

RECLAMATION

Managing Water in the West

Categorical Exclusion Checklist

Lost River Diversion Channel Seep Repair

KBAO-CEC-2015-008

Prepared by:

Kirk Young Date: 9-10-15
Kirk Young
Natural Resources Specialist

Concur with Item 6:

Kirk Young FOR Date: 9-10-15
Laureen Perry
Cultural Resource Specialist

Concur with Item 9:

Kristen L. Hiatt Date: 9/10/15
Kristen Hiatt
ITA Coordinator, Klamath Basin Area Office

Recommended by:

Kristen L. Hiatt Date: 9/10/15
Kristen Hiatt
Senior Natural Resources Specialist, Klamath Basin Area Office

Reviewed by:

Jennie M. Land Date: 9/10/15
Jennie M. Land
Resource Management Division Chief, Klamath Basin Area Office

Approved by:

Therese O'Rourke Bradford Date: 9/10/15
Therese O'Rourke Bradford
Area Manager, Klamath Basin Area Office



U.S. Department of the Interior
Bureau of Reclamation
Mid Pacific Region

COPY

APPROVED

July 2015

DATE: 7/22/2015	PROPOSING AGENCY/APPLICANT: Bureau of Reclamation, KBAO
PROJECT: Lost River Diversion Channel Seep Repair	
EXCLUSION CATEGORY: 516 DM 14.5 C(3) – Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions, or which merely augment or supplement, or are enclosed within existing facilities. 516 DM 14.5 D(1) – Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation.	
NATURE OF ACTION: Reclamation's Klamath Basin Area Office Operation and Maintenance team is proposing routine maintenance along the Lost River Diversion Channel to temporarily repair a seepage point in the canal bank.	
LOCATION: Southwest quarter of the northeast quarter, of Section 21, Township 39 South, Range 09 East, of the Willamette Meridian, Klamath County, Oregon.	
COST AUTHORITY NO: RP.00121900.3220000 15XR0680W4	7.5 MINUTE QUAD MAP: USGS 42121 B7 Klamath Falls
DESCRIPTION OF PROPOSED ACTION/COMMENTS (<i>Environmental Protection Commitments are underlined</i>): <p>Reclamation proposes to conduct maintenance activities that would temporarily repair a seep found along the outer embankment of the Lost River Diversion Channel (LRDC) (see location maps in Exhibit A and photographs in Exhibit B). The seep is located approximately 45 feet east from the current high water line of the LRDC. It is estimated to be leaking at a rate of 0.5 gallons per minute and has created a void in the bank structure measuring roughly 11 feet by 6 feet. Maintenance activities are anticipated to be performed during the summer of 2015.</p> <p>Maintenance actions, to be conducted by the Klamath Basin Area Office's (KBAO) Operations and Maintenance Crew, would consist of utilizing a trackhoe to add approximately 75 cubic yards (CY) of fill materials in 4 zones, or layers, along the sloped outer embankment of the LRDC in the area of the seep (see Exhibit C for proposed locations of fill placement). Fill materials would be acquired from an approved supplier, no fill material would enter the water of the LRDC, and no actions would take place within the prism of the LRDC.</p> <p>The required equipment and materials needed for this project would be staged along the maintenance access road atop of the embankment and outside of the LRDC. Prior to fill material being deposited on the compromised outer embankment, all organic material (e.g., encroaching vegetation, surficial organic deposits, and surface soil mixes of minerals and organics) would be removed.</p> <p>Zone 1 fill material would be comprised of sand that would be deposited to the existing surface (approximately 24 CY of sand deposited along feet of the LRDC's sloped back). The sand would be compacted, while wet, in horizontal lifts of 8-inch to 12-inch thickness using a trackhoe bucket.</p> <p>Zone 2 material, consisting of approximately 24 CY of gravel would be placed upon the Zone 1 material. Zone 2 material would then be compacted in place using a trackhoe bucket. Geotextile material would then be placed upon the Zone 2 (gravel) fill.</p> <p>Zone 3 material, consisting of approximately 21 CY miscellaneous fill with cobbles, would be placed top of the geotextile. Zone 3 material would be compacted using the trackhoe bucket, and its surface would be re-seeded with native grass or hydromulch.</p> <p>The Zone 4 layer consists of 5 CY of 3-inch minus cobbles that would be placed near the lower flank of the bank on top of the Zone 3 layer. A straw waddle would be anchored near the toe to prevent surface erosion of Zone 3 from contaminating the Zone 4 layer.</p> <p>A 6-inch to 12-inch measurement berm would be constructed at the bottom of the ditch in the project area to allow for measurement of the seep. This berm would consist of a mix of the fill materials and would be installed in a manner so that seepage flow would be funneled into a pipe with a sock drain. This berm would remain in place until the permanent repair plan for the seep is executed.</p> <p>The above proposal entails methods to temporarily repair a seep along the LRDC. It is anticipated that a permanent repair will be necessary in the future and as early as October, 2015. This activity would involve: 1) dewatering of the LRDC, 2) removing and relocating fish from the water, 3) excavating the LRDC bank to find the seepage source, 4) repairing the seep, 5) backfilling and compacting the soil of the affected area, 6) rehabilitating the site. Further environmental compliance would be required before commencement of this permanent repair action.</p>	

Engineering/Operation and Maintenance Review

The seep repair was identified by KBAO's Engineering Division. The proposed actions have been reviewed, and no objections have been demonstrated against the proposal (Exhibit D).

