

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

DISTRICT OFFICE: Los Angeles District

FILE NUMBER: 2004-00715

REGULATORY PROJECT MANAGER: Aaron O. Allen, Ph.D. **Date:** April 19, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** April 19, 2004
At the project site (Y/N) N **Date:** _____

PROJECT LOCATION INFORMATION:

State: California

County: Kern

Center coordinates of site by latitude & longitudinal coordinates: 35-38-37 (North)

Approximate size of site/property (including uplands & in acres): 117-45-51 (West)

Name of waterway or watershed: China Dry Lake and its tributaries

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash					X				
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow									
Playa lake							X		
Vernal pool									
Natural pond									
Other water (identify type)									

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

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	X				
Is or would be used as habitat by other migratory birds that cross state lines?	X				
Is or would be used as habitat for endangered species?		X			
Is used to irrigate crops sold in interstate commerce?		X			

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

TYPE OF DETERMINATION: Preliminary X Or Approved _____

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite): The proposed project (utility line) would cross a small ephemeral wash in the City of Ridge Crest, Kern County. The unnamed drainage is tributary to China Lake, a relatively large playa that was regulated prior to the SWANCC Decision (seasonal use by migratory birds). Based on existing information, the China Lake area has an average annual rainfall of approximately 3.79 inches and exhibits very high evapotranspiration rates during the majority of the year. Annual rainfall varies from a low of 0.14 inches (1953) to a maximum of 10.6 inches (1978). As a result, China Lake and its tributaries are dominated by an ephemeral flow regime, with surface flow only being present during and immediately after storm events. China Lake and its tributaries exhibit no evidence of navigation and the above hydrology information indicates that the opportunity for boat use is very limited in both China Lake and its ephemeral tributaries. In terms of interstate commerce, a military installation and a small town (China Lake Acres) of 1,761

people are located next to the playa. A search for businesses in the China Lake area did not produce any evidence that energy/environmental companies use the China Lake area. The closest hotel (Best Western China Lake Inn), which could indicate recreational use of the China Lake area, is located in Ridgecrest and the hotel does not recommend any recreational opportunities in the immediate area (reference is made to Death Valley, Lake Isabella and Red Rock Canyon). Based on the above information, there is no evidence that the playa or its tributaries are utilized for industry, recreation or fish/shellfish production that results in substantial interstate commerce. Based on the above information, the Corps determined that China Lake and its tributaries are isolated, non-navigable water bodies that do not exhibit a substantial interstate commerce connection and, as a result, China Lake and its tributaries are not regulated as waters of the United States pursuant to the SWANCC Supreme Court Decision.