

**ADMINISTRATIVE APPEAL DECISION
CLEAN WATER ACT
ZENECA LAGOONS
CONTRA COSTA COUNTY, CALIFORNIA
SAN FRANCISCO DISTRICT
FILE NUMBER SPN-2003-282520S**

DATE: December 19, 2013

Review Officer: Thomas J. Cavanaugh, U.S. Army Corps of Engineers (Corps), South Pacific Division, San Francisco, California

Appellant: William Marsh, Edgcomb Law Group, attorney representing Cherokee Simeon Venture I, LLC (Appellant)

District Representative: Christina Cavett-Cox, Army Corps of Engineers, San Francisco District (District)

Authority: Clean Water Act (33 USC 1344)

Receipt of Request for Appeal: 25 January 2013

Appeal Meeting and Site Visit Date: 30 May 2013

Summary of Decision: This Clean Water Act (CWA) jurisdictional determination (JD) is remanded to the District for further evaluation and explanation as described below, prior to making its final decision. The District must clearly document the analysis which lead to its conclusion as to the status of the two freshwater lagoons as diked baylands and explain its determination of whether the two freshwater lagoons are jurisdictional under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The District must also provide its basis for determining whether the two freshwater lagoons are adjacent to San Pablo Bay. Additionally, as the Appellant refers to Baxter Creek and the District refers to Carlson Creek as the creek that connects East Stege Marsh to San Pablo Bay, the District should, in its final decision, clarify the correct name of the creek. Finally, as the matter of the exemption was raised by Appellant in its request for a JD, the District's decision on the applicability of the exemption should have been addressed in its final JD. The District must, therefore, include a discussion of why it did not apply the exemption of 33 C.F.R. §328.3(a)(8) in its final JD.

Background Information: The Property is an approximately 10 acre portion of the Campus Bay property, referred to as the Zeneca Freshwater Lagoons, within the City of Richmond, Contra Costa County, California, Latitude 37.910 North, Longitude 122.329 West.

The site on which the ponds are located had been used for industrial and chemical manufacturing from 1897 to 2002. Industrial and chemical manufacturing ceased on the site in 2002. The record does not indicate any other activity activities being conducted on the site since 2002 that produced wastes or effluence that could require treatment. During the time the site was used as a chemical manufacturing facility, the Lagoons were used as wastewater evaporation ponds to capture site wastewater mixture from industrial activities, building maintenance, chemical maintenance and untreated stormwater runoff. The waste treatment activities of the lagoons were described in the site's 1995 National Pollution Discharge Elimination System (NPDES) permit. When the site's 1995 NPDES permit expired, the Regional Water Quality Control Board (RWCB) issued a new NPDES permit in 2002 to permit discharges of industrial process water and stormwater from the ponds. In 2003, Zeneca performed remediation and capping northwest of the lagoons and installed storm drain low-flow interceptors to capture and route site stormwater runoff through the lagoons. The 2002 NPDES permit was then terminated and subsumed in the City of Richmond's NPDES Municipal Stormwater permit. The City of Richmond's NPDES Municipal Stormwater permit was subsequently subsumed by the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit.

The Appellant's consultant evaluated the site using the 1987 *Wetland Delineation Manual* (1987 WDM), the 2008 Regional Supplement to the *Wetland Delineation Manual: Arid West Region* (Version 2.0), and the Code of Federal Regulations (CFR) definitions of jurisdictional waters, and supporting guidance documents. With the May 22, 2012 submittal, the Appellant's consultant concluded that there are 8.61 acres of unconsolidated bottom waters and palustrine emergent wetlands.

A JD for the Property was previously made on July 28, 2004. The District's JD letter referenced a map dated June 15, 2004, titled "Revised Site Plan", as depicting the extent and location of waters of the United States on the site. However, neither the letter nor the referenced map specified the acreage of waters of the U.S. on the site.

On August 23, 2011, the Appellant's consultant, ARCADIS U.S., inc. requested a new JD of the two freshwater lagoons on the Property from the District, as the previous JD had expired in July 2009.

