

MEMORANDUM FOR THE RECORD

SUBJECT: Determination of Traditional Navigable Waters (TNW) on the Los Angeles River

1. Summary.

I have determined that the unlined reach of the Los Angeles River extending approximately two miles within the Sepulveda Basin is a Traditional Navigable Water (TNW). I have also determined that the portion of the Los Angeles River at its estuary with the Pacific Ocean, to the upstream extent of tidal influence (2.5 ft Mean Sea Level), is a TNW. This determination is consistent with the Clean Water Act (CWA), federal regulations (including 33 C.F.R. § 328.3), relevant case law, and existing guidance, including the 5 June 2007 joint U.S. Environmental Protection Agency (EPA) and Department of the Army legal memorandum entitled *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos vs. United States and Carabell vs. United States* (Rapanos Guidance) and *Appendix D of the U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook* issued 5 June 2007 (Appendix D).

2. Background.

a. The Los Angeles River drains a watershed of approximately 828 square miles, comprising the San Fernando Valley and surrounding hillsides, a portion of the San Gabriel Mountains and a portion of the Los Angeles Basin. Prior to channelization, the Los Angeles River was a broad alluvial channel, the alignment of which would vary widely, both in direction and breadth, depending on flood events. What is today designated the Los Angeles River originates at the confluence of Bell Canyon Channel and Arroyo Calabasas and extends in a channelized configuration for approximately 53 miles to discharge to the Pacific Ocean at San Pedro Bay. The majority of the river consists of an engineered concrete flood control channel constructed in the 1940s, with two unlined segments in the Sepulveda Basin (2 miles) and the Glendale Narrows (7 miles).

b. The Sepulveda Basin is a flood control facility along the Los Angeles River completed in 1941 in the southeast portion of the San Fernando Valley and an important component of the flood control system along the Los Angeles River. The subwatershed draining to Sepulveda Basin is 152 square miles. Within the basin, a 2-mile reach of the Los Angeles River is unlined, in contrast to the reaches immediately upstream and downstream of the basin which are of a fully-lined concrete configuration. Baseflows within the Los Angeles River upstream of Sepulveda Dam are largely sustained by urban

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runoff and discharges of treated wastewater effluent. The basin itself comprises the area subject to inundation in a standard project flood (estimated to be 114,000 cfs peak inflow). The historic maximum inflow into the basin is 58,970 cfs, recorded in 1980. The basin also supports two artificial lakes, Lake Balboa and a smaller lake associated with the Sepulveda Wildlife Refuge. The basin area is leased to the City of Los Angeles Department of Recreation and Parks for a variety of recreational uses including boating (on Lake Balboa), bird watching, golf, baseball, soccer and passive recreational uses.

c. There is very little evidence of historic navigation along the Los Angeles River. Its dynamic nature was generally not conducive to navigation. Reaches would frequently go dry and there was no consistent channel that could be reliably navigated. The lower reach (from the downtown area to the outlet) fanned out to a broad, marshy floodplain. The accounts of navigation that predate the construction of the Corps' flood control project are of sporadic boat use associated with extreme flood events where roads and normal routes of access were flooded or washed out.

3. Basis for Determination.

a. The Rapanos Guidance indicates that in its context, the term TNW refers to those waters that are under the jurisdiction of the Corps, pursuant to 33 C.F.R. § 328.3(a)(1), (i.e., “[a]ll waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.”

b. As stated in Appendix D: “when determining whether a water body qualifies as a “traditional navigable water” (i.e., an (a)(1) water), relevant considerations include whether a Corps District has determined that the water body is a navigable water of the United States pursuant to 33 C.F.R. § 329.14, or the water body qualifies as a navigable water of the United States under any of the tests set forth in 33 C.F.R. Part 329, or a federal court has determined that the water body is navigable-in-fact under federal law for any purpose, or the water body is “navigable-in-fact” under the standards that have been used by the federal courts.”

