

Murdock, Marcia

From: Murdock, Marcia
Sent: Monday, November 26, 2001 8:43 AM
To: Brakken, Ken
Cc: Rau, Joe; Rampe, John; Rosenman, Andrew; Nelson, Jody
Subject: Trip Notes from COE Site Visit 11/20/01

Importance: High
Ken,

Andy relayed that you wanted to verify points on our Site tour with Terry McKee, COE. These are my trip notes from our tour with Mr. McKee on 11/20/01. To complete the account, you will need to add your notes from your visit to the Standley Lake mitigation wetland. I'll be interested to hear what Mr. McKee had to say on that portion of his visit. See below:

TRIP NOTES FROM COE SITE VISIT 11/20/01

Terry McKee from US Army Corps of Engineers (COE), at DOE's invitation, came out to the Site to review wetland jurisdictional classifications for some wetlands that may be impacted by Site cleanup and closure actions. I accompanied Mr. Brakken and Mr. McKee on this Site visit. Mr. McKee explained that some of the isolated wetlands determinations now made by his office, EPA, and other COE offices in the state are presently under question to their own Headquarters (HQ) personnel, and that the basis for any determinations he makes right now may change in the future. It was unclear if that would subsequently change designations he made on his 11/20/01 visit, but it sounded like COE would not do a retroactive revision. The other point he made very clearly is that EPA has lead on RFETS, so whatever determinations he makes on our wetlands without their concurrence may not stand. We still need to get EPA out here to confirm these jurisdiction determinations. He said we should get the representatives from the 404 Group and the Superfund Group out together. He suggested that the appropriate EPA 404 personnel would be Glen Rodrigues and/or Dave Rider who normally work this area (Sarah Fowler has been onsite, but he said she is presently dedicated to West Slope issues), and we will also need a Superfund person. He said he doesn't know the present EPA Superfund personnel, but agreed that since Tim Rehder is assigned to the Site, he would probably be a good place to start. He cautioned that EPA may not agree with the determinations of jurisdiction that he made for us on this Site visit.

With that said, Mr. McKee studied my wetland map before we went on our tour, and determined that the majority of the mapped wetlands in the Industrial Area about which I had questions were isolated and non-jurisdictional. He made notes on my map as we talked, and made more later as we drove around looking at various areas in and surrounding the Industrial Area. He determined that the Landfill Pond is jurisdictional, that all contiguous drainages of Walnut Creek (including all ponds) is jurisdictional, that the Walnut Creek diversion ditch is jurisdictional, and that the diversion and drop structures along the North Access Road are jurisdictional.

After careful study of the topography and drainage patterns of Woman Creek and the South Interceptor Ditch (SID), he said that under present internal guidance, and until COE HQ determines differently he must classify the SID and Pond C-2 wetlands as jurisdictional because the SID is tributary to Pond C-2 which is in turn built in the old topographic drainage of Woman Creek. And secondarily, because Woman Creek is only separated from the original drainage by a man made berm, and if this berm were breached or removed, Woman Creek would once again

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flow in the original drainage. Therefore, Pond C-2 and its tributary (the SID) would be considered adjacent to "waters of the US" and thus jurisdictional. Both reasons are his justification for classifying these wetlands as jurisdictional. He explained under which criteria DOE can contest this determination and appeal the finding that the SID and Pond C-2 are jurisdictional. (These reasons to contest being because of the Swank ruling, and because Pond C-2 is isolated from the downstream wetlands by a segment of upland vegetation. To prove this point we will need to do a delineation on the outlet channel of the pond.) He said that because EPA must make the final determination on jurisdiction here, they may find differently, and that the 404 Group and the Superfund group may have differing opinions on this question. In fact, he noted that he would welcome a legal challenge of his jurisdiction determination in this case because COE needs some case law to help clarify guidance in determinations of this type. (He also noted that the expected guidance for COE HQ might confirm or change this determination.)

When questioned about the feasibility of doing mitigation in place in areas of the SID that may have to be disturbed during remediation and drainage revision, he said that was certainly a good possibility, and that he believed that EPA is more in favor of mitigation in place than of remote replacement wetlands. It may be that SID wetlands could be mitigated in place without the need for larger area wetland establishment elsewhere. DOE may wish to pursue this conversation with EPA as it is clear that final Site reconfiguration will almost certainly involve reconstruction on parts of the SID.

We agreed that I would take his changes in jurisdictional status -- from the notations he mad on my map -- and revise the current RFETS Wetlands Map to reflect his determinations. One revision we also agreed on was to connect some separate pieces of a Woman Creek wetland that on the ground is clearly contiguous. This revision is not in a location that will affect cleanup. Once I have this revision made, I'll mark that map segment as "DRAFT" in accordance with Site GIS procedures, and I will not finalize the changes until EPA has concurred. DOE will transmit a copy of the "DRAFT" map to Mr. McKee for his reference.

So the take home messages are 1) this is really EPA's call, and 2) at least most of the Industrial Area mapped wetlands should be classified as non-jurisdictional because they are isolated from "waters of the US". It is now up to DOE to get EPA to concur or otherwise confirm that they agree with Mr. McKee's opinion.

Once we finished the onsite portion of Mr. McKee's visit I took my leave and Mr. Brakken and Mr. McKee went down to the Standley Lake mitigation wetland.

Marcia Murdock
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