



US Army Corps
of Engineers®

REGULATORY GUIDANCE LETTER

No. 16-01

Date: October 2016

SUBJECT: Jurisdictional Determinations

1. Purpose. Approved jurisdictional determinations (AJDs) and preliminary JDs (PJDs) are tools used by the U.S. Army Corps of Engineers (Corps) to help implement Section 404 of the Clean Water Act (CWA) and Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). Both types of JDs specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes. This Regulatory Guidance Letter (RGL) explains the differences between these two types of JDs and provides guidance to the field and the regulated public on when it may be appropriate to issue an AJD as opposed to a PJD, or when it may be appropriate to not prepare any JD whatsoever.

The Corps has long provided JDs as a public service. In U.S. Army Corps of Engineers v. Hawkes Co., 136 S.Ct. 1807 (2016), the Supreme Court held that AJDs are subject to judicial review, and several members of the Court highlighted that the availability of AJDs is important for fostering predictability for landowners. The Corps recognizes the value of JDs to the public and reaffirms the Corps commitment to continue its practice of providing JDs when requested to do so, consistent with the guidance below. This clarification RGL does not change or modify the definitions of AJDs and PJDs included in Corps regulations, the documentation practices for each type of JD, or when an AJD is required by the terms of its definition (e.g., only an AJD can be used to determine presence/absence of waters of the U.S.). This RGL also does not address which aquatic resources are subject to CWA or RHA jurisdiction.

The aim of this RGL is to encourage discussions between Corps districts and parties interested in obtaining the Corps views on jurisdiction to ensure that all parties have a common understanding of the different options for addressing CWA and RHA geographic jurisdiction so that the most appropriate mechanism for addressing the needs of a person requesting a JD can be identified. This RGL does not limit the discretion afforded a district engineer by the regulations to ultimately determine, consistent with the guidance below, how to respond to a request for a JD. After a requestor is fully informed of the options available for addressing geographic jurisdiction, the Corps will continue its current practice of providing an AJD consistent with this guidance if the party continues to request one. The uniform understanding of the different types of JDs and the well-reasoned use of discretion in the manner described in this guidance is of substantial importance within the Regulatory Program. The district engineer should set reasonable priorities based on the district's workload and available regulatory resources. For example, it may be reasonable to give higher priority to a JD request when it accompanies a permit request. This RGL addresses similar issues included in RGLs 07-01 and 08-02. Both RGL 07-01 and 08-02 are hereby superseded by this RGL.

2. Background. The regulations implementing the CWA and RHA introduced the concept of JDs when they "... authorized its district engineers to issue formal determinations of the applicability of the [CWA or RHA] to . . . tracts of land." 33 C.F.R. 320.1(a)(6). The use of such determinations was not addressed by either statute, and the regulations make their use discretionary and do not create a right to a JD. The regulations authorize their use as a service to the public, and the Corps has developed a practice of providing JDs when requested, and in appropriate circumstances.

Corps practice has evolved to address questions of jurisdiction through the use of AJDs and PJDs. However, some jurisdictional inquiries may be resolved without a JD. For example, a letter confirming that no Corps permit is required for activities on a site may be sufficient for responding to requests in a particular case. These different means of addressing questions of jurisdiction are discussed further below.

It is the Corps responsibility to ensure that the various types of JDs, their characteristics, and the reasons behind the JD request, have been adequately discussed with the requestor so requestors can make an informed decision regarding what type of documentation will best serve their needs. The JD requestor, after being advised by the Corps, will determine what form of JD, if any, is best for his/her particular circumstance, based on all the relevant factors. These factors include, but are not limited to, the requestor's preference and reasons for the request, whether any kind of permit authorization is associated with the request for a JD (e.g., individual permit or general permit), and the nature of any proposed activity needing authorization. Such factors are also relevant to how such requests are prioritized by the district engineer. The Corps regulations implementing the CWA and RHA leave the decision of whether to issue a JD to the discretion of the district engineer. However, it will continue to be the agency's practice to honor requests for JDs unless it is impracticable to do so, such as when the Corps is unable to gain access to a site to complete a JD or the Corps lacks other information necessary to respond to the request based on a sound technical record.

3. Approved JDs. An AJD is defined in Corps regulations at 33 CFR 331.2. A definitive, official determination that there are, or that there are not, jurisdictional aquatic resources on a parcel and the identification of the geographic limits of jurisdictional aquatic resources on a parcel can only be made by means of an AJD. AJDs may be either "stand-alone" AJDs or AJDs associated with permit actions. Some "stand-alone" AJDs may later be associated with permit actions, but at time of issuance are not related to a permit application. A "stand-alone" AJD may be requested so that impacts to jurisdictional aquatic resources may be avoided or minimized during the planning stages of a project, or it may be requested in order to fulfill a local/state authorization requirement.

