

**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-2007-480-I02

REGULATORY PROJECT MANAGER: James Joyner **Date:** May 17, 2007

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) **Date:** _____
 At the project site Y (Y/N) **Date:** April 20, 2007

PROJECT LOCATION INFORMATION:
State: Idaho
County: Custer
Center coordinates of site by latitude & longitudinal coordinates: 43.9004831 and -113.52224351
Approximate size of site/property (including uplands & in acres): 30 acres
Name of waterway or watershed: Congdon Springs 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								3,480	
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		X		
Is or would be used as habitat by other migratory birds that cross state lines?	X		X		
Is or would be used as habitat for endangered species?		X		X	
Is used to irrigate crops sold in interstate commerce?	X		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 section of Congdon Springs Creek that is isolated is approximately 13, 650 feet long. I have referred to this section as lower Congdon Springs Creek. Approximately ¼ of the length of lower Congdon Springs Creek occurs on the project site. The applicant proposes to relocate approximately 1100 feet of the channel.

Lower Congdon Springs Creek (below the Burnett Ditch Diversion) is intermingled with flow from the Swauger Ditch. Further downstream the Swauger Ditch and Congdon Springs Creek separate, however both terminate in agricultural fields to the south and east. Lower Congdon Springs Creek has no apparent surface or subsurface connection to a water of the U.S.

Lower Congdon Springs Creek does not appear to support any form of boating. Lower Congdon Springs Creek does appear to serve as habitat for migratory bird species protected by Migratory Bird Treaties. While on site I observed several ducks in this section of creek. However, habitat is essentially limited as there is very little riparian vegetation due to the agricultural nature of the stream's use. Lower Congdon Springs Creek does not appear to be habitat for any endangered species. Additionally, lower

Congdon Springs Creek water is used to irrigate hayfields that may be cut for sale across state lines or fed to livestock sold across state lines.

In *Solid Waste Agency of Northern Cook County v. US Army Corps of Engineers*, 531 US 159 (2001), the United States Supreme Court held that 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. Therefore, the lower portion of Congdon Springs Creek is not a jurisdictional water of the United States.

The upper section of Congdon Springs Creek appears to be jurisdictional. This is the section of Congdon Springs Creek from its spring source to the Burnett Ditch diversion. This section of creek is approximately, 7,430 feet long, most of which appears to be on the applicant's property. This section of the creek appears to be jurisdictional as it contributes flow to the Burnett Ditch, which then flows into the Big Lost River, a water of the U.S. The Burnett Ditch takes water from and returns water to the Big Lost River.