Appendix C-2, **Jurisdictional Delineation Report**

GLENN LUKOS ASSOCIATES

August 31, 2010

Mr. Hugh Hewitt
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SUBJECT: Jurisdictional Delineation of the 1,543-Acre Butterfield Specific Plan Development Project, Located in the City of Banning and County of Riverside, California.

Dear Mr. Hewitt:

This letter report summarizes our preliminary findings of U.S. Army Corps of Engineers (Corps), Colorado River Basin Regional Water Quality Control Board (Regional Board), and California Department of Fish and Game (CDFG) jurisdiction for the above-referenced property.[1]

The Butterfield Specific Plan Development Project (Project) is located in the City of Banning and County of Riverside, California [Exhibit 1]. The Project site comprises approximately 1,543 acres and is located in Sections 25 and 36, Township 2 South, Range 1 West; Section 31, Township 2 South, Range 1 East; and Section 1, Township 3 South, Range 1 West.

The Project is bounded by mostly undeveloped land to the north, Wilson Avenue to the south, undeveloped land to the northeast, Highland Home Road to the southeast, and Highland Springs Avenue to the west [Exhibit 2]. The Project's northern boundary is located at 33.966542° North Latitude and -116.933313° West Longitude; the Project's southern boundary is located at 33.932649° North Latitude and -116.936113° West Longitude; the Project's eastern boundary is located at 33.949980° North Latitude and -116.923623° West Longitude; and the Project's western boundary is located at 33.954105° North Latitude and -116.946983° West Longitude.

The Project site supports three blue-line drainages (as depicted on the U.S. Geological Survey [USGS] topographic map Beaumont, California [dated 1953 and photorevised in 1988] [Exhibit 2]).

[1] This report presents our best effort at estimating the subject jurisdictional boundaries using the most up-to-date regulations and written policy and guidance from the regulatory agencies. Only the regulatory agencies can make a final determination of jurisdictional boundaries. If a final jurisdictional determination is required, GLA can assist in getting written confirmation of jurisdictional boundaries from the agencies.

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During April and May 2005, regulatory specialists of Glenn Lukos Associates, Inc. (GLA) examined the Project site to determine the limits of (1) Corps jurisdiction pursuant to Section 404 of the Clean Water Act (CWA), (2) CDFG jurisdiction pursuant to Division 2, Chapter 6, Sections 1600-1616 of the Fish and Game Code, and (3) Regional Board jurisdiction pursuant to Section 401 of the CWA and Section 13260 of the California Water Code (CWC). GLA re-examined the Project site on June 30, 2010 and July 1, 2010 to define the limits of Corps, CDFG, and Regional Board jurisdiction and to update the results of our original April/May 2005 jurisdictional delineation. Enclosed is a 750-scale map [Exhibit 3] that depicts the boundaries of Corps, CDFG, and Regional Board jurisdiction. Photographs to document the topography, vegetative communities, and general widths of each of the waters are provided as Exhibit 4 and a soils map is included as Exhibit 5.

Wetland data sheets are attached as Appendix A, a copy of the Corps' *Preliminary Jurisdictional Determination Form* for Drainages A, B, C, D, E, and N, as well as Smith Creek, is attached as Appendix B, and copies of the *Approved Jurisdictional Determination Forms* for Drainages F through K, as well as Drainage M, are attached as Appendix C.

Potential Corps jurisdiction within the Project area totals 9.67 acres, of which less than 0.01 acre consists of jurisdictional wetlands. All potential Corps jurisdictional waters within the Project area are ephemeral and considered to be Non-Relatively Permanent Waters (Non-RPWs). A total of 20,929 linear feet of Corps-regulated streambed is present. Potential Corps jurisdiction associated with the off site portions of Smith Creek totals 0.15 acre, none of which consist of jurisdictional wetlands. A total of 530 linear feet of Corps-regulated streambed is present within the off site portions of Smith Creek.

The Project also supports several ephemeral drainage features that are isolated pursuant to the January 9, 2001 U.S. Supreme Court decision titled *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, et al.* (SWANCC) and do not support a surficial connection to another Corps jurisdictional water. This decision indicated that drainages not supporting a surficial connection to Corps jurisdictional waters are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Additionally, the isolated drainage features would be considered non-RPWs, which do not support a significant biological, chemical, or physical nexus to the closest Traditionally Navigable Water (TNW), the Salton Sea, and would not be subject to Corps jurisdiction pursuant to the U.S. Supreme Court decision in *Rapanos v. United States* and *Carabell v. United States*[2]

[2] Rapanos v. United States and Carabell v. U.S. Army Corps of Engineers, 547 U.S. – (2006). In the guidance, the agencies offer three categories: (1) certain types of waters over which they "will assert jurisdiction" (traditional

(Rapanos). The Project area supports a total of 0.47 acre of isolated waters, none of which exhibit wetland characteristics. A total of 9,405 linear feet of isolated streambed is present.

CDFG jurisdiction within the Project area totals 11.53 acres, of which 0.35 acre consists of vegetated riparian habitat. A total of 33,890 linear feet of streambed is present. CDFG jurisdiction associated with the off site portions of Smith Creek total 0.23 acre, of which 0.08 acre consists of vegetated riparian habitat. A total of 530 linear feet of streambed is present within the off site portions of Smith Creek.

Regional Board jurisdiction within the Project area totals 10.14 acres, of which less than 0.01 acre consists of jurisdictional wetlands. A total of 30,334 linear feet of streambed is present. Regional Board jurisdiction associated with the off site portions of Smith Creek total 0.15 acre, none of which consist of jurisdictional wetlands. A total of 530 linear feet of streambed is present within the off site portions of Smith Creek.

## I. METHODOLOGY

Prior to beginning the field delineation a 200-scale color aerial photograph, a 200-scale topographic base map of the property, and the previously cited USGS topographic map were examined to determine the locations of potential areas of Corps, CDFG, and Regional Board jurisdiction. Suspected jurisdictional areas were field checked for the presence of definable channels and/or wetland vegetation, soils and hydrology. Suspected wetland habitats on the site were evaluated using the methodology set forth in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual[3] (Wetland Manual) and the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region Version 2.0[4] (Arid West Supplement). Lateral limits of non-wetland waters were identified using field indicators of an

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navigable waters, wetlands adjacent to such waters, relatively permanent non-navigable tributaries of such waters, and wetlands directly abutting such tributaries), (2) other types of waters for which they will consider on case-by-case whether they have a "significant nexus" with a traditional navigable water, and (3) isolated waters, which may have an interstate commerce connection other than migratory birds. The Corps also noted that other "features" over which they "generally will not assert jurisdiction," include areas such as gullies, erosional features, and ditches excavated in and draining uplands.

[3] Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1. Vicksburg, MS: U.S. Army Engineer Waterways Experimental Station.

[4] U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0). Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center and Engineering Laboratory.

Ordinary High Water Mark (OHWM).[5] While in the field, jurisdictional areas were recorded onto a 200-scale color aerial photograph using visible landmarks. Other data were recorded onto wetland data sheets.

The Soil Conservation Service (SCS)[6] has mapped the following soil types as occurring in the general vicinity of the project site:

**Gorgonio Gravelly Loamy Fine Sand, 2 to 15 Percent Slopes (GmD)**

The Gorgonio series are somewhat excessively drained to excessively drained soils on alluvial fans. These soils developed in alluvium consisting mainly of granitic materials. Slopes range from zero to 15 percent. The upper 15 inches consist of dark grayish-brown (10YR 4/2) to brown (10YR 5/3) gravelly loamy fine sand when dry and very dark grayish brown (10YR 3/2) to dark brown (10YR 3/3) gravelly loamy fine sand when moist. The Gorgonio soils are used for dryland pasture and range, irrigated alfalfa, apricots, and for homesites.

**Greenfield Sandy Loam, 2 to 8 Percent Slopes, Eroded (GyC2) and Greenfield Sandy Loam, 8 to 15 Percent Slopes, Eroded (GyD2)**

The Greenfield series consists of well-drained soils that occur on alluvial fans and terraces. These soils developed in alluvium consisting mainly of granitic materials. The upper 14 inches consist of brown (10YR 5/3) sandy loam when dry and dark brown (10YR 3/3) sandy loam when moist. The Greenfield soils are used for dryland grain, pasture, irrigated alfalfa, potatoes, citrus, peaches and for homesites.

**Hanford Coarse Sandy Loam, 2 to 8 Percent Slopes (HcC) and Hanford Coarse Sandy Loam, 8 to 15 Percent Slopes, Eroded (HcD2)**

The Hanford series consists of well drained and somewhat excessively drained soils on alluvial fans. These soils developed in alluvium composed of granitic materials. The surface layer is grayish-brown coarse sandy loam (10YR 5/2) when dry and very dark grayish brown (10YR3/2) coarse sandy loam when moist about 18 inches thick. Hanford soils are used for dryland pasture and grain and for irrigated alfalfa, potatoes, citrus, grapes, and grain, and for homesites.

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[5] U.S. Army Corps of Engineers. 2008. A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States. R. W. Lichvar and S. M. McColley. ERDC/CRREL TR-08-12. Hanover, NH: U.S. Army Engineer Cold Regions Research and Engineering Laboratory.

[6] SCS is now known as the National Resource Conservation Service or NRCS.

**Ramona Sandy Loam, 2 to 5 Percent Slopes, Eroded (RaB2), Ramona Sandy Loam, 5 to 8 Percent Slopes, Eroded (RaC2), Ramona Sandy Loam, 5 to 8 Percent Slopes, Severely Eroded (RaC3), Ramona Sandy Loam, 8 to 15 Percent Slopes, Severely Eroded (RaD3), and Ramona Sandy Loam, 15 to 25 Percent Slopes, Severely Eroded (RaE3)**

The Ramona series consists of well-drained soils on alluvial fans and terraces. These soils developed in alluvium consisting mainly of granitic materials. The upper 14 inches consists of brown (10YR 5/3) sandy loam when dry and dark brown (10YR 3/3) sandy loam when wet. Ramona soils are used for dry land grain and pasture, irrigated peaches, apricots, citrus, alfalfa, truck crops, grain, homesites, school sites and other nonfarm purposes.

**Terrace Escarpments (TeG)**

The terrace escarpments consist of variable alluvium on terraces and barrancas. Slopes range from 30 to 75 percent. This land type may have exposed "rim pan," gravel, cobblestones, or large boulders in variable quantities. Approximately 25% of this soil unit consists of eroded areas and active gullies heading toward the terrace tops. This soil consists of unaltered alluvial outwash composed of granite, gabbro, metamorphosed sandstone, sandstone, and micha-schist.

**Tujunga Loamy Fine Sand, Channeled, 0 to 8 Percent Slopes (TvC)) and Tujunga Gravelly Loamy Sand, 0 to 8 Percent Slopes (TwC)**

The Tujunga series consists of excessively drained soils on alluvial fans and flood plains. These soils developed in alluvium from predominantly granitic materials. The upper 14 inches consists of brown (10YR 5/3) sandy loam when dry and dark brown (10YR 3/3) sandy loam when wet. The Tujunga soils are used for dry land pasture and grain, and if irrigated, are used for truck crops, grapes, grain, and other nonfarm purposes.

None of these soil units are identified as hydric in the SCS's publication, Hydric Soils of the United States[7]. In addition, none of the soil units are listed as hydric by the Western Riverside County Soil Survey, however Tujunga Loamy Fine Sand, Channeled, 0 to 8 Percent Slopes (TvC) may support hydric soil inclusions if it is combined with Riverwash, is somewhat poorly drained and has a frequently occurring water table at less than 0.5 feet from the surface for a significant period (usually more than two weeks) during the growing season, or the soil is poorly drained or very poorly drained and has a frequently occurring water table at less than 0.5 feet

[7] United States Department of Agriculture, Soil Conservation Service. 1991. Hydric Soils of the United States, 3rd Edition, Miscellaneous Publication Number 1491. (In cooperation with the National Technical Committee for Hydric Soils.)

from the surface for a significant period (usually more than two weeks) during the growing season if textures are coarse sand, sand, or fine sand in all layers within 20 inches. Since none of the soil types on site support Riverwash and the Tujunga series of soils are excessively drained, none of the soils, or their inclusions, are hydric.

It is important to note that under the Arid West Supplement, the presence of mapped hydric soils is no longer dispositive for the presence of hydric soils. Rather, the presence of hydric soils must now be confirmed in the field.

## II. JURISDICTION

### A. Army Corps of Engineers

Pursuant to Section 404 of the Clean Water Act, the Corps regulates the discharge of dredged and/or fill material into waters of the United States. The term "waters of the United States" is defined in Corps regulations at 33 CFR Part 328.3(a) as:

> *(1) All 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) All interstate waters including interstate wetlands;*
> *(3) All 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 foreign commerce including any such waters:*
> > *(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
> > *(ii) From which fish or shell fish are or could be taken and sold in interstate or foreign commerce; or*
> > *(iii) Which are used or could be used for industrial purpose by industries in interstate commerce...*
> *(4) All impoundments of waters otherwise defined as waters of the United States under the definition;*
> *(5) Tributaries of waters identified in paragraphs (a) (1)-(4) of this section;*
> *(6) The territorial seas;*
> *(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1)-(6) of this section.*

> *Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.*
>
> *(8) Waters of the United States do not include prior converted cropland.*[8] *Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.*

In the absence of wetlands, the limits of Corps jurisdiction in non-tidal waters, such as intermittent streams, extend to the OHWM which is defined at 33 CFR 328.3(e) as:

> *...that line on the shore established by the fluctuation of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.*

### 1. Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, et al.

Pursuant to Article I, Section 8 of the U.S. Constitution, federal regulatory authority extends only to activities that affect interstate commerce. In the early 1980s the Corps interpreted the interstate commerce requirement in a manner that restricted Corps jurisdiction on isolated (intrastate) waters. On September 12, 1985, EPA asserted that Corps jurisdiction extended to isolated waters that are used or could be used by migratory birds or endangered species, and the definition of "waters of the United States" in Corps regulations was modified as quoted above from 33 CFR 328.3(a).

On January 9, 2001, the Supreme Court of the United States issued a ruling on SWANCC. In this case the Court was asked whether use of an isolated, intrastate pond by migratory birds is a sufficient interstate commerce connection to bring the pond into federal jurisdiction of Section 404 of the CWA.

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[8] The term "prior converted cropland" is defined in the Corps' Regulatory Guidance Letter 90-7 (dated September 26, 1990) as "wetlands which were both manipulated (drained or otherwise physically altered to remove excess water from the land) and cropped before 23 December 1985, to the extent that they no longer exhibit important wetland values. Specifically, prior converted cropland is inundated for no more than 14 consecutive days during the growing season…." [Emphasis added.]

The written opinion notes that the court's previous support of the Corps' expansion of jurisdiction beyond navigable waters (*United States v. Riverside Bayview Homes, Inc*.) was for a wetland that abutted a navigable water and that the court did not express any opinion on the question of the authority of the Corps to regulate wetlands that are not adjacent to bodies of open water. The current opinion goes on to state:

> *In order to rule for the respondents here, we would have to hold that the jurisdiction of the Corps extends to ponds that are not adjacent to open water. We conclude that the text of the statute will not allow this.*

Therefore, we believe that the court's opinion goes beyond the migratory bird issue and says that no isolated, intrastate water is subject to the provisions of Section 404(a) of the Clean Water Act (regardless of any interstate commerce connection). However, the Corps and EPA have issued a joint memorandum which states that they are interpreting the ruling to address only the migratory bird issue and leaving the other interstate commerce clause nexuses intact.

**2. Rapanos v. United States and Carabell v. United States**

On June 5, 2007, the U.S. Environmental Protection Agency (EPA) and Corps issued joint guidance that addresses the scope of jurisdiction pursuant to the CWA in light of the Supreme Court's decision in the consolidated cases *Rapanos v. United States* and *Carabell v. United States* ("Rapanos"). The chart below was provided in the joint EPA/Corps guidance.

For project sites that include waters other than TNWs and/or their adjacent wetlands or Relatively Permanent Waters (RPWs) tributary to TNWs and/or their adjacent wetlands as set forth in the chart below, the Corps must apply the significant nexus standard, that includes the data set forth in the *Approved Jurisdictional Determination Form* included as Appendix C.

For "isolated" waters or wetlands, the joint guidance also requires an evaluation by the Corps and EPA to determine whether other interstate commerce clause nexuses, not addressed in the SWANCC decision are associated with isolated features on project sites for which a jurisdictional determination is being sought from the Corps. The information pertaining to isolated waters is also included on the *Approved Jurisdictional Determination Form* included as Appendix C.

The agencies will assert jurisdiction over the following waters:

- Traditional navigable waters
- Wetlands adjacent to traditional navigable waters
- Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months)
- Wetlands that directly abut such tributaries

The agencies will decide jurisdiction over the following waters based on a fact-specific analysis to determine whether they have a significant nexus with a traditional navigable water:

- Non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary

The agencies generally will not assert jurisdiction over the following features:

- Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent or short duration flow)
- Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water

The agencies will apply the significant nexus standard as follows:

- A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters
- Significant nexus includes consideration of hydrologic and ecologic factors.

### 3. Corps Preliminary Jurisdictional Determination

A *Corps Preliminary Jurisdictional Determination Form* may be used to concede Corps jurisdiction where all streambeds within the project area are considered Corps jurisdictional waters. The project would be able to move forward pursuant to Corps Regulatory Guidance Letter (RGL) 08-02, issued on June 26, 2008, which allows the Corps to issue preliminary jurisdictional determinations (Preliminary JD) for a project. A Preliminary JD allows a project to

move forward by setting aside/voluntarily waiving questions regarding CWA jurisdiction over drainages on site in the interest of allowing expeditiously obtaining a Section 404 Permit.

As stated in RGL 08-02:

> *While a landowner, permit applicant, or other affected party can elect to request and obtain an approved JD, he or she can also decline to request an approved JD, and instead obtain a Corps individual or general permit authorization based on either a preliminary JD, or, in appropriate circumstances (such as authorizations by non-reporting nationwide general permits), no JD whatsoever. The Corps will determine what form of JD is appropriate for any particular circumstance based on all the relevant factors, to include, but not limited to, the applicant's preference, what kind of permit authorization is being used (individual permit versus general permit), and the nature of the proposed activity needing authorization.*

The Corps typically completes Preliminary JDs within 60 days of receipt of the request for such a determination. If the Corps project manager cannot complete the Preliminary JD within the 60-day timeframe, they must provide their supervisor, who would also provide the applicant, with a schedule to complete the determination (i.e., unlike the Rapanos significant nexus guidelines, there is a specific timeframe to complete the Preliminary JD and move forward with the jurisdictional determination, without uncertainty, and the EPA will not be involved with the Preliminary JD process as the Corps is not required to coordinate with the EPA to review Preliminary JDs). A copy of the Corps' Preliminary JD form is attached as Appendix B.

### 4. Wetland Definition Pursuant to Section 404 of the Clean Water Act

The term "wetlands" (a subset of "waters of the United States") is defined at 33 CFR 328.3(b) as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support...a prevalence of vegetation typically adapted for life in saturated soil conditions." In 1987 the Corps published a manual to guide its field personnel in determining jurisdictional wetland boundaries. The methodology set forth in the 1987 Wetland Delineation Manual and the Arid West Supplement generally require that, in order to be considered a wetland, the vegetation, soils, and hydrology of an area exhibit at least minimal hydric characteristics. While the manual and Supplement provide great detail in methodology and allow for varying special conditions, a wetland should normally meet each of the following three criteria:

- more than 50 percent of the dominant plant species at the site must be typical of wetlands (i.e., rated as facultative or wetter in the National List of Plant Species that Occur in Wetlands[9]);

- soils must exhibit physical and/or chemical characteristics indicative of permanent or periodic saturation (e.g., a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions); and

- Whereas the 1987 Manual requires that hydrologic characteristics indicate that the ground is saturated to within 12 inches of the surface for at least five percent of the growing season during a normal rainfall year, the Arid West Supplement does not include a quantitative criteria with the exception for areas with "problematic hydrophytic vegetation", which require a minimum of 14 days of ponding to be considered a wetland.

### B. Regional Water Quality Control Board

Subsequent to the SWANCC decision, the Chief Counsel for the State Water Resources Control Board issued a memorandum that addressed the effects of the SWANCC decision on the Section 401 Water Quality Certification Program.[10] The memorandum states:

> *California's right and duty to evaluate certification requests under section 401 is pendant to (or dependent upon) a valid application for a section 404 permit from the Corps, or another application for a federal license or permit. Thus if the Corps determines that the water body in question is not subject to regulation under the COE's 404 program, for instance, no application for 401 certification will be required…*
>
> *The SWANCC decision does not affect the Porter Cologne authorities to regulate discharges to isolated, non-navigable waters of the states….*
>
> *Water Code section 13260 requires "any person discharging waste, or proposing to discharge waste, within any region that could affect the waters of the state to file a report of discharge (an application for waste discharge requirements)."*

[9] Reed, P.B., Jr. 1988. National List of Plant Species that Occur in Wetlands. U.S. Fish and Wildlife Service Biological Report 88(26.10).

[10] Wilson, Craig M. January 25, 2001. Memorandum addressed to State Board Members and Regional Board Executive Officers.

