



MEMORANDUM FOR MVP-2007-3980-CKK

Subject: Significant Nexus Analysis Required for Jurisdictional Determination MVP-2007-3980-CKK

This Memorandum documents the joint Headquarters (HQ) level review conducted by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) regarding the draft Jurisdictional Determination (JD) form prepared by the St. Paul District for case number MVP-2007-3980-CKK. Said joint HQ review 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 *SWANNC* and *Rapanos* Supreme Court Decisions, dated June 5, 2007 (Coordination Memo).

The referenced JD form was first submitted by the St. Paul District to EPA via e-mail dated November 9, 2007. EPA and Corps HQ joint review of the JD was initiated on November 16, 2007. The JD involves 17.76 acres of wetlands located in Juneau County, Mauston, Wisconsin, which the St. Paul District initially determined to be isolated waters with no substantial connection to interstate (or foreign) commerce, and therefore non-jurisdictional waters.

Upon review of the available information, including the JD form and accompanying maps and figures, EPA and Corps HQ have determined that the subject wetlands have a hydrologic connection (even if non-relatively permanent) to downstream waters of the United States. The documents submitted by the St. Paul District indicate that the wetlands are hydrologically connected through a series of linked non-relatively permanent "ditches" to the Wisconsin River, which is a Traditional Navigable Water (TNW). The USGS Topographic Map for the area depicts these "ditches" as an intermittent blue line. This hydrologic connection was verified in the field by the District. Therefore, the subject wetlands should not be considered isolated waters, but rather adjacent to downstream waters of the United States.

Based on the above, EPA and Corps HQ are hereby requesting the St. Paul District to reassess the jurisdiction of the referenced wetlands, consistent with the legal memorandum *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States*. In doing so, the District should identify the tributary (i.e., the entire reach of the stream that is of the same order) to which the wetlands are adjacent, and determine if there are any other wetlands adjacent to said tributary. The District should then evaluate whether the tributary together with all of its adjacent wetlands have a significant nexus to downstream TNWs. EPA and Corps HQs also request that the District resubmit a revised JD form incorporating the above requested new documentation and conclusions, through the procedures outlined in the Coordination Memo.

A handwritten signature in black ink, appearing to read "Brian Frazer", is written over a horizontal line.

Brian Frazer, Chief
Wetlands & Aquatic Resources Regulatory Branch
U.S. Environmental Protection Agency

A handwritten signature in black ink, appearing to read "Russell L. Kaiser", is written over a horizontal line.

Russell L. Kaiser, Senior Program Manager
Regulatory Community of Practice
U.S. Army Corps of Engineers

Date: 30 Nov 2007

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