



**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): [8/17/2020](#)
 ORM Number: [LRB-2020-00583](#)
 Associated JDs: [2020-00583 Preliminary JD dated August 17, 2020](#)
 Review Area Location¹: State/Territory: [NY](#) City: [Pendleton](#) County/Parish/Borough: [Niagara](#)
 Center Coordinates of Review Area: Latitude [43.121029 N](#) Longitude [-78.712826 W](#)

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.

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.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
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.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
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.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland 3	5.86	acre(s)	(b)(1) Non-adjacent wetland.	<u>Wetland 3 does not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. Wetland 3 meets the definition of a wetland. Specifically Wetland 3 does not directly abut an (a)(1)-(a)(3) water within a typical year, is not inundated by an (a)(1)-(a)(3) water, is not separated from an (a)(1)-(a)(3) water by a natural berm or barrier, and is not separated from another water by a man made feature that has an engineered mechanism for water exchange in a typical year. The nearest tributary is Donner Brook which is located approximately 2300 linear feet to the west, which is Donner Brook, a perennial tributary that shows up in all aerial photographs listed below as having water and as a solid-blue line stream on all USGS resources. Based on the wetland delineation titled "Wetland Delineation Report: Borrego Solar – Donner Road Pendleton: Donner Road, Pendleton, NY 14094" with amended maps identified "PJD Figure 1; dated July 2020" and "AJD Figure; dated July 2020.", an in-office resource review, the June 16, 2020 site visit, and the APT report discussion below, it has been determined that Wetland 3 is a (b)(1) Non-adjacent wetland.</u>

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: "Wetland Delineation Report: Borrego Solar – Donner Road Pendleton: Donner Road, Pendleton, NY 14094" with amended maps identified "PJD Figure 1; dated July 2020" and "AJD Figure; dated July 2020"

This information is and is not sufficient for purposes of this AJD.

Rationale: The information is sufficient upon changes to the mapping made based on the Corps of Engineers and NYS Department of Environmental Conservation site visit performed on June 16, 2020. Two new maps dated July 2020 were submitted as an addendum and to complete information needed for the JD requests. Without the updated maps, the information would be insufficient.

- Data sheets prepared by the Corps: Title(s) and/or date(s).
- Photographs: Select. Title(s) and/or date(s).
- Corps site visit(s) conducted on: June 16, 2020.

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.



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- 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: [Web Soil Survey - https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx](#), accessed August 5, 2020.
- USFWS NWI maps: [https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/](#), accessed May 7, 2020 and again on August 5, 2020
- USGS topographic maps: *7.5 minute series, NY-Clarence Center, 2016 and 2019 - https://ngmdb.usgs.gov/topoview/viewer/#15/43.1243/-78.7133*, accessed August 5, 2020.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	ORM2 database.
State/Local/Tribal Sources	N/A.
Other Sources	NYSDEC Environmental Resource Mapper - https://gisservices.dec.ny.gov/gis/erm/ , accessed on May 7, 2020 and August 5, 2020.

B. Typical year assessment(s): APT Methodology

The APT pulls precipitation data from NOAA's Daily Global Historical Climatology Network. The APT evaluates normal precipitation conditions based on the three 30-day periods preceding the observation date. For each period, a weighted condition value is assigned by determining whether the 30-day precipitation total falls within, above, or below the 70th and 30th percentiles for totals from the same date range over the preceding 30 years. The APT then makes a determination of "normal," "wetter than normal," or "drier than normal" based on the condition value sum. The APT also displays results generated via the Palmer Drought Severity Index (PDSI) and the University of Delaware WebWIMP.

An APT evaluation was run for the on-site Corps of Engineers' inspection of 16JUN2020, associated with Google Earth Aerial photos for 5May2011 and 22Sep2018, and the date of the wetland delineation, 6JUL2019. The evaluation was run for weather stations in the vicinity of the site. Results indicate wetness during all years evaluated with 2 years of mild wetness (2020-mild wetness and 2018 incipient wetness) and 2011 was reported to have severe wetness. The APT condition indicates that the year was wetter than normal in 2019, but normal conditions in 2011, 2018, and 2020. Based on these conditions, the wetland boundary for Wetland 3 was determined for a typical year and are accurate. Since no flow was observed from the wetland to a downstream (a)(1)-(a)(3) water, Wetland 3 is an (b)(1) non-adjacent excluded wetland.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	APT Condition
43.121029	-78.712826	6/16/2020	1.2	Mild wetness	Dry Season	12	Normal Conditions
43.121029	-78.712826	10/5/2011	3.41	Severe wetness	Wet Season	14	Normal Conditions
43.121029	-78.712826	9/22/2018	0.78	Incipient wetness	Dry Season	11	Normal Conditions
43.121029	-78.712826	7/6/2019	2.88	Moderate wetness	Dry Season	15	Wetter than Normal



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C. Additional comments to support AJD: Although the APT report for 2019 indicated wetter than normal conditions and the 2011 aerial photograph indicated severe wetness for the PDSI class, there is no direct evidence of visible water contributing flow into or is not abutting any (a)(1) – (a)(3) waters, nor does Wetland 3 receive flow waters from any (a)(1)-(a)(3) water. Based on the overall assessment for the study area, Wetland 3 is a non-adjacent wetland and is therefore excluded as a (b)(1) water.