On March 1, 2012 the District provided the Appellant with a JD for the Property. The District concluded that the site contained 5.27 acres of jurisdictional waters, including 2.69 acres of wetlands and 2.58 acres of other waters of the United States.

On May 22, 2012, the Appellant provided the District with a revised report on the extent of waters of the United States, including wetlands on the Property. The report concluded that there were 6.06 acres of wetlands and 2.55 acres of open waters on the Property.

On November 27, 2012, after reviewing the new information provided to the District on May 22, 2012, the District issued its revised JD for the Property. The District concluded that the site contained 8.61 acres of jurisdictional waters, including 6.06 acres of wetlands

and 2.55 acres of other waters of the United States. The Appellant disagreed and appealed citing the reasons for appeal addressed in this appeal decision.

Appeal Evaluation, Findings and Instructions to the District Engineer (DE):

REASON 1: The two freshwater lagoons on the Property are exempt from USACE jurisdiction under the Clean Water Act, pursuant to the waste treatment system exemption, 33 C.F.R. § 328.3(a)(8).

FINDING: This reason for appeal does not have merit. However, as the matter of the exemption was raised by Appellant in its request for a JD, the District's decision on the applicability of the exemption should have been addressed in its final JD.

ACTION: The District must include a discussion of why it did not apply the exemption of 33 C.F.R. §328.3(a)(8) in its final JD.

DISCUSSION: In the RFA, the Appellant argued that, pursuant to 33 C.F.R. §328.3(a)(8), water bodies that are part of a waste treatment system that were designed to meet the requirements of the Clean Water Act (CWA) are excluded from the definition of "waters of the United States". The Appellant asserted that waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not considered waters of the United States. Specifically, the Appellant asserted that waterbodies which are part of an approved water treatment system (i.e., incorporated for a NPDES permit) are exempt from ACOE's jurisdiction. The Appellant cited *N Cal. River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. Cal. 2007) and *San Francisco Baykeeper v. W. Bay Sanitary Dist.*, 2011 U.S. Dist. LEXIS 54883, 139-141 (N.D. Cal. May 23, 2011) as support for their position. The Appellant asserted that the upper and lower freshwater lagoons were formerly part of a permitted NPDES wastewater treatment system in that: (1) the lagoons were created to treat industrial waste; and (2) an NPDES permit was issued for the site, which authorized such discharges. Further, the Appellant asserted that while the NPDES permit was rescinded in 2003, the two freshwater lagoons were incorporated into the City of Richmond's municipal stormwater control system, which is currently permitted under the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit. The Appellant asserted that CWA section 402(p) specifically requires NPDES permits for municipal stormwater discharges "to reduce the discharge of pollutants to the maximum extent practicable," and requires states to adopt regulations that protect water quality and establish a comprehensive program to regulate municipal stormwater discharges. The Appellant further asserted that the pollutants associated with municipal stormwater are regulated under CWA, and that stormwater treatment systems designed to meet the NPDES permit requirements for municipal stormwater meet the intent of "waste treatment systems", as specified in 33 C.F.R. §328.3(a)(8). The Appellant's assertion is that, accordingly, the two freshwater lagoons are exempt from ACOE's jurisdiction under CWA pursuant to the waste treatment system exemption.

In response to questions asked at the appeal conference, the Appellant reiterated their assertion that the two freshwater lagoons on the Property should be considered exempt from USACE jurisdiction under the CWA, pursuant to the waste treatment system exemption. The Appellant asserted that the ongoing treatment of stormwater in the two lagoons should be sufficient for the two freshwater lagoons on the Property to be exempt from USACE jurisdiction under the CWA.

In its February 15, 2012 email to the Appellant's consultant, the District described the consideration that led to their conclusion that the two freshwater lagoons on the Property were not exempt from Corps jurisdiction. In that email, the District explained that the exemption for wastewater treatment facilities are generally associated with processing human and domestic waste and that, since the two freshwater lagoons on the Property treat stormwater, the District determined the lagoons would not fit under the wastewater treatment exemption. The District's November 20, 2012, reconsideration memo indicated that the District had taken jurisdiction over the lagoons in 2004 and conditions had not changed, the lagoons are not used for stock watering, irrigation, settling basins, or rice growing and they are not waste water treatment basins. Further, the reconsideration memo stated that both lagoons collect natural and artificial runoff, that current conditions on the site support both open water and wetland habitat, and that both lagoons are directly connected to each other and the Bay via Baxter Creek.

