

**ADMINISTRATIVE APPEAL DECISION  
CLEAN WATER ACT  
DOMINGUE - FILE NO. MVN-2014-01319  
NEW ORLEANS DISTRICT**

22 OCT '14

**Review Officer (RO):** Ms. Mary J. Hoffman, U.S. Army Corps of Engineers, Northwestern Division, Portland, Oregon

**Appellant:** Ms. Stacey Domingue

**Permit Authority:** Section 10 of the Rivers and Harbors Act; and Section 404 of the Clean Water Act (33 USC 1344 et seq.)

**Receipt of Request for Appeal:** July 24, 2014

**Site Visit/Appeal Meeting:** September 9, 2014

**Summary:** The Appellant is challenging an approved jurisdictional determination (AJD) completed by the New Orleans District (District) which concluded that the U.S. Army Corps of Engineers (Corps) has Clean Water Act (CWA) jurisdiction over wetlands located on a 1.77 acre tract at 103 Rene Street, Madisonville, St. Tammany Parish, Louisiana 70447. The appellant challenges the AJD on the basis that the District incorrectly applied the Corps' wetland delineation procedures to verify normal circumstances, the presence and duration of hydrology sufficient to meet wetland criteria, and the predominance of wetland vegetation sufficient to meet wetland criteria on this tract of land.

For reasons detailed in this document, the appellant's reason for appeal is found not to have merit. The final Corps decision on jurisdiction in this case will be made by the New Orleans District Engineer.

**Background Information:** The Appellant, Ms. Stacey Domingue, submitted a request to the District for a wetland determination (through an agent, Mr. Karl Cavaretta, Latter and Blum, Inc.) for the subject property on May 2, 2014.

The District conducted a site visit on May 29, 2014, and determined conditions at the site met wetland criteria in accordance with the Corps 1987 Wetland Delineation Manual, in combination with the Atlantic and Gulf Coastal Plain Regional

Supplement. The Corps notified the Appellant, in a letter dated May 30, 2014, that the 1.05 acres of wetlands found on the subject property was determined to be waters of the United States under jurisdiction of Section 10 of the Rivers and Harbors Act (RHA) and Section 404 of the Clean Water Act (CWA).

The Appellant submitted a complete Request for Appeal (RFA), dated July 21, 2014, which was received by the Mississippi Valley Division office on July 24, 2014. The Appellant was informed by letter dated July 31, 2014, that the reason presented in the RFA was accepted under this appeal.

**Information Received and its Disposition During the Appeal Review:**

The administrative record (AR) is limited to information contained in the record as of the date of the Notification of Administrative Appeal Options and Process form. Pursuant to 33 CFR § 331.2, no new information may be submitted on appeal. 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 AR. Such interpretation, clarification, or explanation does not become part of the AR, because the District Engineer did not consider it in making the decision on the AJD. However, in accordance with 33 CFR § 331.7(f), the Division Engineer may use such interpretation, clarification, or explanation in determining whether the AR provides an adequate and reasonable basis to support the District Engineer's decision. The information received during this appeal review and its disposition is as follows:

1. The District provided a copy of the AR to the RO and the Appellant on August 5, 2014. The AR is limited to information contained in the record prior to May 30, 2014, which is the date of District's JD decision.
2. As provided for in the Corps' Appeal Program regulations,<sup>1</sup> the RO held a site visit and informal appeal meeting on September 9, 2014. During the site visit, the Appellant and the District provided an overview of the aquatic features. The Appellant was provided an opportunity to discuss and clarify the reason for appeal as indicated in the RFA, and the District

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<sup>1</sup> 33 CFR 331.7(c)

discussed the procedure followed in analyzing the site, and the decision reached.

**APPEAL EVALUATION, FINDINGS, AND INSTRUCTIONS TO THE  
NEW ORLEANS DISTRICT ENGINEER**

**Appellant's Reason for Appeal:** The Appellant alleges that the District did not correctly apply the Corps' wetland delineation procedures to verify normal circumstances, the presence and duration of hydrology sufficient to meet wetland criteria, and the predominance of wetland vegetation sufficient to meet wetland criteria on the subject property.

