

**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:** 2005-00026-AOA

**REGULATORY PROJECT MANAGER:** Aaron O. Allen, Ph.D. **Date:** October 8, 2004

**PROJECT REVIEW/DETERMINATION COMPLETED:** **In the office (Y/N)** Y **Date:** October 8, 2004  
**At the project site (Y/N)** N **Date:** \_\_\_\_\_

**PROJECT LOCATION INFORMATION:**

**State:** California

**County:** Kern

**Center coordinates of site by latitude & longitudinal coordinates:** 34-48-32.1 -118-44-42

**Approximate size of site/property (including uplands & in acres):** 71 acres

**Name of waterway or watershed:** Oso Creek

**SITE CONDITIONS:**

Type of aquatic resource <sup>1</sup>	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									
Vernal pool									
Natural pond									
Other water (identify type)									

<sup>1</sup>Check 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 <sup>1</sup> :	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			

<sup>1</sup>Check 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 construct a 71-acre reservoir (Tehachapi East Afterbay) to increase the storage capacity in the East Branch of the California Aqueduct east of Gorman, Kern County. In File number 2001-00762-AOA, the Corps had previously determined that these unnamed tributaries to Oso Creek, which flows to the east and terminates in the Mojave Desert, are isolated, non-navigable drainage features that do not exhibit a substantial interstate commerce connection. Washes in the project area flow out of the mountains to the south and then proceed east, becoming shallow, poorly defined drainage features that eventually end in the western Mojave Desert. There is no evidence of any navigation in these washes and/or use of the washes for industrial, fish/shellfish production and recreation. Based on the above information, the proposed project would not discharge fill material in waters of the United States pursuant to the SWANCC Supreme Court Decision.