Water Resources

Impacts to waters of the United States have been considered and are not expected as a result of the proposed project. Project activities would occur on the outer embankment of the LRDC outside of the channel prism and ordinary high water line. To minimize potential water resource impacts, silt fencing would be installed on the water side of the maintenance access road and remain intact for the duration of the project. Pooled water resulting from the seep may require removal via pumping and would be discharged away from the project area into a sediment control device surrounded by hay bales to ensure complete land infiltration. Additionally, the required equipment and materials for the project would be staged along the maintenance access road atop of the embankment and outside of the LRDC.

The proposed project qualifies for authorization under the U. S. Army Corps of Engineers (USACE) – Nationwide Permit (NWP) #3 for "Maintenance" and NWP #23 for "Approved Categorical Exclusions" (77 Fed. Reg. 10184, February 21, 2012). NWP #3 approves activities that involve "the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification" (see Appendix A). This proposed project includes maintenance activities that would temporarily repair a seep and stabilize the outer embankment of the LRDC.

NWP #23 states that certain activities undertaken by a Federal agency that are deemed to be categorically excluded from environmental documentation are approved under NWP #23 (see Appendix B). Reclamation has determined that the proposed action is categorically excluded from further NEPA documentation under the following approved categorical exclusions as outlined in the 516 Department Manual (DM): 516 DM 14.5 C(3) – Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions, or which merely augment or supplement, or are enclosed within existing facilities; and 516 DM 14.5 D(1) – Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation. Regulatory Guidance Letter 05-07 (see Appendix C) approves the exclusion categories listed for this project. Per the RGL, notification to the USACE District Engineer is not required as this proposed project involves a small amount of fill, no anticipated water quality impacts, and no use of explosives.

Reclamation has determined that the proposed project does not require Oregon Department of State Lands (ODSL) permitting as the project area is not within ODSL's removal-fill jurisdiction by water type. This proposed action involves maintenance activities to temporarily repair a seep and stabilize the outer embankment of the LRDC; no activities will occur at or below the ordinary high water line of the LRDC. The seep is located adjacent to an existing artificial upland wetland that was created by an agricultural irrigation ditch running parallel to the LRDC bank, and the water leaking from the seep is accentuating the wetland.

Per the ODSL Removal-Fill Guide (see an excerpt of Chapter 2 in Appendix D), artificially created wetlands are jurisdictional if they meet any of the following criteria: equal to or greater than one acre in size; created, in part or whole, in waters of the state; and identified in an authorization as a mitigation site. The wetland area involved in this proposed action is less than one acre in size with the repair area comprising approximately 800 square feet. The wetland of concern was not created in but rather nearby a water of the state; it does not serve as a mitigation site and was created for the purpose of crop irrigation. Reclamation also concludes that the area is non-jurisdictional as this wetland was created from upland by an agricultural irrigation ditch that: contains no game fish; has no open connection to waters of the state; and is dewatered during the non-irrigation season except for incidentally retained water in isolated low areas of the ditch.

Biological Resources

A list of Federally Listed, Proposed, and Candidate species that may occur within Klamath County is attached (Exhibit E). The potential impacts to all species included on the list as a result of the proposed project have been considered and it has been determined that the proposed project activity is not expected to have any effect on any of the species or their habitats, as the actions related to the project are localized and occurring in the previously disturbed context of the LRDC. This decision is based on analysis of current information on the potential effects of the action, known existing populations, and habitat requirements for the species.

The proposed project activities are not expected to result in negative effects on migratory birds protected under the Migratory Bird Treaty Act due to the nature and location of the proposed activities. During site visits performed by KBAO Natural Resource Specialist in June 2015, no bird nests or nest supporting vegetation were observed in or nearby the proposed project area.

Cultural Resources

Compliance with the National Historic Preservation Act (NHPA) Section 106 is demonstrated in the attached documentation (Exhibit F), whereby, Mid-Pacific Archeologist, Laureen Perry, determined the proposed undertaking has no potential to cause effects to historic properties, pursuant to NHPA Section 106 as codified at 36 CFR §800.3(a)(1) and concluded the Section 106 process.

Indian Trust Assets Compliance

Indian Trust Assets (ITAs) are legal interests in property or rights held in trust by the United States for Indian Tribes or individuals. Reclamation considered impacts to ITAs by consulting with the KBAO Indian Trust Asset's Coordinator, Kristen Hiatt, who stated that "the proposed action does not have the potential to impact Indian Trust Assets" (Exhibit G).

EVALUATION OF CRITERIA FOR CATEGORICAL EXCLUSION		No	Yes	Uncertain
1.	This action or group of actions would have a significant effect on the quality of the human environment. (40 CFR 1502.3)	X		
2.	This action or group of actions would have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources. (NEPA Section 102(2)(E))	X		
EVALUATION OF EXCEPTIONS TO ACTIONS WITHIN CATEGORICAL EXCLUSION				
1.	This action would have significant adverse effects on public health and safety.	X		
2.	This action would have significant impacts on such natural resources and unique geographical characteristics such as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers, national natural landmarks; sole or principal drinking aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds (EO 13186); and other ecologically significant or critical areas.	X		
3.	This action will have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.	X		
4.	This action will establish a precedent for future action or represent a decision in principle about future actions without potentially significant environmental effects.	X		
5.	This action has a direct relationship to other actions with individually insignificant, but cumulatively significant environmental effects.	X		
6.	This action will have significant impacts on properties listed or eligible for listing in the in the National Register of Historic Places (National Register) as determined by either the bureau or office. (This determination must be made or coordinated with a Reclamation archeologist)	X		
7.	This action will have significant impacts on species listed or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical habitat for these species.	X		
8.	This action threatens to violate Federal, State, local or Tribal law or requirements imposed for protection of the human environment.	X		
9.	This action will affect ITAs. (This determination must be completed and documented by, or in coordination with, the designated regional ITA coordinator; Policy Memorandum dated 12/15/1993)	X		

10.	This action will limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites. (EO 13007)	X		
11.	This action will have a disproportionately high and adverse effect on low income or minority populations. (EO 12898)	X		
12.	This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species. (Federal Noxious Weed Control Act and EO 13112)	X		

Mid Pacific Region Cultural Resource Specialist concurred with Item 6 (email attached).

