**ADMINISTRATIVE APPEAL DECISION**
**RJM ENTERPRISES, INC.**
**JURISDICTIONAL DETERMINATION**
**FILE NO. MVN-2007-02846-SQ**
**NEW ORLEANS DISTRICT**
**SEPTEMBER 22, 2009**

**Review Officer:** James B. Wiseman, Jr., U.S. Army Corps of Engineers, Mississippi Valley Division (MVD)

**Appellant/Applicant:** RJM Enterprises, Inc.

**Points of Contact:** Mr. Paul Hogan (Agent), Mr. Chris Trepagnier (Agent/Attorney)

**Authority:** Section 404 of the Clean Water Act

**Receipt of Request for Appeal:** 7 August 2008

**Approved Jurisdictional Determination Appeal Meeting and Site Visit:** 7 May 2009

**Summary of Appeal Decision:** RJM Enterprises, Inc. is appealing its jurisdictional determination (JD) by New Orleans District (MVN) for property located in St. Charles Parish, Louisiana. The Request for Appeal (RFA) challenges the significant nexus determination and asserts that a significant nexus does not exist between the tributary/adjacent wetlands and the nearest downstream traditional navigable water (TNW). The appeal is found to have merit, and the jurisdictional determination is being remanded to MVN for reevaluation and reconsideration.

**Background Information:** With cover letter dated 8 March 2007, RJM Enterprises, Inc. (RJM) submitted a wetland delineation report[1] to New Orleans District (MVN) and requested an approved jurisdictional determination for a 41.5-acre tract in Luling, St. Charles Parish, Louisiana. The report concluded that 36.1 acres of the tract met the criteria for wetlands based on standard Corps of Engineers methodology. By letter dated 3 May 2007, MVN determined that the map included with the report correctly delineated the wetlands on the tract. MVN determined that the wetlands are adjacent to a tributary which is a non-relatively permanent water. In accordance with the Rapanos

[1] Report by Conestoga-Rovers and Associates; Administrative Record (AR), p. 12-6 to 12-23.

guidance[2], MVN conducted a significant nexus analysis. MVN determined that a significant nexus exists between the tributary, the tract in question and all similarly situated lands and the tidal part of Cousins Canal, a traditional navigable water. Accordingly, MVN determined that the wetlands on the tract were jurisdictional and subject to regulation pursuant to Section 404 of the Clean Water Act (CWA).

**Information Received and its Disposal During the Appeal:**

33 C.F.R. § 331.3(a)(2) sets the authority of the Division Engineer to hear the appeal of this jurisdictional determination. However, the Division Engineer does not have authority under the appeal process to make a final decision regarding jurisdictional determinations, as that authority remains with the District Engineer. Upon appeal of the District Engineer's determination, the Division Engineer or his Review Officer (RO) conducts an independent review of the administrative record to address the reasons for appeal cited by the appellant. The administrative record is limited to information contained in the record by the date of the Notification of Administrative Appeal Options and Process (NAP) form. Pursuant to 33 C.F.R. § 331.2, no new information may be submitted on appeal. Neither the Appellant nor the District may present new information to MVD. To assist the Division Engineer in making a decision on the appeal, the RO may allow the parties to interpret, clarify, or explain issues and information already contained in the administrative record. Such interpretation, clarification, or explanation does not become part of the administrative record because the District Engineer did not consider it in making the decision on the JD. However, in accordance with 33 C.F.R. § 331.7(f), the Division Engineer may use such interpretation, clarification, or explanation in determining whether the administrative record provides an adequate and reasonable basis to support the District Engineer's decision.

1. MVN provided a copy of the administrative record (AR) to the RO and to Mr. Trepagnier. The AR is limited to information contained in the record by the date of the NAP form. In this case, that date is 9 June 2008.

[2] Grumbles, Benjamin H. and John Paul Woodley, Jr. 2007. Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States* and *Carabell v. United States.* Original guidance released June 5, 2007. Revised guidance released December 2, 2008.

2. A site visit/appeal meeting was held on 9 May 2009. The RO prepared a draft Memorandum for Record (MFR) summarizing the meeting and site visit and supplied a copy to Mr. Trepagnier and MVN on 15 May 2009 for comment. Based on comments received, a final MFR was prepared on 4 June 2009.

