

**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:  
FILE NUMBER:

Omaha  
200490028

REGULATORY PROJECT MANAGER:

S. Warner

Date: 8-23-04

PROJECT REVIEW/DETERMINATION COMPLETED:

In the office    (Y/N)

Date:           

At the project site  (Y/N)

Date: 8-17-04

PROJECT LOCATION INFORMATION:

State:

County:

Center coordinates of site by latitude & longitudinal coordinates:

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

Name of waterway or watershed:

Montana  
Carbon  
Lat 45-11-20.0078 Long 109-14-28.7584  
37 acres  
Rock Creek

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)									

<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?			✓		
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?				✓	

<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

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):

1. Site Conditions – The proposed project is located on a 37-acre tract on the east side of Red Lodge, Montana. The proposed activity is the construction of a subdivision. The site was formerly a coal mine and chromium ore processing facility and has undergone extensive disturbance, with some areas having been reclaimed by the Montana Abandoned Mines Reclamation Bureau in the early 1990s. Most of the site has been reworked or altered by these activities. There are eleven (11) wetland areas located within the site. The delineated wetland areas are associated with multiple flowing discharges from abandoned mine entries.
2. Wetlands A, B, C, D, E and F have a connection to Rock Creek. Wetland A is separated by two culverted road crossings into three hydrologically connected subbodies. Wetland B emerges from a mine discharge in a narrow channel then forms a broad hydric zone before reaching Rock Creek. The discharge from Wetland C enters B at the north end. Wetland D overflows into C through an ephemeral connection. The connection between Wetland E and F and Rock Creek is interrupted by coarse riprap, but does not eliminate connectivity.
3. For Wetlands GA, GB, GC, GD and H there is no surface water connection to any jurisdictional waters of the U. S. No boating would be possible. No fisheries are present. These wetlands are located outside of the 100-year flood plain of Rock Creek. Non-jurisdictional wetlands total 1.076 acres.

This determination was made by reviewing an approved wetland delineation, photos, quad and aerial maps of the project area. Additionally, a site visit was conducted on August 17, 2004.

4. Jurisdictional waters on the project site include Wetlands A, B, C, D, E, F and Rock Creek. Jurisdictional wetlands total 0.958 acres. This is an approved jurisdictional determination.