**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): 01/13/2021
ORM Number: NWW-2020-00462-B03
Associated JDs: N/A
Review Area Location[1]: State/Territory: Idaho City: Donnelly County/Parish/Borough: Valley
Center Coordinates of Review Area: Latitude 44.829167 Longitude -116.026389

## 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 |
| N/A | N/A. | linear feet | 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. |

[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.

| Adjacent wetlands ((a)(4) waters): | | | | |
|---|---|---|---|---|
| (a)(4) Name | (a)(4) Size | | (a)(4) Criteria | Rationale for (a)(4) Determination |
| Wetland Polygon 1a (Palustrine Emergent Wetlands) | 8.377 | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | Per the revised Wetland Delineation and Water of the US report, revised Final Aquatic Resource Report, Schneider's Property, Donnelly, Idaho, dated December 14, 2020.<br><br>Water from Wetland Polygon 1a flows into the 48-inch diameter CMP culvert intersecting Schneider's private driveway approach. On the outlet end of the culvert, flows from Wetland 1a diffuses into a palustrine emergent wetland outside of the wetland delineation boundaries. The palustrine emergent wetland outside of the wetland delineation boundary touches and abuts Boulder Creek. Wetlands outside the wetland delineation boundaries and Wetland Polygon 1a are considered hydrologically connected by way of the 48-inch CMP to Boulder Creek. Boulder Creek is considered a perennial tributary under the navigable water rule and considered an (a)(2) water. See Section III C below for flow pathway to a Section 10 water and supporting data.<br><br>7.94-acre of palustrine emergent wetlands, which consists of Wetland Polygon 1a met the wetland criteria for hydric vegetation, hydric soil, and hydrology under the *1987 Corps of Engineers Wetland Delineation Manual and the Western Mountains, Valleys, and Coast Regional Supplement, May 2010 to the 1987 Delineation Manual* |
| Wetland Polygon 1b (Palustrine Scrub Shrub Wetlands) | 0.024 | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | Per the revised Wetland Delineation and Water of the US report, revised Final Aquatic Resource Report, Schneider's Property, Donnelly, Idaho, dated December 14, 2020, Wetland 1a and Wetland 1b are integrated and part of a larger wetland complex. Hydrophytic vegetation is the only wetland characteristic that separates Wetland Polygon 1b from Wetland Polygon 1a. An intermittent unnamed ditch intersects Wetland Polygon 1a for 600 linear feet and provides supplemental water to Wetland Polygon 1b by way of Wetland Polygon 1a. Wetland Polygon 1a and 1b are considered waters of the United States.<br><br>Water from Wetland Polygon 1a flows into the 48-inch diameter CMP intersecting Schneider's private driveway approach. On the outlet end of the CMP, flows from Wetland 1a diffuses into a palustrine |

| Adjacent wetlands ((a)(4) waters): | | | | |
|---|---|---|---|---|
| (a)(4) Name | (a)(4) Size | | (a)(4) Criteria | Rationale for (a)(4) Determination |
| | | | | emergent wetland outside of the review area. The wetland outside the review area touches and abuts Boulder Creek. Wetland Polygon 1a and wetlands outside the wetland delineation boundaries are considered hydrologically connected by way of the 48-inch CMP to Boulder Creek. Boulder Creek is considered a perennial tributary under the navigable water rule and considered an (a)(2) water. See Section III C below for flow pathway to a Section 10 water and supporting data.<br><br>0.024-acres of palustrine scrub-shrub wetlands consists of Wetland Polygon 1b met the wetland criteria for hydric vegetation, hydric soil, and hydrology under the 1987 Corps of Engineers Wetland Delineation Manual and the Western Mountains, Valleys, and Coast Regional Supplement, May 2010 to the 1987 Delineation Manual and 2018 Final National Wetland Plant List. |
| Wetland Polygon 1c (Palustrine Scrub-Shrub Wetlands) | 0.014 | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | Per the Wetland Delineation and Water of the US report, revised Final Aquatic Resource Report, Schneider's Property, Donnelly, Idaho, dated December 14, 2020, Wetland Polygon 1c is considered part of Wetland Polygon 1a. The wetlands are considered integrated and part of a larger wetland complex. Hydrophytic vegetation is the only wetland characteristic that separates Wetland Polygon 1c from Wetland Polygon 1a. An intermittent unnamed stream intersects Wetland Polygon 1a for 600 linear feet and provides supplemental water to Wetland Polygon 1c by way of Wetland Polygon 1a.<br><br>Water from Wetland Polygon 1a flows into the 48-inch diameter CMP, which intersects Schneider's private driveway approach. On the outlet end of the culvert, flows from Wetland 1a diffuses into a palustrine emergent wetland outside of the review area. The wetland outside the review area touches and abuts Boulder Creek. Wetland Polygon 1 and wetlands outside the wetland delineation boundaries are considered hydrologically connected by way of the 48-inch CMP to Boulder Creek. Boulder Creek is considered a perennial tributary under the navigable water rule and considered an (a)(2) water. See Section III C below for flow pathway to a Section 10 water and supporting data. |