In response to questions asked at the appeal conference, the District indicated that through the 90s, the ponds on the Property were being used to treat wastewater, but after that began receiving only stormwater. The District stated that it concluded, that for a waterbody to be exempt from jurisdiction under the CWA pursuant to the waste treatment system exemption, there must be ongoing biochemical treatment of waste in that waterbody. The District concluded that the wastewater treatment exclusion is for waste treatment systems and does not include stormwater treatment systems. The District noted that the Appellant does not have a NPDES "waste water treatment system," permit and concluded that a stormwater permit is not a wastewater treatment permit. As ongoing treatment of stormwater is the only ongoing treatment occurring within the lagoons, the District concluded that the two freshwater lagoons on the Property are not exempt from USACE jurisdiction under the CWA, pursuant to the waste treatment system exemption and that the Appellant could not avail itself of this exemption.

33 C.F.R. § 328.3(a)(8) states that, "Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States."

40 CFR § 122.26(b)(13) defines Stormwater as "stormwater runoff, snow melt runoff, and surface runoff and drainage". 40 CFR § 122.26(b)(14) states that storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this part 122.

Northern California River Watch v. City of Healdsburg, 496 F.3d. 993, 1001 (9th Cir. 2007), citing U.S. v. Akers, 785 F.2d 814, 819 (9th Cir. 1986) held that, "The waste

treatment system exemption was intended to exempt either water systems that do not discharge into waters of the U.S. or waters that are incorporated in an NPDES permit as part of a treatment system.” Healdsburg at 1001; See 44 Fed. Reg. 32,858 (June 1, 1979). “In other words, no permit is required to discharge pollutants into a self-contained body of water that has no connection to a water of the United States, or into a body of water that is connected to a water of the U.S., but that is part of an approved treatment system.” Healdsburg at 1001-1002.

It is clear from the administrative record that the District, prior to making its decision and again in its reconsideration memorandum, considered the potential that the two freshwater lagoons on the Property might fall under the waste treatment system exemption. The District based its conclusion on the lagoons no longer serving their original purpose of treating discharges associated with industrial activity and now providing only passive treatment of stormwater runoff from the surrounding area. As exemptions from CWA jurisdiction are expected to be narrowly construed in order to achieve the purposes of the CWA, it was reasonable for the District to conclude, based on their consideration, that the two freshwater lagoons on the Property are not exempt from CWA jurisdiction, pursuant to the waste treatment system exemption.

However, as the matter of the exemption was raised by Appellant in its request for a JD and was addressed by the District during its deliberations on the matter. The District’s decision on the applicability of the exemption should have been addressed in its final JD. Therefore, the District is directed to include in its final JD a discussion of why it did not apply the exemption of 33 C.F.R. §328.3(a)(8).

REASON 2: The ACOE’s November 27, 2012 Jurisdictional determination is vague and ambiguous and otherwise fails to specify the factual grounds for the ACOE’s jurisdictional determination.

FINDING: This reason for appeal has merit.

ACTION: In its final decision, the District must clearly describe the analysis which leads to the District’s conclusion as to whether or not the two freshwater lagoons on the Property should be determined to be jurisdictional under Section 10 of the Rivers and Harbors Act as diked baylands. In that analysis, the District must discuss existing District policies concerning diked baylands, any implications that on jurisdiction under Section 404 of the Clean Water Act of those policies. Additionally, the District shall more fully describe its consideration of the joint Corps/EPA guidance, dated December 2, 2008, “Revised Guidance on Clean Water Act Jurisdiction Following the Supreme Court Decision in Rapanos v. U.S. and Carabell v. U.S.” (Revised Rapanos Guidance) in making its JD.

