



## **INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM USER MANUAL**

All reviewed information that contributed to an Approved Jurisdictional Determination (AJD) should be adequately reflected in the administrative record along with printed copies of the AJD Form (including applicable AJD Form Tables) and the ORM Aquatic Resources Upload Spreadsheet (or alternative exported data method from the Aquatic Resources screen in ORM). Refer to the ORM2 Homepage for the latest version of the Upload Spreadsheet. Attachment A to this document provides additional instructions on how to complete the Aquatic Resources Upload Spreadsheet (which is also the same information used to complete the data fields in ORM if using the alternative exported data method from ORM). Attachment B to this document provides additional instruction on how to complete the Tables associated with the AJD Form.

### **DETAILED AJD FORM INSTRUCTIONS**

#### ***Procedural Notes:***

1) This User Manual corresponds with the relevant Sections of the AJD Form. The Form should capture all waters/features in the review area, including Waters of the U.S. (WoUS) and non-WoUS. The Form is designed such that one form can be used to document all waters/features within a review area; however, Districts may also use one form to document waters/features located in each Single Point of Entry (SPOE) Watershed within the review area if the District prefers. The review area refers to the geographic boundary under review for determination of federal Section 10 Rivers and Harbors Act (RHA) and/or Section 404 Clean Water Act (CWA) jurisdiction.

2) An aquatic feature may meet the definition of multiple categories of WoUS. The project manager (PM) should utilize the AJD Form with the appropriate Tables to document the strongest jurisdictional determination (or the determination that requires the least amount of documentation to reach a conclusion of jurisdiction by Rule). Any additional WoUS water types also determined applicable for the subject water would then be documented in the Rationale column of the Table associated with the stronger jurisdictional determination. For example, an (a)(2) interstate perennial stream may also meet the criteria of an (a)(1) water. The subject water may be documented as an (a)(1) WoUS, for example, if the subject water is on the District's list of Section 10 Navigable Waters. The PM should document the water as both a Section 10 water under the RHA in Section III.A and as an (a)(1) water under the CWA in Section III.B in the AJD Form, as well as in Table 1 (for (a)(1) Traditional Navigable Waters) of the AJD Form. The Table should include an explanation that the water could also be determined jurisdictional based on the criteria of an (a)(2) water under the Rule in the Rationale column of Table 1. Such documentation would also simply cite the District Section 10 list as the Rationale for the (a)(1) determination. There should be a single Aquatic Resource 'Waters\_Name' on the Aquatic Resources Upload Spreadsheet (e.g., HQR-2015-12345-SMJ-Stream 1) (or in the appropriate data fields in ORM if using the exported data method from ORM). However, if the subject water is not on the District's list of Section 10 Navigable Waters, and the subject water would require a case-specific or stand-alone traditional navigable water (TNW) determination, the subject water instead may be documented as an (a)(2) WoUS. The PM should document the water as an (a)(2) interstate water under the CWA in Section III.B in the AJD Form, as well as in Table 2 (for (a)(2) Interstate Waters) of the AJD Form. Such documentation would simply cite the crossing of state boundaries (including the names of the states and attaching a map indicating as such) as



the rationale, and an explanation that the water could also be determined jurisdictional based on the criteria of an (a)(1) water under the Rule should be described in the Rationale column of the Table 2 of the Form (for Interstate Waters). There should be a single Aquatic Resource ‘Waters\_Name’ on the Aquatic Resources Upload Spreadsheet (e.g., HQR-2015-12345-SMJ-Stream 1) (or in the appropriate data fields in ORM if using the exported data method from ORM) as the subject water should not be entered in twice in the Aquatic Resources simply because it meets two categories of WoUS.

3) Some aquatic features may contain multiple types of waters. The Clean Water Rule (Rule) states that an (a)(6) adjacent water includes wetlands within or abutting its ordinary high water mark (OHWM).<sup>1</sup> This language is designed to ensure that if there is a fringe wetland abutting a pond that is the source water to a tributary, that wetland is considered part of the pond under the Rule, and as such the pond as a whole, including any abutting wetlands, is jurisdictional as an adjacent water. In addition, excluded waters and features constructed in dry land may also develop wetland characteristics within/below the OHWM. For example, an excluded ditch or stormwater control feature may contain wetlands within/below the OHWM. In these cases, if the PM determines the ditch or stormwater control feature meets the criteria of an excluded water/feature under paragraph (b) of the Rule, the wetlands contained within/below the OHWM would also be excluded. The PM should document these aquatic features as excluded waters/features in Section III.C of the AJD Form, as well as provide the rationale supporting the conclusion in Table 10 (for Non-Waters/Excluded Waters and Features). The PM should also document the aquatic features on the Aquatic Resources Upload Spreadsheet (or in the appropriate data fields in ORM if using the exported data method from ORM). The associated wetland would be discussed in the Rationale column for the excluded water/feature and would not itself be entered as its own Aquatic Resource because the wetland is considered part of the excluded water/feature.

4) An aquatic feature may be determined jurisdictional based on adjacency to more than one WoUS. The PM should document the adjacency that the District has determined requires the least amount of documentation to reach a conclusion of jurisdiction by Rule, where possible. For example, an emergent wetland may be considered adjacent to both an (a)(1) and an (a)(5) WoUS. Suppose the wetland is contiguous with the (a)(5) WoUS, and is also within the 100-year floodplain and not more than 1,500 feet from the OHWM of the (a)(1) WoUS, thereby meeting the criteria of adjacency under neighboring (33 CFR 328.3(c)(2)(ii)). In this case, the District may determine that the jurisdictional determination that requires the least amount of documentation to reach a conclusion of jurisdiction by Rule would be to the (a)(5) WoUS. Therefore, the PM would document the wetland as an (a)(6) WoUS on the AJD Form in Section III.B and in Table 6 (for Adjacent Waters) for its adjacency to the (a)(5) WoUS. The wetland’s adjacency to the (a)(1) WoUS should also be described in the Rationale column of Table 6. The PM would also document the wetland on the Aquatic Resources Upload Spreadsheet (or in the appropriate data fields in ORM if using the exported data method from ORM). However, the subject wetland should not be entered twice under Aquatic Resources simply because the wetland may meet the terms of adjacency to more than one WoUS.

5) An aquatic feature may be determined to be adjacent to one (a)(1)-(a)(5) WoUS, but also lie within the distances/thresholds associated with case-specific waters under (a)(8) to another WoUS. In this case, the PM should only document adjacency for that subject water as it would be jurisdictional by Rule. For example, an emergent wetland may be considered adjacent to an (a)(1) WoUS, but also fall within 4,000

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<sup>1</sup> Preamble, Section IV.G.



feet of the OHWM of an (a)(5) WoUS within the same SPOE watershed. In this case, the PM would document the wetland as an (a)(6) adjacent water on the AJD Form in Section III.B and in Table 6 (for Adjacent Waters) for its adjacency to the (a)(1) WoUS, as well as on the Aquatic Resources Upload Spreadsheet (or in the appropriate data fields in ORM if using the exported data method from ORM), and would not need to conduct a case-specific significant nexus determination (SND) under (a)(8) for the subject water relative to the (a)(5) WoUS.

## **SECTION I: BACKGROUND INFORMATION**

### **A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD):**

*Completion date* is the date this Form is completed and approved by the regulatory District Branch/Division Chief (or representative thereof). This date should also match the date on the AJD transmittal letter.

**B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQR-2015-00001-SMJ):** A suffix (e.g., -SMJ) to this number may be used at the discretion of the District Chief provided that the basic format (e.g., HQR-2015-00001) is retained.

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:** Use location and coordinates that reflect the center of the review area. The review area refers to the geographic boundary under review for determination of federal Section 10 RHA and/or Section 404 CWA jurisdiction. The review area could encompass the project area, or all or some of a parcel (coordinates for the aquatic features/waters in the review area will be entered on the Aquatic Resources Upload Spreadsheet (or in the appropriate data fields in ORM if using the exported data method from ORM) as well as the associated Table(s)).

**Map(s)/Diagram(s):** Supporting map(s)/diagram(s), including delineation maps, map(s) identifying the SPOE watershed, or multiple SPOE watersheds, and similarly situated waters, where applicable, that illustrate the AJD review area should be attached to this AJD Form, and/or in the administrative record.

**Other Sites:** List any other associated JDs (Preliminary or Approved) for this review area, and/or other associated off-site locations (e.g., mitigation sites, disposal sites, borrow sites, etc.), including ORM numbers.

### **D. REVIEW PERFORMED FOR SITE EVALUATION: Pick one or the other, but not both.**

**Office (Desk) Determination Only:** *Date* is the date the PM completed research and evaluation of supporting data in the office setting. A field visit was not completed for this AJD.

**Office (Desk) and Field Determination:** *Office/Desk Date* is the date the PM completed research and evaluation of supporting data in the office setting; *Field Date(s)* is the date(s) the PM conducted a site visit to evaluate or delineate water features within the AJD review area, or conducted an in-field review of an applicant's delineation or data submitted to the Corps for evaluation. Multiple District PM site visits (where applicable) should also be recorded in this box.



## **SECTION II: DATA SOURCES**

**SUPPORTING DATA:** This section identifies the data sources used to support the AJD. Check all that apply; each checked item shall be included in the case file, and/or appropriately referenced as indicated within each source entry (e.g., Title/Date, Citation, etc).