3. During the appeal meeting, it was discovered that there were three items in the MVN files which apparently had not been included in the AR provided to the RO and to Mr. Trepagnier. Copies of the following documents were made and distributed:

a. Letter dated 29 June 2007 from RJM (Paul Hogan) to MVN requesting the JD be revisited in light of the Rapanos guidance.

b. Aerial photo of site vicinity with drainage area identified.

c. Aerial photo of site vicinity identifying "similarly situated" wetlands.

**Jurisdictional Determination Background: Regulations, Guidance, and Court Cases**

In 1985, the U.S. Environmental Protection Agency (EPA) General Counsel signed the Migratory Bird Memo, which opined that movement of migratory birds across state boundaries could be used as a link to interstate commerce. The Corps, in preamble language to its 1986 regulations, adopted the EPA legal memo as the "Migratory Bird Rule" (MBR).[3] The MBR generally allowed the Corps to assert CWA jurisdiction over nearly all natural water bodies, including wetlands that were used or could be used as habitat by migratory birds. In 2001, the MBR was invalidated by the U.S. Supreme Court's decision in the *Solid Waste Agency of Northern Cook County (SWANCC) v. Corps,* which held that isolated, intrastate, non-navigable waters could not be regulated under the CWA based solely on the presence of migratory birds. Following the *SWANCC* decision but prior to the decision in *Rapanos* (discussed below), it was generally believed that a water body (including a wetland) was subject to CWA jurisdiction if it was part of the U.S. territorial seas, a traditional navigable water, any tributary to a traditional navigable water, or a wetland adjacent to any one of the above.

[3] The "Migratory Bird Rule" was not a rule or a part of any Corps or EPA regulation, but instead consisted of examples in a preamble published in the *Federal Register*. The preamble language was never subject to notice and comment rulemaking procedures under the Administrative Procedures Act, and was never codified in the Code of Federal regulations (CFR). Instead, it was advanced as a basis for asserting jurisdiction in a guidance memo.

In addition, isolated wetlands and other waters might be considered jurisdictional where they had the necessary link to either traditional navigable waters or interstate commerce. In 2003, EPA and the Corps provided joint guidance in Appendix A[4] of the Advanced Notice of Proposed Rulemaking on the CWA Regulatory Definition of "Waters of the United States."

In 2007, as a result of the U.S. Supreme Court Rapanos decision,[5] EPA and the Corps, in coordination with the Office of Management and Budget and the President's Council on Environmental Quality, developed a guidance memorandum (Rapan*os* guidance[6]). The Rapanos guidance requires the application of two new standards, as well as a greater level of documentation, to support an agency JD for a particular water body.

The first standard, based on the plurality opinion in the *Rapanos* decision, recognizes regulatory jurisdiction over a water body that is not a traditional navigable water if that water body is "relatively permanent" (i.e., it flows year-round, or at least "seasonally") and over wetlands adjacent to such water bodies if the wetlands directly abut the water body. In accordance with this standard, the Corps and EPA may assert jurisdiction over the following categories of water bodies: (1) traditional navigable waters, (2) all wetlands adjacent to traditional navigable waters, (3) relatively permanent non-navigable tributaries of traditional navigable waters, and (4) wetlands that directly abut relatively permanent, non-navigable tributaries of traditional navigable waters.

The second standard, for tributaries that are not relatively permanent, is based on the concurring opinion of Justice Kennedy and requires a case-by-case "significant nexus" analysis to determine whether waters and their adjacent wetlands are jurisdictional. A significant nexus may be found where a tributary, including its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and biological integrity of a traditional navigable water (TNW). Consequently, the agencies may assert jurisdiction over every water body that is not a relatively permanent water (RPW) if that water body is determined (on the basis of a fact-specific analysis) to have a significant nexus with a TNW. The classes of

[4] 68 F.R. 1995-1998.
[5] Combined cases of *Rapanos v. United States* and *Carabell v. United States.* 126 S. Ct. 2208 (2006).
[6] Grumbles, Benjamin H. and John Paul Woodley, Jr. 2007, 2008. Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States* and *Carabell v. United States.* Original guidance released June 5, 2007. Revised guidance released December 2, 2008.

water body that are subject to CWA jurisdiction, if such a significant nexus is demonstrated, are: (1) non-navigable tributaries that do not typically flow year-round or have continuous flow at least seasonally, (2) wetlands adjacent to such tributaries, and (3) wetlands that are adjacent to but that do not directly abut a relatively permanent, non-navigable tributary. Revised Rapanos guidance,[7] issued on 2 December 2008, further addressed specific issues, including traditional navigable waters, adjacency, and the determination of relatively permanently waters.