ITA Coordinator concurred with Item 9 (email attached).

NEPA Action Recommended

☒ CEC – This action is covered by the exclusion category and no extraordinary circumstances exist. The action is excluded from further documentation in an EA or EIS.

☐ Further environmental review is required, and the following document should be prepared.

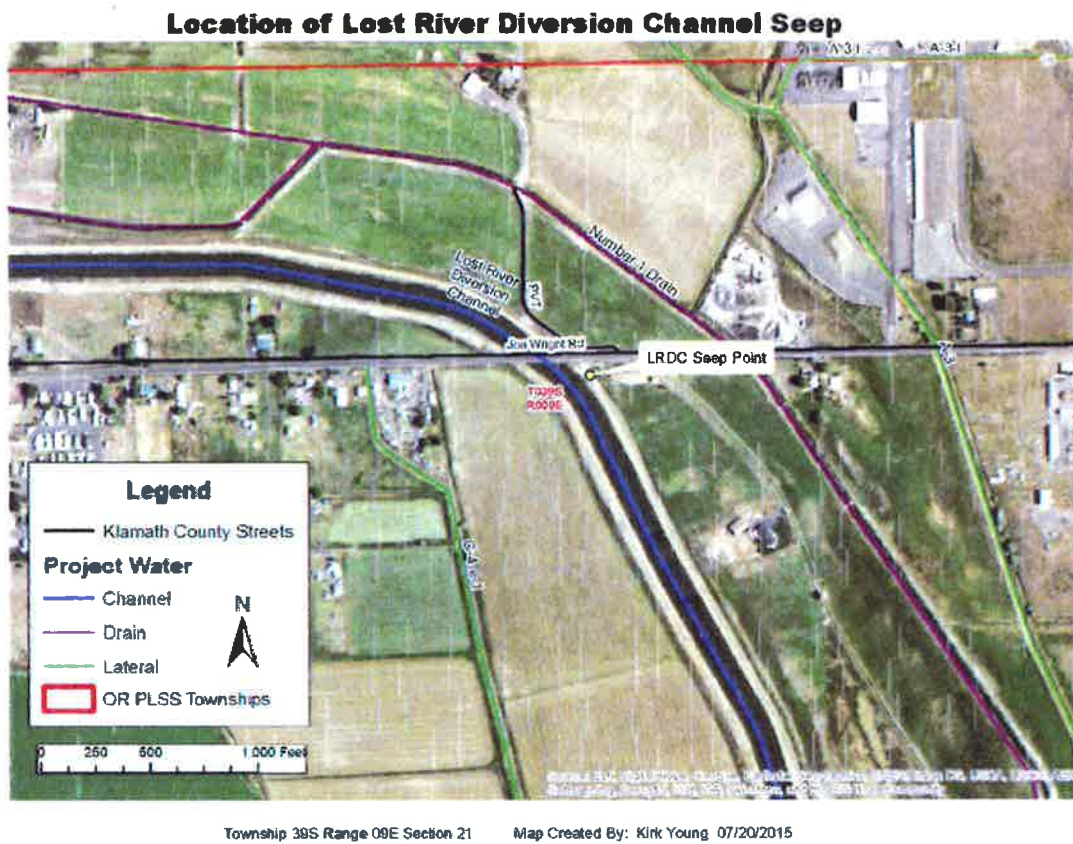
☐ EA

☐ EIS

Discovery Notice: In the event that any cultural and/or paleontological site (historic or prehistoric) is discovered, it shall be immediately reported to a Bureau of Reclamation archaeologist. An evaluation of the significance of the discovery will be made by the archaeologist to determine appropriate actions to be taken to prevent loss of significant cultural or scientific value.

Native American Graves Protection Repatriation Act (NAGPRA) Notice: Any person who knows, or has reason to know, that they have inadvertently discovered possible human remains on Federal or Tribal lands must provide immediate telephone notification of the inadvertent discovery to the Bureau of Reclamation archaeologist at (916) 978-5040 or (916) 978-5041. Work will stop until the proper authorities are able to assess the situation onsite. This action must promptly be followed by written confirmation to the responsible Federal agency official with respect to an inadvertent discovery on Federal lands. If the inadvertent discovery is on tribal lands, it must be reported to the responsible Indian tribal official. This notification is required under the Native American Graves Protection and Repatriation Act (P.L. 101-60) of November 1990.

Exhibit A: Location Maps of Seep Area.



OREGON

QUADRANGLE NAMES

42121

01. Birch River	11. Birch River
02. Long T. Fork	12. Birch River
03. Birch River	13. Birch River
04. Birch River	14. Birch River
05. Birch River	15. Birch River
06. Birch River	16. Birch River
07. Birch River	17. Birch River
08. Birch River	18. Birch River
09. Birch River	19. Birch River
10. Birch River	20. Birch River
21. Birch River	31. Birch River
22. Birch River	32. Birch River
23. Birch River	33. Birch River
24. Birch River	34. Birch River
25. Birch River	35. Birch River
26. Birch River	36. Birch River
27. Birch River	37. Birch River
28. Birch River	38. Birch River
29. Birch River	39. Birch River
30. Birch River	40. Birch River

42121

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05. Birch River	15. Birch River
06. Birch River	16. Birch River
07. Birch River	17. Birch River
08. Birch River	18. Birch River
09. Birch River	19. Birch River
10. Birch River	20. Birch River

This is a summary map only and is not available for all areas.

