



## MEMORANDUM TO ASSERT JURISDICTION FOR POA-2000-1109

**Subject:** Assertion of jurisdiction for Jurisdictional Determination (JD) POA-2000-1109

### Summary

The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers are asserting jurisdiction over 80 acres of wetlands for JD # POA-2000-1109. This JD is based on our finding that the wetlands are adjacent to a traditional navigable water (TNW).

This determination is consistent with the Clean Water Act (CWA), the agencies' regulations (including 33 C.F.R. Parts 328.3 and 329), relevant case law, and existing guidance, including the *JD Form Instructional Guidebook<sup>1</sup> and Appendix D Regarding Waters that Qualify as Waters of the US Under Section (a)(1) of the Agencies' Regulations ("Appendix D")*.

### I. Location

This JD involves 80 acres of wetlands located near the city of Wasilla within the Core Planning Area of Matanuska-Susitna ("Mat-Su") Borough of southcentral Alaska, approximately 46 miles north of Anchorage. The site is located near 61.62° N latitude and 149.43° W longitude. The subject wetlands are located near the headwaters of Vine Creek (a perennial stream) in the upper portion of the Big Lake watershed. The wetlands are part of a wetland system that abuts and extends west from an 8-acre lake ("Little Memory Lake,"<sup>2</sup>), and is bisected by Vine Creek. The Mat-Su Borough is the fastest growing region of the state, with commercial development occurring at a rapid pace. The subject wetlands are located in an area containing some of the highest development densities within the Mat-Su Borough.

### II. Jurisdictional Determination

The 80 acres of wetlands for JD # POA-2000-1109 are jurisdictional because they are adjacent to Little Memory Lake, a TNW.

---

<sup>1</sup>U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook (June 5, 2007).

<sup>2</sup>"Little Memory Lake" is an unnamed lake that, for purposes of this JD, we have identified as "Little Memory Lake." Little Memory Lake is located approximately one-half mile south of Memory Lake, and the subject wetlands are to the west of Little Memory Lake.

### III. Basis for Determination<sup>3</sup>

#### A. TNW Determination

The agencies have determined that Little Memory Lake is the closest TNW for purposes of this JD. Collectively, the factors described below demonstrate that Little Memory Lake is navigable-in-fact, resulting in its designation as a TNW for purposes of CWA jurisdictional determinations.

As stated in *Appendix D*: “when determining whether a water body qualifies as a “traditional navigable water” (i.e., an (a)(1) water), relevant considerations include whether a Corps district has determined that the water body is a navigable water of the United States pursuant to 33 CFR 329.14, or the water body qualifies as a navigable water of the United States under any of the tests set forth in 33 CFR 329, or a federal court has determined that the water body is navigable-in-fact under federal law for any purpose, or the water body is “navigable-in-fact” under the standards that have been used by the federal courts.”<sup>4</sup>

To determine whether Little Memory Lake is a TNW, the agencies conducted a case-specific analysis to evaluate whether it is navigable-in-fact. The agencies have determined that Little Memory Lake is a TNW due to several factors:

- There is documented use of Little Memory Lake for navigation. Staff from the Alaska Department of Environmental Conservation has documented the recreational use of small craft (canoes) on the Lake.
- The physical characteristics also support a determination that the Lake is capable of navigation. Little Memory Lake is an 8-acre permanent lake. It is estimated that the lake is 16 feet in depth.<sup>5</sup>
- Little Memory Lake is accessible to the public. Little Memory Lake is located within platted open space, tract 2-B of the Memory Lake subdivision, a large subdivision containing four common tracts and 283 lots, both developed and undeveloped. Tract 2-B is part of a larger network of open space and trails, connecting tract 2-B to tracts 1-A, 1-B, 1-C, and 2-A. Tract 2-B has six platted public access points that allow the public to access the area via trails, which pass through the platted access points. Parking is available along the road shoulders and in cul-de-sacs.
- Little Memory Lake is located near conduits of interstate travel. Tract 2b abuts a public road approximately 4 miles from the George Parks Highway, which is Alaska’s primary north-south route. The Highway connects Anchorage, Alaska’s largest city, to Denali National Park and Fairbanks, the second-largest city in Alaska.

---

<sup>3</sup> The evidence included in this memorandum is a summary of the evidence considered by the agencies in reaching this conclusion. Additional information regarding the determination is contained in the administrative record for this action.

<sup>4</sup>Section 10 waters under the Rivers and Harbors Act of 1899 are only a subset of TNWs. As noted in Appendix D, traditional navigable, or “(a)(1) waters,” include, but are not limited to “navigable waters of the United States,” or Section 10 waters.

<sup>5</sup>This estimate is based on the depths of similar lakes in the area.