> *(Water Code § 13260(a)(1) (emphasis added).) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code § 13050(e).) The U.S. Supreme Court's ruling in SWANCC has no bearing on the Porter-Cologne definition. While all waters of the United States that are within the borders of California are also waters of the state, the converse is not true—waters of the United States is a subset of waters of the state. Thus, since Porter-Cologne was enacted California always had and retains authority to regulate discharges of waste into any waters of the state, regardless of whether the COE has concurrent jurisdiction under section 404. The fact that often Regional Boards opted to regulate discharges to, e.g., vernal pools, through the 401 program in lieu of or in addition to issuing waste discharge requirements (or waivers thereof) does not preclude the regions from issuing WDRs (or waivers of WDRs) in the absence of a request for 401 certification.…*

In this memorandum the SWRCB's Chief Counsel has made the clear assumption that fill material to be discharged into isolated waters of the United States is to be considered equivalent to "waste" and therefore subject to the authority of the Porter Cologne Water Quality Act. However, while providing a recounting of the Act's definition of waters of the United States, this memorandum fails to also reference the Act's own definition of waste:

> *"Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.*

The lack of inclusion of a reference to "fill material," "dirt," "earth" or other similar terms in the Act's definition of "waste," or elsewhere in the Act, suggests that no such association was intended. Thus, the Chief Counsel's memorandum signals that the SWRCB is attempting to retain jurisdiction over discharge of fill material into isolated waters of the United States by administratively expanding the definition of "waste" to include "fill material" without actually seeking amendment of the Act's definition of waste (an amendment would require action by the state legislature). Consequently, discharge of fill material into waters of the State not subject to the jurisdiction of the Corps pursuant to Section 404 of the CWA may require authorization pursuant to the CWC through application for waste discharge requirements (WDRs) or through waiver of WDRs, despite the lack of a clear regulatory imperative.

### C. California Department of Fish and Game

Pursuant to Division 2, Chapter 6, Section 1600-1616 of the California Fish and Game Code, the CDFG regulates all diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake, which supports fish or wildlife.

CDFG defines a "stream" (including creeks and rivers) as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." CDFG's definition of "lake" includes "natural lakes or man-made reservoirs."

CDFG jurisdiction within altered or artificial waterways is based upon the value of those waterways to fish and wildlife. CDFG Legal Advisor has prepared the following opinion:

- Natural waterways that have been subsequently modified and which have the potential to contain fish, aquatic insects and riparian vegetation will be treated like natural waterways...

- Artificial waterways that have acquired the physical attributes of natural stream courses and which have been viewed by the community as natural stream courses, should be treated by [CDFG] as natural waterways...

- Artificial waterways without the attributes of natural waterways should generally not be subject to Fish and Game Code provisions...

Thus, CDFG jurisdictional limits closely mirror those of the Corps. Exceptions are CDFG's exclusion of isolated wetlands (those not associated with a river, stream, or lake), the addition of artificial stock ponds and irrigation ditches constructed on uplands, and the addition of riparian habitat supported by a river, stream, or lake regardless of the riparian area's federal wetland status.

## III. RESULTS

### A. Corps Jurisdiction

The Project area supports 14 drainage features and/or complexes, which are described below as Drainages A through K, Drainages M and N, and Smith Creek. A majority of the drainage features within the Project area, Drainage Features F through K, as well as Drainage Feature M,

are Non-RPWs, which flow for very limited distances before terminating at existing agricultural berms, which have been erected to limit flows between each berm complex. Each of these berms pre-dates the CWA. Since these berms restrict flows between each berm complex and the drainage features within each berm complex terminate without connecting or sheet flowing into Corps jurisdictional waters, each of these drainage features is isolated pursuant to SWANCC and would not be regulated pursuant to Section 404 of the CWA. Isolated waters within the Project area total 0.47 acre, none of which exhibit wetland characteristics. A total of 9,405 linear feet of isolated streambeds are present.

Drainages A through E, as well as Drainage N, are, ultimately, tributaries which support a surficial connection to Smith Creek, a blue-line stream, which is a Corps jurisdictional water flowing north to south through the Project area. Drainages A through E, Drainage N, and Smith Creek are all considered Non-RPWs. Each of these drainages supports an OHWM through signs of an incised channel, the presence of litter and debris wracking, shelving, and/or sediment deposits. Potential Corps jurisdiction within the Project area totals 9.67 acres, of which less than 0.01 acre consists of jurisdictional wetlands. A total of 20,929 linear feet of Corps-regulated streambed is present. Potential Corps jurisdiction associated with the off site portions of Smith Creek total 0.15 acre, none of which consist of jurisdictional wetlands. A total of 530 linear feet of Corps-regulated streambed is present within the off site portions of Smith Creek.

According to the Corps' Los Angeles District Office, the Salton Sea is the closest TNW to the Project Site[11]. The Salton Sea is approximately 59.00 aerial miles from the Project Site. A graphic depicting the path that "non-isolated" waters would flow from the Project area to the closest TNW, the Salton Sea, is attached as Exhibit 6. Table 1 below summarizes all potential Corps jurisdictional waters on site and Table 2 summarizes all isolated waters on site. The boundaries of potential Corps jurisdiction, as well as the limits of isolated waters on site, are depicted on the enclosed jurisdictional delineation map [Exhibit 3].

[11] U.S. Army Corps of Engineers, Los Angeles District. (2007). Navigable waterways in the Los Angeles District: California. Retrieved on July 14, 2010 from http://www.spl.usace.army.mil.

*POTENTIAL CORPS JURISDICTIONAL WATERS*

Drainages A through E, as well as Drainage N, are, ultimately, tributaries which support a surficial connection to Smith Creek, a blue-line stream, which is a Corps jurisdictional water flowing north to south through the Project area. Drainages A through E, Drainage N, and Smith Creek are all considered Non-RPWs, which would potentially be subject to Corps jurisdiction pursuant to Section 404 of the CWA. Each of these drainages supports an OHWM through signs of an incised channel, the presence of litter and debris wracking, shelving, and/or sediment deposits. Potential Corps jurisdiction within the Project area totals 9.67 acres, of which less than 0.01 acre consists of jurisdictional wetlands. A total of 20,929 linear feet of Corps-regulated streambed is present. Potential Corps jurisdiction associated with the off site portions of Smith Creek total 0.15 acre, none of which consist of jurisdictional wetlands. A total of 530 linear feet of Corps-regulated streambed is present within the off site portions of Smith Creek.

1. Smith Creek

*Smith Creek On Site*

Potential Corps jurisdiction associated with the on site portion of Smith Creek totals 9.25 acres, none of which consists of jurisdictional wetlands. Smith Creek is an ephemeral drainage, which enters the property in the north/northwestern portion of the Project area from the adjacent foothills north of the City of Banning (City). Smith Creek flows in a general north to south direction for 11,429 linear feet before exiting the site and passing under Wilson Avenue (Eighth Street). Ultimately, Smith Creek flows southeasterly before discharging into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Smith Creek supports an OHWM ranging between three and 70 feet in width, and is evidenced by an incised channel, presence of litter and debris wracking, shelving, lines impressed upon the banks, and changes in soil characteristics. No soil pits were excavated within Smith Creek due to the lack of hydrophytic vegetation and non-hydric soil characteristics.

Smith Creek supports an alluvial, sandy, cobbly substrate and is primarily unvegetated. Vegetation along the edges, and above the banks, within the upper reaches of Smith Creek consists of California buckwheat (*Eriogonum fasciculatum*), white sage (*Salvia apiana*), smooth yerba santa (*Eriodictyon californicum*), red-stemmed filaree (*Erodium cicutarium*), red brome (*Bromus*

*madritensis* ssp. *rubens*), hairy vetch (*Vicia villosa*), common cryptantha (*Cryptantha intermedia*), morning glory (*Calystegia* sp.), horseweed (*Conyza canadensis*), chia (*Salvia columbariae*), smilo grass (*Piptatherum miliaceum*), and four-spot Clarkia (*Clarkia purpurea*). Vegetation along, or above, the banks of the lower reaches of Smith Creek consists of walnut (*Juglans hindsii*) and limited stands of mulefat (*Baccharis salicifolia*), and arroyo willows (*Salix lasiolepis*).

*Smith Creek Off Site*

Potential Corps jurisdiction associated with the off site portion of Smith Creek totals 0.15 acre, none of which consists of jurisdictional wetlands. Smith Creek is an ephemeral drainage, which flows in a general north to south direction from the adjacent foothills north of the City. Smith Creek flows for 330 linear feet within the offsite area before entering the site at the Project's northern boundary near the proposed extension of Brookside Avenue. Smith Creek flows through the Project area for 11,429 linear feet before exiting the site through a culvert beneath Wilson Street. At this point, Smith Creek flows for 200 linear feet to the south/southeast before leaving the off site portion of Project. Ultimately, Smith Creek flows southeasterly before discharging into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

The off site portion of Smith Creek supports an OHWM ranging between three and 32 feet in width, and is evidenced by an incised channel, presence of litter and debris wracking, shelving, lines impressed upon the banks, and changes in soil characteristics. No soil pits were excavated within the off site portion of Smith Creek due to the general lack of hydrophytic vegetation and non-hydric soil characteristics.

The northern offsite portion of Smith Creek supports an alluvial, sandy, cobbly substrate and is primarily vegetated with mulefat (*Baccharis salicifolia*). Additional vegetation along the edges, and within the upland fringe, of Smith Creek consists of arroyo willow (*Salix lasiolepis*), ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis* ssp. *rubens*), doveweed (*Croton setigerus*), and summer mustard (*Brassica geniculata*).

The southern offsite portion of Smith Creek supports an alluvial, sandy, cobbly substrate and is primarily unvegetated. Vegetation along the edges, and within the upland fringe, of Smith Creek consists of California buckwheat (*Eriogonum*

*fasciculatum*), ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis* ssp. *rubens*), telegraph weed (*Heterotheca grandiflora*), doveweed (*Croton setigerus*), summer mustard (*Brassica geniculata*), ragweed (*Ambrosia psilostachya*), tocalote (*Centaurea melitensis*), common cryptantha (*Cryptantha intermedia*), and horseweed (*Conyza canadensis*). Vegetation within the creek is limited to one individual of mulefat (*Baccharis salicifolia*).

2. Drainage A

Potential Corps jurisdiction associated with Drainage A totals 0.15 acre, none of which consists of jurisdictional wetlands. Drainage A is an ephemeral, concrete-lined drainage, which is located adjacent to Highland Home Avenue along the southeastern Project boundary. Drainage A accepts flows from the Project area and the adjacent residential neighborhood and flows in a general north to south direction for 1,651 linear feet before exiting the site and passing under Wilson Avenue (Eighth Street). Ultimately, Drainage A discharges into Smith Creek, which flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage A supports an OHWM three to four feet in width, and is evidenced by the presence of litter and debris wracking, shelving, and lines impressed upon the banks. No soil pits were excavated within Drainage A due to the fact that it is a concrete channel and lacks vegetation. As noted, no vegetation is present within this drainage.

3. Tributary A-1

Potential Corps jurisdiction associated with Tributary A-1 totals 0.02 acre, of which less than 0.01 acre consists of jurisdictional wetlands. Tributary A-1 is an ephemeral, artificially-created drainage, which accepts urban runoff from an existing housing tract at the terminus of Hoffer Street located adjacent to the southeastern portion of the Project area. This urban runoff has created a less than 0.01-acre, 90-foot long wetland. Tributary A-1 begins on site adjacent to Hoffer Street and flows in a general west to east direction for 570 linear feet before exiting the site and discharging into Drainage A. Ultimately, Drainage A discharges into Smith Creek, which flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Tributary A-1 supports an OHWM ranging in width from two to four feet, and is evidenced by standing water, the presence of litter and debris wracking, shelving, and

lines impressed upon the banks. One soil pit, Soil Pit 1, was excavated within Tributary A-1. The results of this soil pit indicated that a less than 0.01-acre wetland existed due to the presence of hydrophytic vegetation, wetland hydrology, and hydric soils (reducing conditions were present). The wetland data sheet for Soil Pit 1 is included as Appendix A.

Vegetation within the upper reaches of Tributary A-1 consist of southern cattail (*Typha domingensis*), willow herb (*Epilobium ciliatum*), tall umbrella sedge (*Cyperus eragrastis*), and curly dock (*Rumex crispus*). The lower segment of Tributary A-1 consisted of a small patch of arroyo willows (*Salix lasiolepis*) and black willows (*Salix gooddingii*). The uplands adjacent to Tributary A-1 were dominated by non-native species, such as red brome (*Bromus madritensis*, ssp. *rubens*) and summer mustard (*Brassica geniculata*).

4. Drainage B

Potential Corps jurisdiction associated with Drainage B totals 0.03 acre, none of which consists of jurisdictional wetlands. Drainage B is an ephemeral drainage located in the southern portion of the Project area. Drainage B begins within a pasture on site and flows in a general north to south direction for 1,324 linear feet before discharging into Smith Creek near the southern Project boundary. Ultimately, Smith Creek flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage B supports an OHWM one to two feet in width, and is evidenced by the presence of litter and debris wracking, shelving, and lines impressed upon the banks. No soil pits were excavated within Drainage B due to the lack of vegetation. No vegetation is present within this drainage.

5. Drainage C

Potential Corps jurisdiction associated with Drainage C totals 0.04 acre, none of which consists of jurisdictional wetlands. Drainage C is an ephemeral drainage located in the south-central portion of the Project area. Drainage C begins within a pasture on site and flows in a general west to east direction for 958 linear feet before discharging into Smith Creek. Ultimately, Smith Creek flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage C supports an OHWM one to two feet in width, and is evidenced by the presence of litter and debris wracking, shelving, and lines impressed upon the banks. No soil pits were excavated within Drainage C due to the lack of vegetation. No vegetation is present within this drainage.

6. Drainage D

Potential Corps jurisdiction associated with Drainage D totals 0.06 acre, none of which consists of jurisdictional wetlands. Drainage D is an ephemeral drainage located in the south-central portion of the Project area. Drainage D begins within a pasture on site and flows in a general northeast to southwest direction for 1,308 linear feet before discharging into Smith Creek. Ultimately, Smith Creek flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage D supports an OHWM one to four feet in width, and is evidenced by the presence of litter and debris wracking, shelving, and lines impressed upon the banks. No soil pits were excavated within Drainage D due to the lack of vegetation. No vegetation is present within this drainage.

7. Tributary D-1

Potential Corps jurisdiction associated with Tributary D-1 totals 0.01 acre, none of which consists of jurisdictional wetlands. Tributary D-1 is an ephemeral drainage located in the south-central portion of the Project area. Tributary D-1 begins within a pasture on site and flows in a general north to south direction for 297 linear feet before discharging into Drainage D. Ultimately, Drainage D flows into Smith Creek, which flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Tributary D-1 supports an OHWM one to two feet in width, and is evidenced by the presence of litter and debris wracking, shelving, and lines impressed upon the banks. No soil pits were excavated within Tributary D-1 due to the lack of vegetation. No vegetation is present within this drainage.

8. Drainage E

Potential Corps jurisdiction associated with Drainage E totals 0.05 acre, none of which consists of jurisdictional wetlands. Drainage E is an ephemeral drainage located in the

southeastern portion of the Project area. Drainage E begins within a pasture on site and flows in a general northwest to southeast direction for 1,547 linear feet before discharging into Drainage A, which flows into Smith Creek, which flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage E supports an OHWM one to two feet in width, and is evidenced by the presence of litter and debris wracking, shelving, and lines impressed upon the banks. No soil pits were excavated within Drainage E due to the lack of vegetation. No vegetation is present within this drainage.

9. Drainage N

Potential Corps jurisdiction associated with Drainage N totals 0.06 acre, none of which consists of jurisdictional wetlands. Drainage N is an ephemeral drainage located in the northwestern portion of the Project area. Drainage N begins adjacent to the Banning foothills within the Project area and flows both on and off site in a general northeast to southwest direction for 1,845 linear feet before discharging into Smith Creek. Ultimately, Smith Creek flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage N supports an OHWM one to two feet in width, and is evidenced by the presence of litter and debris wracking, shelving, and lines impressed upon the banks. No soil pits were excavated within Drainage N due to the lack of vegetation. No vegetation is present within this drainage.

**Table 1: Summary of Corps Jurisdictional Waters On Site**

| Drainage Name | Corps Non-Wetland Waters (acres) | Corps Jurisdictional Wetlands (acres) | Total Corps Jurisdiction (acres) | Length (linear feet) |
|---|---|---|---|---|
| Smith Creek On Site | 9.25 | 0 | 9.25 | 11,429 |
| Smith Creek Off Site | 0.15 | 0 | 0.15 | 530 |
| Drainage A | 0.15 | 0 | 0.15 | 1,651 |
| Tributary A-1 | 0.01 | 0.01 | 0.02 | 570 |
| Drainage B | 0.03 | 0 | 0.03 | 1,324 |

| | | | | |
|---|---|---|---|---|
| Drainage C | 0.04 | 0 | 0.04 | 958 |
| Drainage D | 0.06 | 0 | 0.06 | 1,308 |
| Tributary D-1 | 0.01 | 0 | 0.01 | 297 |
| Drainage E | 0.05 | 0 | 0.05 | 1,547 |
| Drainage N | 0.06 | 0 | 0.06 | 1,845 |
| **Total** | **9.81** | **0.01** | **9.82** | **21,459** |

*ISOLATED WATERS*

A majority of the drainage features within the Project area are isolated and do not exhibit a surficial connection to a Corps jurisdictional water. Each of these drainage features, Features F through K, as well as Feature M, are Non-RPWs, which flow for very limited distances before terminating at existing agricultural berms, which have been erected to limit flows between each berm complex. Each of these berms pre-dates the CWA. Since these berms restrict flows between each berm complex and the drainage features within each berm complex terminate without connecting or sheet flowing into a Corps jurisdictional water, each of these drainage features is isolated pursuant to SWANCC and would not be regulated pursuant to Section 404 of the CWA. Isolated waters within the Project area total 0.47 acre, none of which exhibit wetland characteristics. A total of 9,405 linear feet of isolated streambeds are present.

1. Feature F

Isolated waters associated with Feature F total 0.13 acre, none of which exhibit wetland characteristics. Feature F is an ephemeral, isolated drainage feature located in the south-central portion of the Project area. Feature F enters the Project area just south of a horse corral within the site and flows in a northeast to southwest direction for 1,465 linear feet before losing all signs of an OHWM and terminating in the middle of a pasture. Feature F does not connect to, or sheet flow into, a Corps jurisdictional water and is, therefore, an isolated water pursuant to the January 9, 2001 SWANCC Decision. This decision indicated that drainages not supporting a surficial connection to a Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Feature F supports an OHWM three to six feet in width, and is evidenced by the presence of litter and debris wracking, shelving, and lines impressed upon the banks. No soil pits were excavated within Feature F due to the lack of vegetation. No vegetation is present within this drainage feature.

Feature F is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature F is located approximately 58.81 aerial miles from the Salton Sea. Flows within Feature F are limited to natural runoff and storm flows within a 16.83-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August[12]. This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature F that would contribute to the nearest TNW, as Feature F terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature F is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature F and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature F. Feature F, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature F and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature F is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature F, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature F does not exhibit a significant nexus with a TNW. Therefore, Feature F is not a Water of the U.S. pursuant to Section 404 of the CWA.

2. Feature G

Isolated waters associated with Feature G total 0.06 acre, none of which exhibit wetland characteristics. Feature G is an ephemeral, isolated drainage feature located along the eastern Project boundary. Feature G flows adjacent to the Project's eastern boundary in a north to south direction for 813 linear feet before losing all signs of an OHWM and terminating adjacent to a City-constructed facility and a Southern California Edison

[12] http://www.weatherreports.com/United_States/CA/Banning/averages.html

access road. Feature G does not connect to, or sheet flow into, a Corps jurisdictional water and is, therefore, an isolated water pursuant to the January 9, 2001 SWANCC Decision. This decision indicated that drainages not supporting a surficial connection to a Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Feature G supports an OHWM three feet in width, and is evidenced by the presence of litter and debris wrack, shelving, and lines impressed upon the banks. No soil pits were excavated within Feature G due to the lack of vegetation. No vegetation is present within this drainage feature.

Feature G is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature G is located approximately 57.90 aerial miles from the Salton Sea. Flows within Feature G are limited to natural runoff and storm flows within a 32.07-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August[13]. This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature G that would contribute to the nearest TNW, as Feature G terminates off site within a City facility and at a Southern California Edison access road and does not have a surficial connection to a Corps jurisdictional water. Because Feature G is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature G and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature G. Feature G, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature G and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature G is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature G, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within

[13] http://www.weatherreports.com/United_States/CA/Banning/averages.html

the drainage feature, suggest that Feature G does not exhibit a significant nexus with a TNW. Therefore, Feature G is not a Water of the U.S. pursuant to Section 404 of the CWA.

3. Feature H

Isolated waters associated with Feature H total 0.01 acre, none of which exhibit wetland characteristics. Feature H is an ephemeral, isolated drainage feature located near the eastern Project boundary. Feature H begins on site in a pasture and flows in a north to south direction for 605 linear feet before losing all signs of an OHWM within a pasture and terminating adjacent to a berm constructed before the enactment of the CWA. Feature H does not connect to, or sheet flow into, a Corps jurisdictional water and is, therefore, an isolated water pursuant to the January 9, 2001 SWANCC Decision. This decision indicated that drainages not supporting a surficial connection to a Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Feature H supports an OHWM one foot in width, and is evidenced by the presence of litter and debris wracking, and lines impressed upon the banks. No soil pits were excavated within Feature H due to the lack of vegetation. No vegetation is present within this drainage feature.

Feature H is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature H is located approximately 59.00 aerial miles from the Salton Sea. Flows within Feature H are limited to natural runoff and storm flows within a 5.25-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August[14]. This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature H that would contribute to the nearest TNW, as Feature H terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature H is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature H and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature H. Feature H, which is

[14] http://www.weatherreports.com/United_States/CA/Banning/averages.html

isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature H and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature H is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature H, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature H does not exhibit a significant nexus with a TNW. Therefore, Feature H is not a Water of the U.S. pursuant to Section 404 of the CWA.

4. Feature I

Isolated waters associated with Feature I total 0.08 acre, none of which exhibit wetland characteristics. Feature I is an ephemeral, isolated drainage feature located near the eastern Project boundary. Feature I begins off site and flows in a north to south direction for 1,687 linear feet before losing all signs of an OHWM within a pasture and terminating adjacent to a berm constructed before the enactment of the CWA. Feature I does not connect to, or sheet flow into, a Corps jurisdictional water and is, therefore, an isolated water pursuant to the January 9, 2001 SWANCC Decision. This decision indicated that drainages not supporting a surficial connection to a Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Feature I supports an OHWM one to two feet in width, and is evidenced by the presence of litter and debris wracking, and lines impressed upon the banks. No soil pits were excavated within Feature I due to the lack of vegetation. No vegetation is present within this drainage feature.

