ADMINISTRATIVE APPEAL DECISION

FILE NO. 200102999 (JF-ML)

JACKSONVILLE DISTRICT

Review Officer: Arthur L. Middleton, U.S. Army Corps of Engineers (USACE), South Atlantic Division, Atlanta, Georgia.

Appellant Representative: Enrique Calderon and Eva Garnier Calderon, represented by Gilberto Acevedo

Receipt of Request for Appeal (RFA): March 14, 2003

Appeal Conference Date: June 24, 2003 **Site Visit Date:** June 24, 2003

Background Information: By undated letter, received by the USACE Jacksonville District, Antilles Regulatory Section on May 22, 2001, Mr. Gilberto Acevedo requested a revision to the jurisdictional determination for wetlands on the 14-acre site located at PR-2, Km. 149.3, Sabaneta Ward, Mayaguez, Puerto Rico. The request for revision was accompanied by a report titled "REPORT FOR A JURISDICTIONAL DETERMINATION SABANETAS WARD MAYAGUEZ, PUERTO RICO" (the report). The report indicates that the data used to revise the existing wetland delineation was collected between March 27, 2001 and April 2, 2001. Upon review of the report by USACE personnel, it was determined that the report's conclusions and data sheets provided were inconsistent, and therefore needed to be verified on-site. A site inspection was performed by USACE, NRCS, and USFWS personnel, on October 16, 2001. The site inspection revealed that the dominant vegetation was *Paspalum fasciculatum* (Venezuela grass) and the subject area was mostly inundated with surface water. Soil borings were performed near several of the data points identified in the report. These soil borings produced hydric soil indicators such as saturation (water table) within the upper 12 inches of the surface, low chroma soil colors, inundation, and positive testing with α, α'-dipydridyl.

Summary of Decision: I find that the appeal does not have merit. I find that the District evaluated and documented their approved jurisdictional determination dated January 17, 2003, according to applicable laws, regulations and policy guidance.

Appeal Evaluation, Findings and Instructions to the Jacksonville District Engineer (DE):

Reason(s) for the appeal as presented by the appellant:

Reason 1: "The dominant vegetation is Venezola Grass (Paspalum Fasciculatum) w[h]ich occupied 90-95% and some experts considered this plant should no[t] be considered hydrophitic vegetation."

Finding: This reason for appeal does not have merit.

Action: No action required.

Discussion: In the report enclosed with and in support of the appeal of the approved jurisdictional determination the appellant's representative stated: "this farm were dedicated to the growth of sugarcane and at present the time is dedicated to pasture production. While some cattle head are still present, the agricultural practices have for all practical purpose been recently abandoned." This would also explain the dominance of Venezuela Grass in the plant community. However, this plant species is listed in the "List of Plant Species That Occur in Wetlands" 1996 revision as being FACW in the Caribbean Region and FACW in the National Indicator Range. According to the 1987 Corps of Engineers Wetlands Delineation Manual, if more than 50% of the dominant species are OBL, FACW, or FAC, the vegetative criteria is met.

Reason 2: "The Coloso soil is the major soil of the study area and is not classified as hydric. The Coloso soil as indicated on the J.D. report has bright colors (10YR 3/4, 4/3, 4/4 and 4/6), lack black colors on the surface due to organic matter accumulation, lack gley horizon near the surface and the water table is deeper than 40 inches."

Finding: This reason for appeal does not have merit.

Action: No action required.

Discussion: In a letter, dated October 30, 2001, from the NRCS to the USACE, Mr. Juan A. Martinez states: "The soil in the area was mapped as Coloso silty clay loam (Cn) in the "Soil Survey of Mayaguez Area of Western Puerto Rico". The main component of this soil, is not considered hydric but contains inclusions associated with landform depressions." The referenced inclusions are of note here.

As stated in the 1987 Corps Wetlands Delineation Manual: "Although all soil-forming factors (climate, parent material, relief, organisms, and time) affect the characteristics of a hydric soil, the overriding influence is the hydrologic regime. The unique characteristics of hydric soils result from the influence of periodic or permanent inundation or soil saturation for sufficient duration to effect anaerobic conditions. Prolonged anaerobic soil conditions lead to a reducing environment, thereby lowering the soil redox potential. This results in chemical reduction of some soil components (e.g., iron and manganese oxides), which leads to development of soil colors and other physical characteristics that usually are indicative of hydric soils."

According to a letter, dated January 29, 2002, the site visit of October 16, 2001, revealed that the subject site was mostly ponded (inundated) and that the soil borings that were performed showed a water table within the top 5-inches of the soil surface. The soils from the borings also reacted positive to α, α'-dipydridyl.

