

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): July 3, 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: 200800877

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: California County/parish/borough: Kern City: Caliente

Center coordinates of site (lat/long in degree decimal format):

Headwaters: Lat. 35° 18' 55.6288" Long. 118° 23' 56.4445"

Terminus: Lat. 35° 16' 20.4712" Long. 118° 51' 33.6638"

Universal Transverse Mercator:

Name of nearest waterbody: Caliente Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Kern River

Name of watershed or Hydrologic Unit Code (HUC): 18030012 (Tulare-Buena Vista Lakes)

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: July 3, 2008

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Pick List** "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 **Pick List** "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 waters² (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:

Wetlands:

c. Limits (boundaries) of jurisdiction based on: **Pick List**

Elevation of established OHWM (if known):

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:

Approximately 20 miles of Caliente Creek is considered in this form. Caliente Creek is an ephemeral stream.

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.

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: _____ .

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 waterbody⁴ 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: _____

Drainage area: _____

Average annual rainfall: _____

Average annual snowfall: _____

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 10 or more 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: _____ .

Identify flow route to TNW⁵: _____

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.

Tributary stream order, if known: .

(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: .

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

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

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (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: .

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

Riparian corridor. Characteristics (type, average width): .

⁶A 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.

⁷Ibid.

- 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: .
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: .
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: .

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-RPWs⁸ 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.

⁸See Footnote # 3.

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 jurisdictional. 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: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters:
- Other non-wetland waters:
Identify type(s) of waters: .
- Wetlands:

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.

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.

- 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:

Caliente Creek is an ephemeral stream. Caliente Creek flows into a series of ditches that run through agricultural lands at the base of the Sierra Nevada foothills in Kern County. The named Caliente Creek ends where it crosses Comanche Road. There it is intercepted and water carried along in a ditch. The ditch flows north along Malaga Road until it turns west at Mountain View Road. At Edison Drive, the ditch flows north and then west along White Wolf Road. The ditch terminates in a wetland that is adjacent the East Side Canal. The wetland is separated only by a berm from the canal. Given the sandy nature of the soil, it is highly likely that subsurface flows occur between the wetland and the East Side Canal. However, the East Side Canal terminates at Lat 35 12' 19.0972", Long 118 51' 33.5968", at Malaga Road. The East Side Canal is a diversion off of the Kern River and flows south between the 410-foot and 425-foot topographic contour line as shown on the 7.5" quad for Lamont and Weed Patch, California. May 1, 2006, color imagery from GlobeXplorer (retrieved from terrasever.com on April 14, 2008), confirms that the canal ends abruptly at Malaga Road. Per Sheridan Nicholas at the Kern Delta Water Agency, the East Side Canal ends abruptly at Malaga Road and does not flow any further. There do not appear to be any other streams or features that route the water beyond this point in the vicinity of where the canal terminates on the quad sheets or in available aerial photos.

- 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):
- Lakes/ponds:
- Other non-wetland waters: List type of aquatic resource: .
- Wetlands:

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): 20 miles of Caliente Creek
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands:

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: .
- 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 scale & quad name:

Weed Patch, California, 7.5"
 Edison, California, 7.5"
 Arvin, California, 7.5"
 Lamont, California, 7.5"
 Oil Center, California, 7.5"
 Oildale, California, 7.5"
 Bena, California, 7.5"
 Oiler Peak, California, 7.5"
 Loraine, California, 7.5"

- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): May 1, 2006 (GlobeXplorer), May 1, 2000 (GlobeXplorer)

- or Other (Name & Date): .
- 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:

Caliente Creek is an ephemeral stream. Caliente Creek flows into a series of ditches that run through agricultural lands at the base of the Sierra Nevada foothills in Kern County. The named Caliente Creek ends where it crosses Comanche Road. There it is intercepted and water carried along in a ditch. The ditch flows north along Malaga Road until it turns west at Mountain View Road. At Edison Drive, the ditch flows north and then west along White Wolf Road. The ditch terminates in a wetland that is adjacent to the East Side Canal. The wetland is separated from the canal by a berm. Given the sandy nature of the soil, it is highly likely that subsurface flows occur between the wetland and the East Side Canal. However, the East Side Canal terminates at Lat 35 12' 19.0972", Long 118 51' 33.5968", at Malaga Road. The East Side Canal is a diversion off of the Kern River and flows south between the 410-foot and 425-foot topographic contour line as shown on the 7.5" quad for Lamont and Weed Patch, California. May 1, 2006, color imagery from GlobeXplorer (retrieved from terrasever.com on April 14, 2008), confirms that the canal ends abruptly at Malaga Road. Per Sheridan Nicholas at the Kern Delta Water Agency, the East Side Canal ends abruptly at Malaga Road and does not flow any further. There do not appear to be any other streams or features that route the water beyond this point in the vicinity of where the canal terminates on the quad sheets or in available aerial photos.

