



## MEMORANDUM TO ASSERT JURISDICTION FOR NWS-2007-435-NO

**Subject:** Assertion of jurisdiction for Jurisdictional Determination (JD) NWS-2007-435-NO

### Summary

The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers are asserting jurisdiction over four wetlands (identified as Wetlands A, B, C, and Z)<sup>1</sup> adjacent to a non-relatively permanent water (RPW) for jurisdictional determination (JD) NWS-2007-435-NO (JD Forms 1 & 2). This is based on a significant nexus evaluation of the wetlands to Ebey Slough<sup>2</sup>, a traditional navigable water (TNW), based on the statute, the agencies' regulations and the case law, and 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*.

### I. Introduction

The purpose of this memorandum is to document the presence of jurisdictional wetlands adjacent to a non-RPW in Snohomish County, Washington. The wetlands were found to have a significant nexus to a downstream TNW. The wetlands either abut and/or are adjacent to a non-RPW that is hydrologically connected to an RPW, the West Fork of Quilceda Creek, which flows into Quilceda Creek, an RPW, and into the estuary of Ebey Slough, a TNW.

These JDs involve 4 wetlands located in the city of Marysville, Snohomish County, in northwest Washington State in the northern Puget Sound area. The site is located near 48-08-17.93° N latitude and 122-11-12.08° W longitude. A non-RPW (jurisdictional roadside ditch<sup>3</sup>) flows along one side of the property. Two of the site's

<sup>1</sup> The JD for wetlands C & Z contains a typographical error that must be clarified in the final JD form. Since wetland C is located west of the demarcated boundary of the property, and wetland Y is located next to wetland Z on the subject property, the form should have referred to wetland Y instead of wetland C. Once the form is corrected, this determination is applicable to wetlands A, B, Y, & Z.

<sup>2</sup> Because the Corps found a significant nexus to Ebey Slough, there is no need to determine whether a nearer waterbody is a TNW for purposes of the significant nexus evaluation. Designation of Ebey Slough as the nearest TNW for purposes of this JD does not preclude the future determination of TNWs upstream of Ebey Slough if additional information warrants such determination.

wetlands (A & B) have a direct surface hydrologic connection to the non-RPW; the other two wetlands (C & Z) are separated from it by a berm. The site is comprised of wetland agricultural fields common to the Snohomish River valley.

## II. Jurisdictional Determination

The non-RPW and wetlands A, B, C, and Z are jurisdictional, as they were determined to have a significant nexus to a downstream TNW.

## III. Basis for Determination<sup>4</sup>

### A. Significant Nexus

Evaluation of the non-RPW and adjacent wetlands A, B, C, and Z in the review area demonstrate the wetlands have a significant nexus to a TNW. Two of the site's wetlands (A & B) have a direct surface hydrologic connection to the non-RPW. The other two wetlands (C & Z) are separated from the non-RPW by a berm, but are considered adjacent to the non-RPW.

The agencies will consider the flow and functions of the tributary together with the functions performed by *all* wetlands adjacent to that tributary, to determine whether collectively they have a significant nexus with TNWs. Where it is determined that a tributary and its adjacent wetlands collectively have a significant nexus with TNWs, the tributary and all of its adjacent wetlands are jurisdictional. The non-RPW and all four of the adjacent wetlands in the review area are jurisdictional waters of the U.S. because when analyzed together they have a significant nexus to a TNW. This determination applies to the two wetlands that abut (i.e., have a direct hydrologic connection to) the non-RPW (wetlands A & B), as well as to the other two wetlands that are adjacent to, but do not abut, the non-RPW (wetlands C & Z).

The significant nexus evaluation demonstrates that the non-RPW and its adjacent wetlands impact the physical, chemical, and biological integrity of a downstream TNW. The non-RPW and its adjacent wetlands: a) provide detention and attenuation of runoff and floodwaters from the site and the adjoining road; b) conveys and filters sediments and other pollutants from the surrounding agricultural fields and roads to the TNW; c) provide baseflow to the TNW during the drier months of the year; d) support the food chain of the TNW through the creation and transfer of organic carbon and nutrients; and e) provide feeding, staging and resting habitat for waterbirds that also utilize Quilceda Creek, Ebey Slough and Puget Sound.

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<sup>4</sup> The evidence included in this memorandum is a summary of the evidence considered by the agencies in reaching this conclusion. Additional information regarding the determination is contained in the administrative record for this action.

#### IV. Conclusion

The non-RPW and its adjacent wetlands contribute to protecting and enhancing the chemical, physical and biological integrity of a downstream TNW. Therefore, wetlands A, B, C, and Z are jurisdictional waters of the United States.



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