



MEMORANDUM TO ASSERT JURISDICTION FOR POA-2006-1282-4

Subject: Assertion of Jurisdiction for Jurisdictional Determination POA-2006-1282-4

Summary

The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are asserting jurisdiction over a portion of the Palmer-Wasilla Highway drainage ditch and its abutting wetlands for jurisdictional determination POA-2006-1282-4. This JD is based on our finding that the drainage ditch is a relatively permanent water (RPW), and that the subject wetlands physically abut it. This JD is consistent with the Clean Water Act, the agencies' regulations, relevant case law and 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 joint decision memorandum is to document the presence of jurisdictional wetlands abutting a manmade RPW within the Matanuska-Susitna Borough, near Wasilla, Alaska. The site is located near 61.5837° north latitude and 149.3577° west longitude.

II. Jurisdictional Determination

The Palmer-Wasilla Highway drainage ditch between the Seward Meridian Parkway and Cottonwood Creek is jurisdictional because it is an RPW. The wetlands on the JD site physically abut the RPW, and are also jurisdictional.

III. Basis for Determination¹

A. Relatively Permanent Waters

The Palmer-Wasilla Highway drainage ditch originates in the upper portion of a linear spring fen wetland complex and conveys flow for approximately 1.25-1.5 miles from the wetlands

¹ 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.

to a traditionally navigable water (TNW), Cottonwood Creek.² At the confluence with Cottonwood Creek, the water flows through a wetland. As the water flows through the wetland, the ordinary high water mark (OHWM) is absent; however, the lateral limits of the wetland define the outer limits of jurisdiction. This wetland also provides a continuous connection to Cottonwood Creek. Flow through the relevant reach is predominately relatively permanent. The relevant reach includes the Palmer-Wasilla Highway drainage ditch and its adjacent wetlands.

B. Wetlands with a continuous surface connection to RPW

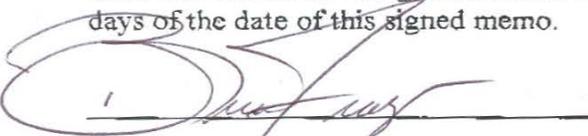
Wetland complexes generally are considered to be part of the same wetland system where there is a demonstrated connection via hydrology and/or other ecologic factors. Furthermore, a wetland that is disconnected due to man-made dikes or barriers, natural river berms, and the like, remain part of the same wetland system.

For the proposed site, the overall wetland complex presented in the JD form includes approximately 45-acres of intact wetlands that directly abut the Palmer-Wasilla Highway drainage ditch. Based upon information provided by the Regional Office, it appears that the 2.83 acres of wetlands subject to this JD are part of the overall 45 acre complex. In this case, the 2.83-acre wetland was artificially disconnected from the larger wetland via a road; hydrology occurs under the road through a culvert and into an artificial ditch which then connects to the larger wetland.

Thus, the complex includes both the smaller and larger wetlands that provide a continuous connection to Palmer-Wasilla Highway drainage ditch, the RPW.

IV. Conclusion

Based on the facts provided in the District's JD form (dated August 30, 2007) and the Regional Office's memorandum (dated October 2, 2007) we have determined that the 2.83 wetland is part of the larger complex and directly abutting the relatively permanent Palmer-Wasilla Highway drainage ditch, which flows into Cottonwood Creek. If there are additional facts that should be recognized in this analysis, please provide them for consideration within 10-days of the date of this signed memo.



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

Date: Oct. 25, 2007



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

Date: Oct 25, 2007

² Cottonwood Creek is a TNW on the basis of being navigable-in-fact.