



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

MEMORANDUM FOR JD # 2007-5500-LMK

Subject: Determination of Ranch Lake and its adjacent wetlands as waters of the United States for Jurisdictional Determination (JD) # 2007-5500-LMK

I. Summary

The United States government has determined that Ranch Lake and its adjacent wetlands are waters of the United States, subject to Clean Water Act ("CWA") § 404 jurisdiction. This determination is consistent with the CWA, the agencies' regulations (including 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3), relevant case law, and existing guidance, including the June 5, 2007 joint EPA and Department of the Army legal memorandum entitled *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* ("Rapanos Guidance"), and *Appendix D* of the *U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook* issued in June 5, 2007 ("Appendix D").

II. Background

This Memorandum documents the results of the Headquarters ("HQ") level review conducted by U.S. Environmental Protection Agency ("EPA") and the U.S. Army Corps of Engineers ("Corps") regarding the draft JD form prepared by the Corps St. Paul District for case number 2007-5500-LMK. This JD involves Ranch Lake, which has an area of 48 acres, and an additional 0.01 acre of wetlands adjacent to the lake. In the draft JD form the Corps St. Paul District initially determined that Ranch Lake and its adjacent wetlands are isolated non-jurisdictional waters with no connection to interstate (or foreign) commerce. The review of this JD form was completed in accordance with the EPA and the Corps *Memorandum for Coordination on Jurisdictional Determinations (JDs) under Clean Water Act (CWA) Section 404 in Light of the SWANCC and Rapanos Supreme Court Decisions*, dated June 5, 2007 ("Coordination Memo").

III. Location and Setting

Ranch Lake has a surface area of approximately 48 acres, and a maximum depth of 44 feet.¹ The lake is located in Oconto County, Wisconsin, at coordinates 45.1747° N (Lat.) and -88.1897° W (Long.). Ranch Lake is a seepage lake; that is, a landlocked lake with no inlets or

¹ See: <http://dnr.wi.gov/org/water/fhp/lakes/O-P.pdf> and <http://www.dnr.state.wi.us/org/water/fhp/lakes/county/oconto.htm>

outlets. The principal source of water for a seepage lake like Ranch Lake is precipitation or runoff, supplemented by groundwater from the immediate drainage area. The Wisconsin Department of Natural Resources (“WDNR”) manages Ranch Lake as a “Public Water of the State”.² The lands along the western border of the lake have been developed for residential purposes. A public beach area is located on the northern border of the lake. The lands along the eastern and southern borders of the lake remain mostly undeveloped.

IV. Jurisdictional Determination Analysis

A. Ranch Lake

In accordance with EPA and Corps Regulations at 33 C.F.R. § 328.3(a)(1) and 40 C.F.R. § 230.3(s)(1), “all 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” are waters of the United States and subject to CWA § 404 jurisdiction. The Rapanos Guidance further highlights that EPA and the Corps will assert CWA § 404 jurisdiction over Traditional Navigable Waters (“TNW”), which includes all the waters described in 33 C.F.R. § 328.3(a)(1) and 40 C.F.R. § 230.3(s)(1).

As stated in Appendix D: “when determining whether a water body qualifies as a ‘traditional navigable water’ (i.e., an (a)(1) water), relevant considerations include whether a Corps District has determined that the water body is a navigable water of the United States pursuant to 33 C.F.R. § 329.14, or the water body qualifies as a navigable water of the United States under any of the tests set forth in 33 C.F.R. § 329, or a federal court has determined that the water body is navigable-in-fact under federal law for any purpose, or the water body is “navigable-in-fact” under the standards that have been used by the federal courts.”

In determining whether Ranch Lake is a water of the United States, subject to CWA § 404 jurisdiction, the United States government conducted a case-specific analysis to evaluate if Ranch Lake qualifies as a TNW, in accordance with 33 C.F.R. § 328.3(a)(1), 40 C.F.R. § 230.3(s)(1), the Rapanos Guidance, and Appendix D. This analysis involved consideration of whether Ranch Lake is navigable in fact, including an assessment of its potential susceptibility to interstate or foreign commerce.

