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April 10, 2008

The Honorable Stephen L. Johnson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Johnson:

Yesterday I learned that the Army Corps of Engineers is proposing to make a determination that could result in significant water quality degradation in the Los Angeles River basin. In effect, the determination would likely exempt tributaries to the Los Angeles River and their adjacent wetlands from the federal Clean Water Act. EPA has the authority to block this determination and I am writing to strongly urge you to do so.

A March 20, 2008, Army Corps of Engineers memorandum determines that the Los Angeles River is a "traditional navigable water" only downstream of the Highway 1 bridge in Long Beach. Because of the Supreme Court's *Rapanos* decision, this finding could have major impacts on the protections for the Los Angeles River, its tributaries, and the adjacent wetlands. I have enclosed a copy of this memorandum for your convenience.

If this determination is allowed to go into effect, it would potentially exempt much of the Los Angeles River basin from the water pollution controls of the federal Clean Water Act. For example, the Clean Water Act requirements for permits to discharge waste, requirements for permits for dredging and filling, requirements to establish state water quality standards, anti-degradation requirements, and the federal oil spill prevention control and countermeasure program may no longer apply in much of the Los Angeles River basin. There may be other serious ramifications as well depending on the gaps and interactions between state and federal law.

The City of Los Angeles has recently completed a two-year planning process for the revitalization of the 32 miles of the Los Angeles River that lie within the city limits. Restoration of the river as a functioning ecosystem with enhanced water quality is the foundation on which the city's master plan depends. The plan envisions a clean and vital waterway that brings walkers and bike riders to paths along the river and encourages developers to build riverfront

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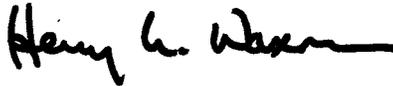
properties. These revitalization plans would be seriously disrupted by any determination that will make it easier for pollution to contaminate the river.

Not only could this determination seriously affect Los Angeles, it would also be a terrible precedent for other watersheds. If the Corps of Engineers applies a similar approach to other rivers, protections against water pollution that are now taken for granted could be seriously eroded throughout the nation.

I understand that the Corps has transmitted this memorandum to EPA for its review. If EPA takes no action, then the Corps determination will go into effect. I am told that the deadline for EPA action could be as soon as tomorrow, April 11, 2008. However, there is no doubt that you have the authority to block the determination of the Corps. It is your agency that has "the final administrative responsibility for construing the term 'navigable waters.'"<sup>1</sup>

I urge you to act immediately and protect the Los Angeles River. I also request that you explain what steps EPA is taking to prevent these types of designations from occurring in other watersheds. Please respond by April 23, 2008.

Sincerely,



Henry A. Waxman  
Chairman

Enclosure

cc: Tom Davis  
Ranking Minority Member

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<sup>1</sup> 43 U.S. Op. Atty. Gen. 197, 1979 WL 16529 (U.S.A.G.).

## MEMORANDUM FOR CHIEF, REGULATORY DIVISION

SUBJECT: DETERMINATION OF TNW STATUS OF THE LOS ANGELES RIVER  
(FILE NO. 2008-218-AJS)

1. Introduction: In support of a request for a jurisdictional determination for a property owner in the Santa Susana Mountains north of Chatsworth, the drainage system of Los Angeles River was examined to determine the location of the traditional navigable water (TNW) into which the subject property flows. The property includes two relatively permanent waters (RPW) as well as five ephemeral drainage channels for which a determination of significant nexus to a downstream TNW must be made to determine their jurisdictional status under the Clean Water Act. The route of flow from the subject property to the San Pedro Bay (the most obvious downstream TNW) was examined to determine the presence of any intervening TNWs at a higher point in the watershed to which the significant nexus determination would apply.

2. Physical setting: The subject waters are located in the northwest limit of the LA River watershed (see attached map, figure 1) and eventually discharge to the Pacific Ocean at the San Pedro Bay. The two RPWs on the project site, Devil Canyon (3<sup>rd</sup> order) and Ybarra Canyon (2<sup>nd</sup> order), confluence just south of the property boundary and continue in a natural 3<sup>rd</sup> order stream for approximately 2.2 miles before reaching Browns Canyon Wash, a concrete-lined flood control channel. From this point to the Pacific Ocean, flows are confined to engineered flood control channels of various configurations. Browns Canyon Wash extends for approximately 5.7 miles before reaching the LA River (also concrete), forming a 4<sup>th</sup> order tributary. The concrete channel continues for 4.3 miles to a channelized, but unlined section which extends approximately 2 miles as the river enters Sepulveda Basin. Near the Sepulveda Dam, the channel returns to a fully lined concrete configuration and continues for another 41 miles before reaching the tidally influenced outlet near the Port of Long Beach in the San Pedro Bay. Along this reach another 4<sup>th</sup> order tributary (Tujunga Wash) joins the river forming a 5<sup>th</sup> order stream. Within the lower 41 miles, a second earthen-bottom section extends for approximately 7 miles in the vicinity of Griffith Park. The attached aerial (figure 2) traces the entire route from the subject property to the San Pedro Bay. Based on the Corps 1972 navigability determination,

the upper limit of tidal influence on the lower reach of the Los Angeles River extends to +2.5 feet Mean Sea Level. The precise point to which this extends upstream was not determined as part of this analysis; however a suitable approximation would be the Highway 1 Bridge, approximately 1.75 miles upstream of the outlet, which the U.S. Coast Guard considers the limit of navigability.

