

**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. 062600032

**REGULATORY PROJECT MANAGER:** Eric M. Gerke **Date:** December 12, 2005

**PROJECT REVIEW/DETERMINATION COMPLETED:** **In the office (Y/N)** Y **Date:** 12/12/05  
**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:4826572 East:558642

**Approximate size of site/property (including uplands & in acres):** <5 acres

**Name of waterway or watershed:** in the Penninger 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)	X								
<u>Irrigation Ditch</u>									

<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):**

Penninger Lateral is not jurisdictional because it is an isolated, non-navigable intrastate water with no nexus to interstate commerce. The ditch terminates in uplands (between Maple Grove and Overland Roads) and does not flow into any other waters of the United States. Its only source of water is from an irrigation ditch and it has no apparent source of natural hydrology. Consequently, if irrigation water was no longer diverted into this ditch, it would revert to uplands. Also, it is not subject to boating. Migratory birds probably use the ditch and it is most likely used to irrigate croplands sold in interstate commerce. However, there is no other evidence of its use in interstate 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.