## **SECTION III. SUMMARY OF FINDINGS**

### **Complete ORM Aquatic Resources Upload Spreadsheet or Export and Print the Aquatic Resources Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status - Required:**

This is required information for all AJDs. The PM will record data and summarize analyses to support the AJD on the AJD Form (including any associated AJD Form Tables) and the Aquatic Resources Upload Spreadsheet (or by filling out the appropriate data fields in ORM under Aquatic Resources) and attach the Upload Spreadsheet to the AJD Form (or attach the appropriate data using the exported data method in ORM). The sections of the AJD Form instruct the PM where to record the supporting data within the appropriate Form Table(s). The Aquatic Resources Upload Spreadsheet contains data fields that are essential to completing an AJD and is an important aspect of the hard copy AJD documentation requirements. Data entered into fields on the Aquatic Resources Upload Spreadsheet may be uploaded to populate the ORM Aquatic Resources fields. Alternatively, for AJDs with relatively few aquatic resources, it may be more efficient for the PM to enter the required data in ORM and then export and print the data from the ORM Aquatic Resources screen. It is a requirement to either complete the Aquatic Resources Upload Spreadsheet or fill out the appropriate data fields in ORM under Aquatic Resources and then export and print the ORM Aquatic Resources screen for every AJD (See Attachment A to this User Manual for more information).

### **A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF**

**JURISDICTION:** Check box if *navigable* WoUS within RHA jurisdiction, as defined by 33 CFR part 329, are found in the review area and document the rationale on Table 1 (for TNWs). The navigable water must be subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters<sup>2</sup> in order to use this AJD Form. Please note that if the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters, the PM should not use this Form to complete a Section 10 navigability determination. The District must follow the procedures outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination. All waters entered in this Section of the Form must also fill out Section III.B of the AJD Form for (a)(1) Traditional Navigable Waters<sup>3</sup>.

**B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION:** Check boxes for all Section 404 WoUS found within the review area. Multiple water categories can be entered on one form. Below each water category, (a)(1)-(a)(8), the PM is instructed to complete the associated Table(s); completion of the appropriate Table(s) is REQUIRED in order to document the Corps basis for jurisdiction.

<sup>2</sup> Refer to 33 CFR 329.16 Use and Maintenance of Lists of Determinations.

<sup>3</sup> The exception to this rule is when an area continues to be a "navigable water of the United States" based only on historic use (see 33 CFR 329.9(a)) but is now dry land. In these rare circumstances, an area determined to be a "navigable water of the United States" in law would not be a TNW for purposes of CWA jurisdiction.



**Additionally:**

**Checkbox under (a)(1):** ‘This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water which has not previously been determined as such. Documentation required for this case-specific (a)(1) TNW determination is attached.’ – See TNW Fact Sheet and/or any Q&As released regarding documentation required in order to complete a TNW determination. A case-specific TNW determination (for navigable-in-fact waters) is associated with a specific request for an AJD in a particular review area. A case specific-TNW determination does not establish upstream or downstream limits of navigability for the TNW and cannot be relied upon by the public to inform future AJDs. Case-specific TNW determinations expire upon the expiration of the AJD. Finally, a TNW determination made as part of a case-specific AJD would be an appealable action under 33 CFR 331.

**Checkboxes under (a)(6):** See preamble section of the Rule addressing adjacency, any Q&As on the Rule regarding adjacency, and associated pictograms to assist in determining applicable adjacency criteria for waters within the review area.

**Checkboxes under (a)(7) and (a)(8):** ‘Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific SND.’<sup>4</sup> These geographically and physically adjacent waters, although determined not adjacent by Rule, require a case-specific SND. By checking this box the PM recognizes that the subject water may have met adjacency criteria, but since it was also determined that the subject water is used for ‘established, normal farming, silviculture, and ranching activities’ a case-specific SND is required under paragraphs (a)(7) or (a)(8) of the Rule.

**C. NON-WATERS OF THE U.S. FINDINGS:** Check boxes for all non-jurisdictional waters or features found within the review area. Multiple waters or features can be entered on one form, even if there are different criteria met for waters or features to be non-jurisdictional.<sup>5</sup> Below each water or feature in this section, the PM is instructed to complete the associated Table(s); completion of the Table(s) is REQUIRED for documentation of the Corps basis for declining jurisdiction of the waters or features.

**The review area is comprised entirely of dry land:** Only use this checkbox when the ENTIRE review area is comprised ENTIRELY of dry land. If there are ANY waters or features occurring within the review area, whether determined jurisdictional or non-jurisdictional, the PM cannot state that the entire review area is dry land. If dry land is selected such that the entire review area is comprised of dry land, PMs do not need to document as such in any of the accompanying Tables in the AJD Form.

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<sup>4</sup> The definition of “adjacent” in the Rule does not include those waters in which established, normal farming, silviculture, and ranching activities occur. Wetlands and farm ponds in which normal farming activities occur, as those terms are used in section 404(f) of the Clean Water Act and its implementing regulations, are not jurisdictional under the Act as an “adjacent” water. Waters in which normal farming, ranching, and silviculture activities occur instead will continue to be subject to case-specific review, as they are today. These waters may be determined to have a significant nexus on a case-specific basis under paragraph (a)(7) or (a)(8). Such activities must be established and ongoing activities to distinguish from activities needed to convert an area to farming, silviculture, or ranching and activities that convert a water to a non-water. 33 CFR 323.4(a)(1). It is important to recognize that “tributaries,” including those ditches that meet the tributary definition, are not “adjacent” waters and are jurisdictional by Rule. 80 FR 37080.

<sup>5</sup> The EXCEPTION is when the checkbox under this Section for *dry land* is picked.





**Checkboxes under Potential (a)(7) and (a)(8):** Only check the box for these waters where a SND was performed on potential (a)(7) or (a)(8) waters and the waters were found to NOT have a significant nexus.

‘Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific SND.’<sup>6</sup> These geographically and physically adjacent waters, although determined not adjacent by Rule, now require a case-by-case SND. By checking this box the PM recognizes that this water may have met adjacency criteria, but since it was also determined that the waters are used for ‘established, normal farming, silviculture, and ranching activities’ a case-specific SND is required.

**Excluded Waters/Features:** Under the Rule all waters and features identified in paragraph (b) as excluded will not be WoUS, even if they otherwise fall within one of the categories in paragraphs (a)(4)-(a)(8).<sup>7</sup> PMs must identify and document a rationale for every excluded water/feature as part of the AJD (when applicable), with the exception of artificial reflecting or swimming pools; small ornamental waters; puddles; certain transitory, erosional features; groundwater; and, certain stormwater control features. See the Attachment B to this User Manual, Table 10 discussion (for Non-Waters/Excluded Waters and Features), and footnote #1 on the AJD Form itself for more information. The PM should select checkboxes on the Form for the excluded features listed as exceptions above (noted with footnote #1 on the Form) only when requested to include these in the AJD, or in the rare case when the PM determines a case-by-case evaluation is required. The PM should provide the rationale supporting the conclusion on Table 10 of the Form and document an excluded water/feature on the Aquatic Resources Upload Spreadsheet (or in the appropriate data fields in ORM if using the exported data method for ORM).

**Other Non-Jurisdictional Waters/Features:** The PM determined that the water(s)/feature(s) is (are) non-WoUS, which do not fit within any of the categories otherwise listed within the AJD Form. For example, an aquatic feature that is not adjacent to a tributary, is wholly situated beyond all distance/floodplain thresholds, is not a potential (a)(7) or (a)(8) water, and is not within the 100-year floodplain of a water identified in (a)(1)-(a)(3) would be identified as an “Other Non-Jurisdictional Waters/Features.” Another example includes waters/features found within a “closed basin” watershed with no (a)(1)-(a)(3) WoUS located within the basin. With no (a)(1)-(a)(3) WoUS to which waters/features drain, there can be no significant nexus under the Rule, and as such, the waters/features within “closed basin” watersheds are non-jurisdictional and would be documented as “Other Non-Jurisdictional Waters/Features”.

**D. ADDITIONAL COMMENTS TO SUPPORT AJD:** If additional reports or literature are used to support the analysis and are not identified in Section II above, these documents (and other sources) will be referenced in this Section. This Section should be used to provide additional information to support the determinations included on this AJD Form. If complex site conditions are present, clarify extenuating conditions in this Section.

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<sup>6</sup> See Footnote ‘3’ above.

<sup>7</sup> See Preamble discussion in IV.I. *Waters and Features that are Not Waters of the U.S.*



## **ATTACHMENT A: AQUATIC RESOURCES UPLOAD SPREADSHEET AND RELEVANT DATA FIELDS IN ORM**

The Aquatic Resources Upload Spreadsheet contains data fields that are essential to completing an Approved Jurisdictional Determination (AJD) and is an important aspect of the hard copy AJD documentation requirements. Data entered into fields on the Aquatic Resources Upload Spreadsheet may be uploaded into the ORM Aquatic Resources fields. Alternatively, for AJDs with relatively few aquatic resources, it may be more efficient for the PM to fill out the appropriate data fields in the Aquatic Resources screen in ORM and then export and print the data from this screen. It is a requirement either to complete the Aquatic Resources Upload Spreadsheet or to export and print the ORM Aquatic Resources screen for every AJD. PMs should always refer to the ORM2 Homepage for the latest version of the Aquatic Resources Upload Spreadsheet.

Note: The section headings below correspond with the columns and column names of the Aquatic Resources Upload Spreadsheet but are also applicable to the same relevant data fields in ORM on the Aquatic Resources screen.