INFORMATION SHEET

**DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF
NORTHERN COOK COUNTY vs. U.S. ARMY CORPS OF ENGINEERS**

DISTRICT OFFICE: U.S. Army Corps of Engineers, Sacramento District

FILE NUMBER: 200800877

REGULATORY PROJECT MANAGER: Andrea Meier

PROJECT REVIEW/DETERMINATION COMPLETED: 7/3/08 In the Office Yes No At the project site Yes No

PROJECT LOCATION INFORMATION:

State: California County: Kern

Center coordinates of site by latitude & longitude coordinates:

Headwaters: Latitude 35° 18' 55.6288" north, Longitude 118° 23' 56.4445" west

Terminus: Latitude 35° 18' 55.6288" north, Longitude 35° 16' 20.4712" west

Approximate size of site/property (including uplands & in acres): 20 linear miles

Name of waterway: Caliente Creek

Watershed: Tulare-Buena Vista Lakes (HUC 18030012)

SITE CONDITIONS									
Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream								20 miles or 105,600 feet	
Dry Wash									
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown (Use Best Professional Judgement)		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?				x	
Is or would be used as habitat by other migratory birds that cross state lines?				x	
Is or would be used as habitat for endangered species?				x	
Is used to irrigate crops sold in interstate commerce?			Water from Caliente Creek may contribute seasonally to the Kern Delta Water Agency irrigation system of canals and ditches that services the agricultural community east		

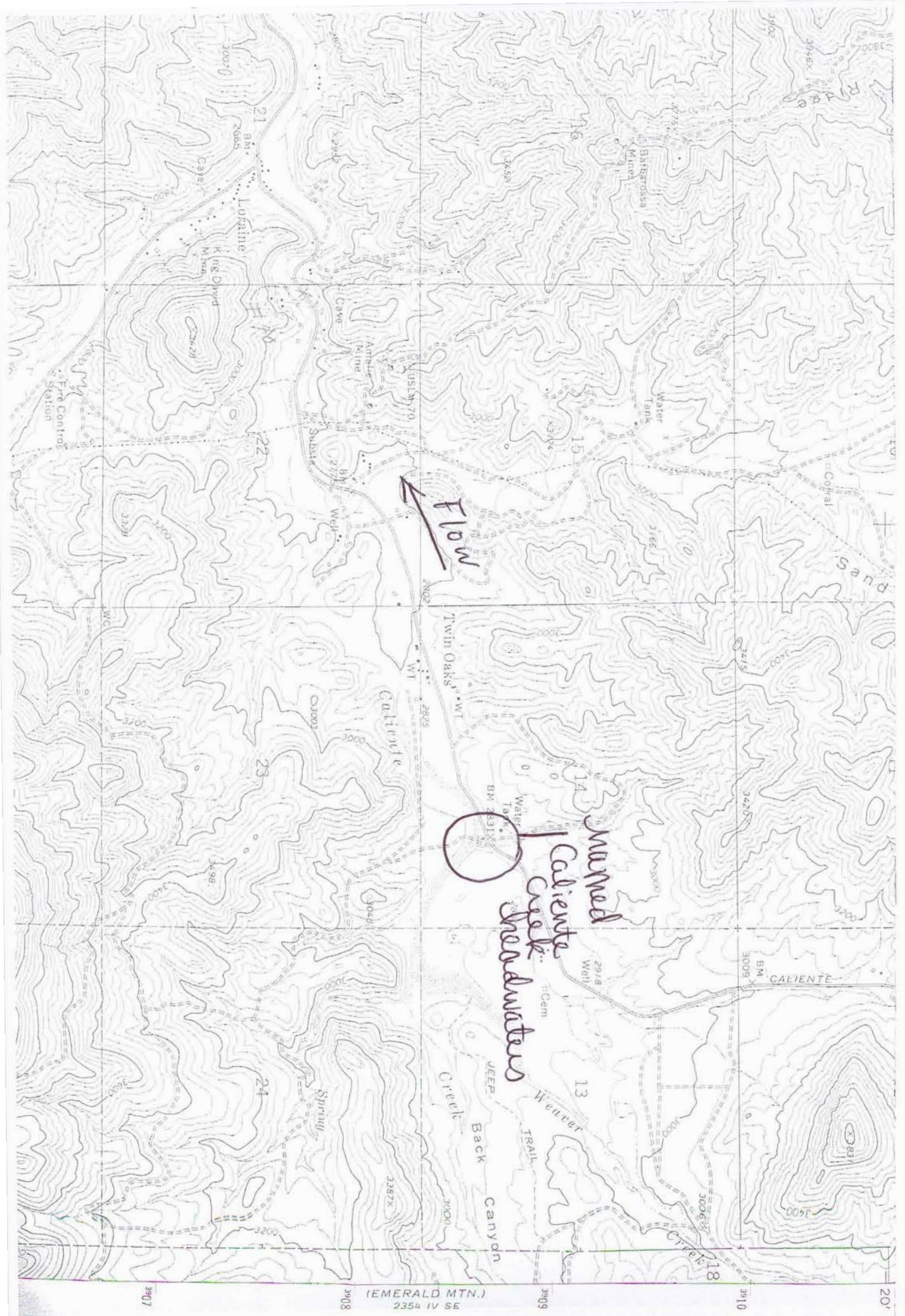
			and south of the City of Bakersfield.		
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¹Check appropriate boxes that best describes potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Approved