Available areas may be covered by 7.5x15 or 15x30 maps.

See CATALOG OF PUBLISHED MAPS for available maps, areas, scales, prices, and Map Order Form.

42121

42121

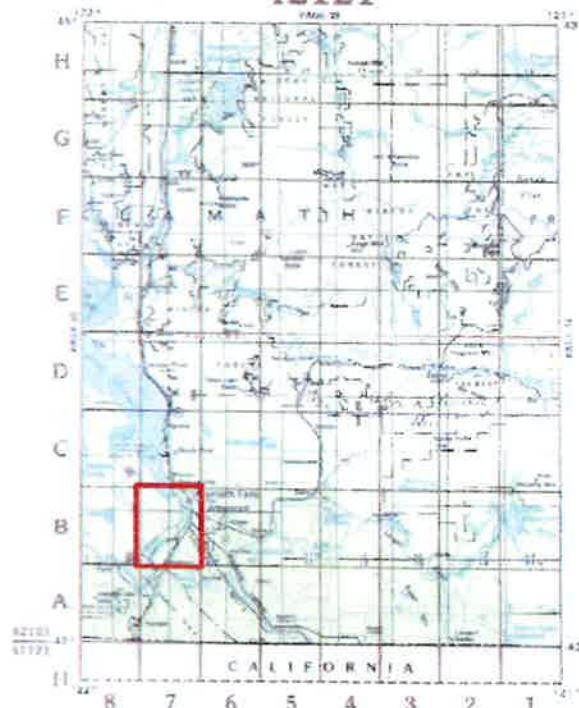


Exhibit B: Photographs and Sketch of Seepage Area.



Fig. 1 – Looking south: Seep measuring approximately 11' between lathes and 6' from ponded water to top of sloughing material



Fig. 2 – Looking south: Seep area is approximately 45' east of LRDC water line

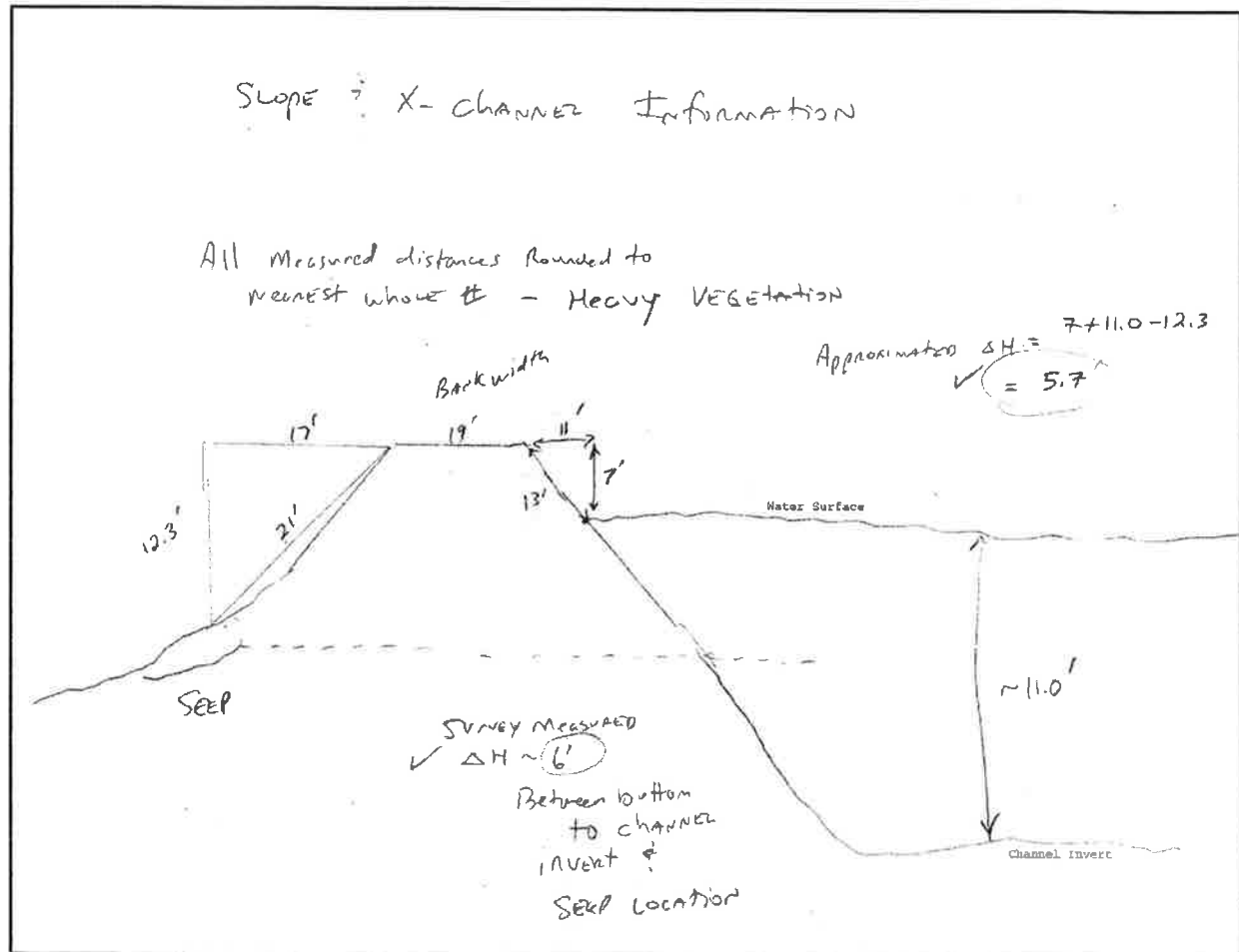


Fig. 3 – Survey sketch depicting location of seep relative to LRDC water line and invert

Exhibit C: Engineering Plans.