### ***A. Waters\_Name***

This is a required field. The Waters\_Name is the name of the aquatic resource<sup>1</sup> (AR) in the review area. It must contain unique values and must correspond to the Waters\_Name provided in ORM, and is associated with the NWP, Impact, and/or Mitigation tabs in ORM, AND on the site map attached to the AJD Form. Follow District naming conventions. The intent is to name the ARs so they can be easily associated to impacts, JDs, and mitigation.

There may be multiple ARs in the review area. Enter all ARs that are found within the review area on this spreadsheet regardless of jurisdictional status (waters of the U.S, non-waters of the U.S., excluded features,<sup>2</sup> no significant nexus, etc.). For example, use a separate row to add a new AR for every on-site wetland, stream, lake, or other type of AR. If there are three different streams and 20 different wetlands within the review area, the project manager (PM) should create 23 rows and list each of the streams and wetlands assigning each a unique Waters\_Name (e.g., Crooked Creek, Briar Channel, Boise River, Wetland 1, Wetland 2, Stream 1, etc.). PMs should follow local District naming practices for naming unnamed features (example: using UT1, UT2, UT3 for unnamed tributary 1, unnamed tributary 2, and unnamed tributary 3 respectively or use of naming convention provided by the applicant).

### ***B. State***

This is a required field. Pick from the list the state in which the AR is located.

### ***C. Cowardin\_Code***

This is a required field. Pick from the list the code that most appropriately characterizes the AR on this row. The Cowardin wetland and deepwater habitat classification system was developed by

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<sup>1</sup>Aquatic resource is used in the generic sense. ARs are the resources/features (jurisdictional or non-jurisdictional) within the review area where the PM is making a determination of jurisdiction. Also referred to in the User Manual as *subject water*.

<sup>2</sup> In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area. See the discussion on Table 10 (for Non-Waters/Excluded Waters and Features) in Attachment B to this User Manual for additional instructions.



U.S. Fish and Wildlife Service in 1979 (FWS/OBS-79/31).<sup>3</sup> The Cowardin method is based upon a hierarchical system, and ranges from System level (highest level) to Subclass level (lowest level). The Systems include: Marine, Riverine, Estuarine, Lacustrine, and Palustrine. Each System is first divided into Subsystems, then into Classes. One exception is the Palustrine System, which is divided directly into Classes. The distinctions within each Subsystem and Class are based upon hydrologic regime, physical structure and composition, and vegetative structure and composition. For example, the Estuarine System is divided into Subtidal and Intertidal Subsystems, then into 12 Classes, including rock bottom, unconsolidated bottom, emergent wetland, and forested wetland.

A new class was added in ORM in June 2009: R6 for ephemeral aquatic resources (not an official Class in the Cowardin classification scheme, but added for Corps ORM data entry purposes).

Note that if the review area is comprised entirely of dry land and the PM appropriately selects “dryland” as the waters\_type, the PM should also select “U” as the Cowardin code to represent “upland”.

#### ***D. HGM\_Code***

Select the most appropriate code for the AR in this row (if applicable in the District). The Hydrogeomorphic Approach to assessing wetland functions, or HGM Approach, is a method to assess the functional condition of a specific wetland referenced to data collected from wetlands across a range of physical conditions.<sup>4</sup> HGM utilizes a wetland classification system based on geomorphic position and hydrologic characteristics to group wetlands into seven different wetland classes, they are defined at: <http://el.erdc.usace.army.mil/wetlands/class.html>.

#### ***E. Meas\_Type***

This is a required field. Select area or linear for the measurement type used to estimate the size of the AR.

#### ***F. Amount***

This is a required field. The amount refers to the area or size of the AR within the review area. Enter the size of the AR being evaluated. If the AR continues beyond the review area, only include the length/acreage of the AR located within the review area. For example, if only 25 acres of a 50-acre wetland is within the review area, the PM would document 25 acres for the amount of the wetland within the review area. If the entire 50-acre wetland is within the review area, the PM would document 50 acres for the amount of the water within the review area. Enter data in acres or square feet for area, and feet for linear. The specific unit type applicable to the amount recorded in this field is documented in the next data field, *Units*. In cases where the AJD is providing a statement of the presence or absence of waters of the U.S. within the review area and not delineating the limits, it is not necessary to know the exact length/acreage, a good approximation will suffice.

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<sup>3</sup> <http://www.fws.gov/wetlands/Data/Wetland-Codes.html>

<sup>4</sup> <http://el.erdc.usace.army.mil/wetlands/procedure.html>





### G. Units

This is a required field. Pick from the list the unit type used to measure the size of the AR. Generally, for wetlands, impoundments, ponds, and the like, acres should be used. For streams, ditches, and the like, linear feet should be used. For other types of ARs, PMs have discretion for which units of measure to use.

### H. Waters\_Type

This is a required field. Pick from the list of waters/features that represents the AR.

Waters_Type Name	Description
A1	(a)(1) Traditional Navigable Waters
A2B	(a)(2) Interstate waters/wetlands - with a wetland boundary
A2O	(a)(2) Interstate waters/wetlands - with an OHWM
A3	(a)(3) Territorial Seas
A4	(a)(4) Impoundments
A5	(a)(5) Tributaries
A6BWB	(a)(6) Adjacent waters - bordering/contiguous - with a wetland boundary
A6BOHWM	(a)(6) Adjacent waters - bordering/contiguous - with an OHWM
A6N1WB	(a)(6) Adjacent waters - neighboring (i) - with a wetland boundary and within 100 feet of OHWM of (a)(1)-(a)(5) water
A6N1OHWM	(a)(6) Adjacent waters - neighboring (i) - with an OHWM and within 100 feet of OHWM of (a)(1)-(a)(5) water
A6N2WB	(a)(6) Adjacent waters - neighboring (ii) - with a wetland boundary and within 100-yr floodplain AND 1500 feet of OHWM of (a)(1)-(a)(5) water
A6N2OHWM	(a)(6) Adjacent waters - neighboring (ii) - with an OHWM and within 100-yr floodplain AND 1500 feet of OHWM of (a)(1)-(a)(5) water
A6N3HWB	(a)(6) Adjacent waters - neighboring (iii) - with a wetland boundary and within 1500 feet of HTL of (a)(1) or (a)(3) water
A6N3HOHWM	(a)(6) Adjacent waters - neighboring (iii) - with an OHWM and within 1500 feet of HTL of (a)(1) or (a)(3) water
A6N3OWB	(a)(6) Adjacent waters - neighboring (iii) - with a wetland boundary and within 1500 feet of OHWM of Great Lakes
A6N3OOHWM	(a)(6) Adjacent waters - neighboring (iii) - with an OHWM and within 1500 feet of OHWM of Great Lakes
A7PRAIRIE	(a)(7) water – Prairie pothole subcategory
A7BAYS	(a)(7) water – Carolina and Delmarva bays subcategory
A7POCOSINS	(a)(7) water – Pocosins subcategory
A7CA	(a)(7) water – Western vernal pools in California subcategory
A7TX	(a)(7) water – Texas coastal prairie wetlands subcategory
A8HWB	(a)(8) waters with a wetland boundary and <4000 feet of HTL but NOT adjacent to an (a)(1)-(a)(5) water



Waters_Type Name	Description
A8HOHWM	(a)(8) waters with an OHWM and <4000 feet of HTL but NOT adjacent to an (a)(1)-(a)(5) water
A8OWB	(a)(8) waters with a wetland boundary and <4000 feet of OHWM but NOT adjacent to an (a)(1)-(a)(5) water
A8OOHWM	(a)(8) waters with an OHWM and <4000 feet of OHWM but NOT adjacent to an (a)(1)-(a)(5) water
A8100WB	(a)(8) waters with a wetland boundary and within the 100-yr floodplain of an (a)(1)-(a)(3) water, but NOT adjacent
A8100OHWM	(a)(8) waters with an OHWM and within the 100-yr floodplain of an (a)(1)-(a)(3) water, but NOT adjacent
DELINPJD	This is applicable to Delineation or Preliminary JDs only. If the review area contains an Approved JD boundary and a Preliminary JD boundary, ARs within the Preliminary JD Boundary may be entered on the Aquatic Resources Upload Spreadsheet and identified by this Waters_Type.
EXCLDB1	(b)(1) Exclusions – waste treatment systems
EXCLDB2	(b)(2) Exclusions – prior converted cropland
EXCLDB3I	(b)(3)(i) Exclusions – ditches with ephemeral flow and not a relocated tributary or excavated in a tributary
EXCLDB3II	(b)(3)(ii) Exclusions – ditches with intermittent flow and not a relocated tributary or excavated in a tributary and not draining a wetland
EXCLDB3III	(b)(3)(iii) Exclusions – ditches that do not flow, directly or through another water, into an (a)(1)-(a)(3) water
EXCLDB4I	(b)(4)(i) Exclusions – artificially irrigated areas that would revert to dry land if application of water ceased
EXCLDB4II	(b)(4)(ii) Exclusions – artificial, constructed lakes and ponds created in dry land
EXCLDB4III	(b)(4)(iii) Exclusions – artificial reflecting or swimming pools created in dry land
EXCLDB4IV	(b)(4)(iv) Exclusions – small ornamental waters created in dry land
EXCLDB4V	(b)(4)(v) Exclusions – water-filled depressions created in dry land incidental to mining or construction activity
EXCLDB4VI	(b)(4)(vi) Exclusions – erosional features
EXCLDB4VII	(b)(4)(vii) Exclusions – puddles
EXCLDB5	(b)(5) Exclusions – groundwater
EXCLDB6	(b)(6) Exclusions – stormwater control features
EXCLDB7	(b)(7) Exclusions – wastewater recycling structures
OTHERA7	Other non-jurisdictional water/features. Potential (a)(7) water that did not have a significant nexus.
OTHERA8F	Other non-jurisdictional water/features. Potential (a)(8) water that did not have a significant nexus.



