

**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. 062100004

REGULATORY PROJECT MANAGER: Greg Martinez **Date:** January 11, 2007

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** N **Date:** _____
At the project site (Y/N) Y **Date:** 1-9-07

PROJECT LOCATION INFORMATION:

State: Idaho

County: Ada

Center coordinates of site by latitude & longitudinal coordinates: Zone:11 North:4839395 East:561878

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

Name of waterway or watershed: near the Dry 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								7300	
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): The project site is a 700 acre working ranch in the Boise foothills that is being proposed to be developed for residential homes. The site has three ephemeral drainages, two with spring fed pocket wetlands at the headwaters totaling 2.5 acres. An on-site was conducted on January 9, 2007 and these drainages were determined to be isolated. The drainages end prior to discharging into any other surface waters. Three unnamed ephemeral streams with bordering wetlands (identified as Wetland Channels 1, 2, and 3 on the drawings) are not jurisdictional because they are isolated, non-navigable intrastate water with no nexus to interstate commerce. These waters have no apparent surface water connection to and do not flow into any other water of the United States. In addition, these waters are not subject to boating and are not open to the general public for use. Migratory birds use this waterway. 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. Therefore the 3 unnamed ephemeral streams and their adjacent wetlands are not jurisdictional under the Clean Water Act.