DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
3701 Bell Road
NASHVILLE, TENNESSEE 37214

November 26, 2007

REPLY TO
ATTENTION OF:

Regulatory Branch

SUBJECT: File No. 200702377, City of McKee Wastewater Treatment Plant and Collection System Improvements along Becket Branch and Indian Creek in Jackson County, Kentucky

Ms. Kari A. Wallover
Nesbitt Engineering, Inc.
227 North Upper Street
Lexington, Kentucky 40507-1016

Dear Ms. Wallover:

This is in response to your October 16, 2007, letter concerning the City of McKee's proposed wastewater treatment facility along Indian Creek.

Review of your submittal reveals that Becket Branch and Indian Creek are located in the vicinity of the work. The Department of Agriculture's soil survey also identifies the soils at the site as Schelocta-Gilpin channery silt loams (SgF) and Grigsby fine sandy loam (Gs). The Gs map unit may have inclusions of hydric soils (potential wetland areas). A copy of the soil map and information is enclosed.

Our office has regulatory responsibilities pursuant to Section 404 of the Clean Water Act (CWA). The CWA prohibits the discharge of dredged or fill material into waters of the U.S., including wetlands, without a Department of the Army (DA) permit. The discharge of dredged or fill material into Indian Creek, Becket Branch, and any adjacent wetlands would be subject to our permitting authority.

The area where potential work would occur should be surveyed for the presence of streams and wetlands. Potential impacts to such areas should be identified and DA authorization sought prior to commencing with discharges of fill material into waters.

This determination reflects current policy. It automatically expires after a 5-year period unless specifically revalidated by this office. It does not grant any property rights or privileges and does not obviate your responsibility to comply with the provisions of any other law or regulation of any local, state, or federal authority.

We appreciate your awareness of our regulatory program. If you have any questions concerning our jurisdiction on this matter or future matters, feel free to contact me at (615) 369-7514.

Sincerely,

Marty G. Tyree
Project Manager
Operations Division

HYDRIC SOILS

JACKSON COUNTY

KENTUCKY

Hydric Soil Map Units (Where not drained and/or not protected from flooding)

None Identified

Map Units That May Have Inclusions of Hydric Soils

Symbol	Name	Probable landscape position of Hydric Inclusions
Gs	Grigsby fine sandy loam, Ø to 3 percent slopes, frequently flooded	Unnamed poorly drained soils in low spots and seeps
Gv	Grigsby-Orrville Variant complex, Ø to 3 percent slopes, frequently flooded	Unnamed poorly drained soils in low areas
Ro	Rowdy silt loam, Ø to 4 percent slopes, occasionally flooded	Unnamed poorly drained soils in seepy areas

All hydric soils in this county support or would have supported woody vegetation under natural conditions except those identified as swamp or ponded phases.

are suited to white oak, northern red oak, eastern white pine, shortleaf pine, and yellow poplar. Sequoia soils are suited to shortleaf pine and white oak. Plant competition, the hazard of erosion, and limited equipment use are concerns in management.

The soils in this complex are poorly suited to urban use because of steep slopes and in places, depth to bedrock.

These Gilpin, Rayne, and Sequoia soils are in capability subclass IVe. The woodland ordination symbol is 6R for Gilpin soil, 4R for Rayne soil, and 4A for Sequoia soil.

Gs—Grigsby fine sandy loam, 0 to 3 percent slopes, frequently flooded. This soil is deep and well drained. It is on flood plains of tributary streams throughout the survey area. The areas of this soil are generally elongated and parallel to streams; they range from 5 to more than 100 acres.

Typically, the surface layer is dark yellowish brown fine sandy loam about 9 inches thick. The upper part of the subsoil, to a depth of about 17 inches, is yellowish brown fine sandy loam. The lower part, to a depth of about 44 inches, is strong brown and yellowish brown loam. The substratum, to a depth of about 60 inches, is yellowish brown and strong brown sandy loam. Hard sandstone bedrock is below the subsoil.

The permeability of this Grigsby soil is moderate or moderately rapid. The available water capacity is high. This soil is subject to frequent flooding, but generally not during the growing season. The soil has good tilth and is easily tilled throughout a wide range of moisture content. The root zone is deep and is easily penetrated by roots. The natural fertility is high, and the content of organic matter is moderate. The soil is medium acid to neutral in the surface layer and subsoil and is strongly acid to neutral in the substratum.

Included with this soil in mapping are small areas of Orrville Variant and Rowdy soils. Also included are small areas of poorly drained soils, soils that contain more than 35 percent coarse fragments in their control section, and sandy soils that have been recently deposited by streams. Individual areas of the included soils generally are less than 3 acres. The included soils make up about 25 percent of the map unit.

This Grigsby soil is mostly used for row crops, hay, or pasture.

This soil is well suited to row crops, and high yields are possible with proper management. The soil can be used for continuous cultivation if it is managed properly and if conservation practices are used that improve tilth and fertility.

This soil is well suited to hay and pasture. Grasses and legumes are seldom damaged by flooding.

The Grigsby soil is well suited to use as woodland, although most areas are cleared. This soil has the capability of producing 124 cubic feet per acre of yellow poplar at the point of highest yearly growth. Yellow poplar, black walnut, eastern white pine, white ash, northern red oak, and white oak are suitable trees to plant. Plant competition is a concern in management.

This soil is poorly suited to most urban uses because flooding is a hazard.

This Grigsby soil is in capability subclass IIw, and the woodland ordination symbol is 9A.

Gv—Grigsby-Orrville Variant complex, 0 to 3 percent slopes, frequently flooded. The soils in this complex are deep, well drained and somewhat poorly drained. They are on narrow flood plains. The Grigsby soil is well drained and is in nearly level to convex areas. The Orrville Variant soil is somewhat poorly drained and is in nearly level to slightly concave areas. The areas of this complex generally include the entire flood plain and range from 20 to 100 acres or more.

The Grigsby soil makes up about 45 percent of the map unit, the Orrville Variant soil makes up about 35 percent, and included soils make up about 20 percent. The soils are in a regular and repeating pattern and are so intermingled that mapping them separately is not practical at the scale used for the maps in the back of this publication.

