

Dear Mr. Simpson,

Our predecessor company Meridian Rossi worked with ACOE to have jurisdictional determination completed on Birch Creek as described in the attached documentation. The ACOE concurred with the field report and responded with a letter validating the delineation report findings, which in part determined that Birch Creek is non-jurisdictional. The report and ACOE concurrence letter were submitted to Randy Pahl of NDEP in 2016, per the attached email from consultant Jill Southerland at Resource Concepts, Inc. to Mr Pahl, with attachments. Also attached is a copy of RCI's delineation report and the concurrence letter from the ACOE specifically determining Birch Creek as non-jurisdictional. In part, the ACOE letter states:

*"The waters identified as "Dump Creek and Birch Creek" on the above drawing are intrastate isolated waters with no apparent interstate or foreign commerce connection. As such, these waters are not currently regulated by the U.S. Army Corps of Engineers (Corps)."*

We notice that Birch Creek remains on your 2019 draft 303d list in the Water Quality Integrated Report. Per the language in the Integrated report:

***"Non-jurisdictional Waters***

*Non-jurisdictional waters need not be evaluated for 303(d) and 305(b) purposes, and NDEP does not have the authority to make jurisdictional determinations (JDs). JDs are issued by the U.S. Army Corps of Engineers (Corps) and the EPA, and are usually valid for five years from the date of the determination letter. NDEP accepts Corps- or EPA-approved JDs effective during the assessment period, on a case-by-case basis and did not include waters in the 2016-2018 Water Quality Integrated Report that were specifically determined to be non-jurisdictional. "*

We believe that the status of Birch Creek and its tributaries as **"intrastate isolated waters with no apparent interstate or foreign commerce connection"** is a near permanent condition, and the provided information fully justifies the removal of Birch Creek from all consideration in the Integrated Report.

Sincerely,

Adam Whitman  
Meridian Jerritt Canyon Corp.