- a. Except as provided otherwise in this RGL, and provided that the Corps is allowed legal access to the property and is otherwise able to complete an AJD, the Corps will issue an AJD upon receiving a request for a formal determination regarding the jurisdictional status of aquatic resources on a parcel, whether or not the request specifically refers to an "AJD."

- b. An AJD:
 - (1) will be used if the Corps is determining the presence or absence of jurisdictional aquatic resources on a parcel;
 - (2) will be used if the Corps is identifying the geographic limits of

jurisdictional aquatic resources on a parcel;

(3) will remain valid for a period of five years (subject to certain limited exceptions explained in RGL 05-02);

(4) can be administratively appealed through the Corps administrative appeal process set out at 33 CFR Part 331; and,

(5) may be requested through the use of the enclosed "Request for Corps Jurisdictional Determination (JD)" in Appendix 1. Even if the JD requestor does not use the enclosed "Request for Corps JD", the same information and signature provided in the "Request for Corps JD" should be submitted to the Corps district with each JD request.

4. Preliminary JDs. A PJD is defined in Corps regulations at 33 CFR 331.2. When the Corps provides a PJD, or authorizes an activity through a general or individual permit relying on an issued PJD, the Corps is making no legally binding determination of any type regarding whether jurisdiction exists over the particular aquatic resource in question. A PJD is "preliminary" in the sense that a recipient of a PJD can later request and obtain an AJD if that becomes necessary or appropriate during the permit process or during the administrative appeal process. See Appendix 2 for the PJD form.

a. A PJD:

(1) may be requested in order to move ahead expeditiously to obtain a Corps permit authorization where the requestor determines that it is in his or her best interest to do so;

(2) may be requested even where initial indications are that the aquatic resources on a parcel may not be jurisdictional, if the requestor makes an informed, voluntary decision that it is in his or her best interest not to request and obtain an AJD;

(3) may be used as the basis for a permit decision; however, for purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a PJD will treat all aquatic resources that would be affected in any way by the permitted activity on the parcel as jurisdictional;

(4) may include the delineation limits of all aquatic resources on a parcel, without determining the jurisdictional status of such aquatic resources; and,

(5) may be requested through the use of the enclosed "Request for Corps Jurisdictional Determination (JD)" in Appendix 1. Even if the JD requestor does not use the enclosed "Request for Corps JD", the same information and signature provided in the "Request for Corps JD" should be submitted to the Corps district with each JD request.

5. No JD Whatsoever. The Corps generally does not issue a JD of any type where no JD has been requested and there are certain circumstances where a JD would not be necessary (such as authorizations by non-reporting nationwide general permits). In some circumstances, including where the Corps verifies general permits or issues letters of permission and/or standard permits, jurisdictional questions may not arise. In other circumstances, where no DA permit would be required because the proposed activity is not a regulated activity or is exempt under Section 404(f) of the CWA and is not recaptured, preparation of a "no permit required" letter may be appropriate, and no JD is required, so long as that letter makes clear that it is not addressing geographic jurisdiction.

6. Processing. The "Request for Corps Jurisdiction (JD)" in Appendix 1 of this RGL is intended to help both the requestor and the Corps in determining which type of JD, if any, is appropriate. When the Corps receives a request for a JD, the Corps should first explain to the requestor the various types of JDs and their characteristics to ensure that an informed decision is made by the requestor as to the type of JD the Corps will issue, if any. The Corps should discuss with the requestor the intent and purpose of the JD request rather than responding to the request through issuance of a JD without such understanding. Providing an explanation upfront as to the differences between the types of JDs and discussing what the requestor may need can help clarify which JD type may be appropriate for the requestor, if any. It is agency practice to honor requests for JDs unless it is clearly impracticable to do so, such as when the Corps is unable to gain access to a site to complete a JD or the Corps lacks other information necessary to respond to the request based on a sound technical record.
7. Coordination with U.S. Environmental Protection Agency (EPA) and posting. The Corps will continue to coordinate with EPA per applicable memoranda. The Corps will also continue to post final AJDs on Corps websites until the AJDs expire (generally five years, see RGL 05-02). PJDs will not be coordinated with EPA or posted on Corps websites.
8. This RGL remains in effect unless revised, superseded, or rescinded.