Implementation of the *Rapanos* decision requires the Corps to strive for more thoroughness and consistency in the documentation of jurisdictional determinations. To meet this requirement, the Corps now uses a standardized JD form. Instructions for completing the form are found in *U.S. Army Corps of Engineers Jurisdictional Form Instructional Guidebook* (Guidebook).[8] The Guidebook clarifies terms commonly used in the form, presents an overview on jurisdictional practices, and supplements the form instructions.

**Jurisdictional Setting for the Current Appeal:**

MVN based its decision on a finding that Peterson Canal is a non-RPW. Therefore, MVN was required to perform a significant nexus determination. Accordingly, in order to assert jurisdiction over the wetland area in question, MVN must demonstrate that a significant nexus exists between Peterson Canal and its adjacent wetlands and the nearest downstream TNW. The nearest TNW is the tidal part of Cousins Canal on the south side of the pump station. Since that section of the canal is subject to the influence of the tide, that part of the canal is navigable water of the United States[9] and thus is a TNW as defined in the Rapanos guidance.

**Basis for Appeal as Presented by Appellant**

**Appellant's Reasons for Appeal**: The appellant states that MVN failed to correctly apply post-Rapanos guidance regarding regulatory jurisdiction by not demonstrating that the area in

[7] Grumbles, Benjamin H. and John Paul Woodley, Jr. 2008. Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States* and *Carabell v. United States.* Revised guidance released December 2, 2008.
[8] The Guidebook was issued on June 1, 2007 as Regulatory National Standard Operating Procedures for conducting an approved jurisdictional determination and documenting practices to support an approved JD. Information on *Rapanos* related memorandums, guidance, forms, guidebooks, etc., may be found at www.usace.army.mil/cw/cecwo/reg/.
[9] See general definition of navigable waters at 33 C.F.R. § 329.4.

question has a significant nexus with a traditional navigable water (TNW) that is not speculative or insubstantial. In particular, the appellant asserts the following specific reasons for appeal:

**1. The statement by MVN in Section III(C)(2) of the Approved Jurisdictional Determination Form (JD Form) that the "commitment of valuable state resources and personnel to monitor water quality in Lake Catouatchie are indicative that the occurrence of discharges from the pumped and drained areas upstream affect the chemical, physical and biological integrity of Lake Catouatchie are more than insubstantial or speculative" is not conclusive. The mere existence of a water quality monitoring station proves nothing and clearly the post-Rapanos guidance requires more than the aforementioned self-serving statement.**

FINDING: This reason for appeal has merit.

DISCUSSION: The administrative record does not contain any data from the water quality monitoring station on Lake Catouatchie to support the conclusion that water quality has been impaired or that the chemical, physical, or biological integrity of the waters monitored by the station have been impacted. As noted by the appellant, the existence of the monitoring station is insufficient grounds to infer an impact to water quality from upstream discharges.

ACTION: MVN should provide data from the water quality monitoring station to support the conclusion that water quality is or is not impacted by upstream discharges and/or provide a statement from the Louisiana Department of Environmental Quality about why a water quality monitoring station is in this location. The statement that "commitment of valuable state resources and personnel to monitor water quality in Lake Catouatchie are indicative that the occurrence of discharges from the pumped and drained areas upstream affect the chemical, physical and biological integrity of Lake Catouatchie are more than insubstantial or speculative" should be removed from the significant nexus analysis unless it is supported by a fact-specific analysis.

**2. MVN failed to properly document and substantiate all of the factors required under the significant nexus evaluation. Specifically, MVN has failed to show a significant correlation between the functions of the tributary, wetlands adjacent to the tributary, and the TNW.**

FINDING: This reason for appeal has merit.

