UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MAY 14 2014

OFFICE OF THE
REGIONAL ADMINISTRATOR

MEMORANDUM

SUBJECT: Special Case Designation – Redwood City Salt Plant Site, San Francisco Bay

FROM: Jared Blumenfeld
Regional Administrator, Region 9

TO: Nancy Stoner
Acting Assistant Administrator
Office of Water

Pursuant to Section IV.A of the *1989 Memorandum of Agreement* between EPA and the Corps,[1] I request your approval to place the determination of the geographic scope of the Clean Water Act ("CWA") jurisdiction for the 1,478-acre Redwood City Salt Plant along the San Francisco Bay on the Region 9 Special Case List so that EPA can make the final jurisdictional determination. Pending your decision EPA and the Army would work to resolve the legal and policy issues raised by this matter. Pursuant to the *1989 Memorandum of Agreement*, once this request for the addition to the Special Case list is provided in writing or by phone to the Corps District Engineer, the Corps will not make a final geographic jurisdictional determination for the proposed special case area for a period of ten working days from the date of the Regional Administrator's notification.

The Corps' San Francisco District is expected to issue a final jurisdictional determination for the Redwood City Salt Plant that would assert jurisdiction under the Rivers and Harbors Act of 1899 ("RHA") over only the Site's eastern portion and would assert no CWA jurisdiction over any portion of the Site. We further understand that the determination would likely rely on a number of interpretations of the CWA that may raise significant legal and policy concerns.[2]

In light of the significance of the issues raised by the Corps' proposed approach, and the ecological importance of the San Francisco Bay waters at issue, I believe it would be appropriate for EPA to make the final jurisdictional determination under the CWA for the Redwood City Salt Plant site.

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[1] *Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions Under Section 404(f) of the Clean Water Act* ("MOA"), dated January 19, 1989.

[2] "Legal Principles to Guide the Approved Jurisdictional Determination for the Redwood City Salt Plant" dated January 9, 2014, and "Supplement to 'Legal Principles to Guide the Approved Jurisdictional Determination for the Redwood City Salt Plant'" dated March 25, 2014.

cc: Colonel John Baker, San Francisco District Commander
US Army Corps of Engineers