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 - site conditions; paragraphs 2-3 - rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 - site information on waters of the U.S. occurring onsite):

Caliente Creek is an ephemeral stream. Caliente Creek flows into a series of ditches that run through agricultural lands at the base of the Sierra Nevada foothills in Kern County. The named Caliente Creek ends where it crosses Comanche Road. There it is intercepted and water carried along in a ditch. The ditch flows north along Malaga Road until it turns west at Mountain View Road. At Edison Drive, the ditch flows north and then west along White Wolf Road. The ditch terminates in a wetland that is adjacent the East Side Canal. The wetland is separated only by a berm from the canal. Given the sandy nature of the soil, it is highly likely that subsurface flows occur between the wetland and the East Side Canal. However, the East Side Canal terminates at Lat 35 12' 19.0972", Long 118 51' 33.5968", at Malaga Road. The East Side Canal is a diversion off of the Kern River and flows south between the 410-foot and 425-foot topographic contour line as shown on the 7.5" quad for Lamont and Weed Patch, California. May 1, 2006, color imagery from GlobeXplorer (retrieved from terrasever.com on April 14, 2008), confirms that the canal ends abruptly at Malaga Road. Per Sheridan Nicholas at the Kern Delta Water Agency, the East Side Canal ends abruptly at Malaga Road and does not flow any further. There do not appear to be any other streams or features that route the water beyond this point in the vicinity of where the canal terminates on the quad sheets or in available aerial photos.



Lorraine CA
 7.5" USGS Quad

Alt View Rd

Edison CA

7.5" USGS Quad

terminus on aerial
seen from 5/1/06

ditch flow

Named Caliente Creek terminus

On quad

Comanche Road

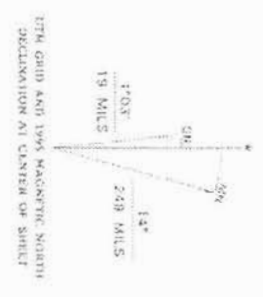
Panama Rd

Produced by the United States Geological Survey
 Control by USGS and NOS/NOAA

Compiled from imagery dated 1952. Revised from imagery dated 1992. FSSS and survey control current as of 1994. Map edited 1995. Contours and land elevations have not been revised and may conflict with other content.

