

DISTRICT OFFICE: Kansas City District
FILE NUMBER: 200401363

PROJECT LOCATION INFORMATION:

State: Kansas
County: Sedgwick
Center coordinates of site (latitude/longitude): 37.73196417 deg, -97.46084556 deg
Approximate size of area (parcel) reviewed, including uplands: 80 acres.
Name of nearest waterway: Rolling Hills Creek
Name of watershed: Middle Arkansas-Slate 11030013

JURISDICTIONAL DETERMINATION

Completed: Desktop determination Date: 27 June 2005
Site visit(s) Date(s): 27 April 2005

Jurisdictional Determination (JD):

- Preliminary JD - Based on available information, *there appear to be* (or) *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:
- There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: More than 8.5 acres of wetlands.
- There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.
 Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

- The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

- (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- (2) The presence of interstate waters including interstate wetlands¹.
- (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- (4) Impoundments of waters otherwise defined as waters of the US.
- (5) The presence of a tributary to a water identified in (1) - (4) above.
- (6) The presence of territorial seas.
- (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The Cadillac Lake basin has a contributing drainage area of approximately 2300 acres. Rainfall events of 0.63-inches in 24 hours, which occur 18 times in the average year, result in the wetlands overflowing into the Chadwick Subdivision stormwater retention pond to the south. The retention pond is an impoundment of and discharges into the west fork of Rolling Hills Creek (a jurisdictional tributary), which discharges into Cowskin Creek, which discharges into the West Valley Floodway, which discharges into the Arkansas River, an interstate river ultimately discharging into the Mississippi River. On April 26, 2005 we walked the site and determined that the wetland delineation previously approved for Mr. Pearson was inaccurate because we observed more wetlands than indicated by the consultant report. Because this is a re-evaluation of a remanded appeal, this determination is not appealable again.

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

- Ordinary High Water Mark indicated by:
- clear, natural line impressed on the bank
 - the presence of litter and debris
 - changes in the character of soil
 - destruction of terrestrial vegetation
 - shelving
 - other:
- High Tide Line indicated by:
- oil or scum line along shore objects
 - fine shell or debris deposits (foreshore)
 - physical markings/characteristics
 - tidal gages
 - other:

- Mean High Water Mark indicated by:
- survey to available datum; physical markings; vegetation lines/changes in vegetation types.

Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:
The wetland delineation submitted by Geological Services, Inc. (GSI) on 3 May 2004 must be reconsidered due to inadequate consideration of available soils data..

Basis For Not Asserting Jurisdiction:

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
 - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
 - Isolated, intrastate wetland with no nexus to interstate commerce.
 - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
 - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
 - Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
- This office concurs with the delineation report, dated _____, prepared by (company):
- This office does not concur with the delineation report, dated 3 May 2004, prepared by (company): GSI
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
- U.S. Geological Survey 7.5 Minute Topographic maps: Wichita West, Kansas
- U.S. Geological Survey 7.5 Minute Historic quadrangles:
- U.S. Geological Survey 15 Minute Historic quadrangles:
- USDA Natural Resources Conservation Service Soil Survey: Sedgwick County, Kansas, Sheet 33 and SSURGO-1 soils data obtained from Bob Murphy of NRCS
- National wetlands inventory maps: from GSI report
- State/Local wetland inventory maps:
- FEMA/FIRM maps (Map Name & Date): Flood Hazard Map of northwest Wichita, Kansas (June 2005) from the ESRI/FEMA Project Impact Hazard Information and Awareness Site at <http://www.esri.com.hazards>
- 100-year Floodplain Elevation is: _____ (NGVD)
- Aerial Photographs (Name & Date): 2000 and 2004
- Other photographs (Date): 26 April 2005, 24 May 2005, 3 October 2002
- Advanced Identification Wetland maps:
- Site visit/determination conducted on: 26 April 2005
- Applicable/supporting case law: U.S. v. Earth Sciences, Inc., 599 F.2d 368 (10th Cir. 1979); U.S. v. Texas Pipe Line Co., 611 F.2d 345 (10th Cir. 1979); Quivira Mining Co. v. U.S.E.P.A., 765 F.2d 126 (10th Cir. 1985); United States v. Deaton, 332 F.3d 698 (4th Cir. 2003, review declined by Supreme Court); United States v. Rueth Development Co., 335 F.3d 598 (7th Cir. 2003); U.S. v. Rapanos, 339 F.3d 447 (6th Cir. 2003, review declined by Supreme Court); Treacy v. Newdunn Associates, LLP, 344 F.3d 407 (4th Cir. 2003, review declined by Supreme Court); Community Ass'n for Restoration of the Env't v. Henry Bosma Dairy (9th Cir. 2002).
- Other information (please specify): The Rainfall Atlas of the United States, National Weather Service weather data

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.