Feature I is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature I is located approximately 59.00 aerial miles from the Salton Sea. Flows within Feature I are limited to natural runoff and storm flows within a 161.30-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an

average monthly minimum of 0.20 inches in June, July, and August[15]. This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature I that would contribute to the nearest TNW, as Feature I terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature I is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature I and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature I. Feature I, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature I and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature I is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature I, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature I does not exhibit a significant nexus with a TNW. Therefore, Feature I is not a Water of the U.S. pursuant to Section 404 of the CWA.

5. Tributary Feature I-1

Isolated waters associated with Tributary Feature I-1 total 0.02 acre, none of which exhibit wetland characteristics. Tributary Feature I-1 is an ephemeral, isolated drainage feature located near the eastern Project boundary. Tributary Feature I-1 begins on site along the Project's eastern boundary and flows in a northeast to southwest direction for 470 linear feet before discharging into Feature I, which loses all signs of an OHWM within a pasture and terminating adjacent to a berm constructed before the enactment of the CWA. Tributary Feature I-1 does not connect to, or sheet flow into, a Corps jurisdictional water and is, therefore, an isolated water pursuant to the January 9, 2001 SWANCC Decision. This decision indicated that drainages not supporting a surficial

[15] http://www.weatherreports.com/United_States/CA/Banning/averages.html

connection to a Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Tributary Feature I-1 supports an OHWM two feet in width, and is evidenced by the presence of litter and debris wracking, and lines impressed upon the banks. No soil pits were excavated within Tributary Feature I-1 due to the lack of vegetation. No vegetation is present within this drainage feature.

Tributary Feature I-1 is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Tributary Feature I-1 is located approximately 59.00 aerial miles from the Salton Sea. Flows within Tributary Feature I-1 are limited to natural runoff and storm flows within a 1.31-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August[16]. This level of rainfall does not suggest a volume, duration, or frequency of flows within Tributary Feature I-1 that would contribute to the nearest TNW, as Tributary Feature I-1 discharges into Feature I, which terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Tributary Feature I-1 is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Tributary Feature I-1 and the TNW. There are no wetlands or vegetated riparian habitat associated with Tributary Feature I-1. Tributary Feature I-1, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Tributary Feature I-1 and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Tributary Feature I-1 is isolated, there are no downstream Section 303(d) impaired waters.

[16] http://www.weatherreports.com/United_States/CA/Banning/averages.html

The limited aquatic function associated with Tributary Feature I-1, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Tributary Feature I-1 does not exhibit a significant nexus with a TNW. Therefore, Tributary Feature I-1 is not a Water of the U.S. pursuant to Section 404 of the CWA.

6. Feature J

Isolated waters associated with Feature J total 0.06 acre, none of which exhibit wetland characteristics. Feature J is an ephemeral, isolated drainage feature located within the eastern portion of the Project area. Feature J begins on site in a pasture and flows in a northeast to southwest direction for 1,878 linear feet before losing all signs of an OHWM within a pasture and terminating adjacent to a berm constructed before the enactment of the CWA. Feature J does not connect to, or sheet flow into, a Corps jurisdictional water and is, therefore, an isolated water pursuant to the January 9, 2001 SWANCC Decision. This decision indicated that drainages not supporting a surficial connection to a Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Feature J supports an OHWM one to three feet in width, and is evidenced by the presence of litter and debris wracking, and lines impressed upon the banks. No soil pits were excavated within Feature J due to the lack of vegetation. No vegetation is present within this drainage feature.

Feature J is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature J is located approximately 59.57 aerial miles from the Salton Sea. Flows within Feature J are limited to natural runoff and storm flows within a 9.26-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August[17]. This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature J that would contribute to the nearest TNW, as Feature J terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature J is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

[17] http://www.weatherreports.com/United_States/CA/Banning/averages.html

A biological nexus does not exist between Feature J and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature J. Feature J, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature J and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature J is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature J, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature J does not exhibit a significant nexus with a TNW. Therefore, Feature J is not a Water of the U.S. pursuant to Section 404 of the CWA.

7. Tributary Feature J-1

Isolated waters associated with Tributary Feature J-1 total 0.02 acre, none of which exhibit wetland characteristics. Tributary Feature J-1 is an ephemeral, isolated drainage feature located near the eastern Project boundary. Tributary Feature J-1 begins off site and flows in a northeast to southwest direction for 306 linear feet before losing all signs of an OHWM within a pasture and terminating adjacent to a berm constructed before the enactment of the CWA. Tributary Feature J-1 does not connect to, or sheet flow into, a Corps jurisdictional water and is, therefore, an isolated water pursuant to the January 9, 2001 SWANCC Decision. This decision indicated that drainages not supporting a surficial connection to a Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Tributary Feature J-1 supports an OHWM two to three feet in width, and is evidenced by the presence of litter and debris wracking, and lines impressed upon the banks. No soil pits were excavated within Tributary Feature J-1 due to the lack of vegetation. No vegetation is present within this drainage feature.

Tributary Feature J-1 is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Tributary Feature J-1 is located approximately 59.26 aerial miles from the Salton Sea. Flows within Tributary Feature J-1 are limited to natural runoff and storm flows within a 71.70-acre watershed. The City

receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August[18]. This level of rainfall does not suggest a volume, duration, or frequency of flows within Tributary Feature J-1 that would contribute to the nearest TNW, as Tributary Feature J-1 terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Tributary Feature J-1 is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Tributary Feature J-1 and the TNW. There are no wetlands or vegetated riparian habitat associated with Tributary Feature J-1. Tributary Feature J-1, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Tributary Feature J-1 and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Tributary Feature J-1 is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Tributary Feature J-1, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Tributary Feature J-1 does not exhibit a significant nexus with a TNW. Therefore, Tributary Feature J-1 is not a Water of the U.S. pursuant to Section 404 of the CWA.

8. Feature K

Isolated waters associated with Feature K total 0.08 acre, none of which exhibit wetland characteristics. Feature K is an ephemeral, isolated drainage feature located within the central portion of the Project area. Feature K begins on site in a pasture and flows in a north to south direction for 1,605 linear feet before losing all signs of an OHWM within a pasture and terminating adjacent to a berm constructed before the enactment of the CWA. Feature K does not connect to, or sheet flow into, a Corps jurisdictional water and is, therefore, an isolated water pursuant to the January 9, 2001 SWANCC Decision. This decision indicated that drainages not supporting a surficial connection to a Corps

[18] http://www.weatherreports.com/United_States/CA/Banning/averages.html

jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Feature K supports an OHWM one to five feet in width, and is evidenced by the presence of shelving and lines impressed upon the banks. No soil pits were excavated within Feature K due to the lack of vegetation. As noted, no vegetation is present within this drainage feature.

Feature K is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature K is located approximately 59.54 aerial miles from the Salton Sea. Flows within Feature K are limited to natural runoff and storm flows within a 7.38-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August[19]. This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature K that would contribute to the nearest TNW, as Feature K terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature K is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature K and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature K. Feature K, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature K and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature K is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature K, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature K does not exhibit a significant nexus with a TNW. Therefore, Feature K is not a Water of the U.S. pursuant to Section 404 of the CWA.

[19] http://www.weatherreports.com/United_States/CA/Banning/averages.html

9. Feature M

Isolated waters associated with Feature M total 0.01 acre, none of which exhibit wetland characteristics. Feature M is an ephemeral, isolated drainage feature located within the northwestern portion of the Project area. Feature M begins on site in a pasture and flows in a north to south direction for 576 linear feet before losing all signs of an OHWM within a pasture and terminating adjacent to a berm constructed before the enactment of the CWA. Feature M does not connect to, or sheet flow into, a Corps jurisdictional water and is, therefore, an isolated water pursuant to the January 9, 2001 SWANCC Decision. This decision indicated that drainages not supporting a surficial connection to a Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the CWA.

Feature M supports an OHWM one foot in width, and is evidenced by the presence of litter and debris wracking, and lines impressed upon the banks. No soil pits were excavated within Feature M due to the lack of vegetation. As noted, no vegetation is present within this drainage feature.

Feature M is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature M is located approximately 59.51 aerial miles from the Salton Sea. Flows within Feature M are limited to natural runoff and storm flows within a 3.05-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August[20]. This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature M that would contribute to the nearest TNW, as Feature M terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature M is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature M and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature M. Feature M, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

[20] http://www.weatherreports.com/United_States/CA/Banning/averages.html

A chemical nexus does not exist between Feature M and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature M is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature M, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature M does not exhibit a significant nexus with a TNW. Therefore, Feature M is not a Water of the U.S. pursuant to Section 404 of the CWA.

**Table 2: Summary of Isolated Waters**

| Drainage Feature | Non-Wetland Isolated Water (acres) | Wetland Isolated Water (acres) | Total Isolated Waters (acres) | Length (linear feet) |
|---|---|---|---|---|
| Feature F | 0.13 | 0 | 0.13 | 1,465 |
| Feature G | 0.06 | 0 | 0.06 | 813 |
| Feature H | 0.01 | 0 | 0.01 | 605 |
| Feature I | 0.08 | 0 | 0.08 | 1,687 |
| Tributary Feature I-1 | 0.02 | 0 | 0.02 | 470 |
| Feature J | 0.06 | 0 | 0.06 | 1,878 |
| Tributary Feature J-1 | 0.02 | 0 | 0.02 | 306 |
| Feature K | 0.08 | 0 | 0.08 | 1,605 |
| Feature M | 0.01 | 0 | 0.01 | 576 |
| **Total** | **0.47** | **0** | **0.47** | **9,405** |

*NON-JURISDICTIONAL SWALES*

1. Feature L

Feature L is a swale within the north-central portion of the Project area. Feature L begins on site in a pasture but does not support an OHWM. Since Feature L does not support an OHWM, it would not be a Corps jurisdictional water and would not be subject to Corps jurisdiction pursuant to Section 404 of the CWA. No vegetation is present within this drainage feature.

2. Feature O

Feature O is a swale within the northeastern portion of the Project area. Feature O begins on site in a pasture but does not support an OHWM. Since Feature O does not support an OHWM, it would not be a Corps jurisdictional water and would not be subject to Corps jurisdiction pursuant to Section 404 of the CWA. No vegetation is present within this drainage feature.

3. Feature P

Feature P is a swale within the northeastern portion of the Project area. Feature P begins on site in a pasture but does not support an OHWM. Since Feature P does not support an OHWM, it would not be a Corps jurisdictional water and would not be subject to Corps jurisdiction pursuant to Section 404 of the CWA. No vegetation is present within this drainage feature.

## B. Regional Water Quality Control Board Jurisdiction

Smith Creek (on and off site), Drainages A through E, and Drainage N have been determined to be Corps jurisdictional waters subject to regulation pursuant to Section 401 and 404 of the CWA. These drainages do not need to be addressed separately pursuant to Section 13260 of the CWC, the Porter-Cologne Act.

Drainage Features F through K, as well as Drainage Feature M, are isolated waters pursuant to SWANCC, which have been determined to be outside of Corps jurisdiction. Since these features are outside of Corps jurisdiction, they may be subject to Report of Waste Discharge Requirements (WDRs) from the Regional Board pursuant to Section 13260 of the CWC.

## C. CDFG Jurisdiction

The Project area supports 17 drainage features and/or complexes, which are described below as Drainages A through P, and Smith Creek. A majority of the drainage features within the Project area, Drainage Features F through M, as well as Drainage Features O and P, flow for very limited distances before terminating at existing agricultural berms, which have been erected to limit flows between each berm complex. Each of these drainages supports a high water mark (HWM) through the presence of bed, bank, and channel, or through signs of an incised channel, the presence of litter and debris, or shelving.

Drainages A through E, as well as Drainage N, are, ultimately, tributaries which support a surficial connection to Smith Creek, a blue-line stream, which flows north to south through the Project area. Each of these drainages supports a HWM through the presence of bed, bank, and channel, or through signs of an incised channel, the presence of litter and debris, shelving, and/or sediment deposits. CDFG jurisdiction associated with the Project totals 11.53 acres, of which 0.35 acre consists of vegetated riparian habitat, and includes 33,890 linear feet of ephemeral streambed. CDFG jurisdiction associated with the off site portions of Smith Creek total 0.23 acre, of which 0.08 acre consists of vegetated riparian habitat, and includes 530 linear feet of streambed. Table 3 below summarizes total CDFG jurisdiction on and off site. The boundaries of CDFG jurisdiction are depicted on the enclosed jurisdictional delineation map [Exhibit 3].

1. Smith Creek

*Smith Creek On Site*

CDFG jurisdiction associated with Smith Creek totals approximately 10.05 acres, of which 0.02 acre consists of vegetated riparian habitat. Smith Creek is an ephemeral drainage, which enters the property in the north/northwestern portion of the Project area from the adjacent foothills north of the City. Smith Creek flows in a general north to south direction for approximately 11,429 linear feet before exiting the site and passing under Wilson Avenue (Eighth Street). Ultimately, Smith Creek flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Smith Creek supports a HWM ranging between three and 70 feet in width, and is evidenced by the presence of a defined bed, bank, and channel, as well as the presence of litter and debris wrack, shelving, and lines impressed upon the banks.

Smith Creek supports an alluvial, sandy, cobbly substrate and is primarily unvegetated. Vegetation along the edges, and above the banks, within the upper reaches of Smith Creek consists of California buckwheat (*Eriogonum fasciculatum*), white sage (*Salvia apiana*), smooth yerba santa (*Eriodictyon californicum*), red-stemmed filaree (*Erodium cicutarium*), red brome (*Bromus madritensis* ssp. *rubens*), hairy vetch (*Vicia villosa*), common cryptantha (*Cryptantha intermedia*), morning glory (*Calystegia* sp.), horseweed (*Conyza canadensis*), chia (*Salvia columbariae*), smilo grass (*Piptatherum miliaceum*), and four-spot Clarkia (*Clarkia purpurea*). Vegetation along, or above, the banks of

the lower reaches of Smith Creek consists of walnut (*Juglans hindsii*) and limited stands of mulefat (*Baccharis salicifolia*), and arroyo willows (*Salix lasiolepis*).

*Smith Creek Off Site*

CDFG jurisdiction associated with the off site portion of Smith Creek totals 0.23 acres, of which 0.08 acre consists of vegetated riparian habitat. Smith Creek is an ephemeral drainage, which flows in a general north to south direction from the adjacent foothills north of the City. Smith Creek flows for 330 linear feet before entering the site at the Project's northern boundary near the proposed extension of Brookside Avenue. Smith Creek flows through the Project area for 11,429 linear feet before exiting the site through a culvert beneath Wilson Street. At this point, Smith Creek flows for 200 linear feet to the south/southeast before leaving the off site portion of Project. Ultimately, Smith Creek flows southeasterly before discharging into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

The off site portion of Smith Creek supports a HWM ranging between 20 and 32 feet in width, and is evidenced by a defined bed, bank, and channel.

The northern offsite portion of Smith Creek supports an alluvial, sandy, cobbly substrate and is primarily vegetated with mulefat (*Baccharis salicifolia*). Additional vegetation along the edges, and within the upland fringe, of Smith Creek consists of arroyo willow (*Salix lasiolepis*), ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis* ssp. *rubens*), doveweed (*Croton setigerus*), and summer mustard (*Brassica geniculata*).

The southern offsite portion of Smith Creek supports an alluvial, sandy, cobbly substrate and is primarily unvegetated. Vegetation along the edges, and within the upland fringe, of Smith Creek consists of California buckwheat (*Eriogonum fasciculatum*), ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis* ssp. *rubens*), telegraph weed (*Heterotheca grandiflora*), doveweed (*Croton setigerus*), summer mustard (*Brassica geniculata*), ragweed (*Ambrosia psilostachya*), tocalote (*Centaurea melitensis*), common cryptantha (*Cryptantha intermedia*), and horseweed (*Conyza canadensis*). Vegetation within the creek is limited to one individual of mulefat (*Baccharis salicifolia*).

2. Drainage A

CDFG jurisdiction associated with Drainage A totals approximately 0.15 acre, none of which consists of vegetated riparian habitat. Drainage A is an ephemeral, concrete-lined drainage, which is located adjacent to Highland Home Avenue along the southeastern Project boundary. Drainage A accepts flows from the Project area and the adjacent residential neighborhood and flows in a general north to south direction for approximately 1,651 linear feet before exiting the site and passing under Wilson Avenue (Eighth Street). Ultimately, Drainage A discharges into Smith Creek, which flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage A supports a HWM three to four feet in width, and is evidenced by the presence of a bed, bank, and channel. No vegetation is present within this drainage as it is a concrete feature.

3. Tributary A-1

CDFG jurisdiction associated with Tributary A-1 totals approximately 0.36 acre, of which 0.33 acre consists of vegetated riparian habitat. Tributary A-1 is an ephemeral, artificially created drainage, which accepts urban runoff from an existing housing tract at the terminus of Hoffer Street located adjacent to the southeastern portion of the Project area. This urban runoff has created the riparian habitat within this tributary. Tributary A-1 begins on site adjacent to Hoffer Street and flows in a general west to east direction for 570 linear feet before exiting the site and discharging into Drainage A. Ultimately, Drainage A discharges into Smith Creek, which flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Tributary A-1 supports a HWM ranging in width from two to four feet, and is evidenced by the presence of a bed, bank, and channel, as well as standing water. The drip line and/or boundaries of existing vegetated riparian habitat within this tributary ranges in width from two to 40 feet.

Vegetation within the upper reaches of Tributary A-1 consists of southern cattail (*Typha domingensis*), willow herb (*Epilobium ciliatum*), tall umbrella sedge (*Cyperus eragrastis*), and curly dock (*Rumex crispus*). The lower segment of Tributary A-1 consisted of a small patch of arroyo willows (*Salix lasiolepis*) and black willows (*Salix gooddingii*). The uplands adjacent to Tributary A-1 were dominated by non-native

species, such as red brome (*Bromus madritensis*, ssp. *rubens*) and summer mustard (*Brassica geniculata*).

4. Drainage B

CDFG jurisdiction associated with Drainage B totals approximately 0.03 acre, none of which consists of vegetated riparian habitat. Drainage B is an ephemeral drainage located in the southern portion of the Project area. Drainage B begins within a pasture on site and flows in a general north to south direction for approximately 1,324 linear feet before discharging into Smith Creek near the southern Project boundary. Ultimately, Smith Creek flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage B supports a HWM one to two feet in width, and is evidenced by the presence of a limited bed, bank, and channel. No vegetation is present within this drainage.

5. Drainage C

CDFG jurisdiction associated with Drainage C totals approximately 0.05 acre, none of which consists of vegetated riparian habitat. Drainage C is an ephemeral drainage located in the south-central portion of the Project area. Drainage C begins within a pasture on site and flows in a general west to east direction for approximately 958 linear feet before discharging into Smith Creek. Ultimately, Smith Creek flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage C supports a HWM one to four feet in width, and is evidenced by the presence of a limited bed, bank, and channel. No vegetation is present within this drainage.

6. Drainage D

CDFG jurisdiction associated with Drainage D totals approximately 0.06 acre, none of which consists of vegetated riparian habitat. Drainage D is an ephemeral drainage located in the south-central portion of the Project area. Drainage D begins within a pasture on site and flows in a general northeast to southwest direction for approximately 1,308 linear feet before discharging into Smith Creek. Ultimately, Smith Creek flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage D supports a HWM one to four feet in width, and is evidenced by the presence of a limited bed, bank, and channel. No vegetation is present within this drainage.

7. Tributary D-1

CDFG jurisdiction associated with Tributary D-1 totals approximately 0.01 acre, none of which consists of vegetated riparian habitat. Tributary D-1 is an ephemeral drainage located in the south-central portion of the Project area. Tributary D-1 begins within a pasture on site and flows in a general north to south direction for approximately 297 linear feet before discharging into Drainage D. Ultimately, Drainage D flows into Smith Creek, which flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Tributary D-1 supports a HWM one to two feet in width, and is evidenced by the presence of a limited bed, bank, and channel. No vegetation is present within this drainage.

8. Drainage E

CDFG jurisdiction associated with Drainage E totals approximately 0.05 acre, none of which consists of vegetated riparian habitat. Drainage E is an ephemeral drainage located in the southeastern portion of the Project area. Drainage E begins within a pasture on site and flows in a general northwest to southeast direction for approximately 1,547 linear feet before discharging into Drainage A, which flows into Smith Creek, which flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage E supports a HWM one to two feet in width, and is evidenced by the presence of bed, bank, and channel, as well as litter and debris wracking, shelving, and lines impressed upon the banks. No vegetation is present within this drainage.

9. Feature F

CDFG jurisdiction associated with Feature F totals 0.13 acre, none of which consists of vegetated riparian habitat. Feature F is an ephemeral drainage feature located in the south-central portion of the Project area. Feature F enters the Project area just south of a horse corral within the site and flows in a northeast to southwest direction for 1,465 linear feet before losing all signs of a HWM and terminating in the middle of a pasture.

Feature F supports a HWM three to six feet in width, and is evidenced by the presence of a bed, bank, and channel. No vegetation is present within this drainage feature.

10. Feature G

CDFG jurisdiction associated with Feature G totals 0.06 acre, none of which consists of vegetated riparian habitat. Feature G is an ephemeral drainage feature located along the eastern Project boundary. Feature G flows adjacent to the Project's eastern boundary in a north to south direction for 813 linear feet before losing all signs of a HWM adjacent to a City-constructed facility and a Southern California Edison access road.

Feature G supports a HWM three feet in width, and is evidenced by the presence of bed, bank, channel, litter and debris wracking, shelving, and lines impressed upon the banks. No vegetation is present within this drainage feature.