Typically, the surface layer of the Grigsby soil is dark grayish brown fine sandy loam about 9 inches thick. The upper part of the subsoil, to a depth of about 17 inches, is yellowish brown fine sandy loam. The lower part, to a depth of about 44 inches, is strong brown and yellowish brown loam. The substratum, to a depth of about 60 inches, is yellowish brown and strong brown sandy loam. Hard bedrock is below the substratum.

The permeability of this Grigsby soil is moderate or moderately rapid. The available water capacity is high. This soil is subject to frequent flooding, but generally not during the growing season. The soil has good tilth and is easily tilled throughout a wide range of moisture content. The root zone is deep and is easily penetrated by roots. The natural fertility is high, and the content of organic matter is moderate. This soil is medium acid to neutral in the surface layer and subsoil and is strongly acid to neutral in the substratum.

Typically, the surface layer of the Orrville Variant soil is very dark grayish brown silt loam about 3 inches thick. The subsoil extends to a depth of about 29 inches. It is light olive brown loam in the upper part and grayish brown loam in the lower part. Gray and brown mottles are throughout the subsoil. The substratum extends to a depth of about 48 inches. It is light brownish gray clay loam that has gray and brown mottles, pebbles, and shale fragments. Gravel content increases with depth. Hard fissile shale is below the substratum.

The permeability of this Orrville Variant soil is moderate. The available water capacity is high. This soil is subject to frequent flooding, but generally not during the growing season. In winter and early in spring, the soi

Typical pedon of Gilpin channery silt loam, in an area of Shelocta-Gilpin channery silt loams, steep; 9.6 miles north of McKee on Kentucky Highway 89, near the access road to a farmstead:

O1—4 to 2 inches; recent forest litter.
O2—2 to 0 inches; very dark grayish brown (10YR 3/2) partly decomposed organic matter.
A1—0 to 3 inches; dark brown (10YR 3/3) channery silt loam; weak fine granular structure; very friable; many fine and medium roots; 15 percent sandstone channers; strongly acid; clear smooth boundary.
B1—3 to 9 inches; yellowish brown (10YR 5/4) silt loam; moderate fine subangular blocky structure; many fine and coarse roots; few wormholes; few tubular pores; few old root channels; 10 percent sandstone fragments; strongly acid; clear wavy boundary.
B21t—9 to 22 inches; yellowish brown (10YR 5/6) channery loam; moderate fine and medium subangular blocky structure; firm; few small roots; few wormholes; few tubular pores and old root channels; common thin clay films; 15 percent thin flat sandstone fragments; strongly acid; gradual wavy boundary.
B22t—22 to 36 inches; yellowish brown (10YR 5/6) channery silty clay loam; moderate fine angular and subangular blocky structure; firm; few fine roots; few wormholes and tubular pores; 15 percent thin flat fragments; strongly acid; clear smooth boundary.
R—36 inches; hard sandstone bedrock.

The thickness of the solum ranges from 18 to 36 inches. Depth to bedrock is 20 to 40 inches. Coarse fragments of sandstone, siltstone, and shale make up 5 to 40 percent of individual horizons. Reaction ranges from strongly acid to extremely acid throughout unless lime has been added.

Undisturbed pedons have a thin, dark A horizon. The Ap horizon has hue of 10YR, value of 3 to 5, and chroma of 2 to 4. Texture is silt loam or loam and the channery analogs.

The B horizon has hue of 7.5YR to 2.5Y, value of 5, and chroma of 4 to 8. Texture is silt loam, loam, or silty clay loam and the channery analogs. Some pedons have a B3 horizon.

Some pedons have a C horizon. It has colors and textures similar to those of the B horizon.

Grigsby Series

The Grigsby Series consists of deep, well drained soils. Permeability is moderate or moderately rapid. These soils formed in mixed alluvium derived mainly from sandstone, siltstone, and shale. They are nearly level, slightly convex soils on flood plains along tributary streams throughout the survey area. The slopes range from 0 to 4 percent.

Grigsby soils are associated with the Allegheny, Allegheny Variant, Huntington, Orrville Variant, and Rowdy soils on flood plains and terraces. Allegheny and Allegheny Variant soils are deep, well drained, and fine loamy and are on terraces above the flood plain. Allegheny Variant soils are commonly less than 60 inches to bedrock. Huntington soils are on flood plains along the South Fork of the Kentucky River and have a thick and dark surface layer. Orrville Variant soils are deep, somewhat poorly drained and loamy and are on tributary streams. Rowdy soils are deep, well drained and loamy and are on low terraces.

Typical pedon of Grigsby fine sandy loam, 0 to 3 percent slopes, frequently flooded; about 15.3 miles south of McKee on U.S. Highway 421, about 7.4 miles west on Kentucky Highway 577 to Moores Creek School, south to Moores Creek:

Ap—0 to 9 inches; dark yellowish brown (10YR 4/4) fine sandy loam; weak fine granular structure; very friable; many fine and few coarse roots; slightly acid; clear smooth boundary.
B21—9 to 17 inches; yellowish brown (10YR 5/4) fine sandy loam; weak medium subangular blocky structure parting to weak fine granular; very friable; few fine roots; few medium mixed pores; surface layer material in old channels; slightly acid; abrupt smooth boundary.
B22—17 to 30 inches; strong brown (7.5YR 5/6) loam; weak medium and fine subangular blocky structure; friable; few fine roots; few fine pores; medium acid; clear smooth boundary.
B23—30 to 44 inches; yellowish brown (10YR 5/4) loam; common medium distinct strong brown (7.5YR 5/6) mottles; moderate medium subangular blocky structure; friable; few fine roots; few dark concretions; medium acid; clear smooth boundary.
C1—44 to 60 inches; yellowish brown (10YR 5/4) and strong brown (7.5YR 5/6) sandy loam; massive; friable; few fine dark concretions; medium acid; abrupt smooth boundary.
R—60 inches; hard sandstone rock.

The solum ranges in thickness from 30 to 50 inches. Coarse fragments, mostly pebbles, range from 0 to 5 percent in the solum and from 0 to 60 percent in the C horizon. Reaction ranges from medium acid to neutral in the solum and from strongly acid to neutral in the C horizon.

The A horizon has hue of 10YR, value of 4 or 5, and chroma of 2 to 4. Texture is fine sandy loam, loam, silt loam, or sandy loam.