DISCUSSION: In the RFA, the Appellant asserted that the ACOE’s November 27, 2012 JD is vague and ambiguous and otherwise fails to specify the factual grounds for the ACOE’s JD.

The District completed one AJD Form for the two freshwater lagoons on the Property.

In Section I.C of the AJD form, the District identified the San Pablo Bay as the nearest downstream Traditionally Navigable Water (TNW) and the nearest waterbody. Section II.A states that there are no “navigable waters of the U.S.” within Rivers and Harbors Act (RHA) jurisdiction, as defined by 33 C.F.R. § 328, in the review area. Section II.B indicates that there are “waters of the U.S.” within Clean Water Act (CWA) jurisdiction, as defined by 33 C.F.R. § 328, in the review area. Section II.B.1.a of the AJD form indicates that the review area contains wetlands adjacent to TNWs and impoundments of jurisdictional waters. Section II.B.1.b indicates that there are 2.58 acres of non-wetland waters and 2.69 acres of wetlands in the review area.

Section III.A.1 indicates that the San Pablo Bay was determined to be a navigable water because it is used for commerce. The District did not include language on the AJD form indicating whether San Pablo Bay is subject to the ebb and flow of the tide. Section III.A.2 states that the upper lagoon collects both natural precipitation and stormwater runoff from the surrounding watershed. Water from the upper lagoon is pumped through a discharge pipe into the lower lagoon. The water is then discharged through an outfall pipe into the East Stege Marsh during large rain events. East Stege Marsh consists of both salt marsh habitat and tidally influenced open water habitat. East Stege Marsh is directly connected to San Francisco Bay via Carlson Creek. In Section IV.B, the District stated that there are 2.58 acres of other waters within the lagoons which are within diked baylands.

The Corps regulations, at 33 CFR §§ 328 and 329, define “waters of the United States” and “navigable waters of the United States”, respectively, and prescribe policy, practice and procedures to be used in determining the extent of such jurisdiction. In addition, 33 CFR § 331, Administrative Appeal Process, provides terms and definitions for JDs. The Corps regulations, at 33 C.F.R. § 329.4, indicates that, “waters that are subject to the ebb and flow of the tide” are by definition navigable waters of the U.S. The term “adjacent” is defined, at 33 CFR 328.3, as “bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are ‘adjacent wetlands’”.

Procedures for making JDs for waters of the United States are described in the 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 19 January 1989, later amended on 4 January 1993.

The 87 Manual states that the Corps of Engineers (*Federal Register* 1982) and the EPA (*Federal Register* 1980) jointly define wetlands as: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically

adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

The Revised Rapanos Guidance directs the agencies to assert jurisdiction over wetlands “adjacent” to traditional navigable waters as defined in the agencies’ regulations. Under EPA and Corps regulations and as used in the Revised Rapanos Guidance, “adjacent” means “bordering, contiguous, or neighboring”. The Revised Rapanos Guidance further states that finding a continuous surface connection is not necessary to establish adjacency under this definition.

The Revised Rapanos Guidance states that the regulations define adjacent as follows: “the term adjacent means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are ‘adjacent wetlands’”. Under this criteria, the agencies consider wetlands adjacent if one of the following three criteria is satisfied. First, there is an unbroken surface connection or shallow sub-surface connection to jurisdictional waters. This hydrologic connection may be intermittent. Second, they are physically separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes and the like. Or, third, their proximity to a jurisdictional water is reasonably close, supporting the science based inference that such wetlands have an ecological interconnection with jurisdictional waters. Because of the scientific basis for this inference, determining whether a wetland is reasonably close to a jurisdictional water does not generally require a case specific demonstration of an ecologic interconnection. In the case of a jurisdictional water and a reasonably close wetland, such implied ecological interconnectivity is neither speculative nor insubstantial. For example, species, such as amphibians or anadromous and catadromous fish, move between such waters for spawning and their life stage requirements. Migratory species, however, shall not be used to support an ecologic interconnection. In assessing whether a wetland is reasonably close to a jurisdictional water, the proximity of the wetland (including all parts of a single wetland that has been divided by road crossings, ditches, berms, etc.) in question will be evaluated and shall not be evaluated together with other wetlands in the area.