11. Feature H

CDFG jurisdiction associated with Feature H totals 0.01 acre, none of which consists of vegetated riparian habitat. Feature H is an ephemeral drainage feature located near the eastern Project boundary. Feature H begins on site in a pasture and flows in a north to south direction for 605 linear feet before losing all signs of a HWM within a pasture and terminating adjacent to a berm.

Feature H supports a HWM one foot in width, and is evidenced by the presence of limited bed, bank, and channel. No vegetation is present within this drainage feature.

12. Feature I

CDFG jurisdiction associated with Feature I totals 0.08 acre, none of which consists of vegetated riparian habitat. Feature I is an ephemeral drainage feature located near the eastern Project boundary. Feature I begins off site and flows in a north to south direction for 1,687 linear feet before losing all signs of a HWM within a pasture and terminating adjacent to a berm.

Feature I supports a HWM one to two feet in width, and is evidenced by the presence of limited bed, bank, and channel. No vegetation is present within this drainage feature.

13. Tributary Feature I-1

CDFG jurisdiction associated with Tributary Feature I-1 totals 0.02 acre, none of which consists of vegetated riparian habitat. Tributary Feature I-1 is an ephemeral drainage feature located near the eastern Project boundary. Tributary Feature I-1 begins on site along the Project's eastern boundary and flows in a northeast to southwest direction for 470 linear feet before discharging into Feature I, which loses all signs of a HWM within a pasture and terminates adjacent to a berm.

Tributary Feature I-1 supports a HWM two feet in width, and is evidenced by the presence of limited bed, bank, and channel. No vegetation is present within this drainage feature.

14. Feature J

CDFG jurisdiction associated with Feature J totals 0.06 acre, none of which consists of vegetated riparian habitat. Feature J is an ephemeral drainage feature located within the eastern portion of the Project area. Feature J begins on site in a pasture and flows in a northeast to southwest direction for 1,878 linear feet before losing all signs of a HWM within a pasture and terminating adjacent to a berm.

Feature J supports a HWM one to three feet in width, and is evidenced by the presence of bed, bank, and channel. No vegetation is present within this drainage feature.

15. Tributary Feature J-1

CDFG jurisdiction associated with Tributary Feature J-1 totals 0.02 acre, none of which consists of vegetated riparian habitat. Tributary Feature J-1 is an ephemeral drainage feature located near the eastern Project boundary. Tributary Feature J-1 begins off site and flows in a northeast to southwest direction for 306 linear feet before losing all signs of a HWM within a pasture and terminating adjacent to a berm.

Tributary Feature J-1 supports a HWM two to three feet in width, and is evidenced by the presence of a bed, bank, and channel. No vegetation is present within this drainage feature

16. Feature K

CDFG jurisdiction associated with Feature K totals 0.08 acre, none of which consists of vegetated riparian habitat. Feature K is an ephemeral drainage feature located within the north-central portion of the Project area. Feature K begins on site in a pasture and flows in a north to south direction for 1,605 linear feet before losing all signs of a HWM within a pasture and terminating adjacent to a berm.

Feature K supports a HWM one to five feet in width, and is evidenced by the presence of bed, bank, and channel. No vegetation is present within this drainage feature.

17. Feature L

CDFG jurisdiction associated with Feature L totals 0.13 acre, none of which consists of vegetated riparian habitat. Feature L is an ephemeral drainage feature located within the central portion of the Project area. Feature L begins on site in a pasture and flows in a north to south direction for 917 linear feet before losing all signs of a HWM within a pasture and terminating adjacent to a berm.

Feature L supports a HWM one to 14 feet in width, and is evidenced by the presence of bed, bank, and channel. No vegetation is present within this drainage feature.

18. Feature M

CDFG jurisdiction associated with Feature M totals 0.01 acre, none of which consists of vegetated riparian habitat. Feature M is an ephemeral drainage feature located within the northwestern portion of the Project area. Feature M begins on site in a pasture and flows in a north to south direction for 576 linear feet before losing all signs of a HWM within a pasture and terminating adjacent to a berm.

Feature M supports a HWM one foot in width, and is evidenced by the presence of a limited bed and bank. No vegetation is present within this drainage feature

19. Drainage N

CDFG jurisdiction associated with Drainage N totals approximately 0.06 acre, none of which consists of vegetated riparian habitat. Drainage N is an ephemeral drainage located in the northwestern portion of the Project area. Drainage N begins adjacent to the City foothills within the Project area and flows both on and off site in a general northeast to

southwest direction for approximately 1,845 linear feet before discharging into Smith Creek. Ultimately, Smith Creek flows into San Gorgonio Wash, which flows into the Whitewater River, which becomes the Coachella Valley Storm Channel, which flows into the Salton Sea.

Drainage N supports a HWM one to two feet in width, and is evidenced by the presence of bed, bank, and channel, as well as litter and debris wrack, shelving, and lines impressed upon the banks.

Vegetation along the upland edges, and above the banks, of Drainage N, consists of California buckwheat (*Eriogonum fasciculatum*), white sage (*Salvia apiana*), smooth yerba santa (*Eriodictyon californicum*), red-stemmed filaree (*Erodium cicutarium*), red brome (*Bromus madritensis* ssp. *rubens*), hairy vetch (*Vicia villosa*), common cryptantha (*Cryptantha intermedia*), morning glory (*Calystegia* sp.), horseweed (*Conyza canadensis*), chia (*Salvia columbariae*), smilo grass (*Piptatherum miliaceum*), and four-spot Clarkia (*Clarkia purpurea*).

20. Feature O

CDFG jurisdiction associated with Feature O totals 0.05 acre, none of which consists of vegetated riparian habitat. Feature O is an ephemeral drainage feature located within the northeastern portion of the Project area. Feature O begins on site adjacent to a dirt access road and flows in a north to south direction for 1,134 linear feet before losing all signs of a HWM within a pasture and terminating adjacent to a berm.

Feature O supports a HWM one to three feet in width, and is evidenced by the presence of a limited bed and bank. No vegetation is present within this drainage feature

21. Feature P

CDFG jurisdiction associated with Feature P totals 0.06 acre, none of which consists of vegetated riparian habitat. Feature P is an ephemeral drainage feature located within the northeastern portion of the Project area. Feature P begins off site within the foothills and flows in a north to south direction for 1,505 linear feet before losing all signs of a HWM within a pasture and terminating adjacent to a berm.

Feature P supports a HWM one to two feet in width, and is evidenced by the presence of a limited bed and bank. No vegetation is present within this drainage feature.

**Table 3: Summary of CDFG Jurisdiction**

| Feature | CDFG Unvegetated Streambed (acres) | Vegetated Riparian Habitat (acres) | Total CDFG Jurisdiction (acres) | Total Linear Feet (ft) |
|---|---|---|---|---|
| **Smith Creek On Site** | 10.03 | 0.02 | 10.05 | 11,429 |
| **Smith Creek Off Site** | 0.15 | 0.08 | 0.23 | 530 |
| **Drainage A** | 0.15 | 0 | 0.15 | 1,651 |
| **Tributary A-1** | 0.03 | 0.33 | 0.36 | 570 |
| **Drainage B** | 0.03 | 0 | 0.03 | 1,324 |
| **Drainage C** | 0.05 | 0 | 0.05 | 958 |
| **Drainage D** | 0.06 | 0 | 0.06 | 1,308 |
| **Tributary D-1** | 0.01 | 0 | 0.01 | 297 |
| **Drainage E** | 0.05 | 0 | 0.05 | 1,547 |
| **Feature F** | 0.13 | 0 | 0.13 | 1,465 |
| **Feature G** | 0.06 | 0 | 0.06 | 813 |
| **Feature H** | 0.01 | 0 | 0.01 | 605 |
| **Feature I** | 0.08 | 0 | 0.08 | 1,687 |
| **Tributary Feature I-1** | 0.02 | 0 | 0.02 | 470 |
| **Feature J** | 0.06 | 0 | 0.06 | 1,878 |
| **Tributary Feature J-1** | 0.02 | 0 | 0.02 | 306 |
| **Feature K** | 0.08 | 0 | 0.08 | 1,605 |
| **Feature L** | 0.13 | 0 | 0.13 | 917 |
| **Feature M** | 0.01 | 0 | 0.01 | 576 |
| **Feature N** | 0.06 | 0 | 0.06 | 1,845 |
| **Feature O** | 0.05 | 0 | 0.05 | 1,134 |
| **Feature P** | 0.06 | 0 | 0.06 | 1,505 |
| **Total** | **11.33** | **0.43** | **11.76** | **34,420** |

## IV. DISCUSSION

### A. Impact Analysis

An analysis of impacts will be performed, based upon this delineation and the current project design (or design alternative) upon the client's request. This analysis will be provided as a separate memorandum and will include an accompanying map.

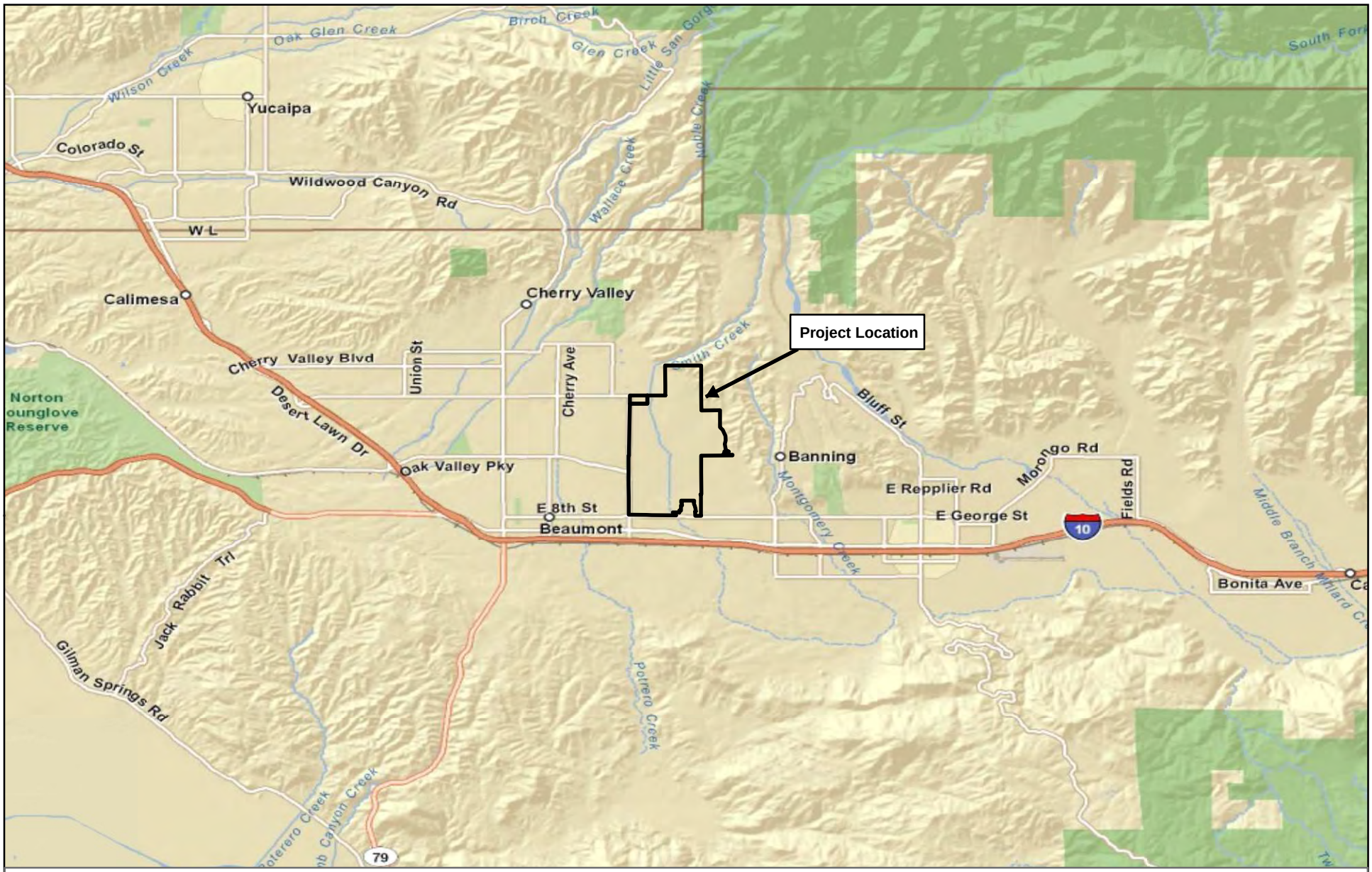
If you have any questions about this letter report, please contact me at (949) 837-0404, Ext. 20.

Sincerely,

GLENN LUKOS ASSOCIATES, INC.

Martin A. Rasnick
Senior Regulatory Specialist

s: 0163-131c.rpt




ArcGIS Online Resource Center:
http://resources.esri.com/arcgisonlineservices

**BANNING BUTTERFIELD PROJECT**

Regional Map

N

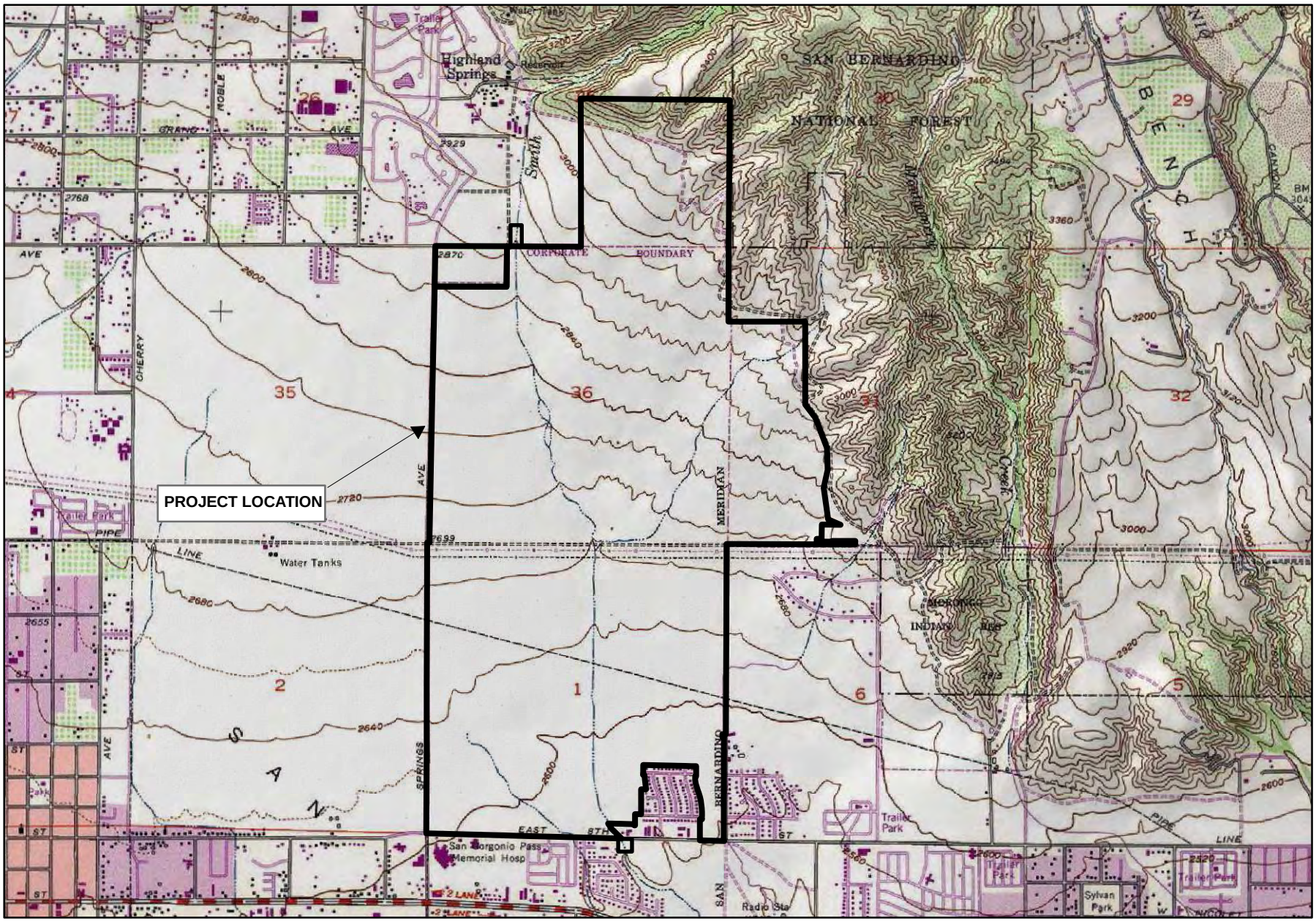
0 1.25 2.5

Miles

GLENN LUKOS ASSOCIATES

Exhibit 1

X:\00 - 0362 ONLY\0163-131BANN\163-131Regional.mxd
August 5, 2010

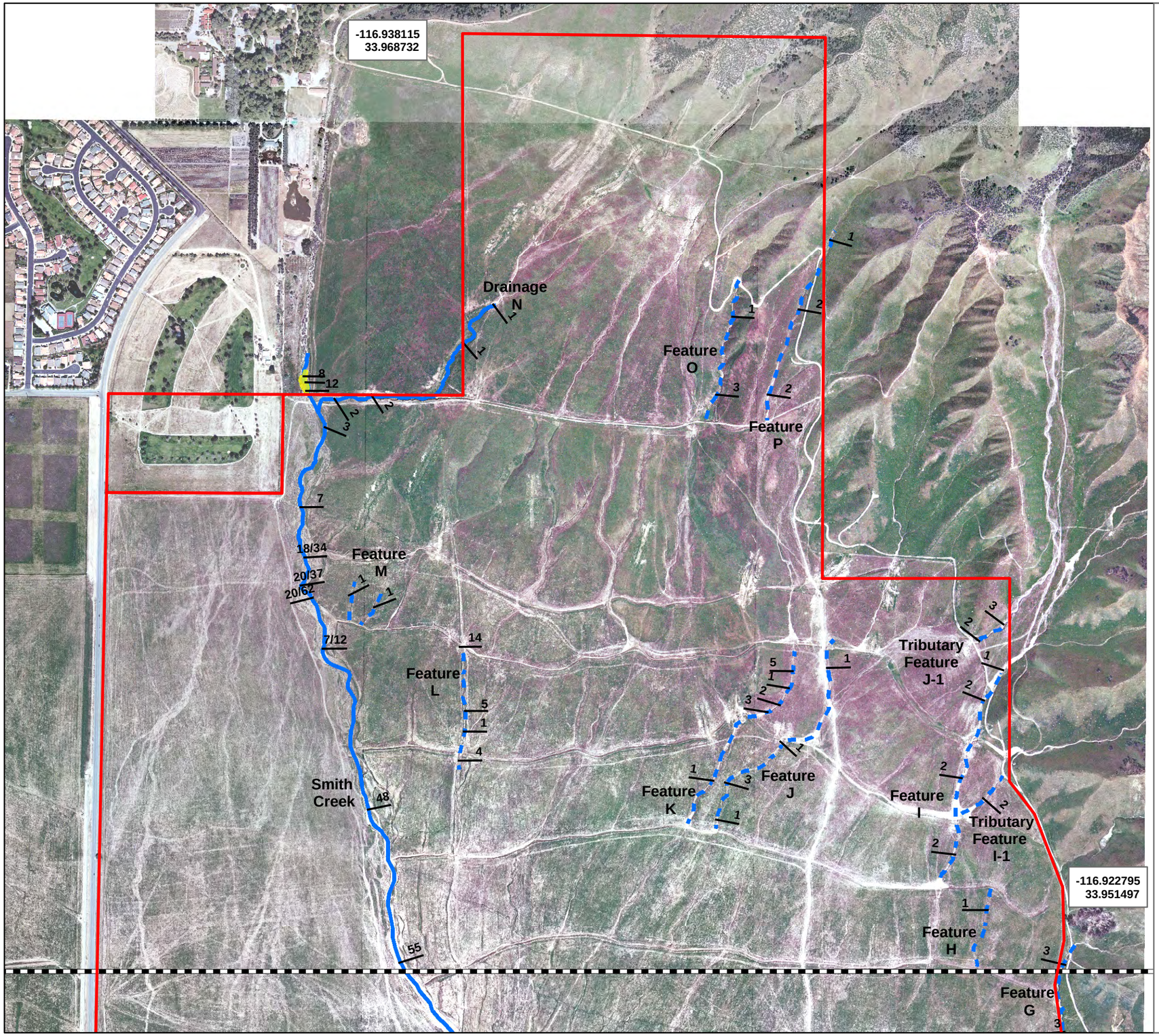



# BANNING BUTTERFIELD PROJECT

Vicinity Map

GLENN LUKOS ASSOCIATES

Exhibit 2




## Legend

- Project Boundary
- Matchline
- Corps Non-Wetalnds Waters/ CDFG Unvegetated Streambed
- Corps Isolated Non-Wetalnd Waters/ CDFG Unvegetated Streambed
- CDFG Riparian
- 2W/2R — Width of Feature in Feet (First number is Corps/CDFG width, second number indicates CDFG width, W indicates Corps Wetland width, and R indicates CDFG Riparian width)

N

0 375 750 1,500

Feet

**1 inch = 750 feet**

# BANNING BUTTERFIELD PROJECT

Jurisdictional Delineation Map - North

GLENN LUKOS ASSOCIATES

Exhibit 3

X:\00 - 0362 ONLY\0163-131BANN\163-131.GIS\DelineationGIS\REV1\163-131DelineationLayout_NorthREV1.mxd
August 31, 2010


## Legend

- Project Boundary
- Matchline
- Corps Non-Wetalnds Waters/ CDFG Unvegetated Streambed
- Corps Isolated Non-Wetalnd Waters/ CDFG Unvegetated Streambed
- Corps Wetlands/CDFG Riparian
- CDFG Riparian
- 2W/2R — Width of Feature in Feet (First number is Corps/CDFG width, second number indicates CDFG width, W indicates Corps Wetland width, and R indicates CDFG Riparian width)

N

0 375 750 1,500

Feet

**1 inch = 750 feet**

# BANNING BUTTERFIELD PROJECT

Jurisdictional Delineation Map - South

GLENN LUKOS ASSOCIATES

Exhibit 3

X:\00 - 0362 ONLY\0163-131BANN\163-131.GIS\DelineationGIS\REV1\163-131DelineationLayout_SouthREV1.mxd
August 31, 2010

Photograph 1 depicts Smith Creek within the Project Area.

