

ADMINISTRATIVE APPEAL DECISION

WILDA TAYLOR

FILE NUMBER SAW-2009-909

WILMINGTON DISTRICT

2 AUGUST 2012

Review Officer: Thomas J. Cavanaugh, U.S. Army Corps of Engineers (Corps), South Pacific Division, San Francisco, California

Appellant: Wilda Taylor

Receipt of Request for Appeal: 9 September 2011

Acceptance of Request for Appeal: 27 September 2011

Appeal Meeting and Site Visit: 14 December 14 2011

Authority: Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344)

SUMMARY OF DECISION

Appellant's request for appeal (RFA) does not have merit. The administrative record (AR) substantiates the Wilmington District's (District) determination that the subject property contains waters of the United States (WOUS), as required by the *U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook* (6/1/2007) ("JD Guidebook"), and the EPA/Army Memorandum, *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* (2 December 2008) ("Rapanos Memorandum").

BACKGROUND

The Taylor property is located at 1023 Robinson Road, Gastonia, Gaston County, North Carolina.

For purposes of evaluation during the approved jurisdictional determination (AJD), consultants for the North Carolina Department of Transportation (NC DOT) evaluated and the Corps verified the site using the 1987 Wetland Delineation Manual (87 Manual), as part of a delineation for the North Carolina Turnpike Authority (NCTA) Gaston Bypass project.

On 24 August 2011, the District issued an AJD to the NC DOT and NCTA with instructions to

notify all fee owners along the proposed road corridor as “affected parties,” where a JD was made on their property. Ms. Taylor was notified that a portion of her property was determined to contain WOUS. Since Ms. Taylor is a landowner, she was considered an “affected party” and was notified of her appeal rights.

The Appellant submitted an RFA on 9 September 2011. The Appellant disagreed with the District’s determination that features S175 and S177 were WOUS, citing the reason for appeal addressed in this decision.

INFORMATION RECEIVED DURING THE APPEAL AND ITS DISPOSITION

The administrative appeal was evaluated based on the District’s administrative record, the Appellant’s RFA, discussions with the Appellant prior to the site visit and discussions with the District during the site visit.

APPELLANT’S STATED REASON FOR APPEAL

“There are no wetlands on the property. There is only a creek, which is mostly dry.”

EVALUATION OF THE REASON FOR APPEAL, FINDING, DISCUSSION, AND ACTION FOR THE WILMINGTON DISTRICT COMMANDER

Appeal Reason: There are no wetlands on the property. There is only a creek, which is mostly dry.

Finding: This reason for appeal does not have merit.

Discussion: The District completed one AJD Form, for Wetland 142 (W142) and Streams 174-177 (S174-S177). It appears, from review of Figure 2-3h titled “Preferred Alternative Refined Design” (printed July 2010), that the appellant’s property contains only Streams 175 & 177 (S175 & S177).

In its AJD form (Section III.D.2), which described waters on the Appellant’s property, the District indicated that S175 and S177 are perennial Relatively Permanent Waters (RPWs). The District based this determination on their verification of a North Carolina Division of Water Quality (NCDWQ) – Stream Identification Form which indicated a score of 35.5 for S175 & a score of 51 for S177. The AR included a District prepared Memorandum for Record, dated August 22, 2011 which states a score of 30 or greater indicates a stream is perennial.

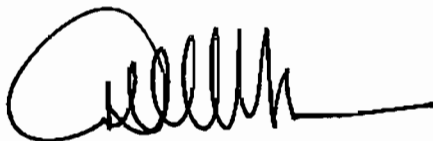
Based on the above, the District’s conclusion that S175 and S177 are perennial RPWs and waters of the United States is supported in the AR.

Action: None required.

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CONCLUSION

For the reasons stated above, I find that the appeal does not have merit. The District's administrative record contains substantial evidence to support the District's determination that Streams 175 & 177 are RPWs that flow directly or indirectly into a TNW. The District's determination was not otherwise arbitrary, capricious or an abuse of discretion, and was not plainly contrary to applicable law, regulation, Executive Order, or policy. The administrative appeals process for this action is hereby concluded.

A handwritten signature in black ink, appearing to read 'D. Jackson, Jr.', with a long horizontal line extending to the right.

Donald E. Jackson, Jr.
Colonel, US Army
Commanding