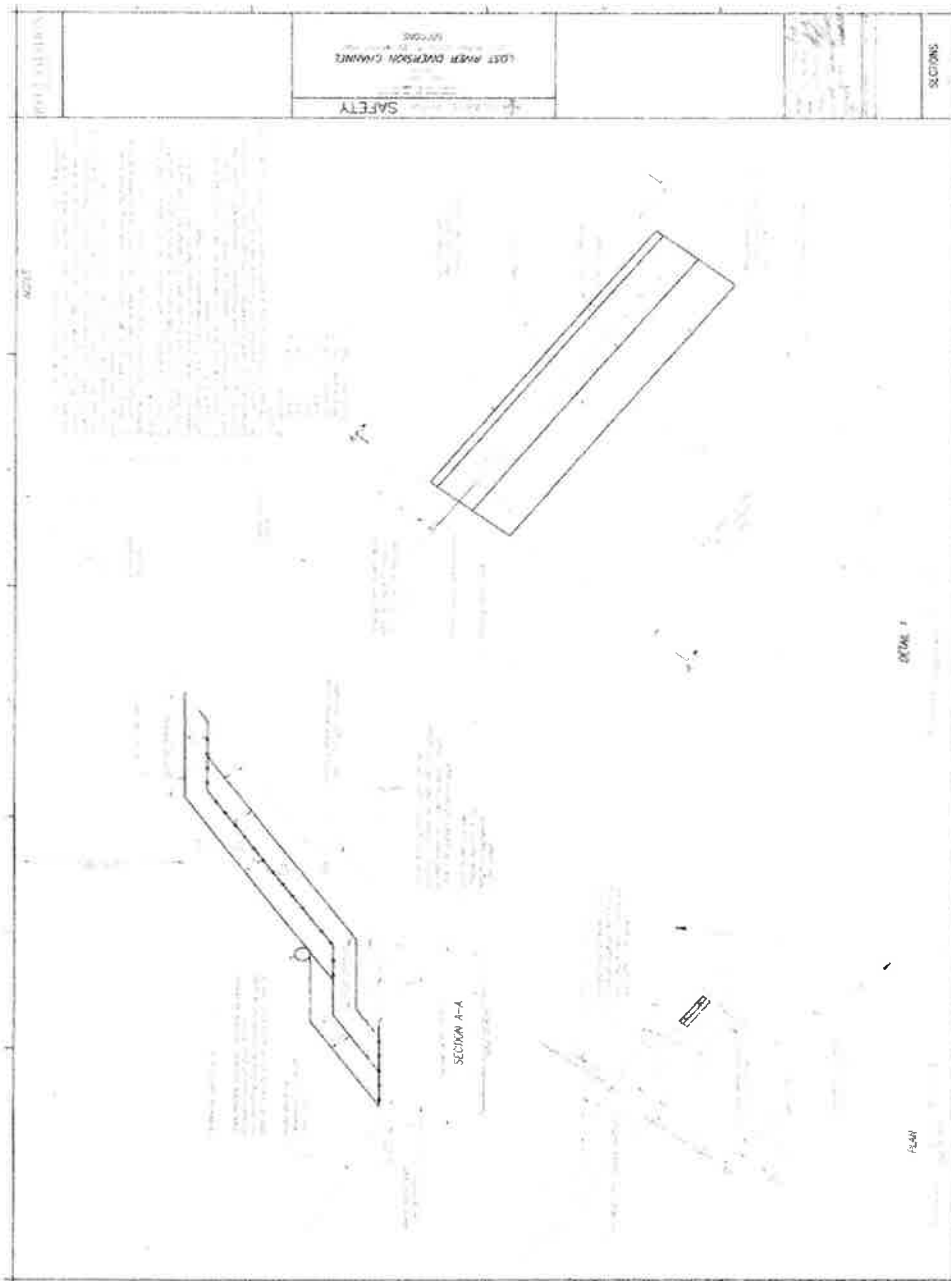


Exhibit D: Klamath Basin Area Office Engineering Division Review Concurrence.

Klamath Basin Area Office Engineering has reviewed the approval request form and proposed project description concerning the Lost River Diversion Channel (LRDC) Seep Repair. The proposed activity includes routine maintenance, performed by KBAO's Operation and Maintenance team, to temporarily repair a seep in the outer embankment of the LRDC. Engineering has approved the proposal. Should the proposed action change, additional review may be required.



