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# Redwood City, California Salt Ponds/Waters of the United States: California Attorney General Files Federal Court Action Challenging U.S. Environmental Protection Agency Jurisdictional Determination

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The California Attorney General ("AG") filed a September 24th Complaint for Declaratory and Injunctive Relief challenging a determination by the United States Environmental Protection Agency ("EPA") that 1,365 acres adjacent to San Francisco Bay denominated the Redwood City Salt ponds ("Site") are not waters of the United States ("WOTUS") under the Clean Water Act.

The Site is described as important for restoration to improve the Bay ecosystem and provide resiliency against sea level rise.

EPA is stated to have made the jurisdictional determination as to whether the salt ponds were WOTUS pursuant to a request by DMB Redwood City Saltworks. This request was stated to have been part of a proposal for an urban development of the Site. This Jurisdictional Determination is stated to be a reversal of EPA's preliminary decision issued on November 21, 2016, which concluded that the Salt Pond Site includes 1,270 acres that are WOTUS.

The California AG argues that the Jurisdictional Determination contradicts the Clean Water Act and relevant case law along with the regulatory definition of WOTUS, citing 80 Fed. Reg. 37,054 (June 29, 2015).

The argument put forth for the finding of a WOTUS includes:

1. the tidal channels within the Site are part of the traditionally navigable waters of San Francisco Bay and were not converted to "fast land," or dry solid upland, prior to the enactment of the CWA;
2. the salt ponds on the Site in their current condition have been shown to be navigable in fact and susceptible to use in interstate or foreign commerce;
3. the salt ponds are impoundments of the San Francisco Bay, which is a "water of the United States"; and the salt ponds have a significant nexus to the traditionally navigable waters of the adjacent San Francisco Bay.

A copy of the Complaint can be downloaded [here](#).