DONALD E. JACKSON
Major General, USA
Deputy Commanding General
for Civil and Emergency Operations

31 Oct 2016

Date

Appendices

Appendix 1 - REQUEST FOR CORPS JURISDICTIONAL DETERMINATION (JD)

To: District Name Here

- I am requesting a JD on property located at: _____
(Street Address)
City/Township/Parish: _____ County: _____ State: _____
Acreage of Parcel/Review Area for JD: _____
Section: _____ Township: _____ Range: _____
Latitude (decimal degrees): _____ Longitude (decimal degrees): _____
(For linear projects, please include the center point of the proposed alignment.)
- Please attach a survey/plat map and vicinity map identifying location and review area for the JD.
- I currently own this property. I plan to purchase this property.
 I am an agent/consultant acting on behalf of the requestor.
 Other (please explain): _____
- Reason for request: (check as many as applicable)
 I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all aquatic resources.
 I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all jurisdictional aquatic resources under Corps authority.
 I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps, and the JD would be used to avoid and minimize impacts to jurisdictional aquatic resources and as an initial step in a future permitting process.
 I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps; this request is accompanied by my permit application and the JD is to be used in the permitting process.
 I intend to construct/develop a project or perform activities in a navigable water of the U.S. which is included on the district Section 10 list and/or is subject to the ebb and flow of the tide.
 A Corps JD is required in order to obtain my local/state authorization.
 I intend to contest jurisdiction over a particular aquatic resource and request the Corps confirm that jurisdiction does/does not exist over the aquatic resource on the parcel.
 I believe that the site may be comprised entirely of dry land.
 Other: _____
- Type of determination being requested:
 I am requesting an approved JD.
 I am requesting a preliminary JD.
 I am requesting a "no permit required" letter as I believe my proposed activity is not regulated.
 I am unclear as to which JD I would like to request and require additional information to inform my decision.

By signing below, you are indicating that you have the authority, or are acting as the duly authorized agent of a person or entity with such authority, to and do hereby grant Corps personnel right of entry to legally access the site if needed to perform the JD. Your signature shall be an affirmation that you possess the requisite property rights to request a JD on the subject property.

*Signature: _____ Date: _____

- Typed or printed name: _____
Company name: _____
Address: _____

Daytime phone no.: _____
Email address: _____

***Authorities:** Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332.

Principal Purpose: The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the project area subject to federal jurisdiction under the regulatory authorities referenced above.

Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in the approved jurisdictional determination (AJD), which will be made available to the public on the District's website and on the Headquarters USACE website.

Disclosure: Submission of requested information is voluntary; however, if information is not provided, the request for an AJD cannot be evaluated nor can an AJD be issued.

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 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 AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) 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) 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) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (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 PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives 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 AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, 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. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "may be" waters of the U.S. and/or that there "may be" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map: _____.
- Data sheets prepared/submitted by or on behalf of the PJD requestor.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. Rationale: _____.
- 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: _____.
- 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 Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): _____.
or Other (Name & Date): _____.
- 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.

Signature and date of
Regulatory staff member
completing PJD

Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)¹

¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.

QUESTIONS AND ANSWERS for RGL 16-01

Q #1) What is an AJD and what is a PJD?

A #1) An AJD and a PJD are defined in Corps regulations at 33 CFR 331.2. See Sections 3 and 4 of RGL 16-01 for additional information.

Q #2) What are the key distinctions between an AJD and a PJD?

A #2) A PJD can only be used to determine that aquatic resources that exist on a particular parcel “may be” subject to regulatory jurisdiction. A PJD cannot be used to determine either that there are no jurisdictional aquatic resources on a parcel at all (e.g., the entire parcel consists of dry land or the parcel only includes non-jurisdictional aquatic resources), or that only a portion of the aquatic resources on a parcel are jurisdictional. A PJD, however, may include the delineation limits of all aquatic resources on a parcel as long as the PJD does not determine the jurisdictional status of such aquatic resources. A definitive, official determination that there are, or that there are not, jurisdictional aquatic resources on a parcel, or the identification of the geographic limits of jurisdictional aquatic resources on a parcel, can only be made by means of an AJD.

Q #3) Are there timeframes associated with issuing JDs?