James Gale – Chief, Engineering Division
Brian Billy – Civil Engineer

8/28/15

Date

Exhibit E: Federally listed Endangered, Threatened, and Candidate Species that May Occur within Klamath County and near the Proposed Project Location.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Klamath Falls Fish and Wildlife Office
1936 California Avenue, Klamath Falls, Oregon 97603
(541) 885-8481 FAX (541) 885-7837
kfaller@fws.gov



**LISTED, PROPOSED, AND CANDIDATE SPECIES THAT
MAY OCCUR IN KLAMATH COUNTY, OREGON**

Status: Endangered

Phylum	Common Name	Scientific Name	Critical Habitat
Fish	Lost River sucker	<i>Deltistes lineatus</i>	Designated
Fish	Shortnose sucker	<i>Chasmistes brevirostris</i>	Designated
Mammal	Gray wolf	<i>Canis lupus</i>	
Plant	Applagate's milk-vetch	<i>Astragalus applagates</i>	
Plant	Green's tuctoria	<i>Tuctoria greenet</i>	Designated

Status: Threatened

Phylum	Common Name	Scientific Name	Critical Habitat
Bird	Northern spotted owl	<i>Strix occidentalis caurina</i>	Designated
Bird	Yellow-billed cuckoo (Western DPS)	<i>Coccyzus americanus occidentalis</i>	Proposed
Fish	Bull trout (Klamath River DPS)	<i>Salvelinus confluentus</i>	Designated
Amphibian	Oregon spotted frog	<i>Rana pretiosa</i>	Proposed
Mammal	Canada lynx	<i>Lynx canadensis</i>	
Plant	Slender Orcutt grass	<i>Orcuttia tenuis</i>	Designated

Status: Proposed

Phylum	Common Name	Scientific Name	Critical Habitat
Mammal	Fisher (West Coast DPS)	<i>Pekania pennanti</i>	

Status: Candidate

Phylum	Common Name	Scientific Name
Bird	Greater Sage-grouse	<i>Centrocercus urophasianus</i>
Plant	Whitebark Pine	<i>Pinus albicadalis</i>

Updated July 6, 2015

Exhibit F: National Historic Preservation Act (Public Law 95-515), Section 106 coordination and consultation.

**CULTURAL RESOURCES COMPLIANCE
Mid-Pacific Region
Division of Environmental Affairs
Cultural Resources Branch (MP-153)**

MP-153 Tracking Number: 15-KBAO-229

Project Name: Lost River Diversion Channel Seep Repair

NEPA Document: CEC

NEPA Contact: Kirk Young

MP-153 Cultural Resources Reviewer: Laureen Perry, Regional Archaeologist



Date: July 28, 2015

Reclamation's Klamath Basin Area Office Operation and Maintenance team is proposing routine maintenance along the Lost River Diversion Channel to temporarily repair a seepage point in the canal bank. The project is located in the SW 1/4 of the NE 1/4 of Section 21, T39S, R9E of the Willamette Meridian, Klamath County, Oregon. The seep would be repaired using fill materials from an approved supplier to create a berm in the existing ditch.

Reclamation has determined that the proposed action is the type of undertaking that has no potential to cause effects on historic properties, pursuant to National Historic Preservation Act (NHPA) Section 106 regulations as codified at 36 CFR Part 800.3(a)(1). As such, Reclamation has no further obligations under Section 106. The proposed action would result in no impacts to historic properties.

This document conveys the completion of the cultural resources review and NHPA Section 106 process for this undertaking. Please retain a copy in the administrative record for this action. Should the proposed action change, additional review under Section 106, possibly including consultation with the State Historic Preservation Officer, may be required. Permanent repair proposed for later in the year will be subject to additional cultural resources compliance review.

Exhibit G: Coordination and Collaboration with Indian Trust Assets.

ITA Determination:

The closest ITA to the proposed Lost River Diversion Channel Seep Repair activity is the Klamath TDSA about 13.10 miles to the north-northwest (see attached image in Exhibit D).

Based on the nature of the planned work it does not appear to be in an area that will impact Indian hunting or fishing resources or water rights nor is the proposed activity on actual Indian lands. It is reasonable to assume that the proposed action will not have any impacts on ITAs.

	Kristen L. Hiatt	9/8/2015
Signature	Printed name of approver	Date

Appendix A: USACE NWP #3

**NATIONWIDE PERMIT 3
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS
FEDERAL REGISTER
AUTHORIZED MARCH 19, 2012**

Maintenance. (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill, such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and/or the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. The placement of new or additional riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in

their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification. For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note. This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

Appendix B: USACE NWP #23

**NATIONWIDE PERMIT 23
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS
FEDERAL REGISTER
AUTHORIZED MARCH 19, 2012**

Approved Categorical Exclusions Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

Note The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at:

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/GuidanceLetter.aspx>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

Appendix C: USACE RGL



**US Army Corps
of Engineers**

REGULATORY GUIDANCE LETTER

No. 05-07

Date: 8 December 2005

SUBJECT: Approved NEPA Categorical Exclusions for Nationwide Permit 23

1. Purpose and Applicability

a. **Purpose.** To issue guidance regarding the Categorical Exclusions of other Federal agencies approved for inclusion under Nationwide Permit 23 (NWP23). This guidance consolidates expired Regulatory Guidance Letters 86-02, 87-10 and 96-01.

b. **Applicability.** This applies to activities that may qualify for authorization under NWP23.

2. General Considerations

a. **Background.** Nationwide Permit 23 (NWP23) was first issued in 1982 to authorize certain actions by other federal agencies that are categorically excluded under NEPA, in accordance with 40 CFR Parts 1500 to 1508. After receiving a request from an agency to include its Categorical Exclusions (CEs) under NWP23, the Headquarters of the Army Corps of Engineers (HQUSACE) may approve CEs for use with NWP23 after conducting a public interest review. A Regulatory Guidance Letter (RGL) is issued to the field with the approved list of agency CEs.

