

ATTACHMENT H

USACOE Regulatory Branch Memorandum 2003-04: Irrigated Wetlands

REGULATORY BRANCH MEMORANDUM 2003-04

SUBJECT: "Irrigated" Wetlands

1. Purpose. To establish policy regarding wetlands in irrigated areas.

2. Applicability. This applies to wetlands subject to jurisdiction under Section 404 of the Clean Water Act in the Sacramento District.

3. References.

a. Section 404 of the Clean Water Act, 33 USC 1344.

b. 33 CFR Parts 320-331, Regulatory Programs of the Corps of Engineers, November 13, 1986.

c. 33 CFR 328.3, preamble and definition of "waters of the United States", November 13, 1986.

d. Corps of Engineers Wetland Delineation Manual, January 1987.

4. Background. In accordance with reference 3(c) above, any area exhibiting wetland characteristics sustained solely by the application of irrigation water is not regulated under Section 404 of the Clean Water Act. Experience has shown that certain circumstances raise substantial questions. Specifically, hydrophytic vegetation can be established and maintained solely by irrigation practices. Also, hydric soils usually develop over a long period of time, and can exhibit hydric soil indicators even if the hydrology has been removed by such activities as dams, diversions, ditches, and other modifications. Therefore, difficulty arises when an area has hydrophytic vegetation and hydric soils, and the landowner claims that his land is wet only because he irrigates it. Such a claim may be (1) completely correct, in that the property would be dry without irrigation; (2) partially correct, in that a portion would be dry while the remainder would be wet with or without irrigation; or (3) incorrect, in that the area would be wet without irrigation, although irrigation may enhance the

growth of hydrophytic vegetation and the duration of water inundation or saturation. The only sure way to prove whether irrigation is sustaining a wet area is to discontinue the use of irrigation water and evaluate the results. This will normally require the cessation of irrigation for two or more growing seasons. Several years may be necessary under drought conditions.

Discontinuing the use of irrigation for this length of time is the best approach to determining whether an area should be regulated under Section 404. Since this approach may not always be practical in all cases, it is necessary to establish an alternate procedure for making jurisdictional determinations regarding irrigated wetlands.

5. Procedure. The following alternate approach will be followed for irrigated wetlands when the cessation of irrigation is not practical:

a. Obtain information from the Natural Resource Conservation Service Soil Survey for the subject area (if available). The soil survey will usually provide groundwater table and flooding information, as well as the type of vegetation found in particular soil types. Once the soil series is identified, determine whether the soil is listed as a hydric soil, or a soil with hydric inclusions, on the local and national hydric soils lists.

b. Check with Federal, State, and local agencies to determine if any surface or groundwater records are available for the property.

c. Obtain information from the landowner, his neighbors, or others who may have knowledge of the hydrologic characteristics of the property.

d. Conduct an on-site wetland delineation of the property.

e. Review period of record and determine whether drought conditions exist.

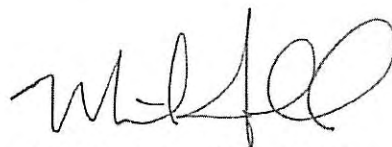
f. Review available aerial photography to characterize historical conditions of the site and past irrigation practices.

6. Policy. One of the following findings will be made upon completion of the procedure established in paragraph 5 above.

a. The area is not a jurisdictional wetland because (1) there were no positive indicators for vegetation and/or soils; or (2) it was obvious that the area would be dry without irrigation based on information obtained and/or field observations.

b. The area is a jurisdictional wetland because there were positive indicators for all three parameters. This finding will clearly identify the source of non-irrigation water (i.e. springs, surface flooding, groundwater, drainage patterns, etc.)

c. There are positive soils and vegetation indicators but the relative importance of irrigation vs. natural hydrology/groundwater in maintaining the wetland cannot be determined. In this case, the area will be regulated under Section 404, unless convincing information is provided that the area is wet due solely to irrigation.



FOR ANDREW J. ROSENAU
Chief, Regulatory Branch