



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
GALVESTON DISTRICT, CORPS OF ENGINEERS  
P. O. BOX 1229  
GALVESTON TX 77553-1229  
April 7, 2009

Compliance Section

**SUBJECT: SWG-2008-1351**, South Texas Project Nuclear Operating Company, Jurisdictional Determination, 7,000-Acre Mass Cooling Reservoir (MCR), Wadsworth, Matagorda County, Texas

Mr. Gregory Gibson  
South Texas Project Operating Company  
P.O. Box 289  
Wadsworth, Texas 77483

Dear Mr. Gibson:

This letter is in response to an initial request dated April 9, 2008 to conduct a jurisdictional delineation verification on the project site for the proposed construction of Nuclear Power Units 3 and 4 under the project number **SWG-2007-786**. On February 26, 2009 at the request of the applicant the land portion and the MCR were separated because they have been defined as two separate project areas. The northern portion maintains the project number **SWG-2007-786** and the MCR was assigned the project number **SWG-2008-1351**. The project site is depicted as Tract B on the attached map received October 28, 2008 and is located on Farm-to-Market 521, approximately 8 miles west of Wadsworth, Matagorda County, Texas.

We have determined that the South Texas Project (STP) MCR is not a water of the United States for the following reasons including but not limited to: (1) the MCR is a man-made water body that is not in entirety impounded from one water, (2) its sources of hydrology are only precipitation and supplemental water pumped from the Colorado River, (3) its discharge system is controlled by outfall structures, and (4) it is not used by the public for recreation. Therefore; a Department of the Army Permit will not be required for the discharge of dredged and or fill material into the MCR (Section 404 of the Clean Water Act) and for work and or structures affecting the MCR (Section 10 of the Rivers and Harbors Act of 1899).

This jurisdictional determination has been conducted to identify the limits of the Corps' Clean Water Act jurisdiction for the particular site identified in this request. This verification may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This letter contains an approved jurisdictional determination for the subject site. This determination remains valid for 5 years from the date of this letter, unless new information warrants revision or reissuance prior to its expiration. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR part 331. Enclosed you will find a Notification of Administrative Appeals Options and Process (NAP) and Request for

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Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Southwest Division Office at the following address:

Mr. James Gilmore  
Appeal Review Officer, CESWD-ETO-R  
U.S. Army Corps of Engineers  
1100 Commerce Street, Suite 831  
Dallas, Texas 75242-1317

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In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within **60 days** of the date of this NAP. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter. If you have any questions concerning this determination, please reference file number **SWG-2008-1351** and contact Mr. Nicholas Laskowski at the letterhead address or by telephone at 409-766-6381.

Sincerely,

Kenny Jaynes  
Chief, Compliance Section

*KJ*  
JAYNES  
RC

Enclosures

Copy Furnished:

Mr. Russell Kiesling  
Regulatory Affairs  
South Texas Project  
P.O. Box 289  
Wadsworth, Texas 77483

Mr. Jayson Hudson  
US Army Corps of Engineers