AECOM

1220 Avenida Acaso
Camarillo, CA 93012

(805)388-3775 tel
(805)388-3577 fax

May 12, 2010

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-9
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Subject: Palmdale Hybrid Power Project – Docket 08-AFC-9
City of Palmdale's Supplemental Information and Comments on the Preliminary Staff Assessment for the Palmdale Hybrid Power Project

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, Sections 1209, 1209.5, and 1210, enclosed herewith for filing please find the City of Palmdale's Supplemental Information and Comments on the Preliminary Staff Assessment for the Palmdale Hybrid Power Project.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the attached proof of service list. In addition, a paper copy was sent to all parties on the attached POS list except for those where "E-mail preferred" is indicated and except for the Energy Commission Staff. Per the instructions of Ms. Felicia Miller (e-mail on May 12, 2010), the Staff Project Manager for this siting case, we are providing a paper copy to her and to Ms. DeCarlo and providing the five additional copies to dockets for filling requests for paper copies. Please let me know if additional copies are needed.

Yours sincerely,

Sara J. Head
Project Manager
Sara.Head@AECOM.com

Enclosure

cc: 08-AFC-9 Proof of Service List (w/encl., via email and U.S. Mail as indicated above)

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

City of Palmdale's	)	
Application for Certification of the	)	Docket No. 08-AFC-9
Palmdale Hybrid Power Project	)	
_____	)	

CITY OF PALMDALE'S SUPPLEMENTAL INFORMATION AND COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT FOR THE PALMDALE HYBRID POWER PROJECT

Michael J. Carroll
Marc T. Campopiano
LATHAM & WATKINS, LLP
650 Town Center Drive, Suite 2000
Costa Mesa, California 92626
(714) 540-1235

May 12, 2010

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
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In the Matter of:

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CITY OF PALMDALE'S SUPPLEMENTAL INFORMATION AND COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT FOR THE PALMDALE HYBRID POWER PROJECT

I. INTRODUCTION

Volume 1 of the Palmdale Hybrid Power Project (PHPP) Preliminary Staff Assessment (PSA) was issued on December 23, 2009 and Volume 2 was issued on February 9, 2010 by the California Energy Commission (CEC). The Applicant provided a preliminary set of comments on the Volume 1 PSA to the CEC on February 8, 2010, and on Volume 2 of the PSA on March 9, 2010. A Workshop was held to discuss the PSA (Volumes 1 and 2) on February 11, 2010 and another Workshop focusing on Biological Resources issues was held on March 16, 2010. The Applicant submitted another round of supplemental information and comments on Volumes 1 and 2 on March 20, 2010.

As a result of discussions at the Workshops and additional information becoming available, this fourth set of comments and supplemental information is provided on the PSA. This set of comments includes discussion on Air Quality, Biological Resources, Land Use, U.S. Air Force Plant 42 concerns, and Waste Management. As in our previous three PSA comment submittals (i.e., February 8, 2010, March 9, 2010, and March 20, 2010), for comments dealing with Conditions of Certification (COCs), we first provide our comment and then our proposed revisions in strikeout or underline format.

With submittal of this set of comments and supplemental information, we believe that all of the information identified as being necessary for the Final Staff Assessment has been provided.

II. COMMENTS

A. AIR QUALITY

Comments on the Air Quality Section 4.1 of the PSA were provided on March 9, 2010. Those comments focused on the Emission Reduction Credits and the preliminary COCs proposed by Staff. The following comments are related to the air quality impact assessment provided in the PSA for PHPP construction and operation.

1. Air Quality Impact Assessment

The Applicant notes the following minor typographical discrepancies in the PSA that Staff may wish to correct in the FSA for informational purposes.[1] To assist Staff, Revised Air Quality Tables 11, 12 and 15 are provided below in the PSA format with what the Applicant believes to be the corrected information. None of the minor typographical discrepancies identified here have a substantive impact on the analysis, and none of the conclusions are affected.

- Except for NO_2, the background values in Table 11 are different from the background values in Tables 12, 13, 14, and 15.
- The PSA references the Victorville site for background SO_2 levels in Table 11 but the Burbank site was indicated in Tables 12 and 15 (The AFC provided data from the Burbank site). Burbank data have been used for SO_2 in the all of the tables provided below for consistency. Both sites recorded similar maximum observations for the various averaging periods in 2005 – 2007.
- Tables 12 and 15 indicate that the PM2.5 modeled maximum concentrations are equal to PM10 values. The fugitive PM2.5 emissions are significantly less than PM10 emissions, as demonstrated in Table 5.2-27R in the Applicant's May 1, 2009 Responses to CEC Data Requests Set 2. Based on these emissions, the PM2.5 level shown in Table 12 should be 11.6 $\mu g/m^3$.
- Table 12 reported the maximum values for modeled year 2002 for CO, PM10 and SO_2, but should have reported the maximum for any of the three years (2002 – 2004) modeled.
- For Table 15, the Applicant's revised cumulative results submitted on May 1, 2009 provide slightly updated values.

[1] A revised air quality impact analysis that incorporated project changes identified in March 2009 was provided with the PHPP Responses to CEC Data Request Set 2 (91-162) submitted on May 1, 2009. PSA Air Quality Table 11 provides the construction impacts, Air Quality Table 12 provides the impacts from PHPP normal operations, and Air Quality Table 15 provides the cumulative modeling results based on that submittal.

2. New 1-hour NO_2 Standard Impact Assessment

On April 12, 2010, a new National Ambient Air Quality Standard (NAAQS) for 1-hour NO_2 impacts became effective. On March 29, 2010, the AVAQMD requested that the Applicant provide an analysis of the PHPP impacts with respect to this new NAAQS for inclusion in the Final Determination of Compliance (FDOC) for the PHPP. The Applicant provided this analysis in response to the District's request on March 29, 2010. A copy of that correspondence is provided as Attachment AQ-1.

Air Quality Table 11
Maximum Project Construction Impacts

Pollutant	Averaging Period	Concentrations (µg/m^3)					Percent of Limiting Standard
		AERMOD Result	Ambient Background[2]	Total[3]	CAAQS	NAAQS	
NO_2[1]	1-hr	296.5	---	296.5	339	---	60%
	Annual	7.9	28.2	36.1	57	100	**63%** ~~93%~~
CO	1-hr	3,349.8	**3,680** ~~4,010.0~~	**7,030** ~~7,030.0~~	23,000	40,000	**31%** ~~51%~~
	8-hr	548.4	**1,840** ~~1,859.0~~	**2,388** ~~2,388.0~~	10,000	10,000	**24%** ~~17%~~
PM_{10}[4]	24-hr	37.0	**86.0** ~~100.2~~	123.0	50	150	**246%** ~~19%~~
	Annual	3.6	**25.0** ~~26.8~~	28.6	20	---	**143%** ~~200%~~
$PM_{2.5}$[4]	24-hr	6.6	**17.0** ~~31.2~~	**23.6** ~~26.6~~	---	35	**67%** ~~134%~~
	Annual	1.0	**8.9** ~~10.7~~	9.9	12	15	**83%** ~~89%~~
SO_2	1-hr	2.5	**34.1** ~~35.6~~	36.6	665	---	**6%** ~~89%~~
	3-hr	1.0	**23.6** ~~24.9~~	24.6	---	1,300	**2%** ~~5%~~
	24-hr	0.2	**15.7** ~~16.6~~	15.9	105	365	**4%** ~~2%~~
	Annual	0.01	**5.2** ~~5.9~~	5.2	---	80	**7%** ~~16%~~

1 Modeled NO_2 concentrations as determined with the OLM.
2 From AFC Table 5.2-29; data were collected at the Lancaster Division Street monitor for all pollutants except SO_2 which was collected at the **Burbank** ~~Victorville~~ monitoring station. These values correspond to the highest monitored values from 2005 – 2007, except for $PM_{2.5}$, which is the 98th percentile value over three years.
3 Modeled concentration plus ambient background.
4 Result reflects 10-hour day from March through October and 8-hour day from November 5 through February 15. 5. Provided for reference only. Total impact includes modeled impact plus time-matched ambient background.

Source: PHPP 2009; PHPP 2010

Air Quality Table 12
Maximum Modeled Concentrations for PHPP Normal Operations

Pollutant	Averaging Period	Concentrations (µg/m^3)					Percent of Limiting Standard
		AERMOD Result	Ambient Background[2]	Total	CAAQS	NAAQS	
NO_2[1]	1-hr	203.1	---	203.1	339	---	60%
	Annual	1.0	28.2	29.2	57	100	51%
CO	1-hr	**367.0** ~~330.0~~	**3,680**~~.0~~	**4,047**~~.0~~	23,000	40,000	**18%** ~~17%~~
	8-hr	**20.4** ~~19.2~~	**1,840**~~.0~~	**1,860** ~~1,859.0~~	10,000	10,000	19%
PM_{10}	24-hr	**18.0** ~~14.2~~	86.0	**104.0** ~~100.2~~	50	150	**208%** ~~200%~~
	Annual	1.8	25.0	26.8	20	---	134%
$PM_{2.5}$	24-hr	**11.6** ~~14.2~~	17.0	**28.6** ~~31.2~~	---	35	**82%** ~~89%~~
	Annual	**1.2** ~~1.8~~	8.9	**10.1** ~~10.7~~	12	15	**84%** ~~89%~~
SO_2	1-hr	**1.6** ~~1.5~~	34.1	**35.7** ~~35.6~~	665	---	5%
	3-hr	1.3	23.6	24.9	---	1,300	2%
	24-hr	0.9	15.7	16.6	105	365	16%
	Annual	0.**0**7	5.2	**5.3** ~~5.9~~	---	80	7%

1 Modeled NO_2 concentrations as determined with the OLM. Maximum AERMOD concentration given is modeled impact plus time-matched ambient background.

2 Background data were collected at the Lancaster Division Street monitor for all pollutants except SO_2 which was collected at the Burbank monitoring station. These values correspond to the highest monitored values from 2005 – 2007, except for $PM_{2.5}$, which is the 98th percentile value over three years.

Source: PHPP 2009**; PHPP 2010**

Air Quality Table 15
NAAQS/CAAQS Cumulative Modeling Results for Project Normal Operations

Pollutant	Averaging Period	Concentrations (µg/m^3)					Percent of Limiting Standard
		AERMOD Result	Ambient Background[2]	Total[3]	CAAQS	NAAQS	
NO_2[1]	1-hr	**291.1**[5] ~~195.2~~	---	**291.1**[5] ~~334.4~~	339	---	**86%** ~~99%~~
	Annual[6]	**6.1** ~~6.6~~	28.2	**34.3** ~~34.8~~	57	100	**60%** ~~61%~~
CO	1-hr	**367.0** ~~251.8~~	3,680	**4,047** ~~3,932~~	23,000	40,000	**18%** ~~17%~~
	8-hr	**20.4** ~~40.6~~	1,840	**1,860** ~~1,881~~	10,000	10,000	19%
PM_{10}	24-hr[6]	**18.5** ~~13.3~~	86.0	**104.5** ~~99.3~~	50	150	**209%** ~~199%~~
	Annual[6]	**1.8** ~~1.5~~	25.0	**26.8** ~~26.6~~	20	---[4]	**134%** ~~133%~~
$PM_{2.5}$	24-hr	**11.6** ~~13.35~~	17.0	**28.6** ~~30.3~~	---	35	**82%** ~~87%~~
	Annual[6]	**1.3** ~~1.55~~	8.9	**10.2** ~~10.4~~	12	15	**85%** ~~87%~~
SO_2	1-hr	**1.7** ~~1.6~~	34.1	**35.8** ~~35.7~~	665	---	**6%** ~~5%~~
	3-hr	1.3	23.6	24.9	---	1,300	2%
	24-hr	0.9	15.7	16.6	105	365	16%
	Annual	0.2	5.2	5.4	---	80	7%

1 Modeled NO_2 concentrations as determined with the OLM. Maximum AERMOD concentration given is modeled impact plus time-matched ambient background.

2 Background data were collected at the Lancaster Division Street monitor for all pollutants except SO_2 which was collected at the Burbank monitoring station. These values correspond to the highest monitored values from 2005 – 2007, except for $PM_{2.5}$, which is the 98th percentile value over three years.

Source: PHPP 2009**; PHPP 2010**

Add the following to the reference section:

PHPP 2010. City of Palmdale's Supplemental Information and Comments on the Preliminary Staff Assessment for the Palmdale Hybrid Power Project. Submitted May 12, 2010.

B. BIOLOGICAL RESOURCES

As noted in the Introduction to these comments, comments on the Biological Resources Section 4.2 of the PSA were submitted on March 9, 2010 and then a Workshop focused on Biological Resources was held on March 16, 2010. The supplemental information and comments provided below are a result of the discussions at the Workshop that lead to revision in the Applicant's comments. A full set of the BIO Conditions of Certification on which we are requesting changes is provided in Attachment BR-1. The COCs where the requests are different from the previous submittal are summarized below and the rationales for the changes are provided as well in Attachment BR-1.

1. Confirmation of No Impacts to Waters of the U.S.

In addition to the supplemental information and comments provided below, a letter confirming the Applicant's determination that the PHPP would not impact jurisdictional Waters of the U.S. was provided by the U.S. Army Corps of Engineers (USACE) on April 5, 2010. A copy of that correspondence is included as Attachment BR-2.

2. Revised Vegetation Mapping

The CEC Staff consultant who prepared the Biological Resources section of the PSA indicated that additional refinement of the vegetation mapping provided in the AFC was needed and he raised concerns related to the prior floristic surveys that have been conducted in 2006 and 2008 for the AFC.

One of the Applicant's consultants (AMEC Earth and Environmental) reviewed the vegetation mapping that had been provided in the AFC (Appendix H, Figure 6). Based on this review, it was concluded that no changes were needed to the vegetation mapping of the power plant site, reclaimed water pipeline or Segment 1 of the transmission line. However, some refinement of the mapping along Segment 2 of the transmission line was needed. The revised vegetation maps along this portion of the Project are provided in Attachment BR-3. The revisions to the mapping result in changes to the number of acres of the vegetative communities by the PHPP as shown in the Revised AFC Table 5.3-6R below. The changes are a combination of the new vegetation mapping as well as further refinements in project design.

As noted above, concerns regarding the prior (2008) floristic surveys were raised in the PSA, addressed in the Applicant's March 9, 2010 submittal, and discussed in the March 16, 2010 PSA Workshop. Proposed COC BIO-11 requires that pre-construction surveys be conducted in Spring 2010 for special-status plant species. Although the PHPP is not yet approved and this COC is still preliminary, the Applicant's consultants (AECOM, AMEC, and UCR) are performing pre-construction floristic surveys of the power plant site and reclaimed water pipeline in anticipated compliance of this condition. The floristic survey should be conducted during two

periods to detect special-status plants during their specific blooming periods. The initial survey was conducted during the fourth week (22^{nd} – 26^{th}) of March 2010 and the second survey period is planned for the fourth week (24^{th} – 28^{th}) of May 2010. These surveys were/will be conducted in accordance with CDFG (2009) and CNPS (2001) protocols. Reference site visits were/will be conducted, and local experts were/will be consulted to offer their guidance and knowledge on rare plant populations in the area. CNDDB, CNPS, and California Herbarium databases were queried. No new rare plants were observed in March 2010 compared with the 2008 surveys. The crowned muilla (CNPS List 4) was noted and mapped in the same location (power plant site) as it was in 2008.

Table 5.3-6R. Direct permanent surface disturbance (in acres) per affected vegetation community

	Transmission Line Segment 2			Total Project		
	Previous (AFC)[1]	Revised	Difference	Previous (AFC)[1]	Revised	Difference
Mojave Creosote Bush Scrub	0.23	7.66	7.43	97.47	147.39	49.92
Joshua Tree Woodland	0.03	3.14	3.11	189.28	189.31	0.03
Desert Scrub (Buckwheat, Saltbush, Brittlebrush)	0.00	5.11	5.11	2.55	16.89	14.34
Rabbitbrush Scrub	0.00	0.00	0.00	144.16	84.28	-59.88
Mojavean Juniper Scrub	0.51	6.71	6.20	0.51	6.71	6.20
Mojave Riparian Forest	0.00	0.00	0.00	0.00	0.00	0.00
Big Basin Scrub	0.00	0.20	0.20	0.00	0.20	0.20
California Annual Grassland	0.00	5.11	5.11	0.00	5.11	5.11
Mojave Desert Wash Scrub	0.01	0.00	-0.01	0.04	0.39	0.35
Agricultural Land	0.00	0.00	0.00	1.32	10.22	8.90
Urban & Disturbed Desert Land	0.00	0.00	0.00	0.25	2.82	2.57
Total	**0.78**	**27.93**	**27.15**	**435.58**	**463.32**	**27.74**

1. Values reflect the AFC and not the revised values provided in Table 1 of the Applicant's Section 2081 Incidental Take Permit Application submitted in April 2009.

3. Comments on Proposed Conditions of Certification

As mentioned above, a complete set of the Applicant's comments on the BIO COCs are provided in Attachment BR-1, including the changes requested on March 9, 2010. The summary below provides a synopsis of what has changed from the prior comments.

a. Comments on BIO-8 and BIO-10 (Topsoil Storage)

In its comments submitted on March 9, 2010, the Applicant had requested certain changes to the requirements in BIO-8 and BIO-10 related to topsoil salvage and storage. Both of these COCs refer to a publication *Rehabilitation of Disturbed Lands in California* (Newton and Claassen 2003, pp. 39-40). Subsequent to March 9, 2010, the Applicant has obtained a copy of this document and requests additional changes to these COCs to clarify that it is only the aspects of this publication that deal with the collection and stockpiling of topsoil that are applicable. Furthermore, since these guidelines restrict the stockpiles for topsoil to be one meter or less, we request that only the top two to three inches of topsoil be stored due to space limitations on the site. This amount of topsoil is consistent with other siting cases.

b. Comments on BIO-11 (Mitigation for CNPS List 3 and 4 Plants)

In addition to the comments previously submitted, the Applicant requests changes to the mitigation required in BIO-11 for CNPS List 3 and 4 plants. These plants are not considered rare under CEQA, nor are they listed as threatened or endangered and hence not required to be protected or mitigated. To date, the only CNPS List 1, 2, 3 or 4 listed species found on the PHPP site and linear routes is the crown muilla, a CNPS List 4 plant.

c. Comments on BIO-2, 3, 7, 8, 13, and 14 (Desert Tortoise Handling)

In its comments submitted on March 9, 2010, the Applicant had requested that all requirements related to desert tortoise handling be deleted since no take authorization is being sought for the Project. The CEC and CDFG indicated that if the provisions were left in, that the CEC Decision would serve as the PHPP's Section 2081 Incidental Take Permit. The Applicant has considered this offer, and continues to believe that no desert tortoise will be found on the power plant site or pipeline routes, and that any desert tortoise that may be found along the transmission line Segment 1 can be avoided or construction postponed until the tortoise moves of its own accord. Therefore, we request that the reference to desert tortoise handling be stricken and other changes made as requested previously in BIO-2, BIO-3, BIO-7, BIO-8 and BIO-13.

In addition to our prior comments, we also request that the requirements related to payment of fees for a regional raven monitoring and management plan in BIO-14 be deleted. This plan is not applicable because no desert tortoises were found on the PHPP site and the Applicant is not

getting an Incidental Take Permit from the USFWS or the CDFG. Therefore, the in lieu fee program does not apply.

d. Comments on BIO-16 and BIO-17

The Applicant requests that the requirements to perform 10-mile surveys for nesting Swainson's hawk be removed. Instead, the Applicant agrees to provide mitigation for Swainson's hawk foraging habitat as follows: 2:1 ratio for alfalfa/agricultural field impacts (10.22 acres) and 1:1 ratio for impacts to Joshua tree woodlands (approximately 190 acres of impact), provided this acreage is also suitable to satisfy Mohave ground squirrel (MGS) compensation requirements. Further surveys (i.e., beyond pre-construction surveys to within a half mile of the Project site) should not be required if the Applicant assumes presence and agrees to mitigation.

In addition, the Applicant believes that there is relatively few Swainson's Hawk nesting in the Antelope Valley, and hence the requirement for mitigation lands to be "near" lands currently occupied or used needs to reflect a reasonable distance. We suggest that lands within 15 miles of CNDDB records would fit this criteria.

e. Comments on BIO-20 (Mohave Ground Squirrel Mitigation)

In its comments submitted on March 9, 2010, the Applicant had requested that mitigation ratio and number of acres for MGS mitigation required in BIO-20 for the PHPP plant site be revised from 2:1 to 1:1, or 366 acres rather than 693 acres. However, as discussed at the March 16 PSA Workshop, the Applicant is willing to accept the higher ratio with the understanding that mitigation lands can be found that are suitable to meet all mitigation requirements, i.e., for MGS, Swainson's hawk foraging habitat, and rare plant species.

In its comments submitted on March 20, 2010, the Applicant indicated that a map showing *additional* potential areas for mitigation lands would be provided. However, upon further review, the Applicant has concluded that area in and around the parcels previously provided under confidential cover have the highest potential to meet the requirements for mitigation of this project. Therefore, no additional properties are being proposed at this time.

Based on this understanding, we agree with BIO-20 as proposed in the PSA related to the ratio and acreage, but we still request the removal of the requirement that compensation lands be "adjacent to" protected lands, and suggests changing the language to "adjacent to, or in the vicinity of" protected lands, to allow flexibility and agency discretion. This comment applies to BIO-20, item (1)(d), and it is Applicant's understanding that CEC and CDFG agree to this proposed change in wording. We also request that the presumed cost of land be reduced from $4,000 to $2,000 an acre, which is consistent with several recent siting cases, for the PAR-like calculation in BIO-20, item (3)(a).

f. Comments on BIO-21 (Desert Kit Fox)

In its comments submitted on March 9, 2010, the Applicant requested that desert kit fox be removed from BIO-21. The CEC Staff consultant recommended that kit fox be left in the COC since the pre-construction survey activities for badgers would be essentially the same for kit fox. The Applicant accepts the condition as proposed in the PSA.

g. Comments on BIO-22 (Bats)

In its comments submitted on March 9, 2010, the Applicant had requested that BIO-22 be deleted in its entirety. However, based on the discussion at the March 16 PSA Workshop, the Applicant agrees to accept this requirement, but requests that an addition be made to the condition in order to clarify the extent of the pre-construction surveys needed (see Attachment BR-1).

C. LAND USE

Consistency Determinations for Transmission Line

In its comments submitted on March 20, 2010, the Applicant provided a letter dated March 2, 2010 (Attachment LU-1) regarding the City's consistency determination for the transmission line route. Addition information on this topic is provided below.

The LAND USE Table 2 in the PSA identifies that Staff cannot determine consistency for the transmission line in the M-1, M-2, and M-4 zone districts, as well as indicates uncertainties regarding the general process for Site Plan Review approval within these zones.

Within the M-1 and M-2 zone designations, utility facilities, including transmission lines, are permitted subject to Site Plan Review approval. Projects that require a Site Plan Review approval are permitted by right within the underlying zone district subject to an administrative hearing approval by the Hearing Officer who approves the Site Plan Review application based upon the required findings within the Zoning Ordinance. The Site Plan Review hearing is a public hearing that is noticed in compliance with the provisions of the Government Code and Public Resources Code. Conditions of Approval would be applied to the project in order to ensure compliance with City codes and standards for the use approved. Since the proposed transmission lines are unmanned facilities, minimal Conditions of Approval would likely be placed on the project to ensure compliance with development standards and construction related requirements.

With regards to the M-4 zone district, utility facilities, including transmission lines, are permitted within the zone subject to Site Plan Review approval when developed in conjunction with an approved Master Plan as identified in Zoning Ordinance Section 64.03. However, as noted in Section 64.03, the special development standards in the M-4 zone are required in order to meet the intent and purpose of the M-4 zone as specified in Section 64.01. The intent of the M-4 zone is to promote larger scale uses and prohibit piece-meal development of properties or land subdivisions that could preclude attraction of major uses.

The installation of transmission lines in conjunction with the PHPP would not require master plan level design review nor would the transmission lines generate the types of land use impacts that require master planning or that would limit the ability of larger industrial parks or manufacturing areas to develop within the M-4 zone subject to a comprehensive plan. The PHPP transmission lines would generally follow existing right-of-way lines or be located in easement areas that would not prohibit comprehensive development consistent with the intent of the M-4 zone, although no such development is being proposed or considered at this time in conjunction with the PHPP. As a result, City staff would likely process the transmission lines as a standard Site Plan Review application because a comprehensive land use plan is not applicable to this type of use.

D. U.S. AIR FORCE PLANT 42 – HAZARDOUS MATERIALS, TRAFFIC AND TRANSPORTATION, AND VISUAL RESOURCES

Several impacts were identified as potential concerns for the U.S. Air Force (USAF) Plant 42 facility. These included 1) the requirement for closed circuit TV (CCTV) cameras along the PHPP facility fenceline, 2) the berm proposed to wrap around the corner of E Avenue M and Site 1 Road/15th Street E to screen the solar array from drivers approaching PHPP from the east along E Avenue M, and 3) the impact of visible and thermal plumes from the PHPP cooling tower on airfield operations. The Applicant has had several discussions with USAF personnel (including personnel at Edwards and Wright Patterson Air Force Bases as well as Plant 42), and has obtained the following input on these issues.