The B horizon has hue of 10YR or 7.5YR, value of 4 to 6, and chroma of 3 to 6. In some pedons, mottles in shades of gray or brown are below a depth of 24 inches. Texture is loam or fine sandy loam.


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N
(Joins sheet 9)
Branch
Elisha
Birch
Lick
Creek
Pigeon
Roost
Creek
McKEE
421
Indian
Gs
SgF
RCF
LyC
(Joins sheet 16)
400 000 FEET
(Joins sheet 20)
2 505 000 FEET

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: CITY OF MCKEE	File Number: 200702377	Date: 11/26/07
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
Marty G. Tyree (615) 369-7514 FAX (615) 369-7501	Michael Montone (513) 684-6212 FAX (513) 684-2460

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
_____ Signature of appellant or agent.		

EcoSource, Inc.

104 Boston Square
Georgetown, Kentucky 40324

Telephone (502) 868-5200
Fax (502) 868-5282

July 19, 2009

Mr. Forrest Daniels
US Army Corps of Engineers
3701 Bell Road
Nashville, TN 37214

RE: Proposed Water Treatment Facility
McKee, Jackson County, Kentucky

Dear Mr. Daniels:

Last week, I spoke with Marty Tyree within your office concerning the above referenced project. The project is illustrated on the enclosed drawings. In summary, the possibility exists for two ephemeral streams to be impacted by construction. These ephemeral streams only have bed and bank features until they intersect a farmed field. After the point of intersection, both streams lose all channel characteristics. I would like to obtain formal consultation or documentation on this project to hopefully classify these streams as isolated waters.

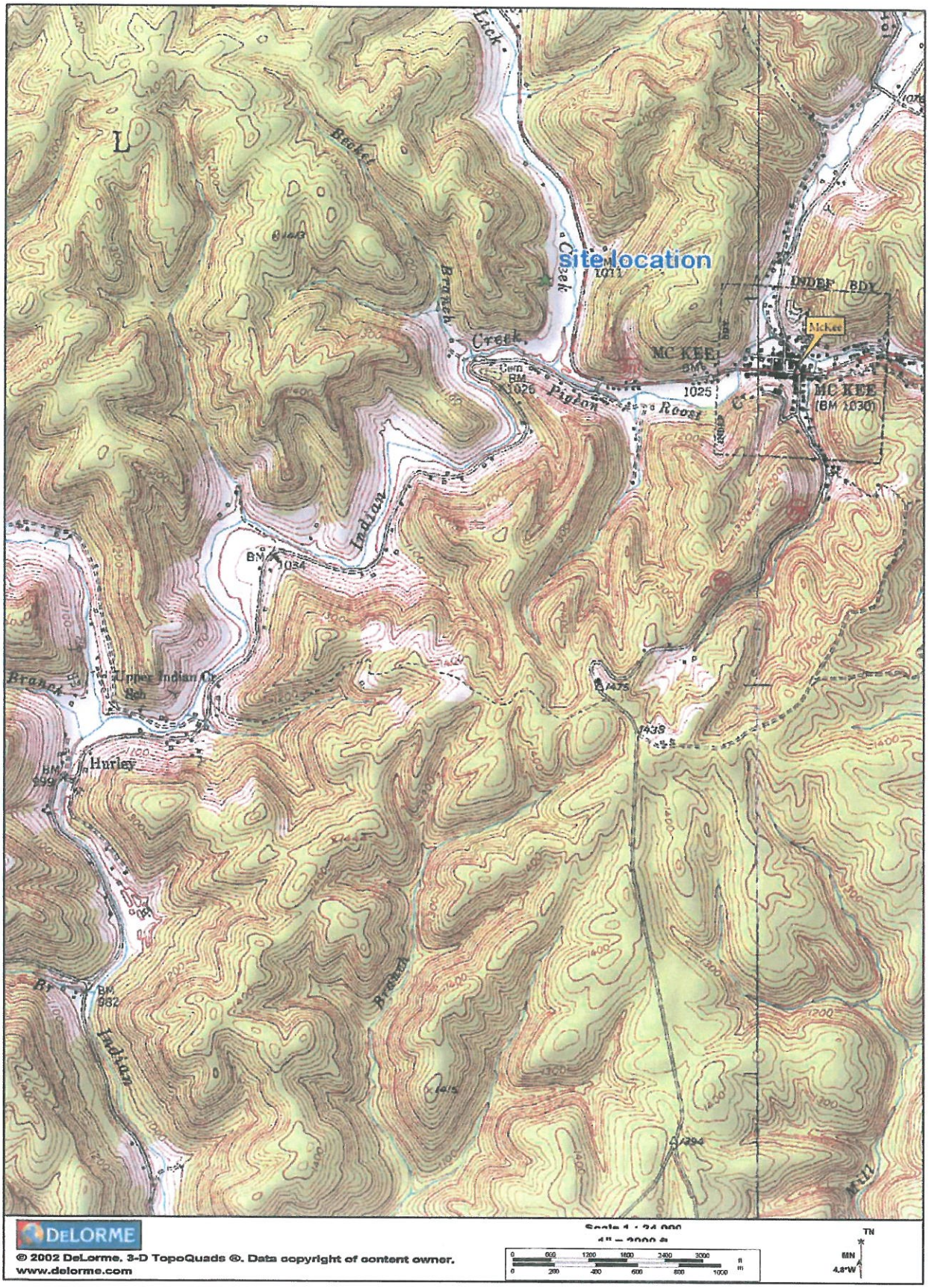
Thank you for your assistance in this matter. If you should have any questions concerning the enclosed please feel free to contact me at your convenience.