The Revised Rapanos Guidance also indicates that the *Rapanos* decision does not affect the scope of jurisdiction over wetlands that are adjacent to traditional navigable waters because at least five justices agreed that such wetlands are “waters of the United States”.

Further, the Revised Rapanos Guidance requires the agencies to assert jurisdiction over those wetlands that have a continuous surface connection with a relatively permanent, non-navigable tributary without the legal obligation to make a significant nexus finding.

Finally, the Revised Rapanos Guidance requires the agencies to ensure that information in the record adequately supports any JD. The Revised Rapanos Guidance directs the agencies to demonstrate and document in the record that a particular water fits within a class identified as not requiring a significant nexus determination or that the water has a significant nexus with a TNW. If a wetland is adjacent to a TNW then no significant nexus determination is required.

The District's "Regulatory Function's Policy On Section 10 Jurisdiction Behind Dikes (Levees)" Memorandum, dated May 25, 1983, stated that Section 10 jurisdiction would be exercised over areas behind dikes if all the following criteria are met: The area is presently at or below mean high water (MHW); The area was historically at or below at or below MHW in its "obstructed, natural state; and, there is no evidence that the area was ever above MHW. The document then provides a procedure, using applicant data, elevations, or historic charts to determine whether these criteria are met.

The District's Regulatory website, on the "Public Notices Explaining Local Policies" page, contains four documents associated with the topic of "Section 10 Jurisdiction". The first of these documents is the District's public notice for the Redwood Shores, Inc. project (13464-49), dated May 21, 1982, which, in paragraph 5, according to the District's website, outlines the District's Administrative policy concerning diked baylands and jurisdiction under Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403). That public notice stated that the Ninth Circuit Court of Appeals, in its decision, in the case of Leslie Salt Co. v. Froehlke (1978) determined the Corps of Engineers' regulatory jurisdiction under Section 10 of the River and Harbor Act. The public notice further quoted the court as stating that: "We hold that in tidal areas, 'navigable waters of the United States' as used in the River and Harbor Act, extend to all places covered by the ebb and flow of the tide to the mean high water (MHW) mark in its unobstructed, natural state" and that the phrase "in its unobstructed, natural state" refers to the tidal flow as it existed before man-induced alterations in the shoreline (such as the building of dikes or the causing of subsidence).

The second of these documents is the District's public notice 71-22, dated June 11, 1971, which the District's website describes as "Section 10 jurisdiction under the River and Harbor Act of 1899 extends to the line on shore reached by the plane of the mean of the higher high water". The public notice announced that limits of jurisdiction over such waters shall extend to the line on shore reached by the plane of the mean of the higher high water.

The third of these documents is the District's public notice 71-22(a), dated January 18, 1972, which the District's website describes as "Section 10 permits are required for all new work in unfilled portions of the interior of diked areas below former mean higher high water". This public notice announced that the Corps of Engineers would be exercising its regulatory authorities within the area bound by the plane of the mean of the higher high water.

The fourth of these documents is the District's public notice 71-22(b), dated July 6, 1976, which the District's website describes as "Clarification of when Section 10 permits are required in areas landward of dikes below former mean higher high water". This public notice set forth the general criteria by which the District would exercise its Rivers and Harbors Act jurisdiction in areas landward of dikes and below former mean higher high water. This public notice specifically states does not pertain to the Corps' authority pursuant to Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344).

The public notice indicates that Rivers and Harbors Act permits will be required for all new work landward of dikes below former mean higher high water as announced in Public Notice 71-22(a), except where work will occur in an area which would not return to its former condition of daily tidal inundation even if the dikes were broken, work will occur in an area characterized by the prevalence of streets, houses, and other similar construction, or work will occur in an area which was not historically inundated, such as an area which subsided below the mean higher high water line after construction of a dike.