1. Plant Site Security Requirements

As noted in previous comments, Security cameras are a concern to Plant 42. Plant 42 believes that its borders (which are also the east and south borders of PHPP) are already quite secure and prefers that use of CCTV around the PHPP is very limited. The USAF will address this issue further in a forthcoming letter to the CEC.

2. Acceptability of a berm along 15th Street E for visual screening

The proposed berm is not an issue for Plant 42. The requested feedback will be addressed in the forthcoming letter to the CEC.

3. Potential impacts to Plant 42 from cooling tower plumes

Visible and thermal plumes are no longer a concern for Plant 42. The requested feedback will be addressed in the forthcoming letter to the CEC.

E. SOIL AND WATER RESOURCES

Comments were provided on the PSA by the Antelope Valley Groundwater Agreement Association2 (AVGAA) and the Antelope Valley United Mutual Group3 (AVUMG), regarding the use of recycled water for the PHPP water supply. The comments question whether the draft PSA's conclusion that the use of recycled water is appropriate for the PHPP because it would benefit the Antelope Valley Groundwater Basin's (Basin) water quality, and whether rerouting the recycled water from its current discharge to agricultural lands would remove it from potential Basin recharge. The AVGAA and AVUMG comments do not undermine the PSA's conclusions on this issue for the following reasons:

- **Basin Recharge Will Not Be Significantly Reduced by PHPP's Use of Recycled Water –** Recycled water used at PHPP will not result in a significant decrease of Basin recharge. The treatment system to produce tertiary-treated water at the Palmdale Water Reclamation Plant (PWRP) will be operational in 2011. At that point, recycled water will only be discharged for agricultural use on land leased from the Los Angeles World Airports (LAWA) at agronomic rates in order to protect groundwater[4]. Application at agronomic rate means that water is discharged at a rate equal to the overlying evapo-transpiration rate based on

[2] Gresham/Savage, March 8, 2010, Proposed Palmdale Hybrid Power Project (08-AFC-9): comments of the Antelope Valley United Mutual Group on the Preliminary Staff Assessment.

[3] Brownstein/Hyatt/Farber/Schreck, March 8, 2010, Proposed Palmdale Hybrid Power Project (08-AFC-9): comments of the Antelope Valley Groundwater Agreement Association on the Preliminary Staff Assessment.

[4] North Los Angeles/Kern County Regional Recycled Water Project - Final Program Environmental Impact Report EIR (SCH No. 2007101125): Prepared for the Los Angeles County Waterworks District 40, Antelope Valley, November 2008, pp. 1-13.

vegetation type, minimizing or eliminating any percolation into the underlying groundwater basin. Thus, the recharge rate of recycled water at agronomic rates (after 2011) will be reduced to at or near zero when the PHPP is expected to become operational. This is consistent with the goal required by the Clean-up and Abatement Order (CAO) from the Regional Water Quality Control Board (RWQCB) to improve the quality of groundwater in the Basin and eliminate impacts to underlying groundwater quality. To manage the increased effluent volume, water will be stored in lined reservoirs and considered for other emerging recycled water end uses[3], such as industrial operations similar to the PHPP. As such, at the time the PHPP begins operation tertiary-treated water from the PWRP would not be available for recharge to the Basin.

- **Use of Recycled Water by PHPP Would Improve Basin Water Quality –** The PSA's conclusion that removal of the recycled water from its current discharge would benefit the Basin groundwater is correct. If recycled water is applied to land (as it is currently treated), it causes a continuous adverse loading of nitrate, dissolved solids, and salt loading to the Basin due to the relatively poor quality of recycled water currently being discharged to land. Removal of this adverse loading source would benefit the water quality of the Basin. The State of California Water Resources Control Board (SWRCB) recently has mandated that salt/nutrient management plans be prepared for all groundwater basins by 2014 (Recycled Water Policy 6B). Central to these plans is the management of the discharge of recycled water as a source of water quality impacts to the groundwater basins. The removal of a portion of the recycled water discharge to the Basin in the supply of water to the PHPP directly benefits the water quality of the Basin and is consistent with the SWRCB policy.

  Use of recycled water by the PHPP is consistent with and advances other State water policies.[5] Article 10, section 2 of the California Constitution requires that all water in the State be put to beneficial use. The use of reclaimed water by the PHPP as an alternative to percolating that water or evaporating to no beneficial use is consistent with the California Constitution. Several sections of the California Water Code (*e.g.* sections 13510 through 13512, 13550(a) and 13551) require that reclaimed water supplant potable water to support beneficial uses to the maximum extent possible. PHPP use of recycled water is consistent with these provisions of the California Water Code. In addition, a letter from the Los Angeles County Sanitation District (please see the attached LACSD letter dated March 12, 2010), which is in support of the PHPP project, comments that since the District is under a Clean-up and Abatement Order (CAO) from the Regional Water Quality Control Board (RWQCB) to

[5] For additional discussion on the PHPP's consistency with applicable policies, see City of Palmdale Letter, "Proposed Palmdale Hybrid Power Project (08-AFC-9) and, Particularly, Comments by AGWA and AV United on the Application of Reclaimed Water to the Project", included in Attachment S&W-1.

improve the quality of groundwater in the Basin, the beneficial use of recycled water for projects like the PHPP is an appropriate use.

Lastly, the amount of recycled water being diverted to the PHPP is small and the water is of much lower quality relative to other proposed Basin recharge projects. There are several recharge projects being planned that will provide much higher quality water to the Basin in lieu of the recharge of recycled water (see attached "Summary of Recycled Water Projects"). The recharge capacity of these projects, in general, provides higher water quality and the proposed amounts are far greater than the amount of recycled water that would be diverted to the PHPP and lost to recharge. For example, the Semi-Tropic Rosamond Water Bank Authority, in conjunction with the Rosamond Community Services District, plans to recharge up to 30,000 acre-feet (af). Los Angeles County Waterworks District 40 plans to inject up to 12,000 af. The Antelope Valley East Kern Water Agency (AVEK) plans to recharge 25,000 acre-feet per year (afy) and the City of Lancaster proposes 625 afy. These water reinjection projects would provide higher quality water to the Basin than what is being proposed for industrial reuse by PHPP.

G. WASTE MANAGEMENT

Comments on WASTE-5:

The Applicant previously submitted comments on the PSA COC WASTE-5 in our Volume 1 PSA Comments submitted to the CEC on February 8, 2010. As written, this COC appears to suggest that all contamination assessment and/or remediation must be performed under a consent agreement with DTSC oversight. The Applicant believes that the intent of WASTE-5 is to require DTSC coordination only for material or significant contamination responses (i.e., the contamination exceeds a minimum threshold level). Otherwise, DTSC regulatory oversight of minor contaminant levels could result, which would be an inefficient use of limited agency resources and would add substantial costs and delays to the Project.

Staff agreed to our proposed revisions in concept at the March 9, 2010 PSA Workshop, but suggested that the trigger for DTSC involvement be put in regulatory terms. We agreed to rework our comments accordingly, and have included a regulatory trigger that involves the adoption of EPA Reportable Quantity threshold limits established under the *Emergency Planning and Community Right to Know Act [EPCRA]*. Accordingly, the Applicant requests that WASTE-5 be revised as follows:

WASTE-5 In the event that contamination is identified during assessment of the project site, during any phase of PHPP construction, **and if the Project Engineer (PE), Professional Geologist (PG), or CPM reasonably determines that sampling is needed to confirm the nature and extent of contamination, then the Project PE and/or PG shall file a written report to the CPM stating a recommended course of action. If significant contamination (i.e., contamination levels which exceed the EPA Reportable Quantity [RQ] thresholds as listed under the Emergency Planning and Community Right to Know Act [EPCRA]) is identified which the PG, PE, or CPM reasonably determines may pose a significant risk to workers or the public, then the DTSC will be consulted regarding the proposed course of action.** ~~any additional work to assess and/or remediate any contamination shall be conducted under the oversight of DTSC, with CPM review and approval.~~

Verification: The project owner shall consult with DTSC, and enter into a**n** ~~consent~~ agreement ~~as necessary~~ **at DTSC's request**, to ensure oversight of any additional site assessment and remediation work needed to reevaluate the site or address contamination **levels above Reportable Quantities, that have been determined to pose a significant risk to workers or the public** found during any phase of PHPP site construction. The project owner shall ensure that the CPM is involved and appraised of all discussions with DTSC, and CPM concurrence shall be required for project decisions addressing site remediation.

Air Quality

Attachment AQ-1

AVAQMD-AECOM Emails Related to the New 1-hour NO2 NAAQS

From: Chris Anderson [mailto:canderson@avaqmd.ca.gov]
Sent: Mon 3/29/2010 9:26 AM
To: Head, Sara
Cc: Alan De Salvio
Subject: New Federal NO2 Standard

Hi Sara,

Please evaluate PHPP emissions as they relate to the new National 1 hour NO_2 standard (100 ppb). We need to have the evaluation added to the Final DOC.

Thanks,

Chris

From: Head, Sara [mailto:Sara.Head@aecom.com]
Sent: Monday, March 29, 2010 10:47 AM
To: Chris Anderson
Cc: Alan De Salvio
Subject: RE: New Federal NO2 Standard

Chris -

Because we had anticipated that an analysis would be required related to the new 1-hour NO_2 NAAQS, AECOM has already performed a modeling assessment to determine PHPP compliance with the new standard. Because the current EPA regulatory air dispersion model, AERMOD, does not output results in a format that can be directly compared to the form of the new standard, AECOM has created a post-processor that takes the raw output from AERMOD and performs the necessary computations to create results that can be compared to the standard. The form of the new standard was determined from the following announcement:

> "On January 22, 2010, EPA announced a new hourly NO_2 standard of 100 ppb based on the 3-year average of the 98th-percentile of the annual distribution of daily maximum 1-hour concentrations. The final rule for the new hourly NAAQS was published in the Federal Register on February 9, 2010, and will be effective on April 12, 2010". (http://www.epa.gov/air/nitrogenoxides/actions.html#jan10)"

The analysis was completed by using AECOM's "POST-1hr" post-processor with AERMOD binary post-files generated by re-running the original AERMOD runs used for the AFC submittal as input. The post-processor takes those impacts then adds hourly matched background values to the impacts from every receptor for every hour, determines the 98^{th} percentile of the daily highs for each receptor for each year, and finally takes the 3 year average of those values. The highest 3-year average is then reported, along with the contribution of project sources to that impact. For PHPP, the highest 3-year average of the 98^{th} percentile of the daily maximum impacts was found to be 93.2 ppb (175.3 $\mu g/m^3$) against the new 1-hour NO_2 NAAQS of 100 ppb (188.1 $\mu g/m^3$). The contribution of PHPP project sources was 56.8 ppb (106.9 $\mu g/m^3$) out of the total. Thus, compliance with the new standard is demonstrated. We can provide the modeling files upon request.

On 2/25/10, the EPA posted a notice on the SCRAM bulletin site (www.epa.gov/scram001) with instructions for how the new standard should be modeled. The procedure described in the notice was compared to the handling of the standard in the post-processor and it was found that the AECOM POST-1hr post-processor fully meets the process described in the notice.

Please let me know what else you need related to this request.

Sara

Biological Resources

Attachment BR-1

Proposed Revisions to Preliminary Conditions of Certification

The Applicant has proposed changes to the following Biological Resources Conditions of Certification. Many of the changes were submitted on March 9, 2010. However, a PSA Workshop was held on March 16, 2010, and most of these proposed changes were discussed. In a few cases, additional changes are now proposed. Changes are shown in **underline** for inserted text and in ~~strikeout~~ for deleted text. Rationales for the changes are also provided.

Rationale for proposed changes to BIO-2, BIO-3, BIO-7, BIO-8 and BIO-13: **In its comments submitted on March 9, 2010, the Applicant had requested that all requirements related to desert tortoise handling be deleted since no take authorization is being sought for the Project. The Applicant continues to believe that no desert tortoise will be found on the power plant site or pipeline routes, and that any desert tortoise that may be found along transmission line Segment 1 can be avoided or construction postponed until the tortoise moves of its own accord. Therefore, we request that the reference to desert tortoise handling be stricken and other changes be made as requested previously to these five COCs.**

DESIGNATED BIOLOGIST DUTIES

BIO-2 The project owner shall ensure that the Designated Biologist performs the following during any site (or related facilities) mobilization, ground disturbance, grading, construction, operation, and closure activities. The Designated Biologist may be assisted by the approved Biological Monitor(s) but remains the contact for the project owner and CPM. The Designated Biologist duties shall include the following:

1. Advise the project owner's Construction and Operation Managers on the implementation of the biological resources conditions of certification;
2. Consult on the preparation of the Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) to be submitted by the project owner;
3. Be available to supervise, conduct, and coordinate mitigation, monitoring, and other biological resources compliance efforts, particularly in areas requiring avoidance or containing sensitive biological resources, such as special-status species or their habitat;
4. Clearly mark sensitive biological resource areas and inspect these areas at appropriate intervals for compliance with regulatory terms and conditions;
5. Inspect active construction areas where animals may have become trapped prior to construction commencing each day. At the end of the day, inspect for the installation of structures that prevent entrapment or allow escape during periods of construction inactivity. Periodically inspect areas with high vehicle activity (e.g., parking lots) for animals in harm's way;

6. Notify the project owner and the CPM of any non-compliance with any biological resources condition of certification;
7. Respond directly to inquiries of the CPM regarding biological resource issues;
8. Maintain written records of the tasks specified above and those included in the BRMIMP. Summaries of these records shall be submitted in the Monthly Compliance Report and the Annual Compliance Report;
9. Train the Biological Monitors as appropriate, and ensure their familiarity with the BRMIMP, Worker Environmental Awareness Program (WEAP) training, and USFWS guidelines on desert tortoise surveys ~~and handling procedures~~ <www.fws.gov/ventura/speciesinfo/protocols_guidelines>; and
10. Maintain the ability to be in regular, direct communication with representatives of CDFG and USFWS, including notifying these agencies of dead or injured listed species and reporting special-status species observations to the California Natural Diversity Data Base.

Verification: The Designated Biologist shall submit in the Monthly Compliance Report to the CPM copies of all written reports and summaries that document biological resources compliance activities. If actions may affect biological resources during operation a Designated Biologist shall be available for monitoring and reporting. During project operation, the Designated Biologist shall submit record summaries in the Annual Compliance Report unless his/her duties cease, as approved by the CPM.

Rationale for proposed changes to BIO-3: See Rationale for BIO-2, etc. above.

BIOLOGICAL MONITOR QUALIFICATIONS

BIO-3 The project owner's CPM-approved Designated Biologist shall submit the resume, at least three references, and contact information of the proposed Biological Monitors to the CPM for approval in consultation with CDFG and USFWS. The resume shall demonstrate, to the satisfaction of the CPM, the appropriate education and experience to accomplish the assigned biological resource tasks. Biological Monitors involved in any aspect of desert tortoise surveys ~~and handling~~ must meet the criteria to be considered a USFWS Authorized Biologist (USFWS 2008b) and demonstrate familiarity with the most recent protocols and guidelines for the desert tortoise.

Biological Monitor(s) training by the Designated Biologist shall include familiarity with the conditions of certification, BRMIMP, WEAP, USFWS guidelines on desert tortoise surveys ~~and handling procedures~~ <www.fws.gov/ventura/speciesinfo/protocols_guidelines> and all permits.

Verification: The project owner shall submit the specified information to the CPM for approval at least 30 days prior to the start of any project-related site disturbance activities. The Designated Biologist shall submit a written statement to the CPM confirming that individual Biological Monitor(s) has been trained including the date when training was completed. If additional Biological Monitors are needed during construction, the specified information shall be submitted to the CPM for approval at least 10 days prior to their first day of monitoring activities.

Rationale for proposed changes to BIO-7: See Rationale for BIO-2, etc. above.

BIOLOGICAL RESOURCES MITIGATION IMPLEMENTATION AND MONITORING PLAN

BIO-7 The project owner shall develop a Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) and submit two copies of the proposed BRMIMP to the CPM (for review and approval) and shall implement the measures identified in the approved BRMIMP. The BRMIMP shall incorporate impact avoidance and minimization measures described in final versions of the Mohave Ground Squirrel Translocation Plan; the Restoration Plan; the Hazardous Materials Plan; the Sensitive Plant Protection Plan; ~~the Desert Tortoise Translocation Plan~~; the Raven Monitoring, Management, and Control Plan; the Swainson's Hawk Monitoring and Mitigation Plan; the Burrowing Owl Monitoring and Mitigation Plan; the Streambed Avoidance ~~and Mitigation~~ Plan; and the Closure Plan.

The BRMIMP shall be prepared in consultation with the Designated Biologist and shall include the following:

1. All biological resources mitigation, monitoring, and compliance measures proposed and agreed to by the project owner;
2. All biological resources conditions of certification identified as necessary to avoid or mitigate impacts;
3. All biological resource mitigation, monitoring, and compliance measures required in federal agency terms and conditions;
4. All sensitive biological resources to be impacted, avoided, or mitigated by project construction, operation, and closure;
5. All required mitigation measures for each sensitive biological resource;
6. A detailed description of measures that shall be taken to avoid or mitigate temporary disturbances from construction activities;
7. All locations on a map, at an approved scale, of sensitive biological resource areas subject to disturbance and areas requiring temporary protection and avoidance during construction;

8. Aerial photographs, at an approved scale, of all areas to be disturbed during project construction activities; include one set prior to any site or related facilities mobilization disturbance and one set subsequent to completion of project construction. Provide planned timing of aerial photography and a description of why times were chosen. Provide a final accounting of the before/after acreages and a determination of whether additional habitat compensation is necessary in the Construction Termination Report;
9. Duration for each type of monitoring and a description of monitoring methodologies and frequency;
10. Performance standards to be used to help decide if/when proposed mitigation is or is not successful;
11. All remedial measures to be implemented if performance standards are not met;
12. A discussion of biological resources-related facility closure measures including a description of funding mechanism(s); and
13. A process for proposing plan modifications to the CPM and appropriate agencies for review and approval.

Verification: The project owner shall submit the BRMIMP to the CPM at least 60 days prior to start of any project-related site disturbance activities. The CPM, in consultation with other appropriate agencies, will determine the BRMIMP's acceptability within 45 days of receipt. The BRMIMP shall contain all of the required measures included in all biological conditions of certification. No ground disturbance may occur prior to the CPM's approval of the final BRMIMP.

The project owner shall notify the CPM no less than five working days before implementing any modifications to the approved BRMIMP to obtain CPM approval. Any changes to the approved BRMIMP must also be approved by the CPM in consultation with appropriate agencies to ensure no conflicts exist.

Implementation of BRMIMP measures (construction activities that were monitored, species observed) will be reported in the Monthly Compliance Reports by the Designated Biologist. Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying which items of the BRMIMP have been completed; a summary of all modifications to mitigation measures made during the project's site mobilization, ground disturbance, grading, and construction phases; and which mitigation and monitoring items are still outstanding.

Rationale for proposed changes to BIO-8: See Rationale for BIO-2, etc. above related to desert tortoise handling. In addition, the Applicant had previously requested certain changes to the requirements in BIO-8 and BIO-10 related to topsoil salvage and storage. Both of these COCs refer to a publication *Rehabilitation of Disturbed Lands in California* (Newton and Claassen 2003, pp. 39-40). Subsequent to March 9, 2010, the Applicant has obtained a copy of this document and requests additional changes to these COCs to clarify that it is only the aspects of this publication that deal with the collection and stockpiling of topsoil that are applicable.

IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-8 The project owner shall undertake the following measures to manage the construction site and related facilities in a manner to avoid or minimize impacts to biological resources:

1. Limit Disturbance Area. The boundaries of all areas to be disturbed (including staging areas, access roads, and sites for temporary placement of spoils) shall be delineated with stakes and flagging prior to construction activities in consultation with the Designated Biologist. Spoils shall be stockpiled in disturbed areas lacking native vegetation and which do not provide habitat for special-status species. Parking areas, staging and disposal site locations shall also be located in areas without native vegetation or special-status species habitat. All disturbances, vehicles, and equipment shall be confined to the flagged areas.

2. Minimize Road Impacts. New and existing roads that are planned for construction, widening, or other improvements shall not extend beyond the flagged impact area as described above. All vehicles passing or turning around will do so within the planned impact area or in previously disturbed areas. Where new access is required outside of existing roads (e.g. new spur roads) or the construction zone, the route will be clearly marked (i.e., flagged and/or staked) prior to the onset of construction.

3. Minimize Traffic Impacts. Vehicular traffic during project construction and operation shall be confined to existing routes of travel to and from the project site, and cross country vehicle and equipment use outside designated work areas shall be prohibited. The speed limit shall not exceed 25 miles per hour within the project area, on maintenance roads for linear facilities, or on access roads to the PHPP site.

4. Monitor During Construction. The Designated Biologist or Biological Monitor shall be present at the construction site during all project activities **located outside the exclusion fencing that** have potential to disturb soil, vegetation, and wildlife. In areas that could support desert tortoise, Mohave ground squirrel, or any other sensitive wildlife species **(including, but not limited to, silvery legless lizard, coast horned lizard, nesting birds, southern grasshopper mouse, and American badger) and are located outside the exclusion fencing,** the USFWS-approved Designated Biologist or Biological Monitor shall walk immediately ahead of equipment during brushing and grading activities.

5. Salvage Wildlife during Clearing and Grubbing. The Designated Biologist or Biological Monitor shall salvage and relocate sensitive wildlife **species (including, but not limited to, silvery legless lizard, coast horned lizard, and southern grasshopper mouse)** during clearing and grading operations. The species shall be salvaged when conditions will not jeopardize the health and safety of the monitor and relocated **to** off-site habitat.

6. Minimize Impacts of Transmission/Pipeline Alignments, Roads, and Staging Areas. For construction activities outside of the plant site (transmission line, pipeline alignments), access roads, pulling sites, and storage and parking areas shall be designed, installed, and maintained with the goal of minimizing impacts to native plant communities and sensitive biological resources. Transmission lines and all electrical components shall be designed, installed, and maintained in accordance with the Avian Power Line Interaction Committee's (APLIC's) *Suggested Practices for Avian Protection on Power Lines* (APLIC 2006) and *Mitigating Bird Collisions with Power Lines* (APLIC 2004) to reduce the likelihood of ~~large~~ bird electrocutions and collisions.

7. Avoid Use of Toxic Substances. Road surfacing and sealants as well as soil bonding and weighting agents used on unpaved surfaces shall be non-toxic to wildlife and plants. Anticoagulants shall not be used for rodent control.

8. Minimize Lighting Impacts. Facility lighting shall be designed, installed, and maintained to prevent side casting of light towards wildlife habitat.

9. Avoid Vehicle Impacts to Desert Tortoise. No vehicles or construction equipment **outside of the exclusion fencing** shall be moved **after parking for any period of time, no matter how brief,** prior to an inspection of the ground beneath the vehicle for the presence of desert tortoise. If a desert tortoise is observed, it will be left to move on its own. ~~If the tortoise does not move, the animal will be relocated to a safe location within 500 feet of the project area.~~ No tortoise shall be moved without authorization from the CDFG, USFWS, and CPM**, unless it is in imminent danger.**

10. Avoid Wildlife Pitfalls. At the end of each work day, the Designated Biologist shall ensure that all potential wildlife pitfalls (trenches, bores, and other excavations) outside the permanently fenced area have been backfilled. If backfilling is not feasible, all trenches, bores, and other excavations shall be sloped at a 3:1 ratio at the ends to provide wildlife escape ramps, or covered completely to prevent wildlife access, or fully enclosed with tortoise-exclusion fencing. All trenches, bores, and other excavations shall be inspected periodically throughout and at the end of each workday by the Designated Biologist or a Biological Monitor. Should wildlife become trapped, the Designated Biologist or Biological Monitor shall remove and relocate the individual to a safe location. Any wildlife encountered during the course of construction shall be allowed to leave the construction area unharmed.

11. Avoid Entrapment of Desert Tortoise and Mohave Ground Squirrel. Any construction pipe, culvert, or similar structure with a diameter greater than 3 inches, stored less than 8 inches above ground and within desert tortoise or Mohave ground squirrel habitat for one or more days/nights, shall be inspected for tortoises or Mohave ground squirrel before the material is moved, buried, or capped. As an alternative, all such structures may be capped before being stored outside the fenced area, or placed on pipe racks. These materials would not need to be inspected or capped if they are stored within the permanently fenced area after the clearance surveys have been completed.

