

JURISDICTIONAL DETERMINATION

U.S. Army Corps of Engineers
Sacramento District

File Number: SPK-2007-00144

PROJECT LOCATION INFORMATION: Central Lathrop Phase II Project

State: California
County: San Joaquin
Center Coordinates of Site: Latitude 037.501646N, Longitude -121.175995W
Approximate size of area (parcel) reviewed, including uplands: 519 acres
Name of nearest waterway: San Joaquin River
Name of watershed: San Joaquin

JURISDICTIONAL DETERMINATION

Completed: Desktop determination [X] Date: August 14, 2008
Site visit [X] Date: March 29, 2007

Jurisdictional Determination (JD):

Preliminary JD - Based on available information, *there appear to be* (or) *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).

There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 3.642 acres, however, these are adjacent to the project and reported by the applicant **not** to be within project boundaries.

There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 1.153 acres riparian woodland; 1.929 acres of seasonal wetland; 1.208 acres of jurisdictional drainage ditches for a total of 4.29 acres of jurisdictional waters.

There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area. 1.913 acres of waters that do not drain into any tributary.

Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) The presence of interstate waters including interstate wetlands¹.

(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(iii) which are or could be used for industrial purposes by industries in interstate commerce.

(4) Impoundments of waters otherwise defined as waters of the U.S.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

(7) The presence of wetlands adjacent² to other waters of the U.S., except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Drainage ditches are used to distribute water pumped from the San Joaquin River for irrigating commercial crops, excess is pumped back into the San Joaquin River, a navigable waterbody as recognized by the Corps. One riparian wetland is located on the San Joaquin River (waterside) of the levee. A seasonal wetland is separated by the levee but is adjacent to the San Joaquin River. Two seasonal wetlands are adjacent

to drainage ditches.

Lateral Extent of Jurisdiction: (Reference 33 CFR parts 328 and 329)

- Ordinary High Water Mark indicated by:
- clear, natural line impressed on the bank
 - the presence of litter and debris
 - changes in the character of soil
 - destruction of terrestrial vegetation
 - shelving
 - other:
- High Tide Line indicated by:
- oil or scum line along shore objects
 - fine shell or debris deposits (foreshore)
 - physical markings/characteristics
 - tidal gages
 - other:
- Mean High Water Mark indicated by:
- survey to available datum;
 - physical markings;
 - vegetation lines/changes in vegetation types.

Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: ECORP Consulting, Inc.

Basis For Not Asserting Jurisdiction:

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
 - Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
 - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- Isolated, intrastate wetland with no nexus to interstate commerce. This office concurs with the consultant that there are 1.913 acres of isolated waters as well as other waters which are considered jurisdictional .
- Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply)

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
- This office concurs with the delineation report: The delineation report was modified subsequent to the March 29, 2007 field visit. The revised report includes additional data points and clarification on waters. The revised report was submitted September 24, 2007.
- This office does not concur with the delineation report, dated , prepared by
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
- U.S. Geological Survey 7.5 Minute Topographic maps:
- U.S. Geological Survey 7.5 Minute Historic quadrangles:
- U.S. Geological Survey 15 Minute Historic quadrangles:
- USDA Natural Resources Conservation Service Soil Survey:
- National wetlands inventory maps:
- State/Local wetland inventory maps:
- FEMA/FIRM maps (Map Name & Date):
- 100-year Floodplain Elevation is: (NGVD)
- Aerial Photographs (Name & Date):
- Other Photographs (Date):
- Advanced Identification Wetland maps:
- Site visit/determination conducted on: March 29, 2007
- Applicable/supporting case law:
- Other information (please specify):

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.