

REGULATORY BRANCH MEMORANDUM 2004-03

SUBJECT: "Leaky Ditch" Wetlands

1. Purpose. To establish policy for "leaky ditch" wetlands.

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

3. References.

a. Federal Register, Vol. 51, No. 219, dated 13 November 1986, page 41217.

b. Regulatory Branch Office Memorandum 2003-04, "Irrigated" Wetlands, dated 31 Oct 2003.

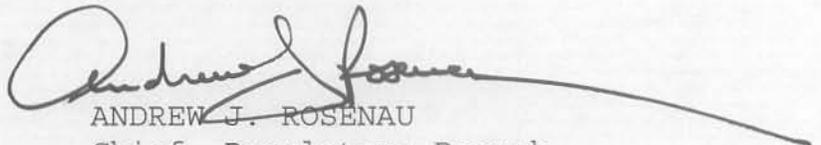
c. 33 CFR 328: Definition of Waters of the United States.

4. Definition. A "leaky ditch" wetland is an area down slope from an irrigation ditch that meets the definition of wetlands in accordance with the Corps' Wetland Delineation Manual where the hydrology is due solely to leakage from the ditch.

5. Background. Reference 3a states that artificially irrigated areas, which would revert to upland if the irrigation ceased, and irrigation ditches excavated on dry land are generally not considered to be waters of the United States. Reference 3b identifies the procedures to be used in differentiating between natural and artificially irrigated wetlands. Some leaky ditch wetlands have been considered "waters of the United States" in the past since they did not meet a strict interpretation as irrigated. This has resulted in confusion and an appearance of inconsistency.

6. Policy. Wetlands created solely by leakage from irrigation ditches will be considered "artificially irrigated wetlands." Accordingly, such wetlands will not be considered waters of the U.S. Where there is uncertainty regarding the source of hydrology for the

wetland, we will assume that the wetland is supported, at least partially, by natural hydrology unless clearly demonstrated otherwise. In such cases the wetland would be jurisdictional until shown to be due solely to a leaky ditch.



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