12. Minimize Standing Water. Water applied to dirt roads and construction areas (trenches or spoil piles) for dust abatement shall use the minimal amount needed to meet safety and air quality standards in an effort to prevent the formation of puddles, which could attract desert tortoises and common ravens to construction sites. A Biological Monitor shall patrol these areas to ensure water does not puddle and attract desert tortoise, common ravens, and other wildlife to the site and shall take appropriate action to reduce water application where necessary.

13. Minimize Spills of Hazardous Materials. All vehicles and equipment shall be maintained in proper working condition to minimize the potential for fugitive emissions of motor oil, antifreeze, hydraulic fluid, grease, or other hazardous materials. The Designated Biologist shall be informed of any hazardous spills immediately as directed in the project Hazardous Materials Plan. Hazardous spills shall be immediately cleaned up and the contaminated soil properly disposed of at a licensed facility. Servicing of construction equipment shall take place only at a designated area. Service/maintenance vehicles shall carry a bucket and pads to absorb leaks or spills.

14. Worker Guidelines. During construction all trash and food-related waste shall be placed in self-closing containers and removed daily from the site. Workers shall not feed wildlife or bring pets to the project site. Except for law enforcement personnel, no workers or visitors to the site shall bring firearms or weapons.

15. Avoid Spread of Noxious Weeds. The project owner shall implement the following Best Management Practices during construction and operation to prevent the spread and propagation of noxious weeds:

    a. Limit the size of any vegetation and/or ground disturbance to the absolute minimum and limit ingress and egress to defined routes;

    b. Prevent spread of non-native plants via vehicular sources by implementing Trackclean™ or other methods of vehicle cleaning for vehicles **leaving** ~~coming and going from~~ construction sites. Earth-moving equipment shall be cleaned prior to transport to the construction site;

    c. Use only weed-free straw, hay bales, and seed, **if available and practicable,** for erosion control and sediment barrier installations, and

d. Avoid using invasive non-native species in landscaping plans and erosion control.

16. Stockpile Topsoil. To increase chances for revegetation success, topsoil shall be stockpiled from the project site ~~and along project linear features~~ for use in revegetation **of temporary disturbance areas**. Native topsoil from the least disturbed locations and only areas that are relatively free of noxious weeds shall be used as a source of topsoil. ~~All other e~~**E**lements **related to the collection and stockpiling** of topsoil **for** use shall be as described in Rehabilitation of Disturbed Lands in California (Newton and Claassen 2003, pp. 39-40).

17. Implement Erosion Control Measures. Standard erosion control measures shall be implemented for all phases of construction and operation where sediment run-off from exposed slopes threatens to enter "Waters of the State." Sediment and other flow-restricting materials shall be moved to a location where they shall not be washed back into the stream. All disturbed soils and roads within the project site shall be stabilized to reduce erosion potential, both during and following construction. Areas of disturbed soils (access and staging areas) with slopes toward a drainage shall be stabilized to reduce erosion potential.

18. Monitor Ground-Disturbing Activities Prior to Site Mobilization. If ground-disturbing activities are required prior to site mobilization, such as for geotechnical borings or hazardous waste evaluations, a Designated Biologist or Biological Monitor shall be present to monitor any actions that could disturb soil, vegetation, or wildlife.

19. Control and Regulate Fugitive Dust. To reduce the potential for the transmission of fugitive dust the owner shall implement dust control measures. These shall include:

    a. The owner shall apply non-toxic soil binders, equivalent or better in efficiencies than the ARB- approved soil binders, to active unpaved roadways, unpaved staging areas, and unpaved parking area(s) throughout construction to reduce fugitive dust emissions.

    b. Water the disturbed areas of the active construction sites at least three times per day and more often if uncontrolled fugitive dust is noted.

    c. Enclose, cover, water twice daily, and/or apply non-toxic soil binders according to manufacturer's specifications to exposed piles with a 5% or greater silt content.

    d. Establish a vegetative ground cover (in compliance with biological resources impact mitigation measures above) or otherwise create stabilized surfaces on all unpaved areas at each of the construction sites within 21 days after active construction operations have ceased.

    e. Increase the frequency of watering, if water is used as a soil binder for disturbed surfaces, or implement other additional fugitive dust mitigation measures, to all active disturbed fugitive dust emission sources when wind speeds (as instantaneous wind gusts) exceed 25 mph.

Verification: All mitigation measures and their implementation methods shall be included in the BRMIMP and implemented. Implementation of the measures will be reported in the Monthly Compliance Reports by the Designated Biologist. Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying how measures have been completed.

Rationale for proposed changes to BIO-9: Changes are meant to clarify that monthly compliance inspections will continue through completion of construction.

COMPLIANCE VERIFICATION

BIO-9 The project owner shall provide Energy Commission staff, CDFG, and USFWS with reasonable access to the project site and mitigation lands under the control of the project owner and shall otherwise fully cooperate with the Energy Commission's efforts to verify the project owner's compliance with, or the effectiveness of, mitigation measures set forth in the conditions of certification. The project owner shall hold harmless the Designated Biologist, the Energy Commission and staff, and any other agencies with regulatory requirements addressed by the Energy Commission's sole permitting authority for any costs the project owner incurs in complying with the management measures, including stop work orders issued by the CPM or the Designated Biologist. The Designated Biologist shall do all of the following:

1. Notification. Notify the CPM, CDFG, and USFWS at least 14 calendar days before initiating ground-disturbing activities. Immediately notify the CPM, CDFG, and USFWS in writing if the project owner is not in compliance with any conditions of certification, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods specified in the conditions of certification. CDFG shall be notified at their Southern Region Headquarters Office, 4949 Viewridge Avenue, San Diego, CA 92123; (858) 467-4201. USFWS shall be notified at their Ventura office at 2493 Portola Road, Suite B, Ventura, CA 93003; (805) 644-1766.
2. Monitoring During Grading. Remain on site daily while grubbing and grading are taking place to avoid or minimize take of listed species, to check for compliance with all impact avoidance and minimization measures, and to check all exclusion zones to ensure that signs, stakes, and fencing are intact and that human activities are restricted in these protected zones.
3. Fence Monitoring. During construction maintain and check desert tortoise exclusion fences on a daily basis to ensure the integrity of the fence is maintained. The Designated Biologist shall be present on site to monitor construction and determine fence placement during fence installation. During operation of the project, fence inspections shall occur at least once per month throughout the life of the project, and

more frequently after storms or other events that might affect the integrity and function of desert tortoise exclusion fences. Fence repairs shall occur within two days (48 hours) of detecting problems that affect the functioning of the desert tortoise exclusion fencing.

4. Monthly Compliance Inspections. Conduct compliance inspections at a minimum of once per month after clearing, grubbing, and grading are completed **and until construction is completed,** and submit a monthly compliance report to the CPM, USFWS, and CDFG. All observations of listed species and their sign shall be reported to the Designated Biologist for inclusion in the monthly compliance report.

5. Annual Listed Species Status Report. No later than January 31 of every year the PHPP facility remains in operation, provide the CPM, USFWS, and CDFG an annual Listed Species Status Report, which shall include, at a minimum: 1) a general description of the status of the project site and construction/operation activities, including actual or projected completion dates, if known; 2) a copy of the table in the BRMIMP with notes showing the current implementation status of each mitigation measure; 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for project impacts, and 4) recommendations on how effectiveness of mitigation measures might be improved.

6. Final Listed Species Mitigation Report. No later than 45 days after initiation of project operation, provide the CPM a Final Listed Species Mitigation Report that shall include, at a minimum: 1) a copy of the table in the BRMIMP with notes showing when each of the mitigation measures was implemented; 2) all available information about project-related incidental take of listed species; 3) information about other project impacts on the listed species; 4) construction dates; 5) an assessment of the effectiveness of conditions of certification in minimizing and compensating for project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the listed species; and 7) any other pertinent information, including the level of take of the listed species associated with the project.

7. Notification of Injured, Dead, or Relocated Listed Species. In the event of a sighting in an active construction area (e.g., with equipment, vehicles, or workers), injury, kill, or relocation of any listed species, the CPM, CDFG, and USFWS shall be notified immediately by phone. Notification shall occur no later than noon on the business day following the event if it occurs outside normal business hours so that the agencies can determine if further actions are required to protect listed species. Written follow-up notification via FAX or electronic communication shall be submitted to these agencies within two calendar days of the incident and include the following information as relevant:

a. Injured Desert Tortoise. If a desert tortoise is injured as a result of project-related activities during construction, the Designated Biologist shall immediately take it to a CDFG-approved wildlife rehabilitation and/or veterinarian clinic. Any veterinarian bills for such injured animals shall be paid by the project owner. Following phone notification as required above, the CPM, CDFG, and USFWS shall determine the final disposition of the injured animal, if it recovers. Written notification shall include, at a minimum, the date, time, location, circumstances of the incident, and the name of the facility where the animal was taken.

b. Desert Tortoise/Mohave Ground Squirrel Fatality. If a desert tortoise or Mohave ground squirrel is killed by project-related activities during construction or operation, or if a desert tortoise or Mohave ground squirrel is otherwise found dead, submit a written report with the same information as an injury report. These desert tortoises shall be salvaged according to guidelines described in *Salvaging Injured, Recently Dead, Ill, and Dying Wild, Free-Roaming Desert Tortoise* (Berry 2001). The project owner shall pay to have the desert tortoises transported and necropsied. The report shall include the date and time of the finding or incident.

8. Stop Work Order. The CPM may issue the project owner a written stop work order to suspend any activity related to the construction or operation of the project to prevent or remedy a violation of one or more conditions of certification (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. The project owner shall comply with the stop work order immediately upon receipt thereof.

Verification: No later than two calendar days following the above-required notification of a sighting, kill, injury, or relocation of a listed species, the project owner shall deliver to the CPM, CDFG, and USFWS via FAX or electronic communication the written report from the Designated Biologist describing all reported incidents of the sighting, injury, kill, or relocation of a listed species, identifying who was notified and explaining when the incidents occurred. In the case of a sighting in an active construction area, the project owner shall, at the same time, submit a map (e.g., using Geographic Information Systems) depicting both the limits of construction and sighting location to the CPM, CDFG, and USFWS.

No later than January 31st of every year the PHPP facility remains in operation, provide the CPM an annual Listed Species Status Report as described above, and a summary of desert tortoise exclusion fence inspections and repairs conducted in the course of the year.

Rationale for proposed changes to BIO-10: Applicant proposes to reflect the mitigation requirement associated with Joshua tree woodland communities in BIO-17, rather than BIO-10. In addition, changes to BIO-10 are requested to clarify that revegetation should

only apply to areas that are temporarily disturbed, and not areas that are expected to be developed. As discussed at the March 16 PSA Workshop, it would also be overly onerous to separate the top inch of topsoil from the next six to eight inches. Furthermore, as noted in the rationale for changes to BIO-8, the Applicant has subsequently reviewed the referenced guideline related to topsoil, and since these guidelines restrict the stockpiles for topsoil to be one meter or less, we request that only the top two to three inches of topsoil be stored due to space limitations on the site. This amount of topsoil is consistent with other siting cases.

RESTORATION PLAN AND COMPENSATION FOR IMPACTS TO NATIVE VEGETATION COMMUNITIES

BIO-10 The project owner shall provide restoration/compensation for impacts to native vegetation communities and develop and implement a Restoration Plan for all areas subject to temporary project disturbance. Upon completion of construction, all temporarily disturbed areas shall be revegetated, excluding the **laydown area**, road and roadbed. ~~Native plant communities including Joshua Tree Woodland and Mojavean Juniper Scrub will be mitigated at a ratio of no less than 2:1 through the purchase of off-site habitat.~~ Permanent impacts to Riparian Communities will require a ratio of 5:1. The following measures shall be implemented for the revegetation effort areas not subject to the facility Landscape Plan. These measures will include:

1. Plan Details. The plans shall include at minimum: (a) the location of the mitigation site ~~(off-site mitigation may be required);~~ (b) locations and details for top soil storage; (c) the plant species to be used; (d) seed collection guidelines; (e~~d~~) a schematic depicting the mitigation area; (~~e~~f) time of year that the planting will occur and the methodology of the planting; (~~f~~g) a description of the irrigation methodology if used; (~~g~~h) measures to control exotic vegetation on site; (~~h~~i) success criteria; (~~i~~j) a detailed monitoring program; and (~~j~~k) locations and impacts to all Joshua and Juniper Trees. All habitats dominated by non-native species prior to project disturbance shall be revegetated using appropriate native species.

2. Topsoil Salvage. Topsoil shall be stockpiled from the project site for use in revegetation of **temporarily** ~~the~~ disturbed soils. ~~The upper 1 inch of topsoil which contains the seedbank shall be scraped and stockpiled for use as the top-dressing for the revegetation area. An additional~~**Two (2)** ~~6~~ to **three (3)** ~~8~~ inches of soil ~~below the top 1 inch of soil~~ shall ~~also~~ be scraped and ~~separately~~stockpiled for use in revegetation **of temporarily disturbed** areas. ~~All other e~~**E**lements **related to the collection and** ~~of soil~~ stockpiling **of topsoil** shall be conducted as described on pages 39-40 of *Rehabilitation of Disturbed Lands in California* (Newton and Claassen 2003)

3. Seed Stock. Only seed of locally occurring species shall be used for revegetation. Seeds shall contain a mix of short-lived early pioneer species such as native annuals and perennials and subshrubs (for example, squirreltail, cheesebush, matchweed,

peppergrass, rabbitbrush, creosote bush, burro-weed, wolfberry, Nevada tea, needlegrass, rice grass, goldenhead). Seeding shall be conducted as described in Chapter 5 of *Rehabilitation of Disturbed Lands in California* (Newton and Claassen 2003). A list of plant species suitable for Mojave Desert region revegetation projects, including recommended seed treatments, are included in Appendix A-8 of the same report. The list of plants observed during the 2010 special-status plant surveys of the PHPP area can also be used as a guide to site-specific plant selection for revegetation.

4. Monitoring Requirement and Success Criteria. Post-seeding and planting monitoring will be yearly from years one to five or until the success criteria are met. If the survival and cover requirements have not been met, the owner is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements as previously mentioned. Remediation activities (e.g. additional planting, removal of non-native invasive species, or erosion control) shall be taken during the five-year period if necessary to ensure the success of the restoration effort. If the mitigation fails to meet the established performance criteria after the five-year maintenance and monitoring period, monitoring and remedial activities shall extend beyond the five-year period until the criteria are met or unless otherwise specified by the Energy Commission. If a fire occurs in a revegetation area within the five-year monitoring period, the owner shall be responsible for a one-time replacement. If a second fire occurs, no replanting is required, unless the fire is caused by the owner's activity.

Verification: All mitigation measures and their implementation methods shall be included in the BRMIMP and implemented. Within 90 days after completion of project construction, the project owner shall provide to the CPM verification of the total vegetation and community subject to temporary and permanent disturbance. If habitat disturbance exceeded that described in this analysis, the CPM shall notify the project owner of any additional **mitigation** ~~funds~~ required ~~or compensation acreage that must be purchased~~ to compensate for any additional habitat disturbances ~~at the adjusted market value at the time of construction to acquire and manage habitat.~~ To monitor and evaluate the success of the restoration the owner shall submit annual reports of the restoration including the status of the site, percent cover of native and exotics, and any remedial actions conducted by the owner to the CPM.

~~For Joshua Tree Woodland and Mojavean Juniper Scrub, no less than 90 days prior to acquisition of the property, the project owner, or a third-party approved by the CPM, in consultation with CDFG and USFWS, shall submit a formal acquisition proposal to the CPM, CDFG, and USFWS describing the parcel(s) intended for purchase. These lands may be collated within lands acquired to off-set impacts to Mohave ground squirrels. All mitigation lands must be within Los Angeles County.~~

~~Draft agreements to delegate land acquisition to CDFG or an approved third party and agreements to manage compensation lands shall be submitted to Energy Commission staff for review and approval (in consultation with CDFG) prior to land acquisition. Such agreements~~

~~shall be mutually approved and executed at least 60 days prior to start of any project-related ground disturbance activities. The project owner shall provide written verification to the CPM that the compensation lands or conservation easements have been acquired and recorded in favor of the approved recipient(s). Alternatively, before beginning project ground-disturbing activities or any other activities that could result in take, the project owner shall provide Security in accordance with this condition. Within 90 days after the land or easement purchase, as determined by the date on the title, the project owner shall provide the CPM with a management plan for review and approval, in consultation with CDFG, for the compensation lands and associated funds.~~

Rationale for proposed changes to BIO-11: As noted in a previous submittal, changes are requested to allow the power plant site and reclaimed water pipeline route to conduct floristic surveys this year, but other PHPP components to be surveyed at a time close to construction of those components. The Applicant also requests changes to the mitigation required in BIO-11 for CNPS List 3 and 4 plants. These plants are not consider rare under CEQA, nor are they listed as threatened or endangered and hence are not required to be protected or mitigated. To date, the only CNPS List 1, 2, 3 or 4 listed species found on the PHPP site and linear routes is the crown muilla, a CNSP List 4 plant.

SPECIAL-STATUS PLANT SURVEYS/PROTECTION PLAN

BIO-11 To avoid impacts to State and federally listed Threatened and Endangered, Proposed, Petitioned, and Candidate or California Native Plant Society List 1A, 1B, **or** 2, ~~3, or 4~~ plants that might occur on the PHPP site or along the proposed transmission line alignments, pre-construction surveys shall be conducted in these areas in Spring 2010 **for the power plant site and reclaimed water pipeline, and in the Spring prior to the commencement of ground disturbance for the transmission line and natural gas pipeline**. If special-status plant species are detected within 100 feet of the project footprint, the qualified botanist shall prepare a Sensitive Plant Protection Plan to avoid direct and indirect impacts. The project owner shall implement the following measures:

1. Pre-Construction Floristic Surveys. A qualified botanist **(i.e., someone who meets the qualifications in the CDFG 2009 Protocol)** shall conduct floristic surveys on the PHPP project site and along linear facilities in all areas subject to ground-disturbing activity, including, but not limited to, tower pad preparation and construction areas, tower removal sites, pulling and tensioning sites, assembly yards, and areas subject to grading for new access roads. Surveys shall be conducted within 100 feet of all surface-disturbing activities at the appropriate time of year and according to guidelines from the California Department of Fish and Game (CDFG ~~2000~~**2009**) and the California Native Plant Society (CNPS 2001).
2. Sensitive Plant Protection Plan. If special-status plant species are detected during pre-construction surveys, a qualified botanist shall prepare a Sensitive Plant Protection

Plan (Plan). Populations of rare plants shall be flagged and mapped prior to any ground disturbance. Where possible the owner shall modify the placement of structures, access roads, laydown areas, and other ground-disturbing activities in order to avoid the plants. The Plan shall include measures for avoiding direct impacts and accidental impacts during construction by identifying the plant occurrence location and establishing an appropriately sized buffer. The Plan shall also include measures to avoid indirect impacts including: sedimentation from adjacent disturbed soils; alterations of the site hydrology from changes in the drainage patterns; dust deposition; and displacement or degradation of the habitat from the introduction and spread of noxious weeds. The Plan shall also include a discussion of monitoring and reporting requirements during and after construction.

a. Prior to any ground disturbance, any populations of listed plant species identified during the surveys shall be protected by a buffer zone **if they can be avoided.** The buffer zone shall be established around these areas and shall be of sufficient size to eliminate potential disturbance to the plants from human activity and any other potential sources of disturbance including human trampling, erosion, and dust. The size of the buffer will depend upon the proposed use of the immediately adjacent lands, and includes consideration of the plant's ecological requirements (e.g., sunlight, moisture, shade tolerance, edaphic physical and chemical characteristics) that are identified by the Designated Biologist. The buffer for herbaceous species shall be, at minimum, 50 feet from the perimeter of the population or the individual. A smaller buffer may be established, provided there are adequate measures in place to avoid the take of the species, with the approval of the USFWS, CDFG, and CPM.

b. Impacts to non-listed **rare** plant species (i.e., CNPS List 1~~,~~ **and** 2~~, 3, and 4~~ species) shall first be avoided where feasible, and, where not feasible, impacts shall be **mitigated** ~~compensated~~ through **transplanting**, reseeding (with locally collected seed stock), or other CPM-approved methods. ~~If Project activities will result in loss of more than 10% of the known individuals within an existing population of non-listed special-status plant species, the project owner shall preserve existing off-site occupied habitat that is not already part of the public lands in perpetuity at a 2:1 mitigation ratio. The CPM may reduce this ratio depending on the sensitivity of the plant. The preserved habitat shall be occupied by the plant species impacted, and be of superior or similar habitat quality to the impacted areas in terms of soil features, extent of disturbance, habitat structure, and dominant species composition, as determined by a qualified plant ecologist.~~

3. State ~~or Federally~~ Listed Plant Species: If impacts to listed plants are determined to be unavoidable, ~~the USFWS shall be consulted for authorization, through the context of a Biological Opinion, and/or~~ the CDFG shall be consulted for authorization **of take** through an Incidental Take Permit. Additional mitigation measures to protect or

restore listed plant species or their habitat may be required by ~~the USFWS and/or~~ CDFG before impacts are authorized.

~~4. Agency Notification and Avoidance: If State or federally listed plant species are detected during the pre-construction floristic surveys, the CPM, USFWS, and CDFG shall be notified in writing no more than 15 days from detection of the plants.~~

~~5. Review and Submittal of Plan: The project owner shall submit to the CPM, USFWS, and CDFG a draft Sensitive Plant Protection Plan. Prior to any ground-disturbing activities within 100 feet of the sensitive plant occurrences detected during the pre-construction floristic surveys, the project owner shall submit to the CPM a final Plan that reflects review and approval by Energy Commission staff in consultation with CDFG and USFWS.~~

Verification: No later than July 31, 2010**, or other year as applicable,** the project owner shall submit a report describing the results of floristic surveys conducted on the PHPP power plant site and along the proposed transmission line alignment. The report shall be submitted to the CPM~~, USFWS,~~ and CDFG and shall describe qualifications of the surveyor, survey methods including dates and times, a discussion of visits to reference sites, figures depicting the area(s) surveyed, figures depicting the locations of any special-status plants observed, and a list of all plant species detected. **If State listed plant species are detected during the pre-construction floristic surveys, the CPM and CDFG shall be notified in writing no more than 15 days from detection of the plants.**

If special-status plant species were detected during the 2010 surveys the project owner shall submit to the CPM and CDFG a Sensitive Plant Protection Plan (Plan) at least 60 days prior to the start of any ground-disturbing activities **within 100 feet of the sensitive plant occurrences detected during the pre-construction floristic surveys**. The CPM will determine the Plan's acceptability in consultation with CDFG and USFWS within 15 days of receipt of the Plan. Any modifications to the approved Plan shall be made only after approval by Energy Commission Staff in consultation with CDFG ~~and USFWS~~. The project owner shall notify the CPM no fewer than 5 working days before implementing any CPM-approved modifications to the Plan.

Within 30 days after completion of construction the project owner shall provide to the CPM~~, USFWS, and~~ CDFG a construction termination report discussing how mitigation measures described in the Plan were implemented.

Rationale for proposed changes to BIO-12: The proposed change clarifies that because Applicant already has conducted protocol surveys for arroyo toad, any additional surveys will be clearance surveys.

AVOIDANCE MEASURES FOR ARROYO TOAD

BIO-12 The project owner shall conduct pre-construction surveys for arroyo toads at the Little Rock Creek transmission line crossing on Segment 2 and implement impact avoidance and minimization measure during all construction activities. These measures include, but are not limited to, the following:

1. Surveys. Prior to ground disturbance the project owner shall retain a biologist who is familiar with arroyo toads that occur in desert habitats to conduct **clearance** ~~protocol~~ ~~s~~urveys prior to construction and monitor all construction activities at Little Rock Creek. Clearance surveys shall be completed within 24 hours of construction. If arroyo toads are detected, a 500-foot disturbance free buffer shall be implemented and the area shall be avoided until the owner completes consultation with the USFWS.

2. Monitoring. The project owner shall conduct full time monitoring of all areas within 500 feet of Little Rock Creek **during ground disturbance activities**. Although this species is primarily nocturnal and aestivates during the winter, monitoring **during ground disturbance activities** shall occur year round whenever day time temperatures exceed 50 degrees Fahrenheit and during periods of rainfall. If arroyo toads are detected, the Designated Biologist shall contact the CPM and USFWS within 24 hours. Work shall not occur within 500 feet of Little Rock Creek until approved by the CPM and USFWS.

Verification: Within 30 days of completion of arroyo toad ~~protocol and~~ clearance surveys, the Designated Biologist shall submit a report to the CPM describing how mitigation measures described above have been satisfied. The report shall include the survey results and any other information needed to demonstrate compliance with the measures described above.

Rationale for proposed changes to BIO-13: See Rationale for BIO-2, etc. above.

