



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

REPLY TO
ATTENTION OF

September 21, 2010

Regulatory Division SPK-2006-00534

Mr. Matt Gause
Westervelt Ecological Services Inc
600 North Market Boulevard, Suite 3
Sacramento, California 95834

Dear Mr. Gause:

We are responding to your August 12, 2010, request for a preliminary jurisdictional determination (JD), in accordance with our Regulatory Guidance Letter (RGL) 08-02, for the Burke Ranch Conservation Bank site. The approximately 949.44-acre site is located on Barker Slough, in portions of Sections 2, 3 and 10, Township 5 North, Range 1 East, MDBM, Latitude 38.2992797387753°, Longitude -121.84808695149°, near the Jepson Prairie Preserve in Solano County, California.

Based on available information, we concur with the estimate of potential waters of the United States, as depicted on your August 10, 2010, Exhibit A, Delineation of Waters of the United States, including wetlands, of the Burke Ranch Conservation Bank drawing. The approximately 286.73 acres of wetlands, including vernal pools, and other water bodies present within the survey area may be jurisdictional waters of the United States. These waters may be regulated under Section 404 of the Clean Water Act.

A copy of our RGL 08-02 Preliminary Jurisdictional Determination Form for this site is enclosed. Please sign and return a copy of the completed form to this office. Once we receive a copy of the form with your signature we can accept and process a Pre-Construction Notification or permit application for your proposed project.

You should not start any work in potentially jurisdictional waters of the United States unless you have Department of the Army permit authorization. You may request an approved JD for this site at any time prior to starting work within waters. In certain circumstances, as described in RGL 08-02, an approved JD may later be necessary.

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

This preliminary determination has been conducted to identify the potential limits of wetlands and other water bodies which may be subject to Corps of Engineers' jurisdiction for the particular site identified in this request. A Notification of Appeal Process and Request for Appeal (RFA) form is enclosed to notify you of your options with this determination. This

determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

We appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*.

Please refer to identification number SPK-2006-00534 in any correspondence concerning this project. If you have any questions, please contact me at our Sacramento District Regulatory Division, 1325 J Street, Room 1480, Sacramento, California 95814-2922, email Michael.C.Finan@usace.army.mil, or telephone 916-557-5324. For more information regarding our program, please visit our website at www.spk.usace.army.mil/regulatory.html.

Sincerely,



Michael Finan
Wetland Specialist

Enclosures

Copy Furnished without enclosures:

Ken Sanchez, U.S. Fish and Wildlife Service, Endangered Species Division, 2800 Cottage Way, W-2605, Sacramento, California 95825

William Marshall, Central Valley Regional Water Quality Control Board, 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114

Paul Jones, U.S. Environmental Protection Agency, Region IX, Wetlands Regulatory Office (WTR-8), 75 Hawthorne Street, San Francisco, California 94105

Jennifer Navicky, California Department of Fish and Game, North Central Region
1701 Nimbus Road, Rancho Cordova, CA 95670

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Matt Gause, Westervelt Ecological Services Inc	File No.: SPK-2006-00534	Date: September 21, 2010
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input checked="" type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

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

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

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

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) engineer (address on reverse). This form must be received by the DIVISION engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) engineer (address on reverse). This form must be received by the DIVISION (not district) engineer within 60 days of the date of this notice.

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

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

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

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

Sacramento District

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

Regulatory Branch: California Delta File/ORM #: SPK-2006-00534 PJD Date: September 21, 2010

State: CA City/County: , Solano County Nearest Waterbody: Location (Lat/Long): 38.2992797387753°, -121.84808695149° Size of Review Area: 949.44 acres	Name/Address Matt Gause Of Property Westervelt Ecological Services Inc Owner/ 600 North Market SBoulevard, Suite 3 Potential Sacramento, California 95834 Applicant
--	---

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

linear feet	ft wide	acres	Stream Flow N/A
Wetlands: 286.73 acre(s) Cowardin Palustrine, emergent Class:			

Name of any Water Bodies Tidal:
on the site identifies as
Section 10 Waters: Non-Tidal:

Office (Desk) Determination
 Field Determination:
Date(s) of Site Visit(s): 4 Mar 2008

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

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

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.

