

**INFORMATION SHEET
 DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
 RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
 COUNTY V. U.S. ARMY CORPS OF ENGINEERS**

DISTRICT OFFICE: Walla Walla District

FILE NUMBER: NWW No. 042100102

REGULATORY PROJECT MANAGER: Gregory J. Martinez **Date:** July 9, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** N **Date:** _____
At the project site (Y/N) Y **Date:** July 8, 2004

PROJECT LOCATION INFORMATION:

State: Idaho

County: Ada

Center coordinates of site by latitude & longitudinal coordinates: Zone:11 North:4839994 East:557763

Approximate size of site/property (including uplands & in acres): 400 acres

Name of waterway or watershed: Goose Creek

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream								7,000	
Dry Wash									
Mudflat									
Sandflat									
Wetlands	X								
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	X				
Is or would be used as habitat by other migratory birds that cross state lines?	X				
Is or would be used as habitat for endangered species?		X			
Is used to irrigate crops sold in interstate commerce?		X			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary _____ Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

Goose Creek is an ephemeral drainage that according to the 1979 Eagle Idaho USGS quadrangle map flows for 2.8 miles before it ends in the valley bottom, approximately 0.16 mile east of Dry Creek. Approximately 0.76 mile of Goose Creek is located on the project site. Though we do not have an application for this project, we anticipate that the entire 0.76 mile would be filled for the project. There is an earthen dam on the creek that has no outlet and blocks all flows. The channel downstream of the earthen dam has been filled at four locations within the next ½ mile. There is no evidence of flows below the earthen dam and any flows that are generated from the drainage immediately below the earthen dam are not sufficient to maintain that portion of the channel that still exists. Sage brush and other upland plants now occupy the stream channel and, based on the size of the vegetation,

especially the sage brush, this downstream channel has not flowed enough to remove the vegetation for at least 20 years. The lower mile of the creek is also fragmented, with other reaches of the channel being filled. At its downstream end, Goose Creek disappears into an open live stock corral, approximately 0.16 mile from Dry Creek.

There is no apparent surface connection or hydrologic connection between Goose Creek and Dry Creek, or any other water of the U.S. In addition, neither Goose Creek, nor the impoundment are boatable. The impoundment is approximately 0.56 acre, and approximately 2 feet deep. There are no boat ramps on the impoundment and no access for public use. Based on *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), where the United States Supreme Court held that isolated, non-navigable, intrastate waters are not jurisdictional under the Clean Water Act (CWA) if the sole interstate commerce nexus is the use of such waters by migratory birds, Goose Creek is not subject to Clean Water Act jurisdiction.

The wetlands that are the subject of this Jurisdictional Determination are located entirely on the project site. Again, although we do not have an application for this project, we anticipate that the entire 1.1 acres would be filled for the project. Wetland #1 is located in the impoundment area of Goose Creek, upstream of the earthen dam. This wetland is 0.54 acre. Wetlands # 3 and 7 are 0.13 and 0.017 acre, respectively, and are located in and bordering the existing Goose Creek channel bottom. These wetlands have been delineated in accordance with the 1987 Wetland Delineation Manual and positive indicators of hydrology, hydric soils and wetlands plants were confirmed. Though these wetlands are located within and adjacent to Goose Creek, they are not jurisdictional under the CWA because Goose Creek is not a water of the U.S. and they are not hydrologically connected or adjacent to any other water of the US.

Wetlands #2 ,4, and 5 (0.18, 0.02 and 0.18 acres, respectively) are small spring fed wetlands that are located approximately 100 to 150 feet to the north of Goose Creek. Wetland #6 (0.01 acre) is a small, shallow, excavated pond located approximately 100 feet to the south of Goose Creek that appears to have been excavated in a small spring, as a livestock watering hole. These wetlands have been delineated using the 1987 wetland delineation manual and positive indicators of hydrology, hydric soils and wetland plants have been confirmed. These wetlands are not bordering or contiguous to Goose Creek and although they could be considered neighboring, they have no apparent hydrologic connection to the creek or any water of the US and therefore, are considered isolated. In addition, these wetlands are not boatable and there is no apparent interstate commerce use of these wetlands, except they are likely used by migratory birds. Based on *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), where the United States Supreme Court held that isolated, non-navigable, intrastate waters are not jurisdictional under the CWA if the sole interstate commerce nexus is the use of such waters by migratory birds, these wetlands are not subject to CWA jurisdiction.

There are no waters of the U.S. occurring onsite. An approved JD has been prepared for this project.