DESERT TORTOISE CLEARANCE SURVEYS AND EXCLUSION FENCING

BIO-13 The project owner shall undertake appropriate measures to manage construction at the plant site and linear facilities in a manner to avoid impacts to desert tortoise. Methods for clearance surveys, fence installation, and other procedures shall be consistent with those described in the *Guidelines for Handling Desert Tortoise During Construction Projects* (Desert Tortoise Council 1999) or more current guidance provided by CDFG and USFWS. These measures include, but are not limited to, the following:

1. Fence Installation. Prior to ground disturbance, the entire plant site shall be fenced with permanent desert tortoise-exclusion fence. To avoid impacts to desert tortoise during fence construction, the proposed fence alignment shall be flagged and the alignment surveyed within 24 hours prior to fence construction. Surveys shall be conducted by the Designated Biologist using techniques approved by the USFWS and CDFG. Biological Monitors may assist the Designated Biologist under his or her

supervision. These surveys shall provide 100% coverage of all areas to be disturbed during fence construction and an additional transect along both sides of the proposed fence line. This fence line transect shall cover an area approximately 90 feet wide centered on the fence alignment. Transects shall be no greater than 30 feet apart. All desert tortoise burrows, and burrows constructed by other species that might be used by desert tortoises, shall be examined to assess occupancy of each burrow by desert tortoises and handled in accordance with USFWS-approved protocol.

a. Timing, Supervision of Fence Installation. The exclusion fencing shall be installed prior to the onset of site clearing and grubbing. The fence installation shall be supervised by the Designated Biologist and monitored by the Biological Monitors to ensure the safety of any tortoise present.

b. Fence Material and Installation. The permanent tortoise exclusionary fencing shall **be constructed in compliance with current USFWS guidelines.** ~~consist of galvanized hard wire cloth 1 by 2 inch mesh sunk 12 inches into the ground, and 24 inches above ground (USFWS 2008b, Appendix D).~~

c. Security Gates. Security gates shall be designed with minimal ground clearance to deter ingress by tortoises, including gates that would exclude public access to the PHPP site.

d. Tower Fencing. If tortoises are discovered during clearance surveys of the linear routes, the tower locations shall be temporarily fenced with tortoise exclusion fencing to prevent desert tortoise entry during construction. Temporary fencing must follow **current USFWS** guidelines for permanent fencing and supporting stakes shall be sufficiently spaced to maintain fence integrity.

e. Fence Inspections. Following installation of the desert tortoise exclusion fencing for both the permanent site fencing and temporary fencing in the utility corridors, the fencing shall be regularly inspected. Permanent fencing shall be inspected monthly and during/following all major rainfall events. Any damage to the fencing shall be temporarily repaired immediately to keep tortoises out of the site, and permanently repaired within two days of observing damage. Inspections of permanent site fencing shall occur for the life of the project. Temporary fencing must be inspected weekly and, where drainages intersect the fencing, during and immediately following major rainfall events. All temporary fencing shall be repaired immediately upon discovery and, if the fence may have permitted tortoise entry while damaged, the Designated Biologist shall inspect the utility corridor or tower site for tortoise.

2. Desert Tortoise Clearance Surveys. Following construction of the tortoise exclusionary fencing around the Plant Site, all fenced areas shall be cleared of tortoises by the Designated Biologist, who may be assisted by Biological Monitors. A minimum of two clearance surveys, with negative results, must be completed during a timeframe acceptable to the CEC and CDFG. ~~, and these must coincide with~~

~~heightened desert tortoise activity from late March through May and during October. To facilitate seeing the ground from different angles, the second clearance survey shall be walked at 90 degrees to the orientation of the first clearance survey.~~

3. Relocation for Desert Tortoise. If desert tortoises are detected on the PHPP site, the owner shall coordinate with the USFWS, CDFG, and CPM regarding the disposition of the animal(s). ~~If located during clearance surveys within the transmission line project impact area the Designated Biologist shall move the tortoise the shortest possible distance, keeping it out of harm's way but still within its home range. Desert tortoise encountered during construction of any of the utility corridors shall be similarly treated in accordance with the techniques described in the *Guidelines for Handling Desert Tortoise during Construction Projects* (Desert Tortoise Council 1999) or more current guidance on the USFWS website. Any person handling tortoise must be trained and approved by the USFWS and CDFG and be on site during ground disturbance or construction. A site where tortoises will be moved must be pre-approved, and acquired prior to ground disturbing activities. The health of any tortoise to be translocated must be assessed prior to moving; a quarantine site located for any ill tortoise must be designated. The host population of tortoise surveyed prior to any translocated tortoise being moved, and a study to determine the efficacy of the translocation and impact to host population be conducted for a minimum of 5 years.~~

~~4. Burrow Inspection. All potential desert tortoise burrows within the fenced area shall be searched for presence. In some cases, a fiber optic scope may be needed to determine presence or absence within a deep burrow. To prevent reentry by a tortoise or other wildlife, all burrows shall be collapsed once absence has been determined. Tortoises excavated from burrows shall be translocated to unoccupied natural or artificial burrows immediately following excavation in an area approved by the Designated Biologist if environmental conditions warrant immediate relocation.~~

~~5. Biologist using hand tools, and then collapsed or blocked to prevent re-occupation. If excavated during May through July, the Designated Biologist shall search for desert tortoise nests/eggs. All desert tortoise handling and removal, and burrow excavations, including nests, shall be conducted by the Designated Biologist in accordance with the USFWS-approved protocol (Desert Tortoise Council 1999) or more current guidance on the USFWS website.~~

~~6~~**4**. Monitoring During Clearing. Following **construction of exclusion fencing and completion of clearance surveys,** ~~desert tortoise clearance removal from the plant site and translocation to a new site,~~ heavy equipment shall be allowed to enter the project site to perform earth work such as clearing, grubbing, leveling, and trenching. A Biological Monitor shall be onsite during initial clearing and grading activities. Should a tortoise be discovered, **the owner shall coordinate with the USFWS, CDFG and CPM regarding the disposition of the animal(s).** ~~it shall be translocated as described above in accordance with the Desert Tortoise Translocation Plan.~~

~~7~~5. Reporting. The Designated Biologist shall record the following information for any desert tortoises observed ~~or handled~~: a) the locations (narrative and maps) and dates of observation; b) general condition and health, including injuries, state of healing and whether desert tortoise voided their bladders; **and** c) ~~location moved from and location moved to (using GPS technology); d)~~ gender, carapace length, and diagnostic markings (i.e., identification numbers or marked lateral scutes)**.**~~; e) ambient temperature when handled and released; and f) digital photograph of each handled desert tortoise as described in the paragraph below. Desert tortoise moved from within project areas shall be marked for future identification as described in *Guidelines for Handling Desert Tortoise during Construction Projects* (Desert Tortoise Council 1999) or more current guidance on the USFWS website. Digital photographs of the carapace, plastron, and fourth costal scute shall be taken. Scutes shall not be notched for identification.~~ Any desert tortoises observed within the project area or adjacent habitat shall be reported to the USFWS, CDFG, and CPM by written and electronic correspondence within 24 hours.

Verification: ~~Within 60 days of publication of the Energy Commission Decision the project owner shall submit to Energy Commission Staff, USFWS and CDFG a draft Desert Tortoise Translocation Plan. At least 60 days prior to start of any project-related ground disturbance activities, the project owner shall provide the CPM with the final version of a Translocation Plan that has been approved by Energy Commission staff in consultation with USFWS and CDFG. The CPM will determine the plan's acceptability within 15 days of receipt of the final plan. All modifications to the approved Desert Tortoise Translocation Plan must be made only after approval by the Energy Commission staff in consultation with USFWS and CDFG. The project owner shall notify the CPM no fewer than 5 working days before implementing any CPM-approved modifications to the Translocation Plan.~~

~~Within 30 days after initiation of translocation activities, the Designated Biologist shall provide to the CPM for review and approval, a written report identifying which items of the Translocation Plan have been completed, and a summary of all modifications to measures made during implementation.~~

Within 30 days of completion of **construction activities,** ~~desert tortoise clearance surveys~~ the Designated Biologist shall submit a report to the CPM, USFWS, and CDFG describing how each of the mitigation measures described above has been satisfied. ~~The report shall include the desert tortoise survey results, capture and release locations of any relocated desert tortoises, and any other information needed to demonstrate compliance with the measures described above.~~

Rationale for proposed changes to BIO-14: The requirements related to payment of fees for a regional raven monitoring and management plan in BIO-14 should be deleted. The Applicant is not seeking incidental take authorization for desert tortoise and the regional raven in lieu mitigation fee therefore is not applicable. Applicant agrees that it will

implement a raven control and monitoring plan to ensure that the project does not indirectly impact desert tortoises in the project vicinity.

RAVEN MONITORING, MANAGEMENT, AND CONTROL PLAN

BIO-14 The project owner shall design and implement a Raven Monitoring, Management, and Control Plan (Raven Plan) that is consistent with the most current USFWS-approved raven management guidelines and that meets the approval of the USFWS, CDFG, and the Energy Commission. The Raven Plan shall: identify conditions associated with the project that might provide raven subsidies or attractants; describe management practices to avoid or minimize conditions that might increase raven numbers and predatory activities; describe control practices for ravens; address monitoring during construction and for the life of the project; and discuss reporting requirements. For the first year of reporting the project owner shall provide quarterly reports describing implementation of the Raven Plan. Thereafter the reports shall be submitted annually for the life of the project. ~~The Raven Plan shall also include a requirement for payment of an in-lieu fee to a third-party account established by the USFWS to support a regional raven monitoring and management plan (USFWS 2009).~~

Verification: At least 60 days prior to start of any project-related ground disturbance activities, the project owner shall provide the CPM, USFWS, and CDFG with the final version of the Raven Plan that has been reviewed and approved by USFWS and CDFG. The CPM shall determine the plan's acceptability within 15 days of receipt of the final plan. All modifications to the approved Raven Plan must be made only after consultation with the Energy Commission Staff, USFWS, and CDFG. The project owner shall notify the CPM no less than five working days before implementing any CPM-approved modifications to the Raven Plan.

Within 30 days after completion of project construction, the project owner shall provide to the CPM for review and approval a report identifying which items of the Raven Plan have been completed, a summary of all modifications to mitigation measures made during the project's construction phase, and which items are still outstanding.

Rationale for proposed changes to BIO-15: Proposed changes are meant to clarify that the measures only apply to migratory birds.

PRE-CONSTRUCTION NEST SURVEYS AND IMPACT AVOIDANCE MEASURES FOR MIGRATORY BIRDS

BIO-15 Pre-construction nest surveys **for migratory birds** shall be conducted if construction activities will occur from February 1 through August 15. The Designated Biologist or Biological Monitor conducting the surveys shall be experienced bird surveyors and familiar with standard nest-locating techniques such as those described in

Martin and Guepel (1993). Surveys shall be conducted in accordance with the following guidelines:

1. Surveys shall cover all potential **migratory bird** nesting habitat in the project site and within 500 feet of the boundaries of the plant site and linear facilities;
2. At least two pre-construction surveys shall be conducted, separated by a minimum 10-day interval. One of the surveys shall to be conducted within the 10 days preceding initiation of construction activity. Additional follow-up surveys may be required if periods of construction inactivity exceed three weeks in any given area, an interval during which birds may establish a nesting territory and initiate egg laying and incubation;
3. If active **migratory bird** nests are detected during the survey, a no-disturbance buffer zone (protected area surrounding the nest, the size of which is to be determined by the Designated Biologist in consultation with CDFG, USFWS, and CPM) and a monitoring plan shall be developed. Nest locations shall be mapped using GPS technology and submitted, along with a weekly report stating the survey results, to the CPM; and
4. The Designated Biologist shall monitor the nest until he or she determines that nestlings have fledged and dispersed. Activities that might, in the opinion of the Designated Biologist and in consultation with the CPM, disturb nesting activities shall be prohibited within the buffer zone until such a determination is made.

Verification: At least 10 days prior to the start of any project-related ground disturbance activities, the project owner shall provide the CPM a letter-report describing the findings of the pre-construction nest surveys, including the time, date, and duration of the survey; identity and qualifications of the surveyor(s); and a list of species observed. If active nests are detected during the survey, the report shall include a map or aerial photo identifying the location of the nest and shall depict the boundaries of the no-disturbance buffer zone around the nest.

Rationale for proposed changes to BIO-16: The Applicant requests that the requirement to perform 10-mile surveys for nesting Swainson's hawk be removed because Swainson's hawks are already known to forage on the project site based on a reported observation by a CEC Staff biologist. The Applicant therefore agrees to provide mitigation for impacts to Swainson's hawk foraging habitat as follows: 2:1 ratio for alfalfa/agricultural field impacts (10.22 acres[1]) and 1:1 ratio for impacts to Joshua tree woodlands (approximately 190 acres[1]), provided this acreage is also suitable to satisfy Mohave ground squirrel compensation requirements. The pre-construction survey within half a mile from the Project is still required.

[1] These acreages reflect revised vegetation community mapping as provided in Attachment BR-3.

SWAINSON'S HAWK IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-16 The project owner shall implement the following measures to avoid and offset impacts to Swainson's hawk:

1. Pre-Construction Surveys. To assure that nesting Swainson's hawks are not disturbed by construction activities, a qualified ornithologist approved by the CDFG and CPM shall conduct pre-construction surveys **prior to commencement of ground disturbing activities.** Surveys will include all areas within **0.5** ~~one~~ mile of the project in regions with suitable nesting habitat for Swainson's hawks. This includes but is not limited to areas supporting Joshua Tree Woodlands and agricultural lands. ~~The survey periods shall follow a specified schedule: Period I occurs from 1 January to 20 March, Period II occurs from 20 March to 5 April, Period III occurs from 5 April to 20 April, Period IV occurs from 21 April to 10 June, and Period V occurs from June 10 to July 30. No fewer than three surveys per period in at least two survey periods shall be completed immediately prior to the start of project construction~~ Survey results shall be provided to the CDFG and CPM in a written report, within 30 days of commencement of construction activities.

2. Swainson's Hawk Monitoring and Mitigation Plan. If a **Swainson's hawk** nest site is found **within 0.5 mile of the project site**, the Designated Biologist shall prepare a Swainson's Hawk Monitoring and Mitigation Plan in consultation with CDFG and Energy Commission Staff. This plan shall include detailed measures to avoid and minimize impacts to Swainson's hawks in and near the construction areas and shall also include the following:

   a. If a nest site is found, no new disturbances or other project-related activities that may cause nest abandonment or forced fledging will be initiated within 0.5 mile of an active nest between 1 March and 15 September. These buffer zones may be adjusted in consultation with the CPM and CDFG.

   b. During the nesting season (March 1 through September 15), the Designated Biologist shall be present daily, on site, **during construction activities,** monitoring the behavior of any nesting Swainson's hawks within 0.5 mile of the project. The Designated Biologist shall have authority to order the cessation of all construction activities within 0.5 mile of any Swainson's hawk nest if the birds exhibit abnormal nesting behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Construction shall not resume until the Designated Biologist has consulted with the CDFG and CPM. The Designated Biologist, CPM, and CDFG must confirm that the bird's behavior has normalized prior to the initiation of construction.

   c. If construction or other project-related activities cause nest abandonment by a Swainson's hawk or forced fledging, monitoring of the nest site by a qualified biologist shall be required to determine if the nest is abandoned. If the nest is

abandoned and if the nestlings are still alive, the project owner shall fund the recovery and hacking (controlled release of captive reared young) of the nestling(s). Transport to the raptor center shall only be approved by the CPM and CDFG Regional Representative.

d. If relocation of nestlings is required, the project owner shall provide a written report documenting the relocation efforts. The report shall include what actions were taken to avoid the nest, the location of the nest, the number and condition of the eggs/nestlings taken from the nest, the location of where the eggs/nestlings are incubated, the survival rate, the location of the nests where the chicks are relocated, and whether the birds were accepted by the adopted parent.

e. Nest trees for Swainson's hawks in the project area shall not be removed unless avoidance measures are determined to be infeasible. If a nest tree for a Swainson's hawk must be removed from the PHPP project area, it shall occur between 1 October and 1 February.

3. Discovery of an Injured Swainson's Hawk. If a Swainson's hawk is found injured during project-related activities on the project site, it shall be immediately relocated to a raptor recovery center approved by the CDFG Regional Representative. Any costs associated with the care or treatment of such injured Swainson's hawks shall be borne by the project owner. The Designated Representative shall immediately notify the CDFG and CPM of the incident unless the incident occurs outside of normal business hours. In that event, the CDFG and CPM shall be notified no later than noon on the next business day. Notification to the CDFG and CPM shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location, and circumstances of the incident.

Verification: Survey results shall be provided to the CDFG and CPM in a written report, within 30 days of commencement of construction activities. If pre-construction surveys detect nesting Swainson's hawks within **0.5**~~one~~ mile of proposed construction activities, the Designated Biologist shall provide to CDFG and the CPM a Swainson's Hawk Monitoring and Mitigation Plan at least 30 days prior to the start of any project-related site disturbance activities. The project owner shall report monthly to CDFG and the CPM for the duration of construction on the implementation of Swainson's hawk avoidance and minimization measures described in the Swainson's Hawk Monitoring and Mitigation Plan. Within 30 days after completion of construction, the project owner shall provide to the CDFG and CPM a written construction termination report identifying how mitigation measures described in the plan have been completed.

No later than two calendar days following the above-required notification of a sighting, kill, injury, or relocation of a Swainson's hawk, the project owner shall deliver to the CPM and CDFG via FAX or electronic communication the written report from the Designated Biologist describing all reported incidents of the sighting, injury, kill, or relocation of a Swainson's hawk, identifying who was notified and explaining when the incident(s) occurred. In the case of a

sighting in an active construction area, the project owner shall, at the same time, submit a map (e.g., using Geographic Information Systems) depicting both the limits of construction and sighting location to the CPM and CDFG.

Rationale for proposed changes to BIO-17: see rationale for BIO-16 changes above related to survey requirements. In addition, the Applicant believes that there are relatively few Swainson's Hawk nesting in the Antelope Valley, and hence the requirement for mitigation lands to be "near" lands currently occupied or used needs to reflect a reasonable distance. Based on CNDDB observations since 1999, we suggest 15 miles.

SWAINSON'S HAWK HABITAT COMPENSATORY MITIGATION

BIO-17 Loss of foraging habitat for Swainson's hawks shall be mitigated by providing Habitat Management (HM) lands ~~at a ratio of 2:1~~ for ~~any~~ foraging habitat impacted **by the project.** ~~within a 10-mile radius of active Swainson's hawk nest(s) (CDFG considers a nest active if it was used one or more times within the last 5 years). The location of all active nests will be determined by conducting pre-construction surveys within a 10-mile radius of the project area and by consulting with CDFG for known records. The surveys shall identify all potential nest sites and inspect all historic Swainson's hawk nests. The project owner shall be required to provide compensation for impacts to any foraging habitat impacted within 10 miles of an active nest.~~

a. Foraging habitat includes but is not limited to alfalfa; fallow fields; beet, tomato, onions, and other low-growing row or field crops; dry-land and irrigated pasture; and cereal grain crops (including corn after harvest), **and project impacts to these foraging habitats will be mitigated at a ratio of 2:1.** Joshua tree woodland shall be considered foraging habitat in the Antelope Valley, **and project impacts to this foraging habitat will be mitigated at a ratio of 1:1.**

b. Lands which are currently in urban use or lands that have no existing or potential value for foraging Swainson's hawks will not require mitigation. The project owner will provide the CPM and CDFG a report of potential foraging lands impacted by the proposed project as determined by consultation with the CDFG and recent site-specific surveys conducted by a CDFG-qualified raptor biologist.

c. Management Authorization holders/Project sponsors shall provide for the long-term management of the HM lands by funding a management endowment (the interest on which shall be used for managing the HM lands). The responsibilities for acquisition and management of the HM lands may be delegated by written agreement to CDFG or to a third party, such as a non-governmental organization dedicated to Mojave Desert habitat conservation, subject to approval by the CPM, in consultation with CDFG prior to land acquisition or management activities. The acquisition and management of HM lands shall include the following elements:

1. Selection Criteria for HM Lands. The HM lands selected for acquisition shall:

   a. Be in the western Mojave Desert;

   b. Provide moderate to good quality foraging habitat for Swainson's hawk with capacity to improve in quality and value for this species; and

   c. Be near **(within 15 miles of)** lands for which there is reasonable evidence (for example, recent (<15 years) CNDDB occurrences on or immediately adjacent to the proposed lands) suggesting current **use**~~occupation~~ by Swainson's hawk ideally with populations that are stable, recovering, or likely to recover.

2. Review and Approval of HM Lands Prior to Acquisition. A minimum of three months prior to acquisition of the property, the project owner, or a third-party approved by the CPM, in consultation with CDFG, shall submit a formal acquisition proposal to the CPM and CDFG describing the parcel(s) intended for purchase. This acquisition proposal shall discuss the suitability of the proposed parcel(s) as HM lands for Swainson's hawk in relation to the criteria listed above. Approval from the CPM, in consultation with CDFG, shall be required for acquisition of all parcels in advance of purchase.

3. Mitigation Security for HM Lands and Avoidance/Minimization Measures. The project owner or an approved third party shall complete acquisition of the proposed HM lands prior to initiating ground-disturbing project activities. If Security is provided, the project owner, or an approved third party, shall complete the proposed HM lands acquisition within 12 months of the start of project ground-disturbing activities. The project owner shall also provide financial assurances to the CPM, with copies of the document(s) to CDFG, to guarantee that an adequate level of funding is available to implement all impact avoidance, minimization, and compensation measures required during construction (as described in Condition of Certification **BIO-16**) and for management of the HM lands. Financial assurance shall be provided to the CPM in the form of an irrevocable letter of credit or another form of security (Security) approved by the CPM, prior to initiating ground-disturbing project activities. If necessary to draw on these funds, such funds shall be used solely for implementation of the measures associated with the project.

4. HM Lands Acquisition Conditions. The project owner shall comply with the following conditions relating to acquisition of HM lands after the CPM, in consultation with CDFG, has approved the proposed HM lands and received Security, if any, as described above.

   a. Preliminary Report: The project owner, or approved third party, shall provide a recent preliminary title report, initial hazardous materials survey report, biological analysis, and other necessary documents for the proposed HM lands. All documents conveying or conserving HM lands and all conditions of title/easement are subject to a field review and approval by the CPM, in consultation with

CDFG, California Department of General Services and, if applicable, the Fish and Game Commission and/or the Wildlife Conservation Board.

b. Title/Conveyance: The project owner shall transfer fee title or a conservation easement to the HM lands to CDFG under terms approved by CDFG. Alternatively, a non-profit organization qualified to manage compensation lands (pursuant to California Government Code section 65965) and approved by CDFG and the CPM may hold fee title or a conservation easement over the HM lands. If the approved non-profit organization holds title, a conservation easement shall be recorded in favor of CDFG in a form approved by CDFG. If the approved non-profit holds a conservation easement, CDFG shall be named a third party beneficiary. If a Security is provided, the project owner or an approved third party shall complete the proposed HM lands acquisition within 12 months of the start of project ground-disturbing activities.

c. Enhancement Fund. The project owner shall fund the initial protection and enhancement of the HM lands by providing the enhancement funds to the CDFG. Alternatively, a non-profit organization may hold the enhancement funds if they are qualified to manage the HM lands (pursuant to California Government Code section 65965) and if they meet the approval of CDFG and the CPM. If CDFG takes fee title to the HM lands, the enhancement fund must go to CDFG.

d. Endowment Fund. Prior to ground-disturbing project activities, the project owner shall provide to CDFG a capital endowment in the amount determined through the Property Analysis Record (PAR) or PAR-like analysis that will be conducted for the HM lands. Alternatively, a non-profit organization may hold the endowment fees if they are qualified to manage the HM lands (pursuant to California Government Code section 65965) and if they meet the approval of CDFG and the CPM. If CDFG takes fee title to the compensation lands, the endowment must go to CDFG, where it will be held in the special deposit fund established pursuant to California Government Code section 16370. If the special deposit fund is not used to manage the endowment, the California Wildlife Foundation shall manage the endowment for CDFG and with CDFG guidance.

The project owner and the CPM shall ensure that an agreement is in place with the endowment holder/manager to ensure the following conditions:

- Interest. Interest generated from the initial capital endowment shall be available for reinvestment into the principal and for the long-term operation, management, and protection of the approved HM lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the HM lands.

- Withdrawal of Principal. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the CDFG or the approved

third-party endowment manager to ensure the continued viability of the species on the HM lands. If CDFG takes fee title to the HM lands, monies received by CDFG pursuant to this provision shall be deposited in a special deposit fund established pursuant to Government Code section 16370. If the special deposit fund is not used to manage the endowment, the California Wildlife Foundation will manage the endowment for CDFG with CDFG guidance.

- Pooling Endowment Funds. CDFG, or a CPM- and CDFG-approved non-profit organization qualified to hold endowments pursuant to California Government Code section 65965, may pool the endowment with other endowments for the operation, management, and protection of the HM lands for local populations of Swainson's hawk. However, for reporting purposes, the endowment fund must be tracked and reported individually.

e. Reimbursement Fund: The project owner shall provide reimbursement to the CDFG or approved third party for reasonable expenses incurred during title, easement, and documentation review; expenses incurred from other state agency reviews; and overhead related to providing HM lands.