A #3) Every AJD and PJD should be completed and provided to the requestor as promptly as practicable in light of the district’s workload, efficient processing of any related permit actions, and site and weather conditions if a site visit is determined necessary. Moreover, every Corps district should ensure that a permit applicant’s request for an AJD rather than a PJD will not prejudice the timely processing of that permit application, noting that an AJD may take longer to issue. JDs associated with permit actions may be finalized and sent with the issued permit/verification package if the applicant concurs that is appropriate and acceptable. The data necessary to quantify and defend the Corps Regulatory Program’s performance will be available for a permit application regardless of whether it was supported by an AJD, a PJD, or no JD whatsoever.

Q #4) Is the information used to support a permit decision the same whether the application is supported by an AJD or a PJD or even no JD?

A #4) Similar information is needed for an AJD as is needed for impacts and compensatory mitigation calculations during the permit process. However, the permit applicant has the right to request a PJD at any time (see Section 4 of RGL 16-01), or even no JD whatsoever. Regardless of the type of JD that is completed, permit applicants must submit the necessary information required to review their application and complete a permit decision. Applicants should provide a delineation of aquatic resources in support of an individual permit or “letter of permission” application. Also, a delineation of aquatic resources is required in order to determine that a pre-construction notification is complete per the nationwide permits general condition. Corps regulatory personnel are expected to continue to exercise appropriate judgment and use appropriate information when making technical and scientific determinations as to what areas on the parcel qualify as aquatic resources.

Q #5) Should the Corps complete JDs for use related to other CWA programs?

A #5) The Corps should consider workload and appropriately prioritize the response to requests for either an AJD or a PJD if the Corps has reason to believe that person is seeking a JD for any purpose relating to a CWA program not administered by the Corps (e.g., CWA Section 402, 303, or 311). The Corps should be cognizant that some states and local governments require AJDs in order to provide water quality certifications or for

other purposes. Depending upon the basis for the need for the JD and the district's workload, it may be appropriate for the Corps to deny requests for JDs to address a need not related to a Corps program. That justification should be appropriately documented. Districts are encouraged to work with state and other local agencies to develop operating procedures to facilitate this issue.

Q #6) Is the enclosed PJD form to be used for all PJDs?

A #6) In general, where a PJD is used the Corps district should complete the enclosed "Preliminary Jurisdictional Determination Form" in Appendix 2, which sets forth in writing the minimum requirements for a PJD and important information concerning the requesting party's option to request and obtain an AJD, and subsequent appeal rights. The PJD form must be sent to the requestor of the PJD and the signature of the requestor should be obtained on the PJD form wherever practicable. Where a PJD form covers multiple aquatic resources or multiple parcels, the information for each can be included in the table provided with the PJD form. Information in addition to the minimum of data required on the PJD form can be included on that form, but only if such information pertains to the amount and location of aquatic resources on the parcel. Information should be sufficiently accurate and reliable that the effective presumption of jurisdiction over all of the aquatic resources at the site will support a reliable and enforceable permit decision. Any such additional information included on the PJD form should not purport, or be construed, to address any legal determination involving jurisdiction on the parcel. Such supporting documentation may include descriptions of the characteristics of aquatic resources or information about nearby aquatic resources. Data developed and relied upon to support the Corps permit decision should be carefully documented as part of the permit process and should not be included in the PJD form.

Q #7) Are site visits necessary for an AJD?

A #7) The information used to support an AJD should be reliable and verifiable. Traditionally, this information has been obtained or verified through a site visit, but now, with information from new, highly sensitive technology and imaging, site visits are not always required for AJDs. However, certain AJDs, including those that are complex and challenging (e.g., some adjacency determinations, significant nexus determinations) may still require a site visit. Corps staff should ensure they have appropriate authorizations to enter sites legally when conducting a site visit.

Q #8) How are AJDs to be documented?

A #8) Documentation of an AJD generally requires the use of the AJD form published on 05 June 2007, or as modified by subsequent revisions developed by Corps Headquarters, in order to provide the "basis of jurisdictional determination" as per 33 CFR 331.2. A "basis of jurisdictional determination" is a summary of the indicators used to support the Corps AJD.

Corps districts will ensure that the information in the file adequately supports any AJD. The file shall, to the maximum extent practicable, explain the rationale for the determination, disclose the data and information relied upon, and, if applicable, explain what data or information received greater or lesser weight, and what professional judgment or assumptions were used in reaching the determination. The district should ensure the AJD form and associated documentation adequately demonstrates, when applicable, the tributary connection to the traditional navigable water, adjacency (including consideration of all adjacency factors), and the significant nexus determination. The level of documentation may vary among projects. For example, AJDs for complex review areas may require additional documentation by the districts.