Sincerely,

Debbie Collinsworth
Principal Scientist

CC: Jim Wade, Nesbitt Engineering

Att.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MC KEE
BM 1026
1025
Pigeon
Roost
Indian
BM 1034
Upper Indian Ch
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Hurley
BM 999
BM 932
Indian
Branch
1438
BM 975
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© 2002 DeLorme. 3-D TopoQuads ®. Data copyright of content owner.
www.delorme.com
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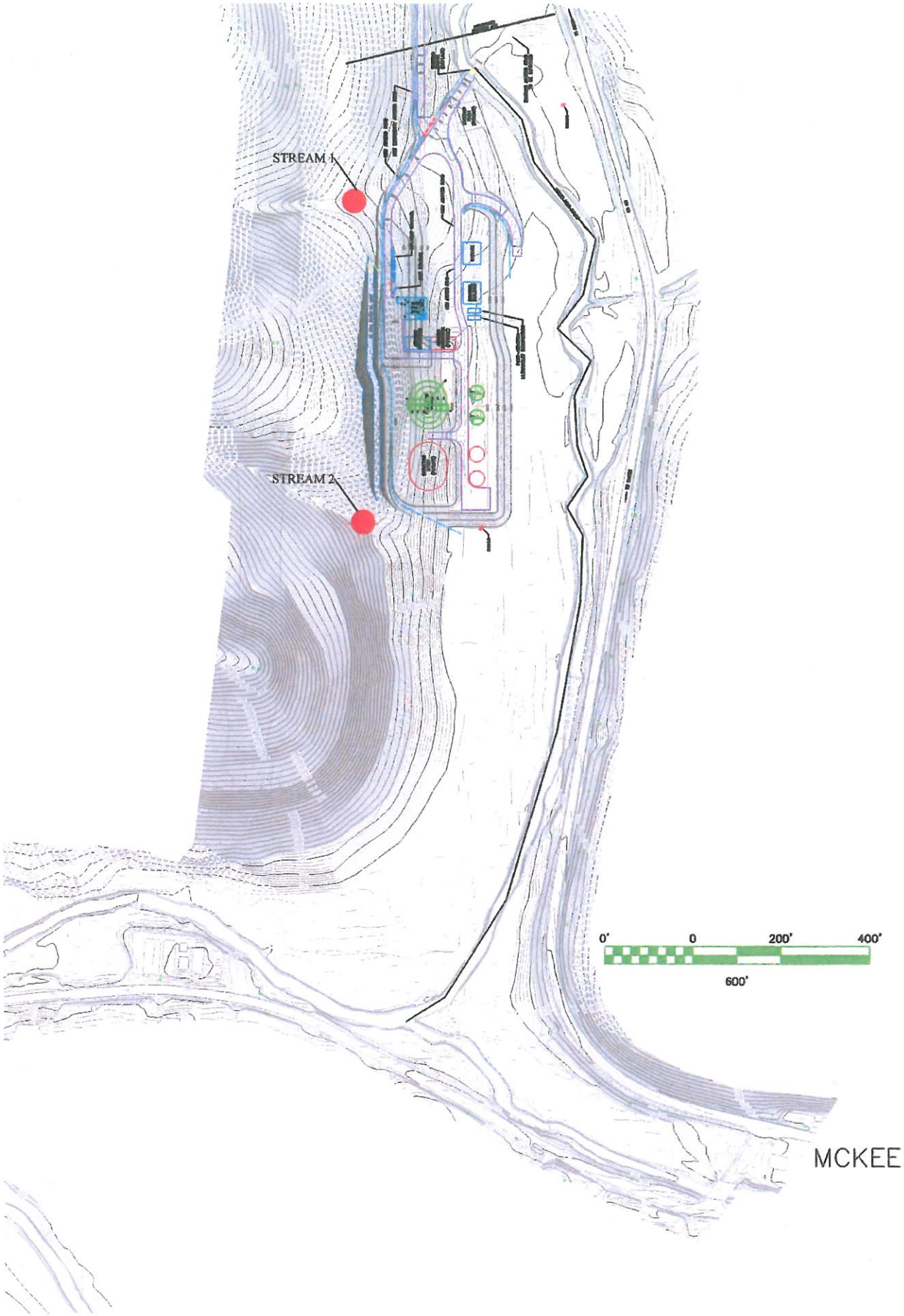
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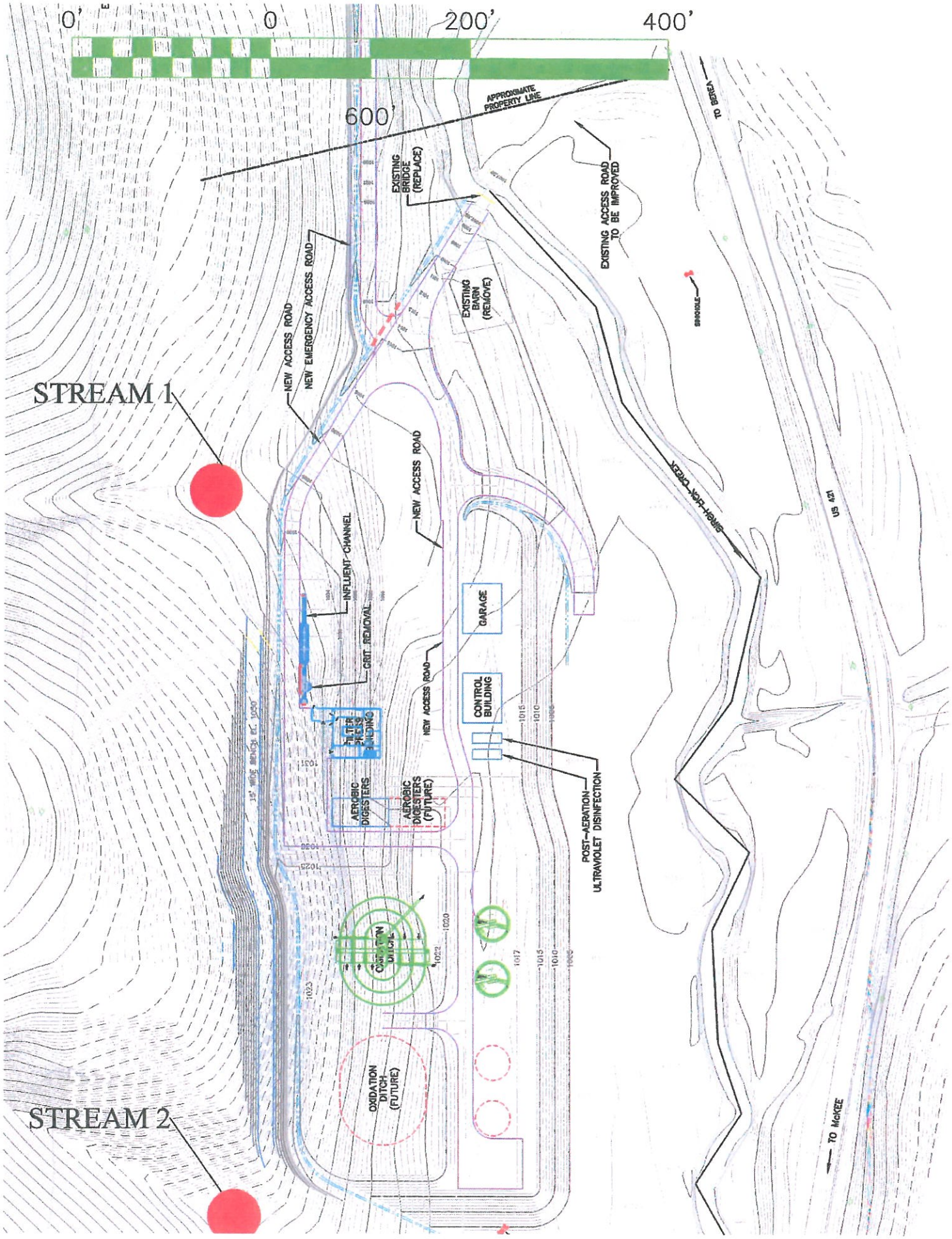
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APPROXIMATE PROPERTY LINE
EXISTING BRIDGE (REPLACE)
EXISTING ACCESS ROAD TO BE IMPROVED
TO BEREA
NEW ACCESS ROAD
NEW EMERGENCY ACCESS ROAD
EXISTING BARN (REMOVE)
STREAM 1
NEW ACCESS ROAD
INFLUENT CHANNEL
GRIT REMOVAL
GARAGE
CONTROL BUILDING
NEW ACCESS ROAD
AEROBIC DIGESTERS
AEROBIC DIGESTERS (FUTURE)
POST-AERATION
ULTRAVIOLET DISINFECTION
OXIDATION DITCH (FUTURE)
STREAM 2
BIRCH TREE CREEK
US 421
TO McKEE

DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
Eastern Regulatory Field Office
501 Adesa Blvd., Suite 250
LENOIR CITY, TENNESSEE 37771

August 18, 2009

REPLY TO

Eastern Regulatory Field Office

SUBJECT: File No. LRN-2009-01105; Preliminary Jurisidictional Determination, Birch Lick Creek Mile 0.4R, Indian Creek Mile 7.4R, Middle Fork Rockcastle River Mile 7.8, Jackson County, Kentucky: Proposed Jackson County WTP

Ms. Debbie Collinsworth
EcoSource, Inc
104 Boston Square
Georgetown, Kentucky 40324

Dear Ms. Collinsworth:

This is in response to your recent request for a waters of the U.S. jurisdictional determination at the proposed Jackson County Water Treatment Plant in Jackson County, Kentucky. Please refer to Department of the Army (DA) File No. LRN-2009-01105 in future correspondence and permit application submittals regarding this project.

Our agency has regulatory responsibilities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). The Clean Water Act prohibits the discharge of dredged or fill without a Section 404 permit. The Rivers and Harbors Act requires a Section 10 permit for work in navigable water of the United States.

Our preliminary jurisdictional determination is that Birch Lick Creek is considered waters of the U.S. and is subject to Corps of Engineers' regulatory jurisdiction under Section 404 of the Clean Water Act.

The Corps based this decision on a preliminary jurisdictional determination (JD) that there may be waters of the United States on the project site. Preliminary JDs are advisory in nature and may not be appealed. An approved JD is an official Corps determination that "waters of the U.S." and/or "navigable waters of the U.S." are either present or absent on a particular site. An approved JD precisely identifies the limits of those waters on the project site determined to be jurisdictional under the CWA or RHA. If you wish, you may request that the USACE reevaluate this case and issue an approved JD. If you request an approved JD, you may not begin work until the approved JD, which may require coordination with the Environmental Protection Agency, is completed. Please contact me if you wish to request an approved JD for this case.

If any additional resources which may be considered waters of the U.S. are located during design or construction, these areas should be avoided until a jurisdiction determination can be provided. This determination is valid for a period of five years from the date of this letter. Two copies of the Preliminary Jurisdictional Determination Form and a Notification of Administrative Appeal Options that explains available options regarding this determination are enclosed. **You need to sign both copies of the Preliminary Jurisdictional Determination Form, retain one copy for your files, and return the other copy in the enclosed envelope.**

The locations identified on the attached map as channels 1 and 2 were found to be upland drainage features and are not considered waters of the U.S.

It should be noted that this verification is only for Birch Lick Creek, and does not authorize any work on the site. Impacts to waters of the United States should be avoided during the design phase whenever practicable. When these resources cannot be avoided, the work should be designed to minimize adverse impacts. A Department of Army (DA) permit pursuant to Section 404 of the Clean Water Act will be required for any work which entails the direct filling or excavation in waters of the United States. A DA permit application should include a survey of all waters of the U.S. on the site, a plan showing any proposed fill or excavation in waters of the U.S., a description of efforts taken to avoid and minimize the proposed fill and a plan to mitigate any unavoidable fill in waters of the U.S.

Our permitting requirements for the project would depend on the specific construction methods and associated impacts to waters of the U.S. Any activity that would not involve substantial stream or wetland alterations or fills may be authorized under our Nationwide Permit (NWP) program. Work or discharges of dredged or fill material into waters and wetlands that does not qualify for authorization under our NWP program would require authorization by a standard DA permit.

If you have any questions, please contact me at the above address or telephone (865)986-7296.

