerial and Other: Aerial imagery: 1) Google Earth Imagery dated: July 17, 1998, June 22, 2006, August 19, 2009, August 29, 2013, April 11, 2014;
☒ Corps site visit(s) conducted on: August 13, 2020, see field notes for additional information.
☐ Previous Jurisdictional Determinations (AJDs or PJDs): ORM Number(s) and date(s).
☒ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.
☒ USDA NRCS Soil Survey: Soil Map – Owyhee County Area, Idaho (NWW-2020-00384), dated August 20, 2020
☒ USFWS NWI maps: NWW-2020-00348 NWI Map, Map derived from colored infrared from 1980s imagery, Scale 1:58K, dated August 19, 2020
☒ USGS topographic maps: Jordan Valley Quadrangle topo map, dated 1955, Scale 1:250K; Triangle Flat Quadrangle topo map, dated 2020, Scale 1:24K

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	StreamStats Report, North Fork Boulder Creek, dated July 22, 2020; StreamStats (PROSPER tool), dated July 22, 2020; National Hydrography Dataset classification, dated August 19, 2020
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	Idaho Department of Water Resources – Water Rights within the review area (No. 55-4020A and 55-13658)
Other Sources	N/A.

B. Typical year assessment(s):

APT output dated June 22, 2006 and April 11, 2014 reviewed Google Earth aerial imagery. The aerial imagery was recorded during a typical year during normal conditions.
APT output May 7, 2020 found that the wetland delineation and aquatic resource review on May 7, 2020 occurred during a drier than normal field conditions, during the beginning of the dry season. This delineation was prior to irrigation flows being introduced on site.
APT dated August 13, 2020 found that the wetland delineation and aquatic resource review on August 13, 2020 occurred within a wetter than normal field condition during dry season. However the APT is not applicable to the irrigation induced wetlands (i.e. Non-Boulder Creek wetlands 1, 2, and 3) since the hydrology provided to those wetlands is provided by a regulated manmade irrigation diversion.

C. Additional comments to support AJD:

Hydrologic surface connection flow path:
North Boulder Creek flows to Boulder Creek to Big Creek flows to Jordan Creek which flows to the Owyhee River which flows to the Snake River at RM 395.7. The Snake River has been determined to be navigable under Section 10 of the Rivers and Harbors Act at RM 445.5.