c. The determination that the estuary area is a TNW is based on the fact that this reach is subject to the ebb and flow of the tide and based on the fact Corps of Engineers determined this water body to be a navigable water of the United States pursuant to 33 C.F.R. § 329.14 on 29 November 1972.

d. To determine whether the 2-mile reach of the Los Angeles River within the Sepulveda Basin is a TNW (the “Study Reach”), in accordance to 33 C.F.R. §

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328.3(a)(1), a case-specific analysis to evaluate whether the Study Reach is navigable-in-fact, including consideration of its potential susceptibility to interstate and foreign commerce, was undertaken. The Corps has determined that the Study Reach is a TNW based on the following factors:

(1) Physical Characteristics. The depth and configuration of the Study Reach varies due to the natural substrate (sediment and rocks) which is subject to erosion and redeposition by flood waters; however, the channel configuration and flows are generally adequate to provide the depth of flow necessary to float small recreational watercraft such as canoes and kayaks throughout portions of the Study Reach. Average daily discharges as measured at the dam are approximately 100 cfs for most of the year which, in a low-flow channel width that varies from 20 to 50 feet, will generally provide adequate depth of flow depending on the channel cross-section. Sources of flows during non-flood periods are dominated by urban runoff and treated effluent from the Donald C. Tillman Wastewater Reclamation Plant.

(2) The Study Reach of the Los Angeles River has been used for interstate commerce and has the potential to be used for commercial activities involving navigation and interstate commerce in the future. The greater Sepulveda Basin Recreation Area is a popular and well-publicized recreational resource, attracting visitors from the local area as well as from out-of-state. The basin is located at the intersection of two major freeways (Interstate 405 and Highway 101) within a highly urbanized area with few facilities with similar recreational opportunities as those offered at Sepulveda (see <http://www.laparks.org/dos/horticulture/sepulvedabasin.htm>). Anecdotal information and photographs from a variety of sources indicate that the Study Reach is used recreationally by people in canoes and kayaks. Much of this use is documented on the website of the Friends of the Los Angeles River (FOLAR) (see <http://www.folar.org/index.html>). Los Angeles County Parks and Recreation Department personnel have indicated they routinely observe people boating in this reach of the Los Angeles River. In addition, there is commercial recreational boating concessionaire on the adjacent Lake Balboa and it is possible this established enterprise could offer kayak and other small recreational watercraft rentals. Although this activity is not officially sanctioned by the Corps or Los Angeles County, these activities demonstrate this reach of the river has requisite physical characteristics to support the use of small recreational watercraft such as canoes and kayaks. Such use provides evidence of the susceptibility for commercial use.

(3) Public accessibility to the Study Reach. Although public access within the Study Reach is strongly discouraged, there are no physical barriers restricting public access to this reach of the Los Angeles River. In addition, there are well-worn paths to the river from public areas and parking within the basin. In addition, Lake Balboa and the wildlife refuge, both adjacent to the Study Reach, attract visitors to the basin.

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4. Determination.

a. The portion of the Los Angeles River at its estuary with the Pacific Ocean up to 2.5 feet MSL is a TNW. The 2-mile reach of the Los Angeles River within the Sepulveda Basin exhibits physical characteristics, such as depth and duration flow on a routine basis, indicating this reach has the potential to be used for commercial recreational navigation activities, such as canoeing, kayaking, birding, and wildlife viewing. The surrounding basin recreation area is a publicly accessible, highly utilized, well-publicized facility that is susceptible to use in interstate commerce associated with recreational activities, including navigation. The above factors demonstrate the 2-mile reach of the Los Angeles River within the Sepulveda Basin is navigable-in-fact, and thus a TNW. Therefore, I hereby determine that the Study Reach is subject to the jurisdiction of Section 404 of the CWA, pursuant to 33 C.F.R. § 328.3(a)(1).

b. This determination does not (1) consider any other potentially applicable bases for determining CWA jurisdiction within the River or (2) foreclose analysis of other areas of the Los Angeles River outside Sepulveda Basin and estuary for purposes of determining CWA jurisdiction.



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