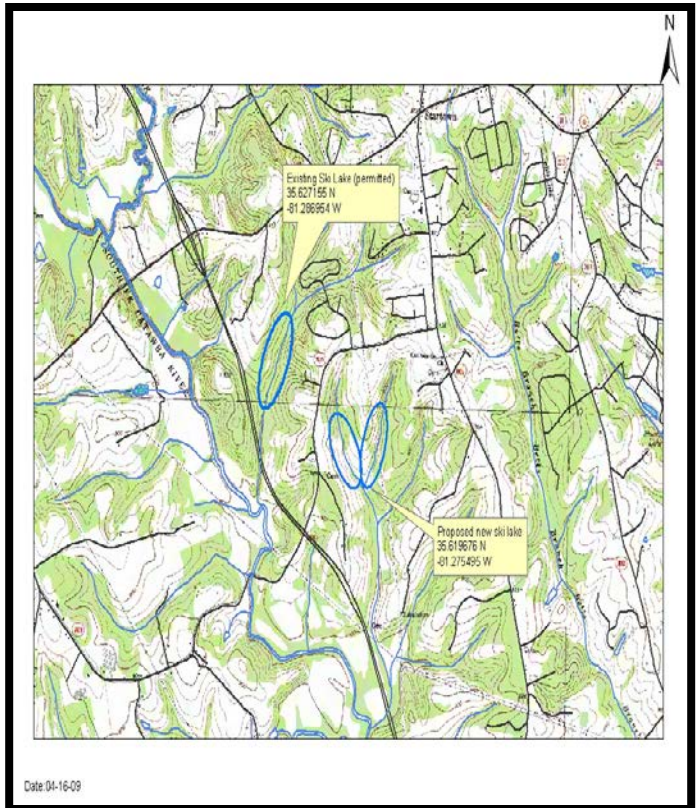




**US Army Corps
of Engineers**
Wilmington District

RFE Farms, LLC / Neill Ski Lake II Catawba County (Regulatory)

- The proposed project was to construct a second ski lake on property adjacent to a previously permitted ski lake near the Startown community in Catawba County, North Carolina.
- The permit for this project was denied because the project's purpose and need does not justify the construction of an on-line impoundment. The Corps has determined that there are several off-site practicable alternatives that exist to meet this need.
- An administrative appeal was filed by the applicant on February 19, 2013 and subsequently accepted by the Corps on February 22, 2013. By memorandum dated July 8, 2014, the Corps found that the Rocky Ford East, LLC's (RFE) appeal had merit, and remanded the permit decision for action.
- A final permit decision pursuant to the Corps' remand of the appealed action is pending. The applicant has a deadline of January 28, 2015 to provide a response to the comments received during the most recent Public Notice.



CONGRESSIONAL DISTRICT: NC-10

DATE: 23 February 2015

1. PURPOSE:

To provide information regarding a permit denial issued to Neill Grading & Construction Company for the proposed construction of Neill Ski Lake II, a proposed recreational/ski

PROJECT INFORMATION – RFE Farms, LLC / Neill Ski Lake II, Catawba County, NC
(Regulatory) – Continued

competition impoundment located near the Startown community in Catawba County, North Carolina (Action ID SAW-2009-01304).

2. **BACKGROUND:**

a. On October 6, 2005, Neill Grading & Construction Company was issued an individual permit to discharge fill material into 300 linear feet of stream to construct two dams and impound approximately 3,600 linear feet of perennial and intermittent stream for an 18-acre water ski lake near Newton in Catawba County, North Carolina (Action ID SAW-2003-30268).

b. On July 9, 2009, Mr. Clay Neill submitted a Department of the Army permit application for a second ski lake on property adjacent to the previously permitted lake. The application was ultimately considered complete and a public notice was issued on October 3, 2011. Prior to the application being considered complete, the Corps notified Mr. Neill multiple times that his initial application and/or subsequent submittals lacked necessary information to process his application. Specifically, the application lacked information regarding the project purpose and need, alternatives analysis, avoidance and minimization efforts, and proposed compensatory mitigation for unavoidable impacts.

c. On October 28, 2011, a site visit was conducted to review the project with other resource commenting agencies. Many of the same issues outlined above were raised/discussed at this meeting.

d. The comment period closed on November 18, 2011. All comments received via the Public Notice as well as comments from the Corps were provided to the applicant on November 29, 2011. A response deadline of January 31, 2012, was granted due to substantive comments received. The applicant has requested and was granted an extension to provide comments by March 16, 2012.

e. The applicant responded by letter dated March 16, 2012, which was received by the Corps on March 22, 2012. This response did not provide any new information and reiterated information that had already been submitted.

f. The Corps evaluated the applicant's March 16, 2012, response and carefully reviewed all the information submitted to date. By letter dated December 10, 2012, the applicant was notified that their permit request was denied due to lack of compliance with the 404(b)1 Guidelines. Specifically, the Corps concluded that the project's purpose/need did not justify the construction of an on-line impoundment and determined that there are several off-site practicable alternatives that exist to meet this need. An administrative appeal was filed by the applicant on February 19, 2013 and subsequently accepted by the Corps on February 22, 2013.

g. By memorandum dated July 8, 2014, the Corps found that the RFE appeal had merit, and remanded the permit decision to the Corps for action. The effects of this reconsideration were

PROJECT INFORMATION – RFE Farms, LLC / Neill Ski Lake II, Catawba County, NC
(Regulatory) – Continued

determined to be narrow in scope and impact. Therefore, pursuant to 33 CFR § 331.10 (b), the Corps provided notification, by letter dated July 25, 2014, to all parties who participated in the original permit review seeking their comments regarding our reconsideration of the RFE permit decision.

h. The remand comment period closed on August 12, 2014. All comments received via this remand comment period, as well as comments from the Corps were provided to the applicant on August 27, 2014. A response deadline of September 12, 2014, was given to the applicant with the comment response letter.

i. The applicant requested in writing “a minimum of 90 days prior to the deadline” in order to submit their response. After concurrence from the Corps the response deadline was extended to December 15, 2014, with a condition of scheduling two interim meetings during the extension in order to answer/discuss questions through the progression of the response.

j. The applicant provided additional and revised project information within the scope of the remand review. In accordance with 33 CFR § 331.10 (b) and 325.7, the Corps determined that additional public review and consideration of the project was warranted. An additional Public Notice was issued on December 17, 2014, with a comment deadline of January 5, 2015, regarding the revised request for an Army (DA) permit authorization to fill and subsequently flood approximately 4,092 linear feet of stream and 0.14 acre of wetlands.

k. The Public Notice comment period closed on January 5, 2015. All comments received via the Public Notice as well as comments from the Corps were provided to the applicant on January 12, 2015. The applicant provided their response to comments the week of January 26th.

3. **CURRENT STATUS:**

A final permit decision pursuant to the Corps’ remand of the appealed action is pending. A final decision is anticipated on or before March 31, 2015.