

JURISDICTIONAL DETERMINATION

DISTRICT OFFICE: Walla Walla District (CENWW)

FILE NUMBER: NWW No. 041500001

PROJECT LOCATION INFORMATION:

State: Idaho
County: Bonner
Center coordinates of site (UTM): Zone:11 North:5344138 East:526045
Approximate size of area (parcel) reviewed, including uplands: entry\\Enter the approx. size of area in acres \\
Name of nearest waterway: Pend Oreille River
Name of watershed:

JURISDICTIONAL DETERMINATION

Completed: Desktop determination Date: September 29, 2004
Site visit(s) Date(s):

Jurisdictional Determination (JD):

- Preliminary JD - Based on available information, *there appear to be* (or) *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable. (Reference 33 CFR part 331).
 Approved JD – An approved JD is an appealable action (Reference 33 CFR part 331).

Check all that apply:

- There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
- There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
- There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.
 Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction

Basis of Jurisdictional Determination:

A. Waters defined under 33CFR part 329 as "navigable waters of the United States":

- The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

- (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- (2) The presence of interstate waters including interstate wetlands¹
- (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
 - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 - (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- (4) Impoundments of waters defined as a Water of the US.
- (5) The presence of a tributary to a water identified in (1) – (4) above.
- (6) The presence of territorial seas.
- (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).

The Pend Oreille River is a natural river that originates in Idaho and flows to the west crossing into Washington at Newport. It was impounded by the construction of Albeni Falls Dam, a multipurpose project operated by the Corps of Engineers. This dam was designed to maintain a water surface elevation of 2062.5 NGVD during the summer recreation season. The Pend Oreille River, upstream of Albeni Falls Dam, together with Pend Oreille Lake and the Clark Fork downstream of River Mile 4.0 is collectively referred to as Pend Oreille Lake. The Pend Oreille River along with the Pend Oreille Lake and the downstream portion of the Clark Fork are designated as navigable waters of the United States for purposes of Section 10 of the Rivers and Harbors Act of 1899. This is documented in a Report of Navigability of Clark Fork River above Lake Pend Oreille, Idaho and Montana, dated April 1932, signed by the Chief of Engineers. This report concludes that the Clark Fork River downstream of River Mile 4.0 to Pend Oreille Lake is a navigable water of the United States because, by its connection with Pend Oreille Lake and the Clark Fork River below the lake (now known as Pend Oreille River), it forms a continuous water highway over which interstate and foreign commerce may be conducted. The lake was historically used to transport loose logs to local mills that shipped lumber to local, national, and international markets. The U.S. Coast Guard has also designated the lakes navigable. Further, in 1986 U.S. Court of Appeals case in the Ninth Circuit, *Swanson v. United States* 789 F.2d 1368 (9thCir.), the court confirmed that Lake Pend Oreille is a navigable water of the U.S. Residents, out-of-state, and worldwide visitors currently use the lake heavily for boating, fishing, hunting, swimming, and general recreation.

Lateral Extent of Jurisdiction: (Reference: 33 CFR 328 and 329)

- | | |
|---|--|
| <input checked="" type="checkbox"/> Ordinary High Water Mark indicated by: | <input type="checkbox"/> High Tide Line indicated by: |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects |
| <input type="checkbox"/> the presence of litter and debris | <input type="checkbox"/> fine shell or debris deposits (foreshore) |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> physical markings/characteristics |
| <input type="checkbox"/> destruction of terrestrial vegetation | <input type="checkbox"/> tidal gages |
| <input type="checkbox"/> shelving | <input type="checkbox"/> other: _____ |
| <input checked="" type="checkbox"/> other: Full lake elevation of 2062.5 feet NGVD as regulated at Albeni Dam | |
- Mean High Water Mark indicated by:
 survey to available datum; physical markings; vegetation lines/changes in vegetation types
- Wetland boundaries, as shown on the attached wetland delineation map and/or in a jurisdictional report prepared by:
_____.

Basis For Not Asserting Jurisdiction:

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1,2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
 - Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
 - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
 - Isolated, intrastate wetland with no nexus to interstate commerce.
 - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:

- Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
 - This office concurs with the delineation report, dated _____, prepared by (company):
 - This office does not concur with the delineation report, dated _____, prepared by (company):
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
- U.S. Geological Survey 7.5 Minute Topographic maps:
- U.S. Geological Survey 7.5 Minute Historic quadrangles:
- U.S. Geological Survey 15 Minute Historic quadrangles:
- USDA Natural Resources Conservation Service Soil Survey:
- National wetlands inventory maps:
- State/Local wetland inventory maps:
- FEMA/FIRM maps (Map Name & Date):
- 100-year Floodplain Elevation is: _____ (NGVD)
- Aerial Photographs (Name & Date):
- Other photographs (Date):
- Advanced Identification Wetland maps:
- Site visit/determination conducted on:
- Applicable/supporting case law:
- Other information (please specify):

Preparer: _____ **Date:** _____

¹ Wetlands identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

² The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.