Waters_Type Name	Description
OTHERDIST	Other non-jurisdictional waters/features. Outside distance threshold or 100-yr floodplain. For example, a water identified within the SPOE, however it occurs outside of the 4000 foot (or 100-yr floodplain) threshold.
OTHEREB	Other non-jurisdictional waters/features. Any other water identified within the review area that does not meet any of the 328.3 (a)(1)-(a)(8) categories, is not excluded under (b)(1)-(b)(7), is not an “OTHERA7” or “OTHERA8F”, was not identified as an “OTHERDIST” feature, and was determined not to be a WoUS.
DRYLAND	Review area was entirely made up of dry land

### ***I. Latitude***

This is a required field. Latitudes and Longitudes must be input as decimal degrees (NAD 83).

### ***J. Longitude***

This is a required field. See Latitude. Be sure to include the negative sign (“-“) to specify the western hemisphere.

### ***K. Local\_Waterway***

This is an optional column that if used should be District-specific. For example, it may be used by Districts to identify the nearest USGS named waterway to which the AR drains.

### ***L. Similarly\_Situated***

This is a required field for all (a)(8) waters types and answers the question of whether similarly situated waters are identified in the single point of entry watershed (SPOE) watershed and are used in the significant nexus determination (SND) of the subject (a)(8) water or of the potential (a)(8) water without a significant nexus.

### ***M. Sim\_Situated\_Aggregated\_SPOE***

This is a required field for all (a)(7) waters types and answer the questions of whether similarly situated waters are identified in the SPOE watershed and are used in the SND of the subject (a)(7) water or of the potential (a)(7) water without a significant nexus.

### ***N. Adjacent\_Waters\_Sbjct\_33USC1344***

This is a required field for all (a)(7) and (a)(8) waters types and indicates whether the subject water is geographically and physically adjacent per (a)(6), but is being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore is not adjacent and requires a case-specific SND. The subject water may have met adjacency criteria, but since it was also determined that the water is used for ‘established, normal farming, silviculture, and ranching activities’ a case-specific SND is required.



***O. – AH. Ordinary High Water Mark (OHWM) Indicators***

These are required fields when the limits (boundaries) of jurisdiction of the subject water are based on the presence of an OHWM ((a)(5) tributaries, certain (a)(6) adjacent waters, and certain (a)(8) case-specific waters). The OHWM is the line on the shore established by the fluctuations of water and is indicated by physical characteristics identified in Columns O. - AH. Select all that apply. In general, there are no “required” physical characteristics that must be present to make an OHWM determination, although in order to meet the definition of “tributary” an (a)(5) water must include both bed and banks and at least one other indicator of OHWM. The list of OHWM characteristics is not exhaustive. Therefore, when selecting Column AG *OHWM\_Other*, use Column AH *OHWM\_Other\_Text* to describe those ‘other’ indicators used to identify the limits of jurisdiction for the subject water. The PMs do not need to select “No” for the OHWM indicators that were not used in the delineation of the subject water if using the ORM Upload Spreadsheet.

***AI. – AQ. Functions to be considered for the purposes of completing a Significant Nexus Determination***

These are required fields when completing a SND. Select all that apply for the subject water. Only the functions applicable to the subject water shall be selected. This should be filled out for (a)(7) and (a)(8) waters, and for potential (a)(7) and (a)(8) waters which were determined to not have a significant nexus.



## **ATTACHMENT B: AJD FORM TABLES**

**TABLE 1 - (a)(1) Traditional Navigable Waters**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Type:

Waters_Type Name	Description
A1	(a)(1) Traditional Navigable Waters

***A. (a)(1) Waters Name***

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data field in ORM if using the exported data method from ORM).

***B. (a)(1) Criteria***

Select from the picklist. Select the criterion that is the most applicable to the subject water.<sup>1</sup> If the water meets multiple criteria, provide an explanation in the Rationale column.

- The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act (RHA)
- A federal court has determined that the waterbody is navigable-in-fact under federal law
- Waters have historically, are currently, and/or are susceptible for commercial navigation, including commercial waterborne recreation.

***C. Rationale to Support (a)(1) Designation***

Provide a rationale to support the conclusion for the selected (a)(1) designation. When the AJD includes a delineation of the limits (boundaries) of jurisdiction, the rationale should identify which OHWM indicator(s), HTL indicator(s), and/or wetland delineation methods (87 Manual and Regional Supplement) were used to determine the lateral limits of the subject water. The HTL means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The HTL may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The PM should also select at least one of the following and discuss as part of the rationale:

- The waterbody is subject to Section 9 or 10 of the RHA .
  - Reference if the waterbody is subject to the ebb and flow of the tide or is on the District's list of Section 10 navigable waters.
- A federal court has determined that the waterbody is navigable-in-fact under federal law
  - The PM should reference applicable court decision(s).

<sup>1</sup> See the Q&As related to TNWs and fact sheet related to "Traditional Navigable Waters," which provides an explanation of documentation requirements needed to fulfill this section.





- Waters have historically, are currently, and/or are susceptible for commercial navigation, including commercial waterborne recreation.
  - The PM should reference the stand-alone navigable-in-fact (section 404) TNW determination previously completed for this water.
  - If the Approved Jurisdictional Determination (AJD) involves a case-specific TNW determination being made for the subject water, the PM should attach the required documentation for making a case-specific navigable-in-fact (section 404) TNW determination to the AJD Form. In this case, the PM should note “see attached case-specific documentation” in the Rationale column of this Table.

#### **TABLE 2 - (a)(2) Interstate Waters**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Type:

Waters_Type Name	Description
A2B	(a)(2) Interstate waters/wetlands - with a wetland boundary
A2O	(a)(2) Interstate waters/wetlands - with an OHWM

##### ***A. (a)(2) Waters Name***

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data field in ORM if using the exported data method from ORM).

##### ***B. Rationale to Support (a)(2) Designation***

Provide rationale that the (a)(2) water flows across, or forms a part of, state boundaries. Discuss any data collected and analyzed, and how the PM concluded the subject water is an (a)(2) water of the U.S (WoUS). The rationale may include reference to or description of a map attached to the AJD Form which depicts the basis for the designation as an (a)(2) WoUS. Finally, when the AJD includes a delineation of the limits (boundaries) of jurisdiction, the rationale should identify which OHWM indicator(s), HTL indicator(s), and/or wetland delineation methods (87 Manual and Regional Supplement) were used to determine the lateral limits of the subject water.

#### **TABLE 3 - (a)(3) Territorial Seas**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Type:

Waters_Type Name	Description
A3	(a)(3) Territorial Seas

##### ***A. (a)(3) Waters Name***

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data field in ORM if using the exported data method from ORM).



### ***B. Rationale to Support (a)(3) Designation***

Provide rationale that the (a)(3) water is the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.<sup>2</sup> The rationale may include a statement that the subject water meets the terms of the “territorial seas” and include a distance measured seaward from the line of ordinary low water. The rationale may include an attached map with reference/description of what is depicted on the map to provide a basis for the designation.

### **TABLE 4 - (a)(4) Impoundments**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Type:

Waters_Type Name	Description
A4	(a)(4) Impoundments

#### ***A. (a)(4) Waters Name***

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data field in ORM if using the exported data method from ORM).

### ***B. Rationale to Support (a)(4) Designation***

Provide rationale that the (a)(4) water is an impoundment of a water otherwise identified as an (a)(1)-(a)(5) WoUS. Discuss data collected, analysis of that data, and the conclusions reached. Identify the name and type of water that is impounded and reference how that determination was made. When the (a)(1)-(a)(5) water that is impounded lies within the review area, it should be referenced in the Rationale column. When the (a)(1)-(a)(5) water lies outside the review area, rationale supporting that the water is an (a)(1)-(a)(5) water should be provided in this data field. Finally, when the AJD includes a delineation of the limits (boundaries) of jurisdiction, the rationale should identify which OHWM indicator(s), HTL indicator(s), and/or wetland delineation methods (87 Manual and Regional Supplement) were used to determine the lateral limits of the subject water.

### **TABLE 5 - (a)(5) Tributaries**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Type:

Waters_Type Name	Description
A5	(a)(5) Tributaries

<sup>2</sup> For additional information, see also 33 CFR 328.4 and 33 CFR 329.12.



As defined in the Rule, paragraph (c)(3), “tributary” means a water that contributes flow, either directly or through another water (including an impoundment), to a water identified in paragraphs (a)(1)-(a)(3).

- A tributary must have both bed and banks AND an OHWM.
- A ditch can be a tributary if it is not excluded under 323.3(b) and meets the definition of tributary. See the Q&As for the Rule for further information on ditches.
- A tributary does not lose its status as a tributary if it has one or more natural or constructed breaks, so long as a bed and banks and an OHWM can be identified upstream of the break.

#### **A. (a)(5) Waters Name**

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data field in ORM if using the exported data method from ORM).