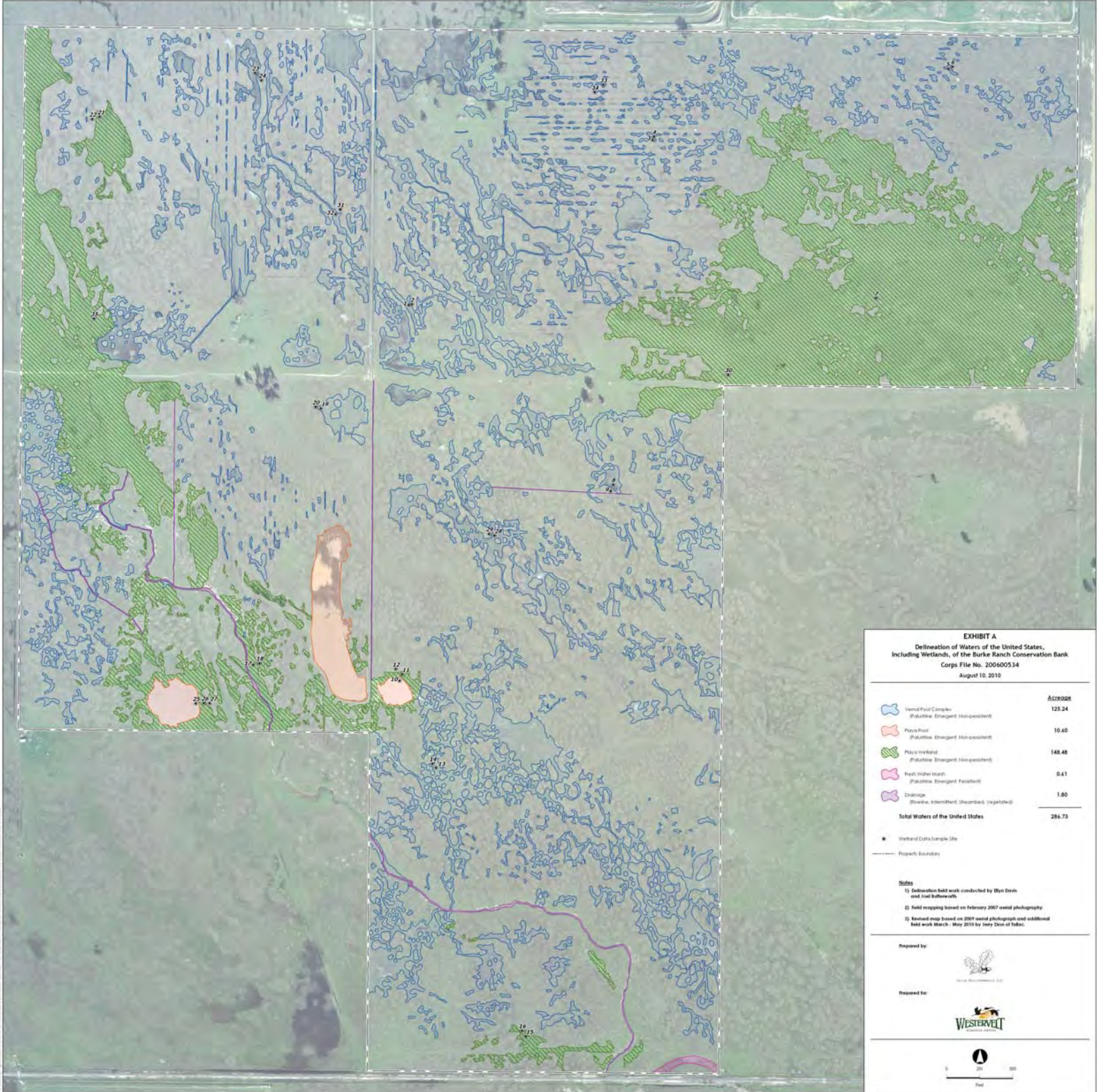


EXHIBIT A
 Delineation of Waters of the United States,
 Including Wetlands, of the Burke Ranch Conservation Bank
 Corps File No. 200600534
 August 10, 2010

	ACRES
Vernal Pool Complex (Palustrine, Emergent, Nonpersistent)	125.24
Pond (Palustrine, Emergent, Nonpersistent)	10.40
Pond Wetland (Palustrine, Emergent, Nonpersistent)	148.48
Fresh Water Marsh (Palustrine, Emergent, Persistent)	0.61
Drainage (Riverine, Intermittent, Unchanneled, Vegetated)	1.60
Total Waters of the United States	284.73

Wetland Data Sample Site
 Property Boundary

Notes

- 1) Delineation field work conducted by Bryn Davis and Joel Hoffmann.
- 2) Field mapping based on February 2007 aerial photography.
- 3) Revised map based on 2009 aerial photograph and additional field work March - May 2010 by Jerry Don of T&E.

Prepared by:
 Prepared for:

0 20 50
 Feet