North American Datum of 1927 (NAD 27). Projection and blue 1000-meter ticks: Universal Transverse Mercator, zone 11 10 000-foot ticks: California Coordinate System, zone 5

North American Datum of 1983 (NAD 83) is shown by dashed corner ticks. The values of the shift between NAD 27 and NAD 83 for 7.5-minute intersections are obtainable from National Geodetic Survey NADCON software



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A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE OR REQUEST

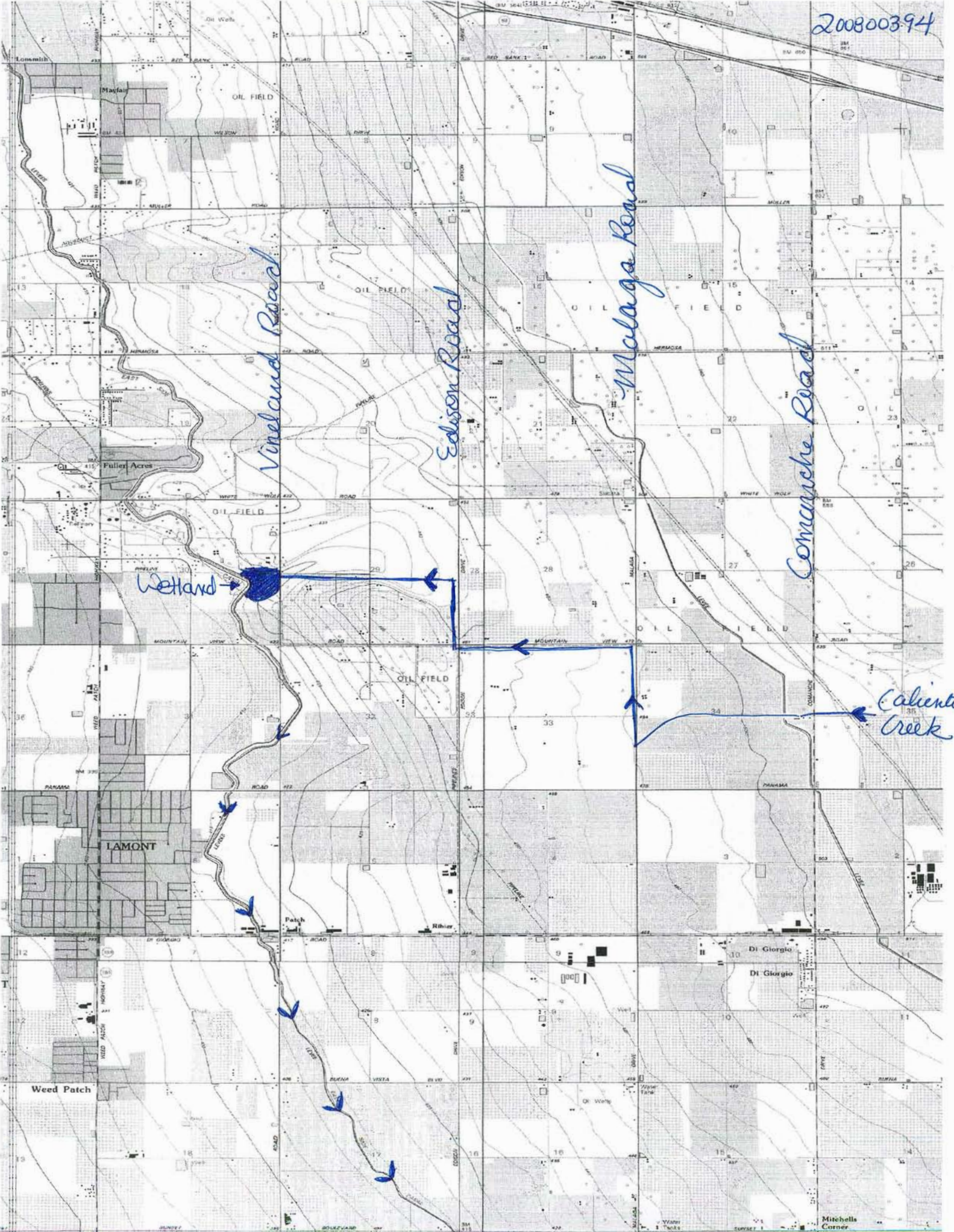


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Vineland Road

Edison Road

Malaga Road

Comanche Road

Wetland

Caliente Creek

LAMONT

