



## MEMORANDUM TO DECLINE JURISDICTION FOR NWP-2007-369


**Subject:** Declination of Jurisdiction for Jurisdictional Determination NWP-2007-369

In accordance with the 2007 Memorandum, *Coordination on Jurisdictional Determinations (JDs) under Clean Water Act (CWA) Section 404 in Light of the SWANCC and Rapanos Supreme Court Decisions*, the Portland District has requested formal Headquarters approval of a proposed CWA jurisdictional assertion over Long Lake (located in Klamath Falls, Oregon), based solely on links to interstate commerce as provided under 40 CFR 230.3(s) and 33 CFR 328.3(a)(3).

EPA and Corps staff representing both program and counsel offices have reviewed available data on Long Lake, and we decline to grant approval for the assertion of and have determined that there is an insufficient basis to assert CWA jurisdiction over the site described in the Portland District JD #NWP-2007-369, dated September 4, 2007. The District indicated that the site in question includes intrastate, isolated, non-navigable waters and that the sole prospective basis for asserting jurisdiction was the actual or potential use of this area by interstate commerce, as defined in 33 CFR 328.3(a)(3). Based on a review of the information provided to Headquarters, at this time the Corps and EPA jointly concluded that the information used to support jurisdiction under 33 CFR 328.3(a)(3) is not sufficient.

Although we decline to grant the requested approval to assert jurisdiction over Long Lake, we emphasize to the District that this is a case-specific determination, and that it sets no policy or precedent with respect to any other situation, or with respect to the validity of the regulations at 328.3(a)(3). In completing its jurisdictional determination, the District should similarly advise the property owner of the case-specific nature of this determination.

  
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Russell L. Kaiser, Senior Program Manager  
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Date: Nov. 15, 2007

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