CESPK-CO-R (1145) 13 Feb 2004

REGULATORY BRANCH MEMORANDUM 2004-01

SUBJECT: Reclamation of Sand and Gravel Pits

1. Purpose. To establish policy for determining when pits excavated in uplands for fill, sand, or gravel extraction require a Department of the Army permit for reclamation.

2. Applicability. This memorandum applies to all actions in the Sacramento District.

3. References. 33 CFR 320-330, Preamble, Section 328.3.

4. Background. Pits excavated in uplands for fill, sand, or gravel often fill with water. The result is usually a lake or a wetland, and sometimes both. The question arises as to whether these water bodies should be considered waters of the United States under Section 404 of the Clean Water Act.

5. Policy. The following criteria will be used to determine whether pits excavated in uplands for the extraction of fill, sand, or gravel, and which now hold water or support wetlands, are waters of the United States.

a. If the pit has not been abandoned, it will generally not be considered a water of the United States. A pit has not been abandoned if (1) the excavation operation is on-going and has not been interrupted for 5 years or (2) excavation has ceased but a mine plan or reclamation plan exists to give evidence that there was intent to fill the area upon completion of excavation. Such reclamation activities must have been initiated within 5 years after cessation of mining.

b. If the pit has been abandoned, any water body within a pit may be regulated, provided it meets the definition of waters of the United States.

ANDREW J. ROSENAU
Chief, Regulatory Branch