Sincerely,

Ken Jones
Regulatory Specialist
Operations Division

Enclosures

Copies Furnished:

Barbara Scott
Project Manager
401 Water Quality Certification
Kentucky Division of Water
200 Fair Oaks
Frankfort, KY 40601

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 12-Aug-09

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:
EcoSource, Inc.
Attn: Ms. Debbie Collinsoworth, 104 Boston Square, Georgetown, KY 40324

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:
Nashville District, Jackson County WTP, LRN-2009-01105

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

State:KY County/parish/borough: Jackson City: Mckee
Center coordinates of site (lat/long in degree decimal format):
Lat. 37.43547° **N**, Long. 84.01054° **W.**

Universal Transverse Mercator:

Name of nearest waterbody: Birch Lick Creek

Identify (estimate) amount of waters in the review area:

Non-wetland waters: 2450 linear feet: 20 width (ft) and/or acres.
Cowardin Class: Riverine
Stream Flow: Perennial
Wetlands: 0 acres.
Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:
Tidal: N/A
Non-Tidal: N/A

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

☒ Office (Desk) Determination. Date: 18-Aug-09
☒ Field Determination. Date(s): 12-Aug-09

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there *"may be"* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:EcoSource, Inc.

☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

- ☐ Office concurs with data sheets/delineation report.
- ☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps:

☐ Corps navigable waters' study:

☐ U.S. Geological Survey Hydrologic Atlas:

- ☐ USGS NHD data.
- ☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name:Sandgap, KY.

☐ USDA Natural Resources Conservation Service Soil Survey. Citation:

☐ National wetlands inventory map(s). Cite name:

☐ State/Local wetland inventory map(s):

☐ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date):Google Earth.
or ☒ Other (Name & Date):COE 12-Aug-2009.

☐ Previous determination(s). File no. and date of response letter:

☐ Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

18 Aug 2009

Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining
the signature is impracticable)

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: EcoSource, Inc (Jackson Couty WTP)	File Number: LRN-2009-01105	Date: 18-Aug-09
Attached is:		See Section below
☐	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
☐	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
☐	PERMIT DENIAL	C
☐	APPROVED JURISDICTIONAL DETERMINATION	D
☒	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II- REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

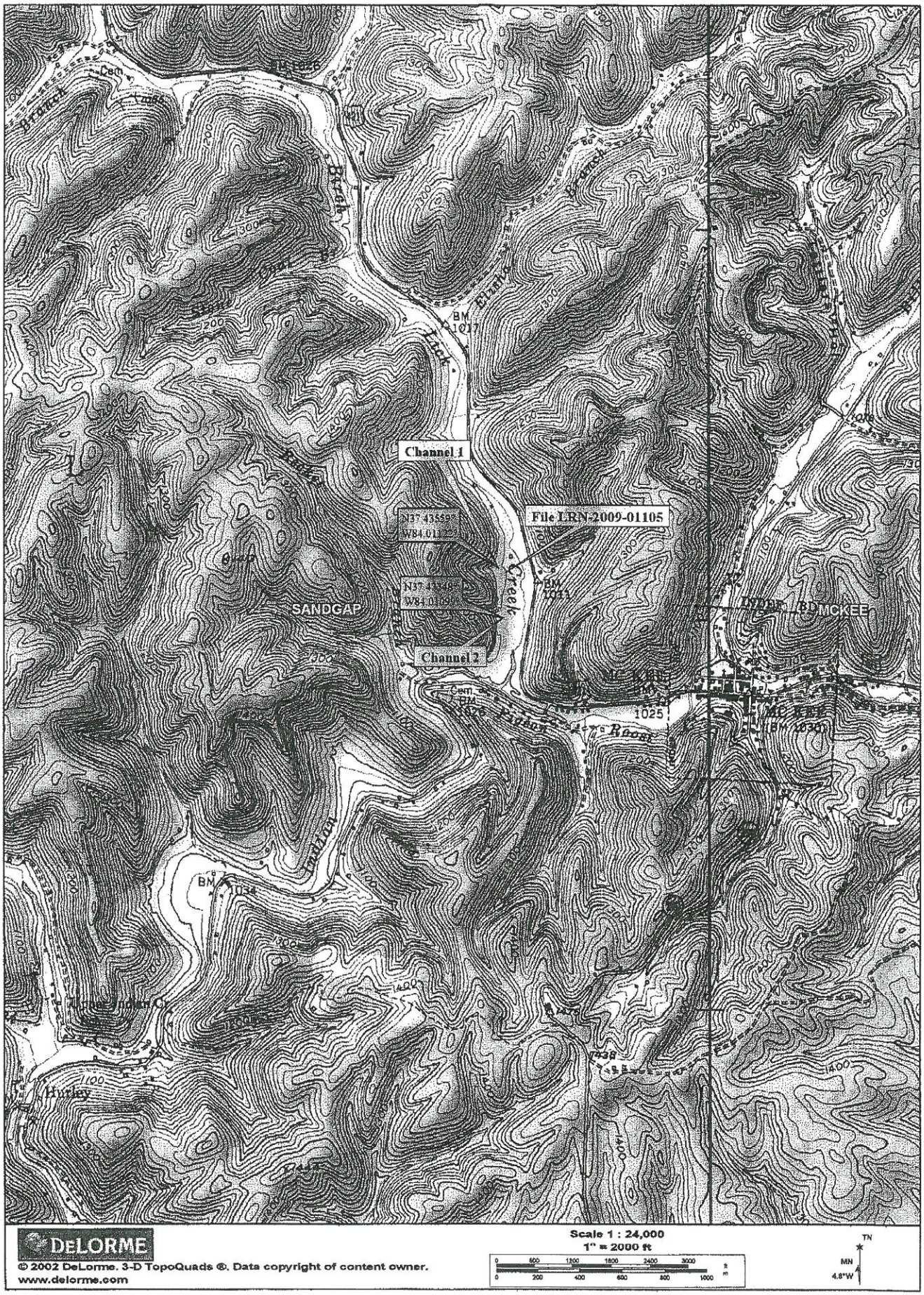
ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

