

JURISDICTIONAL DETERMINATION

DISTRICT OFFICE: Walla Walla District (CENWW)

FILE NUMBER: NWW No. 042600124

PROJECT LOCATION INFORMATION:

State: Idaho
County: Blaine
Center coordinates of site (UTM):
Approximate size of area (parcel) reviewed, including uplands: 153.20
Name of nearest waterway: Willow Creek
Name of watershed: Willow Creek Watershed

JURISDICTIONAL DETERMINATION

Completed: Desktop determination Date: August 31, 2004 (Gerke)
Site visit(s) Date(s): September 1, 2004 (Gerke)

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: 64.90 acres of wetlands
 - 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 wetlandsⁱ
- (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 adjacentⁱⁱ to other waters of the US, except for those wetlands adjacent to other wetlands.

Willow Creek is a Category (5) tributary because it carries water to the Big Wood River, which carries water to the Malad River, which carries water to the Snake River, which is a Category (1) interstate waterway.

64.90 acres of wetlands were present within the 153.20-acre parcel of property. These wetlands are adjacent to Willow Creek; therefore are a Category (7) "waters of the United States." The wetlands were delineated using the criteria of hydraulic connection, hydric soil and wetland vegetation, as set forth in the *Army Corps of Engineers 1987 Wetland Delineation Manual*. Field verification of the surveyed area, confirmed all three criteria were present by the Army Corps of Engineers.

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 checked="" type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects |
| <input checked="" 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 type="checkbox"/> other: _____ | |
- 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: **Mr. Trent Stumph, Sawtooth Environmental Consulting, LLC, August 2004.**

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 August 10, 2004 prepared by Sawtooth Environmental Consulting, LLC.
 - 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 Survey 26, July 1992
- Other photographs (Date):
- Advanced Identification Wetland maps:
- Site visit/determination conducted on: August 10, 2004
- Applicable/supporting case law:
- Other information (please specify): Onsite verification by Mr. Eric M. Gerke, Army Corps of Engineers, Boise Regulatory Office, September 1, 2004.

Preparer: Mr. Eric M. Gerke Date: September 27, 2004

^{i.} 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).

^{ii.} 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.