

**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:** 2006-00448-AOA

**REGULATORY PROJECT MANAGER:** Aaron O. Allen, Ph.D. **Date:** January 31, 2006

**PROJECT REVIEW/DETERMINATION COMPLETED:** **In the office (Y/N)** Y **Date:** January 31, 2006  
**At the project site (Y/N)** N **Date:** \_\_\_\_\_

**PROJECT LOCATION INFORMATION:**

**State:** California

**County:** Kern

**Center coordinates of site by latitude & longitudinal coordinates:** 35-06-00 (North)

**Approximate size of site/property (including uplands & in acres):** 118-16-48 (West)

**Name of waterway or watershed:** Cache Creek (Rosamond/Rogers Drylakes)

**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 repair an existing railroad bridge over Cache Creek, which is tributary to Rosamond and Rogers Drylakes near Edwards Air Force Base, Kern County, California. Rainfall in the Mojave Desert averages approximately 5 to 7 inches annually and high summer temperatures result in substantial potential evapotranspiration rates. In File Number 2002-00343-AOA, the Corps had concluded that Rosamond and Rogers Drylakes and their tributaries are non-navigable isolated water bodies that do not exhibit substantial interstate commerce. Based on the above information and the Corps independent review of the project area, Cache Creek is an isolated non-navigable water body and, as a result, is subject to the SWANCC Supreme Court Decision (No. 99-1178). Using the criteria at 33 CFR Part 328.3, the Corps has determined that Cache Creek exhibits insufficient evidence of interstate commerce to meet the requirements at 33 CFR Part 328.3(a) (3) (iii) and do not meet the requirements for navigability at 33 CFR

Part 328.3(a)(1). As a result, the proposed railroad bridge repair project is not subject to the Corps jurisdiction under Section 404 of the Clean Water Act and Section 404 permit is not required for the proposed construction activities in Cache Creek.