



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

January 19, 2017

Regulatory Division (SPK-2010-00319)

Ms. Alicia Forsythe
Bureau of Reclamation
San Joaquin River Restoration Program
2800 Cottage Way, W-1727
Sacramento, California 95825

Dear Ms. Forsythe:

We are responding to your June 13, 2016, September 29, 2016, and January 19, 2017, request and correspondence for a preliminary jurisdictional determination (JD) for the Mendota Pool Bypass & Reach 2B Project site from our office. This approximately 5,610.65-acre project site is located in the San Joaquin River, including Mendota Pool, in Sections 7, 8, 16-23, 25-27, 29-30, 32, and 36, Township 13 South, Range 15 East, MDB&M, Latitude 36.780214676602°, Longitude -120.329834476599°, Fresno and Madera Counties, California. The Corps of Engineers has jurisdiction over this project area under Section 10 of the Rivers and Harbors Act, and Section 404 of the Clean Water Act.

Based on available information, we concur with your aquatic resources delineation for the site as depicted in the set of 29 wetland delineation maps created by AECOM dated 2016, entitled *404 Wetland Delineation, Mendota Pool Bypass and Reach 2B Improvements Project*. We verify that there are approximately 711.26 acres of waters of the United States within the project site. These waters of the United States are made up of approximately 396.59 acres of other waters of the United States, 299.68 acres of wetlands, and 14.99 acres of jurisdictional canals that are present within the survey area. These features are potential jurisdictional aquatic resources or waters of the United States and are regulated under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

At your request, we have completed a preliminary JD for the site. Enclosed find a copy of the *Preliminary Jurisdictional Determination Form* (Enclosure 1). Please sign and return the completed form to this office, at the address listed below, within 30 days of the date of this letter. If you do not return the signed form within 30 days, we will presume concurrence and finalize the preliminary jurisdictional determination.

You may request an approved JD for this site at any time prior to starting work within waters, including after a permit decision is made.

We recommend you provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

This preliminary jurisdictional determination has been conducted to identify the potential limits of wetlands and other aquatic resources at the project site which may be subject to U.S. Army Corps of Engineers jurisdiction under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. A *Notification of Appeal Process and Request for Appeal Form* is enclosed to notify you of your options with this determination (Enclosure 2).

Please refer to identification number SPK-2010-00319 in any correspondence concerning this project. If you have any questions, please contact me at the letterhead address, Room 1350, by email at Kathy.Norton@usace.army.mil, or telephone at (916) 557-5260. For Regulatory program information or to complete our customer survey, visit our website located at www.spk.usace.army.mil/Missions/Regulatory.aspx.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Norton", written over a white rectangular area.

Kathy Norton
Sr. Project Manager
California South Branch

Enclosures

cc: (w/encl)

Ms. Rebecca Victorine, Bureau of Reclamation, San Joaquin River Restoration Program, 2800 Cottage Way, Sacramento, California 95825

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

Sacramento District

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Regulatory Branch: **California South** File/ORM #: **SPK-2010-00319** PJD Date: **January 19, 2017**

State: **CA** City/County: **Near Firebaugh, Madera/Fresno Counties**

Nearest Waterbody: **San Joaquin River**

Location (Lat/Long): **36.780214676602°, -120.329834476599°**

Size of Review Area: **5,610.65** acres

Name/Address
Of Property **Bureau of Reclamation**
Owner/ **Attn: Ms. Alicia Forsythe**
Potential **2800 Cottage Way**
Applicant **Sacramento, California 95825**

Identify (Estimate) Amount of Waters in the Review Area

Non-Wetland Waters:

Canals: **14.99** acres linear feet ft wide
Other Waters: **396.59** acre(s)

Stream Flow: **Perennial and Seasonal**

Wetlands: **299.68** acre(s)

Cowardin Class: **Mixed**

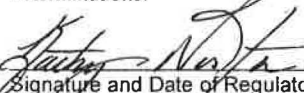
Name of any Water Bodies Tidal:
on the site identified as
Section 10 Waters: Non-Tidal: **San Joaquin River**