#### **B. Flow Regime**

Select from the picklist. See the Q&As for the Rule for a discussion on flow regimes.

- Perennial – Streams with flowing water year-round during a typical year, with groundwater or contributions of flow from higher in the stream or river network as primary sources of water for stream flow.
- Intermittent – Streams with both precipitation and groundwater providing part of the stream’s flow, and flow continuously only during certain times of the year.
- Ephemeral – Streams with flowing water only in response to precipitation events in a typical year, and are always above the water table.

#### **C. (a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows**

Identify the name of the (a)(1), (a)(2), or (a)(3) water to which the (a)(5) water flows directly into or through other waters.

#### **D. Tributary Breaks**

Select from the picklist.

- Yes – A water that otherwise qualifies as a tributary does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and OHWM can be identified upstream of the break. If there are any breaks in the tributary provide additional discussion in the Rationale column.
- No – A tributary is without any constructed or natural breaks.

#### **E. Rationale for (a)(5) Designation and Additional Discussion. (Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.)**

Provide rationale the (a)(5) water is a tributary of the previously identified (a)(1), (a)(2), or (a)(3) water to which the (a)(5) water flows directly into or through other waters. Identify how the tributary contributes flow either directly or through another water into the (a)(1)-(a)(3) water. This can be described by identifying the flowpath (e.g., Tributary A to Tributary B to Tributary C,



a TNW) or referencing an attached map to the AJD Form that illustrates the (a)(5)'s connection to the (a)(1)-(a)(3) water. When the (a)(1)-(a)(3) water lies within the review area, it should be referenced in the Rationale column. When the (a)(1)-(a)(3) water lies outside the review area, rationale supporting that the water is an (a)(1)-(a)(3) water should be provided in this Rationale column. As indicated above, describe any tributary breaks including the type of the break. Finally, when the AJD includes a delineation of the limits (boundaries) of jurisdiction, the rationale should identify which OHWM indicator(s), HTL indicator(s), and/or wetland delineation methods (87 Manual and Regional Supplement) were used to determine the lateral limits of the subject water.

**TABLE 6 - (a)(6) Adjacent Waters**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Types:

Waters_Type Name	Description
A6BWB	(a)(6) Adjacent waters - bordering/contiguous - with a wetland boundary
A6BOHWM	(a)(6) Adjacent waters - bordering/contiguous - with an OHWM
A6N1WB	(a)(6) Adjacent waters - neighboring (i) - with a wetland boundary and within 100 feet of OHWM of (a)(1)-(a)(5) water
A6N1OHWM	(a)(6) Adjacent waters - neighboring (i) - with an OHWM and within 100 feet of OHWM of (a)(1)-(a)(5) water
A6N2WB	(a)(6) Adjacent waters - neighboring (ii) - with a wetland boundary and within 100-yr floodplain AND 1500 feet of OHWM of (a)(1)-(a)(5) water
A6N2OHWM	(a)(6) Adjacent waters - neighboring (ii) - with an OHWM and within 100-yr floodplain AND 1500 feet of OHWM of (a)(1)-(a)(5) water
A6N3HWB	(a)(6) Adjacent waters - neighboring (iii) - with a wetland boundary and within 1500 feet of HTL of (a)(1) or (a)(3) water
A6N3HOHWM	(a)(6) Adjacent waters - neighboring (iii) - with an OHWM and within 1500 feet of HTL of (a)(1) or (a)(3) water
A6N3OWB	(a)(6) Adjacent waters - neighboring (iii) - with a wetland boundary and within 1500 feet of OHWM of Great Lakes
A6N3OOHWM	(a)(6) Adjacent waters - neighboring (iii) - with an OHWM and within 1500 feet of OHWM of Great Lakes

Adjacent waters include all waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of the Rule, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.



- The term adjacent means bordering, contiguous, or neighboring a water identified in paragraphs (a)(1)-(a)(5) of the Rule including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like.
- For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its OHWM.<sup>3</sup>
- Adjacency is not limited to waters located laterally to a water identified in paragraphs (a)(1)-(a)(5) of this section. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (a)(1)-(a)(5) or are located at the head of a water identified in paragraphs (a)(1)-(a)(5) of this section and are bordering, contiguous, or neighboring such water.
- Waters being used for established normal farming, ranching, and silviculture activities are not adjacent but would instead be subject to a case-specific SND.
- For purposes of adjacency, the entire water is adjacent if any part of the water is bordering, contiguous, or neighboring.

**A. (a)(6) Waters Name**

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data field in ORM if using the exported data method from ORM).

**B. (a)(1)-(a)(5) Water Name to which this Water is Adjacent**

Enter the name and type of water ((a)(1)-(a)(5)) to which the subject water is adjacent. This water may or may not be located within the review area. For example, for a wetland that is adjacent to an unnamed (a)(5) tributary that is outside the review area, the PM should enter “unnamed (a)(5) tributary” in this column.

**C. Rationale for (a)(6) Designation and Additional Discussion. (Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.)**

For (a)(6) waters, the PM must explain how the extent of the 100-year floodplain and distance thresholds were determined. In most cases, it is expected that the PM will reference the FEMA FIRM as the basis of the extent of the 100-year floodplain. However, when the FEMA FIRM is not available for the review area or has been determined to be inaccurate, the PM will need to describe the alternative tool(s) and/or data used to determine the extent of the 100-year floodplain.

It is also expected that the PM will utilize the NHD data and the distance buffer tool included in the ORM CorpsMap JD Viewer as the method used to determine the location of the subject water relative to the distance thresholds defined in paragraph (a)(6) of the Rule. In circumstances where NHD data is unavailable for the review area, the PM may manually draw the location of the OHWM or HTL in the ORM CorpsMap JD Viewer; however, the PM must describe how the location of the OHWM or HTL was determined (such as use of specific GPS data or visual

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<sup>3</sup> The Rule states that an adjacent water includes wetlands within or abutting its OHWM. This language is designed to ensure that if there is a fringe wetland abutting that pond that is the source water to a tributary, that the wetland is considered part of the pond under the Rule and the pond as a whole, including any abutting wetlands, is jurisdictional as an adjacent water.





identification of specific indicators viewed on aerial photographs). In some cases, such as when the subject water lies close to or extends across the distance thresholds, the PM may need to provide further discussion to demonstrate the distances provided by the ORM CorpsMap JD Viewer were accurate and the subject water was truly within or beyond those distances (such as use of specific GPS data provided by the applicant to more accurately map the location of the HTL or OHWM as well as the subject water boundary). See Q&As on the Rule on distance measurements.

When the (a)(1)-(a)(5) water to which the subject water is adjacent is within the review area, it should be referenced in the Rationale column. When such water lies outside the review area, rationale supporting that the water is an (a)(1)-(a)(5) water should be provided in this Rationale column. Finally, when the AJD includes a delineation of the limits (boundaries) of jurisdiction, the rationale should identify which OHWM indicator(s), HTL indicator(s), and/or wetland delineation methods (87 Manual and Regional Supplement) were used to determine the lateral limits of the subject water.

## **SIGNIFICANT NEXUS DETERMINATIONS**

Significant nexus means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (a)(1)-(a)(3) of the Rule.

- “In the Region” means the watershed that drains to the nearest water identified in paragraphs (a)(1)-(a)(3). Also referred to in the Rule as the SPOE watershed.
- The SPOE watershed is the drainage basin within whose boundaries all precipitation ultimately flows to the nearest single (a)(1)-(a)(3) water. See Q&As for the Rule for discussion on the SPOE watershed.
- For an effect to be significant, it must be more than speculative or insubstantial.
- See the preamble discussion for further information on “similarly situated.”
- The water’s effect on downstream (a)(1)-(a)(3) waters shall be assessed by evaluating the aquatic functions identified in the Rule at 33 CFR 328.3(c)(5)(i)-(ix). These are the only functions that may be used for the SND.
- A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (a)(1)-(a)(3).

To complete an SND, the “region” for the SND must first be identified. Under the Rule, the region is the SPOE watershed which drains to the nearest (a)(1)-(a)(3) water. Second, any similarly situated waters must be identified. See the preamble for further discussion on “similarly situated.” Finally, the waters are evaluated individually or in combination with any identified similarly situated waters in the SPOE watershed to determine if they significantly affect the chemical, physical or biological integrity of the nearest (a)(1)-(a)(3) water.



**TABLE 7 - (a)(7) Waters**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Types:

Waters_Type Name	Description
A7PRAIRIE	(a)(7) water – Prairie pothole subcategory
A7BAYS	(a)(7) water – Carolina and Delmarva bays subcategory
A7POCOSINS	(a)(7) water – Pocosins subcategory
A7CA	(a)(7) water – Western vernal pools in California subcategory
A7TX	(a)(7) water – Texas coastal prairie wetlands subcategory

Waters identified in paragraph (a)(7) are similarly situated by Rule with other waters of the same subcategory within the SPOE watershed, but these waters require an SND to determine whether they are WoUS. The PM will identify and aggregate all other (a)(7) waters of the same subcategory within the SPOE watershed for purposes of the SND. Additionally, waters identified in this paragraph shall not be combined with waters identified in either paragraphs (a)(6) or (a)(8) when performing an SND. These waters may include water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific SND.