The project owner is responsible for all HM lands acquisition/easement costs, including but not limited to, title and document review costs, as well as expenses incurred from other State agency reviews and overhead related to providing HM lands to the department or approved third party; escrow fees or costs; environmental contaminants clearance; and other site clean-up measures.

Verification: No less than 90 days prior to acquisition of the property, the project owner, or a third-party approved by the CPM, in consultation with CDFG, shall submit a formal acquisition proposal to the CPM and CDFG describing the parcel(s) intended for purchase.

Draft agreements to delegate land acquisition to CDFG or an approved third party and agreements to manage HM lands shall be submitted to Energy Commission Staff for review and approval (in consultation with CDFG) prior to land acquisition. Such agreements shall be mutually approved and executed at least 60 days prior to start of any project-related ground disturbance activities. The project owner shall provide written verification to the CPM that the HM lands have been acquired and recorded in favor of the approved recipient(s). Alternatively, before beginning project ground-disturbing activities, the project owner shall provide Security in accordance with this condition. Within 90 days after the land purchase, as determined by the date on the title, the project owner shall provide the CPM with a management plan for review and approval, in consultation with CDFG, for the HM lands and associated funds.

Within 90 days after completion of project construction, the project owner shall provide to the CPM verification that disturbance to Swainson's hawk habitat has been quantified and that funds required acquire and manage the habitat have been designated.

Rationale for proposed changes to BIO-20: In its comments submitted on March 9, 2010, the Applicant had requested that the mitigation ratio and number of acres for MGS mitigation required in BIO-20 for the PHPP plant site be revised from 2:1 to 1:1, or 366 acres rather than 693 acres. However, as discussed at the March 16 PSA Workshop, the Applicant is willing to accept the higher mitigation ratio with the understanding that compensation lands located either inside or outside Los Angeles County (see proposed change to BIO-10) can be acquired, provided they are suitable to meet all mitigation requirements, i.e., for MGS, Swainson's hawk foraging habitat, and rare plant species.

Based on this understanding, the Applicant agrees with BIO-20 as proposed in the PSA related to the ratio and acreage, but requests the removal of the requirement that compensation lands be "adjacent to" protected lands, and suggests changing the language to "adjacent to, or in the vicinity of" protected lands, to allow flexibility and agency discretion. We also request that the presumed cost of land be reduced from $4,000 to $2,000 an acre, which is consistent with several recent siting cases, for the PAR-like calculation.

MOHAVE GROUND SQUIRREL HABITAT COMPENSATORY MITIGATION

BIO-20 To fully mitigate for habitat loss and potential take of Mohave ground squirrel, the project owner shall acquire, in fee or in easement, no less than 693 acres of land suitable for this species and shall provide funding for the enhancement and long-term management of these compensation lands. This mitigation ratio is based on a 2:1 ratio for the power plant site and a 3:1 ratio for the transmission line route. The responsibilities for acquisition and management of the compensation lands may be delegated by written agreement to CDFG or to a third party, such as a non-governmental organization dedicated to Mojave Desert habitat conservation, subject to approval by the CPM in consultation with CDFG, prior to land acquisition or management activities. If habitat disturbance exceeds that described in this analysis, the project owner shall be responsible for acquisition and management of additional compensation lands or additional funds required to compensate for any additional habitat disturbances. Additional funds shall be based on the adjusted market value of compensation lands at the time of construction to acquire and manage habitat. The acquisition and management of compensation lands shall include the following elements:

1. Selection Criteria for Compensation Lands. The compensation lands selected for acquisition shall:
    a. Be in the western Mojave Desert;
    b. Provide moderate to good quality habitat for Mohave ground squirrel with capacity to improve in quality and value for this species;
    c. Be a contiguous block of land (preferably) or located so they result in a contiguous block of protected habitat;

d. Be adjacent to **or in the vicinity of** larger blocks of lands that are already protected such that there is connectivity between the acquired lands and the protected lands;

e. Be connected to lands for which there is reasonable evidence (for example, recent [<15 years] CNDDB occurrences on or immediately adjacent to the proposed lands) suggesting current occupation by Mohave ground squirrel, ideally with populations that are stable, recovering, or likely to recover;

f. Not have a history of intensive recreational use, grazing, or other disturbance that might make habitat recovery and restoration infeasible;

g. Not be characterized by high densities of invasive species, either on or immediately adjacent to the parcels under consideration, that might jeopardize habitat recovery and restoration; and

h. Not be encumbered by easements or uses that would preclude fencing of the site or preclude or unacceptably constrain management of the site for the primary benefit of the species and their habitat for which mitigation lands were secured.

2. Review and Approval of Compensation Lands Prior to Acquisition. A minimum of three months prior to acquisition of the property, the project owner, or a third party approved by the CPM in consultation with CDFG, shall submit a formal acquisition proposal to the CPM and CDFG describing the parcel(s) intended for purchase. This acquisition proposal shall discuss the suitability of the proposed parcel(s) as compensation lands for Mohave ground squirrel in relation to the criteria listed above. Approval from the CPM, in consultation with CDFG, shall be required for acquisition of all parcels comprising the 693 acres in advance of purchase.

3. Mitigation Security for Compensation Lands and Avoidance/Minimization Measures. The project owner or an approved third party shall complete acquisition of the proposed compensation lands prior to initiating ground-disturbing project activities. If Security is provided, the project owner, or an approved third party, shall complete the proposed compensation lands acquisition within 12 months of the start of project ground-disturbing activities. The project owner shall also provide financial assurances to the CPM, with copies of the document(s) to CDFG, to guarantee that an adequate level of funding is available to implement all impact avoidance, minimization, and compensation measures described in Condition of Certification BIO-19. Financial assurance shall be provided to the CPM in the form of an irrevocable letter of credit or another form of security (Security) approved by the CPM, prior to initiating ground-disturbing project activities. If necessary to draw on these funds, such funds shall be used solely for implementation of the measures associated with the project.

   Prior to initiation of ground disturbance, the Security shall be provided by the project owner and approved by the CPM, in consultation with CDFG, to ensure funding in the amount of $**2,459,250**~~3,846,150~~. These Security amounts were calculated as

follows and may be revised upon completion of a Property Analysis Record (PAR) or PAR-like analysis of the proposed compensation lands:

a. Land acquisition costs for compensation lands, calculated at $**2,000**~~4,000~~/acre for 693 acres: $**1,386,000**~~2,772,000.00~~;

b. Costs of enhancing compensation lands, calculated at $250/acre for 693 acres: $173,250~~.00~~; and

c. Costs of establishing an endowment for long-term management of compensation lands, calculated at $1,300/acre for 693 acres: $900,000~~.00~~.

4. Compensation Lands Acquisition Conditions. The project owner shall comply with the following conditions relating to acquisition of compensation lands after the CPM, in consultation with CDFG, has approved the proposed compensation lands and received Security, if any, as described above.

a. Preliminary Report: The project owner, or approved third party, shall provide a recent preliminary title report, initial hazardous materials survey report, biological analysis, and other necessary documents for the proposed 693 acres. All documents conveying or conserving compensation lands and all conditions of title/easement are subject to a field review and approval by the CPM, in consultation with CDFG, California Department of General Services and, if applicable, the Fish and Game Commission and/or the Wildlife Conservation Board.

b. Title/Conveyance: The project owner shall transfer fee title or a conservation easement to the 693 acres of compensation lands to CDFG under terms approved by CDFG. Alternatively, a non-profit organization qualified to manage compensation lands (pursuant to California Government Code section 65965) and approved by CDFG and the CPM may hold fee title or a conservation easement over the habitat mitigation lands. If the approved non-profit organization holds title, a conservation easement shall be recorded in favor of CDFG in a form approved by CDFG. If the approved non-profit holds a conservation easement, CDFG shall be named a third party beneficiary. If a Security is provided, the project owner or an approved third party shall complete the proposed compensation lands acquisition within 12 months of the start of project ground-disturbing activities.

c. Enhancement Fund. The project owner shall fund the initial protection and enhancement of the 693 acres by providing the enhancement funds to the CDFG. Alternatively, a non-profit organization may hold the enhancement funds if they are qualified to manage the compensation lands (pursuant to California Government Code section 65965) and if they meet the approval of CDFG and the CPM. If CDFG takes fee title to the compensation lands, the enhancement fund must go to CDFG.

d. Endowment Fund. Prior to ground-disturbing project activities, the project owner shall provide to CDFG a capital endowment in the amount determined through the Property Analysis Record (PAR) or PAR-like analysis that will be conducted for the 693 acres of compensation lands. Alternatively, a non-profit organization may hold the endowment fees if they are qualified to manage the compensation lands (pursuant to California Government Code section 65965) and if they meet the approval of CDFG and the CPM. If CDFG takes fee title to the compensation lands, the endowment must go to CDFG, where it will be held in the special deposit fund established pursuant to California Government Code section 16370. If the special deposit fund is not used to manage the endowment, the California Wildlife Foundation shall manage the endowment for CDFG and with CDFG guidance.

   The project owner and the CPM shall ensure that an agreement is in place with the endowment holder/manager to ensure the following conditions:

   - Interest. Interest generated from the initial capital endowment shall be available for reinvestment into the principal and for the long-term operation, management, and protection of the approved compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the compensation lands.
   - Withdrawal of Principal. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the CDFG or the approved third-party endowment manager to ensure the continued viability of the species on the 693 acres. If CDFG takes fee title to the compensation lands, monies received by CDFG pursuant to this provision shall be deposited in a special deposit fund established pursuant to Government Code section 16370. If the special deposit fund is not used to manage the endowment, the California Wildlife Foundation will manage the endowment for CDFG with CDFG guidance.
   - Pooling Endowment Funds. CDFG, or a CPM- and CDFG-approved non-profit organization qualified to hold endowments pursuant to California Government Code section 65965, may pool the endowment with other endowments for the operation, management, and protection of the 693 acres for local populations of Mohave ground squirrel. However, for reporting purposes, the endowment fund must be tracked and reported individually.

e. Reimbursement Fund: The project owner shall provide reimbursement to the CDFG or approved third party for reasonable expenses incurred during title, easement, and documentation review; expenses incurred from other State agency reviews; and overhead related to providing compensation lands.

The project owner is responsible for all compensation lands acquisition/easement costs, including but not limited to, title and document review costs, as well as expenses incurred from other State agency reviews and overhead related to providing compensation lands to the department or approved third party; escrow fees or costs; environmental contaminants clearance; and other site clean-up measures.

Verification: No less than 90 days prior to acquisition of the property, the project owner, or a third-party approved by the CPM, in consultation with CDFG, shall submit a formal acquisition proposal to the CPM and CDFG describing the parcel(s) intended for purchase.

Draft agreements to delegate land acquisition to CDFG or an approved third party and agreements to manage compensation lands shall be submitted to Energy Commission Staff for review and approval (in consultation with CDFG) prior to land acquisition. Such agreements shall be mutually approved and executed at least 60 days prior to the start of any project-related ground disturbance activities. The project owner shall provide written verification to the CPM that the compensation lands or conservation easements have been acquired and recorded in favor of the approved recipient(s). Alternatively, before beginning project ground-disturbing activities, the project owner shall provide Security in accordance with this condition. Within 90 days after the land purchase, as determined by the date on the title, the project owner shall provide the CPM with a management plan for review and approval, in consultation with CDFG, for the compensation lands and associated funds. If habitat disturbance exceeded that described in this analysis, the CPM shall notify the project owner of any additional funds required or lands that must be purchased to compensate for any additional habitat disturbances at the adjusted market value at the time of construction to acquire and manage habitat.

Rationale for proposed changes: In its comments submitted on March 9, 2010, the Applicant requested that desert kit fox be removed from BIO-21. The CEC Staff consultant recommended that kit fox be left in the COC since the pre-construction survey activities for badgers would be essentially the same for kit fox. Therefore, the Applicant agrees to accept this COC with only the other change shown.

AMERICAN BADGER AND DESERT KIT FOX IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-21 Prior to ground disturbance the owner shall conduct pre-construction surveys for American badgers and desert kit fox. These surveys may be conducted concurrent with the desert tortoise **clearance** surveys. Surveys shall be conducted as described below:

Biological Monitors shall perform pre-construction surveys for badger and kit fox dens in the project area, including areas within 250 feet of all project facilities, utility corridors, and access roads. If dens are detected, each den shall be classified as inactive, potentially active, or definitely active. Inactive dens that would be directly impacted by construction

activities shall be excavated by hand and backfilled to prevent reuse by badgers or kit fox. Potentially active dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium (such as diatomaceous earth or fire clay) and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If present, occupied badger dens shall be flagged and ground-disturbing activities avoided within 50 feet of the occupied den avoided. Maternity dens shall be avoided during the pup-rearing season (15 February through 1 July) and a minimum 200-foot buffer established. Buffers may be modified with the concurrence of CDFG and CPM. Maternity dens shall be flagged for avoidance, identified on construction maps, and a biological monitor shall be present during construction.

If avoidance of a non-maternity den is not feasible, badgers shall be relocated by slowly excavating the burrow (either by hand or mechanized equipment under the direct supervision of the biologist, removing no more that 4 inches at a time) before or after the rearing season (15 February through 1 July). Any relocation of badgers shall occur only after consultation with the CDFG and CPM. A written report documenting the badger removal shall be provided to the CPM within 30 days of relocation.

Verification: The project owner shall submit a report to the CPM and CDFG within 30 days of completion of badger and kit fox surveys. The report shall describe survey methods, results, mitigation measures implemented, and the results of the mitigation.

Rationale for proposed changes: In its comments submitted on March 9, 2010, the Applicant had requested that BIO-22 be deleted in its entirety. However, based on the discussion at the March 16 PSA Workshop, the Applicant agrees to accept this requirement, but requests that the proposed changes be made to the condition in order to clarify the extent of the pre-construction surveys needed.

BAT AVOIDANCE AND MINIMIZATION MEASURES

BIO-22 Prior to ground disturbance **in areas containing potentially suitable habitat for bats (*i.e.*, along transmission line Segment 2),** the project owner shall conduct a survey for roosting bats within 200 feet of project activities within 15 days prior to any grading of rocky outcrops or removal of trees (particularly trees 12 inches in diameter or greater at 4.5 feet above grade with loose bark or other cavities).

The project owner shall also conduct surveys for roosting bats **in areas containing potentially suitable habitat for bats** during the maternity season (1 March to 31 July) within 300 feet of project activities. Trees and rocky outcrops shall be surveyed by a

qualified bat biologist Surveys shall include a minimum of one day and one evening. The biologist shall be approved by the Designated Biologist. If active maternity roosts or hibernacula are found, the rock outcrop or tree occupied by the roost shall be avoided (i.e., not removed) by the project, if feasible. If avoidance of the maternity roost is not feasible, the bat biologist shall survey (through the use of radio telemetry or other CDFG/CPM-approved methods) for nearby alternative maternity colony sites. If the bat biologist determines in consultation with and with the approval of the CDFG, and CPM that there are alternative roost sites used by the maternity colony and young are not present, then no further action is required. However, if there are no alternative roost~~s~~ sites used by the maternity colony, provision of substitute roosting bat habitat is required. If active maternity roosts are absent, but a hibernaculum (i.e., a non-maternity roost) is present, then exclusion of bats prior to demolition of roosts is required.

1. Provision of substitute roosting bat habitat. If a maternity roost will be impacted by the project, and no alternative maternity roosts are in use near the site, substitute roosting habitat for the maternity colony shall be provided on, or in close proximity to, the project site no less than three months prior to the eviction of the colony. Alternative roost sites will be constructed in accordance with the specific bats' requirements in coordination with CDFG and the CPM. Alternative roost sites must be of comparable size and proximal in location to the impacted colony. The CDFG shall also be notified of any hibernacula or active nurseries within the construction zone.

2. Exclude bats prior to demolition of roosts. If non-breeding bat hibernacula are found in trees scheduled to be removed or in crevices in rock outcrops within the grading footprint, the individuals shall be safely evicted, under the direction of the qualified bat biologist, by opening the roosting area to allow airflow through the cavity or other means determined appropriate by the bat biologist (e.g., installation of one-way doors). In situations requiring one-way doors, a minimum of one week shall pass after doors are installed and temperatures should be sufficiently warm for bats to exit the roost. This action should allow all bats to leave during the course of one week. Roosts that need to be removed in situations where the use of one-way doors is not necessary in the judgment of the qualified bat biologist shall first be disturbed by various means at the direction of the bat biologist at dusk to allow bats to escape during the darker hours, and the roost tree shall be removed or the grading shall occur the next day (i.e., there shall be no less or more than one night between initial disturbance and the grading or tree removal). If an active maternity roost is located in an area to be impacted by the project, and alternative roosting habitat is available, the demolition of the roost site must commence before maternity colonies form (i.e., prior to 1 March) or after young are flying (i.e., after 31 July) using the exclusion techniques described above.

Verification: The project owner shall submit a report to the CPM and CDFG within 30 days of completion of roosting bat surveys and any subsequent mitigation. The report shall describe survey methods, results, mitigation measures implemented, and the results of the mitigation.

Biological Resources

Attachment BR-2

USACE Letter Confirming No Impact to Jurisdictional Waters of the U.S.

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

April 5, 2010

REPLY TO
ATTENTION OF
Regulatory Division

Steve Williams, City of Palmdale
c/o Nick Ricono, AMEC Earth & Environmental, Inc.
9210 Sky Park Court, Suite 200
San Diego, California 92123

SUBJECT: Determination regarding requirement for Department of the Army Permit

Dear Mr. Williams:

Reference is made to your request (File No. SPL-2009-00634-PHT) dated January 29, 2010, for clarification on whether a Department of the Army Permit is required for the Palmdale Hybrid Power Project, located in the city of Palmdale and unincorporated areas of Los Angeles County, California.

As you may know, the Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. The first test determines whether or not the proposed project is located in a water of the United States (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act. If both tests are met, *and* the regulated activity is located within the Corps' geographic jurisdiction then a permit is required. As part of our evaluation process, we have made the determination below.

Geographic jurisdiction:

Based on the attached preliminary jurisdictional determination dated April 2, 2010, we have determined the Palmdale Hybrid Power Project site contains waters of the United States in the locations depicted as 16, 32, 33, 34, 35, 36, 37, 38, 39, 40a, 40b, and 43 pursuant to 33 C.F.R. §325.9.

Based on the attached approved jurisdictional determination dated April 2, 2010, we have determined the Palmdale Hybrid Power Project site does not contain waters of the United States in the locations depicted as 1a-c, 2, 3, 4, 5, 6, 7, 8a-d, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 41, and 42 on the enclosed drawing, pursuant to 33 C.F.R. §325.9.

Activity:

Based on the information you have provided, we have determined the proposed work, were it to occur in waters of the U.S. (see above, *"Geographic jurisdiction"*), would involve a

discharge of dredged or fill material and therefore, and would be regulated under Section 404 of the Clean Water Act if the activity is performed in the manner described in your application.

Requirement for a Department of the Army Permit:

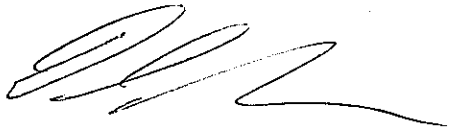
Based on the information you have provided, the proposed Palmdale Hybrid Power Project has been designed such that impacts to waters of the U.S. would be avoided. Although transmission lines would traverse waters of the U.S., all proposed discharges of dredged or fill material would occur outside of the ordinary high water mark, the lateral limits of our geographic jurisdiction.

Based on the discussion above, we have determined your proposed project is not subject to our jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit would not be required from our office if the activity is performed in the manner described.

Notwithstanding our determination above, your proposed project may be regulated under other Federal, State, and local laws.

If you have any questions, please contact Phuong Trinh of my staff at 213.452.3372 or via e-mail at Phuong.H.Trinh@usace.army.mil. Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: http://per2.nwp.usace.army.mil/survey.html.

Sincerely,



Daniel P. Swenson
Chief, Los Angeles Section
North Coast Branch
Regulatory Division

Enclosures

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

April 2, 2010

REPLY TO
ATTENTION OF
Regulatory Division

Steve Williams, City of Palmdale
c/o Nick Ricono, AMEC Earth & Environmental, Inc.
9210 Sky Park Court, Suite 200
San Diego, California 92123

SUBJECT: Approved Jurisdictional Determination regarding presence/absence of geographic jurisdiction

Dear Mr. Williams:

Reference is made to your request (File No. SPL-2009-00634-PHT) dated January 29, 2010, for an approved Department of the Army jurisdictional determination (JD) for the Palmdale Hybrid Power Project site, located in the city of Palmdale and unincorporated areas of Los Angeles County, California.

As you may know, the Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, then a permit is required. The first test determines whether or not the proposed project is located in a water of the United States (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act. As part of the evaluation process, pertaining to the first test only, we have made the jurisdictional determination below.

Based on available information, we have determined there are no waters of the United States on the project site, in the locations depicted as 1a-c, 2, 3, 4, 5, 6, 7, 8a-d, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 41, and 42 on the enclosed drawing. The basis for our determination can be found in the enclosed JD forms.

The aquatic resources identified as 1a-c, 2, 3, 4, 5, 6, 7, 8a-d, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 on the above drawing are intrastate isolated waters with no apparent interstate or foreign commerce connection. As such, these waters are not currently regulated by the Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Clean Water Act. Other Federal, State, and local laws may apply to your activities. In particular, you may need authorization from the California State Water Resources Control Board and/or the U.S. Fish and Wildlife Service.

This letter contains an approved jurisdictional determination for the Palmdale Hybrid Power Project site. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet (Appendix A) and Request for Appeal (RFA) form. If you request to

appeal this decision you must submit a completed RFA form to the Corps South Pacific Division Office at the following address:

Tom Cavanaugh
Administrative Appeal Review Officer,
U.S. Army Corps of Engineers
South Pacific Division, CESPD-PDS-O, 2042B
1455 Market Street, San Francisco, California 94103-1399

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. Part 331.5, and that it has been received by the Division Office within 60 days of the date on the NAP. Should you decide to submit an RFA form, it must be received at the above address by **June 4, 2010**. It is not necessary to submit an RFA form to the Division office if you do not object to the decision in this letter.

This verification is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. If you wish to submit new information regarding the approved jurisdictional determination for this site, please submit this information to Phuong Trinh at the letterhead address by **June 4, 2010**. The Corps will consider any new information so submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. A revised or reissued jurisdictional determination can be appealed as described above.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the particular Project site identified in your request. 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.

If you have any questions, please contact Phuong Trinh of my staff at 213.452.3372 or via e-mail at Phuong.H.Trinh@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: http://per2.nwp.usace.army.mil/survey.html.

Sincerely,

Daniel P. Swenson
Chief, Los Angeles Section
North Coast Branch
Regulatory Division

Enclosures

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Steve Williams, City of Palmdale	File Number: SPL-2009-00634-PHT	Date: April 2, 2010

Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I: The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://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 engineer. This form must be received by the division engineer within 60 days of the date of this notice.