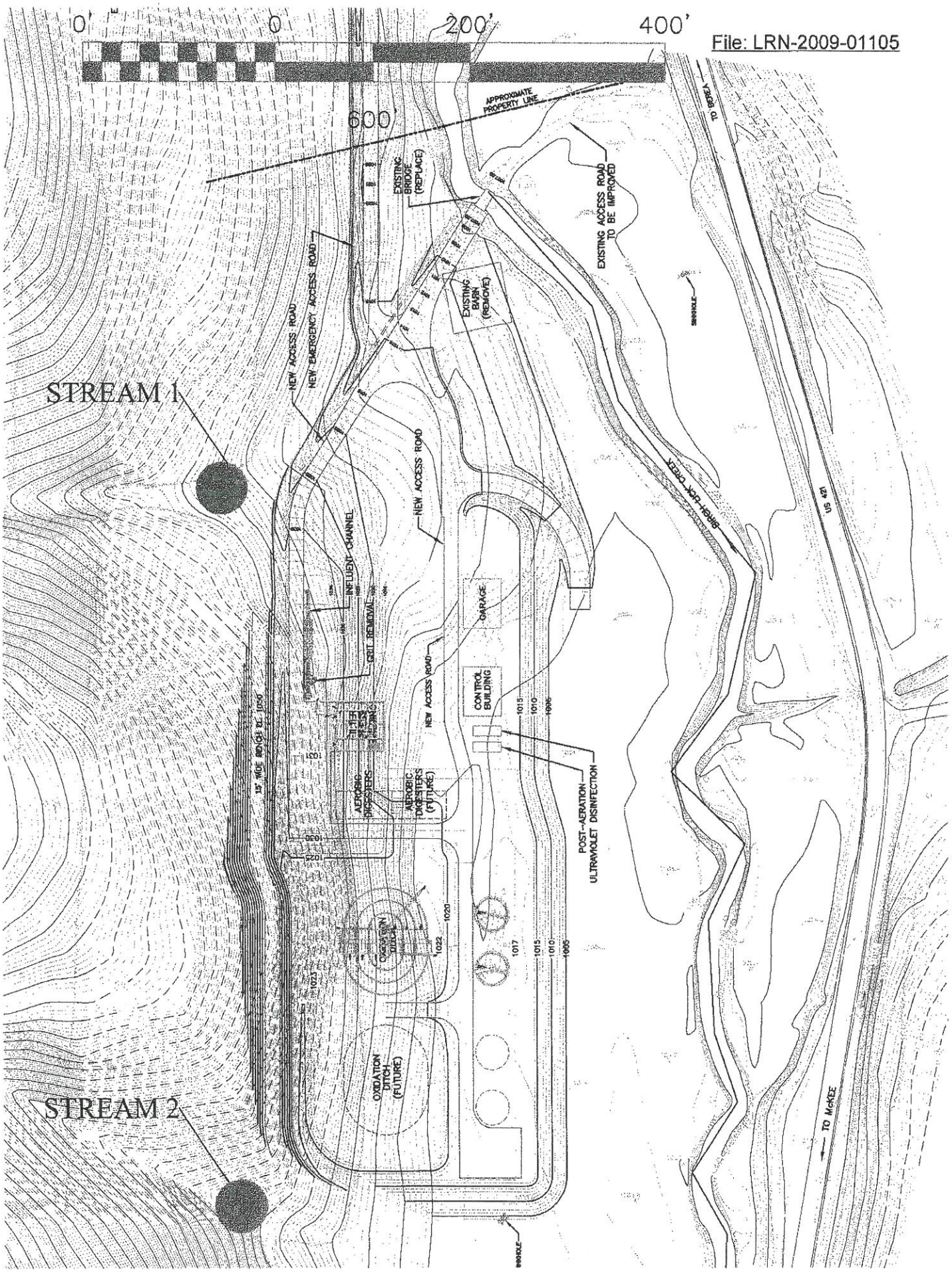
POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact: Ken M. Jones Corps of Engineers, Regulatory Branch 501 Adesa Blvd, Suite 250 Lenoir City, Tennessee 37771	If you only have questions regarding the appeal process you may also contact: U.S. Army Corps of Engineers Great Lakes and Ohio River Division 550 Main Street, Room 10032 Cincinnati, OH 45202

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:




0'
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200'
400'
600'
File: LRN-2009-01105
APPROXIMATE PROPERTY LINE
EXISTING BRIDGE (REPLACE)
EXISTING ACCESS ROAD TO BE IMPROVED
EXISTING BARN (REMOVE)
NEW ACCESS ROAD
NEW EMERGENCY ACCESS ROAD
STREAM 1
NEW ACCESS ROAD
INFLUENT CHANNEL
GRIT REMOVAL
GARAGE
CONTROL BUILDING
NEW ACCESS ROAD
AEROBIC DIGESTERS
AEROBIC DIGESTERS (FUTURE)
POST-AERATION ULTRAVIOLET DISINFECTION
OXIDATION DITCH (FUTURE)
STREAM 2
BIRCH BRANCH CREEK
US 421
TO BOONE
TO McKEE

May 24, 2012

Mr. Ken Jones
United States Army Corps of Engineers, Nashville
Eastern Regulatory Field Office
501 Adesa Blvd.
Suite B 250
Lenoir City, Tennessee 37771

RE: City of McKee Wastewater Treatment Plant and Collection System Improvements, Jackson County, Kentucky

Dear Mr. Jones:

Nesbitt Engineering, Inc. has been retained by the City of McKee to prepare a Regional Facilities Plan for proposed wastewater treatment and collection system improvements in Jackson County, Kentucky. The City of McKee is in the process of obtaining financial assistance to upgrade the system. The work will be performed in two general phases, which are shown on the attached maps.

The first phase will involve constructing a new 0.50 MGD wastewater treatment plant (WWTP), extending an existing 8" force main, and upgrading an existing pump station. The WWTP will be located on a property west of the intersection of US 421 and Hwy 89. The new force main will parallel a short section of Hwy 89 and then travel across the new WWTP property.

The second phase of the project will involve extension of the sewer collection system into the surrounding communities. It will be performed in three sub-phases:

- Construction of approximately eight miles of sewers parallel to US 421, north from McKee to Sand Gap, and throughout Sand Gap.
- Construction of approximately thirteen miles of sewers parallel to US 421 and Hwy 30, south from McKee to Annville, and throughout Annville.
- Construction of approximately nine miles of sewers parallel to Hwy 290, south from McKee to Annville.

This system is designed to serve approximately 421 (equivalent) households. The intended plan is for all sewer lines to be constructed within roadway right-of-way.

An Environmental Assessment was previously completed for the WWTP site location in 2009. The proposed WWTP site was evaluated by the Army Corps of Engineers at that time, and a Preliminary Jurisdictional Determination (File No. LRN-2009-01105) was issued for the WWTP portion of the site.

