

**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. 050600008

**REGULATORY PROJECT MANAGER:** Duane E. Mitchell **Date:** July 19, 2005

**PROJECT REVIEW/DETERMINATION COMPLETED:** **In the office (Y/N)** Y **Date:** July 19, 2005  
**At the project site (Y/N)** N **Date:** \_\_\_\_\_

**PROJECT LOCATION INFORMATION:**

**State:** Idaho

**County:** Nez Perce

**Center coordinates of site by latitude & longitudinal coordinates:** Zone:11 North:5138195 East:498929

**Approximate size of site/property (including uplands & in acres):** \_\_\_\_\_

**Name of waterway or watershed:** Unnamed intermittent stream and adjacent wetlands

**SITE CONDITIONS:**

Type of aquatic resource <sup>1</sup>	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								1226	
Dry Wash									
Mudflat									
Sandflat									
Wetlands		X							
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

<sup>1</sup>Check 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 <sup>1</sup> :	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			

<sup>1</sup>Check 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):** This unnamed intermittent stream is not jurisdictional because it is an isolated, non-navigable intrastate water with no nexus to interstate commerce. It historically flowed into the Snake River, however, development in the City of Lewiston has altered the stream and it no longer has an apparent surface water connection to and does not flow into any other water of the United States. In addition, it is not subject to boating and is not open to the general public for use. The stream contains vegetation that is likely used by migratory songbirds but that use was not verified. However, there is no other evidence of its use in interstate or foreign commerce. Based on Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (531 U.S. 159 (2001)), isolated, non-navigable intrastate waters are not jurisdictional under the Clean Water Act if the sole interstate commerce nexus is the use of such waters by migratory birds or other factors in the Migratory Bird Rule. The wetlands bordering the stream are not jurisdictional because although they are adjacent to the stream, the stream is not a water of the U.S.