Soils saturated for long or very long duration will usually exhibit reducing conditions. Under such conditions, ions of iron are transformed from a ferric valence state to a ferrous valence state. This condition can often be detected in the field by a ferrous iron test. When a soil extract

changes to a pink color upon addition of α, α'-dipydridyl, ferrous iron is present, which indicates a reducing soil environment.

Reason 3: "The presence of bright colors indicates that the hydrology has not impacted the soil characteristics to meet the hydric soil criteria."

Finding: This reason for appeal does not have merit.

Action: No action required.

Discussion: In the report in support of the revision to the approved jurisdictional determination the appellant's representative stated: "this farm were dedicated to the growth of sugarcane and at present the time is dedicated to pasture production. While some cattle head are still present, the agricultural practices have for all practical purpose been recently abandoned." The fact that this site had been in row crop (sugarcane) production in the recent past would account for the soil displaying atypical characteristics. As stated in the 1987 Corps Wetlands Delineation Manual: "Although all soil-forming factors (climate, parent material, relief, organisms, and time) affect the characteristics of a hydric soil, the overriding influence is the hydrologic regime. The unique characteristics of hydric soils result from the influence of periodic or permanent inundation or soil saturation for sufficient duration to effect anaerobic conditions. Prolonged anaerobic soil conditions lead to a reducing environment, thereby lowering the soil redox potential. This results in chemical reduction of some soil components (e.g., iron and manganese oxides), which leads to development of soil colors and other physical characteristics that usually are indicative of hydric soils."

Additionally, the 1987 Corps Wetlands Delineation Manual states: "In some cases, it is not necessary to characterize the soils. Examine the vegetation on DATA FORM 1. Hydric soils can be assumed to be present when:

(a) All dominant plant species have an indicator status of OBL.

(b) All dominant plant species have an indicator status of OBL and/or FACW (at least one dominant species must be OBL)."

The indicator status of the dominant plants on all of the DATA FORMS provided by the appellant's representative are FACW and OBL.

According to a letter, dated January 29, 2002, the site visit of October 16, 2001, revealed that the subject site was mostly ponded (inundated) and that the soil borings that were performed showed a water table within the top 5-inches of the soil surface. The soils from the borings also reacted positive to α, α'-dipydridyl.

Soils saturated for long or very long duration will usually exhibit reducing conditions. Under such conditions, ions of iron are transformed from a ferric valence state to a ferrous valence state. This condition can often be detected in the field by a ferrous iron test. When a soil extract

changes to a pink color upon addition of α, α'-dipydridyl, ferrous iron is present, which indicates a reducing soil environment.

Reason 4: "Climatological data near the area for more than 35 years indicates that in the month of October the average rainfall is 8.89 inches. ACOE performed the evaluation on October 16 of the year 2001. Climatological data obtained during that week (Oct. 11-16, 2001) indicated that the rainfall was 6.19, which is 69% of the total average rainfall for the month of October. The field evaluation was no[t] schedule[d] at the correct time of the year and the hydrology data obtained is erratic"

Finding: This reason for appeal does not have merit.

Action: No Action required.

Discussion: The rainfall data provided in the Request for Appeal and found in the Administrative Record indicated that October in not the rainiest month of the year for this location. There are 5 additional months that produce an average rainfall in excess of 7.5 inches. Any of these could produce precipitation sufficient to cause ponding/flooding of this site. What is remarkable is that the date collected for the revision to the jurisdictional determination for the wetlands was collected primarily in March, which is the 4th driest month of the year in this region.

Information Received and it's Disposition During the Appeal Review:

1) The Jacksonville District furnished a copy of the Administrative Record for the subject request.

2) The applicant provided a copy of Mr. Gilberto Acevedo's report titled "REPORT FOR A JURISDICTIONAL DETERMINATION SABANETAS WARD MAYAGUEZ, PUERTO RICO", January 29, 2001, letter from USACE, July 12, 2002, letter from Gilberto Acevedo, and the January 17, 2003 report form USACE that includes the NRCS evaluation.

Conclusion: After reviewing and evaluating the administrative record provided by the Jacksonville District, I conclude that the District's decision that the wetland in question is of the configuration and dimension depicted on the enclosures to the January 17, 2003 letter is not arbitrary, capricious or an abuse of discretion, was not plainly contrary to applicable law or policy, and was supported by substantial evidence in the administrative record. Accordingly, I conclude that this Request for Appeal does not have merit. This concludes the Administrative Appeal Process.

15 March 2005
(Date)

for Benjamin S. Butler, COL
Michael J. Walsh
Brigadier General, US Army
Commanding