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

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

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

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

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

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

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

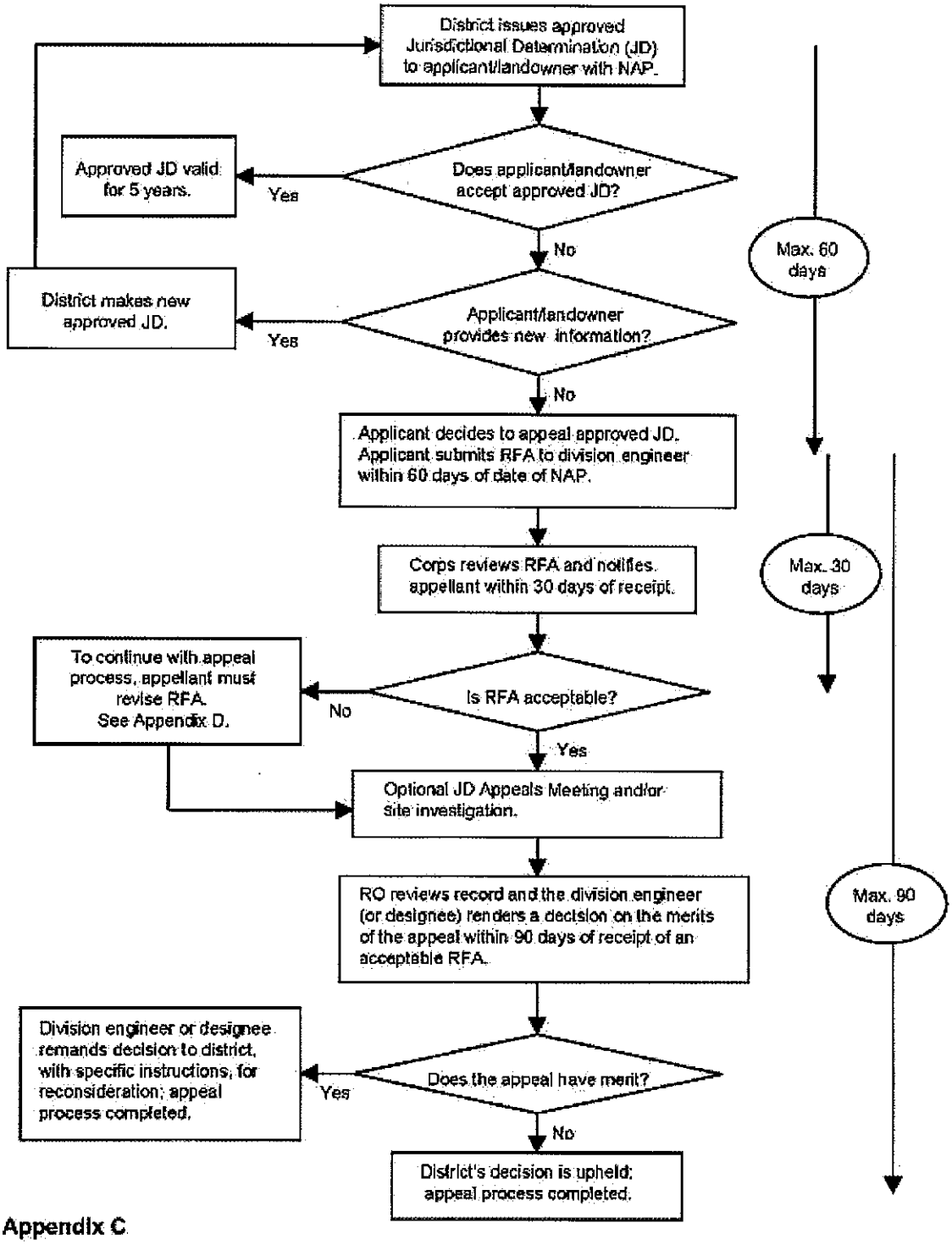
POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
DISTRICT ENGINEER Los Angeles District, Corps of Engineers ATTN: Chief, Regulatory Division P.O. Box 532711 Los Angeles, CA 90053-2325 Tel. (213) 452-3425	DIVISION ENGINEER South Pacific Division, Corps of Engineers ATTN: Tom Cavanaugh Administrative Appeal Review Officer, South Pacific Division, CESPD-PDS-O, 2042B 1455 Market Street, San Francisco, California 94103-1399 Tel. (415) 503-6574

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

	Date:	Telephone number:
_____ Signature of appellant or agent.		

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

April 2, 2010

REPLY TO
ATTENTION OF
Regulatory Division

Steve Williams, City of Palmdale
c/o Nick Ricono, AMEC Earth & Environmental, Inc.
9210 Sky Park Court, Suite 200
San Diego, California 92123

SUBJECT: Preliminary Jurisdictional Determination regarding presence/absence of geographic jurisdiction

Dear Mr. Williams:

Reference is made to your request (File No. SPL-2009-00634-PHT) dated January 29, 2010, for a preliminary Department of the Army jurisdictional determination (JD) for the Palmdale Hybrid Power Project site, located in the city of Palmdale and unincorporated areas of Los Angeles County, California. As part of the evaluation process, we have made the jurisdictional determination below.

As you may know, the Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, then a permit is required. The first test determines whether or not the proposed project is located in a water of the United States (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act. As part of the evaluation process, pertaining to the first test only, we have made the jurisdictional determination below.

Based on available information, it appears waters of the United States may be present on the Palmdale Hybrid Power Project site in the approximate locations noted as 16, 32, 33, 34, 35, 36, 37, 38, 39, 40a, 40b, and 43 on the enclosed drawing. The basis for the preliminary JD can be found on the enclosed "Preliminary Jurisdictional Determination Form." Please note preliminary JDs are non-binding ". . . written indications that there may be waters of the United States, including wetlands, on a parcel or indications of the approximate location(s) of waters of the United States or wetlands on a parcel. Preliminary JDs are advisory in nature and may not be appealed." (33 C.F.R. 331.2.). 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 for this site. The option to obtain an approved JD in this instance and at this time has been declined. For purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S.

Please be reminded that preliminary JDs may not be appealed through the Corps' administrative appeal process set out at 33 CFR Part 331. Preliminary jurisdictional determinations are fully explained in the enclosed Regulatory Guidance Letter 08-02, dated

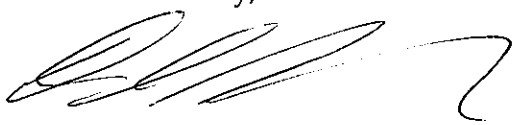
June 26, 2008. Further, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). 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.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the Palmdale Hybrid Power Project, Los Angeles County project site identified in your request. 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.

If you have any questions, please contact Phuong Trinh of my staff at 213.452.3372 or via e-mail at Phuong.H.Trinh@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: http://per2.nwp.usace.army.mil/survey.html.

Sincerely,



Daniel P. Swenson
Chief, Los Angeles Section
North Coast Branch
Regulatory Division

Enclosures

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 02-Apr-2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, SPL-2009-00634-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	CA - California
County/parish/borough:	Los Angeles
City:	
Lat:	34.48306
Long:	-118.1187
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 11N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 11N

Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW):
Name of watershed or Hydrologic Unit Code (HUC):

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☑ Office Determination Date: 02-Apr-2010

☐ Field Determination Date(s): ☐

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wash 1	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m^2)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: [ ]
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The unnamed ephemeral wash (Wash 1) is located in the Anaverde Creek 12-digit HUC. Based on tophographic maps and NRCS HUC data, during large storm events, flows from the wash would drain into the Lower Amargosa Creek, Piute Ponds, and eventually terminate at Rosamond Dry Lake. On January 28, 2002, the Corps had determined that the Rosamond Dry Lake does not have a substantial interstate commerce connection and, therefore, is not subject to Clean Water Act section 404 jurisdiction. There is no evidence that water from the wash is utilized for industrial purposes, recreation, fish or shellfish production that generates interstate commerce and there is also no evidence of navigation in the wash. As a result, the wash is a non-navigable isolated water body that does not exhibit substantial interstate commerce and is not subject to Clean Water Act section 404 jurisdiction.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size: [ ]
Drainage area: [ ]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are [ ] river miles from TNW.
Project waters are [ ] river miles from RPW.
Project Waters are [ ] aerial (straight) miles from TNW.
Project waters are [ ] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

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

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wash 1	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wash 1	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m^2)
Wash 1	Isolated (interstate or intrastate) waters, including isolated wetlands	-	1821.0852
Total:		**0**	**1821.0852**

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

☐ 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 soley on the "Migratory Bird Rule" (MBR):

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--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	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

[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.

[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.

[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.

[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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 02-Apr-2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, SPL-2009-00634-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	CA - California
County/parish/borough:	Los Angeles
City:	
Lat:	34.48306
Long:	-118.1187
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 11N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 11N

Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW):
Name of watershed or Hydrologic Unit Code (HUC):

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☑ Office Determination Date: 02-Apr-2010

☐ Field Determination Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wash 2	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 3	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 4	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 5	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 6	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m^2)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: [ ]
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The unnamed ephemeral washes (Washes 2, 3, 4, 5, 6) are located in the Lake Palmdale 12-digit HUC. Based on tophographic maps and NRCS HUC data, during large storm events, flows from the washes would drain into Piute Ponds and eventually terminate at Rosamond Dry Lake. On January 28, 2002, the Corps had determined that the Rosamond Dry Lake does not have a substantial interstate commerce connection and, therefore, is not subject to Clean Water Act section 404 jurisdiction. There is no evidence that water from the washes is utilized for industrial purposes, recreation, fish or shellfish production that generates interstate commerce and there is also no evidence of navigation in the washes. As a result, the washes are non-navigable isolated water bodies that do not exhibit substantial interstate commerce and are not subject to Clean Water Act section 404 jurisdiction.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size: [ ]
Drainage area: [ ]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

..... Tributary flows directly into TNW.

..... Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are [ ] river miles from TNW.
Project waters are [ ] river miles from RPW.
Project Waters are [ ] aerial (straight) miles from TNW.
Project waters are [ ] aerial(straight) miles from RPW.

..... Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

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

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wash 2	-	-	-	-	-	-	-
Wash 3	-	-	-	-	-	-	-
Wash 4	-	-	-	-	-	-	-
Wash 5	-	-	-	-	-	-	-
Wash 6	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wash 2	-	-
Wash 3	-	-
Wash 4	-	-
Wash 5	-	-
Wash 6	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m^2)
Wash 2	Isolated (interstate or intrastate) waters, including isolated wetlands	-	283.27992
Wash 3	Isolated (interstate or intrastate) waters, including isolated wetlands	-	445.15416
Wash 4	Isolated (interstate or intrastate) waters, including isolated wetlands	-	283.27992
Wash 5	Isolated (interstate or intrastate) waters, including isolated wetlands	-	1173.58824
Wash 6	Isolated (interstate or intrastate) waters, including isolated wetlands	-	1173.58824
Total:		**0**	**3358.89048**

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

☐ 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 soley on the "Migratory Bird Rule" (MBR):

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--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	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

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[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.

[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.

[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.

[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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 02-Apr-2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, SPL-2009-00634-JD3

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	CA - California
County/parish/borough:	Los Angeles
City:	
Lat:	34.48306
Long:	-118.1187
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 11N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 11N

Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW):
Name of watershed or Hydrologic Unit Code (HUC):

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☑ Office Determination Date: 02-Apr-2010

☐ Field Determination Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wash 7	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m^2)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: [ ]
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The unnamed ephemeral wash (Wash 7) is located in the Lower Amargosa Creek 12-digit HUC. Based on tophographic maps and NRCS HUC data, during large storm events, flows from the wash would drain into Piute Ponds and eventually terminate at Rosamond Dry Lake. On January 28, 2002, the Corps had determined that the Rosamond Dry Lake does not have a substantial interstate commerce connection and, therefore, is not subject to Clean Water Act section 404 jurisdiction. There is no evidence that water from the wash is utilized for industrial purposes, recreation, fish or shellfish production that generates interstate commerce and there is also no evidence of navigation in the wash. As a result, the wash is a non-navigable isolated water body that does not exhibit substantial interstate commerce and is not subject to Clean Water Act section 404 jurisdiction.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size: [ ]
Drainage area: [ ]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

Tributary flows directly into TNW.
Tributary flows through [ ] tributaries before entering TNW.
:Number of tributaries

Project waters are [ ] river miles from TNW.
Project waters are [ ] river miles from RPW.
Project Waters are [ ] aerial (straight) miles from TNW.
Project waters are [ ] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

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

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wash 7	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wash 7	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m^2)
Wash 7	Isolated (interstate or intrastate) waters, including isolated wetlands	-	1375.93104
Total:		**0**	**1375.93104**

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

☐ 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 soley on the "Migratory Bird Rule" (MBR):

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--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	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

[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.

[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.

[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.

[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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 02-Apr-2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, SPL-2009-00634-JD4

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	CA - California
County/parish/borough:	Los Angeles
City:	
Lat:	34.48306
Long:	-118.1187
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 11N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 11N

Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW):
Name of watershed or Hydrologic Unit Code (HUC):

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☑ Office Determination Date: 02-Apr-2010

☐ Field Determination Date(s): ☐

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wash 8	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m²)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: [ ]
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The unnamed ephemeral wash (Wash 8) is located in the Upper Amargosa Creek 12-digit HUC. Based on tophographic maps and NRCS HUC data, during large storm events, flows from the wash would drain into the Middle Amargosa Creek, Lower Amargosa Creek, Piute Ponds, and eventually terminate at Rosamond Dry Lake. On January 28, 2002, the Corps had determined that the Rosamond Dry Lake does not have a substantial interstate commerce connection and, therefore, is not subject to Clean Water Act section 404 jurisdiction. There is no evidence that water from the wash is utilized for industrial purposes, recreation, fish or shellfish production that generates interstate commerce and there is also no evidence of navigation in the wash. As a result, the wash is a non-navigable isolated water body that does not exhibit substantial interstate commerce and is not subject to Clean Water Act section 404 jurisdiction.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size: [ ]
Drainage area: [ ]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are [ ] river miles from TNW.
Project waters are [ ] river miles from RPW.
Project Waters are [ ] aerial (straight) miles from TNW.
Project waters are [ ] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

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

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wash 8	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wash 8	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m^2)
Wash 8	Isolated (interstate or intrastate) waters, including isolated wetlands	-	3965.91888
Total:		**0**	**3965.91888**

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

☐ 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 soley on the "Migratory Bird Rule" (MBR):

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--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	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

[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.

[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.

[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.

[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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 02-Apr-2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, SPL-2009-00634-JD5

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	CA - California
County/parish/borough:	Los Angeles
City:	
Lat:	34.48306
Long:	-118.1187
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 11N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 11N

Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW):
Name of watershed or Hydrologic Unit Code (HUC):

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☑ Office Determination Date: 02-Apr-2010

☐ Field Determination Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wash 22	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 23	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 24	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 25	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 26	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 27	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 28	Isolated (interstate or intrastate) waters, including isolated wetlands

Wash 29	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 30 Little Rock Wash	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 31	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 9 Little Rock Wash	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m^2)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: [ ]
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The unnamed ephemeral washes (Washes 22, 23, 24, 25, 26, 27, 28, 29, 31) are tributary to Little Rock Wash. The washes and Little Rock Wash are located in the Brainard Canyon-Little Rock Wash 12-digit HUC. Based on tophographic maps and NRCS HUC data, during large storm events, flows from the washes would terminate at Rosamond Dry Lake. On January 28, 2002, the Corps had determined that the Rosamond Dry Lake does not have a substantial interstate commerce connection and, therefore, is not subject to Clean Water Act section 404 jurisdiction. There is no evidence that water from the washes is utilized for industrial purposes, recreation, fish or shellfish production that generates interstate commerce and there is also no evidence of navigation in the washes. As a result, the washes are non-navigable isolated water bodies that do not exhibit substantial interstate commerce and is not subject to Clean Water Act section 404 jurisdiction.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size: [ ]
Drainage area: [ ]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are [ ] river miles from TNW.
Project waters are [ ] river miles from RPW.
Project Waters are [ ] aerial (straight) miles from TNW.
Project waters are [ ] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:

Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

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

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wash 22	-	-	-	-	-	-	-
Wash 23	-	-	-	-	-	-	-
Wash 24	-	-	-	-	-	-	-
Wash 25	-	-	-	-	-	-	-
Wash 26	-	-	-	-	-	-	-
Wash 27	-	-	-	-	-	-	-
Wash 28	-	-	-	-	-	-	-
Wash 29	-	-	-	-	-	-	-
Wash 30 Little Rock Wash	-	-	-	-	-	-	-
Wash 31	-	-	-	-	-	-	-
Wash 9 Little Rock Wash	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wash 22	-	-
Wash 23	-	-
Wash 24	-	-
Wash 25	-	-
Wash 26	-	-
Wash 27	-	-
Wash 28	-	-
Wash 29	-	-
Wash 30 Little Rock Wash	-	-
Wash 31	-	-
Wash 9 Little Rock Wash	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m^2)
Wash 22	Isolated (interstate or intrastate) waters, including isolated wetlands	-	445.15416
Wash 23	Isolated (interstate or intrastate) waters, including isolated wetlands	-	283.27992
Wash 24	Isolated (interstate or intrastate) waters, including isolated wetlands	-	930.77688
Wash 25	Isolated (interstate or intrastate) waters, including isolated wetlands	-	1173.58824
Wash 26	Isolated (interstate or intrastate) waters, including isolated wetlands	-	1375.93104
Wash 27	Isolated (interstate or intrastate) waters, including isolated wetlands	-	1618.7424
Wash 28	Isolated (interstate or intrastate) waters, including isolated wetlands	-	566.55984
Wash 29	Isolated (interstate or intrastate) waters, including isolated wetlands	-	566.55984
Wash 30 Little Rock Wash	Isolated (interstate or intrastate) waters, including isolated wetlands	-	29946.7344
Wash 31	Isolated (interstate or intrastate) waters, including isolated wetlands	-	2792.33064
Wash 9 Little Rock Wash	Isolated (interstate or intrastate) waters, including isolated wetlands	-	24604.88448
Total:		**0**	**64304.54184**

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

☐ 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 soley on the "Migratory Bird Rule" (MBR):

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--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	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

---

[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.

[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.

[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.

[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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 02-Apr-2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, SPL-2009-00634-JD6

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	CA - California
County/parish/borough:	Los Angeles
City:	
Lat:	34.48306
Long:	-118.1187
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 11N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 11N

Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW):
Name of watershed or Hydrologic Unit Code (HUC):

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☑ Office Determination Date: 02-Apr-2010

☐ Field Determination Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wash 10	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 11	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 12	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 20	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 21	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m^2)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: [ ]
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The unnamed ephemeral washes (Washes 10, 11, 12, 20, 21) are located in the 12-digit HUC 180902061602. Based on tophographic maps and NRCS HUC data, during large storm events, flows from the washes would eventually terminate at Rosamond Dry Lake. On January 28, 2002, the Corps had determined that the Rosamond Dry Lake does not have a substantial interstate commerce connection and, therefore, is not subject to Clean Water Act section 404 jurisdiction. There is no evidence that water from the washes is utilized for industrial purposes, recreation, fish or shellfish production that generates interstate commerce and there is also no evidence of navigation in the washes. As a result, the washes are non-navigable isolated water bodies that do not exhibit substantial interstate commerce and are not subject to Clean Water Act section 404 jurisdiction.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size: [ ]
Drainage area: [ ]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

.... Tributary flows directly into TNW.

.... Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are [ ] river miles from TNW.
Project waters are [ ] river miles from RPW.
Project Waters are [ ] aerial (straight) miles from TNW.
Project waters are [ ] aerial(straight) miles from RPW.

.... Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

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

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wash 10	-	-	-	-	-	-	-
Wash 11	-	-	-	-	-	-	-
Wash 12	-	-	-	-	-	-	-
Wash 20	-	-	-	-	-	-	-
Wash 21	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wash 10	-	-
Wash 11	-	-
Wash 12	-	-
Wash 20	-	-
Wash 21	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m^2)
Wash 10	Isolated (interstate or intrastate) waters, including isolated wetlands	-	283.27992
Wash 11	Isolated (interstate or intrastate) waters, including isolated wetlands	-	566.55984
Wash 12	Isolated (interstate or intrastate) waters, including isolated wetlands	-	1861.55376
Wash 20	Isolated (interstate or intrastate) waters, including isolated wetlands	-	930.77688
Wash 21	Isolated (interstate or intrastate) waters, including isolated wetlands	-	930.77688
Total:		**0**	**4572.94728**

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

☐ 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 soley on the "Migratory Bird Rule" (MBR):

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--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	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

---

[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.

[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.

[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.

[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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 02-Apr-2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, SPL-2009-00634-JD7

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	CA - California
County/parish/borough:	Los Angeles
City:	
Lat:	34.48306
Long:	-118.1187
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 11N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 11N

Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW):
Name of watershed or Hydrologic Unit Code (HUC):

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☑ Office Determination Date: 02-Apr-2010

☐ Field Determination Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wash 13	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 14	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 15	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 17	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 18	Isolated (interstate or intrastate) waters, including isolated wetlands
Wash 19	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m^2)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: [ ]
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The unnamed ephemeral washes (Washes 13, 14, 15, 17, 18, 19) are located in the Indian Bill Canyon 12-digit HUC. Based on tophographic maps and NRCS HUC data, during large storm events, flows from the washes would eventually terminate at Rosamond Dry Lake. On January 28, 2002, the Corps had determined that the Rosamond Dry Lake does not have a substantial interstate commerce connection and, therefore, is not subject to Clean Water Act section 404 jurisdiction. There is no evidence that water from the washes is utilized for industrial purposes, recreation, fish or shellfish production that generates interstate commerce and there is also no evidence of navigation in the washes. As a result, the washes are non-navigable isolated water bodies that do not exhibit substantial interstate commerce and are not subject to Clean Water Act section 404 jurisdiction.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size: [ ]
Drainage area: [ ]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are [ ] river miles from TNW.
Project waters are [ ] river miles from RPW.
Project Waters are [ ] aerial (straight) miles from TNW.
Project waters are [ ] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

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

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wash 13	-	-	-	-	-	-	-
Wash 14	-	-	-	-	-	-	-
Wash 15	-	-	-	-	-	-	-
Wash 17	-	-	-	-	-	-	-
Wash 18	-	-	-	-	-	-	-
Wash 19	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wash 13	-	-
Wash 14	-	-
Wash 15	-	-
Wash 17	-	-
Wash 18	-	-
Wash 19	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m^2)
Wash 13	Isolated (interstate or intrastate) waters, including isolated wetlands	-	202.3428
Wash 14	Isolated (interstate or intrastate) waters, including isolated wetlands	-	202.3428
Wash 15	Isolated (interstate or intrastate) waters, including isolated wetlands	-	202.3428
Wash 17	Isolated (interstate or intrastate) waters, including isolated wetlands	-	121.40568
Wash 18	Isolated (interstate or intrastate) waters, including isolated wetlands	-	445.15416
Wash 19	Isolated (interstate or intrastate) waters, including isolated wetlands	-	1375.93104
Total:		**0**	**2549.51928**

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

☐ 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 soley on the "Migratory Bird Rule" (MBR):

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--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	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

---

[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.

[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.

[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.

[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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 02-Apr-2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, SPL-2009-00634-JD8

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	CA - California
County/parish/borough:	Los Angeles
City:	
Lat:	34.48306
Long:	-118.1187
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 11N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 11N

Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW):
Name of watershed or Hydrologic Unit Code (HUC):

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☐ Office Determination Date:

☑ Field Determination Date(s): ☐ 04-Nov-2009

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wash 41	Uplands
Wash 42	Uplands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m^2)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: [ ]
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Washes 41 and 42 are located within the Santa Clara River watershed. However, both washes lack sufficient indicators of ordinary high water mark. Wash 42 begins on a residential property as a swale and displays signs of erosion after crossing a roadway. However, wash 42 loses signs of bank and continues as a swale downstream. Wash 41 begins and continues as a swale lacking sufficient indicators of ordinary high water mark.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size: [ ]
Drainage area: [ ]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are [ ] river miles from TNW.
Project waters are [ ] river miles from RPW.
Project Waters are [ ] aerial (straight) miles from TNW.
Project waters are [ ] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):

Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

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

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]
Not Applicable.

Identify water body and summarize rationale supporting determination:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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 soley on the "Migratory Bird Rule" (MBR):

Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--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	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
----USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

---

[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.

[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.

[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.

[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.

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 #: SPL-2009-634-PHT | PJD Date: 1/14/10

State: CA | City/County: Los Angeles

Nearest Waterbody: Palmdale Ditch and Santa Clara River

Location: TRS, LatLong or UTM: T 5N, R11W, Sec 21 and 19; T5N, R12W, Sec 27

Name/ Address of Person Requesting PJD: Steve Williams, City of Palmdale, 38300 Sierra Highway, Suite A, Palmdale, CA 93550

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

Non-Wetland Waters: 5,500 linear ft | width 3.64 acres | Stream Flow: Ephemeral

Wetlands: 0 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: Nov 4, 2009

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: AECOM Environment/AMEC Earth & Environme
- ☐ 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: Palmdale
- ☐ 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:
- ☐ Photographs: ☑ Aerial (Name & Date): Google Maps 2006, 2008
  - ☐ Other (Name & Date):
- ☐ 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.

4/2/2010
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 #	SPL-2009-634-PHT	PJD Date:	1/14/10
State	CA	City/County	Palmdale/Los Angeles	Person Requestinq PJD	Steve Williams

Site Number	Latitude	Longitude	Cowardin Class	Est. Amount of Aquatic Resource in Review Area	Class of Aquatic Resource
16	34.51600	-117.92102	Riverine	1.55 ac	Non-Section 10 non-wetlanc
Wash 32	34.50520	-118.03528	Riverine	0.29 ac	Non-Section 10 non-wetlanc
Wash 33	34.50041	-118.04860	Riverine	0.10 ac	Non-Section 10 non-wetlanc
Wash 34	34.50038	-118.05612	Riverine	0.23 ac	Non-Section 10 non-wetlanc
Wash 35	34.50030	-118.05814	Riverine	0.09 ac	Non-Section 10 non-wetlanc
Wash 36	34.50040	-118.06206	Riverine	0.34 ac	Non-Section 10 non-wetlanc

Notes:

Site 16 is the California Aqueduct. Wash 32 is the Palmdale Ditch. Both are potential WUS. Washes 33 through 40 potentially flow into the Palmdale Ditch and therefore may be WUS. Wash 43 potentially flows into the Santa Clara River and therefore may be WUS. Estimated Amount of Aquatic Resource in Review Area was calculated by the average width of dry stream channel through a 500 foot project boundary.