As part of the Facilities Plan, we are requesting that the Army Corps of Engineers provide us with updated information concerning the possibility of wetlands within the impact area of the entire proposed project. Please submit comments in a letter addressed to the undersigned when you have completed your review. If you require additional information, please call me at (859) 233-3111. On behalf of the City of McKee, thank you for your kind and prompt attention to this matter.

Sincerely,

Kari A. Wallover, PG
Professional Geologist

Attachments

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DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
EASTERN REGULATORY FIELD OFFICE
501 ADESA BLVD, SUITE 250
LENOIR CITY, TN 37771-8094

REPLY TO
ATTENTION OF

September 6, 2012

Eastern Regulatory Field Office

SUBJECT: File No. LRN-2009-01105; Permit Information Regarding Wastewater System Improvements in the City of McKee, Jackson County, Kentucky

Nesbitt Engineering, Inc.
Attn: Ms. Kari A. Wallover
227 North Upper Street
Lexington, KY 40507-1016

Dear Ms. Wallover:

This letter is in response to your request for comments regarding the proposed wastewater system improvements project for the City of McKee, Kentucky. Please refer to file number LRN-2009-01105, in future correspondence with us related to this work. After review of the information and maps provided, it appears areas of the proposed project identified may require permitting from the U.S. Army Corps of Engineers, specifically, placement of any utility lines in stream crossings and/or wetlands along the project corridor.

The Corps is responsible for administering the Regulatory Programs of the Department of the Army (DA) pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Any proposed work in waters of the United States (US) is subject to our jurisdiction.

If your client chooses to go forward this project, the following information should be submitted to this office prior to beginning work for our review:

a. A Preliminary Jurisdictional Determination (PJD) package identifying all potential waters of the US within the project boundary, including streams and wetlands. Wetland Delineations must be performed in accordance with the 1987 Wetland Delineation Manual and the 2010 Eastern Mountains and Piedmont Regional Supplement. The supplement data forms and indicators must be used for any data collection for wetland delineations. The 1987 Manual and the regional supplement, including data forms, are available on the Regulatory Homepage Website at http://www.usace.army.mil/CECW/Pages/reg_supp.aspx,

b. A completed DA permit application,

c. Complete plans and drawings of your proposed activity, including plan views, cross sections, dimensions, materials to be used and methods of construction,

d. Location map identifying any stream crossings and/or wetland impacts, and

e. Any other details of your proposal that you wish to provide that would facilitate our review of this proposal.

Once we have received the requested information, we will then continue processing your request. Consequently, no work should be performed in watercourses below the ordinary high water mark or wetlands prior to written approval from this office. We appreciate your awareness of our regulatory program. Any questions or comments may be directed to me at the above address or telephone (865) 986-7296, or you can email me at Mary.A.Brannan@usace.army.mil.

Sincerely,

Mary Ann Brannan

Mary Ann Brannan
Regulatory Specialist
Eastern Field Office
Operations Division

Exhibit 9-5

Natural Resources and Conservation Service Correspondence

May 24, 2012

Mr. Charles Gibson
District Conservationist
Natural Resources Conservation Service
PO Box 1179
McKee, KY 40447

RE: City of McKee Wastewater Treatment Plant and Collection System Improvements, Jackson County, Kentucky

Dear Mr. Gibson:

Nesbitt Engineering, Inc. has been retained by the City of McKee to prepare a Regional Facilities Plan for proposed wastewater treatment and collection system improvements in Jackson County, Kentucky. The City of McKee is in the process of obtaining financial assistance to upgrade the system. The work will be performed in two general phases, which are shown on the attached maps.

The first phase will involve constructing a new 0.50 MGD wastewater treatment plant (WWTP), extending an existing 8" force main, and upgrading an existing pump station. The WWTP will be located on a property west of the intersection of US 421 and Hwy 89. The new force main will parallel a short section of Hwy 89 and then travel across the new WWTP property.

The second phase of the project will involve extension of the sewer collection system into the surrounding communities. It will be performed in three sub-phases:

- Construction of approximately eight miles of sewers parallel to US 421, north from McKee to Sand Gap, and throughout Sand Gap.
- Construction of approximately thirteen miles of sewers parallel to US 421 and Hwy 30, south from McKee to Annville, and throughout Annville.
- Construction of approximately nine miles of sewers parallel to Hwy 290, south from McKee to Annville.

This system is designed to serve approximately 421 (equivalent) households. The intended plan is for all sewer lines to be constructed within roadway right-of-way.

As part of the Facilities Plan, we are requesting that the Natural Resource Conservation Service provide us with information concerning the possibility of hydric soils, prime farmland, or farmland of statewide importance within the impact area of the proposed project. Please submit comments in a letter addressed to the undersigned when you have completed your review.

If you require additional information, please call me at (859) 233-3111. On behalf of the City of McKee, thank you for your kind and prompt attention to this matter.

Sincerely,

Kari A. Wallover, PG
Professional Geologist

Attachments

P:\McKee, City of\1098-10\Corr\NRCS Lett.doc

United States Department of Agriculture

NRCS Natural Resources Conservation Service

1925 Old Main Street
Suite 2
Maysville, KY. 41056
Ph: 606-759-5570

June 05, 2012

To: Kari A. Wallover, PG
Nesbitt Engineering, Inc.
227 North Upper Street
Lexington, KY 40507-1016
Ph: 859-233-3111

Re: City of McKee Wastewater Treatment Plant and Collection Systems Improvements, Jackson County, KY

Ms. Wallover,

Attached is an NRCS map using 2010 aerial photography showing the McKee WWTP project area, as identified by maps provided with your request showing the acres of prime farmland within this site. Additional information including soil descriptions and information on hydric soils in Jackson County is available on-line through USDA's Web Soil Survey.

According to the information in your request all other areas of construction and new sewer lines will be placed on existing right-a-ways or previously disturbed areas that are already considered as prior converted land. "This part of the determination does not apply to any lands beyond the boundary of the right-of-ways or previously disturbed areas not already designated as *Prior Converted.*"

If this office may be of additional assistance, please do not hesitate to contact my office in Maysville Ky. or contact the NRCS District Conservationist at 606-287-8314.

Steve Jacobs
Resource Soil Scientist, NRCS, Maysville, KY.

cc: Chuck Gibson, NRCS District Conservationist, McKee, KY