

**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: 2004-01295-AOA

REGULATORY PROJECT MANAGER: Aaron O. Allen, Ph.D. **Date:** June 17, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** June 17, 2004
At the project site (Y/N) N **Date:** _____

PROJECT LOCATION INFORMATION:

State: California

County: Los Angeles

Center coordinates of site by latitude & longitudinal coordinates: 34-36-00 & 118-16-00

Approximate size of site/property (including uplands & in acres): 10,000

Name of waterway or watershed: Amargosa Creek

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						X			
Dry Wash				X					
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow							X		
Playa lake									
Vernal pool									
Natural pond				X					
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 _____ Or Approved X

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 applicant proposes to impact isolated water bodies to construct a large mixed-used development (Ritter Ranch) in Amargosa Creek and adjacent wetlands west of the City of Palmdale, Los Angeles County, California. Amargosa Creek is a relatively large isolated stream system that originates in the San Andreas Rift Valley and flows east towards the City of Palmdale then turns north terminating in Rosamond Dry Lake (Edwards AFB). In the upstream portion of the watershed, Amargosa Creek is a perennial stream that supports substantial riparian habitat and adjacent wetlands (wet meadow habitat). Just west of the City of Palmdale, the stream turns north and as a result, the depth to groundwater increases rapidly as the channel moves away from the San Andreas Fault. The downstream portion of the watershed exhibits an intermittent/ephemeral flow regime and supports only seasonal aquatic habitat. The magnitude of storm flows in Amargosa Creek varies from a low of 50 to 100 cubic feet per second (cfs) in dry years to

12,000 to 15,000 cfs during very large storm events (50 to 100-year event). In terms of substantial interstate commerce connections, there is no evidence that water from Amargosa Creek is utilized for industrial purposes, recreation, fish or shellfish production that generates interstate commerce and there is also no evidence of navigation, even small rafts or canoes, in Amargosa Creek. In terms of irrigation, there are several small fruit orchards along the upstream portions of Amargosa Creek that utilize groundwater for irrigation; however there is no evidence that these small orchards generate substantial interstate commerce. In the upstream portion of the watershed, at the confluence of Amargosa Creek and Rodgers Creek, approximately four federally listed as threatened red-legged frogs were discovered in a small stock pond adjacent to Amargosa Creek and Rodgers Creek (estimated red-legged frog population is 8-10 individuals). The stock pond is located in an area that ponds water during normal storm events and supports approximately 70 acres of wetlands. Prior to the SWANCC decision, the Corps had exerted jurisdiction over Amargosa Creek, its tributaries and adjacent wetlands using migratory birds as the interstate commerce connection. The upper watershed supports well developed riparian habitat for migratory birds and the Corps has documented substantial use of Rosamond Dry Lake by a number of migratory bird species during the late winter and early spring. However, based on the above information, Amargosa Creek is non-navigable isolated water body that does not exhibit substantial interstate commerce and, therefore, is no longer subject o the Corps jurisdiction with the SWANCC Supreme Court decision. The Corps previously determined in March 2001 that Amargosa Creek was no longer subject to Corps jurisdiction with the SWANCC decision, in coordination with USEPA and Regulatory HQ.