DISCUSSION: Based on the *U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook*[10] (Guidebook), a significant nexus determination must be done for non-relatively permanent waters and any wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. The significant nexus determination should include a fact-specific analysis and documentation of ecologic and hydrologic factors, among other things. The Guidebook states:

> [F]ield staff will explain the specific connections between the characteristics documented and the functions/services that affect a TNW. Specifically, an evaluation will be made of the frequency, volume, and duration of flow; proximity to a TNW; capacity to transfer nutrients and organic carbon vital to support food webs; habitat services such as providing spawning areas for important aquatic species; functions related to the maintenance of water quality such as sediment trapping; and other relevant factors.[11]

The Guidebook further states that:

> [T]he evaluation will also consider the functions performed cumulatively by any and all wetlands that are adjacent to the tributary, such as storage of flood water and runoff; pollutant trapping and filtration; improvement of water quality; support of habitat for aquatic species; and other functions that contribute to the maintenance of water quality, aquatic life, commerce, navigation, recreation, and public health in the TNW. This is particularly important where the presence or absence of a significant nexus is less apparent, such as for a tributary at the upper reaches of a watershed. Because such a tributary may not have a large volume, frequency, and duration of flow, it is important to consider how the functions supported by the wetlands, cumulatively, have more than a speculative or insubstantial effect on the chemical, physical, or biological integrity of a TNW.[12]

[10] Joint guidance issued by U.S. Army Corps of Engineers and Environmental Protection Agency on June 1, 2007.
[11] Guidebook, p. 55
[12] Guidebook, p. 55-56.

The specific factors considered by MVN for the significant nexus determination in this case are found in Section III(C) of its Approved Jurisdictional Determination Form (JD Form).[13] MVN states that the wetlands on the project site are adjacent to Peterson Canal, a non-RPW,[14] and that there is a hydrological connection between the wetlands on the project site and Peterson Canal.[15] MVN further states that Peterson Canal flows into the non-tidal part of Cousins Canal, a relatively permanent water (RPW). MVN notes that Peterson Canal and the non-tidal parts of Cousins Canal are located within a leveed system for flood control purposes and that water from Cousins Canal is pumped through a pump-station structure into an unprotected section of Cousins Canal subject to the ebb and flow of the tides.

While MVN lists a number of characteristics of the wetland and tributary,[16] the administrative record does not contain an analysis of how these factors constitute more than a speculative or insubstantial effect on the chemical, physical, and/or biological integrity of the TNW (tidal Cousins Canal).

ACTION: MVN should determine and document for the record if there is or is not a significant nexus that has more than a speculative or insubstantial effect on the chemical, physical, and/or biological integrity of the TNW. The significant nexus determination should contain a fact specific analysis of each of the functions that the wetlands and the tributary provide and should elaborate on why the nexus between the onsite wetlands and waters and the TNW is or is not significant and why it is or is not more than speculative or insubstantial. The analysis should focus on how each function performed by the onsite wetlands and the tributary affects the physical, chemical and/or biological integrity of the TNW. The administrative record should be revised accordingly to reflect this analysis.

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[13] AR, Section 10, p. 5.

[14] See Part 2 of Section III(C) of the JD Form. In that section, MVN refers to Peterson Canal as an RPW. This reference is apparently a clerical error, since Part 2 is used only for non-RPWs, and Peterson Canal is referenced as a non-RPW elsewhere on the JD Form and in the AR.

[15] On the JD Form, MVN specifically stated that "a hydrological connection between this wetland and Peterson Canal is maintained via cuts in the spoil bank along Peterson Canal." During the appeal meeting, Mr. Hogan pointed out that there were no "cuts" in the spoil bank, but that the spoil bank did contain a single culvert. MVN agreed to this correction of the record, as shown in the Memorandum for Record prepared by the Review Officer summarizing the appeal meeting (Appendix A).

[16] MVN noted the following characteristics of the tributary: (1) artificial canal, (2) 30 feet wide and 10 feet deep with vertical side slopes, (3) substrate composed of silts and muck, (4) intermittent but not seasonal flow, (5) 20 or more flow events per year, (6) average of 77 days a year with 0.1 inch of rain or more, (7) discrete confined flow controlled by a pump. MVN considered three wetland areas totaling 372 acres as the "similarly situated lands" for the significant nexus analysis.

**3. MVN failed to show how the non-relatively permanent water (non-RPW), with only intermittent flow, affects the chemical, physical and biological integrity of the TNW.**

FINDING: This reason for appeal has merit.