| Adjacent wetlands ((a)(4) waters): | | | | |
|---|---|---|---|---|
| (a)(4) Name | (a)(4) Size | | (a)(4) Criteria | Rationale for (a)(4) Determination |
| | | | | 0.014-acres of palustrine scrub-shrub wetlands consists of Wetland Polygon 1c met the wetland criteria for hydric vegetation, hydric soil, and hydrology under the 1987 Corps of Engineers Wetland Delineation Manual and the Western Mountains, Valleys, and Coast Regional Supplement, May 2010 to the 1987 Delineation Manual and the 2018 Final Wetland Plant Inventory List. |
| Wetland Polygon 1d (Palustrine Scrub-Shrub Wetland) | 0.085 | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | Per the Wetland Delineation and Water of the US report, revised Final Aquatic Resource Report, Schneider's Property, Donnelly, Idaho, dated December 14, 2020, Wetland Polygon 1d is considered part of Wetland Polygon 1a. The wetlands are considered integrated and part of a larger wetland complex. Hydrophytic vegetation is the only wetland characteristic that separates Wetland Polygon 1d from Wetland Polygon 1a. An intermittent unnamed stream intersects Wetland Polygon 1a for 600 linear feet and provides supplemental water to Wetland Polygon 1d by way of Wetland Polygon 1a.<br><br>Water from Wetland Polygon 1a flows into the 48-inch diameter CMP, which intersects Schneider's private driveway approach. On the outlet end of the culvert, flows from Wetland 1a diffuses into a palustrine emergent wetland outside of the wetland delineation boundaries. The wetland outside the delineation boundaries touches and abuts Boulder Creek. Wetland Polygon 1 and wetlands outside the review area are considered hydrologically connected by way of the 48-inch CMP to Boulder Creek. Boulder Creek is considered a perennial tributary under the navigable water rule and considered an (a)(2) water. See Section III C below for flow pathway to a Section 10 water and supporting data.<br><br>0.085-acres of palustrine scrub-shrub wetlands consists of Wetland Polygon 1b met the wetland criteria for hydric vegetation, hydric soil, and hydrology under the 1987 Corps of Engineers Wetland Delineation Manual and the Western Mountains, Valleys, and Coast Regional Supplement, May 2010 to the 1987 Delineation Manual and the 2018 National Final Wetland Plant List |

## D. Excluded Waters or Features

| Excluded waters ((b)(1) – (b)(12)):[4] | | | | |
|---|---|---|---|---|
| Exclusion Name | Exclusion Size | | Exclusion[5] | Rationale for Exclusion Determination |
| N/A. | N/A | linear feet | N/A. | N/A |

## 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: Final Aquatic Delineation Report, Schneider Property, dated December 14, 2020.

This information is sufficient for purposes of this AJD.

Rationale: N/A or describe rationale for insufficiency (including partial insufficiency).

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

☒ Photographs: Aerial and Other: Site photos of data pits, soils and vegetation are found in the appendix of the revised wetland delineation report, titled: Final Aquatic Delineation Report, Schneider Property, dated December 14, 2020. Google Earth Photos: 1998, 2004, 2006, 2009, and 2017.

☒ Corps site visit(s) conducted on: October 28, 2020 with Mr. James Fronk and Mr. Matthew Fronk, Fronk Consulting, LLC, in attendance.

☐ 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: NRCS Websoil Survey, Valley County, 1981

☒ USFWS NWI maps: Map derived from colored infrared, Dated 1980's, Scale 1:58K, https://www.fws.gov/wetlands/Data/Mapper.html

☒ USGS topographic maps: Lake Fork, 7.5 Minute, Quadrangle Map, 1973; and, Donnelly, 7.5 Minute, Quadrangle Map,1986 https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcseprd1389479.htmldated, Scale 1:250K

**Other data sources used to aid in this determination:**

| Data Source (select) | Name and/or date and other relevant information |
|---|---|
| USGS Sources | Boulder Creek USGS Stream Stats Report, December 1, 2020; and intermittent side channel of Boulder Creek, USGS Stream Stats PROSPER Tool, December 1, 2020 |
| USDA Sources | NRCS Hydric Soil Soils in the United States, Version 7.0, 2010 |
| NOAA Sources | N/A. |
| USACE Sources | 1987 Corps of Engineers Wetland Delineation Manual |
| State/Local/Tribal Sources | N/A. |
| Other Sources | USFS, 1940 Valley County Map: Boulder, Kennally, Gold, Camp Creeks |
| USACE Sources | *Western Mountains, Valleys, and Coast Regional Supplement, May 2010 to the 1987 Delineation Manual* |
| USACE Sources | 2018 Final National Wetland Plant List, Region 9 |

[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.

