



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103-1398

inREPLY TO
ATTENTION OF

Regulatory Division

OCT 18 2010

Subject: File No. 2009-00443S

Mr. Kevin Lincoln
Power Engineers, Inc.
P.O. Box 1066
3940 Glenbrook Drive
Hailey, Idaho 83333

Dear Mr. Lincoln:

This letter is written in regard to our February 5, 2010, preliminary jurisdictional determination for the Panoche Valley Solar Farm project site. This project site is located approximately thirty miles south of Los Banos, in San Benito County, California. The project site encompasses approximately 4,900 acres in Sections 3-5, 8-11, and 13-16, of Township 14S, Range 10E and Sections 18-19 of Township 15S, 11E of the Cerro Colorado, Llanda, Mercy Hot Springs, and Panoche USGS 7.5 minute topographic quadrangle maps, respectively.

A preliminary jurisdictional determination was issued for this project site on February 5, 2010, pursuant to the Regulatory Guidance Letter, RGL 08-02. The District Engineer retains the discretion to use an approved jurisdictional determination in any other circumstance where he determines that it is appropriate given the facts of the particular case. The San Francisco District has re-examined the conditions of the project site and in particular the surface hydrologic connection between the project site and a navigable water of the U.S. We have determined that the waters present on this project site are jurisdictional waters of the United States. Therefore, we are rescinding the February 5, 2010, preliminary jurisdictional determination and are issuing an approved jurisdictional determination (see enclosed map dated October 15, 2010). The October 15, 2010, map supersedes the preliminary jurisdictional determination map dated February 1, 2010.

The enclosed delineation map entitled, "SPN File 2009-00443S, Approved Jurisdictional Determination, Panoche Valley Solar Farm," in one (1) sheet dated October 15, 2010, accurately depicts the extent and location of other waters of the United States within the boundary area of the site that are subject to U.S. Army Corps of Engineers' regulatory authority under Section 404 of the Clean Water Act. This approved jurisdictional determination is based on the current conditions of the site, as verified during a field investigation of December 14, 2009, and a review of other data submitted by EPA Region 9. This approved jurisdictional determination will expire in five (5) years from the date of this letter, unless new information or a change in field conditions warrants a revision to the delineation map prior to the expiration date. The lateral

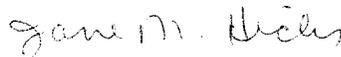
defined by the presence of scouring, sediment deposits, shelving, debris lines, and transitional vegetation on the banks. The basis for this approved jurisdictional determination is further explained in the enclosed *Approved Jurisdictional Determination Form*. This approved jurisdictional determination is presumed to be consistent with the official interagency guidance of June 5, 2007, interpreting the Supreme Court decision, *Rapanos v. United States*, 126 S. Ct. 2208 (2006).

You are advised that the approved jurisdictional determination may be appealed through the U.S. Army Corps of Engineers' *Administrative Appeal Process*, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; Mar. 28, 2000), and outlined in the enclosed flowchart and *Notification of Administrative Appeal Options, Process, and Request for Appeal* (NAO-RFA) Form. If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to this office for reconsideration of this decision. If you do not provide new information to this office, you may elect to submit a completed NAO-RFA Form to the Division Engineer to initiate the appeal process; the completed NAO-RFA Form must be submitted directly to the Appeal Review Officer at the address specified on the NAO-RFA Form. You will relinquish all rights to a review or an appeal, unless this office or the Division Engineer receives new information or a completed NAO-RFA Form within sixty (60) days of the date on the NAO-RFA Form. If you intend to accept the approved jurisdictional determination, you do not need to take any further action associated with the Administrative Appeal Process.

You may refer any questions on this matter to Katerina Galacatos of my Regulatory staff by telephone at 415-503-6778 or by e-mail at Katerina.Galacatos@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: <http://www.spn.usace.army.mil/regulatory/>.

Sincerely,



Jane M. Hicks
Chief, Regulatory Division

Enclosures

Copy Furnished (w/ encls):
Solargen Energy, Cupertino, CA (Attn. Eric Cherniss)

Copy Furnished (w/ encl 1 only):
CA RWQCB, Fresno, CA

Copies Furnished (w/o encls):
U.S. EPA, San Francisco, CA
CA SWRCB, Sacramento, CA