#### **A. SPOE Name**

Follow the District's naming convention and enter a unique name for each SPOE watershed identified within the review area. The SPOE watershed name is the name shown on the SPOE watershed map generated for the AJD.<sup>4</sup> There may be multiple SPOE watersheds within the review area; however, only those SPOE watersheds within the review area where (a)(7) waters have been identified should be entered on Table 7 (for (a)(7) Waters). SPOE watersheds evaluated under paragraph (a)(8) should be entered on Table 8 (for (a)(8) Waters) and SPOE watersheds associated with non-WoUS determinations (for both potential (a)(7) and (a)(8) waters determined NOT to have a significant nexus) should be entered on Table 9 (for Non-Waters/No Significant Nexus).

For example, a linear review area may span two SPOE watersheds which the PM identifies as SPOEs A and B. SPOE A includes one (a)(7) water and one (a)(8) water. SPOE B includes only one (a)(8) water. In this case, the PM would complete Table 7 (for (a)(7) waters) listing the SPOE with the one (a)(7) water as SPOE A. The PM would also complete Table 8 (for (a)(8) Waters) listing the SPOEs with the (a)(8) waters as SPOEs A and B, each on a separate row for the respective (a)(8) water found within them. This can be visualized as:

	TABLE 7 - (a)(7) Waters
SPOE A	X
SPOE B	N/A

<sup>4</sup> The SPOE watershed map should be labeled with the ORM file number and have each SPOE watershed within the review area clearly illustrated. The PM should print the SPOE watershed map and attach it to the AJD Form.



	TABLE 8 - (a)(8) Waters
SPOE A	X
SPOE B	X

***B. (a)(7) Waters Name***

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data field in ORM if using the exported data method from ORM). Note that the PM should not list similarly situated waters here that are not in the review area as only those (a)(7) waters identified within the review area should be listed on this Table.

***C. (a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus***

Identify the nearest (a)(1), (a)(2), or (a)(3) water to which the subject water being evaluated eventually drains. This will be the water discussed as part of the SND associated with the subject water in the Significant Nexus Determination column of this Table.

***D. Significant Nexus Determination***

For (a)(7) waters, the PM must first identify the SPOE watershed boundary. This will normally be accomplished by attaching a SPOE watershed map to the AJD Form with all SPOE watershed(s) within the review area clearly illustrated. However, in the arid West where SPOE watersheds can be very large, it may be reasonable to evaluate all similarly situated waters in a smaller region (or SPOE watershed), generally no smaller than a typical 10-digit hydrologic unit code (HUC-10) watershed in the same area. When the PM utilizes a smaller SPOE watershed in the arid West, the PM must include the basis for utilizing this approach in this column (see Q&As on the Rule and the JD Viewer in ORM for identifying the SPOE watershed boundary).

The PM must next describe how the subject water meets the definition of one of the five subcategories of waters described in paragraph (a)(7) of the Rule. As previously stated, waters identified in paragraph (a)(7) are similarly situated by Rule with other waters in the same subcategory and must be combined with other waters in the same subcategory located in the same SPOE watershed as part of the SND.

Finally, the PM must clearly document the SND. To document the SND, the PM must discuss/analyze data, and then summarize how the waters have more than a speculative or insubstantial effect on the physical, chemical, and biological integrity of the (a)(1)-(a)(3) water to which the subject water drains and which was previously identified in this Table. When the (a)(1)-(a)(3) water to which the subject water(s) has a significant nexus lies within the review area, it should be referenced in this column. When the (a)(1)-(a)(3) water lies outside the review area, rationale supporting that the water is an (a)(1)-(a)(3) water should also be provided in this SND column.

The PM should discuss, as part of this determination, the functions identified for the subject water on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) as well as any additional functions attributed by the similarly



situated waters. This effect shall be assessed by evaluating only the aquatic functions identified in the Rule at paragraph (c)(5)(i)-(ix) and exhibited by the subject water (as documented on the Aquatic Resources Upload Spreadsheet or appropriate data fields in ORM if using the exported data method from ORM) and any similarly situated waters in the SPOE watershed. The subject water has a significant nexus when any single function or combination of functions performed by the subject water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the (a)(1)-(a)(3) water previously identified in this Table. Note that it is not enough to simply restate the functions that the subject water and any similarly situated waters perform. The SND must specifically discuss how these functions have more than a speculative or insubstantial effect on the specific (a)(1)-(a)(3) water previously identified in this Table. Additionally, the PM should note those circumstances when only a subset of similarly situated waters was used for the SND.<sup>5</sup>

There should be a single SND for all the identified (a)(7) waters alone or together with similarly situated waters in the SPOE watershed. Therefore, if the review area contains two or more (a)(7) waters of the same subcategory and in the same SPOE watershed, the rows in Significant Nexus Determination Column may be merged by SPOE watershed to document the associated SND, or if left unmerged, the location of the SND should be referenced (e.g., “See the SND for the similarly situated (a)(7) water, ‘Pocosin A’, in the first row above”).

Only those (a)(7) waters found to have a significant nexus should be documented on this Table. Potential (a)(7) waters lacking a significant nexus should be documented on Table 9 (for Non-Waters/No Significant Nexus). Finally, when the AJD includes a delineation of the limits (boundaries) of jurisdiction, the rationale should identify which OHWM indicator(s), HTL indicator(s), and/or wetland delineation methods (87 Manual and Regional Supplement) were used to determine the lateral limits of the subject water.

#### **TABLE 8 - (a)(8) Waters**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Types:

Waters_Type Name	Description
A8HWB	(a)(8) waters with a wetland boundary and <4000 feet of HTL but NOT adjacent to an (a)(1)-(a)(5) water
A8HOHWM	(a)(8) waters with an OHWM and <4000 feet of HTL but NOT adjacent to an (a)(1)-(a)(5) water
A8OWB	(a)(8) waters with a wetland boundary and <4000 feet of OHWM but NOT adjacent to an (a)(1)-(a)(5) water
A8OOHWM	(a)(8) waters with an OHWM and <4000 feet of OHWM but NOT adjacent to an (a)(1)-(a)(5) water

<sup>5</sup> It should be noted that a conclusion that significant nexus is lacking may not be based on consideration of a subset of similarly situated waters because under the significant nexus standard the inquiry is how the similarly situated waters in combination affect the integrity of the downstream water.



A8100WB	(a)(8) waters with a wetland boundary and within the 100-yr floodplain of an (a)(1)-(a)(3) water, but NOT adjacent
A8100OHWM	(a)(8) waters with an OHWM and within the 100-yr floodplain of an (a)(1)-(a)(3) water, but NOT adjacent

Waters identified in paragraph (a)(8) require both similarly situated and an SND. Additionally, waters identified in this paragraph shall not be combined with waters identified in either paragraphs (a)(6) or (a)(7) when performing an SND. These waters may also include water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific SND.

#### A. SPOE Name

Follow the District's naming convention and enter a unique name for each SPOE watershed identified within the review area. The SPOE watershed name is the name shown on the SPOE watershed map generated for this AJD.<sup>6</sup> There may be multiple SPOE watersheds within the review area; however, only those SPOE watersheds within the review area where (a)(8) waters have been identified should be entered on Table 8 (for (a)(8) Waters). SPOE watersheds evaluated under paragraph (a)(7) should be entered on Table 7 (for (a)(7) Waters) and SPOE watersheds associated with non-WoUS determinations (for both potential (a)(7) and (a)(8) waters determined NOT to have a significant nexus) should be entered on Table 9 (for Non-Waters/No Significant Nexus).

For example, a linear review area may span two SPOE watersheds which the PM identifies as SPOEs A and B. SPOE A includes one (a)(7) water and one (a)(8) water. SPOE B includes only one (a)(8) water. In this case, the PM would complete Table 7 (for (a)(7) Waters) listing SPOE with the one (a)(7) water as SPOE A. The PM would also complete Table 8 (for (a)(8) Waters) listing the SPOEs with the (a)(8) waters as SPOEs A and B, each on a separate row for the respective (a)(8) water found within them. This can be visualized as:

	TABLE 7 - (a)(7) Waters
SPOE A	X
SPOE B	N/A

	TABLE 8 - (a)(8) Waters
SPOE A	X
SPOE B	X

#### B. (a)(8) Waters Name

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data

<sup>6</sup> The SPOE watershed map should be labeled with the ORM file number and have each SPOE watershed within the review area clearly illustrated. The SPOE watershed map should be printed and attached to this AJD form.





field in ORM if using the exported data method from ORM). Note that the PM should not list similarly situated waters here that are not in the review area as only those (a)(8) waters identified within the review area should be listed on this Table.

***C. (a)(1)-(a)(3) Water Name to which this Water Has a Significant Nexus.***

Identify the nearest (a)(1), (a)(2), or (a)(3) water to which the subject water being evaluated drains. This will be the water discussed as part of the SND associated with the subject water in the Significant Nexus Determination Column of this Table.

***D. Significant Nexus Determination***

For (a)(8) waters, the PM must first identify the SPOE watershed boundary. This will normally be accomplished by attaching a SPOE watershed map to the AJD Form with all SPOE watershed(s) within the review area clearly illustrated. However, in the arid West where SPOE watersheds can be very large, it may be reasonable to evaluate all similarly situated waters in a smaller region (or SPOE watershed), generally no smaller than a typical 10-digit hydrologic unit code (HUC-10) watershed in the same area. When the PM utilizes a smaller SPOE watershed in the arid West, the PM must include the basis for utilizing this approach in this column. See Q&As on the Rule and the JD Viewer in ORM for identifying the SPOE watershed boundary.