Di Giorgio

Weed Patch

Mitchells Corner



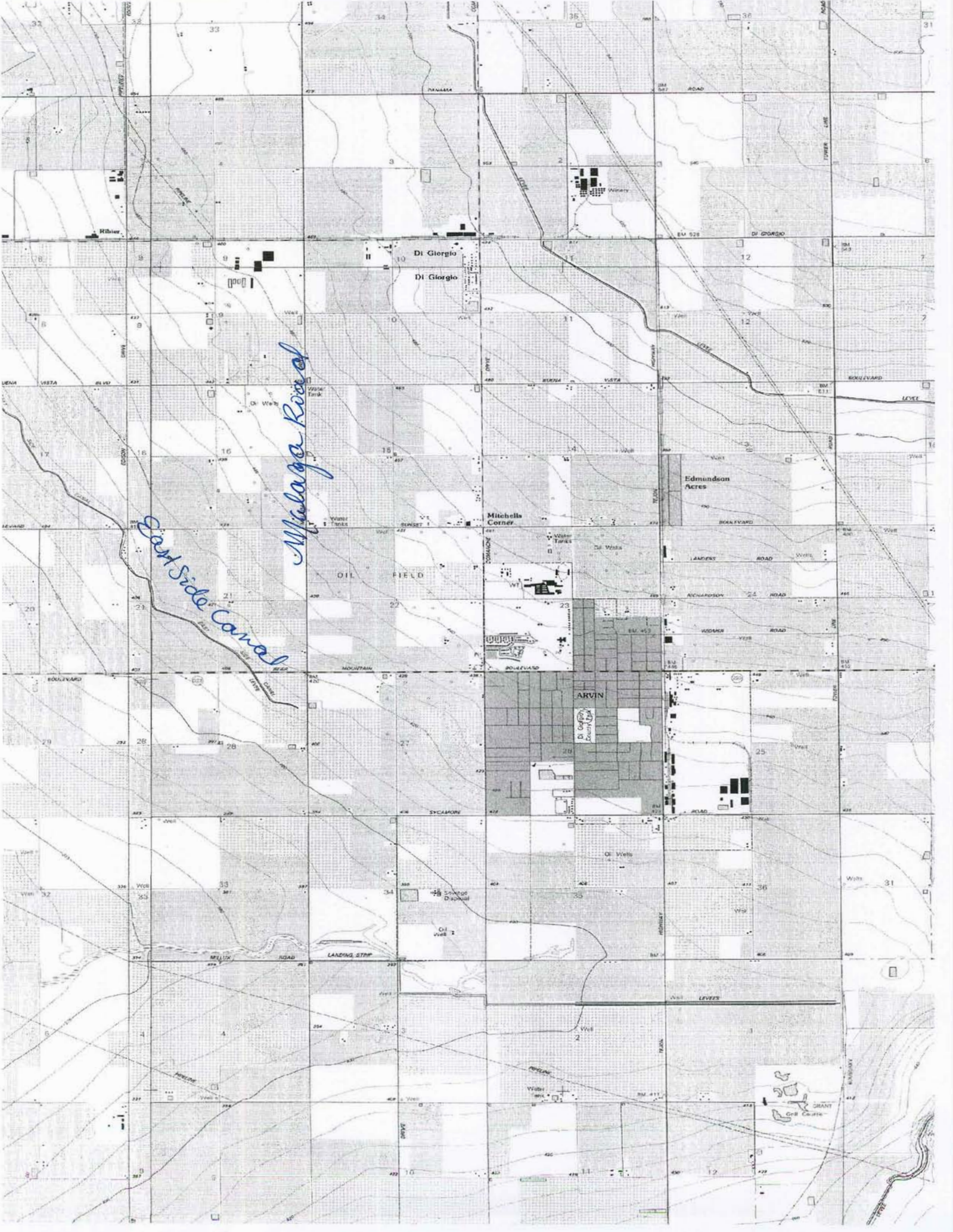
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5/1/08



East Side Canal

Milaga River

Di Giorgio

Di Giorgio

Mitchell's Corner

Edmundson Acres

ARVIN

City of Arvin

LANDING STRIP

GRANT

CR Courts



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From: KCWA Info [info@kcwa.com]
Sent: Thursday, May 01, 2008 4:29 PM
To: Jones, Andrea J SPK
Cc: mulkay@kerndelta.org; sheridan@kerndelta.org
Subject: RE: East Side Canal
Thank you for inquiry,

The East Side Canal falls under Kern Delta Water District's jurisdiction and they would be able to better answer any questions regarding the canal.