**Finding:** This reason for appeal does not have merit.

**Action:** No further action.

**Discussion:** The Appellant believes that heavy rainfall, which occurred the day before the District's field site visit, created an abnormally wet condition on the property on the day the District completed their wetland determination. Also, since 2008, the yard has become overgrown with invasive plants (carried in by storms).

According to the Corps' JD Guidebook,<sup>2</sup> documentation is required to support a wetland determination. Wetlands will meet all three parameters of hydrology, hydrophytic vegetation, and hydric soils, as required by the agency regulations, and described in the Corps of Engineers Wetlands Delineation Manual<sup>3</sup> and/or appropriate Regional Supplement.

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<sup>2</sup> *Jurisdictional Determination Form Instructional Guidebook*. U.S. Army Corps of Engineers and Environmental Protection Agency, May 30, 2007. This *JD Guidebook* is intended to be used as the U.S. Army Corps of Engineers Regulatory National Standard Operating Procedures for conducting an approved jurisdictional determination (JD) and documenting practices to support an approved JD.

<sup>3</sup> *Corps of Engineers Wetlands Delineation Manual*, Wetlands Research Program Technical Report Y-87-1(1987 Manual); the 1987 Manual is the current Federal delineation manual used in the Clean Water Act Section 404 regulatory program for the identification and delineation of wetlands (used to determine federal wetland criteria). Except where noted in the manual, the approach requires positive evidence of hydrophytic vegetation, hydric soils, and wetland hydrology for a determination that an area is a wetland. The 1987 Manual describes procedures to be used when delineating wetlands in "atypical situations," where the subject areas have been purposely or incidentally created by human activities, but in which wetland indicators of one or more parameters are absent.

The Corps and the Environmental Protection Agency<sup>4</sup> jointly define wetlands as:

Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

The District evaluated the subject property using maps (U.S. Geologic Survey, National Wetland Inventory), aerial photography (spanning multiple years, 1998-2012), the U.S. Department of Agriculture, Natural Resources Conservation Service soil surveys for the St. Tammany Parish, and conducted an on-site evaluation on May 29, 2014. Explicit in the definition of a wetland is the consideration of three environmental parameters: hydrology, soil, and vegetation. The District found that climatic and hydrologic conditions on the site were typical for this time of year, and that normal circumstances were present. The District recorded positive wetland indicators of *all three* parameters (and did not rely solely on the presence of water on the site) on its *Wetland Determination Data Forms-Atlantic and Gulf Coastal Plain Region*.<sup>5</sup>

During the Appeal site visit and informal meeting, the District clarified the process used to evaluate and reach the determination for wetlands found on the subject site. The District used criteria stipulated in the Atlantic and Gulf Coastal Plain Regional Supplement and 1987 Wetland Delineation Manual to evaluate wetland hydrology, hydrophytic vegetation, and hydric soils. The District determined that 1.05 acres of tidal wetlands on the subject property are jurisdictional waters of the United States. The tidal wetlands are adjacent to the Bayou de Zaire, a traditionally navigable water subject to tidal ebb and flow.

The District supports its determination, following current regulations and guidance, that the subject wetlands meet federal criteria, and are subject to jurisdictional under Section 10 of the RHA and Section 404 of the CWA. As a result, this reason for appeal is without merit.

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<sup>4</sup> Federal Register 1980 and 1982

<sup>5</sup> AR, pages 17-22

**Conclusion:** After reviewing and evaluating the RFA, the District's AR, and recommendation of the RO, I have determined that the District's conclusion regarding the wetland determination was reasonable, supported by the AR, and does not conflict with laws, regulations, executive orders, or officially promulgated policies of the Corps Regulatory Program. The final Corps jurisdictional determination will be made by the New Orleans District Engineer.



Michael C. Wehr  
Major General, U.S. Army  
Division Commander