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 DIST DRO
FILE NUMBER: 200480498
REGULATORY PROJECT MANAGER: MCKEE
PROJECT REVIEW/DETERMINATION COMPLETED: **In the office** **Date: September 27, 04**
At the project site **Date:**

PROJECT LOCATION INFORMATION:
State: Colorado
County: Elbert
Center coordinates of site by latitude & longitudinal coordinates: 39 30 48.4279, 104 35 15.0587
Approximate size of site/property (including uplands & in acres): 3,680
Name of waterway or watershed: Kiowa Creek

SITE CONDITIONS: rural dry upland surrounds the aquatic sites

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) Stock ponds		x							

[1]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[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?					

[1]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: Approved x Preliminary

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):

Stock Ponds 1A, 2B, 3C, 4D, 6E and 7F have no wetlands or ordinary high water mark up gradient or down gradient of these stock ponds**.** The Federal Register states that the Corps generally does not consider stock ponds excavated on dry land waters of the U.S. Also, the drainages these ponds are located on are non-jurisdictional, as the drainages between the stock ponds and the downstream jurisdictional tributary are upland vegetated swales. Therefore, these ponds are isolated and non-jurisdictional. **Stock Pond 8G** is non-jurisdictional, because it is on a drainage that flows to Running Creek, that flows to Boxelder Creek, that flows to the Empire Canal, that flows to the Bijou Canal, which terminates on uplands south of Ft. Morgan. Therefore, there is no tributary connection to a jurisdictional water of the U.S.