Kern Delta can be contacted at:
501 Taft Highway
Bakersfield, CA 93307
(661) 834-4656

Or by e-mailing...

Mark Mulkey, General Manger – mulkay@kerndelta.org
Sheridan Nicholas, Engineer – sheridan@kerndelta.org

Thank you,
>KCWA Info

From: Jones, Andrea J SPK [mailto:Andrea.J.Jones@usace.army.mil]
Sent: Thursday, April 17, 2008 1:40 PM
To: KCWA Info
Subject: East Side Canal

I am investigating the jurisdictional status of Caliente Creek for the Corps Regulatory program and am looking for information on water flows in the East Side Canal which may be the creek's only tie to the Kern River. Would it be possible to put me in touch with someone in your office who may be able to assist me?

The quad maps show the canal receives water by a diversion off the Kern River which tells me that flow in the canal goes north to south. The aerial photos I have looked at show the canal abruptly ending at Malaga Road. I would like to know if the canal is siphoned after that point and if so, where the canal terminates.

I wanted to also thank you for your agency's assistance in providing me information on Sandy Creek near Taft. I was able to use the information your agency provided on the

dispersion weirs on the channel to support my recommendations to the U.S. EPA.

Regards,

Andrea Jones
Senior Regulatory Project Manager
US Army Corps of Engineers
1325 J Street, Room 1480
Sacramento, California 95814
Andrea.J.Jones@usace.army.mil
P 916-557-7745
F 916-557-6877

From: Jones, Andrea J SPK
Sent: Monday, May 05, 2008 1:59 PM
To: 'Gary Medeiros'
Subject: RE: Calient Creek/East Side Canal, Kern Co.: applicability toUPRR 339.29 and Bakersfield VA Cemetery projects

Gary,

That is correct. EPA will need to review the jurisdictional determination and concur with our findings.

Andrea Jones
Senior Regulatory Project Manager
US Army Corps of Engineers
1325 J Street, Room 1480
Sacramento, California 95814
Andrea.J.Jones@usace.army.mil
P 916-557-7745
F 916-557-6877

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

From: Gary Medeiros [mailto:GMedeiros@bonterraconsulting.com]
Sent: Monday, May 05, 2008 1:57 PM
To: Jones, Andrea J SPK
Subject: Re: Calient Creek/East Side Canal, Kern Co.: applicability toUPRR 339.29 and Bakersfield VA Cemetery projects

Andrea,

Thanks for the update. I assume that following your supervisor's review and concurrence with your findings, will you also need to submit the Rapanos JD to EPA and Corps HQ for a final determination. Is that correct?

Thanks,

Gary Medeiros
Associate Principal
Regulatory Services
Bon Terra Consulting
151 Kalmus Drive
Suite E-200
Costa Mesa, California 92626
Phone: (714) 444-9199 X238
Cell: (714) 264-6858
Fax: (714) 444-9599
gmedeiros@bonterraconsulting.com

>>> "Jones, Andrea J SPK" <Andrea.J.Jones@usace.army.mil> 5/5/2008 1:39

>>> PM >>>

Dear Gary and Tim,

I received a point of contact at the end of last week from Kern County Water Agency to discuss the flows in the East Side Canal. The contact they gave me was Sheridan Nicholas from the Kern Delta Water District. I had a short conversation with Sheridan this afternoon, but he explained to me that the East Side Canal is diverted off the Kern River and the canal dead ends at Malaga Road.

I intend to have a draft Rapanos JD for Caliente Creek for my supervisor to review by the end of next week. A JD call on Caliente Creek will influence our jurisdictional determination for the waters on the UPRR 339.29 site and VA Cemetery site.

Regards,

Andrea Jones
Senior Regulatory Project Manager
US Army Corps of Engineers
1325 J Street, Room 1480
Sacramento, California 95814
Andrea.J.Jones@usace.army.mil
P 916-557-7745
F 916-557-6877

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