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

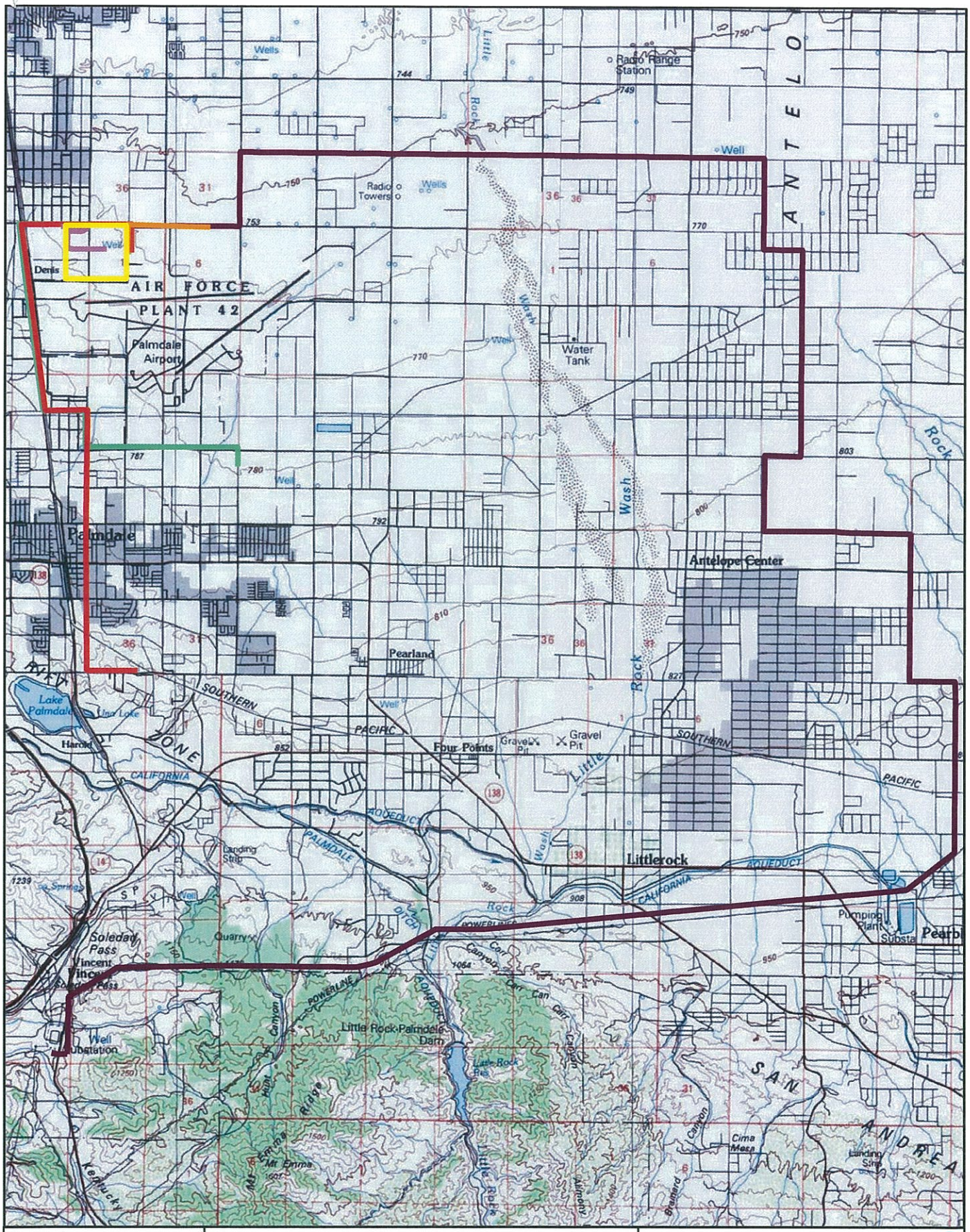
District Office: Los Angeles District | File/ORM #: SPL-2009-634-PHT | PJD Date: 1/14/10

State: CA | City/County: Palmdale/Los Angeles | Person Requestinq PJD: Steve Williams

Site Number	Latitude	Longitude	Cowardin Class	Est. Amount of Aquatic Resource in Review Area	Class of Aquatic Resource
Wash 37	34.50041	-118.06634	Riverine	0.29 ac	Non-Section 10 non-wetlanc
Wash 38	34.50041	-118.06997	Riverine	0.23 ac	Non-Section 10 non-wetlanc
Wash 39	34.50035	-118.07108	Riverine	0.09 ac	Non-Section 10 non-wetlanc
Wash 40	34.49976	-118.07985	Riverine	0.09 ac	Non-Section 10 non-wetlanc
Wash 43	34.48306	-118.11870	Riverine	0.34 ac	Non-Section 10 non-wetlanc
			n/a		Non-Section 10 non-wetlanc

Notes:

Site 16 is the California Aqueduct. Wash 32 is the Palmdale Ditch. Both are potential WUS. Washes 33 through 40 potentially flow into the Palmdale Ditch and therefore may be WUS. Wash 43 potentially flows into the Santa Clara River and therefore may be WUS. Estimated Amount of Aquatic Resource in Review Area was calculated by the average width of dry stream channel through a 500 foot project boundary.



Legend

- Transmission Line
- Reclaimed Water Pipeline
- Natural Gas Supply Line
- Potable Water
- Power Plant Site
- Sanitary Wastewater Pipeline

Palmdale Hybrid Power Project

0 0.5 1 2 Miles

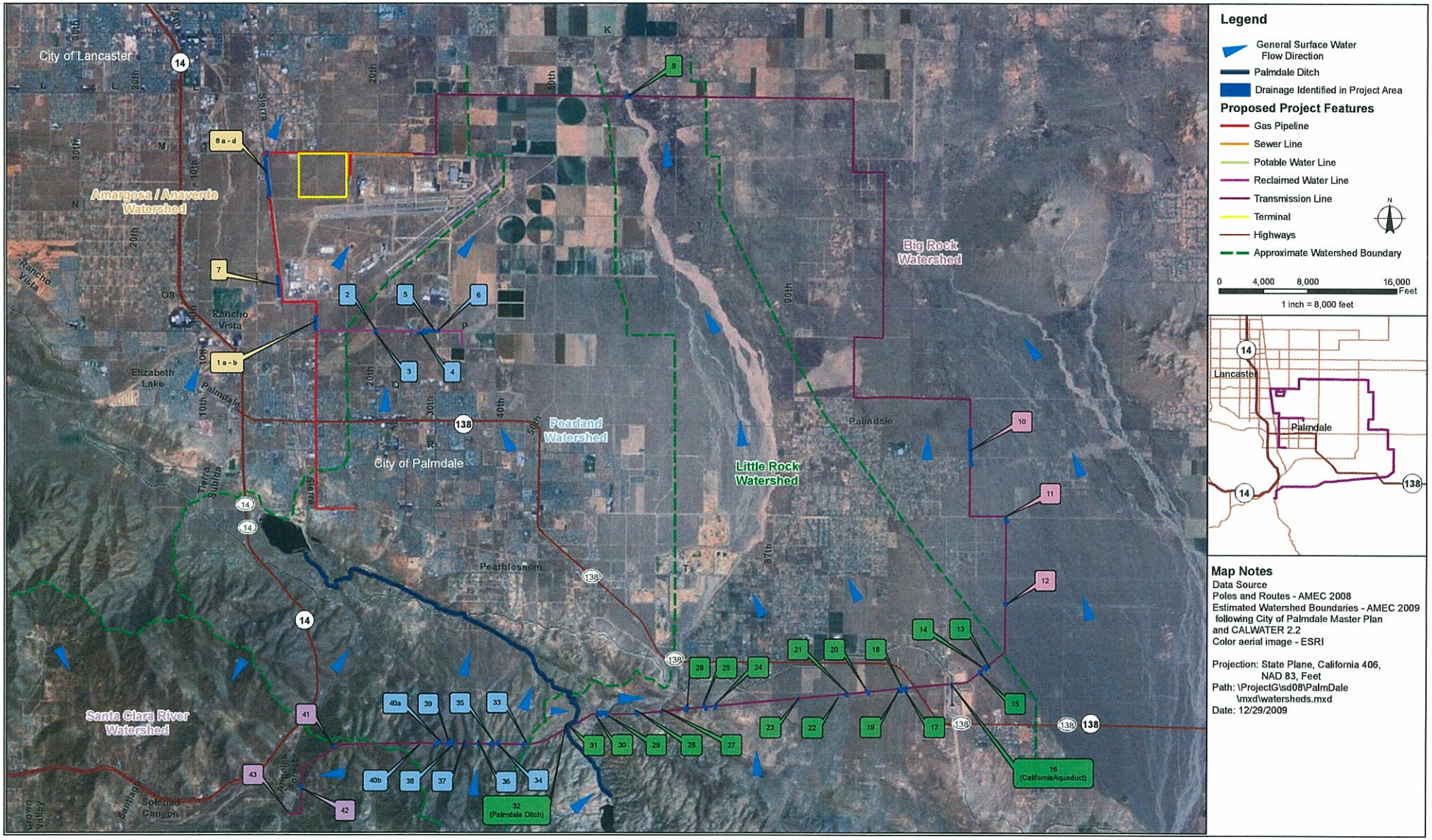
1:110,000

Map Notes:
Projection: NAD 83, Zone 11
Path:G:\sdo8\bio\Palmdale\mxd\sspecies Power Plant Bio 6554000247\graphics\mxd
Date: 03/19/2009

Figure 1

amec

N

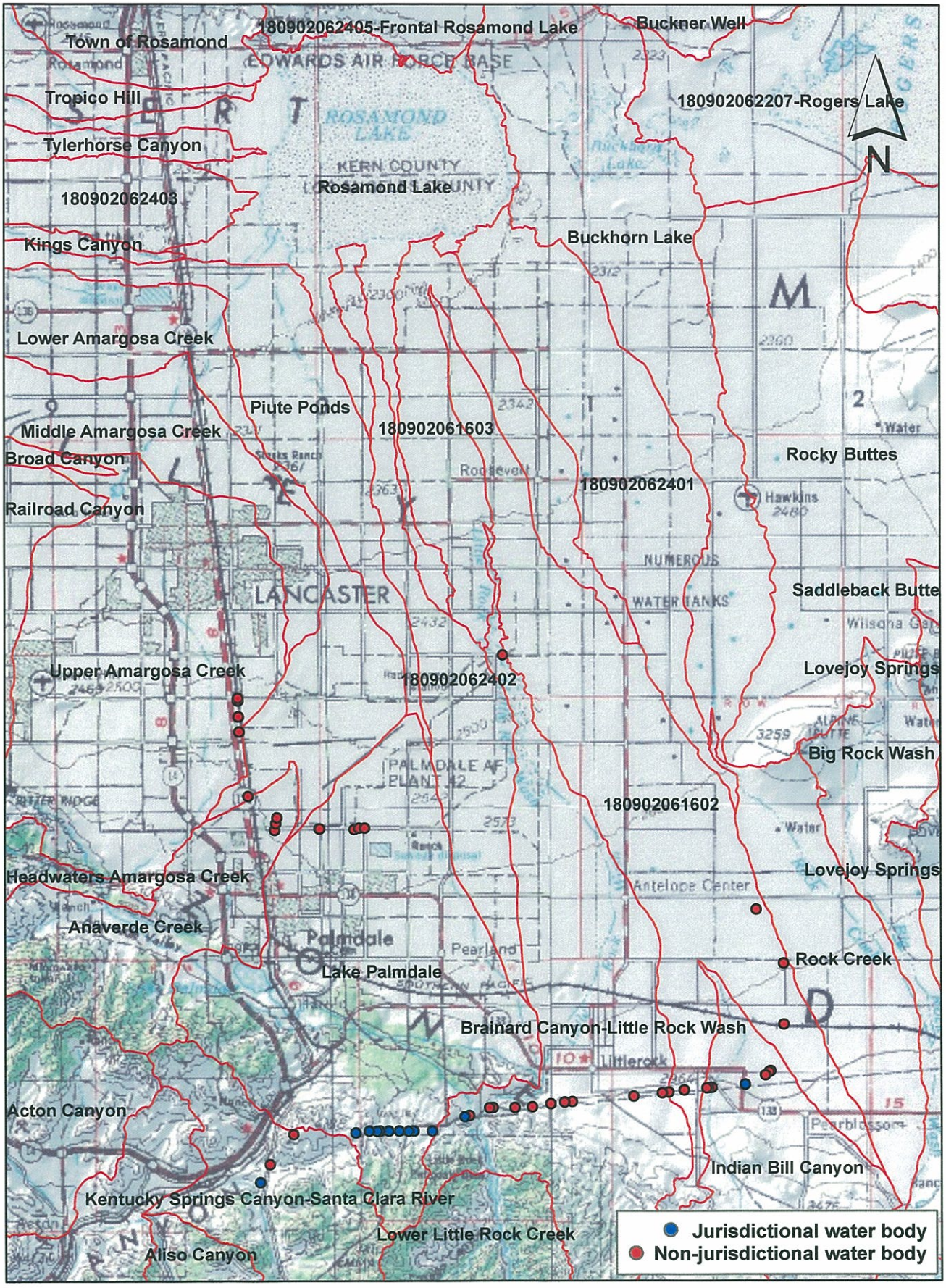


amec

Watershed and Hydrology
Palmdale Hybrid Power Project

FIGURE 2

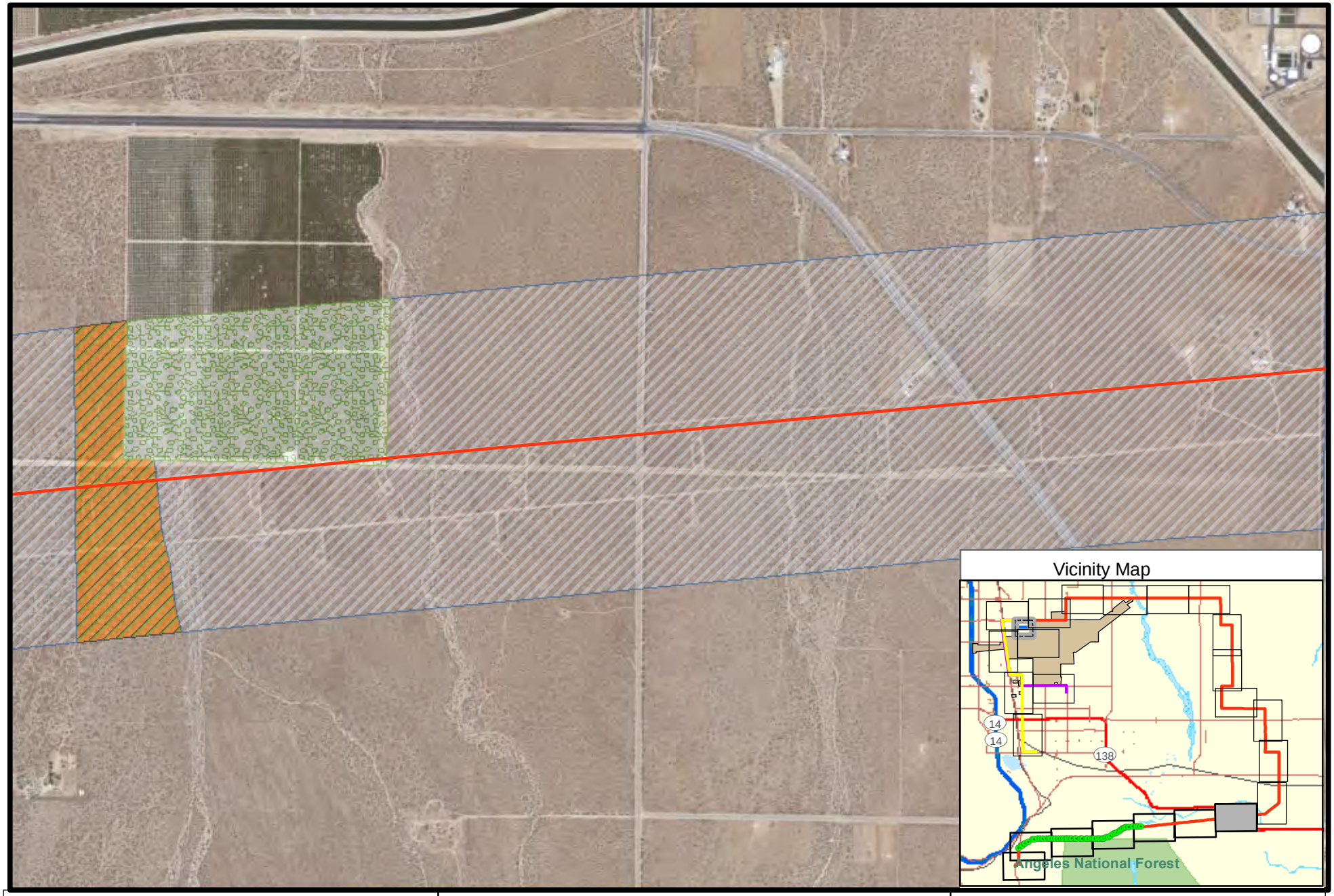
Waterways Traversed by Palmdale Hybrid Power Project



Biological Resources

Attachment BR-3

Revised PHPP Vegetation Maps



Legend

- Agricultural Land (Active/Fallow) & Orchards
- Mojave Creosote Bush Scrub
- Joshua Tree Woodland & Mojave Creosote Bush Scrub
- Transmission Line Route

Palmdale Hybrid Power Project

Habitat Communities

Figure 2-P

0 0.09 0.18 0.27 0.36 Miles

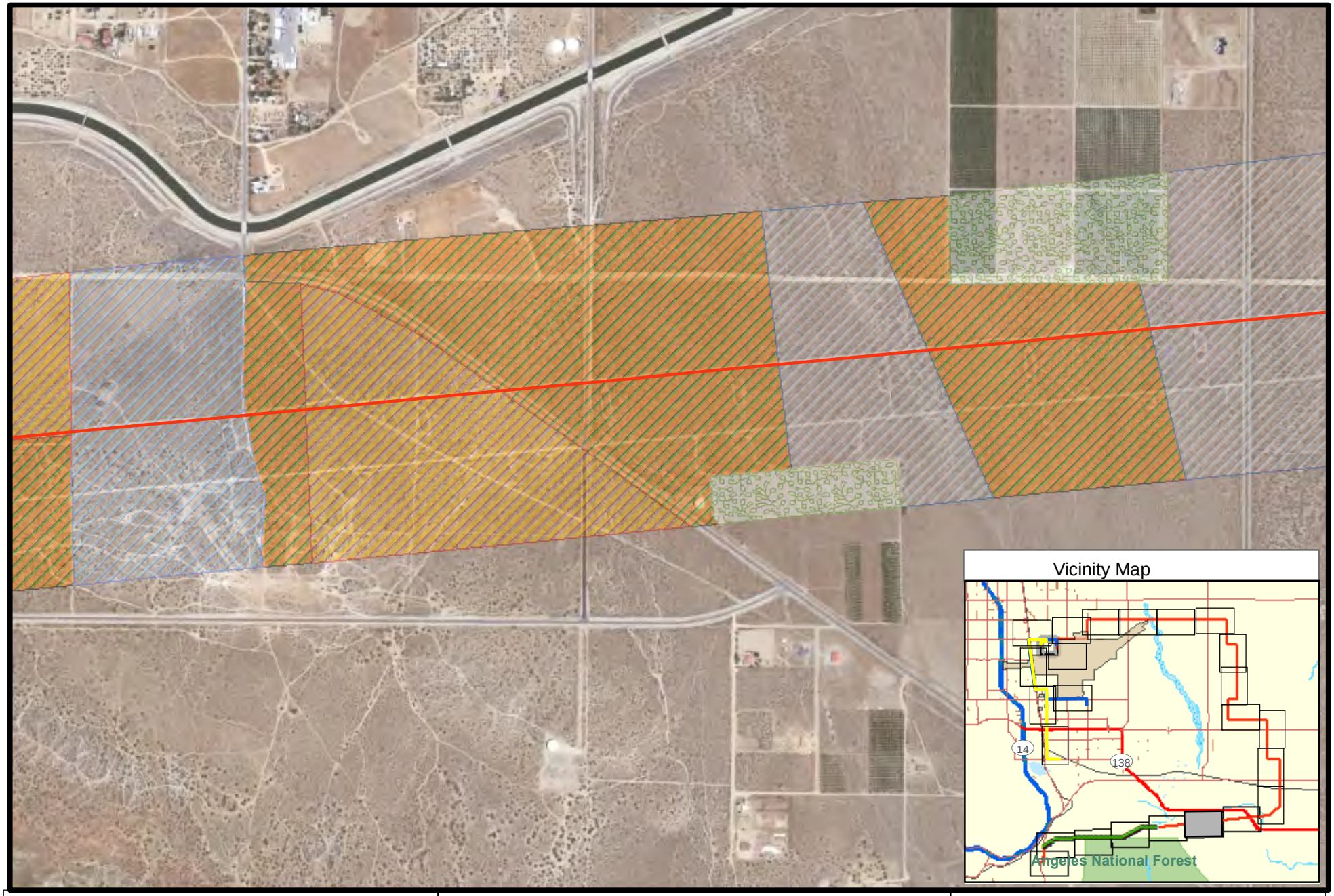
1:12,000

Map Notes:

Projection: NAD 83, Zone 11
Path:S:\active projects\Palmdale Power Plant Bio 6554000247\graphics\mxd\2010
Date: 04/16/10

N

amec



Legend

- Agricultural Land (Active/Fallow) & Orchards
- Mojavean Juniper Scrub
- Joshua Tree Woodland
- Mojave Creosote Bush Scrub
- Joshua Tree Woodland & Mojave Creosote Bush scrub
- Transmission Line Route

Palmdale Hybrid Power Project

Habitat Communities

Figure 2-Q

0 0.09 0.18 0.27 0.36 Miles

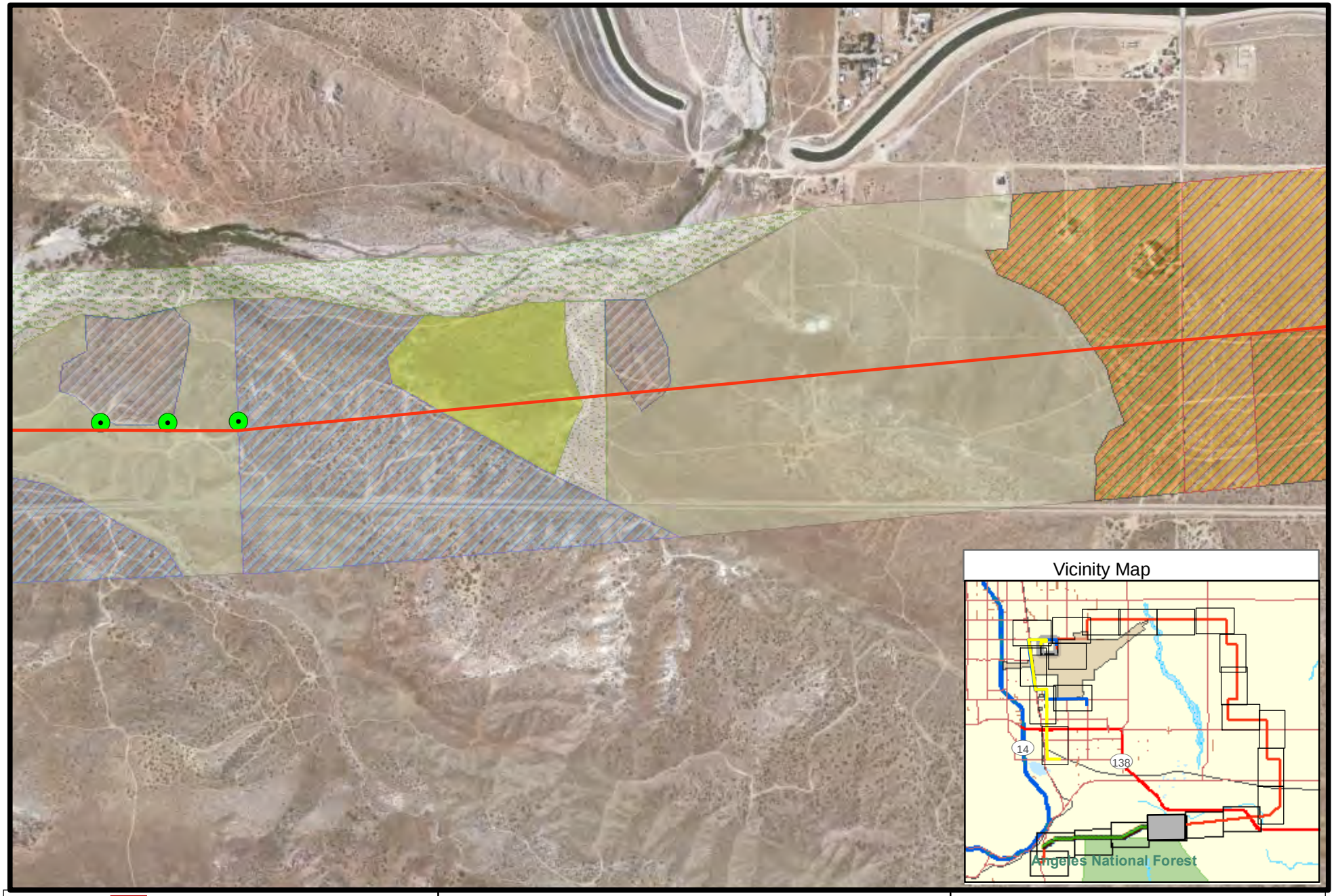
1:12,000

Map Notes:

Projection: NAD 83, Zone 11
Path:S:\active projects\Palmdale Power Plant Bio 6554000247\graphics\mxd\2010
Date: 04/16/10

N

amec



Legend

- Joshua Tree Woodland
- Big Basin Scrub
- Mojave Creosote Bush Scrub
- Mojavean Juniper Scrub
- Mojave Desert Wash Scrub
- Desert Scrub
- Joshua Tree Woodland & Mojave Creosote Bush scrub
- Mojavean Juniper Scrub & Mojave Creosote Bush scrub
- Transmission Line Route
- Towers

Palmdale Hybrid Power Project

Habitat Communities

Figure 2-R

0 0.09 0.18 0.27 0.36 Miles

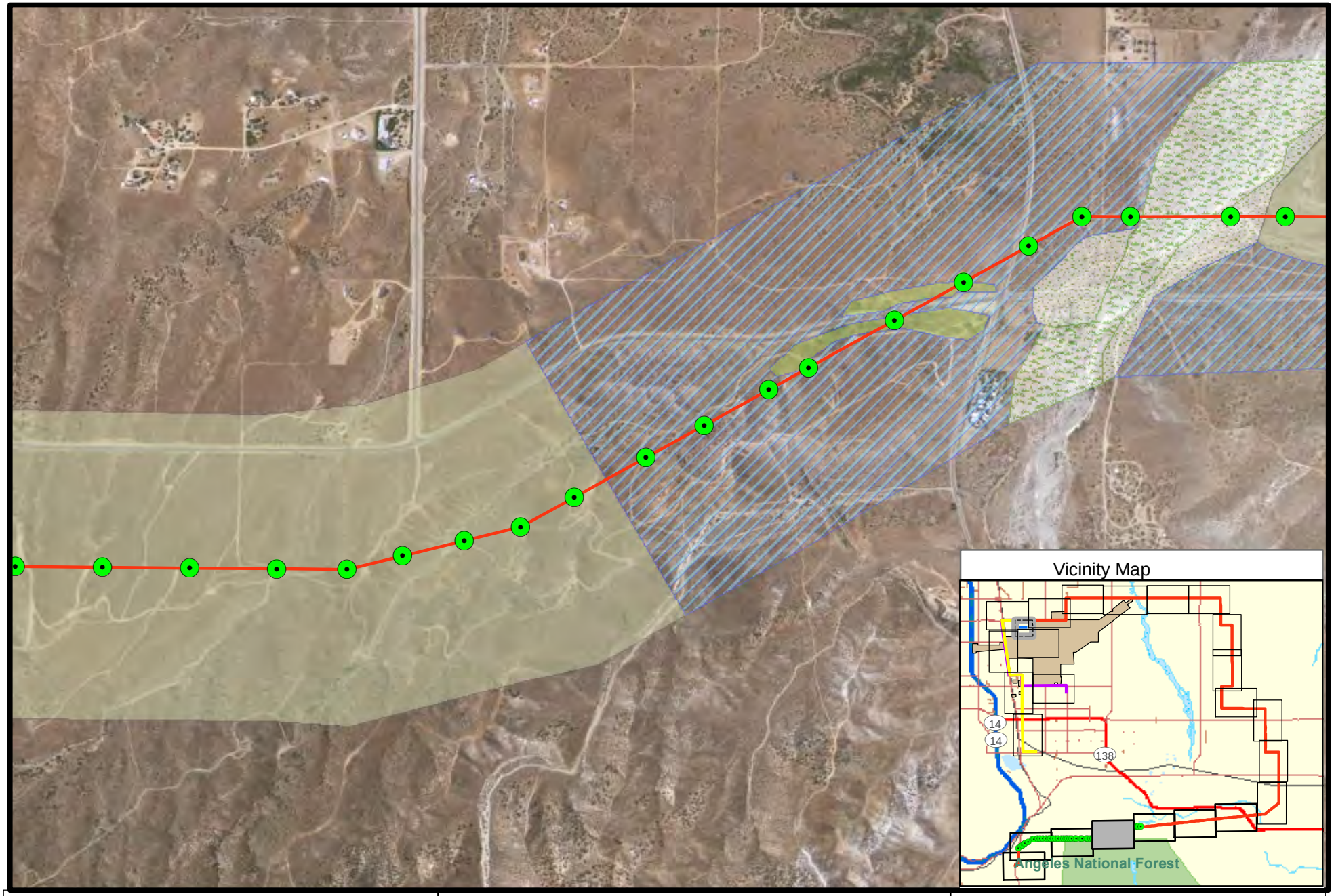
1:12,000

Map Notes:

Projection: NAD 83, Zone 11
Path:S:\active projects\Palmdale Power Plant Bio 6554000247\graphics\mxd\2010
Date: 04/16/10

N

amec



Legend

- Big Basin Scrub & Riparian Scrub
- Mojavean Juniper Scrub
- Desert Scrub
- Big Basin Scrub
- Mojave Desert Wash Scrub
- Transmission Line Route
- Towers

Palmdale Hybrid Power Project

Habitat Communities

Figure 2-S

0 0.09 0.18 0.27 0.36 Miles

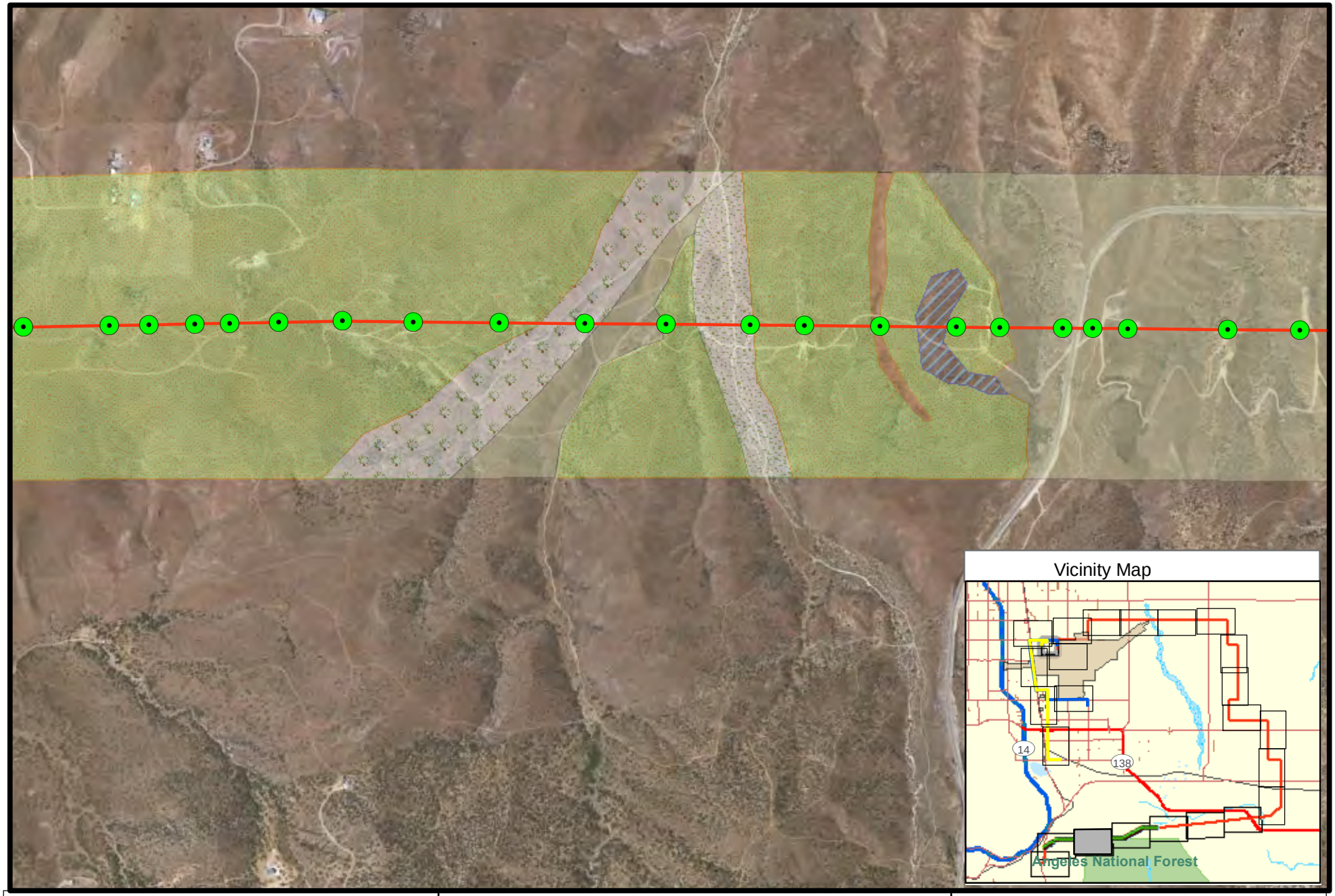
1:12,000

Map Notes:

Projection: NAD 83, Zone 11
Path:S:\active projects\Palmdale Power Plant Bio 6554000247\graphics\mxd\2010
Date: 04/16/10

N

amec



Legend

- Riparian Scrub
- Mojavean Juniper Scrub
- California Annual Grassland
- Big Basin Scrub
- Desert Scrub
- Scrub Oak
- Transmission Line Route
- Towers

Palmdale Hybrid Power Project

Habitat Communities

Figure 2-T

0 0.09 0.18 0.27 0.36 Miles

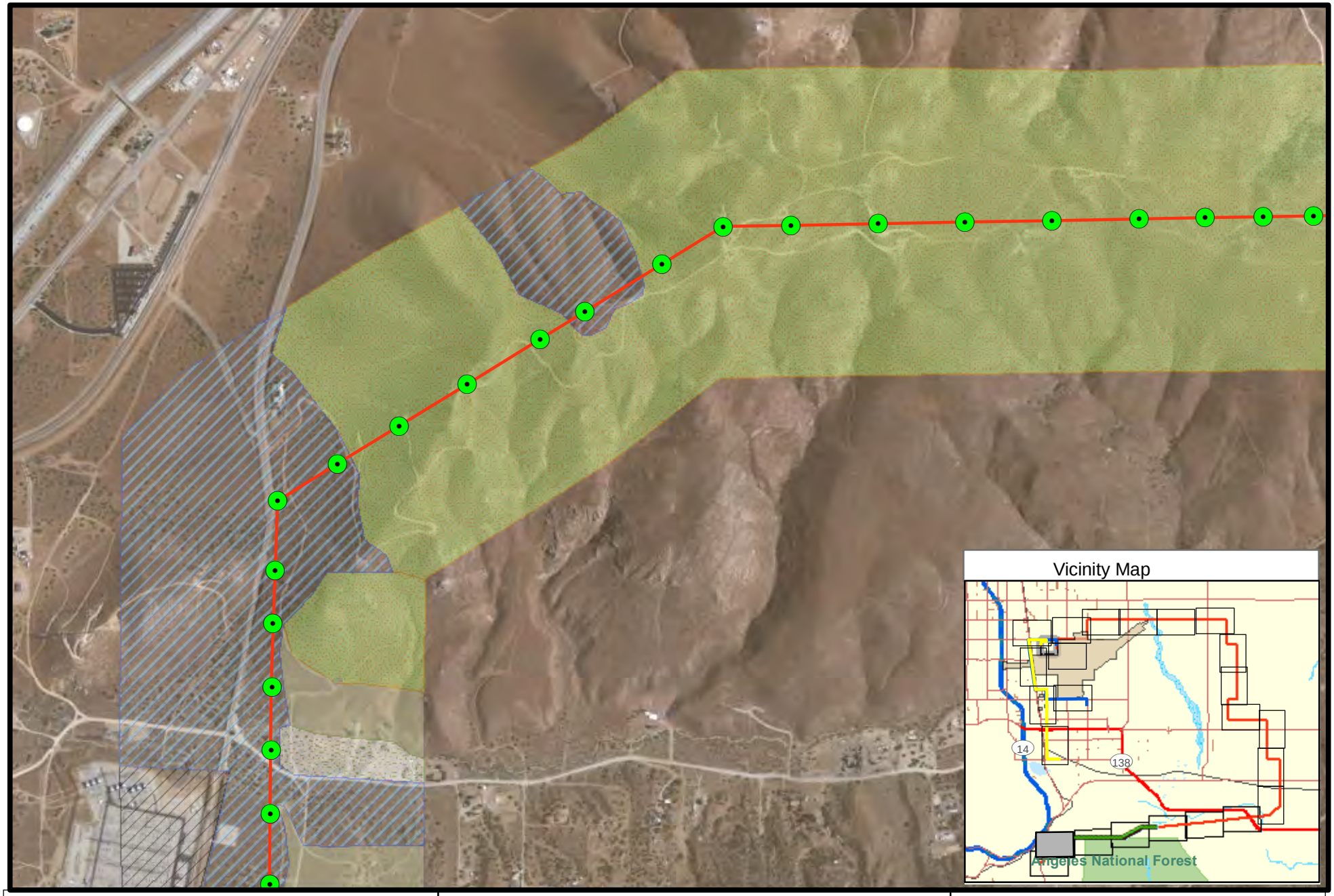
1:12,000

Map Notes:

Projection: NAD 83, Zone 11
Path:S:\active projects\Palmdale Power Plant Bio 6554000247\graphics\mxd\2010
Date: 04/16/10

N

amec



Legend

- California Annual Grassland
- Big Basin Scrub
- Mojavean Juniper Scrub
- Desert Scrub
- Transmission Line Route
- Towers

Palmdale Hybrid Power Project

Habitat Communities

Figure 2-U

0 0.09 0.18 0.27 0.36 Miles

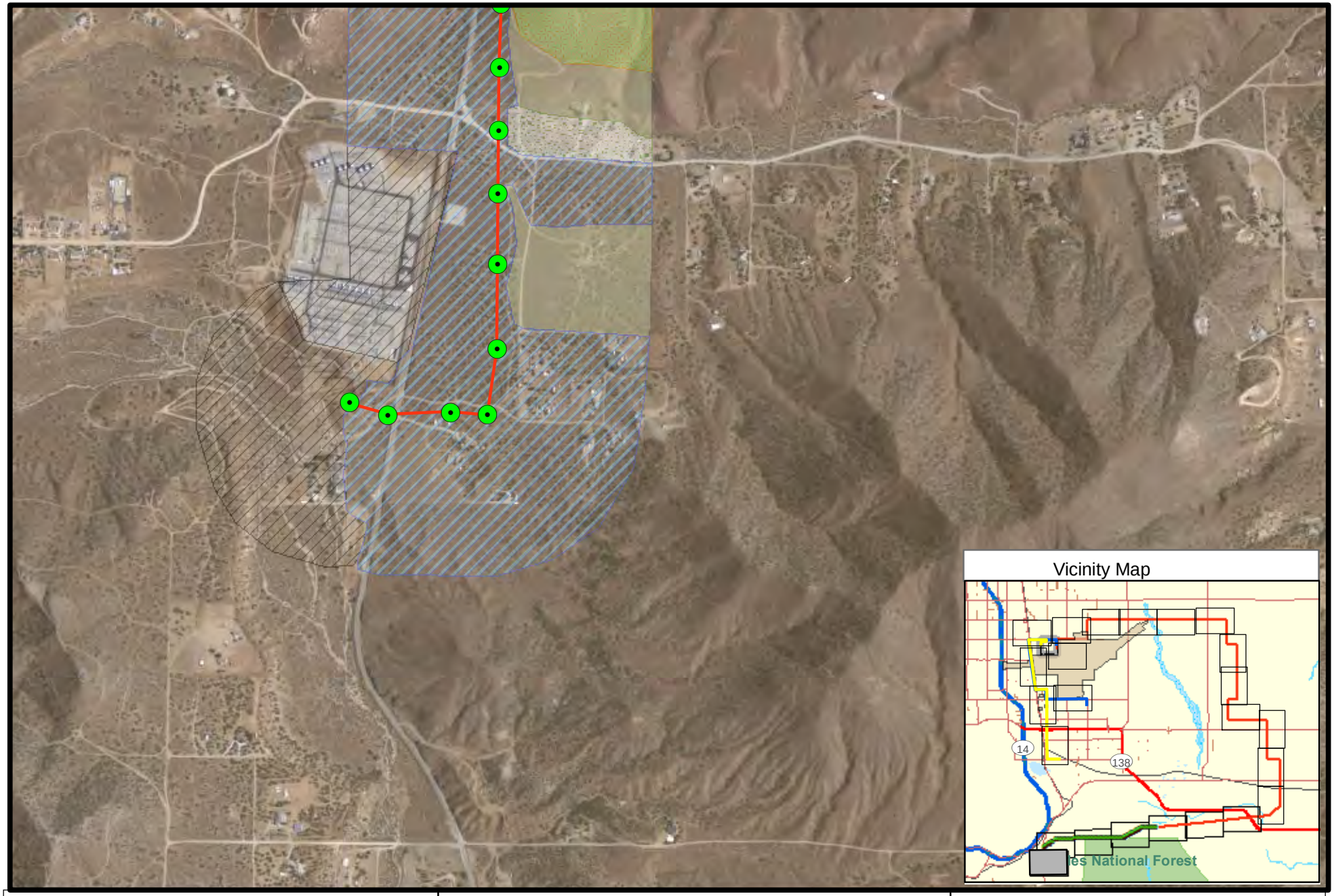
1:12,000

Map Notes:

Projection: NAD 83, Zone 11
Path:S:\active projects\Palmdale Power Plant Bio 6554000247\graphics\mxd\2010
Date: 04/16/10

N

amec



Legend

- California Annual Grassland
- Mojavean Juniper Scrub
- Big Basin Scrub
- Desert Scrub
- Urban & Disturbed/Developed land
- Transmission Line Route
- Towers

Palmdale Hybrid Power Project

Habitat Communities

Figure 2-V

0 0.09 0.18 0.27 0.36 Miles

1:12,000

Map Notes:

Projection: NAD 83, Zone 11
Path:S:\active projects\Palmdale Power Plant Bio 6554000247\graphics\mxd\2010
Date: 04/16/10

N

amec

Land Use

Attachment LU-2

Letter from City of Palmdale Regarding Zoning Compliance for the PHPP Transmission Lines

Soil and Water

Attachment S&W-1

City of Palmdale Comments on AGWA and AV United Water Adjudication Letters

RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

1 Civic Center Circle, P.O. Box 1059, Brea, California 92822-1059
Telephone 714.990.0901 Facsimile 714.990.6230

May 6, 2010

Steve Williams, City Manager
City of Palmdale
38300 North Sierra Highway
Palmdale, California 93550

Re: Proposed Palmdale Hybrid Power Project (08-AFC-9) and, Particularly, Comments by AGWA and AV United on the Application of Reclaimed Water to the Project

Dear Steve:

At your request, I have reviewed the letters provided to the C.E.C. by certain of the City's adversaries in the ongoing Antelope Valley Water Rights Adjudication ("Water Adjudication") which seem to complain about the use of reclaimed water for the above-referenced project ("the Project'). This letter responds to those letters. In the Water Adjudication, the Antelope Valley public water suppliers, including the City of Palmdale ("the City"), seek to have the court establish legal priorities to extract water from the Antelope Valley groundwater basin ("the basin") and to impose a management structure on that water production. The City's (and other public water suppliers') ultimate goal in prosecuting that adjudication is to sustain the basin as a water resource by balancing supply and extraction and providing a mechanism for the purchase of supplemental water to meet increased demands.

It is true that the public water suppliers feel the basin presently is in a state of overdraft as evidenced by subsidence which cracks building foundations and runways at the air force base. Notably, AGWA and AV United, the two adverse litigants who seem to question the use of reclaimed water for the Project, deny the existence of that water shortage or overdraft and also claim to support the Project. Their only complaint concerns the application of reclaimed water which is particularly appropriate for the Project for all of the following reasons:

1. Article 10, section 2 of the California Constitution requires that all water in the state be put to maximum beneficial use which, in this context, mandates the application of reclaimed water to the Project as an alternative to percolating that water into a subsurface plume which presents a water quality issue;

2. Several sections of the California Water Code (*e.g.* sections 13510 through 13512, 13550(a) and 13551) mandate that reclaimed water supplant potable water to support beneficial uses to the maximum extent possible, also stating that not to do so constitutes a waste or unreasonable use of water;

3. Providing reclaimed water for the Project establishes a new beneficial use of the water, thereby reducing increased demands on the basin's limited supply of potable water; and

4. It is hoped that the participation of the County Sanitation Districts in the subject water rights adjudication will facilitate maximizing the application of reclaimed water to a number and variety of beneficial uses, thereby limiting the application of potable water to uses for which only potable water is appropriate and legal.

In summary, the application of reclaimed water to the Project is mandated by State law and is compatible with the public water suppliers' goals in prosecuting the water rights adjudication, sustaining the basin as a water source and meeting projected future water demands.

We would be happy to respond to any questions which you may have with respect to this particular matter.

Very truly yours,

James L. Markman
Special Counsel
City of Palmdale

P6399-1234\1218342v1.doc

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

APPLICATION FOR CERTIFICATION
for the
PALMDALE HYBRID POWER PROJECT

Docket No. 08-AFC-9

PROOF OF SERVICE
(Revised 4/15/2010)

APPLICANT
Thomas M. Barnett
Executive Vice President
Inland Energy, Inc.
3501 Jamboree Road
South Tower, Suite 606
Newport Beach, CA 92660
tbarnett@inlandenergy.com

Antonio D. Penna Jr.
Vice President
Inland Energy
18570 Kamana Road
Apple Valley, CA 92307
tonypenna@inlandenergy.com

Laurie Lile
Assistant City Manager
City of Palmdale
38300 North Sierra Highway, Suite A
Palmdale, CA 93550
llile@cityofpalmdale.org

COUNSEL FOR APPLICANT
Michael J. Carroll
Marc Campopiano
Latham & Watkins, LLP
650 Town Center Drive, Ste. 2000
Costa Mesa, CA 92626
michael.carroll@lw.com
marc.campopiano@lw.com

APPLICANT'S CONSULTANT
Sara Head, Vice President
AECOM Environment
1220 Avenida Acaso
Camarillo, CA 93012
Sara.Head@aecom.com

INTERESTED AGENCIES
Erinn Wilson, Staff Environmental Scientist
Department of Fish & Game
18627 Brookhurst Street #559
Fountain Valley, CA 92708
E-mail preferred
ewilson@dfg.ca.gov

Richard W. Booth, Sr. Geologist
Lahontan Regional Water Quality Control Board
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150-2306
rbooth@waterboards.ca.gov

Christian Anderson
Air Quality Engineer
Antelope Valley AQMD
43301 Division St, Suite 206
Lancaster, CA 93535
E-mail preferred
canderson@avaqmd.ca.gov

Jeffrey Doll
Air Resources Engineer
Energy Section/Stationary Sources
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812
E-mail preferred
jdoll@arb.ca.gov

Ronald E. Cleaves, Lt. Col. USAF
Commander ASC Det 1
Air Force Plant 42
2503 East Avenue P
Palmdale, CA 93550
Ronald.Cleaves@edwards.af.mil

Rick Buckingham
3310 El Camino Avenue, LL-90
State Water Project
Power & Risk Office
Sacramento, CA 95821
E-mail preferred
rbucking@water.ca.gov

Manuel Alvarez
Southern Calif. Edison
1201 K Street
Sacramento, CA 95814
Manuel.Alvarez@sce,com

Robert J. Tucker
Southern Calif. Edison
1 Innovation Drive
Pomona, CA 91768
Robert.Tucker@sce.com

California ISO
E-mail preferred
e-recipient@caiso.com

ENERGY COMMISSION

JEFFREY D. BYRON
Commissioner and Presiding Member
jbyron@energy.state.ca.us

ANTHONY EGGERT
Commissioner and Associate Member
aeggert@energy.state.ca.us

Kristy Chew
Advisor to Commissioner Byron
kchew@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

Felicia Miller
Project Manager
fmiller@energy.state.ca.us

Lisa DeCarlo
Staff Counsel
ldecarlo@energy.state.ca.us

Jennifer Jennings
Public Adviser
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Sara J. Head, declare that on, May 11, 2010, I served and filed copies of the attached City of Palmdale's Supplemental Information and Comments on the Preliminary Staff Assessment for the Palmdale Hybrid Power Project (08-AFC-9). The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[http://www.energy.ca.gov/sitingcases/palmdale/index.html]**. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(*Check all that Apply*)

For service to all other parties:

__X__ sent electronically to all email addresses on the Proof of Service list;

_____ by personal delivery;

__X__ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

_X__ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

____depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-9
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years.

_____