Districts should ensure the documentation used to support the AJD addresses any objections from AJD requestors and/or consultants, when applicable. If the requestor submits materials with which the districts do not agree or do not concur (e.g., wetland delineation report), the districts should clearly document the reasons for reaching a contrary conclusion.

Copies of all supporting documents for the AJD should be included in the file, including, where applicable: resources referenced in the check boxes of the AJD form, or any other additional information used to support the determination, and documentation should clearly state any conclusions formulated from this information; print-outs or screen shots of remotely-sourced information (e.g., GIS, Google Earth); identification of the review area; field notes and complete wetland delineation data sheets; identification and rationale for determining the ordinary high water mark, mean high water line, and/or high tide line; and all other related documents and correspondence (emails, phone records, meeting records, *etc.*). It is typically not necessary to include in the file copies of readily available regulations, policy documents, guidance, and manuals utilized in the decision-making process; however, districts may include a copy of the title page and other relevant pages for clarity.

Q #9) For large projects that require multiple JDs, or for situations where a requestor asks to utilize PJDs and AJDs for different parts of a review area, can a combination of types of JDs be used?

A #9) A combination of PJDs and AJDs can be used, as long as the review areas for each type of JD are clearly designated.

Q #10) For the purpose of JDs, how is the "review area" defined, and how are multiple water bodies and wetlands within a review area documented?

A #10) The review area for JDs is at the discretion of the district, and should be clearly documented in the file for the JD. It may consist of the entire parcel of land, or a portion of that parcel. The review area should be clearly marked on any plans or maps accompanying a JD. When there are multiple water bodies or wetlands within the review area of a PJD, their location and extent may be summarized in the table provided in the PJD form.

Q #11) How are aquatic resources that are designated as "navigable waters of the U.S." under Section 10 of the RHA to be documented for jurisdiction if they are the only aquatic resources present in a JD review area?

A #11) For JDs with review areas which only include aquatic resources which are subject to the ebb and flow of the tide and/or have been designated as "navigable waters of the U.S." under Section 10 of the RHA and are included on Corps district lists of such aquatic resources (i.e., aquatic resources that have been determined navigable through 33 CFR Part 329 or through determinations made by the federal courts), no official JD of any kind is required. The Corps need only document in the file that the aquatic resources are included in the district section 10 navigable waters of the U.S. list and/or that the aquatic resources are subject to the ebb and flow of the tide. As such, the aquatic resources are clearly section 10 navigable waters of the U.S. and, therefore, those aquatic resources are also considered to be CWA Section 404 traditional navigable waters. This provision excludes "historic" section 10 aquatic resources that are now "fast land"/dry land and not considered jurisdictional under section 404. The district should inform the landowner that their parcel includes such aquatic resources subject to Corps authorities under section 10 and section 404 and include documentation in the file that such conversation occurred (e.g., email; phone record, *etc.*). The Corps will continue to provide an AJD when requested per Section 3 of this RGL after having the conversation with the requestor about their options (see Sections 2 and 6 of this RGL); for example, if the requestor wants to contest the lateral limits of jurisdiction in such aquatic resources the Corps may provide an AJD. In addition,

districts may continue to provide a "case-specific" AJD for aquatic resources subject to both section 10 and section 404 authority (e.g., those aquatic resources subject to the ebb and flow of the tide) when requested. When a PJD form is used to identify aquatic resources which "may be" subject to both section 10 and 404 authority on a parcel it may only list previously identified "navigable waters of the U.S." and/or those aquatic resources which may be subject to the ebb and flow of the tide.

Q #12) What type of JDs are to be used for enforcement actions?

A #12) A JD is not required in connection with an enforcement action. PJDs are sometimes used in enforcement situations because access to a site may be impracticable or unauthorized, or for other reasons an AJD cannot be completed in a timely manner. In such circumstances, a PJD may serve as the initial step for Corps enforcement actions. The Corps may also support an enforcement action with an AJD; however, in some circumstances, an enforcement action may be supported by no official JD whatsoever as long as there is adequate documentation in the file to support jurisdiction over the site, and as long as the other elements required to demonstrate that a violation has occurred exists in the file. Regardless of how the Corps documents jurisdiction related to an enforcement action, the Corps primarily must ensure sufficient evidence and support is provided in the file to enable a conclusion regarding geographic jurisdiction for a complete administrative record and for potential litigation purposes. Consistent with Section 3 of this RGL, if the alleged violator requests an AJD because they want to contest jurisdiction, for example, the Corps will issue an AJD. See 33 CFR 326 and 331 for additional information on such requests.

