

**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. 052100091

**REGULATORY PROJECT MANAGER:** Gregory J. Martinez **Date:** April 7, 2005

**PROJECT REVIEW/DETERMINATION COMPLETED:** **In the office (Y/N)** Y **Date:** April 7, 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:50 North:4831355 East:447870

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

**Name of waterway or watershed:** in Milk Lateral

**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									
Dry Wash									
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type) <u>irrigation lateral</u>	0.01							262	

<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):**

The Milk Lateral is an irrigation feeder ditch that comes off the South Slough and ends in an agricultural field. It has no surface connection with any other surface water. The Milk Lateral is not boatable. Therefore, the Milk Lateral is isolated and no longer regulated under Section 404 of the Clean Water Act. This determination is based on the US Supreme Court ruling in SWANCC, No. 99-1178 (January 9, 2001). The result of this ruling is that the Department of the Army no longer has regulatory jurisdiction over isolated, non-navigable intrastate waters of the US, if the sole nexus to interstate commerce is the use of the water by migratory birds.