

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: Omaha
 FILE NUMBER: 200490332
 REGULATORY PROJECT MANAGER: S. Warner Date: 6-3-04

PROJECT REVIEW/DETERMINATION COMPLETED: In the office (Y/N) Date:
 At the project site Y(N) Date: 10-2-04

PROJECT LOCATION INFORMATION:
 State: Montana
 County: Yellowstone
 Center coordinates of site by latitude & longitudinal coordinates: Lat. 45-48-0.0003 Long. 108-40-0.0000
 Approximate size of site/property (including uplands & in acres): 5.3 acres
 Name of waterway or watershed: Cove Ditch

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) <u>Man made ponds</u>				✓					

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.

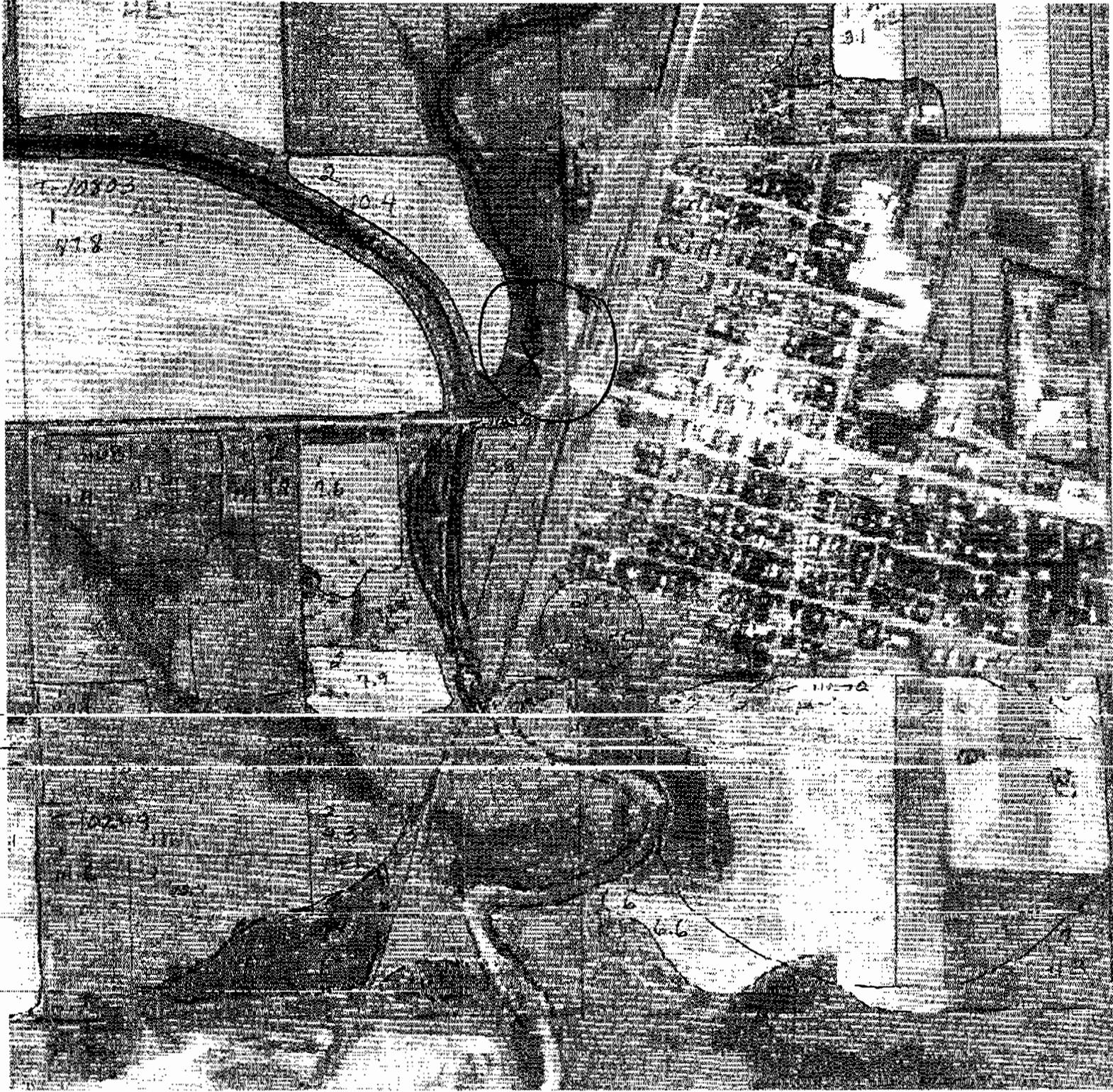
Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	✓				
Is or would be used as habitat by other migratory birds that cross state lines?	✓				
Is or would be used as habitat for endangered species?					✓
Is used to irrigate crops sold in interstate commerce?		✓			

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 ✓

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):

NOT TO SCALE
M-19



JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers, Omaha District

APPLICANT: Yellowstone Country Club

PROJECT LOCATION/WATERWAY: 2 Irrigation Ponds / Section 30, T 1 N, R 25 E / Yellowstone Co.