DISCUSSION: See above discussion.

ACTION: MVN should determine and document for the record if there is or is not a significant nexus that has more than a speculative or insubstantial effect on the chemical, physical, and/or biological integrity of the TNW. The significant nexus determination should contain a fact-specific analysis of the flow characteristics of the tributary.

**CONCLUSION:**

I find that the reasons for appeal cited by RJM Enterprises, Inc. have merit. The jurisdictional determination is remanded to New Orleans District for reconsideration and reevaluation based on comments detailed above. The final Corps decision will be the MVN District Engineer's decision made pursuant to my remand.

Michael J. Walsh
Brigadier General, U.S. Army
Division Engineer

# Appendix A
# Memorandum for Record
# Appeal Conference and Site Visit

CEMVD-PD-KM 4 Jun 09

MEMORANDUM FOR RECORD

SUBJECT: RJM Enterprises, Inc. Jurisdictional Determination Appeal Conference and Site Visit, New Orleans District (Corps File No. MVN-2007-02846-SQ), 7 May 2009

1. Appellant: RJM Enterprises, Inc.
Location of Site: Sections 24, 45 and 64, T13S-R20E, St. Charles Parish, Louisiana

2. Review Officer: James B. Wiseman, Jr., Ph.D., U.S. Army Corps of Engineers, Mississippi Valley Division (MVD)

3. Participants:

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|---|---|
| Mr. Ray Matherne | RJM Enterprises, Inc. (RJM) |
| Mr. Ron Matherne | RJM |
| Mr. Paul Hogan | RJM |
| Mr. Chris Trepagnier | Agent/Attorney for RJM |
| Mr. Rob Heffner | New Orleans District (MVN) |
| Mr. William Nethery | MVN |
| Dr. Wiseman | Administrative Appeals Review Officer (RO) |

4. Conference Summary:

The RO met representatives from RJM and MVN at RJM offices in Paradis, LA, on 7 May 2009. The meeting began at approximately 9:30am. The RO made introductory remarks explaining the role of the RO and the reason for the meeting and site visit. The RO asked if any other attendees would like to make an opening statement, but all declined.

The RO then asked for clarification of some of the contents of the administrative record (AR) and for explanation of other jurisdictional issues, in particular:

(a) Tidal nature of Cousins Canal – The original approved JD was dated 3 May 2007. In the JD Form included with the letter, MVN stated that "[w]etlands on the property are adjacent to tributaries of Peterson Canal (onsite), part of a tributary system of Cousins Canal, a tidal water." By letter dated 9 May 2007, Mr. Hogan disagreed, stating that the "property, nor Peterson Canal, nor a portion of Cousin's Canal is tidally influenced." Subsequently, by letter dated 29 June 2007, Mr. Hogan requested a reexamination of the JD in light of the Rapanos guidance. In their response dated 9 June 2008, MVN reaffirmed their original determination but did not address the tidal issue. During the appeal meeting, Mr. Nethery stated that he called Mr. Hogan to explain the MVN position on tidal influence in the area, but Mr. Hogan did not recall the conversation. However, Mr. Nethery stated that MVN considered only that part of Cousins Canal on the downstream side of the pumping station to be tidal, and Mr. Hogan agreed.

(b) Site visits made for the JD – The RO noted that Part I.D. of the JD Form indicated that this was an office evaluation, yet some of the data in the form could have only been gathered during an actual site visit. Mr. Nethery stated that the field data came from the

Conestoga-Rovers (consultant) data sheets and from a brief site visit that he made on 1 May 2007. His site visit was noted on the "pink sheet" (AR 12, p. 5 of 23), but that he had mistakenly not included that date on the JD Form.

(c) HUC Code – The RO noted that the HUC code was missing on the JD Form. By e-mail dated 18 May 2009, Mr. Nethery furnished the code: 8090301 (East Central Louisiana Coastal).

(d) Drainage area – The RO asked if this drainage area was part of a drainage district, and Mr. Hogan said that it was not. Mr. Hogan noted that the JD Form was incorrect to say there were "gaps in spoil pile" between the project site and Peterson Canal, and that the hydrological connection was actually through a single culvert in the levee.