**B. Typical year assessment(s):** *N/A. A wetland delineation was performed within the define project limits, employing the 1987 Corps of Engineers Wetland Delineation Manual and Western Mountains, Valleys, and Coast Regional Supplement, May 2010. Points along the defined transects were flagged and professionally surveyed by a licienced land surveyor in the state of Idaho. The annual snowpack in Donnelly, Valley County, Idaho averages 109 inches a year. Boulder Creek (perennial) and the unnamed intermittent stream receive waters for snowmelt based on topographic elevation of a sourrounding mountain range. Boulder Creek is positioned along the landscape parallel to the mountain range and the unnamed intermittent stream channel is positioned perpendicular to an unnamed mountain within the range. There is no need to perform a typical year assessment based on these rationales.*

**C. Additional comments to support AJD:**

Additional information about the intermittent unnamed stream. A manmade earthen impoundment is located an estimated 1,000 linear feet upstream, which is outside of the project evaluation area. The impoundment has a 36-inch diameter x 100-foot long CMP outlet with no control valve. The culvert is set at a fixed elevation within the earthen embankment, to prevent overtopping the earthworks in case of a high precipitation year. Above the impoundment, there are no indications of a naturally defined bed and bank. Review of the USGS Quad Map indicates that the impoundment was built at the headwater of the unnamed intermittent stream. Surface snowmelt from the mountain appears to be captured by the manmade impoundment constructed in a natural draw. The original intent of the impoundment was likely an irrigation impoundment, which eventually took on a dual purpose as also a fire reservoir for a residential subdivision, which now located around this feature. The residential subdivision, Jug Handle Estates, was built in 1980. (In the mid-1980s, the Corps Section 404 Regulatory Program began in the state of Idaho. No Corps files exist on this impoundment or subdivision.) After 1973, the intermittent unnamed creek, downstream of the impoundment, was split and straightened. The altered unnamed intermittent creek connects to Boulder Creek by way of two routes: a southern course and a western course. The southern course parallels the mountain range and follows the original stream alignment. The western course is confined in a 1-foot wide by 600-foot long trapezoidal ditch constructed in Wetland Polygon 1. Wetland Polygon 1 is considered abutting and touching Boulder Creek and is considered a waters of the United States. The unnamed intermittent ditch flows from Wetland Polygon 1a through a 48-inch diameter CMP intersecting Schneider's private driveway approach. On the outlet end of the culvert, the unnamed intermittent ditch diffuses into a palustrine emergent wetland that touches and abuts Boulder Creek. Boulder Creek is considered a perennial tributary under the navigable water protection rule. Refer to Section III C. Reviewing the intermittent unnamed creek on the Lake Fork USGS Quad Map, 1973, it describes the unnamed stream as an intermittent tributary as defined in the Navigable Water Protection Rule. The estimated drainage basin of the intermittent unnamed stream is 0.14 square miles and the mean annual precipitation is 30.9 inches per year for the project area. This geographic area receives an average of 109 inches of snowpack. The 7-day, 10-year output from StreamStats was used to estimate low flows within the drainage using regression analysis. The USGS StreamStats reported an average 7-day flow at the lowest flow of 10 years at 0.08 cubic feet per second. The USGS StreamStat also reported a 10-year peak flow of 2.09 cubic feet per second. (The regression analysis is based on an unaltered flow regime but is used to demonstrate flow.) Flow was also observed in the unnamed intermittent creek during a Corps onsite review on October 28, 2020. Currently, a channel with bed and bank can be observed via Google Earth aerial near Lat 44.49'35.62° Long -116° 01'36.19").

Additional information about Boulder Creek: Boulder Creek is a natural creek which has had some alterations from the construction of the Shay railroad in the early 1900s and from timber and agricultural

practices during the past 150+ years. Reviewing 1940 United States Forest Service map and USGS 7.5 Quad Map,Lake Fork, dated 1973 it was described as a perennial tributary as defined in the navigable water protection rule due to continuous surface water flow during spring melt of snowpack and rainfall. The estimated drainage basin is estimated at 20.7 square miles and the mean annual precipitation is 42.8 inches per year. This geographic area receives an average of 109 inches of snowpack. The 7-day 10-year output from StreamStats was used to estimate low flows within the drainage using regression analysis. The USGS StreamStats reported an average 7-day flow at the lowest flow of 10 years was estimated for the perennial reach of Boulder Creek at 6.07 cubic feet per second. Currently, a natural channel with bed and bank can be observed via Google Earth aerial near Lat 44°49'43.31 Long -116° 01'36.19").

Hydrologic surface connection flow: The intermittent unnamed stream channel flows into Wetland Polygon 1, which flows directly into the perennial channel of Boulder Creek, which flows into Lake Cascade, which flows into the North Fork Payette River, which merges with the South Fork Payette River to form the mainstem Payette River. The mainstem Payette River flows directly into the Snake River, below River Mile 445.5. The Snake River below River Mile 445.5 is considered to be a traditional navigable water under Section 10 of the Rivers and Harbors Act of 1899.

Downstream flow duration:Topo maps, USGS Hydrography dataset, USGS stream gauges (13245000; 13246000, North Fork Payette River; and 13247500,Confluence of South Fork and North Fork Payette Rivers; 13249500; and 13250000 Mainstem Payette River) and aerial imagery show the river reaches of the North Fork, South Fork and mainstem Payette Rivers merging and leading to the confluence of the Snake River, Section 10 water, as perennial waterways.