3. Past uses and navigation: An internet search of historic uses of the LA River did not reveal any documented navigation. The river was the site of settlement and a source of water for irrigation and municipal use. The LA River Revitalization Plan (<http://www.lariverrmp.org/>) mentions the river being a "transportation corridor" as the area was settled (see executive summary, ES-1); however this designation is in the context of its geography and surrounding topography providing a broader corridor for overland transport (road and rail) as opposed to boat traffic.

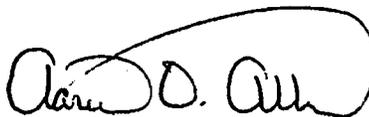
4. Present uses and navigation: The only boating documented upstream of the port area is occasional use of small canoe-type craft in the unlined reach in Sepulveda Basin where flows of adequate depth and relatively low velocity during non-flood periods are relatively constant. This unlined segment has been used by the Friends of the LA River (FOLAR) to highlight the natural values of the river and to contrast it with the more familiar concrete reaches, including traversing it in a canoe (see <http://www.folar.org/index.html>). However, there is no organized boating or concession associated with such activity, which is technically illegal (Los Angeles County Public Works does not allow access for boating). There is no legal access to the river for boat use upstream of the port, likely due to the hazards posed by dangerous flood flows and impaired water quality. The Sepulveda Basin was established in 1941 with the completion of the Sepulveda Dam. The basin supports numerous recreational opportunities (golf, hiking, horseback riding), as well as a small artificial lake (Lake Balboa) approximately 27 acres in size which is used by non-motorized craft and model boats and includes paddle boat rentals and fishing ([http://www.laparks.org/dos/aquatic/balboa/private\\_boatting.htm](http://www.laparks.org/dos/aquatic/balboa/private_boatting.htm)). Lake Balboa was constructed around 1992 and is fed by treated effluent from the Tillman Water Reclamation Plant and drains to the LA River. At its closest point the lake is approximately 300 feet from the river; however flows from the LA River would only reach Lake Balboa during extreme flood events of enough volume and duration to be detained by Sepulveda Dam and fill the basin to an elevation between 705 and 710 feet based on mapping

provided by Reservoir Regulation (see [http://155.83.112.59/resreg/map\\_gallery/spda.htm](http://155.83.112.59/resreg/map_gallery/spda.htm)). This is equivalent to the 33- to 50-year flood event based on the relevant frequency curve (copy attached). According to Corps records, the highest elevation recorded is 705 feet in 1980, which is prior to the lake's construction.

5. Future uses and navigation: Several proposals to improve the LA River for recreational uses, improved habitat and water quality conditions, and aesthetics have been considered over the years. The most recent of these is the LA River Revitalization Plan, which proposes a wide range of possible projects to improve the river. A Programmatic EIR/EIS was completed in April 2007, with the Corps of Engineers in the role of lead federal agency. The document is intended to provide "a conceptual framework to guide the revitalization of the river through physical transformations to the channel itself and within the neighboring rights-of-way, as well as in some adjacent areas." The Master Plan and companion EIR/EIS are available at: <http://www.lariverrmp.org/>. The plan emphasizes improvements in habitat quality, flood storage, aesthetics and recreational opportunities along various segments of the LA River. The Master Plan is described as a "visionary document" (chapter 6-5) with 20 separate "opportunity areas" identified, including 5 that were examined and fleshed out in greater depth and addressed in the EIR/EIS. Recreational opportunities illustrated in the plan are largely focused on providing walking and bicycling trails, parks, and natural areas. One of the detailed opportunity areas, the "Chinatown-Cornfields Area", includes an alternative that envisions construction of a secondary channel that could include boatable access (illustrated on page 6-31 of the Master Plan), although the EIR/EIS does not mention this use. Another alternative would replace the secondary channel with urban uses. Whether and to what extent this or any of the various components of the plan are implemented remains uncertain, though there is clearly strong interest among the various stakeholders involved and the project is politically supported at the federal, state and local levels. There are numerous economic and logistical hurdles that would have to be addressed in future plans as specific proposals move forward, which would then necessitate development of a project level EIR/EIS for a given project to be implemented (EIR/EIS page ES-16).

6. Conclusions: Based on the examination of the LA River system and its past, current and potential future uses, the downstream TNW for purposes of determining a significant nexus with the

non-RPW waters on the subject site would be the limit of tidal influence where the LA River discharges to the Pacific Ocean at San Pedro Bay. No historic navigational uses upstream of the tidally influenced outlet could be identified. Presently, the occasional use of kayaks and/or canoes on other reaches of the river are sporadic and do not support any associated commerce (in addition to being illegal). Lake Balboa is a small artificial lake in Sepulveda Basin fed by treated effluent from a nearby treatment plant with limited navigational and commercial uses, though no obvious connections to interstate commerce. The lake drains to the LA River, which bypasses the lake as it passes through Sepulveda Basin. While flows from the LA River may theoretically reach the lake there is no record of this occurring since the construction of both the basin and lake. Finally, the capacity to provide navigation at some point in the future is highly doubtful given the river's configuration, hydrology and fundamental use as a flood control channel. The potential recreational uses envisioned in the LA River Revitalization Plan are not centered on navigational uses, but rather recreational uses adjacent to the river (walking, biking, etc). The one plan element which incorporated potential boat use would involve the construction of a separate secondary channel in what is currently an upland industrial use area and appears somewhat speculative given the extensive property acquisition required. In light of these findings I have concluded the downstream TNW for purposes of the subject jurisdictional determination is the upper limit of tidal influence on the LA River at +2.5 MSL, which is presumed to extend to the vicinity of the Highway 1 Bridge.



Aaron O. Allen, PhD  
Chief, North Coast Branch  
Regulatory Division

Enclosures