(e) References in JD Form – The RO asked for an explanation of why MVN chose to include the particular references cited on page eight of the JD Form (AR 10, back of p.6 of 11). MVN stated that the first six were general references, that the Bayou Chauvin Louisiana DEQ reference was for a similar kind of area (under pump), and that the personal communication concerned water quality monitoring in Lake Catouatchie. The RO pointed out that Bayou Chauvin is south of Houma and a considerable distance away from the site in question. Mr. Trepagnier noted that Cousins Canal, not Lake Catouatchie, was the receiving TNW for the significant nexus evaluation, and that there were many other sources of flow for Lake Catouatchie other than Cousins Canal. MVN explained that the monitoring station in Lake Catouatchie would detect pollutants entering the lake via Cousin's Canal (based on communication with DEQ personnel) and that any pollution detected by the monitoring station in Lake Catouatchie could be traced and isolated back to the stormwater pump system or other actual individual source (hazardous waste generator, wastewater treatment plant, etc.). MVN also clarified that their intent of mentioning the monitoring station was not that DEQ placed it there specifically to detect pollutants from the project site, but that the associated stormwater pump on Cousin's Canal (and areas drained by the pump) are within the target source area being monitored.

(f) Other JD Form questions – Mr. Trepagnier questioned several of the entries on the data sheets, including the lack of documentation regarding number of flow events, duration and volume of same. In response, Mr. Nethery stated that he had not determined flow events, duration and volume, but had estimated the number of rain events. Mr. Trepagnier also questioned whether or not an ordinary high water mark (OHWM) would exist without the pump, and whether the non-RPW and adjacent wetlands served as a nursery ground for any species in the TNW. Mr. Nethery responded that the wetlands and water were not a nursery ground. In addition, Mr. Trepagnier noted that but for the pump, any pollutants present would not enter the TNW. Mr. Heffner noted that it was the normal circumstance for the pump to operate. The RO asked if there were any field notes to support the five field indicators of an OHWM, since they differed from the consultant data sheets. Mr. Nethery stated that he filled out the form upon his return to the office based on his memory of his own site visit, and that there were no field notes.

(g) Significant nexus - Mr. Trepagnier asked whether a significant nexus would exist without the pump, and rhetorically asked how many times the pump had to operate to create a nexus? Five times? Ten times? Mr. Trepagnier stated that he believed this was all a matter of degree. Mr. Heffner then stated that MVN had taken a conservative ("worst case scenario") approach by calling Peterson Canal a non-RPW, when a case could have been made that much of the area was adjacent to a tidal water and a significant nexus evaluation would therefore not have been required.

(h) Length of canals – The RO asked for clarification on the disparate number on the JD Form regarding the length of the canals relative to jurisdiction and the relative reach. Mr. Nethery confirmed that the jurisdictional area was 2800 feet and the a relative reach was 8100 feet in length.

During the meeting, it was discovered that there were three items in the MVN files which apparently had not been included in the AR provided to the RO and to Mr. Trepagnier. Copies of the following documents were made and distributed:

(a) Letter dated 29 June 2007 from RJM (Paul Hogan) to MVN requested the JD be revisited in light of the Rapanos guidance. Upon subsequent reexamination of the AR, the RO found a copy of this letter.

(b) Aerial photo of site vicinity with drainage area identified.

(c) Aerial photo of site vicinity identifying "similarly situated" wetlands.

5. Field visit – After the appeal conference, the participants (except Mr. Ray Matherne) drove to the project area to observe the site and vicinity. Stops were made to observe Peterson Canal just north of the project site, on the west side of the site about midway between the northern and southern boundaries, and along Peterson Canal south of the site at a pipeline crossing. The participants then drove along Peterson Canal to a point where it turns west towards Cousins Canal and then stopped to observe the point where the canal flows into Cousins Canal just north of the pumping station. We then walked to the other side of the pumping station and observed an approximate 4-4.5 foot difference in water elevation on the protected side of the pump versus the unprotected, downstream side. The site visit ended at approximately 11:30 am.

6. On 15 May 09, a draft version of this MFR was forwarded to Mr. Trepagnier and to MVN for review and comment. A response was received from Mr. Trepagnier on 20 May 09 and from MVN on 1 Jun 09. The MFR was revised to include their comments and clarifications.

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James B. Wiseman, Jr., Ph.D.
Administrative Appeals Review Officer