

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. 052100064

REGULATORY PROJECT MANAGER: Gregory J. Martinez **Date:** February 24, 2005

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** February 24, 2005
At the project site (Y/N) N **Date:** _____

PROJECT LOCATION INFORMATION:

State: Idaho

County: Ada

Center coordinates of site by latitude & longitudinal coordinates: Zone:11 North:4836411 East:559583

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

Name of waterway or watershed: in Pierce Gulch

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								8000	
Dry Wash									
Mudflat									
Sandflat									
Wetlands									
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):

Pierce Gulch is an ephemeral stream that originates at elevation 3400 in the Boise foothills. It flows for 1.5 miles until it ends in a small pond located 1/8 mile north of Hill Road. There is no channel of any kind below the pond.

In addition, this waterway is not boatable, and is located entirely on private lands and not open to the general public for use. Migratory birds, however, probably use the pond located at the end of the waterway. However, there is no other evidence of its use in interstate or foreign commerce. In Solid Waste Agency of Northern Cook County v. US Army Corps of Engineers, 531 US 159 (2001), the US Supreme Court held that isolated, non-navigable intrastate waters are not jurisdictional under the Clean Water Act, if the sole interstate nexus is the use of such waters by migratory birds or other factors of the Migratory Bird Rule. Therefore, Pierce Gulch is not considered a water of the United States.