The PM must also explain how the extent of the 100-year floodplain and distance thresholds were determined. In most cases, it is expected that the PM will reference the FEMA FIRM as the basis of the extent of the 100-year floodplain. However, when the FEMA FIRM is not available for the review area or has been determined to be inaccurate, the PM will need to describe the alternative tool(s) and/or data used to determine the extent of the 100-year floodplain.

It is also expected that the PM will utilize the NHD data and the distance measurement or buffer tool included in the ORM JD Viewer as the method used to determine the location of the subject water relative to the distance thresholds defined in paragraph (a)(8) of the Rule. In circumstances where NHD data is unavailable for the review area, the PM may manually draw the location of the OHWM or HTL on the ORM map; however, the PM must describe how the location of the OHWM or HTL was determined (such as use of specific GPS data or visual identification of specific indicators viewed on aerial photographs). In some cases, such as when the subject water lies close to or extends across the distance thresholds, the PM may need to provide further discussion to demonstrate the distances provided by ORM JD Viewer were accurate and the subject water was truly within or beyond those distances (such as the use of specific GPS data provided by the applicant or from a field visit to more accurately map the location of the HTL or OHWM as well as the subject water boundary).

Once the PM has explained how the extent of the 100-year floodplain and/or distance thresholds was determined, the PM must then discuss how waters (including the subject water) were determined to be similarly situated. The PM should note those circumstances when only a subset of similarly situated waters was used for the SND.<sup>7</sup>

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<sup>7</sup> It should be noted that a conclusion that significant nexus is lacking may not be based on consideration of a subset of similarly situated waters because under the significant nexus standard the inquiry is how the similarly situated waters in combination affect the integrity of the downstream water.



Finally, the PM must clearly document the SND. To document the SND, the PM must discuss/analyze data, and then summarize how the waters have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water to which the subject water drains and which was previously identified in this Table. When the (a)(1)-(a)(3) water to which the subject water(s) has a significant nexus lies within the review area, it should be referenced in this column. When the (a)(1)-(a)(3) water lies outside the review area, rationale supporting that the water is an (a)(1)-(a)(3) water should also be provided in this SND column.

The PM should discuss, as part of this determination, the functions identified for the subject water on the Aquatic Resources Upload Spreadsheet (or appropriate data field in ORM if using the exported data method from ORM) as well as any additional functions attributed by the similarly situated waters. This effect shall be assessed by evaluating only the aquatic functions identified in the Rule at paragraph (c)(5)(i)-(ix) and exhibited by the subject water (as documented on the Aquatic Resources Upload Spreadsheet or appropriate data field in ORM if using the exported data method from ORM) and any similarly situated waters in the SPOE watershed. The subject water has a significant nexus when any single function or combination of functions performed by the subject water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the (a)(1)-(a)(3) water previously identified in this Table. Note that it is not enough to simply restate the functions that the subject water and any similarly situated waters perform. The SND must specifically discuss how these functions have more than a speculative or insubstantial effect on the specific (a)(1)-(a)(3) water previously identified this Table.

There should be a single SND for all the identified (a)(8) waters alone or together with similarly situated waters in the SPOE watershed. Therefore, if the review area contains two or more (a)(8) waters that are in the same SPOE watershed, the rows in the Significant Nexus Determination Column may be merged by SPOE watershed to document the associated SND, or if left unmerged, the location of the SND should be referenced (e.g., “See the SND for the similarly situated (a)(8) water, ‘Water A’, in the first row above”).

Only those (a)(8) waters found to have a significant nexus should be documented on this Table. Potential (a)(8) waters lacking a significant nexus should be documented on Table 9 (for Non-Waters/No Significant Nexus). Finally, when the AJD includes a delineation of the limits (boundaries) of jurisdiction, the rationale should identify which OHWM indicator(s), HTL indicator(s), and/or wetland delineation methods (87 Manual and Regional Supplement) were used to determine the lateral limits of the subject water.



## **Non-Waters of the U.S. Tables (No SigNex, Excluded, Other)**

**TABLE 9 - Non-Waters/No Significant Nexus**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Types:

Waters_Type Name	Description
OTHERA7	Other non-jurisdictional water/features. Potential (a)(7) water that did not have a significant nexus.
OTHERA8F	Other non-jurisdictional water/features. Potential (a)(8) water that did not have a significant nexus.

Waters identified in paragraph (a)(7) are similarly situated by Rule with other waters of the same subcategory within the SPOE watershed, but these waters require an SND to determine whether they are WoUS. Waters identified in paragraph (a)(8) require both a similarly situated determination and an SND. The PM will identify and aggregate all other (a)(7) waters of the same subcategory within the SPOE watershed for purposes of the SND. Additionally, waters identified in paragraphs (a)(7) and (a)(8) shall not be combined with each other nor with waters identified in paragraph (a)(6) when performing an SND. These waters may include water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific SND.

### ***A. SPOE Name.***

Follow the District's naming convention and enter a unique name for each SPOE watershed identified within the review area. The SPOE watershed name is the name shown on the SPOE watershed map generated for this AJD.<sup>8</sup> There may be multiple SPOE watersheds within the review area; however, only those SPOE watersheds within the review area where potential (a)(7) or (a)(8) waters that did NOT have a significant nexus have been identified should be entered on this Table. SPOE watersheds evaluated under paragraph (a)(7) should be entered on Table 7 (for (a)(7) Waters) and SPOE watersheds associated with (a)(8) waters should be entered on Table 8 (for (a)(8) Waters).

For example, a linear review area may span two SPOE watersheds which the PM identifies as SPOEs A and B. SPOE A includes one (a)(7) water and one (a)(8) water. SPOE B includes one (a)(8) water that has a significant nexus and one potential (a)(8) water that lacked a significant nexus. In this case, the PM would complete Table 7 listing SPOE with the one (a)(7) water as SPOE A. The PM would also complete Table 8 listing the SPOE with the one (a)(8) water that had a significant nexus as SPOE B and Table 9 listing the SPOE with the potential (a)(8) water that lacked a significant nexus also as SPOE B. This can be visualized as:

<sup>8</sup> The SPOE watershed map should be labeled with the ORM file number and have each SPOE watershed within the review area clearly illustrated. The PM should print the SPOE watershed map and attach it to this AJD form.



	TABLE 7 - (a)(7) Waters
SPOE A	X
SPOE B	N/A

	TABLE 8 - (a)(8) Waters
SPOE A	X
SPOE B	X

	TABLE 9 – Non-Waters/No Significant Nexus
SPOE A	X
SPOE B	N/A

***B. Non-(a)(7)/(a)(8) Waters Name***

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM). Note that the PM should not list similarly situated waters here that are not in the review area as only those potential (a)(7) or (a)(8) waters that do NOT have a significant nexus identified within the review area should be listed on this Table.

***C. (a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus.***

Identify the nearest (a)(1), (a)(2), or (a)(3) water to which the subject water being evaluated drains. This will be the water discussed as part of the SND associated with the subject water in the Basis for Determination Column of this Table.

***D. Significant Nexus Determination***

For both potential (a)(7) and (a)(8) waters, the PM must first identify the SPOE watershed boundary. This will normally be accomplished by attaching a SPOE watershed map to the AJD Form with all SPOE watershed(s) within the review area clearly illustrated. However, in the arid West where SPOE watersheds can be very large, it may be reasonable to evaluate all similarly situated waters in a smaller region (or SPOE watershed), generally no smaller than a typical 10-digit hydrologic unit code (HUC-10) watershed in the same area. When the PM utilizes a smaller SPOE watershed in the arid West, the PM must include the basis for utilizing this approach in this column. See Q&As on the Rule and the JD Viewer in ORM for identifying the SPOE watershed boundary.

For potential (a)(8) waters, the PM must also explain how the extent of the 100-year floodplain and distance thresholds were determined. In most cases, it is expected that the PM will reference the FEMA FIRM as the basis of the extent of the 100-year floodplain. However, when the FEMA FIRM is not available for the review area or has been determined to be inaccurate, the PM will need to describe the alternative tool(s) and/or data used to determine the extent of the 100-year floodplain.



It is also expected that the PM will utilize the NHD data and the distance measurement or buffer tool included in the ORM JD Viewer as the method used to determine the location of the potential (a)(8) subject water relative to the distance thresholds defined in paragraph (a)(8) of the Rule. In circumstances where NHD data is unavailable for the review area, the PM may manually draw the location of the OHWM or HTL on the ORM map; however, the PM must describe how the location of the OHWM or HTL was determined (such as use of specific GPS data or visual identification of specific indicators viewed on aerial photographs). In some cases, such as when the subject water lies close to or extends across the distance thresholds, the PM may need to provide further discussion to demonstrate the distances provided by ORM JD Viewer were accurate and the subject water was truly within or beyond those distances (such as the use of specific GPS data provided by the applicant or from a field visit to more accurately map the location of the HTL or OHWM as well as the subject water boundary).

Once the PM has explained how the extent of the 100-year floodplain and/or distance thresholds were determined for the potential (a)(8) water(s), the PM must then discuss how waters (including the subject water) were determined to be similarly situated. The PM should note those circumstances when only a subset of similarly situated waters was used for the SND.<sup>9</sup>

For potential (a)(7) waters, the PM must describe how the subject water meets the definition of one of the five subcategories of waters described in paragraph (a)(7) of the Rule. As previously stated, waters identified in paragraph (a)(7) are similarly situated by Rule with other waters in the same subcategory and must be combined with other waters in the same subcategory located in the same SPOE watershed as part of the SND.