FILE NUMBER: 200490332

PROJECT REVIEW COMPLETED: [] Office [X] Field

Jurisdictional Determination (JD): (For sites regulated under 33CFR 320-330)

- [] Preliminary JD - Based on available information, there appear to be [] or there appear to be no [] waters of the United States on the project site. A preliminary JD is not appealable.
[X] Approved JD - There are [] or there are no [X] waters of the United States on the project site, as identified in the basis of jurisdictional determination indicated below. An approved JD is an appealable action (Reg. 33CFR 331).

Basis of Jurisdictional Determination: (Reference: 33CFR 328.3(a))

- [] (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 wetlands.
[] (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 effect interstate commerce including any such waters:
[] (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 defined as a Water 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 adjacent to interstate or other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for Basis:

The 2 ponds are isolated. There is no surface connection to any other jurisdictional WUS.

Lateral Extent of Jurisdiction: (Reference: 33 CFR 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
[] In ocean or coastal area, site is within a zone three geographic (nautical) miles seaward of the baseline
[] Wetland, as shown on the attached wetland delineation map and/or in a jurisdictional report prepared by:

[] Additional supporting information attached:

Preparer: Shannon Warner Date: June 3, 2004

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.

3Baseline is the line on the shore reached by the ordinary low tides from which the distance of three miles is measured.

1. Site Conditions – The proposed project is located at the Yellowstone Country Club in Billings, Montana. The proposed activity is the dredging of two (2) man-made irrigation ponds on the golf course. The west pond is 3.02 surface acres and the east pond is 2.24 surface acres. The west pond is located adjacent to Cove Ditch, but is not constructed on the ditch. A head gate on Cove Ditch pipes water to the west pond. Another pipe allows water to flow from the west pond to the east pond. Neither pond has an inlet or an outlet. Equipment to be used is a suction dredge. Spoils will be placed in an upland location and will not be returned to the ponds.
2. There is no surface water connection to jurisdictional waters of the U. S. There are no wetland areas. Boating would be possible on either pond, but because of the location on a golf course, it is highly unlikely. Both ponds are used for irrigation on the golf course. Fish are present in both ponds, but again, because of the location, they are not utilized for fishing.
3. This determination was made by reviewing quad and aerial maps of the project area. Additionally, a site visit was conducted on June 2, 2004.
4. There are no jurisdictional waters on the project site. This is an approved jurisdictional determination.



U.S. ARMY CORPS OF ENGINEERS

HELENA REGULATORY OFFICE
10 WEST 15TH STREET, SUITE 2200
HELENA, MONTANA 59626

REPLY TO
ATTENTION OF:

June 3, 2004

Billings Regulatory Office
Phone (406) 657-5910
FAX (406) 657-5911

RE: Dredging Two Irrigation Ponds
Corps File No. 200490332

Mr. Joe Stribley
c/o Yellowstone Country Club
5707 Bobby Jones Boulevard
Billings, Montana 59106

Dear Mr. Stribley:

We have reviewed your proposed project as described in your letter and application dated April 29, 2004. The project is located in two (2) existing irrigation ponds in Section 30, Township 1 North, Range 25 East, in Yellowstone County, Montana.

Based on the information provided, and a field visit by Shannon Warner on June 2, 2004, we have determined that the two ponds are isolated, and that there are no jurisdictional waters of the United States located at the project site. Therefore, the activity is not subject to Department of the Army (DA) regulatory authorities and no permit pursuant to Section 404 of the Clean Water Act is required from the Corps of Engineers.

If you are satisfied with the Corps' determination, there is no need to respond. If you disagree with this jurisdictional determination, you have the right to appeal the decision in accordance with the procedures and authorities contained in Regulation 33 CFR Part 331 as issued in the Federal Register on March 9, 1999. Enclosed is a *Notification of Administrative Appeal Options and Process and Request for Appeal* form, which explains the options available to you under the Administrative Appeal Process. Also enclosed is the Corps' basis of jurisdictional determination for the site.

Although a DA permit is not required for this project, this does not eliminate the requirement that you obtain any other applicable Federal, State, Tribal or local permits as required.

If you have any questions regarding this determination, please contact me at (406) 657-5910 and reference file number 200490332.

Sincerely,

Allan Steinle
Montana Program Manager

Enclosures:
Appeal Form
Basis of JD