Thorn Creek Road to Moscow
Wetland Functions Evaluation
dated July 2006

Prepared for:
Idaho Transportation Department, District 2

Prepared by:
Shelly Gilmore, Resource Planning Unlimited, Inc.

REVIEW COMMENTS

Prepared by John M. Olson, Wetland Ecologist
U. S. Environmental Protection Agency, Region 10, Boise, Idaho
August 31, 2006

This Wetland Functions Evaluation assesses and rates the functions of wetlands found on three proposed alignments (C3, E2, and W4) for the US 95 Thorn Creek Road to Moscow project. In earlier comments on a report identifying the extent of wetlands in the project area, we indicated that an assessment of wetland functions and values should be completed. Depending on the diversity and extent of wetlands, we felt that such an assessment could be based simply on best professional judgment or could require the use of a quantitative methodology. The evaluator used the Washington State Wetland Rating System for Eastern Washington (revised August 2004). Due to the proximity of the study area to Washington and the similarity in wetlands evaluated in the methodology and the study area, we believe the assessment methodology is appropriate provided state-specific items are properly considered.

The evaluation provides a succinct description of the wetland functions. Some additional analyses and information would strengthen the evaluation. The description of direct, indirect, and cumulative effects is helpful for general descriptions of how the highway project might cause these effects, but more project-specific information is needed to analyze this project. Specific comments are as follows:

1. The Washington methodology begins by determining if any of the wetlands meet any of the criteria for special protection. It is not readily apparent if the project wetlands were checked against that list as adapted to Idaho criteria. A specific statement about the applicability of the check list to any wetlands should be included.

2. While we understand that the purpose of the rating system is to place the wetlands in one of four categories, it would be informative to provide the actual scoring of the wetlands. Because all the wetlands except one are Category III wetlands, it would be helpful to try to further distinguish wetland differences. The report does this by providing a function rating (percent of achievable points) and by identifying which of the three resource functions is rated highest in each wetland. Because the wetlands are grouped by proposed highway alignments, it might be worthwhile to further analyze the wetland functions within each alignment. For

example, summing the function rating (or the raw scores) for each wetland and then calculating the mean of the sums for the wetlands within each alignment might give some broad generalizations about the wetland functions in each alignment. Using this analysis, the mean of the total function rating for the wetlands in Alignment C3 is 110, in Alignment E2 is 126, and in Alignment W4 is 104. This might not be an appropriate use of the data from this rating system, but some such type of further analysis would help to distinguish any differences in the wetland functions.

3. Direct effects to wetlands will eliminate, not just reduce, those wetland functions performed by the wetland being filled. The estimated acreage of these direct effects should be included in this section.

4. Some semi-quantitative measure of the indirect effects should be attempted. Because hydrologic changes might be the greatest indirect effect, perhaps a specific description of the hydrologic changes could be provided. For example, which wetlands will be isolated by construction and which wetlands will be connected through culverts after construction? Also, which wetlands will have vegetation changes through clearing or temporary construction impacts?

5. The relationship of project impacts to cumulative effects is especially hard to describe. Additional information on historic losses of native wetland vegetation would be helpful. Also, wetland restoration efforts (past, current and reasonably foreseeable) should be described, as well as potential opportunities for restoration in the project study area. Such information might give an indication of future wetland conditions in the area.

Thank you for the opportunity to provide these comments. Please contact me at 208-378-5756 or olson.john@epa.gov if you should have any questions or would like to discuss these comments further.

Thorn Creek Road to Moscow
Determination of Jurisdictional Waters of the United States
dated May 2005

Prepared for:
Idaho Transportation Department, District 2

Prepared by:
Shelly Gilmore, Resource Planning Unlimited, Inc.

REVIEW COMMENTS

Prepared by John M. Olson, Wetland Ecologist
U. S. Environmental Protection Agency, Region 10, Boise, Idaho
November 28, 2005

This report is an effort to determine jurisdictional waters of the United States (*i.e.*, "waters of the United States" subject to the jurisdiction of the Clean Water Act) within the large study area of the US 95 Thorn Creek Road to Moscow project. This study area extends approximately from Thorn Creek Road to Moscow (south to north) and from Paradise Ridge to the Washington state line (east to west). The report provides extensive information on the identification and delineation of wetlands throughout the study area. However, the report could be substantially improved by accurately stating or referencing the definition of "waters of the U. S.", correcting the Clean Water Act jurisdiction on Prior Converted Cropland, summarizing information on wetland plant communities, and describing wetland functions and values. Specific comments are as follows:

1. Page 1, Section 2.1 – The description of "waters of the U. S." should be clarified by either including in the text of the report the entire section of 33 CFR 328.3(a), including only the reference to the section, or summarizing the section as including interstate waters and their tributaries, intrastate waters with foreign or interstate commerce connections and their tributaries, and wetlands adjacent to other waters of the U. S.

While the cited regulations state that waters of the U. S. do not include prior converted cropland (PCC), it should be noted that the PCC determination is made primarily for Food Security Act purposes and that EPA retains the final authority regarding Clean Water Act jurisdiction. Prior converted cropland with wetland characteristics that has been abandoned is regulated by the Clean Water Act (CWA). Prior converted cropland with wetland characteristics that is proposed for a non-agricultural use is also regulated by the Clean Water Act (CWA).

As noted in the text of the report, the adjacency of a wetland is determined by its physical proximity to the other water of the U. S. While the surface water elevation of a wetland as it relates to other waters can be one tool in helping to determine adjacency, it is not a

requirement nor is it the only factor to consider.

The referenced Supreme Court decision did not exclude all isolated wetlands from federal jurisdiction. Based on that decision, isolated, non-navigable intrastate waters are not jurisdictional under the Clean Water Act if the sole interstate commerce nexus is the use of such waters by migratory birds or other factors in the Migratory Bird Rule. Many isolated waterbodies and some, but fewer, isolated wetlands remain subject to Clean Water Act jurisdiction.

The text of the report mentions that "some intermittent drainageways are also defined as 'waters of the United States'". As a point of clarification, all intermittent streams as well as all ephemeral streams that are tributaries to other waters of the U. S. are subject to Clean Water Act jurisdiction.

2. Page 25, Table 4 – As noted in comments above, the PCC label does not automatically remove an area from Clean Water Act jurisdiction. Because this report is determining jurisdiction for a non-agricultural use, PCC has no bearing on Clean Water Act jurisdiction for these sites. These sites must be evaluated to determine whether they have wetland characteristics; if they are wetlands, then they are subject to Clean Water Act jurisdiction for the purposes of this proposed project.

3. Although not specifically related to determining Clean Water Act jurisdiction, information on the wetland plant communities within the project area would be very helpful in evaluating these biological resources and in assessing impacts. The substantial work effort in documenting vegetation for the wetland determination data forms could be used to develop basic information about the wetland plant communities. The data could be synthesized based on National Wetland Inventory classification, including dominance types. Approximations of the extent of these various wetland plant communities should be made as well.

4. An assessment of wetland functions and values would also add to the value of this report and the ability to assess impacts. Depending on the diversity and extent of wetland, such an assessment could be based simply on best professional judgment or could require the use of a more quantitative methodology.

Thank you for the opportunity to provide these comments. Please contact me at 208-378-5756 or olson.john@epa.gov if you should have any questions or would like to discuss these comments further.