



MEMORANDUM FOR POA-1992-574 & POA-1992-574-Z

Subject: Non-Concurrence with Jurisdictional Determinations POA-1992-574 & POA-1992-574-Z

Summary:

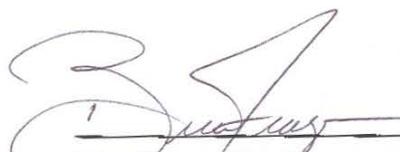
U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) have reviewed jurisdictional determinations (JDs) POA-1992-574 (and associated POA-1992-574-Z) and agree that we do not concur with the determinations, and that the subject JDs should be returned to the Alaska District for reconsideration consistent with this memorandum. This interpretation is based on the Clean Water Act, the agencies' regulations and existing practice, 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*.

Non-Concurrence with JDs

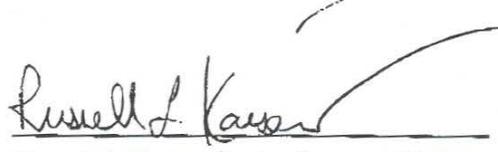
On July 31, 2007, Corps Headquarters notified the Alaska District via e-mail that Headquarters does not concur with the non-jurisdictional "isolated waters" determination for the Fort Knox Tailing Facility JD POA-1992-574 (and associated JD POA-1992-574-Z). We would like to supplant the record with this memorandum as the basis for the determination.

EPA and the Corps agree that the agencies' designation of a portion of waters of the U.S. as part of a waste treatment system does not itself alter CWA jurisdiction over any waters remaining upstream of such system. Both the Corps and EPA believe that all the waters upstream and downstream of the tailings dam that were jurisdictional prior to the authorized activity and that qualify as jurisdictional waters of the U.S. under the *Rapanos* guidance are still subject to CWA jurisdiction notwithstanding the construction of the tailings dam.

As a result, JDs POA-1992-574 & POA-1992-574-Z are being returned to the Alaska District to revise and resubmit consistent with this memorandum.



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Wetlands & Aquatic Resources Regulatory Branch
U.S. Environmental Protection Agency



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

Date: Oct. 25, 2007

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