



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
3319 UNIVERSITY DRIVE
BISMARCK, NORTH DAKOTA 58504-7565

October 27, 2022

NWO-2012-00167-BIS

Western EcoSystems Technology, Inc.
Attn: Mr. Martin Piorkowski
4007 State Street, Suite 109
Bismarck, North Dakota 58503

Dear Mr. Piorkowski:

We are responding to your September 14, 2022 request for an approved jurisdictional determination (JD) for the Basin Electric Power Cooperative Pioneer Generating Station Site Expansion Project. The project site is located in the E½ of Section 20, Township 155 North, Range 103 West centered on Latitude 48.2381° North, Longitude -103.9559° West, Williams County, North Dakota.

The Corps is responsible for administering federal laws that regulate certain activities in the waters of the United States (WOUS). The authority applicable to this responsibility is Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344), which prohibits the discharge of dredged or fill material into WOUS without authorization.

Based on the available information, our office concurs with your finding that no wetlands or other WOUS exist within the boundaries of the site plan provided with your aquatic resource delineation. Therefore, no permit from the Corps is required to complete construction in the area(s) surveyed. This disclaimer of jurisdiction is only for Section 404 of the CWA. Other Federal, State, and local laws may apply to your activities.

An approved (JD) has been completed and is enclosed for your information. The JD may also be viewed at our website located at: <http://www.nwo.usace.army.mil/Missions/Regulatory-Program/North-Dakota/Jurisdictional-Determination.aspx>. The JD will be available on the website within 30 days.

This determination is valid for five years from the date of this letter unless new information warrants revision of the determination before the expiration date. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 Code of Federal Regulations (CFR) Part 331.

A Notification of Appeal Process (NAP) and Request for Appeal (RFA) form is enclosed. If you request to appeal this determination you must submit a completed RFA form to the Northwestern Division Office at the address specified on the form.

For an RFA to be accepted, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the NAP. Should you decide to submit an RFA form, it must be received at the above address by 60 days from the date of this letter. It is not necessary to submit an RFA form if you do not object to the determination in this letter.

You should provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

We appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer service survey found on our website at <https://regulatory.ops.usace.army.mil/customer-service-survey/>.

Please refer to identification number NWO-2012-00167-BIS in any correspondence concerning this project. If you have any questions, please contact me by email at Toni.R.Erhardt@usace.army.mil or telephone at (701) 255-0015, extension 2003. For more information regarding our program, please visit our website at <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota.aspx>.

Sincerely,



Toni R. Erhardt
Senior Project Manager
North Dakota Regulatory Section

Enclosures

DRY LAND APPROVED JURISDICTIONAL DETERMINATION FORM¹
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): October 25, 2022.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWO-OD-R-ND; WEST Consultants; Basin Electric Power Cooperative; Williams County; 20-155-103; Pioneer Generating Station; NWO-2012-00167-BIS

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: North Dakota County/parish/borough: Williams County City:
Center coordinates of site (lat/long in degree decimal format): Lat. 48.230524° North, Long. -103.953557° West
Universal Transverse Mercator: 577711.03, 534251.87

Name of nearest waterbody:

Name of watershed or Hydrologic Unit Code (HUC): 10130101

- Check if map/diagram of review area is available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: October 25, 2022.
 Field Determination. Date(s): By WEST on June 9, 2022.

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

SECTION III: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Information supplied by WEST Consultants.
 Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 Office concurs with data sheets/delineation report.
 Office does not concur with data sheets/delineation report.
 Data sheets prepared by the Corps:
 U.S. Geological Survey Hydrologic Atlas: USGS National Map, Hydrography and Watershed Boundary Datasets
 USGS NHD data.
 USGS 8 and 12 digit HUC maps.
 U.S. Geological Survey map(s). Cite scale & quad name:
 USDA Natural Resources Conservation Service Soil Survey. Citation: Hydric Rating by Map Unit
 National wetlands inventory map(s). Cite name: Wetland Map Layer.
 State/Local wetland inventory map(s):
 FEMA/FIRM maps: Wetland Map Layer.
 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
 Photographs: Aerial (Name & Date): Provided by WEST and GoogleEarth 2009 thru 2017
 or Other (Name & Date): Provided by WEST.
 Previous determination(s). File no. and date of response letter:
 Applicable/supporting case law:
 Applicable/supporting scientific literature:
 Other information (please specify): One wetland was identified in the WEST information; however, it is beyond the proposed disturbance area.

B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD. EXPLAIN RATIONALE FOR DETERMINATION THAT THE REVIEW AREA ONLY INCLUDES DRY LAND: Based on a review of the data listed in Section III.A above, it has been determined that there are no aquatic resources or potential aquatic resources in the project area.

¹ This form is for use only in recording approved JDs involving dry land. It extracts the relevant elements of the longer approved JD form in use since 2007 for aquatic areas and adds no new fields.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: BEPC, Attn: Kevin Solie
WEST, Attn: Martin Piorkowski

File Number:
NWO-2012-00167-BIS

Date: October 27, 2022

Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found in Corps regulations at 33 CFR Part 331, or at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/FederalRegulation.aspx>

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
US Army Corps of Engineers, North Dakota Regulatory Office
Attn: Benjamin N. Soiseth, ND Regulatory Section Chief
3319 University Drive
Bismarck, ND 58504 Telephone (701) 255-0015, ext. 2001
CENWO-OD-RND@usace.army.mil

If you only have questions regarding the appeal process you may also contact:
US Army Corps of Engineers, Northwestern Division
Attn: Regulatory Appeals Review Officer
P.O. Box 2870
Portland, OR 97208-2870

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: