

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. 052600083

REGULATORY PROJECT MANAGER: Eric M. Gerke **Date:** May 4, 2005

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** May 4, 2005
At the project site (Y/N) N **Date:** _____

PROJECT LOCATION INFORMATION:

State: Idaho

County: Elmore

Center coordinates of site by latitude & longitudinal coordinates: Zone:50 North:4791769 East:408114

Approximate size of site/property (including uplands & in acres): 0.014 acres

Name of waterway or watershed: Snake River Watershed

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	X								
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):

West Fork Sugar Creek and Mud Springs Creek are not jurisdictional because they are isolated, non-navigable intrastate waters with no nexus to interstate commerce. These are natural streams that flow into Squaw Creek, which terminates in lava fields at two locations within Sec. 30, T.2.N., R.5E., B.M. Flows are absorbed into fractured, lava rock and there is no physical evidence of a channel beyond these terminuses, until Sec.6, T.3.S, R.5E., B.M. From this point south, a well-defined physical channel is present on the landscape, and there is an established surface connection to the Snake River, which is an interstate water (Category

2). However, there is no evidence of any hydrologic connection between the upper and lower segments of Squaw Creek. Based on this, we consider the upper section of Squaw Creek and tributaries to it such as West Fork Sugar Creek and Mud Springs Creek to be isolated. In addition, neither the upper section of Squaw Creek, West Fork Sugar Creek, or Mud Springs Creek are not subject to boating and there is no other evidence of their use in interstate or foreign commerce. Migratory birds probably use the upper reaches of Squaw Creek, from the headwaters to Sec.30, T.2 N., R 5 E., B.M. However, 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.