- There are waterbody-based attractions on multiple similar nearby waterbodies that are likely to attract out-of-state travelers for recreational commercial navigation.
  - Little Memory Lake is located in a part of the Mat-Su Borough identified by the Mat-Su Convention and Visitors Bureau as “Lake Country,” where access to the water and waterborne recreation is a major attraction.<sup>6</sup> The Mat-Su Borough is the fastest growing region of the state, and among the fastest growing in the country. As such, commercial development is occurring at a rapid pace, and the Wasilla area is at the heart of it. The extensive commercial development associated with recreational use of Big Lake, approximately 15 miles to the southwest, is a prime example. Interstate and foreign tourism is a substantial and growing segment of the economy of the Mat-Su Borough.
  - Numerous bed and breakfasts (B&Bs), hotels, lodges, rental cabins, and vacations homes in the local area advertise their waterfront location or lake access to attract visitors. The Convention and Visitors Bureau website yields links to fifteen establishments in the local area with advertising that emphasizes their waterfront location,<sup>7</sup> some of which have lakes that are smaller than Little Memory.<sup>8</sup> Many of these establishments also provide or rent boats for the use of their customers.
  - There are also commercial operators and guides that take their clients to lakes in the Mat-Su Borough with public access.<sup>9</sup>
- Little Memory Lake has the potential to support future commercial navigation. Little Memory Lake is located within a platted subdivision containing both developed and undeveloped lots. The undeveloped lots in the Little Memory Lake subdivision are available for commercial development, and are susceptible to hotel and/or B&B development. Based on other B&Bs, hotels, lodges, etc., in the area, it is common that these facilities provide recreational boat rentals for their customers (see above). Based on the above considerations, it is reasonable to expect future development to support commercial navigation on Little Memory Lake.

A combination of the factors above demonstrate Little Memory Lake supports actual navigation and is susceptible to being used for commercial navigation, demonstrating that Little Memory Lake is navigable-in-fact, resulting in its designation as a TNW for

---

<sup>6</sup> The official slogan of the Mat-Su Convention and Visitors Bureau states that the “Mat-Su is where Alaska comes to play.”

<sup>7</sup> See [www.alaskavisit.com/index.cfm](http://www.alaskavisit.com/index.cfm). For example, the Best Western Lake Lucille Inn, three and one-half miles from Little Memory Lake, provides sailboats; and the Gatehouse Bed & Breakfast, over two miles away on Wasilla Lake, provides a canoe.

<sup>8</sup> Country Pleasures Bed and Breakfast ([www.countrypleasuresbedandbreakfast.com](http://www.countrypleasuresbedandbreakfast.com)), located on Zak Lake (4 miles from Little Memory Lake) advertises the lake as a prominent attraction. Zak Lake is approximately 1 acre smaller than Little Memory Lake. Similar to Little Memory Lake, Zak Lake is located in a common tract that provides public access. Alaskan Host Bed and Breakfast ([www.alaskanhost.com/index.htm](http://www.alaskanhost.com/index.htm)) is another example of an establishment that advertises recreational navigation on its private lake (provides canoes and kayaks), and is smaller than Little Memory Lake (approximately 6 acres). It is located in Willow, Alaska, approximately 22 miles northwest of Little Memory Lake.

<sup>9</sup> Float Experience is a guide service in Anchorage that leads expeditions to lakes to fly fish for rainbow trout from float tubes trips, including lakes in the Mat-Su.

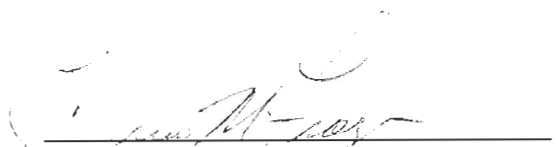
purposes of CWA jurisdictional determinations.

**B. Wetlands Adjacent to a TNW**

The Rapanos guidance states the agencies will continue to assert jurisdiction over wetlands that are “adjacent” to TNWs as defined in the agencies’ regulations. Under EPA and Corps regulations, a wetland is “adjacent” when it is “bordering, contiguous or neighboring” another water of the U.S.<sup>10</sup> The 80 acres of wetlands subject to the JD are part of a larger sedge-dominated kettle wetland system that is contiguous with Little Memory Lake, and forms the lake’s western, eastern, and part of its northern banks. The subject wetlands include both the lake’s outlet stream and Vine Creek, which flows through the wetlands. Since we have determined that Little Memory Lake is a TNW, the wetlands are considered adjacent to a TNW.

**IV. Conclusion**

The 80 acres of wetlands for JD # POA-2000-1109 are jurisdictional because they are adjacent to Little Memory Lake, a TNW. Little Memory Lake is a TNW because it is navigable-in-fact, supported by a combination of factors that demonstrate actual navigation and susceptibility to being used for commercial navigation.



Brian Frazer, Chief  
Wetlands & Aquatic Resources Regulatory Branch  
U.S. Environmental Protection Agency

Date: 1/28/08



Russell L. Kaiser, Senior Program Manager  
Regulatory Community of Practice  
U.S. Army Corps of Engineers

Date: 28 Jun 08

<sup>10</sup> 33 C.F.R. 328.3(a)(7).