INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: _____
FILE NUMBER: 200400436

REGULATORY PROJECT MANAGER: Spence Date: 30 June 2004

PROJECT REVIEW/DETERMINATION COMPLETED: In the office Y (Y/N) Date: 30 June 2004
At the project site Y (Y/N) Date: 12 May 2004

PROJECT LOCATION INFORMATION:
State: Ohio
County: Tuscarawas
Center coordinates of site by latitude & longitudinal coordinates: 40° 20' 34.8414" N, 81° 23' 58.4034" W
Approximate size of site/property (including uplands & in acres): 19.1
Name of waterway or watershed: Crooked Creek

SITE CONDITIONS:

| Type of aquatic resource[1] | 0-1 ac | 1-3 ac | 3-5 ac | 5-10 ac | 10-25 ac | 25-50 ac | > 50 ac | Linear feet | Unknown |
|---|---|---|---|---|---|---|---|---|---|
| Lake | | | | | | | | | |
| River | | | | | | | | | |
| Stream | | | | | | | | | |
| Dry Wash | | | | | | | | | |
| Mudflat | | | | | | | | | |
| Sandflat | | | | | | | | | |
| Wetlands | | | | | | | | | |
| Slough | | | | | | | | | |
| Prairie pothole | | | | | | | | | |
| Wet meadow | | | | | | | | | |
| Playa lake | | | | | | | | | |
| Vernal pool | | | | | | | | | |
| Natural pond | | | | | | | | | |
| Other water (identify type) Mining Impoundments | 6 | | | | | | | | |

[1]Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

| Migratory Bird Rule Factors[1]: | If Known | | If Unknown Use Best Professional Judgment | | |
|---|---|---|---|---|---|
| | Yes | No | Predicted to Occur | Not Expected to Occur | Not Able To Make Determination |
| Is or would be used as habitat for birds protected by Migratory Bird Treaties? | X | | | | |
| Is or would be used as habitat by other migratory birds that cross state lines? | | | X | | |
| Is or would be used as habitat for endangered species? | | | | X | |
| Is used to irrigate crops sold in interstate commerce? | | | | X | |

[1]Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary __ Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

see attached Memorandum for Record

CELRH-OR-FN

30 June 2004

**MEMORANDUM FOR RECORD**

SUBJECT: Non-jurisdictional determinations on existing water impoundments on the proposed Putnam Mine near Gnadenhutten, Tuscarawas County, Ohio (File# 200400435).

Site Conditions

This site is a previously mined site with existing water impoundments left over from the previous pre-law mining activity. The small permit area, encompassing 19.1 acres, consists exclusively of higher elevation contours without any areas in valleys except the extreme western edge. At this location the applicant is not going to mine within the 100-foot buffer zone of this stream (an unnamed tributary to Crooked Creek).

Non-jurisdicitional (Isolated) Waters Determination

A total of six existing water impoundments were identified on site. WI-15, WI-16, WI-17, WI-22, WI-23 and an unlabeled impoundment were found on the hillsides within the permit boundary. All of the impoundments save WI-17 were connected to each other via an existing ephemeral channel. However, the last receiving impoundment, WI-23, did not have an outlet or channel to connect it to an existing water of the United States (same scenario for the WI-17 impoundment). Therefore, although the waters may be used by migratory birds as resting areas or possible food sources, they were not jurisdictional waters of the United States.

The following table outlines the approximate sizes of each impoundment in acres:

| | |
|---|---|
| WI-15 | 0.055 |
| WI-16 | 0.041 |
| WI-17 | 0.269 |
| WI-22 | 0.197 |
| WI-23 | 0.078 |
| Unlabeled | ~0.020 |
| **Total** | **~0.66** |

Other Waters of the United States On-Site

No other waters of the United States exist on the proposed project site. Most of the drainage on-site eventually flows into an unnamed tributary to Crooked Creek. Crooked Creek flows into Stillwater Creek, a tributary of the Tuscarawas River, a Section 10 (navigable) stream.

Jim Spence
North Permits Section