To date, HQUSACE has concurred with the CEs of three federal agencies for inclusion under NWP23. CEs were approved for the Bureau of Reclamation (BOR) in RGL 86-02 dated January 17, 1986, the Federal Highway Administration (FHWA) in RGL 87-10 dated December 9, 1987, and the U.S. Coast Guard (USCG) in RGL 96-01 dated November 5, 1996.

b. **Practice.** While RGLs 86-02, 87-10 and 96-01 have expired, HQUSACE has instructed districts that the guidance provided therein remains generally valid since the RGLs have not been superseded by regulations or other RGLs. Districts currently use these expired RGLs in determining whether activities qualifying for approved categorical exclusions may be authorized under NWP23.

3. Guidance

a. The CE actions approved by HQUSACE for BOR, FHWA, and USCG for inclusion under NWP23 (see Attachments 1 through 3) continue to be in effect. Please note the lists include many actions that do not require Department of the Army authorization. However, to be

consistent with past RGLs and reduce confusion when referencing the CE number, we have included all agency CEs.

b. Notification to the district engineer is required for some CE activities to be authorized under NWP23. In such cases, the prospective permittee must contact the appropriate district, so that the district can review the project proposal and ensure the activity would have only minimal individual and cumulative impacts on the aquatic environment. Notification is required for the following:

- BOR: CE activities that involve more than a small amount of fill, activities with the potential to cause more than minor water quality impacts, and activities involving the use of explosives near waters with significant fisheries resources.
- FHWA: CE activities occurring under paragraphs (c)(3), (c)(7), (c)(9) and (c)(12), and all activities under paragraph (d), and
- USCG: CE activities under number (6) for projects where wetland impacts are proposed, and number (8) to address potential impacts/encroachment on Federal navigation projects.

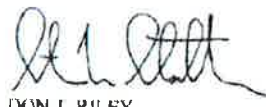
Districts will review each notification and verify whether the activity meets the terms and conditions of NWP23. Special conditions may be added to the NWP verification to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. If the district believes that concerns for the aquatic environment or any public interest factor warrant further review, discretionary authority may be exercised on a case-by-case basis to require an individual permit.

c. Districts will provide a response to the prospective permittee, verifying whether the activity meets the terms and conditions of NWP23 within the designated response period for the most recently issued nationwide permits (as provided in the "Notification" general condition for the nationwide permits) or the appropriate regional condition. If the district does not respond within the designated time, the activity qualifies for NWP23 authorization.

d. Unless a district or division has regional conditions that require notification for additional CE activities, all other CE activities do not require pre-construction notification to the district. BOR, FHWA, and USCG may however voluntarily seek written verification from districts for CE actions that do not require notification.

e. This guidance rescinds and replaces RGLs 86-02, 87-10 and 96-01.

4. Duration. This guidance remains in effect unless revised or rescinded.


DON I. RILEY
Major General, US Army
Director of Civil Works

ATTACHMENT 1

RGL 05-07

Bureau of Reclamation

Approved Categorical Exclusions for NWP23

The following BOR Categorical Exclusions were approved for inclusion under NWP23 on January 17, 1986

A. General Activities.

(2) Training activities of enrollees assigned to the various youth programs. Such training may include minor construction activities for other entities

(3) Research activities, such as nondestructive data collection and analysis, monitoring, modeling, laboratory testing, calibration, and testing of instruments or procedures and nonmanipulative field studies.

B. Planning Activities.

(3) Data collection studies that involve test excavations for cultural resources investigations or test pitting, drilling or seismic investigations for geologic exploration purposes where the impacts will be localized.

C. Project Implementation Activities.

(3) Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities

(4) Approval of land management plans where implementation will only result in minor construction activities and resultant increased operation and maintenance activities.

D. Operation and Maintenance Activities.

(1) Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation

(9) Issuance of permits for removal of gravel or sand by an established process from existing quarries.

(11) Implementation of improved appearance and soil and moisture conservation programs where the impacts are localized.

(12) Conduct of programs of demonstration, educational, and technical assistance to water user organizations for improvement of project and on-farm irrigation water use and management

(17) Minor safety of dams construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.

E. Grant and Loan Activities.

(1) Rehabilitation and Betterment Act loans and contracts which involve repair, replacement, or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities

(2) Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized

(3) Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.

Appendix D: ODSL Removal-Fill Guide – Chapter 2OREGON DEPARTMENT OF
STATE LANDS

Acronyms

Artificially Created Ponds and Wetlands

Artificially created ponds and wetlands are waters that exist as a result of some human activity. They are jurisdictional if they meet any one of the following criteria (other than the exceptions listed below):

- Greater than or equal to one acre in size (unless created for one of the purposes listed in this section)
- Created, in part or in whole, in waters of this state
- Identified in an authorization as a mitigation site

Exceptions: The one-acre size threshold does not apply to wetlands or ponds artificially created entirely from uplands when constructed for the purpose of:

- Wastewater treatment
- Settling of sediment
- Stormwater detention or treatment
- Agricultural crop irrigation or stock watering
- Fire suppression
- Cooling water
- Surface mining - even if the site is managed for interim wetlands functions and values
- Log storage
- Aesthetic purposes

To determine whether a wetland or pond was "created in part or in whole in a water of this state", the applicant should use the following resources to research the historical site conditions. Generally if any of the following situations exist in any portion of the created wetland or pond, it was likely created in part or wholly in a water of this state:

- The USGS map shows a channel flowing through, into or out of the artificially created pond or wetland
- Historical aerial photos show a water body, inundation or an area devoid of vegetation in early spring
- NWI or LWI maps show a wetland identified at the site
- Hydric soils maps from the County Soil Survey show that the site is mapped as a hydric soil unit, or is in a low topographic position in a soil unit with hydric soil inclusions
- There are springs, seeps or wetlands upslope of the site, or a channel flowing into the site

When an existing jurisdictional pond is enlarged through artificial means, such as redirection of water or excavation, the additional area is included in the jurisdictional boundary.

