

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. 062100020

REGULATORY PROJECT MANAGER: Gregory J. Martinez **Date:** December 9, 2005

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** N **Date:** _____
At the project site (Y/N) Y **Date:** August 30, 2005

PROJECT LOCATION INFORMATION:

State: Idaho

County: Valley

Center coordinates of site by latitude & longitudinal coordinates: lat:44-50-19.4280 lon:116-5-15.2880

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

Name of waterway or watershed: Wetland swale near the Mud 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									
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 wetland swale is not jurisdictional because it is an isolated, non-navigable intrastate water with no nexus to interstate commerce. It has no 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. 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.