



August 15, 2014

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Frequently Asked Questions

Overview:

Over two years ago, the Saltworks project asked the United States Army Corps of Engineers (Corps) and United States Environmental Protection Agency (EPA) to make a formal “jurisdictional determination” (JD) specifying what portions of the project site, if any, they considered to be subject to federal regulation under the Clean Water Act (CWA) and the Rivers and Harbors Act (RHA). Through personal conversations with the former District Commander of the local Corps office and confirmed by documents released pursuant to a Freedom of Information Act (FOIA) request, we know that senior Corps officials locally and in Washington reached a final decision on the JD and were prepared to release it on May 16, 2014. For reasons unclear to Saltworks, the final JD that was prepared and concludes that the vast majority of the site is subject to neither federal law has not been released.

Q: What did the Corps conclude?

A: According to the package of legal memoranda and conversations with the then District Commander, the site was divided into two portions: the “Western Portion” which has the longest history of use and disturbance and the “Eastern Portion” which was constructed pursuant to a 1940 federal permit. The Corps determined that the Western Portion was subject to no jurisdiction under either law. As to the Eastern Portion, the Corps found that limited historic jurisdiction under the RHA remained, but over less than 100 acres, and that no CWA jurisdiction applied.

Q: Who made these conclusions?

A: The Office of Chief Counsel prepared the legal memoranda addressing the law, facts, and history of the site. The memoranda were transmitted by the Director of Civil Works for the Corps. And the local individual with the authority and responsibility to sign and issue the JD, which he committed to doing on May 16, 2014, was the former District Commander in San Francisco.

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Q: Were these final decisions?

A: The legal memoranda (available at RCSaltworks.com) speak for themselves and articulate full and final analyses and conclusions regarding the site and the application, or lack thereof, of the CWA and RHA to it. An actual JD implementing the memoranda was prepared for issuance.

Q: Why are you releasing these memoranda now?

A: This has gone on long enough. Pursuant to Corps published policy, preparation of a JD should typically take 60 days. We are now well into our third year since requesting the JD. Our conversations with the District Commander and the FOIA documents produced leave no doubt that a final decision was made by the Corps. That decision should be issued formally, as it had been committed to being on May 16, 2014.

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