Office (Desk) Determination
 Field Determination:
Date(s) of Site Visit(s):

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply – checked items should be included in case file and, where checked and requested, appropriately reference sources below)

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Data sheets prepared by the Corps.
- Corps navigable waters' study.
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; CA-MENDOTA DAM**
- USDA Natural Resources Conservation Service Soil Survey.
- National wetlands inventory map(s).
- State/Local wetland inventory map(s).
- FEMA/FIRM maps.
- 100-year Floodplain Elevation (if known):
- Photographs: Aerial
 Other
- Previous determination(s). File no. and date of response letter:
- Other information (please specify): **LiDAR from BOR**

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 Project Manager
(REQUIRED) **19 Jan 2017**

Signature and Date of Person Requesting Preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that 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) that 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) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (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 preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes 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 approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, 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, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Bureau of Reclamation,
Attn: Ms. Alicia Forsythe

File No.: SPK-2010-00319

Date: January 19, 2017

Attached is:

See Section below

	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
◆	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the **above** decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

From: [Minks, Andrew](#)
To: [Norton, Kathleen M CIV CESPCK CESPDP \(US\)](#)
Subject: Re: [EXTERNAL] Re: Wetland Delineation for Reach 2B (UNCLASSIFIED)
Date: Thursday, January 19, 2017 2:15:19 PM

Hi Kathy,

The following are the acreage totals for the delineation sheets the canal occurs on.

- Sheet 3: 0.38 acre
- Sheet 4: 2.31 acres
- Sheet 5: 2.26 acres
- Sheet 7: 0.378 acre
- Sheet 8: 4.74 acres
- Sheet 9: 3.29 acres
- Sheet 10: 1.63 acres
- Sheet 11: 0.004 acre

Cheers,
Andrew

14.99 acres

On Thu, Jan 19, 2017 at 1:23 PM, Norton, Kathleen M CIV CESPCK CESPDP (US)
<Kathy.Norton@usace.army.mil> wrote:

CLASSIFICATION: UNCLASSIFIED

Hi Andrew--- Thanks for your help on this-- Would it be possible to have an acreage total for the canals per wetland delineation sheet? Please.....thanks much again!

Kathy Norton

Ecologist/Sr. Project Manager

USACE, Regulatory Division

California South Branch,

1325 J Street, Room 1350

Sacramento, California 95814-2922

916-557-5260; fax-916-557-7807

Customer Service Hours: 09:00 am-3:00 pm - Tuesday -Friday

kathy.norton@usace.army.mil

(We do not have "out-of-office" e-mail return notes. So--e-mails not returned in a reasonable amount of time means I'm not in the office, and haven't received your message.)

Web page/surveys/information

[Blockedhttp://www.spk.usace.army.mil/Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx)

[Blockedhttp://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey)

-----Original Message-----

From: Minks, Andrew [<mailto:aminks@usbr.gov>]

Sent: Tuesday, January 17, 2017 3:06 PM

To: Harrison, Katrina <kharrison@usbr.gov>

Cc: Norton, Kathleen M CIV CESPCK CESPDP (US) <Kathy.Norton@usace.army.mil>;

Rebecca Victorine <rvictorine@usbr.gov>

Subject: [EXTERNAL] Re: Wetland Delineation for Reach 2B (UNCLASSIFIED)

Hi Kathy,

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Kathy Norton
Sr. Project Manager
California South Branch
U.S. Army Corps of Engineers
1325 J Street, Room 1480
Sacramento, California 95814-2922
Phone: (916) 557-5260, FAX 916-557-7807
Email: Kathy.Norton@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Thomas J. Cavanaugh
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division
1455 Market Street, 2052B
San Francisco, California 94103-1399
Phone: 415-503-6574, FAX 415-503-6646
Email: Thomas.J.Cavanaugh@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: