Evaluation of Jurisdiction and Navigability on Santa Cruz River, AZ and Los Angeles River, CA: EPA's Planned Approach

November 10, 2008

Why is EPA evaluating these rivers?

The federal Clean Water Act established several programs to protect and restore the quality of the waters of the United States (WUS), including rivers, streams, wetlands, and coastal waters. These programs have proven effective in addressing water pollution problems and the adverse effects of dredging and fill activities in the Santa Cruz River and Los Angeles River watersheds. In order to ensure that these successful efforts can continue and improve, EPA is working to verify that Clean Water Act protections remain in effect throughout these watersheds.

EPA shares responsibilities for implementing the Clean Water Act with the Army Corps of Engineers (Corps). In light of recent Supreme Court decisions that may reduce the scope of Clean Water Act jurisdiction, EPA and the Corps have had to more carefully identify WUS that are subject to federal jurisdiction. A key issue in evaluating jurisdiction on some waters is whether and how they influence downstream navigable waters.

Background Information

Earlier in 2008, the Corps' Los Angeles District determined that two segments of Santa Cruz River (from Tubac to Continental and from Roger Road to Pinal County line) and two segments of Los Angeles River (Sepulveda Basin and downstream from Pacific Coast Highway) are navigable waters. The Corps later suspended its decisions on Santa Cruz River. Several interested parties and elected officials raised concerns about these decisions. As EPA has the final say on whether waters are WUS under Clean Water Act, EPA decided to invoke our "special case" authority to make the final decisions on jurisdiction and navigability for these Rivers in an effort to address the concerns raised by interested parties and officials. EPA intends to evaluate the entire length of each River and examine different legal bases for asserting jurisdiction and navigability. EPA's decisions will assist in subsequent evaluations of Clean Water Act jurisdiction on other water bodies within the Santa Cruz River and Los Angeles River watersheds.

We want to emphasize that Los Angeles River and Santa Cruz Rivers themselves are subject to Clean Water Act jurisdiction and protections. Moreover, the Corps' navigability determinations for Los Angeles River remain in effect. Our investigation will focus on navigability of these Rivers as a whole and other grounds for evaluating jurisdiction of tributaries within their watersheds.

How will EPA evaluate these Rivers?

EPA's navigability evaluation will focus on several key issues:

- Is there sufficient river flow and depth to support boating?
- Is there a history of boating on the River and for what purposes? What recreational or commercial uses are made of the River?
- Is there public access to the River?
- Are there plans to improve or restore the River to increase navigation potential?

EPA will focus on past, present, and potential future navigability. EPA will also consider other potential grounds for jurisdiction of these Rivers including flow across tribal or national boundaries and relationship to downstream waters. EPA will make its decisions based on existing federal law, regulations, and guidance concerning Clean Water Act jurisdiction.

When will EPA make its decision?

EPA has not established a firm schedule for a decision as we are still collecting basic data and information and evaluating information gaps. We plan to conduct our initial evaluation over the next 2 months, then determine a more specific decision timeline.

How can you help?

EPA is interested in obtaining data and information from agencies and interested parties to assist in this evaluation. In particular, we are seeking data and information about:

- river flows, depths, cross section, seasonal flow variations, and channel characteristics;
- photos, accounts, data, and other information about past or recent boating on the river in any form of water craft;
- information about use of these Rivers by interstate travelers or for commercial purposes;
- data and information about public access, including information about access points, parking, channel obstructions, and access or boating restrictions;
- information about River improvement or restoration plans that address, directly or indirectly, potential for future navigation if River improvements are carried out; and
- any other data, information or analysis the public believes will assist EPA's evaluation.

While we would appreciate any relevant input, we would prefer written material in electronic form.
Please direct data, information, documents, and questions to:

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Thank you for your help and interest!