Finally, the PM must clearly document the SND for the potential (a)(7) and/or (a)(8) waters. To document the SND, the PM must discuss/analyze data, and then summarize if the waters have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water to which the subject water drains and which was previously identified in this Table. When the (a)(1)-(a)(3) water lies within the review area to which the subject water(s) are evaluated for a significant nexus, it should be referenced in this column. When the (a)(1)-(a)(3) water lies outside the review area, rationale supporting that the water is an (a)(1)-(a)(3) water should also be provided in this column.

The PM should discuss, as part of this determination, the functions identified for the subject water on the Aquatic Resources Upload Spreadsheet (or appropriate data field in ORM if using the exported data method from ORM) as well as any additional functions attributed by the similarly situated waters. This effect shall be assessed by evaluating only the aquatic functions identified in the Rule at paragraph (c)(5)(i)-(ix) and exhibited by the subject water (as documented on the Aquatic Resources Upload Spreadsheet or appropriate data field in ORM if using the exported data method from ORM) and any similarly situated waters in the SPOE watershed. The subject water has a significant nexus when any single function or combination of functions performed by

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<sup>9</sup> It should be noted that a conclusion that significant nexus is lacking may not be based on consideration of a subset of similarly situated waters because under the significant nexus standard the inquiry is how the similarly situated waters in combination affect the integrity of the downstream water.





the subject water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the (a)(1)-(a)(3) previously identified in this Table. Note that it is not enough to simply restate the functions that the subject water and any similarly situated waters perform. The SND must specifically discuss how these functions have more than a speculative or insubstantial effect on the specific (a)(1)-(a)(3) water previously identified in this Table.

There should be a single SND for all the identified potential (a)(7) and all the identified potential (a)(8) waters alone or together with similarly situated waters in the SPOE watershed. Therefore, if the review area contains two or more potential (a)(8) waters that are in the same SPOE watershed, the rows in the Basis for Determination Column may be merged by SPOE watershed to document the associated SND, or if left unmerged, the location of the SND should be referenced (e.g., “See the SND for the similarly situated potential (a)(8) water, ‘Water A’, in the first row above”).

Only those potential (a)(7) and/or (a)(8) waters found to lack a significant nexus should be documented on this Table. Those (a)(7) or (a)(8) waters found to have a significant nexus should be documented on Tables 7 and 8, respectively. Finally, when the AJD includes a delineation of the limits (boundaries) of jurisdiction, the rationale should identify which OHWM indicator(s), HTL indicator(s), and/or wetland delineation methods (87 Manual and Regional Supplement) were used to determine the lateral limits of the subject water.

#### **TABLE 10 – Non-Waters/Excluded Waters and Features**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Types:

Waters_Type Name	Description
EXCLDB1	(b)(1) Exclusions – waste treatment systems
EXCLDB2	(b)(2) Exclusions – prior converted cropland
EXCLDB3I	(b)(3)(i) Exclusions – ditches with ephemeral flow and not a relocated tributary or excavated in a tributary
EXCLDB3II	(b)(3)(ii) Exclusions – ditches with intermittent flow and not a relocated tributary or excavated in a tributary and not draining a wetland
EXCLDB3III	(b)(3)(iii) Exclusions – ditches that do not flow, directly or through another water, into an (a)(1)-(a)(3) water
EXCLDB4I	(b)(4)(i) Exclusions – artificially irrigated areas that would revert to dry land if application of water ceased
EXCLDB4II	(b)(4)(ii) Exclusions – artificial, constructed lakes and ponds created in dry land
EXCLDB4III	(b)(4)(iii) Exclusions – artificial reflecting or swimming pools created in dry land
EXCLDB4IV	(b)(4)(iv) Exclusions – small ornamental waters created in dry



Waters_Type Name	Description
	land
EXCLDB4V	(b)(4)(v) Exclusions – water-filled depressions created in dry land incidental to mining or construction activity
EXCLDB4VI	(b)(4)(vi) Exclusions – erosional features
EXCLDB4VII	(b)(4)(vii) Exclusions – puddles
EXCLDB5	(b)(5) Exclusions – groundwater
EXCLDB6	(b)(6) Exclusions – stormwater control features
EXCLDB7	(b)(7) Exclusions – wastewater recycling structures

Under the Rule, all waters and features identified in paragraph (b) as excluded will not be WoUS, even if they otherwise fall within one of the categories in paragraphs (a)(4)-(a)(8). These exclusions do not apply to (a)(1)-(a)(3) waters.

#### ***A. Paragraph (b) Excluded Feature/Water Name***

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM).

#### ***B. Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion***

In cases where a review area contains a feature that potentially meets the definition of one of the waters or features excluded from CWA jurisdiction listed in 33 CFR 328.3(b), the PM must identify the appropriate excluded water on the AJD Form and document the rationale to support this conclusion. The PM must identify and document a rationale for every excluded water as part of every AJD, with the exception of artificial reflecting or swimming pools ((33 CFR 328.3(b)(4)(iii)), small ornamental waters ((33 CFR 328.3(b)(4)(iv))), certain transitory, erosional features referred to in 33 CFR 328.3(b)(4)(vi), puddles ((33 CFR 328.3(b)(4)(vii)), groundwater ((33 CFR 328.3(b)(5))), and certain subterranean stormwater control features ((33 CFR 328.3(b)(6))). This is explained further below.

Artificial reflecting or swimming pools as well as small ornamental waters typically lack characteristics and functions inherent to tributaries, impoundments, or other aquatic resources. Because of a lack of these characteristics, PMs are not expected to identify or document the location of any of these features unless specifically requested to do so during the evaluation process. There may be rare cases when the feature may resemble a tributary, impoundment, or other aquatic resource, and as such to ensure clarity, the PM may determine that documentation should be provided in order to demonstrate that the feature is not a WoUS.

Excluded waters or features listed at 328.3(b)(4)(vi) include lawfully constructed grassed waterways, non-wetland swales, and erosional or other ephemeral features that do not meet the definition of tributary. PMs are expected to identify and document a rationale for features such as grassed waterways and larger gullies or non-wetland swales (e.g., features that may resemble a tributary) as part of every AJD. However, because of their highly transitory nature and/or lack of characteristics and functions inherent to tributaries, PMs are not expected to identify or document the location of smaller, non-wetland swales or erosional features such as rills, small gullies, or



other similar, transitory erosional features within the review area unless specifically requested to do so during the evaluation process. PMs may consider documenting such features if they are used as part of the rationale in an SND if they provide hydrologic connections from the subject water to the downstream waters.

Puddles are commonly considered very small, shallow, and highly transitory pools of water that form on pavement or uplands during or immediately after a rainstorm or similar precipitation event. Because puddles are highly transitory and the agencies have never considered puddles to meet the minimum standard for being a WoUS, PMs are not expected to identify or document their location within the review area unless specifically requested to do so during the evaluation process.

The CWA is a surface water act and subsurface groundwater has never been interpreted to be a WoUS. Because the groundwater exclusion is specific to groundwater that is not surface water, PMs are not expected to identify or document groundwater found below the surface of the review area unless specifically requested to do so during the evaluation process. When specifically requested, the Corps is expected to only make a determination of jurisdiction on groundwater that may be below the surface of the review area and not confirm the actual presence or location of the subsurface groundwater.

Stormwater control features described in 328.3(b)(6) often include features that are almost entirely subterranean, such as storm sewers. Because of a lack of technical tools and resources necessary to locate these features, PMs are not expected to identify or document these subterranean stormwater control features or their associated surface components when created in dry land (such as man-hole covers or storm drains) unless specifically requested to do so during the evaluation process. When specifically requested, the Corps is expected to only make a determination of jurisdiction on the feature that may be below the surface of the review area and not confirm the actual presence or location of the subsurface feature.

Finally, puddles and excluded waters listed at 328.3(b)(4)(vi) tend to be very difficult or impossible to observe or detect via remote sensing techniques. Therefore, identification of these features as part of an AJD should be limited to only those specifically observed in the field when requested.

#### **TABLE 11 – Non-Waters/Other**

This Table describes waters identified on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM) with the following Waters\_Types:

Waters_Type Name	Description
OTHERDIST	Other non-jurisdictional waters/features. Outside distance threshold or 100-yr floodplain. For example, a water identified within the SPOE, however it occurs outside of the 4000 foot (or 100-yr floodplain) threshold.



Waters_Type Name	Description
OTHEREB	Other non-jurisdictional waters/features. Any other water identified within the review area that does not meet any of the 328.3 (a)(1)-(a)(8) categories, is not excluded under (b)(1)-(b)(7), is not an “OTHERA7” or “OTHERA8F”, was not identified as an “OTHERDIST” feature, and was determined not to be a WoUS.

***A. Other Non-Waters of US Feature/Water Name***

Manually enter in the Waters\_Name. The Waters\_Name entered should match the name entered in the Waters\_Name column on the Aquatic Resources Upload Spreadsheet (or appropriate data fields in ORM if using the exported data method from ORM).

***B. Rationale for Non-Waters of US Feature/Water and Additional Discussion***

Provide rationale for how these other non-jurisdictional waters/features within review area do not meet the definitions for 33 CFR 328.3(a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7). Such waters are also not potential (a)(7)s or (a)(8)s which did not have a significant nexus. Include a discussion of the analysis and any pertinent information.