The United States government has determined that Ranch Lake is navigable-in-fact, and thus a TNW, based on several factors, including presence of public boat ramps and beaches, actual current use for recreational navigation, availability of commercial facilities such as boat rentals and bait shops to users of Ranch Lake, and the lake’s location in an area that attracts interstate travelers, as follows:

1. The physical characteristics of Ranch Lake, including size and depth, indicate that it has the capacity to be navigated by watercraft.
 - a. According to information from the WDNR, Ranch Lake has a surface area of 48 acres and a maximum depth of 44 feet.³

² Personal communication from Gregory Sevener, Watershed Specialist, Peshtigo Office, MDNR, January 31, 2008.

³ Ibid Footnote Number 1.

2. There are current facilities that allow members of the public to access and launch watercraft into Ranch Lake.
 - a. According to information from the WDNR,^{4,5} there are at least three documented public access points to the lake, including a boat ramp, a walk-in trail and a public beach.
3. Ranch Lake is currently used for navigation.
 - a. Aerial photography for the site depicts numerous buildings with docks and boats along the western border of Ranch Lake.
 - b. According to information from the WDNR,⁶ the above referenced access points are currently used by the public to launch boats into the lake for recreational boating and fishing.
4. Because of its location relatively close to state boundaries and conduits of interstate travel Ranch Lake is readily accessible to out-of-state travelers.
 - a. Ranch Lake is located approximately 33 miles from the boundary between Wisconsin and Michigan.
 - b. Ranch Lake is located approximately 5 miles from US-64, and 8 miles from US-141, which are main highways crossing between Wisconsin and Michigan.
5. Numerous similar water bodies, parks and forests near Ranch Lake provide water-based resources likely to attract out-of-state travelers for recreational commercial navigation.
 - a. Several internet sites⁷ advertise multiple similar lakes in the vicinity of Ranch Lake as recreational and fishing attractions, and provide additional information on public boat access, lodging, campgrounds, boat rental and other services and facilities in the area.
 - b. White Potato Lake,⁸ a popular 978 acres recreational lake with several public boat ramps, and camping and picnic areas, is located approximately 4 miles from Ranch Lake. Several lodges, campgrounds, and boat rental facilities are located in the immediate vicinity of White Potato Lake.⁹
 - c. The Peshtigo River State Forest is located approximately 14 miles from Ranch Lake. This forest is a very popular destination in the area for travelers interested in recreational commercial boating activities.¹⁰

⁴ See: <http://www.dnr.state.wi.us/org/water/fhp/lakes/list/#lakebook>; <http://dnr.wi.gov/org/water/fhp/lakes/O-P.pdf>; and http://dnrmaps.wisconsin.gov/imf/ext/apps/boat_ext/boat_results.jsp?strID=3035.

⁵ Ibid Footnote Number 2.

⁶ Ibid Footnote Number 2.

⁷ See: http://www.wisconsinlakes.com/oconto_county_lakes.html; http://www.goingoutside.com/lakecounty/Wisconsin_Oconto.html; http://www.lake-link.com/lakes/do_lakeresults.cfm?RegionID=768; <http://www.fishingworks.com/lakes/wisconsin/oconto/>, and <http://www.dnr.state.wi.us/org/water/fhp/lakes/>.

⁸ See: <http://www.dnr.state.wi.us/org/water/fhp/lakes/lakemap/0515100a.htm>.

⁹ See: <http://www.exploringthenorth.com/whisperingpine/lodge.html>; <http://www.lake-link.com/lakes/lake.cfm?LakeID=3042>; and http://www.goingoutside.com/lake/112/1122191_White_Potato_Lake_Wisconsin.html.

¹⁰ See: <http://www.dnr.state.wi.us/forestry/stateforests/SF-Peshtigo/>.

- d. The Governor Thompson State Park, in which the Peshtigo River State Forest headquarters is located, is situated approximately 8 miles from Ranch Lake. The WDNR internet site for this park indicates that it features attractions such as: several lakes and streams for recreational boating and fishing.¹¹
6. Ranch Lake has the potential to be used by out-of-state travelers for activities involving navigation and interstate commerce, such as recreational commercial navigation.
 - a. Several internet sites advertise lodging, bait and tackle sale, and boat rental services available in the Ranch Lake area.¹² These sites also specifically describe Ranch Lake as an attractive lake for boating and fishing, and highlight other resorts, hotels, campgrounds, and recreational attractions in the area that could support the use and enjoyment of Ranch Lake.
 - b. It is reasonable to expect that users of nearby water-based attractions, including the above referenced White Potato Lake and the Peshtigo River State Forest, which are popular destination for travelers interested in recreational commercial boating activities, would also use Ranch Lake for similar water-based recreational activities.
 - c. The fact that Ranch Lake is an accessible public lake, currently used for recreational navigation, with nearby boat rental and bait sale facilities, campgrounds, and lodges, would provide an attraction for out-of-state travelers in the area interested in boating, canoeing, kayaking, and fishing.
 - d. According to information from the Oconto County Land Information Office,¹³ many of the residences located along the borders of Ranch Lake, which have direct access to the lake and boat docks, are second homes owned by residents of other states, such as Michigan, Illinois, and Colorado. It is reasonable to expect that these home owners from out-of-state use Ranch Lake for recreational boating and fishing, and engage in navigation related commerce, such as sale and/or rental of boats, and boating and fishing gear, equipment and materials.
 - e. Personnel from lodges located in the Ranch Lake area have indicated that out-of-state travelers regularly come to that area, either bring or rent boats, and use all lakes in the area, including Ranch Lake, for recreational navigation and fishing.
 - f. The above mentioned recreational navigation attractions and activities demonstrate that Ranch Lake may be susceptible to use in interstate commerce in many forms, including sale and/or rental of boats, and boating and fishing gear, equipment and materials.

B. Wetlands Adjacent to Ranch Lake

The Rapanos Guidance highlights that EPA and the Corps will assert CWA § 404 jurisdiction over wetlands that are “adjacent” to TNWs as defined in the agencies’ regulations.¹⁴

¹¹ See: <http://www.dnr.state.wi.us/ORG/land/parks/specific/govthompson/>.

¹² See: [http://www.lake-link.com/lakes/lake.cfm?LakeID=2992&RegionID=768](http://www.lake-link.com/lakes/lake.cfm?LakeID=2992&RegionID=768;);

http://www.goingoutside.com/lake/112/1120779_Ranch_Lake_Wisconsin.html; and <http://www.poppresort.com/>.

¹³ See: <http://solo.co.oconto.wi.us/ocontoco/>.

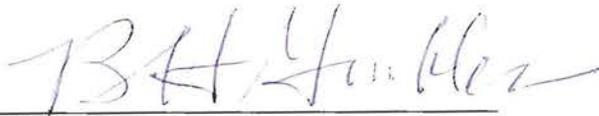
¹⁴ 33 C.F.R. § 328.3(a)(7) and 40 C.F.R. § 230.3(s)(7).

Corps and EPA regulations¹⁵ state: "The term adjacent means bordering, contiguous or neighboring." The 0.01 acre of wetland subject to this Memorandum was described by the St. Paul District in the draft JD form as directly abutting Ranch Lake. Since, as discussed above, the United States government has determined that Ranch Lake is a TNW, the subject wetland is considered adjacent to a TNW.

V. Conclusion

Collectively, the above discussed factors demonstrate that Ranch Lake is navigable-in-fact, and thus a TNW, susceptible to use in interstate commerce associated with commercial recreational navigation activities, such as commercial recreational boating and fishing. Therefore, the United States government hereby determines that Ranch Lake is subject to CWA § 404 jurisdiction, in accordance with 33 C.F.R. § 328.3(a)(1), 40 C.F.R. § 230.3(s)(1) and the Rapanos Guidance.

In addition, since the 0.01 acre of wetland associated with JD # 2007-5500-LMK is adjacent to a TNW (i.e., Ranch Lake), the United States government hereby determines that the wetland is subject to CWA § 404 jurisdiction, in accordance with 33 C.F.R. § 328.3(a)(7), 40 C.F.R. § 230.3(s)(7) and the Rapanos Guidance.



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¹⁵ 33 C.F.R. § 328.3(c); and 40 C.F.R. § 230.3(b).