Following are some examples of jurisdictional artificially created ponds and wetlands:

- A flood-irrigated pasture that meets wetland criteria, greater than one acre, where no wetland or waterway existed on the site prior to flooding

- A wetland caused by water backing up behind an undersized culvert in an intermittent stream
- A two-acre wildlife pond created by construction of a berm in a non-jurisdictional drainage

Figure 2-3 provides a step-by-step procedure for how to determine if an artificially created wetland or pond is jurisdictional.



Figure 2-3: Jurisdiction flowchart for artificially created ponds and wetlands.

Ditches

A ditch is a manmade water conveyance channel. Channelized or straightened natural waterways are not considered ditches. If the channelized waterway is shown as an intermittent or perennial stream on a USGS map, it is likely not a ditch, but a channelized stream. Likewise, if historical aerials show the waterway in a different location, it is likely a channelized stream.

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Acronyms

Ditches created in wetlands are jurisdictional (with the exception of some irrigation ditches and roadside and railroad ditches as described below).

Ditches created in uplands are jurisdictional if they meet both of the following:

- Have a free and open connection to a waterway: A "free and open connection" means a connection by any means, including but not limited to culverts, to or between natural waters that allows the interchange of surface flow at bankfull stage or OHW, or at or below HMT between tidal waterways.
- Contain food and game fish: Because the list of food fish includes almost any fish (there is no list available), and the ditch must have both to be jurisdictional, the game fish list (ORS 496.009) is used to establish jurisdiction. Ditches created from upland that have fish screens are generally not jurisdictional.

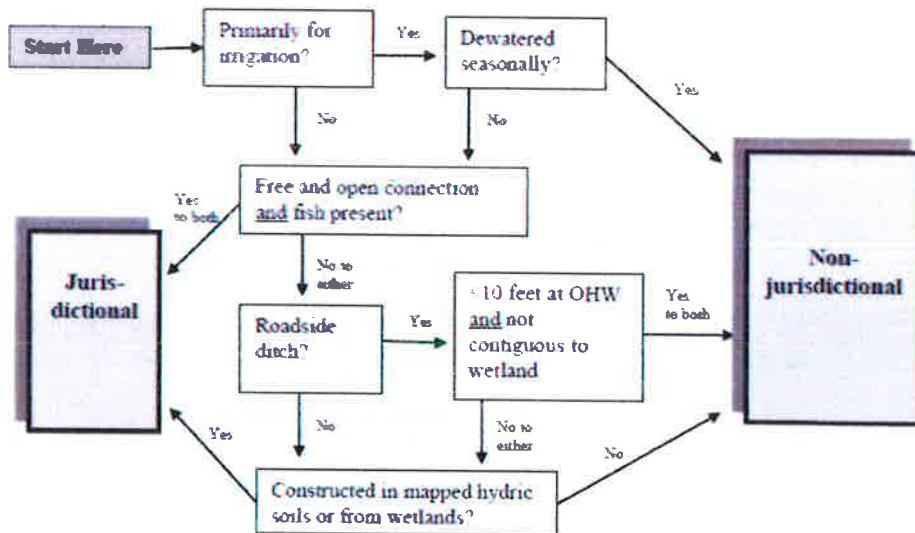


Figure 2-4: Jurisdiction flowchart for ditches.

Irrigation Ditches

Regardless of whether it was created in wetlands or uplands, an irrigation ditch is not jurisdictional if it meets both of the following.

- The ditch is operated and maintained for the primary purpose of irrigation.
- The ditch is dewatered for the non-irrigation season except for isolated puddles in low areas. "Dewatered" means that the source of the irrigation water is turned off or diverted from the irrigation ditch. A ditch that is dewatered during the non-

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Acronyms

irrigation season may be used for temporary flows associated with stormwater collection, stock water runs, or fire suppression.

Roadside and Railroad Ditches

Regardless of whether it was created in wetlands or uplands, a roadside or railroad ditch is not jurisdictional if it meets all of the following:

- It is ten feet wide (average) or less at OHW or the wetland boundary
- It is not adjacent and connected or contiguous to wetlands. (If so, only the portion that is connected or contiguous with the wetland is jurisdictional.)
- It does not contain fish

Note that a roadside ditch is always jurisdictional if it is a channelized stream, or if it has a free and open connection to another water and contains food and game fish.

Figure 2-5 illustrates a portion of a roadside ditch that is jurisdictional because it is adjacent to a wetland. (A ditch may be considered adjacent to a wetland even if there is an upland berm between the ditch and the wetland.)

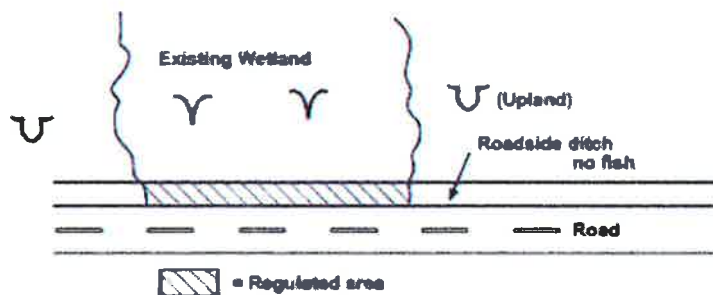


Figure 2-5: Jurisdiction of a roadside ditch with adjacent wetlands.

If an applicant is uncertain about whether a ditch is jurisdictional, he or she should contact a [Wetland Specialist or Resource Coordinator](#). Figure 2-4 may also help to determine whether a ditch is jurisdictional.

