

**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-2006-759-B01

REGULATORY PROJECT MANAGER: Martinez **Date:** November 29, 2006

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y)** **Date:** November 29, 2006
At the project site (N) **Date:**

PROJECT LOCATION INFORMATION:

State: Idaho

County: Ada

Center coordinates of site by latitude & longitudinal coordinates:

Approximate size of site/property (including uplands & in acres): 100

Name of waterway or watershed: Boise River water shed

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									
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)	x								
Man-made ditch									

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): An unnamed, man-made irrigation ditch and drain ditch received water from a controlled ground water well. Applicant has now turned water off to the ditch. The ditch was constructed deep enough to encounter ground water; however, the ditch has a culvert crossing that was installed prior to 1960 that is set higher than the bottom of the ditch. With the well water turned off, the section of ditch upstream of the culvert no longer flows through the culvert. The water elevation in the ditch is 10 to 12 inches below the bottom of the culvert. Under normal circumstances the upper section of ditch will no longer be connected to the lower section.

Based on Supreme Court ruling in the court case of SWANCC v US Army Corps of Engineers, No. 99-1178, the Department of the Army no longer has jurisdiction over isolated, non-navigable, intrastate water of the United States, if the sole nexus to interstate commerce is the use of the waters by migratory birds. Because the upper section of ditch is no longer connected to the lower section, the upper section is isolated and no longer jurisdictional under the Clean Water Act.