While the District has documents on its website, which are described above, that reference court cases and describe the basis for regulating diked baylands under Section 10 of the Rivers and Harbors Act, the District's basis for asserting jurisdiction under the CWA, based on a conclusion that the two lagoons are diked baylands, is not sufficiently explained in the documentation supporting the JD for the Property. The District concluded, on its AJD form, that the two freshwater lagoons are diked baylands, yet also concluded, on the AJD form, that there are no "navigable waters of the U.S." within RHA jurisdiction, as defined by 33 C.F.R. § 328, in the review area. There is no indication in the AR of a specific analysis that led to the conclusion that the the two freshwater lagoons on the Property are diked baylands or how such a determination might be relevant in asserting jurisdiction under the CWA. Additionally, while the District described the physical connection from the two freshwater lagoons to San Pablo Bay, as being through an outfall pipe into the East Stege Marsh, and from East Stege Marsh is directly connected to San Francisco Bay via Carlson Creek, the District has not fully explained its basis for concluding that the two freshwater lagoons on the Property are adjacent to a TNW.

The District must, therefore, clearly document the analysis which leads to the conclusion as to whether the two freshwater lagoons are diked baylands and, if so, clarify whether these waters should properly be determined to be jurisdictional under Section 10 of the Rivers and Harbors Act as diked baylands, as described in District policy and public notices. In that analysis, the District must clarify any implications of its analysis or conclusions that lead to a determination that the two freshwater lagoons on the Property would be jurisdictional under Section 404 of the Clean Water Act, as a result of being diked baylands. Additionally, the District must reconsider the analysis that led to the conclusion that the two freshwater lagoons are adjacent to San Pablo Bay. In its final decision, the District must provide its basis for determining whether the two freshwater lagoons are adjacent to San Pablo Bay, or whether the two freshwater marshes should more properly be characterized and analyzed differently, based on their relationship to East Stege Marsh or the creek that connects directly to San Pablo Bay, in compliance with the Revised Rapanos Guidance, as a result of being connected to San Pablo Bay through an outfall pipe into the East Stege Marsh, and from East Stege Marsh to San Pablo Bay. Additionally, as the Appellant refers to Baxter Creek and the District refers to Carlson Creek as the creek that connects East Stege Marsh to San Pablo Bay, the District should, in its final decision, clarify the correct name of the creek. As San Pablo Bay is the northern portion of San Francisco Bay, the interchanging use of names should not result in confusion.

Information Received and its Disposition during the Appeal Review: The administrative appeal was evaluated based on the District's administrative record, the Appellant's Request for Appeal (RFA), discussions at the appeal meeting

Conclusion: The District must clearly document the analysis which leads to the conclusion as to whether the two freshwater lagoons are diked baylands and clarify whether these waters should properly be determined to be jurisdictional under Section 10 of the Rivers and Harbors Act as diked baylands, as described in District policy and public notices or conclusions that lead to a determination that the two freshwater lagoons on the Property would be jurisdictional under Section 404 of the Clean Water Act, as a result of being diked baylands. In its final decision, the District must provide its basis for determining whether the two freshwater lagoons are adjacent to San Pablo Bay, or whether the two freshwater marshes should more properly be characterized and analyzed differently, in compliance with the Revised Rapanos Guidance, as a result of being connected to San Pablo Bay through an outfall pipe into the East Stege Marsh, and from East Stege Marsh to San Pablo Bay. Additionally, as the Appellant refers to Baxter Creek and the District refers to Carlson Creek as the creek that connects East Stege Marsh to San Pablo Bay, the District should, in its final decision, clarify the correct name of the creek. Finally, as the matter of the exemption was raised by Appellant in its request for a JD, the District must include a discussion of why it did not apply the exemption of 33 C.F.R. §328.3(a)(8) in its final JD. The District's determination was not otherwise arbitrary, capricious or an abuse of discretion, and was not plainly contrary to applicable law or policy. This concludes the Administrative Appeal Process. The District shall, upon completion of these tasks, provide its final decision to the Division Engineer and Appellant.



Thomas J. Cavanaugh
Administrative Appeal Review Officer