QUICK REFERENCE CHART for RGL 16-01

APPROVED JDs	PRELIMINARY JDs
<ul style="list-style-type: none"> An AJD is defined in Corps regulations at 33 CFR 331.2. A definitive, official determination that there are, or that there are not, jurisdictional aquatic resources on a parcel and the identification of the geographic limits of jurisdictional aquatic resources on a parcel, can only be made by means of an AJD. 	<ul style="list-style-type: none"> A JD requestor may elect to use a PJD to move ahead expeditiously to obtain a Corps permit authorization, where the requestor determines that it is in his or her best interest to do so. May include the delineation limits of all aquatic resources on a parcel so long as the PJD does not determine the jurisdictional status of such aquatic resources.
<ul style="list-style-type: none"> Will specify what aquatic resources are or are not jurisdictional on a parcel for purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures. 	<ul style="list-style-type: none"> A requestor may elect to use a PJD even where initial indications are that the aquatic resources on a site may not be jurisdictional, if the requestor makes an informed, voluntary decision that it is in his or her best interest not to request and obtain an AJD. For purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a PJD will treat all aquatic resources that would be affected in any way by the permitted activity on the site as jurisdictional aquatic resources. When the Corps provides a PJD, or authorizes an activity based on a PJD, the Corps is making no legally binding determination of any type regarding whether jurisdiction exists over the particular aquatic resource in question.
<ul style="list-style-type: none"> Remains valid for period of five years (subject to certain limited exceptions explained in RGL 05-02). 	<ul style="list-style-type: none"> Do not have expiration dates (see RGL 05-02).
<ul style="list-style-type: none"> Can be administratively appealed through the Corps administrative appeal process set out at 33 CFR Part 331. 	<ul style="list-style-type: none"> A PJD is not an appealable action. A PJD is "preliminary" in the sense that a recipient of a PJD can later request and obtain an AJD if that becomes necessary or appropriate during the permit process or during the administrative appeal process.
<ul style="list-style-type: none"> May be requested through the use of the "Request for Corps JD" included with RGL 16-01 as Appendix 1. Even if the JD requestor or Corps district does not use the "Request for Corps JD", the same information and signature provided in the "Request for Corps JD" should be submitted to the Corps district with each JD request. 	<ul style="list-style-type: none"> May be requested through the use of the "Request for Corps JD" included with RGL 16-01 as Appendix 1. Even if the JD requestor or Corps district does not use the "Request for Corps JD", the same information and signature provided in the "Request for Corps JD" should be submitted to the Corps district with each JD request.

OTHER OPTIONS TO BE CONSIDERED

NO PERMIT REQUIRED	OTHER CIRCUMSTANCES
<ul style="list-style-type: none"> For situations where the proposed activity is not a regulated activity or an activity is exempt under Section 404(f) of the CWA and is not recaptured, preparation of a "no permit required" letter may be appropriate, and no JD is required, so long as that letter makes clear that it is not addressing geographic jurisdiction. 	<ul style="list-style-type: none"> The Corps generally does not issue a JD of any type where no JD has been requested and there are certain circumstances where a JD would not be necessary (such as authorizations by non-reporting nationwide general permits). In some circumstances, including where the Corps verifies general permits or issues letters of permission and/or standard permits, jurisdictional questions may not arise.

Sample questions which may be posed to requestors to help determine which type of JD, if any, may be appropriate in their circumstances:

Whether the requestor intends to avoid or minimize impacts to aquatic resources on the parcel for a planned project. (PJD may suffice).

Whether the requestor intends to avoid or minimize impacts to jurisdictional aquatic resources on the parcel for a planned project. (AJD may be necessary).

Whether the requestor needs an AJD for local/state authorization, or whether a PJD or no JD whatsoever would suffice.

Whether the requestor is proposing work only to occur in a designated Section 10 "navigable water of the U.S." and/or in a water subject to the ebb and flow of the tide. (No JD may be necessary).

Whether the requestor has submitted a non-reporting general permit verification request. (No JD may be necessary).

Whether the requestor desires a faster permit process. (PJD may suffice).

Whether the requestor wants formal confirmation regarding non-jurisdictional aquatic resources on a parcel. (AJD may be necessary).

Whether the requestor wants to perform exempt activities under 404(f)(1). ("No Permit Required" letter which does not address geographic jurisdiction may suffice).

Whether the requestor wants confirmation that aquatic resources which are generally not considered jurisdictional are non-jurisdictional (e.g., certain ditches). (AJD may be necessary).