



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NORTH DAKOTA REGULATORY OFFICE  
1513 SOUTH 12<sup>TH</sup> STREET  
BISMARCK ND 58504-6640  
October 13, 2010

[NWO-2010-1961-BIS]

EXHIBIT NO. Appendix 11

Mr. Michael Cook  
SWCA Environmental Consultants  
116 N. 4<sup>th</sup> Street, Suite 200  
Bismarck, ND 58501

Dear Mr. Cook:

We have reviewed your request for Department of the Army (DA) jurisdictional determination on the proposed Garden Creek Gas Plant. This proposed development includes an approximate 80-acre parcel of land located in the SE $\frac{1}{4}$  of Section 35, Township 151 North, Range 98 West, McKenzie County, North Dakota.

Based on the information that you provided, we have determined that the defined project area does not include any jurisdictional waters of the United States. Therefore, the proposed subdivision development that you described in your August 27<sup>th</sup>, 2010 email is not subject to DA regulatory authorities and no permit pursuant to Section 404 of the Clean Water Act is required from the Corps of Engineers.

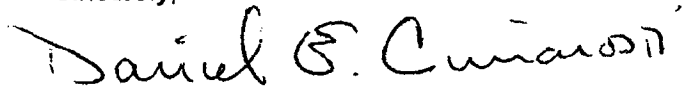
An approved jurisdictional determination (JD) has been completed for this project. The JD is enclosed for your information. It may also be viewed at our website at: <https://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>. The JD will be available on the website within 30 days. You may also request copies of the supporting materials the Corps used in determining this jurisdiction. If you are not in agreement with the JD, you may request an administrative appeal under Corps of Engineers regulations found at 33 C.F.R. 331. The Notification of Administrative Appeal Options and Process and Request for Appeal (NAO-RFA) are attached. The request for appeal must be received within 60 days from the date of this correspondence. If you would like more information on the jurisdictional appeal process, contact this office. It is not necessary to submit a Request for Appeal if you do not object to the JD. The JD will be valid for a period of 5 years from the date of this letter.

This determination has been conducted to identify the limits of the Corps of Engineers Clean Water Act jurisdiction for the particular site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenants are USDA program participants, or anticipate participation in the USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

Although a DA permit is not required for this project, this does not eliminate the requirement that you obtain any other applicable Federal, State, Tribal or local permits as required.

Should you have any questions regarding this determination, please do not hesitate to contact Jason Renschler of this office at telephone number (701)-255-0015 or at the letterhead address and reference project number NWO-2010-1961-BIS.

Sincerely,

A handwritten signature in cursive script that reads "Daniel E. Cimarosti".

Daniel E. Cimarosti  
Regulatory Program Manager  
North Dakota

Enclosures

APPROVED JURISDICTIONAL DETERMINATION FORM  
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 13 October 2010

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Omaha District; SWCA / Gardea Creek; NWO-2010-01961-BIS.

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: North Dakota. County/parish/borough: McKenzie County. City: Watford City.

Center coordinates of site (lat/long in degree decimal format): Lat. 47.8485 Long. -103.1836

Name of nearest waterbody: Cherry Creek / Little Missouri River.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None.

Name of watershed or Hydrologic Unit Code (HUC): Lower Little Missouri - 10110205.

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: October 13, 2010.

Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters:      linear feet:      width (ft) and/or      acres.

Wetlands:

**c. Limits (boundaries) of jurisdiction based on: Pick List**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **This is a isolated wetland identified within the project area. Wetland identified is not jurisdictional.. It is not used for recreation or industrial purposes. There is no nexus to interstate commerce. The wetland is located approximately 20 miles from the Little Missouri River. There is no hydrological connection between the wetlands and the Little Missouri River.**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