Photograph 2 depicts Smith Creek within the Project Area.

GLENN LUKOS ASSOCIATES

Exhibit 4

**BANNING BUTTERFIELD PROJECT**

Site Photographs

Photograph 3 depicts the jurisdictional wetland located at the southeastern corner of the Project Area.

Photograph 4 depicts a typical jurisdictional feature within the Project Area.

GLENN LUKOS ASSOCIATES

Exhibit 4

**BANNING BUTTERFIELD PROJECT**

Site Photographs

Photograph 5 depicts a typical non-jurisdictional feature within the Project Area.

Photograph 6 depicts a former blue-line drainage within the Project Area that does not exist anymore.

GLENN LUKOS ASSOCIATES

Exhibit 4

**BANNING BUTTERFIELD PROJECT**

Site Photographs

-116.938115
33.968732

-116.929493
33.932625

## Legend

- Project Boundary
- GmD - Gorgonio gravelly loamy fine sand, 2 to 15 percent slopes
- GyC2 - Greenfield sandy loam, 2 to 8 percent slopes, eroded
- GyD2 - Greenfield sandy loam, 8 to 15 percent slopes, eroded
- HcC - Hanford coarse sandy loam, 2 to 8 percent slopes
- HcD2 - Hanford coarse sandy loam, 8 to 15 percent slopes, eroded
- RaB2 - Ramona sandy loam, 2 to 5 percent slopes, eroded
- RaC2 - Ramona sandy loam, 5 to 8 percent slopes, eroded
- RaC3 - Ramona sandy loam, 5 to 8 percent slopes, severely eroded
- RaD3 - Ramona sandy loam, 8 to 15 percent slopes, severely eroded
- RaE3 - Ramona sandy loam, 15 to 25 percent slopes, severely eroded
- TeG - Terrace escarpments
- TvC - Tujunga loamy sand, channeled, 0 to 8 percent slopes
- TwC - Tujunga gravelly loamy sand, 0 to 8 percent slopes

N

0 500 1,000 2,000

Feet

**1 inch = 1,000 feet**

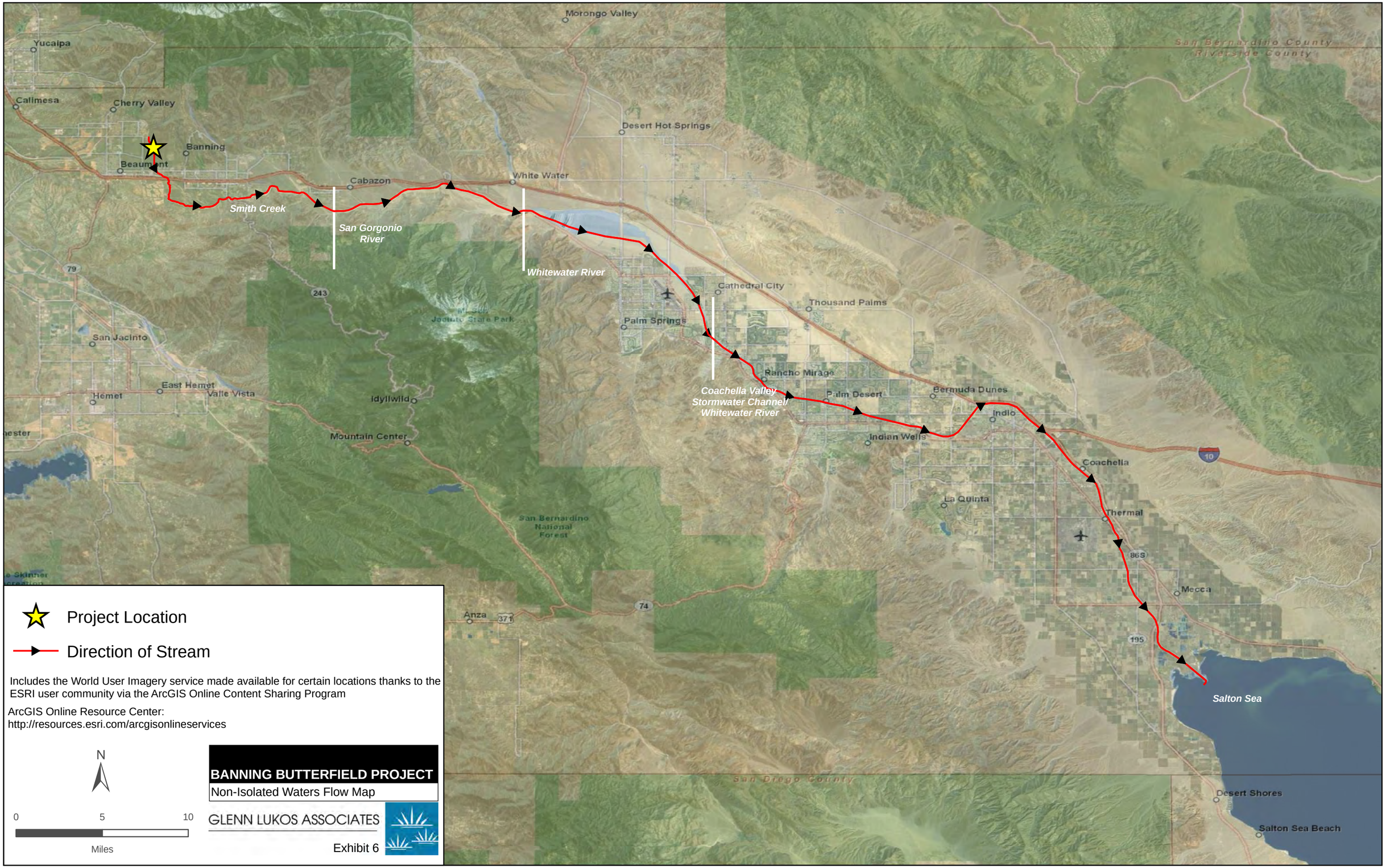
# BANNING BUTTERFIELD PROJECT

Soils Map

X:\00 - 0362 ONLY\0163-131BANN\163-131.GIS\SoilsGIS\163-131Soils.mxd
July 13, 2010

GLENN LUKOS ASSOCIATES

Exhibit 5




X:\00 - 0362 ONLY\0163-131BANN\163-131.GIS\DelineationGIS\SmithCreek.mxd

## WETLAND DETERMINATION DATA FORM – Arid West Region

Project/Site: Banning Butterfield Residential Development Project City/County: Banning/Riverside Sampling Date: 7/14/10

Applicant/Owner: Pardee Homes State: CA Sampling Point: 1

Investigator(s): Martin Rasnick & Justin Meyer Section, Township, Range: Section 1, Township 3 South, Range 1 West

Landform (hillslope, terrace, etc.): Channel Local relief (concave, convex, none): Concave Slope (%): 0-1

Subregion (LRR): LRR C Lat: 33.933637 Long: -116.930581 Datum: WGS 84

Soil Map Unit Name: Ramona sandy loam, 2 to 5 percent slopes, eroded NWI classification: Unclassified

Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No _____ (If no, explain in Remarks.)

Are Vegetation _____, Soil _____, or Hydrology _____ significantly disturbed? No Are "Normal Circumstances" present? Yes X No _____

Are Vegetation _____, Soil _____, or Hydrology _____ naturally problematic? No (If needed, explain any answers in Remarks.)

### SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

| | | |
|---|---|---|
| Hydrophytic Vegetation Present? | Yes X No _____ | **Is the Sampled Area within a Wetland?** **Yes X No _____** |
| Hydric Soil Present? | Yes X No _____ | |
| Wetland Hydrology Present? | Yes X No _____ | |

Remarks:

### VEGETATION – Use scientific names of plants.

| Tree Stratum (Plot size: _____) | Absolute % Cover | Dominant Species? | Indicator Status |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| Total Cover: | | | |
| **Sapling/Shrub Stratum** (Plot size: _____) | | | |
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| Total Cover: | | | |
| **Herb Stratum** (Plot size: _____) | | | |
| 1. *Typha domingensis* | 50 | Yes | OBL |
| 2. *Rumex crispus* | 35 | Yes | FACW |
| 3. *Epilobium ciliatum* | 10 | No | FACW |
| 4. *Cyperus eragrostis* | 5 | No | FACW |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| Total Cover: | 100 | | |
| **Woody Vine Stratum** (Plot size: _____) | | | |
| 1. | | | |
| 2. | | | |
| _____ = Total Cover | | | |

% Bare Ground in Herb Stratum _____ % Cover of Biotic Crust _____

**Dominance Test worksheet:**

Number of Dominant Species That Are OBL, FACW, or FAC: 2 (A)

Total Number of Dominant Species Across All Strata: 2 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 100 (A/B)

**Prevalence Index worksheet:**

| Total % Cover of: | Multiply by: |
|---|---|
| OBL species _____ | x 1 = _____ |
| FACW species _____ | x 2 = _____ |
| FAC species _____ | x 3 = _____ |
| FACU species _____ | x 4 = _____ |
| UPL species _____ | x 5 = _____ |
| Column Totals: _____ (A) | _____ (B) |

Prevalence Index = B/A = _____

**Hydrophytic Vegetation Indicators:**

X Dominance Test is >50%

___ Prevalence Index is ≤3.0[1]

___ Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)

___ Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

**Hydrophytic Vegetation Present?** **Yes X No _____**

Remarks:

## SOIL

Sampling Point: 1

**Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)**

| Depth (inches) | Matrix Color (moist) | Matrix % | Redox Features Color (moist) | Redox Features % | Redox Features Type[1] | Redox Features Loc[2] | Texture | Remarks |
|---|---|---|---|---|---|---|---|---|
| 0-1 | 10YR 3/2 | 100 | | | | | Sandy Loam | |
| 1-6 | 5YR 4/4 | 100 | | | | | Sandy Loam | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. [2]Location: PL=Pore Lining, M=Matrix.

**Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)**

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- _X_ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5) (**LRR C**)
- ___ 1 cm Muck (A9) (**LRR D**)
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Loamy Mucky Mineral (F1)
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Vernal Pools (F9)

**Indicators for Problematic Hydric Soils[3]:**

- ___ 1 cm Muck (A9) (**LRR C**)
- ___ 2 cm Muck (A10) (**LRR B**)
- ___ Reduced Vertic (F18)
- ___ Red Parent Material (TF2)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless unless disturbed or problematic.

**Restrictive Layer (if present):**

Type: Concrete/Rip Rap

Depth (inches): 6

**Hydric Soil Present? Yes X No ___**

Remarks:

## HYDROLOGY

**Wetland Hydrology Indicators:**

Primary Indicators (minimum of one required; check all that apply)

- _X_ Surface Water (A1)
- ___ High Water Table (A2)
- ___ Saturation (A3)
- ___ Water Marks (B1) (**Nonriverine**)
- ___ Sediment Deposits (B2) (**Nonriverine**)
- ___ Drift Deposits (B3) (**Nonriverine**)
- ___ Surface Soil Cracks (B6)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
- ___ Salt Crust (B11)
- ___ Biotic Crust (B12)
- ___ Aquatic Invertebrates (B13)
- ___ Hydrogen Sulfide Odor (C1)
- ___ Oxidized Rhizospheres along Living Roots (C3)
- ___ Presence of Reduced Iron (C4)
- ___ Recent Iron Reduction in Plowed Soils (C6)
- ___ Thick Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (2 or more required)

- ___ Water Marks (B1) (**Riverine**)
- ___ Sediment Deposits (B2) (**Riverine**)
- ___ Drift Deposits (B3) (**Riverine**)
- ___ Drainage Patterns (B10)
- ___ Dry-Season Water Table (C2)
- ___ Crayfish Burrows (C8)
- ___ Saturation Visible on Aerial Imagery (C9)
- ___ Shallow Aquitard (D3)
- ___ FAC-Neutral Test (D5)

**Field Observations:**

Surface Water Present? Yes X No ___ Depth (inches): 1/2

Water Table Present? Yes ___ No ___ Depth (inches): ___

Saturation Present? (includes capillary fringe) Yes ___ No ___ Depth (inches): ___

**Wetland Hydrology Present? Yes X No ___**

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

# *PRELIMINARY JURISDICTIONAL DETERMINATION FORM*

**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:**

District Office: Los Angeles District | File/ORM #: | PJD Date:

State: CA | City/County: Banning/Riverside

Nearest Waterbody: Smith Creek

Location: TRS, LatLong or UTM: 33.946978 North Latitude, -116.937332 West Longitude

Name/ Address of Person Requesting PJD: Amy Glad, Pardee Homes, 10880 Wilshire Boulevard, Suite 1900, Los Angeles, California 90024

Identify (Estimate) Amount of Waters in the Review Area:

Non-Wetland Waters: 21,459 linear ft | 20 width | 9.82 acres | Stream Flow: Ephemeral

Wetlands: 0.01 acre(s) | Cowardin Class: Riverine

Name of Any Water Bodies on the Site Identified as Section 10 Waters: Tidal: | Non-Tidal:

☐ Office (Desk) Determination
☐ Field Determination: | Date of Field Trip:

**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: See Attached Maps
- ☑ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps
- ☐ Corps navigable waters' study:
- ☑ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data.
  - ☑ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite quad name: 1:24,000/Beaumont, California
- ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurv
- ☑ National wetlands inventory map(s). Cite name: http://www.fws.gov/wetlands/Data/Mapper.html
- ☐ State/Local wetland inventory map(s):
- ☑ FEMA/FIRM maps: 060246-0805G; -0808G; -0812G; and -0816G
- ☐ 100-year Floodplain Elevation is: 2,573 to 2,591 MSL
- ☑ Photographs: ☑ Aerial (Name & Date): Google Earth, 2010
  ☑ Other (Name & Date): Site Photographs, June/July 2010
- ☑ Previous determination(s). File no. and date of response letter: 2006-00657-SJH; 07/11/2006
- ☐ Other information (please specify):

**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)

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.

# *PRELIMINARY JURISDICTIONAL DETERMINATION FORM*

**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:**

Appendix A - Sites

District Office: Los Angeles District | File/ORM #: | PJD Date:

State: CA | City/County: Banning/Riverside | Person Requestinq PJD: Amy Glad, Pardee Homes

| Site Number | Latitude | Longitude | Cowardin Class | Est. Amount of Aquatic Resource in Review Area | Class of Aquatic Resource |
|---|---|---|---|---|---|
| Smith | 33.946978 N | -116.937332 W | n/a | 9.40 Acres | Non-Section 10 non-wetlanc |
| A | 33.934035 N | -116.929392 W | n/a | 0.15 Acre | Non-Section 10 non-wetlanc |
| A1 | 33.933484 N | -116.929894 W | n/a | 0.01 Acre | Non-Section 10 non-wetlanc |
| A1 Wet | 33.933484 N | -116.929894 W | Riverine | 0.01 Acre | Non-Section 10 wetland |
| B | 33.935126 N | -116.938271 W | n/a | 0.03 Acre | Non-Section 10 non-wetlanc |
| C | 33.943604 N | -116.938391 W | n/a | 0.04 Acre | Non-Section 10 non-wetlanc |

**Notes**:

# *PRELIMINARY JURISDICTIONAL DETERMINATION FORM*

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Pardee Homes
10880 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024

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☐ Office (Desk) Determination
☐ Field Determination: | Date of Field Trip:

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Appendix A - Sites

| | | | | | |
|---|---|---|---|---|---|
| District Office | Los Angeles District | File/ORM # | | PJD Date: | |
| State | CA | City/County | Banning/Riverside | Person Requestinq PJD | Amy Glad, Pardee Homes |

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| Smith | 33.946978 N | -116.937332 W | n/a | 9.40 Acres | Non-Section 10 non-wetlanc |
| A | 33.934035 N | -116.929392 W | n/a | 0.15 Acre | Non-Section 10 non-wetlanc |
| A1 | 33.933484 N | -116.929894 W | n/a | 0.01 Acre | Non-Section 10 non-wetlanc |
| A1 Wet | 33.933484 N | -116.929894 W | Riverine | 0.01 Acre | Non-Section 10 wetland |
| B | 33.935126 N | -116.938271 W | n/a | 0.03 Acre | Non-Section 10 non-wetlanc |
| C | 33.943604 N | -116.938391 W | n/a | 0.04 Acre | Non-Section 10 non-wetlanc |

**Notes**:

**APPROVED JURISDICTIONAL DETERMINATION FORM**
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:** Banning Butterfield Project - Form 1: Drainage Features F, G, H, I, Tributary I-1, J, Tributary J-1, K, M

State: California County/parish/borough: Riverside City: Banning

Center coordinates of site (lat/long in degree decimal format): Lat. 33.946978" ° **N**, Long. -116.937332 ° **W**.

Universal Transverse Mercator:

Name of nearest waterbody: Smith Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A

Name of watershed or Hydrologic Unit Code (HUC): Salton Sea 18100200 (HUC 8)

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☐ Office (Desk) Determination. Date:

☐ Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are no** *"waters of the U.S."* within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet: width (ft) and/or acres.
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Not Applicable.**
      Elevation of established OHWM (if known):Unknown .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: **These drainage features are isolated waters pursuant to the January 9, 2001 Supreme Court decision entitled**

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

**Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, et al. (SWANCC). This decision indicated that drainages not supporting a surficial connection to another Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the Clean Water Act. In addition, these drainage features are Non-Relatively Permanent Waters (Non-RPWs), which does not support a significant biological, chemical, or physical nexus to a Traditionally Navigable Water (TNW) as described below:**

**Feature F:**

**Feature F is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature F is located approximately 58.81 aerial miles from the Salton Sea. Flows within Feature F are limited to natural runoff and storm flows within a 16.83-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature F that would contribute to the nearest TNW, as Feature F terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature F is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature F and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature F. Feature F, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature F and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature F is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature F, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature F does not exhibit a significant nexus with a TNW. Therefore, Feature F is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature G:**

**Feature G is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature G is located approximately 57.90 aerial miles from the Salton Sea. Flows within Feature G are limited to natural runoff and storm flows within a 32.07-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature G that would contribute to the nearest TNW, as Feature G terminates off site within a City facility and at a Southern California Edison access road and does not have a surficial connection to a Corps jurisdictional water. Because Feature G is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature G and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature G. Feature G, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature G and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature G is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature G, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature G does not exhibit a significant nexus with a TNW. Therefore, Feature G is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature H:**

**Feature H is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature H is located approximately 59.00 aerial miles from the Salton Sea. Flows within Feature H are limited to natural runoff and storm flows within a 5.25-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature H that would contribute to the nearest TNW, as Feature H terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature H is isolated, it does not have a**

**significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature H and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature H. Feature H, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature H and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature H is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature H, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature H does not exhibit a significant nexus with a TNW. Therefore, Feature H is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature I:**

**Feature I is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature I is located approximately 59.00 aerial miles from the Salton Sea. Flows within Feature I are limited to natural runoff and storm flows within a 161.30-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature I that would contribute to the nearest TNW, as Feature I terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature I is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature I and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature I. Feature I, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature I and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature I is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature I, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature I does not exhibit a significant nexus with a TNW. Therefore, Feature I is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Tributary Feature I-1:**

**Tributary Feature I-1 is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Tributary Feature I-1 is located approximately 59.00 aerial miles from the Salton Sea. Flows within Tributary Feature I-1 are limited to natural runoff and storm flows within a 1.31-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Tributary Feature I-1 that would contribute to the nearest TNW, as Tributary Feature I-1 discharges into Feature I, which terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Tributary Feature I-1 is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Tributary Feature I-1 and the TNW. There are no wetlands or vegetated riparian habitat associated with Tributary Feature I-1. Tributary Feature I-1, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Tributary Feature I-1 and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Tributary Feature I-1 is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Tributary Feature I-1, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Tributary Feature I-1 does not exhibit a significant nexus with a TNW. Therefore, Tributary Feature I-1 is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature J:**

**Feature J is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature J is located approximately 59.57 aerial miles from the Salton Sea. Flows within Feature J are limited to natural runoff and storm flows within a 9.26-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature J that would contribute to the nearest TNW, as Feature J terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature J is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature J and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature J. Feature J, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature J and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature J is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature J, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature J does not exhibit a significant nexus with a TNW. Therefore, Feature J is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Tributary Feature J-1:**

**Tributary Feature J-1 is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Tributary Feature J-1 is located approximately 59.26 aerial miles from the Salton Sea. Flows within Tributary Feature J-1 are limited to natural runoff and storm flows within a 71.70-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Tributary Feature J-1 that would contribute to the nearest TNW, as Tributary Feature J-1 terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Tributary Feature J-1 is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**
**A biological nexus does not exist between Tributary Feature J-1 and the TNW. There are no wetlands or vegetated riparian habitat associated with Tributary Feature J-1. Tributary Feature J-1, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Tributary Feature J-1 and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Tributary Feature J-1 is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Tributary Feature J-1, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Tributary Feature J-1 does not exhibit a significant nexus with a TNW. Therefore, Tributary Feature J-1 is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature K:**

**Feature K is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature K is located approximately 59.54 aerial miles from the Salton Sea. Flows within Feature K are limited to natural runoff and storm flows within a 7.38-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature K that would contribute to the nearest TNW, as Feature K terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature K is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature K and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature K. Feature K, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature K and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature K is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature K, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature K does not exhibit a significant nexus with a TNW. Therefore, Feature K is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature M:**

**Feature M is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature M is located approximately 59.51 aerial miles from the Salton Sea. Flows within Feature M are limited to natural runoff and storm flows within a 3.05-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature M that would contribute to the nearest TNW, as Feature M terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature M is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature M and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature M. Feature M, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature M and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature M is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature M, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature M does not exhibit a significant nexus with a TNW. Therefore, Feature M is not a Water of the U.S. pursuant to Section 404 of the CWA.**

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## SECTION III: CWA ANALYSIS

### A. TNWs AND WETLANDS ADJACENT TO TNWs

**The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below**.

**1. TNW**
Identify TNW: **N/A**.

Summarize rationale supporting determination: .

**2. Wetland adjacent to TNW**
Summarize rationale supporting conclusion that wetland is "adjacent": .

### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

**This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.**

**The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.**

**A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.**

**If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.**

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**
Watershed size: ** **square miles**
Drainage area: ** **acres**
Average annual rainfall: inches
Average annual snowfall: inches

**(ii) Physical Characteristics:**
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: Project waters do not cross or serve as state boundaries.

Identify flow route to TNW[5]: .
Tributary stream order, if known: .

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

**Tributary** is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

**Tributary** properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

| | | |
|---|---|---|
| ☐ Silts | ☐ Sands | ☐ Concrete |
| ☐ Cobbles | ☐ Gravel | ☐ Muck |
| ☐ Bedrock | ☐ Vegetation. Type/% cover: | |
| ☐ Other. Explain: . | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: none.

Surface flow is: **Pick List.** Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):

| | |
|---|---|
| ☐ clear, natural line impressed on the bank | ☐ the presence of litter and debris |
| ☐ changes in the character of soil | ☐ destruction of terrestrial vegetation |
| ☐ shelving | ☐ the presence of wrack line |
| ☐ vegetation matted down, bent, or absent | ☐ sediment sorting |
| ☐ leaf litter disturbed or washed away | ☐ scour |
| ☐ sediment deposition | ☐ multiple observed or predicted flow events |
| ☐ water staining | ☐ abrupt change in plant community |
| ☐ other (list): | |

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

| | |
|---|---|
| ☐ High Tide Line indicated by: | ☐ Mean High Water Mark indicated by: |
| ☐ oil or scum line along shore objects | ☐ survey to available datum; |
| ☐ fine shell or debris deposits (foreshore) | ☐ physical markings; |
| ☐ physical markings/characteristics | ☐ vegetation lines/changes in vegetation types. |
| ☐ tidal gauges | |
| ☐ other (list): | |

**(iii) Chemical Characteristics:**
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: .
Identify specific pollutants, if known: .

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

**(iv) Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

**(i) Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is**: Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

**(ii) Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

**(iii) Biological Characteristics. Wetland supports (check all that apply):**

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

**3. Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

| Directly abuts? (Y/N) | Size (in acres) | Directly abuts? (Y/N) | Size (in acres) |
|---|---|---|---|

Summarize overall biological, chemical and physical functions being performed: .

## C. SIGNIFICANT NEXUS DETERMINATION

**A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.**

**Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:**

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: N/A.

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: N/A.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: N/A.

## D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]**
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☒ Interstate isolated waters. Explain: The drainage features within the Project area are isolated waters pursuant to SWANCC. This decision indicated that drainages not supporting a surficial connection to another Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the Clean Water Act. In addition, these drainage features are Non-RPWs, which do not support a significant biological, chemical, or physical nexus to a TNW.

[8]See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
**[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ Other factors. Explain: .

**Identify water body and summarize rationale supporting determination:** The drainage features within the Project area are isolated waters pursuant to SWANCC. This decision indicated that drainages not supporting a surficial connection to another Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the Clean Water Act. In addition, these drainage features are Non-RPWs, which do not support a significant biological, chemical, or physical nexus to a TNW.

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☒ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☒ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:

**These drainage features are isolated waters pursuant to the January 9, 2001 Supreme Court decision entitled Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, et al. (SWANCC). This decision indicated that drainages not supporting a surficial connection to another Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the Clean Water Act. In addition, these drainage features are Non-Relatively Permanent Waters (Non-RPWs), which does not support a significant biological, chemical, or physical nexus to a Traditionally Navigable Water (TNW) as described below:**

**Feature F:**

**Feature F is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature F is located approximately 58.81 aerial miles from the Salton Sea. Flows within Feature F are limited to natural runoff and storm flows within a 16.83-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature F that would contribute to the nearest TNW, as Feature F terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature F is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature F and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature F. Feature F, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature F and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature F is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature F, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature F does not exhibit a significant nexus with a TNW. Therefore, Feature F is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature G:**

**Feature G is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature G is located approximately 57.90 aerial miles from the Salton Sea. Flows within Feature G are limited to natural runoff and storm flows within a 32.07-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature G that would contribute to the nearest TNW, as Feature G terminates off site within a City facility and at a Southern California Edison access road and does not have a surficial connection to a Corps jurisdictional water. Because Feature G is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature G and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature G. Feature G, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature G and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature G is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature G, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature G does not exhibit a significant nexus with a TNW. Therefore, Feature G is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature H:**

**Feature H is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature H is located approximately 59.00 aerial miles from the Salton Sea. Flows within Feature H are limited to natural runoff and storm flows within a 5.25-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature H that would contribute to the nearest TNW, as Feature H terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature H is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature H and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature H. Feature H, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature H and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature H is isolated, there are no downstream Section 303(d) impaired waters.**
**The limited aquatic function associated with Feature H, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature H does not exhibit a significant nexus with a TNW. Therefore, Feature H is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature I:**

**Feature I is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature I is located approximately 59.00 aerial miles from the Salton Sea. Flows within Feature I are limited to natural runoff and storm flows within a 161.30-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature I that would contribute to the nearest TNW, as Feature I terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature I is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature I and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature I. Feature I, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature I and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature I is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature I, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature I does not exhibit a significant nexus with a TNW. Therefore, Feature I is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Tributary Feature I-1:**

**Tributary Feature I-1 is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Tributary Feature I-1 is located approximately 59.00 aerial miles from the Salton Sea. Flows within Tributary Feature I-1 are limited to natural runoff and storm flows within a 1.31-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency**

**of flows within Tributary Feature I-1 that would contribute to the nearest TNW, as Tributary Feature I-1 discharges into Feature I, which terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Tributary Feature I-1 is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Tributary Feature I-1 and the TNW. There are no wetlands or vegetated riparian habitat associated with Tributary Feature I-1. Tributary Feature I-1, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Tributary Feature I-1 and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Tributary Feature I-1 is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Tributary Feature I-1, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Tributary Feature I-1 does not exhibit a significant nexus with a TNW. Therefore, Tributary Feature I-1 is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature J:**

**Feature J is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature J is located approximately 59.57 aerial miles from the Salton Sea. Flows within Feature J are limited to natural runoff and storm flows within a 9.26-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature J that would contribute to the nearest TNW, as Feature J terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature J is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature J and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature J. Feature J, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature J and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature J is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature J, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature J does not exhibit a significant nexus with a TNW. Therefore, Feature J is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Tributary Feature J-1:**

**Tributary Feature J-1 is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Tributary Feature J-1 is located approximately 59.26 aerial miles from the Salton Sea. Flows within Tributary Feature J-1 are limited to natural runoff and storm flows within a 71.70-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Tributary Feature J-1 that would contribute to the nearest TNW, as Tributary Feature J-1 terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Tributary Feature J-1 is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Tributary Feature J-1 and the TNW. There are no wetlands or vegetated riparian habitat associated with Tributary Feature J-1. Tributary Feature J-1, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Tributary Feature J-1 and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Tributary Feature J-1 is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Tributary Feature J-1, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Tributary Feature J-1 does not**

**exhibit a significant nexus with a TNW. Therefore, Tributary Feature J-1 is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature K:**

**Feature K is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature K is located approximately 59.54 aerial miles from the Salton Sea. Flows within Feature K are limited to natural runoff and storm flows within a 7.38-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature K that would contribute to the nearest TNW, as Feature K terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature K is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature K and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature K. Feature K, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature K and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature K is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature K, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature K does not exhibit a significant nexus with a TNW. Therefore, Feature K is not a Water of the U.S. pursuant to Section 404 of the CWA.**

**Feature M:**

**Feature M is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature M is located approximately 59.51 aerial miles from the Salton Sea. Flows within Feature M are limited to natural runoff and storm flows within a 3.05-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature M that would contribute to the nearest TNW, as Feature M terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature M is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.**

**A biological nexus does not exist between Feature M and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature M. Feature M, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.**

**A chemical nexus does not exist between Feature M and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature M is isolated, there are no downstream Section 303(d) impaired waters.**

**The limited aquatic function associated with Feature M, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature M does not exhibit a significant nexus with a TNW. Therefore, Feature M is not a Water of the U.S. pursuant to Section 404 of the CWA.**

☐ Other: (explain, if not covered above): **.**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

☒ Non-wetland waters (i.e., rivers, streams): **9,405** linear feet **2-4** width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply -** checked items shall 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: See Attached Jurisdictional Delineation Map.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☒ U.S. Geological Survey Hydrologic Atlas: http://www.atlas.ca.gov.
  - ☐ USGS NHD data.
  - ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute Beaumont, California.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: http://soils.usda.gov.
- ☒ National wetlands inventory map(s). Cite name:http://www.fws.gov/wetlands/Data/Mapper.html .
- ☐ State/Local wetland inventory map(s): .
- ☒ FEMA/FIRM maps: 060246-0805G, -0808G, -0812G, and -0816G(msc.fema.gov).
- ☒ 100-year Floodplain Elevation is: approximately 2,573 to 2,601 feet above Mean Sea Level (msc.fema.gov) (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth, 2010.
  or ☒ Other (Name & Date): Site Photographs - June/July 2010.
- ☒ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☐ Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** These drainage features are isolated waters pursuant to the January 9, 2001 Supreme Court decision entitled Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, et al. (SWANCC). This decision indicated that drainages not supporting a surficial connection to another Corps jurisdictional water are isolated and not subject to Corps jurisdiction pursuant to Section 404 of the Clean Water Act. In addition, these drainage features are Non-Relatively Permanent Waters (Non-RPWs), which does not support a significant biological, chemical, or physical nexus to a Traditionally Navigable Water (TNW) as described below:

Feature F:

Feature F is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature F is located approximately 58.81 aerial miles from the Salton Sea. Flows within Feature F are limited to natural runoff and storm flows within a 16.83-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature F that would contribute to the nearest TNW, as Feature F terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature F is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature F and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature F. Feature F, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature F and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature F is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature F, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature F does not exhibit a significant nexus with a TNW. Therefore, Feature F is not a Water of the U.S. pursuant to Section 404 of the CWA.

Feature G:

Feature G is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature G is located approximately 57.90 aerial miles from the Salton Sea. Flows within Feature G are limited to natural runoff and storm flows within a 32.07-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature G that would contribute to the nearest TNW, as Feature G terminates off site within a City

facility and at a Southern California Edison access road and does not have a surficial connection to a Corps jurisdictional water. Because Feature G is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.
A biological nexus does not exist between Feature G and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature G. Feature G, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature G and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature G is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature G, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature G does not exhibit a significant nexus with a TNW. Therefore, Feature G is not a Water of the U.S. pursuant to Section 404 of the CWA.

Feature H:

Feature H is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature H is located approximately 59.00 aerial miles from the Salton Sea. Flows within Feature H are limited to natural runoff and storm flows within a 5.25-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature H that would contribute to the nearest TNW, as Feature H terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature H is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature H and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature H. Feature H, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature H and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature H is isolated, there are no downstream Section 303(d) impaired waters.
The limited aquatic function associated with Feature H, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature H does not exhibit a significant nexus with a TNW. Therefore, Feature H is not a Water of the U.S. pursuant to Section 404 of the CWA.

Feature I:

Feature I is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature I is located approximately 59.00 aerial miles from the Salton Sea. Flows within Feature I are limited to natural runoff and storm flows within a 161.30-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature I that would contribute to the nearest TNW, as Feature I terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature I is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature I and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature I. Feature I, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature I and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature I is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature I, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature I does not exhibit a significant nexus with a TNW. Therefore, Feature I is not a Water of the U.S. pursuant to Section 404 of the CWA.

Tributary Feature I-1:

Tributary Feature I-1 is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Tributary Feature I-1 is located approximately 59.00 aerial miles from the Salton Sea. Flows within Tributary Feature I-1 are limited to natural runoff and storm flows within a 1.31-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Tributary Feature I-1 that would contribute to the nearest TNW, as Tributary Feature I-1 discharges into Feature I, which terminates on site within a pasture and does not have a surficial connection to a

Corps jurisdictional water. Because Tributary Feature I-1 is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Tributary Feature I-1 and the TNW. There are no wetlands or vegetated riparian habitat associated with Tributary Feature I-1. Tributary Feature I-1, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Tributary Feature I-1 and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Tributary Feature I-1 is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Tributary Feature I-1, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Tributary Feature I-1 does not exhibit a significant nexus with a TNW. Therefore, Tributary Feature I-1 is not a Water of the U.S. pursuant to Section 404 of the CWA.

Feature J:

Feature J is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature J is located approximately 59.57 aerial miles from the Salton Sea. Flows within Feature J are limited to natural runoff and storm flows within a 9.26-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature J that would contribute to the nearest TNW, as Feature J terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature J is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature J and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature J. Feature J, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature J and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature J is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature J, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature J does not exhibit a significant nexus with a TNW. Therefore, Feature J is not a Water of the U.S. pursuant to Section 404 of the CWA.

Tributary Feature J-1:

Tributary Feature J-1 is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Tributary Feature J-1 is located approximately 59.26 aerial miles from the Salton Sea. Flows within Tributary Feature J-1 are limited to natural runoff and storm flows within a 71.70-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Tributary Feature J-1 that would contribute to the nearest TNW, as Tributary Feature J-1 terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Tributary Feature J-1 is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Tributary Feature J-1 and the TNW. There are no wetlands or vegetated riparian habitat associated with Tributary Feature J-1. Tributary Feature J-1, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Tributary Feature J-1 and the TNW because this drainage feature originates off site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Tributary Feature J-1 is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Tributary Feature J-1, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Tributary Feature J-1 does not exhibit a significant nexus with a TNW. Therefore, Tributary Feature J-1 is not a Water of the U.S. pursuant to Section 404 of the CWA.

Feature K:

Feature K is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature K is located approximately 59.54 aerial miles from the Salton Sea. Flows within Feature K are limited to natural runoff and storm flows within a 7.38-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume,

duration, or frequency of flows within Feature K that would contribute to the nearest TNW, as Feature K terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature K is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature K and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature K. Feature K, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

A chemical nexus does not exist between Feature K and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature K is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature K, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature K does not exhibit a significant nexus with a TNW. Therefore, Feature K is not a Water of the U.S. pursuant to Section 404 of the CWA.

Feature M:

Feature M is an isolated water pursuant to SWANCC and does not exhibit a physical nexus with the closest TNW, the Salton Sea. Feature M is located approximately 59.51 aerial miles from the Salton Sea. Flows within Feature M are limited to natural runoff and storm flows within a 3.05-acre watershed. The City receives approximately 18.10 inches of rainfall per year, with an average monthly maximum of 3.90 inches in January and an average monthly minimum of 0.20 inches in June, July, and August . This level of rainfall does not suggest a volume, duration, or frequency of flows within Feature M that would contribute to the nearest TNW, as Feature M terminates on site within a pasture and does not have a surficial connection to a Corps jurisdictional water. Because Feature M is isolated, it does not have a significant effect on physical properties in the TNW including transport of floodwaters, temperature, turbidity, suspended sediments, and dissolved nutrients.

A biological nexus does not exist between Feature M and the TNW. There are no wetlands or vegetated riparian habitat associated with Feature M. Feature M, which is isolated, contains very little nutrients and organic carbon, and therefore would not have a significant effect on downstream foodwebs.

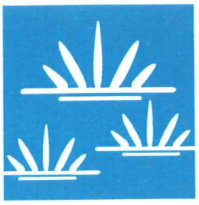
A chemical nexus does not exist between Feature M and the TNW because this drainage feature originates on site in a relatively undeveloped/natural watershed and does not have the capability to transport pollutants from the surrounding developed offsite areas to the TNW. Since Feature M is isolated, there are no downstream Section 303(d) impaired waters.

The limited aquatic function associated with Feature M, combined with its distance and isolation from a TNW and the minimal volume, duration, and frequency of flows within the drainage feature, suggest that Feature M does not exhibit a significant nexus with a TNW. Therefore, Feature M is not a Water of the U.S. pursuant to Section 404 of the CWA.

# Off-Site Sewer and Water Pipeline Facilities

GLENN LUKOS ASSOCIATES

Regulatory Services



September 9, 2010

Hugh Hewitt
Hewitt & Wolensky, LLP
4041 MacArthur Boulevard, Suite 300
Newport Beach, California 92660

SUBJECT: Jurisdictional Delineation of the Butterfield Specific Plan Off-Site Sewer and Water Pipeline Facilities Located in the Cities of Banning and Beaumont, Riverside County, California.

Dear Mr. Hewitt:

This letter report summarizes our preliminary findings of U.S. Army Corps of Engineers (Corps), Colorado River Basin Regional Water Quality Control Board (Regional Board), and California Department of Fish and Game (CDFG) jurisdiction for the above-referenced sewer and water line facilities.[1]

The Butterfield Specific Plan Off-Site Sewer and Water Pipeline Facilities Project (Project) is located partially within the Cities of Banning and Beaumont, and partially in the unincorporated portion of Riverside County, California [Exhibit 1]. The Project consists of seven proposed sewer and/or water pipeline alignment options within the vicinity of the proposed Butterfield Specific Plan Development Project (Butterfield) in the City of Banning (City) and County of Riverside, California [Exhibit 2]. These alignments are as follows:

- Pipeline Alternative A: A proposed 24-inch pipeline connecting an existing pipeline within the roadway right-of way at the intersection of Orchard Street and Noble Street in the unincorporated portion of Riverside County with the Smith Creek Detention Basin in the Butterfield Project area.

  This proposed alignment would begin at the intersection of Orchard Street and Noble Street and travel south along Noble Street to Brookside Avenue, at which point the

[1] This report presents our best effort at estimating the subject jurisdictional boundaries using the most up-to-date regulations and written policy and guidance from the regulatory agencies. Only the regulatory agencies can make a final determination of jurisdictional boundaries. If a final jurisdictional determination is required, GLA can assist in getting written confirmation of jurisdictional boundaries from the agencies.

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alignment would turn to the east and follow Brookside Avenue until the proposed pipeline connection with the Smith Creek Detention Basin within the Butterfield Project.[2]

- Pipeline Alternative B: A proposed 24-inch pipeline connecting an existing pipeline within the roadway right-of way at the intersection of Orchard Street and Noble Street in the unincorporated portion of Riverside County with the Smith Creek Detention Basin in the Butterfield Project area.

  This proposed alignment would begin at the intersection of Orchard Street and Noble Street and travel south along Noble Street to High Street, at which point the alignment would turn to the east and follow High Street until its intersection with Cherry Avenue. The alignment would then turn south and follow Cherry Avenue until its intersection with Brookside Avenue, at which point the alignment would turn to the east and follow Brookside Avenue until its proposed pipeline connection with the Smith Creek Detention Basin within the Butterfield Project. [3]

- Pipeline Alternative C: A proposed 24-inch pipeline connecting an existing pipeline within the roadway right-of way at the intersection of Orchard Street and Noble Street in the unincorporated portion of Riverside County with the Smith Creek Detention Basin in the Butterfield Project area.

  This proposed alignment would begin at the intersection of Orchard Street and Noble Street and travel south along Noble Street to High Street, at which point the alignment would turn to the east and follow High Street until its intersection with Bellflower Street. The alignment would then turn south and follow Bellflower Street until its intersection with Brookside Avenue, at which point the alignment would turn to the east and follow Brookside Avenue until its proposed pipeline connection with the Smith Creek Detention Basin within the Butterfield Project. [4]

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[2] Please note that any temporary or permanent disturbance to Smith Creek associated with the proposed pipeline alternatives connecting with the Smith Creek Detention Basin within the Butterfield Project, or the recycled water line connecting the Smith Creek Detention Basin with the City's Wastewater Treatment Plant, has already been analyzed as part of GLA's jurisdictional delineation report for the Butterfield Project, dated August 31, 2010.

[3] Please note that any temporary or permanent disturbance to Smith Creek associated with the proposed pipeline alternatives connecting with the Smith Creek Detention Basin within the Butterfield Project, or the recycled water line connecting the Smith Creek Detention Basin with the City's Wastewater Treatment Plant, has already been analyzed as part of GLA's jurisdictional delineation report for the Butterfield Project, dated August 31, 2010.

[4] Please note that any temporary or permanent disturbance to Smith Creek associated with the proposed pipeline alternatives connecting with the Smith Creek Detention Basin within the Butterfield Project, or the recycled water line connecting the Smith Creek Detention Basin with the City's Wastewater Treatment Plant, has already been analyzed as part of GLA's jurisdictional delineation report for the Butterfield Project, dated August 31, 2010.

- Recycled Water Backbone: A proposed recycled water line option transporting water from the Smith Creek Detention Basin to the City's Wastewater Treatment Plant located near the City Airport. This proposed alignment would begin at the Smith Creek Detention Basin and travel southerly and easterly within the Butterfield Project area,[5] at which point the alignment would turn to the south and follow Highland Home Road until its intersection with Wilson Street. The alignment would then turn to the east and follow Wilson Street until its intersection with Sunset Avenue, at which point the alignment would turn to the south and follow Sunset Avenue until its intersection with Lincoln Street. The alignment would then turn to the east and follow Lincoln Street until its intersection with Hathaway Street, at which point the alignment would turn to the south and follow Hathaway Street until its intersection with Charles Street, at which point the alignment would turn to the east and follow Charles Street until the proposed recycled water line connects to the existing City Wastewater Treatment Plant.

- Proposed Off Site Trunk Sewer Line: A proposed off site trunk sewer line option beginning in the roadway right-of way within Wilson Street in the City near Smith Creek, which will connect to an existing sewer line within San Gorgonio Avenue in the City. This proposed alignment would begin within Wilson Street near its intersection with Park Avenue and travel east along Wilson Street, at which point the alignment would turn to the south and follow Omar Street until its intersection with Ramsey Street. The alignment would then turn to the east and follow Ramsey Street until its intersection with San Gorgonio Avenue, at which point the alignment would turn to the south and follow San Gorgonio Avenue until its connection with the existing sewer line at the intersection of San Gorgonio Avenue and Westward Avenue. From the point of connection with the existing sewer line, the existing sewer line travels south along San Gorgonio Avenue until its intersection with Wesley Street, at which point the sewer line turns toward the east and follows Wesley Street before abruptly turning to the south and then east along Porter Street before turning to the northeast within undeveloped land and entering the City's existing Wastewater Treatment Plant.

- Optional Sewer Force Main Route A: This proposed alignment would divert existing sewer flows from the proposed lift station at the intersection of Omar Street and Ramsey Street to the Butterfield Satellite Treatment Plant within the Butterfield Project area at the northern terminus of Highland Home Road. This proposed alignment would be within both Highland Home Road and Ramsey Street.

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[5] Please note that any temporary or permanent disturbance to Smith Creek associated with the proposed pipeline alternatives connecting with the Smith Creek Detention Basin within the Butterfield Project, or the recycled water line connecting the Smith Creek Detention Basin with the City's Wastewater Treatment Plant, has already been analyzed as part of GLA's jurisdictional delineation report for the Butterfield Project, dated August 31, 2010.

- Optional Sewer Force Main Route B: This proposed alignment would divert existing sewer flows from the proposed lift station at the intersection of Omar Street and Ramsey Street to the Butterfield Satellite Treatment Plant within the Butterfield Project area at the northern terminus of Highland Home Road. This proposed alignment would be within Omar Street, Wilson Street, and Highland Home Road.

On January 15, 2008, regulatory specialists of Glenn Lukos Associates, Inc. (GLA) examined the Project area to determine the limits of (1) Corps jurisdiction pursuant to Section 404 of the Clean Water Act (CWA), (2) Regional Board jurisdiction pursuant to Section 401 of the CWA and Section 13260 of the California Water Code (CWC), and (3) CDFG jurisdiction pursuant to Division 2, Chapter 6, Section 1600-1616 of the Fish and Game Code. GLA re-examined the Project area on August 20, 2010 to update the results of our January 15, 2008 delineation results.

The proposed sewer and water pipeline alignments are all to be installed within existing roadway rights-of-way, other than the potential connection of Pipeline Alternatives A, B, or C with the Smith Creek Detention Basin in the Butterfield Project area, which may result in the disturbance to Smith Creek; however, this disturbance has already been assessed as part of the Butterfield jurisdictional delineation report, prepared by GLA, dated August 31, 2010. A graphic depicting the proposed sewer and water pipeline alignments is attached as Exhibit 3.

No Corps, Regional Board, or CDFG jurisdiction is present within the Project area; therefore, no regulatory permits or agreements from the Corps, Regional Board, or CDFG will be required to construct any of these alignments within the footprint of the Project area.

## I. METHODOLOGY

Prior to beginning the field delineation, a 200-scale color aerial photograph, a 200-scale topographic base map of the property, and the previously-cited USGS topographic map were examined to determine the locations of potential areas of Corps, CDFG, and Regional Board jurisdiction. Suspected jurisdictional areas were field checked for the presence of definable channels and/or wetland vegetation, soils and hydrology. Suspected wetland habitats on the site were evaluated using the methodology set forth in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual[6] (Wetland Manual) and the 2008 Regional Supplement to the Corps

[6] Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1. Vicksburg, MS: U.S. Army Engineer Waterways Experimental Station.

of Engineers Wetland Delineation Manual: Arid West Region Version 2.0[7] (Arid West Supplement). Lateral limits of non-wetland waters were identified using field indicators of an Ordinary High Water Mark (OHWM).[8] While in the field, jurisdictional areas were recorded onto a 200-scale color aerial photograph using visible landmarks. Other data were recorded onto wetland data sheets, if applicable.

## II. JURISDICTION

### A. Army Corps of Engineers

Pursuant to Section 404 of the CWA, the Corps regulates the discharge of dredged and/or fill material into waters of the United States. The term "waters of the United States" is defined in Corps regulations at 33 CFR Part 328.3(a) as:

> *(1) All 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) All interstate waters including interstate wetlands;*
> *(3) All 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 foreign commerce including any such waters:*
> *(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
> *(ii) From which fish or shell fish are or could be taken and sold in interstate or foreign commerce; or*
> *(iii) Which are used or could be used for industrial purpose by industries in interstate commerce...*
> *(4) All impoundments of waters otherwise defined as waters of the United States under the definition;*

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[7] U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0). Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center and Engineering Laboratory.

[8] U.S. Army Corps of Engineers. 2008. A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States. R. W. Lichvar and S. M. McColley. ERDC/CRREL TR-08-12. Hanover, NH: U.S. Army Engineer Cold Regions Research and Engineering Laboratory.

*(5) Tributaries of waters identified in paragraphs (a) (1)-(4) of this section;*
*(6) The territorial seas;*
*(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1)-(6) of this section.*

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

(8) Waters of the United States do not include prior converted cropland.[9] Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with the EPA.

In the absence of wetlands, the limits of Corps jurisdiction in non-tidal waters, such as intermittent streams, extend to the OHWM which is defined at 33 CFR 328.3(e) as:

*...that line on the shore established by the fluctuation of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.*

### 1. Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, et al.

Pursuant to Article I, Section 8 of the U.S. Constitution, federal regulatory authority extends only to activities that affect interstate commerce. In the early 1980s the Corps interpreted the interstate commerce requirement in a manner that restricted Corps jurisdiction on isolated (intrastate) waters. On September 12, 1985, EPA asserted that Corps jurisdiction extended to isolated waters that are used or could be used by migratory birds or endangered species, and the definition of "waters of the United States" in Corps regulations was modified as quoted above from 33 CFR 328.3(a).

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[9] The term "prior converted cropland" is defined in the Corps' Regulatory Guidance Letter 90-7 (dated September 26, 1990) as "wetlands which were both manipulated (drained or otherwise physically altered to remove excess water from the land) and cropped before 23 December 1985, to the extent that they no longer exhibit important wetland values. Specifically, prior converted cropland is inundated for no more than 14 consecutive days during the growing season...." [Emphasis added.]

On January 9, 2001, the Supreme Court of the United States issued a ruling on SWANCC. In this case the Court was asked whether use of an isolated, intrastate pond by migratory birds is a sufficient interstate commerce connection to bring the pond into federal jurisdiction of Section 404 of the CWA.

The written opinion notes that the court's previous support of the Corps' expansion of jurisdiction beyond navigable waters (*United States v. Riverside Bayview Homes, Inc.*) was for a wetland that abutted a navigable water and that the court did not express any opinion on the question of the authority of the Corps to regulate wetlands that are not adjacent to bodies of open water. The current opinion goes on to state:

> *In order to rule for the respondents here, we would have to hold that the jurisdiction of the Corps extends to ponds that are not adjacent to open water. We conclude that the text of the statute will not allow this.*

Therefore, we believe that the court's opinion goes beyond the migratory bird issue and says that no isolated, intrastate water is subject to the provisions of Section 404(a) of the CWA (regardless of any interstate commerce connection). However, the Corps and EPA have issued a joint memorandum which states that they are interpreting the ruling to address only the migratory bird issue and leaving the other interstate commerce clause nexuses intact.

### 2. Rapanos v. United States and Carabell v. United States

On June 5, 2007, the U.S. Environmental Protection Agency (EPA) and Corps issued joint guidance that addresses the scope of jurisdiction pursuant to the CWA in light of the Supreme Court's decision in the consolidated cases *Rapanos v. United States* and *Carabell v. United States* ("Rapanos"). The chart below was provided in the joint EPA/Corps guidance.

For project sites that include waters other than TNWs and/or their adjacent wetlands or Relatively Permanent Waters (RPWs) tributary to TNWs and/or their adjacent wetlands as set forth in the chart below, the Corps must apply the significant nexus standard, that includes the data set forth in the *Approved Jurisdictional Determination Form*.

For "isolated" waters or wetlands, the joint guidance also requires an evaluation by the Corps and EPA to determine whether other interstate commerce clause nexuses, not addressed in the SWANCC decision are associated with isolated features on project sites for which a jurisdictional determination is being sought from the Corps. The information pertaining to isolated waters is also included on the *Approved Jurisdictional Determination Form*.

The agencies will assert jurisdiction over the following waters:

- Traditional navigable waters
- Wetlands adjacent to traditional navigable waters
- Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months)
- Wetlands that directly abut such tributaries

The agencies will decide jurisdiction over the following waters based on a fact-specific analysis to determine whether they have a significant nexus with a traditional navigable water:

- Non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary

The agencies generally will not assert jurisdiction over the following features:

- Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent or short duration flow)
- Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water

The agencies will apply the significant nexus standard as follows:

- A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters
- Significant nexus includes consideration of hydrologic and ecologic factors.

### 3. Corps Preliminary Jurisdictional Determination

A *Corps Preliminary Jurisdictional Determination Form* may be used to concede Corps jurisdiction where all streambeds within the project area are considered Corps jurisdictional waters. The project would be able to move forward pursuant to Corps Regulatory Guidance Letter (RGL) 08-02, issued on June 26, 2008, which allows the Corps to issue preliminary jurisdictional determinations (Preliminary JD) for a project. A Preliminary JD allows a project to

move forward by setting aside/voluntarily waiving questions regarding CWA jurisdiction over drainages on site in the interest of allowing expeditiously obtaining a Section 404 Permit.

As stated in RGL 08-02:

> *While a landowner, permit applicant, or other affected party can elect to request and obtain an approved JD, he or she can also decline to request an approved JD, and instead obtain a Corps individual or general permit authorization based on either a preliminary JD, or, in appropriate circumstances (such as authorizations by non-reporting nationwide general permits), no JD whatsoever. The Corps will determine what form of JD is appropriate for any particular circumstance based on all the relevant factors, to include, but not limited to, the applicant's preference, what kind of permit authorization is being used (individual permit versus general permit), and the nature of the proposed activity needing authorization.*

The Corps typically completes Preliminary JDs within 60 days of receipt of the request for such a determination. If the Corps project manager cannot complete the Preliminary JD within the 60-day timeframe, they must provide their supervisor, who would also provide the applicant, with a schedule to complete the determination (i.e., unlike the Rapanos significant nexus guidelines, there is a specific timeframe to complete the Preliminary JD and move forward with the jurisdictional determination, without uncertainty, and the EPA will not be involved with the Preliminary JD process as the Corps is not required to coordinate with the EPA to review Preliminary JDs).

### 4. Wetland Definition Pursuant to Section 404 of the Clean Water Act

The term "wetlands" (a subset of "waters of the United States") is defined at 33 CFR 328.3(b) as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support...a prevalence of vegetation typically adapted for life in saturated soil conditions." In 1987 the Corps published a manual to guide its field personnel in determining jurisdictional wetland boundaries. The methodology set forth in the 1987 Wetland Delineation Manual and the Arid West Supplement generally require that, in order to be considered a wetland, the vegetation, soils, and hydrology of an area exhibit at least minimal hydric characteristics. While the manual and Supplement provide great detail in methodology and allow for varying special conditions, a wetland should normally meet each of the following three criteria:

- more than 50 percent of the dominant plant species at the site must be typical of wetlands (i.e., rated as facultative or wetter in the National List of Plant Species that Occur in Wetlands[10]);

- soils must exhibit physical and/or chemical characteristics indicative of permanent or periodic saturation (e.g., a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions); and

- Whereas the 1987 Manual requires that hydrologic characteristics indicate that the ground is saturated to within 12 inches of the surface for at least five percent of the growing season during a normal rainfall year, the Arid West Supplement does not include a quantitative criteria with the exception for areas with "problematic hydrophytic vegetation", which require a minimum of 14 days of ponding to be considered a wetland.

### B. Regional Water Quality Control Board

Subsequent to the SWANCC decision, the Chief Counsel for the State Water Resources Control Board issued a memorandum that addressed the effects of the SWANCC decision on the Section 401 Water Quality Certification Program.[11] The memorandum states:

> *California's right and duty to evaluate certification requests under section 401 is pendant to (or dependent upon) a valid application for a section 404 permit from the Corps, or another application for a federal license or permit. Thus if the Corps determines that the water body in question is not subject to regulation under the COE's 404 program, for instance, no application for 401 certification will be required...*
>
> *The SWANCC decision does not affect the Porter Cologne authorities to regulate discharges to isolated, non-navigable waters of the states....*
>
> *Water Code section 13260 requires "any person discharging waste, or proposing to discharge waste, within any region that could affect the waters of the state to file a report of discharge (an application for waste discharge requirements)."*

---

[10] Reed, P.B., Jr. 1988. National List of Plant Species that Occur in Wetlands. U.S. Fish and Wildlife Service Biological Report 88(26.10).

[11] Wilson, Craig M. January 25, 2001. Memorandum addressed to State Board Members and Regional Board Executive Officers.

> *(Water Code § 13260(a)(1) (emphasis added).) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code § 13050(e).) The U.S. Supreme Court's ruling in SWANCC has no bearing on the Porter-Cologne definition. While all waters of the United States that are within the borders of California are also waters of the state, the converse is not true—waters of the United States is a subset of waters of the state. Thus, since Porter-Cologne was enacted California always had and retains authority to regulate discharges of waste into any waters of the state, regardless of whether the COE has concurrent jurisdiction under section 404. The fact that often Regional Boards opted to regulate discharges to, e.g., vernal pools, through the 401 program in lieu of or in addition to issuing waste discharge requirements (or waivers thereof) does not preclude the regions from issuing WDRs (or waivers of WDRs) in the absence of a request for 401 certification....*

In this memorandum the SWRCB's Chief Counsel has made the clear assumption that fill material to be discharged into isolated waters of the United States is to be considered equivalent to "waste" and therefore subject to the authority of the Porter Cologne Water Quality Act. However, while providing a recounting of the Act's definition of waters of the United States, this memorandum fails to also reference the Act's own definition of waste:

> *"Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.*

The lack of inclusion of a reference to "fill material," "dirt," "earth" or other similar terms in the Act's definition of "waste," or elsewhere in the Act, suggests that no such association was intended. Thus, the Chief Counsel's memorandum signals that the SWRCB is attempting to retain jurisdiction over discharge of fill material into isolated waters of the United States by administratively expanding the definition of "waste" to include "fill material" without actually seeking amendment of the Act's definition of waste (an amendment would require action by the state legislature). Consequently, discharge of fill material into waters of the State not subject to the jurisdiction of the Corps pursuant to Section 404 of the CWA may require authorization pursuant to the CWC through application for waste discharge requirements (WDRs) or through waiver of WDRs, despite the lack of a clear regulatory imperative.

### C. California Department of Fish and Game

Pursuant to Division 2, Chapter 6, Section 1600-1616 of the California Fish and Game Code, the CDFG regulates all diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake, which supports fish or wildlife.

CDFG defines a "stream" (including creeks and rivers) as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." CDFG's definition of "lake" includes "natural lakes or man-made reservoirs."

CDFG jurisdiction within altered or artificial waterways is based upon the value of those waterways to fish and wildlife. CDFG Legal Advisor has prepared the following opinion:

- Natural waterways that have been subsequently modified and which have the potential to contain fish, aquatic insects and riparian vegetation will be treated like natural waterways...

- Artificial waterways that have acquired the physical attributes of natural stream courses and which have been viewed by the community as natural stream courses, should be treated by [CDFG] as natural waterways...

- Artificial waterways without the attributes of natural waterways should generally not be subject to Fish and Game Code provisions...

Thus, CDFG jurisdictional limits closely mirror those of the Corps. Exceptions are CDFG's exclusion of isolated wetlands (those not associated with a river, stream, or lake), the addition of artificial stock ponds and irrigation ditches constructed on uplands, and the addition of riparian habitat supported by a river, stream, or lake regardless of the riparian area's federal wetland status.

## III. RESULTS

### A. Corps Jurisdiction

The sewer and water pipeline alignments are all proposed within existing roadway rights-of-way; therefore, no Corps jurisdiction is present with the Project area.

### B. Regional Water Quality Control Board Jurisdiction

Since no Corps jurisdiction is present and no water features exist within the roadway rights-of way within the Project area, no Regional Board jurisdiction is present.

### C. CDFG Jurisdiction

The proposed sewer and water pipeline alignments are all proposed within existing roadway rights-of-way; therefore, no CDFG jurisdiction is present with the Project area.

## IV. DISCUSSION

### A. Impact Analysis

Since the sewer and water pipeline alignments are all proposed within existing roadway rights-of-way, which do not contain streambeds, no Corps, Regional Board, or CDFG jurisdiction is present. As a result, no regulatory permits or agreements from the Corps pursuant to Section 404 of the CWA, the Regional Board pursuant to Section 401 of the CWA or Section 13260 of the CWC, or the CDFG pursuant to Section 1602 of the Fish and Game Code are required.

If you have any questions regarding this letter report, please call me at (949) 837-0404, Ext. 20.

Sincerely,

GLENN LUKOS ASSOCIATES, INC.

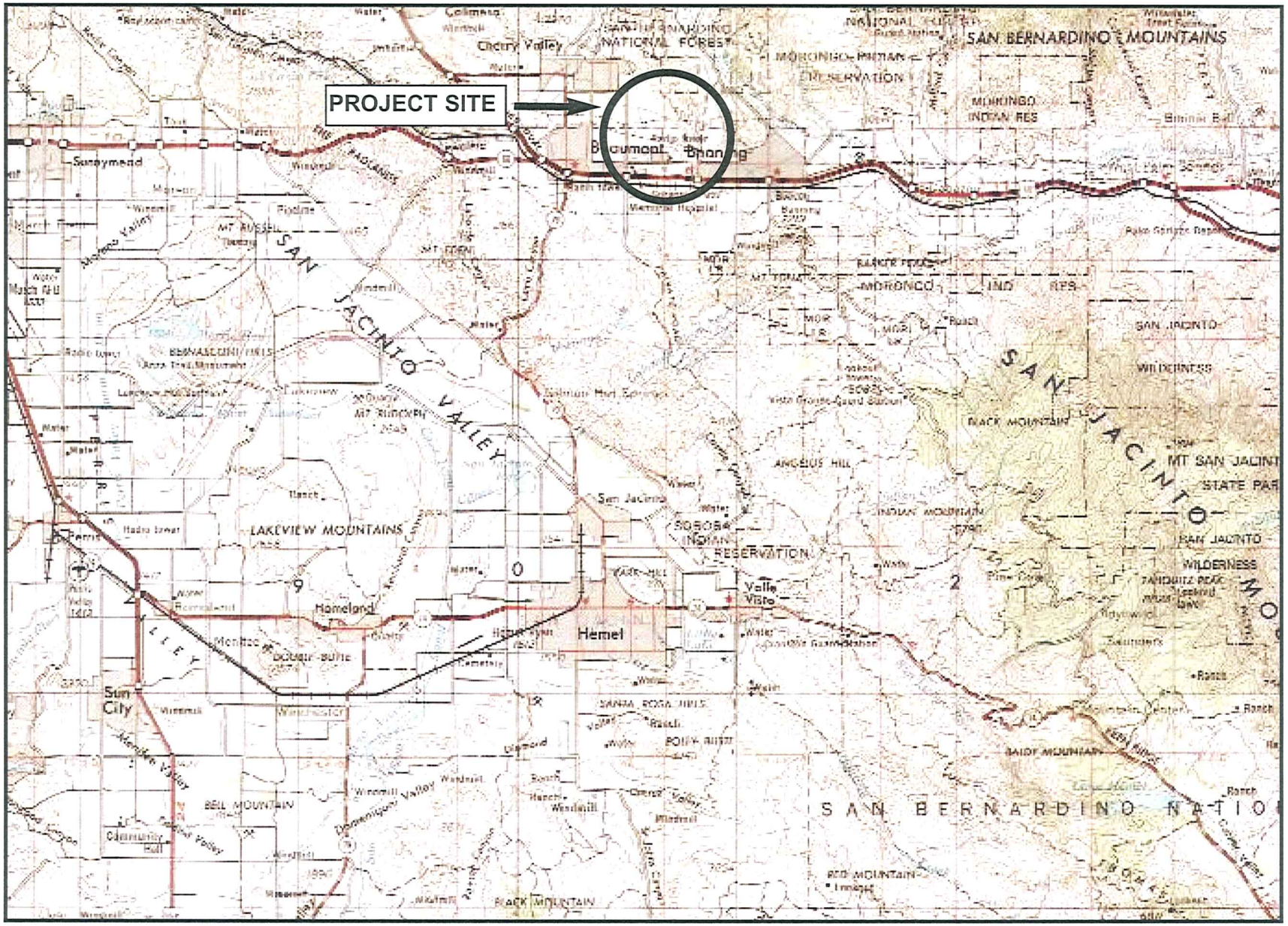
Martin A. Rasnick
Senior Regulatory Specialist

S: 0163-131a.proposedpipesrpt.rpt

Exhibit 1

Regional Map

Adapted from USGS Santa Ana quadrangle




NORTH

0 2 4 6

MILES

**BUTTERFIELD**

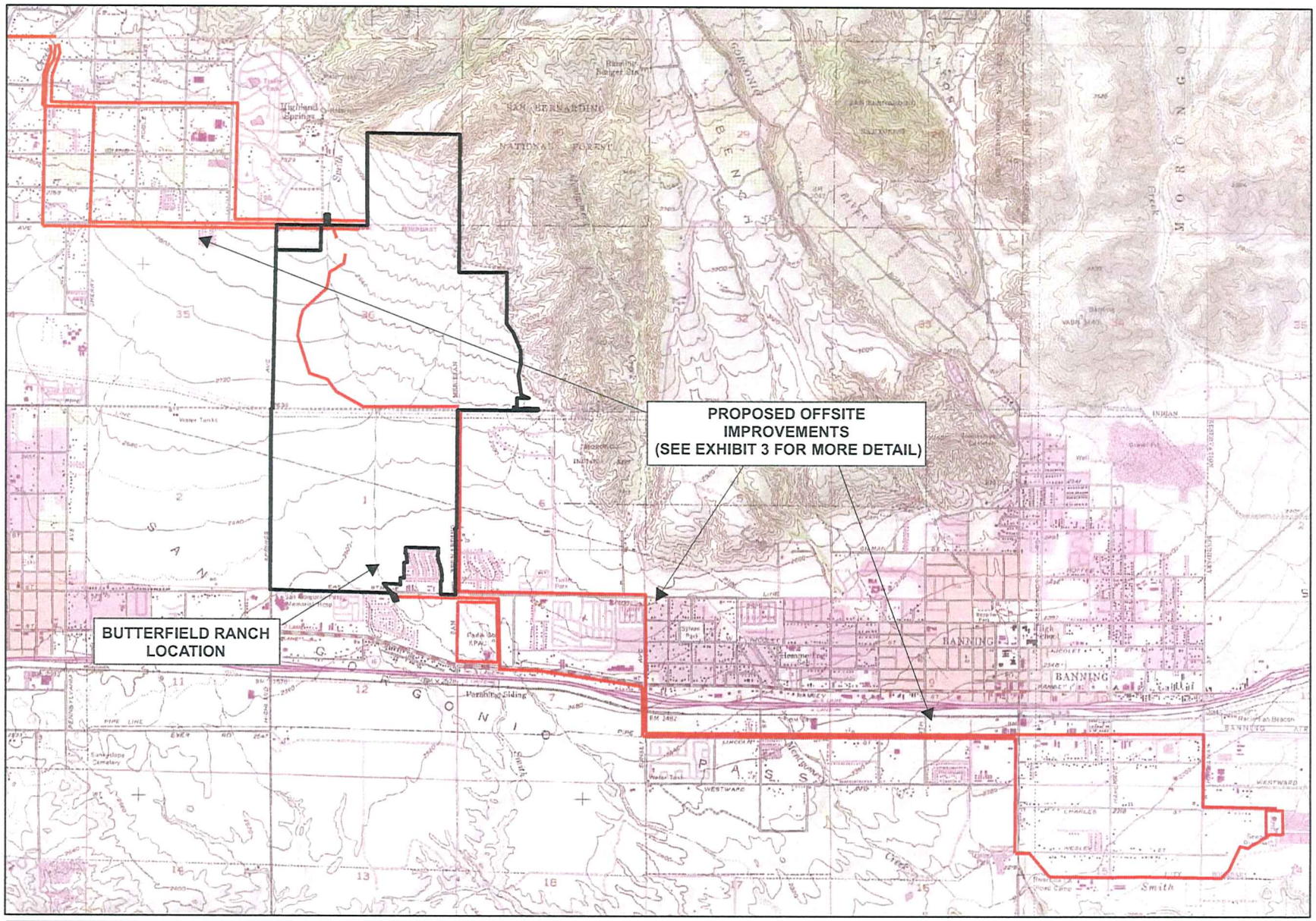
Regional Map

GLENN LUKOS ASSOCIATES

EXHIBIT 1

Exhibit 2

Vicinity Map




Adapted from USGS Beaumont quadrangle

NORTH

0 2,000 4,000

FEET

# BUTTERFIELD

Vicinity Map

GLENN LUKOS ASSOCIATES

Exhibit 2

Exhibit 3

Proposed Sewer Line and Water Line Facilities Map

PARDEE • BUTTERFIELD SPECIFIC PLAN

# Offsite Infrastructure

## LEGEND

**STATE WATER PROJECT PIPELINE EXTENSION**

- Existing Pipeline (36")
- Proposed Pipeline Alt. A (24")
- Proposed Pipeline Alt. B (24")
- Proposed Pipeline Alt. C (24")

**OFFSITE SEWER FACILITIES**

- Existing Sewer System
- Proposed Offsite Trunk Sewer
- Optional Sewer Force Main Routes to Divert Existing Sewer Flows From Proposed Lift Station at Ramsey St. and Omar St. to Proposed Butterfield Satellite Treatment Plant

**OFFSITE RECYCLED WATER FACILITIES**

- Proposed Recycled Water Backbone

**OFFSITE DRAINAGE IMPROVEMENTS**

- Potential Smith Creek Offsite Improvements (see photo insets)

ORCHARD ST
CHERRY AVE
Alt. C
HIGH ST
NOBLE ST
Alt. B
BELLFLOWER AVE
BROOKSIDE AVE
Alt. A
BROOKSIDE AVE
Storm Water / Smith Creek Detention and Prop. SWP & Recycled Water Storage Basin
PARDEE BUTTERFIELD
HIGHLAND SPRINGS AVE
HIGHLAND HOME ROAD
WILSON ST
RAMSEY ST
Alt. A
Alt. B
OMAR ST
SUNSET AVE
10
LINCOLN ST
WESTWARD AVE
BOBCAT RD
BARBOUR ST
CHARLES ST
WESLEY ST
PORTER ST
HARGRAVE AVE
HATHAWAY ST
SAN GORGONIO AVE
Wastewater Treatment Plant

EXTENSION OF BROOKSIDE AVE

Smith Creek Offsite Drainage Improvements

SMITH CREEK
WILSON ST
APEX ST

Not to Scale

8/21/07 JN 65-100290

RBF CONSULTING

# Memorandum – Jurisdictional Delineation
# Potential Impact Analysis

# MEMORANDUM

GLENN LUKOS ASSOCIATES
Regulatory Services

**PROJECT NUMBER:** 0163-0131BANN

**TO:** Mr. Hugh Hewitt
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Mike Taylor, Pardee Homes
Chip Leslie, RBF Consulting
Kevin Thomas, RBF Consulting
Dave Levine, NRC
Eric Kline, NRC
Greg Hohman

**FROM:** Martin Rasnick

**DATE:** September 9, 2010

**SUBJECT:** Butterfield Specific Plan Development Project, Located in the City of Banning and County of Riverside, California: Jurisdictional Delineation Potential Impact Analysis.

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This memorandum summarizes our preliminary findings and a potential impact analysis of U.S. Army Corps of Engineers (Corps), Colorado River Basin Regional Water Quality Control Board (Regional Board), and California Department of Fish and Game (CDFG) jurisdiction for the Butterfield Specific Plan Development Project (Project) located in the City of Banning and County of Riverside, California. An impact analysis was conducted for the Project from digital files received from both RBF Consulting for the southern half of the Project and Douglas Bender and Associates for the northern half of the Project area. This impact assessment also considers potential off site disturbance to Smith Creek both 330 linear feet north and 200 linear feet south of the Project area.

## 1. Impacts to Corps Jurisdiction

Potential Corps jurisdiction within the Project area totals 9.67 acres, of which 0.01 acre consists of jurisdictional wetlands. All potential Corps jurisdictional waters within the Project area are ephemeral. A total of 20,929 linear feet of Corps-regulated streambed is present. Potential Corps jurisdiction associated with the off site portions of Smith Creek

totals 0.15 acre, none of which consist of jurisdictional wetlands. A total of 530 linear feet of Corps-regulated streambed is present within the off site portions of Smith Creek.

Based upon the most up-to-date Project site plan, potential permanent impacts to Corps jurisdiction total 1.17 acres, of which 0.01 acre consists of jurisdictional wetlands, and potential temporary impacts total 8.65 acres, none of which consist of jurisdictional wetlands. Table 1 below outlines potential permanent impacts to Corps jurisdiction and Table 2 outlines potential temporary impacts to Corps jurisdiction.

**Table One.** Potential Permanent Impacts to Corps Jurisdictional Waters

| Drainage Features | Corps Non-Wetland Waters (Acres) | Corps Wetlands (Acres) | Total Corps Jurisdiction (Acres) | Permanent Impacts to Corps Non-Wetland Waters (Acres) | Permanent Impacts to Corps Wetlands (Acres) | Total Permanent Impacts to Corps Jurisdiction (Acres) |
|---|---|---|---|---|---|---|
| **Smith Creek On Site** | 9.25 | 0 | 9.25 | 0.60 | 0 | 0.60 |
| **Smith Creek Off Site** | 0.15 | 0 | 0.15 | 0.15 | 0 | 0.15 |
| **Drainage A** | 0.15 | 0 | 0.15 | 0.15 | 0 | 0.15 |
| **Tributary A-1** | 0.01 | 0.01 | 0.02 | 0.01 | 0.01 | 0.02 |
| **Drainage B** | 0.03 | 0 | 0.03 | 0.03 | 0 | 0.03 |
| **Drainage C** | 0.04 | 0 | 0.04 | 0.04 | 0 | 0.04 |
| **Drainage D** | 0.06 | 0 | 0.06 | 0.06 | 0 | 0.06 |
| **Tributary D-1** | 0.01 | 0 | 0.01 | 0.01 | 0 | 0.01 |
| **Drainage E** | 0.05 | 0 | 0.05 | 0.05 | 0 | 0.05 |
| **Drainage N** | 0.06 | 0 | 0.06 | 0.06 | 0 | 0.06 |
| **Total(s)** | **9.81** | **0.01** | **9.82** | **1.16** | **0.01** | **1.17** |

**Table Two.** Potential Temporary Impacts to Corps Jurisdiction

| Drainage Features | Corps Non-Wetland Waters (Acres) | Corps Wetlands (Acres) | Total Corps Jurisdiction (Acres) | Temporary Impacts to Corps Non-Wetland Waters (Acres) | Temporary Impacts to Corps Wetlands (Acres) | Total Temporary Impacts to Corps Jurisdiction (Acres) |
|---|---|---|---|---|---|---|
| **Smith Creek On Site** | 9.25 | 0 | 9.25 | 8.65 | 0 | 8.65 |
| **Total(s)** | **9.25** | **0** | **9.25** | **8.65** | **0** | **8.65** |

**2. Impacts to Isolated Waters**

Isolated waters within the Project area total 0.47 acre, none of which exhibit wetland characteristics. A total of 9,405 linear feet of isolated streambeds are present.

Based upon the most up-to-date Project site plan, potential permanent impacts to isolated waters total 0.40 acre, none of which exhibits wetland characteristics. No temporary impacts to isolated waters are anticipated. Table 3 outlines potential permanent impacts to isolated waters.

**Table Three:** Potential Permanent Impacts to Isolated Waters

| Drainage Features | Non-Wetland Isolated Waters (Acres) | Isolated Wetlands (Acres) | Total Isolated Waters (Acres) | Permanent Impacts to Non-Wetland Isolated Waters (Acres) | Permanent Impacts to Isolated Wetlands (Acres) | Total Permanent Impacts to Isolated Waters (Acres) |
|---|---|---|---|---|---|---|
| **Feature F** | 0.13 | 0 | 0.13 | 0.13 | 0 | 0.13 |
| **Feature G** | 0.06 | 0 | 0.06 | 0 | 0 | 0 |
| **Feature H** | 0.01 | 0 | 0.01 | 0.01 | 0 | 0.01 |
| **Feature I** | 0.08 | 0 | 0.08 | 0.08 | 0 | 0.08 |
| **Tributary Feature I-1** | 0.02 | 0 | 0.02 | 0.02 | 0 | 0.02 |
| **Feature J** | 0.06 | 0 | 0.06 | 0.06 | 0 | 0.06 |

| Drainage Features | Non-Wetland Isolated Waters (Acres) | Isolated Wetlands (Acres) | Total Isolated Waters (Acres) | Permanent Impacts to Non-Wetland Isolated Waters (Acres) | Permanent Impacts to Isolated Wetlands (Acres) | Total Permanent Impacts to Isolated Waters (Acres) |
|---|---|---|---|---|---|---|
| **Tributary Feature J-1** | 0.02 | 0 | 0.02 | 0.01 | 0 | 0.01 |
| **Feature K** | 0.08 | 0 | 0.08 | 0.08 | 0 | 0.08 |
| **Feature M** | 0.01 | 0 | 0.01 | 0.01 | 0 | 0.01 |
| **Total(s)** | **0.47** | **0** | **0.47** | **0.40** | **0** | **0.40** |

### 3. Impacts to Regional Board Jurisdiction

Potential Regional Board jurisdiction within the Project area totals 10.14 acres, of which less than 0.01 acre consists of jurisdictional wetlands. All potential Regional Board jurisdictional waters within the Project area are ephemeral. A total of 30,334 linear feet of Regional Board-regulated streambed is present. Potential Regional Board jurisdiction associated with the off site portions of Smith Creek totals 0.15 acre, none of which consist of jurisdictional wetlands. A total of 530 linear feet of Regional Board-regulated streambed is present within the off site portions of Smith Creek.

Based upon the most up-to-date Project site plan, potential permanent impacts to Regional Board jurisdiction total 1.57 acres, of which 0.01 acre consists of jurisdictional wetlands, and potential temporary impacts total 8.65 acres, none of which consist of jurisdictional wetlands. Table 4 outlines potential permanent impacts to Regional Board jurisdiction and Table 5 outlines potential temporary impacts to Regional Board jurisdiction.

**Table Four.** Potential Permanent Impacts to Regional Board Jurisdiction

| Drainage Features | Non-Wetland Waters (Acres) | Wetlands (Acres) | Total Regional Board Jurisdiction (Acres) | Permanent Impacts to Non-Wetland Waters (Acres) | Permanent Impacts to Wetlands (Acres) | Total Permanent Impacts to Regional Board Jurisdiction (Acres) |
|---|---|---|---|---|---|---|
| **Smith Creek On Site** | 9.25 | 0 | 9.25 | 0.60 | 0 | 0.60 |
| **Smith Creek Off Site** | 0.15 | 0 | 0.15 | 0.15 | 0 | 0.15 |
| **Drainage A** | 0.15 | 0 | 0.15 | 0.15 | 0 | 0.15 |
| **Tributary A-1** | 0.01 | 0.01 | 0.02 | 0.01 | 0.01 | 0.02 |
| **Drainage B** | 0.03 | 0 | 0.03 | 0.03 | 0 | 0.03 |
| **Drainage C** | 0.04 | 0 | 0.04 | 0.04 | 0 | 0.04 |
| **Drainage D** | 0.06 | 0 | 0.06 | 0.06 | 0 | 0.06 |
| **Tributary D-1** | 0.01 | 0 | 0.01 | 0.01 | 0 | 0.01 |
| **Drainage E** | 0.05 | 0 | 0.05 | 0.05 | 0 | 0.05 |
| **Feature F** | 0.13 | 0 | 0.13 | 0.13 | 0 | 0.13 |
| **Feature G** | 0.06 | 0 | 0.06 | 0 | 0 | 0 |
| **Feature H** | 0.01 | 0 | 0.01 | 0.01 | 0 | 0.01 |
| **Feature I** | 0.08 | 0 | 0.08 | 0.08 | 0 | 0.08 |
| **Tributary Feature I-1** | 0.02 | 0 | 0.02 | 0.02 | 0 | 0.02 |
| **Feature J** | 0.06 | 0 | 0.06 | 0.06 | 0 | 0.06 |
| **Tributary Feature J-1** | 0.02 | 0 | 0.02 | 0.01 | 0 | 0.01 |
| **Feature K** | 0.08 | 0 | 0.08 | 0.08 | 0 | 0.08 |
| **Feature M** | 0.01 | 0 | 0.01 | 0.01 | 0 | 0.01 |
| **Drainage N** | 0.06 | 0 | 0.06 | 0.06 | 0 | 0.06 |
| **Total(s)** | **10.28** | **0.01** | **10.29** | **1.56** | **0.01** | **1.57** |

**Table Five.** Potential Temporary Impacts to Regional Board Jurisdiction

| Drainage Features | Non-Wetland Waters (Acres) | Wetlands (Acres) | Total Regional Board Jurisdiction (Acres) | Temporary Impacts to Non-Wetland Waters (Acres) | Temporary Impacts to Wetlands (Acres) | Total Temporary Impacts to Regional Board Jurisdiction (Acres) |
|---|---|---|---|---|---|---|
| **Smith Creek On Site** | 9.25 | 0 | 9.25 | 8.65 | 0 | 8.65 |
| **Total(s)** | **9.25** | **0** | **9.25** | **8.65** | **0** | **8.65** |

**4. Impacts to CDFG Jurisdiction**

Potential CDFG jurisdiction within the Project area totals 11.53 acres, of which 0.35 acre consists of vegetated riparian habitat. A total of 33,890 linear feet of streambed is present. Potential CDFG jurisdiction associated with the off site portions of Smith Creek totals 0.23 acre, of which 0.08 acre consists of vegetated riparian habitat. A total of 530 linear feet of streambed is present within the off site portions of Smith Creek.

Based upon the most up-to-date Project site plan, potential permanent impacts to CDFG jurisdiction total 2.47 acres, of which 0.41 acre consists of vegetated riparian habitat, and potential temporary impacts total 9.22 acres, of which 0.02 acre consist of vegetated riparian habitat. Table 6 outlines potential permanent impacts to CDFG jurisdiction and Table 7 outlines potential temporary impacts to CDFG jurisdiction.

**Table Six.** Potential Permanent Impacts to CDFG Jurisdiction

| Drainage Features | CDFG Unvegetated Streambed (Acres) | CDFG Vegetated Riparian Habitat (Acres) | Total CDFG Jurisdiction (Acres) | Permanent Impacts to CDFG Unvegetated Streambed (Acres) | Permanent Impacts to CDFG Vegetated Riparian Habitat (Acres) | Total Permanent Impacts to CDFG Jurisdiction (Acres) |
|---|---|---|---|---|---|---|
| **Smith Creek On Site** | 10.03 | 0.02 | 10.05 | 0.84 | 0 | 0.84 |

| Drainage Features | CDFG Unvegetated Streambed (Acres) | CDFG Vegetated Riparian Habitat (Acres) | Total CDFG Jurisdiction (Acres) | Permanent Impacts to CDFG Unvegetated Streambed (Acres) | Permanent Impacts to CDFG Vegetated Riparian Habitat (Acres) | Total Permanent Impacts to CDFG Jurisdiction (Acres) |
|---|---|---|---|---|---|---|
| **Smith Creek Off Site** | 0.15 | 0.08 | 0.23 | 0.15 | 0.08 | 0.23 |
| **Drainage A** | 0.15 | 0 | 0.15 | 0.15 | 0 | 0.15 |
| **Tributary A-1** | 0.03 | 0.33 | 0.36 | 0.03 | 0.33 | 0.36 |
| **Drainage B** | 0.03 | 0 | 0.03 | 0.03 | 0 | 0.03 |
| **Drainage C** | 0.05 | 0 | 0.05 | 0.05 | 0 | 0.05 |
| **Drainage D** | 0.06 | 0 | 0.06 | 0.06 | 0 | 0.06 |
| **Tributary D-1** | 0.01 | 0 | 0.01 | 0.01 | 0 | 0.01 |
| **Drainage E** | 0.05 | 0 | 0.05 | 0.05 | 0 | 0.05 |
| **Feature F** | 0.13 | 0 | 0.13 | 0.13 | 0 | 0.13 |
| **Feature G** | 0.06 | 0 | 0.06 | 0 | 0 | 0 |
| **Feature H** | 0.01 | 0 | 0.01 | 0.01 | 0 | 0.01 |
| **Feature I** | 0.08 | 0 | 0.08 | 0.08 | 0 | 0.08 |
| **Tributary Feature I-1** | 0.02 | 0 | 0.02 | 0.02 | 0 | 0.02 |
| **Feature J** | 0.06 | 0 | 0.06 | 0.06 | 0 | 0.06 |
| **Tributary Feature J-1** | 0.02 | 0 | 0.02 | 0.01 | 0 | 0.01 |
| **Feature K** | 0.08 | 0 | 0.08 | 0.08 | 0 | 0.08 |
| **Feature L** | 0.13 | 0 | 0.13 | 0.13 | 0 | 0.13 |

| Drainage Features | CDFG Unvegetated Streambed (Acres) | CDFG Vegetated Riparian Habitat (Acres) | Total CDFG Jurisdiction (Acres) | Permanent Impacts to CDFG Unvegetated Streambed (Acres) | Permanent Impacts to CDFG Vegetated Riparian Habitat (Acres) | Total Permanent Impacts to CDFG Jurisdiction (Acres) |
|---|---|---|---|---|---|---|
| **Feature M** | 0.01 | 0 | 0.01 | 0.01 | 0 | 0.01 |
| **Drainage N** | 0.06 | 0 | 0.06 | 0.06 | 0 | 0.06 |
| **Feature O** | 0.05 | 0 | 0.05 | 0.05 | 0 | 0.05 |
| **Feature P** | 0.06 | 0 | 0.06 | 0.05 | 0 | 0.05 |
| **Total(s)** | **11.33** | **0.43** | **11.76** | **2.06** | **0.41** | **2.47** |

**Table Seven.** Potential Temporary Impacts to CDFG Jurisdiction

| Drainage Features | CDFG Unvegetated Streambed (Acres) | CDFG Vegetated Riparian Habitat (Acres) | Total CDFG Jurisdiction (Acres) | Temporary Impacts to CDFG Unvegetated Streambed (Acres) | Temporary Impacts to CDFG Vegetated Riparian Habitat (Acres) | Total Temporary Impacts to CDFG Jurisdiction (Acres) |
|---|---|---|---|---|---|---|
| **Smith Creek On Site** | 10.03 | 0.02 | 10.05 | 9.19 | 0.02 | 9.21 |
| **Tributary Feature J-1** | 0.02 | 0 | 0.02 | 0.01 | 0 | 0.01 |
| **Total(s)** | **10.05** | **0.02** | **10.07** | **9.20** | **0.02** | **9.22** |

Please call me at (949) 837-0404, Ext. 20 if you have questions regarding this memorandum.

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