



## MEMORANDUM FOR NW0-2007-1550

**Subject:** Clarification of Closest Traditional Navigable Water for Jurisdictional Determination (JD) NWO-2007-1550

### Summary

The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) have determined that the Little Snake River is the closest traditional navigable water (TNW) for jurisdictional determination (JD) NWO-2007-1550. This assertion is consistent with the existing regulations including 33 C.F.R. Parts 328.3 and 329, and guidance, including the *JD Form Instructional Guidebook*<sup>1</sup> – *Appendix D Regarding Waters that Qualify as Waters of the US Under Section (a)(1) of the Agencies' Regulations* (“Appendix D”).

### Location

The Little Snake River originates in Routt County, Colorado, and undulates along the border between Wyoming and Colorado. The Little Snake flows for approximately 150 miles (241 km) before it enters the Yampa River, which is a tributary to the Green River. The subject JD site is located on Coal Gulch, a non-Relatively Permanent Water (RPW) which is tributary to Savery Creek (an RPW), a tributary of the Little Snake River. The JD site is located near latitude 41-13-34.45°N, and longitude 107-22-21.77° W.

### Basis for TNW Determination

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 CFR 329.14, or the water body qualifies as a navigable water of the United States under any of the tests set forth in 33 CFR 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.”<sup>2</sup>

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<sup>1</sup> U.S. Army Corps of Engineers *Jurisdictional Determination Form Instructional Guidebook* (June 5, 2007)

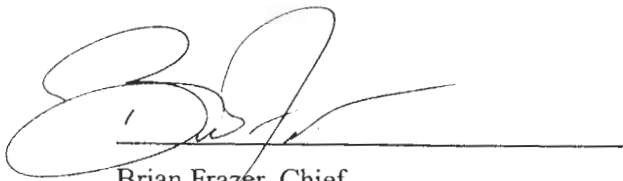
<sup>2</sup> Section 10 waters under the Rivers and Harbors Act of 1899 are only a subset of TNWs. Any water that meets the considerations identified in *Appendix D* is also a TNW.

To determine whether the Little Snake is a TNW, the agencies conducted a case-specific analysis to evaluate whether the North Fork is navigable-in-fact. The agencies have determined that the Little Snake<sup>3</sup> is a TNW due to several factors:

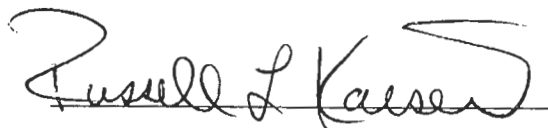
- Little Snake River is accessible to the public via multiple locations on public land<sup>4</sup>. In addition, access may be obtained at the County Road 4 Bridge overpass<sup>5</sup>.
- There is documented seasonal navigation of the river. The Little Snake is publicized as a location for canoe trips<sup>6</sup>, The Wyoming Fish and Game<sup>7</sup>, US Fish and Wildlife Service, and other governmental and scientific entities float various reaches of the Little Snake River downstream from Baggs, Wyoming as part of aquatic life monitoring programs, including endangered species collections and monitoring.
- The presence of hunting and fishing lodges in the Baggs area<sup>8</sup> with a national reputation are a documented source of interstate travelers in the area seeking an outdoor experience.

### Conclusion

Collectively, the factors described above demonstrate that the Little Snake River is navigable-in-fact, resulting in its designation as a TNW for purposes of the Clean Water Act jurisdictional determinations. The agencies are requesting that the Omaha District revise the JD form to reflect this determination.



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Date: 12 Dec 2007

Date: 11 Dec 2007

<sup>3</sup> This determination applies to the Little Snake River beginning at the confluence of the South Fork of the Little Snake River with the Main Fork of the Little Snake River in Routt County, Colorado (40.9918°N, -107.0518°W) to the downstream confluence with the Yampa River. This designation of the nearest TNW for the purposes of this JD does not preclude the future determination for any portions upstream if additional information warrants such determination.

<sup>4</sup> Colorado Canoe Trails states that there are many options for different put-in spots on public land along the length of the river <http://home.mesastate.edu/~jerry/guide/> (Last visited December 11, 2007).

<sup>5</sup> A map published by CanoeWest identifies access points in Baggs, as well the County Road 4 bridge overpass <http://www.canowest.com/links.htm> (Last visited December 4, 2007).

<sup>6</sup> See, for example: <http://home.mesastate.edu/~jerry/guide/>, and <http://www.canowest.com/links.htm>

<sup>7</sup> Personal communication: Robb Keth and Tomm Annear, Wyoming Game and Fish Department (Sept. 2007), sampling conducted for the *Progress Report: Green River Watershed Native Non-Game Fish Species Research: Phase II* by the Wyoming Game and Fish Department (March 2007)

<sup>8</sup> See, for example: <http://www.boyerylranch.com/History/history.htm/>; <http://www.wildhorsetours.com/cowboy.html>; <http://www.saddlepocketranch.com/brochure.html> (All visited last on Dec 11, 2007)