



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

February 22, 2013

Office of the Chief
Asset Management Division

Lupe Vela
Policy Director
Ad Hoc River Committee
Councilmember Ed P. Reyes, Chairperson
City of Los Angeles
200 N. Spring Street, 410
Los Angeles, California 90012

Dear Ms. Vela:

My staff has reviewed the recent draft proposal for the Los Angeles River Recreational Zone Pilot Program. We appreciate that you have taken into account the parameters outlined in our letter of 14 May 2012 and that City, Mountains Recreation and Conservation Authority (MRCA), and County staff have been able to discuss the proposal with my staff. Our understanding is that your current proposal would establish a recreation zone from approximately Fletcher Drive to Steelhead Park, a distance of approximately 2.5 miles. Under the proposal, the recreation zone would be open to the public for use during daylight hours from Memorial Day to Labor Day.

In our 14 May 2012 letter of non-objection to non-motorized boating from Memorial Day to Labor Day within the non-concrete-bottom reach commonly called the Glendale Narrows, we concluded such activities generally would not conflict with the operation and maintenance of the Los Angeles County Drainage Area (LACDA) project, and we provided considerations for boaters to take into account. We recommend that you include that letter as an attachment to your report.

The comments provided below should be read together with the parameters and considerations outlined in our 14 May 2012 letter. Our understanding is that a formal request for a letter of non-objection will be made to the U.S. Army Corps of Engineers (Corps) by the City and/or MRCA as appropriate, upon finalization of the proposal.

1. Operation and Safety.

a. Weather and operations effects on users.

Operation and maintenance of the LACDA project is a key concern of the Corps. The Memorial Day to Labor Day period was identified in our 14 May 2012 letter as the

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period that generally would not conflict with operation and maintenance of the LACDA project and would avoid the main flood season.

Although weather events are less likely during the identified period than the rest of the year, water levels and flow conditions can change without notice. As noted in our 14 May 2012 letter, there is no warning system in place on the river. For the summer 2013 pilot program, users should be made aware of the hazards involved in boating in the river where, compared to conditions on a more natural system, flows can be significantly faster and subject to change, footing is more treacherous, and there are no calm pools downstream in the event of the need to exit in an emergency. Changes in conditions may be the result of weather events not visible from the recreation zone or from water management operations, both planned and unplanned. Such changes in conditions can put boaters at risk of injury and death in some circumstances, if users are swept downstream or into bridges, debris, or other obstructions.

We note that you have, as recommended in our 14 May 2012 letter, developed exit criteria under which the recreation zone would be closed. Our understanding is that the area would be closed "when a National Weather Service flood, small stream or thunderstorm watch or warning has been issued for the affected watershed." As the City and MRCA will actively invite users to the area, both notifying them through signage and undertaking personal communications in the case of weather or operational events is essential.

As noted, upstream releases by the Corps or County of Los Angeles may also result in the need for users to leave the area. You should communicate with the County about the best mechanism for obtaining advance warning of any coming releases they initiate and should have a plan in place to communicate such information to the public. Corps staff is unable to promise advance notification of operations it initiates; however, Corps staff may provide a courtesy notification to MRCA's point-of-contact for operations from Corps dams that may impact downstream river users.

b. Designated exit location.

As discussed by our staffs, exit of the area at the designated location adjacent to Steelhead Park should be clearly identified and emphasized on signs, brochures, maps, and other communications, and our staff will work with you to explore the appropriate location for exit signage, possibly locating exit signage within the river for the term of the program and painting a marker on the trapezoidal channel wall. Because the river returns to a concrete bottom beyond this point with a low flow channel that can move quickly and high vertical walls, signage should identify that the area downstream of the designated exit is closed to public use, and rangers should communicate that restriction.

c. Safety.

The Corps' responsibility for the area is limited to operation and maintenance of the LACDA project, and our staff is not responsible for general safety and security. Our

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understanding of the current proposal is that MRCA staff would have a dedicated patrol on weekends but presence on weekdays would be more limited, and the City does not plan to provide any police patrols. We recommend that, as the City and MRCA are planning to actively invite users to the area, you include provisions to ensure adequate safety and include provisions for communicating closures in event of weather events. We encourage you to communicate with LAFD swiftwater rescue about your planned approach. In addition, as the channel was not designed for recreational use, there are other safety issues to consider and provide warnings for, such as steep slopes that can be slippery when wet, and the variable depths of the river pools. In addition, large trash may pose a hazard to boaters, and you may wish to consider removing such trash or warning users of it. Further, we encourage the use of Personal Flotation Devices (PFDs) by all boaters. Please see our 14 May 2012 letter for further discussion of other considerations in the area.

d. Signage and warnings.

Signage providing restrictions and prohibited uses should be posted at all designated entry/exit locations as well as lesser-used entry points. Signage should emphasize the major hazards associated with use of this area, in easy to understand language and symbols. In addition to stating that entry is at the user's own risk, signage should indicate that flows are subject to increase without notice and that the river bottom is uneven and may contain deep holes.

e. Appropriate closure notification at season's end.

The proposal is not clear on how the post-Labor Day conclusion of the program will be communicated. Because operation and maintenance activities may be necessary during this time and flood season will begin, you should take steps to ensure the public understands that the recreation zone will be closed between Labor Day and Memorial Day. Signage should indicate these restrictions.

f. Scope of proposal.

The report proposes uses in addition to boating. We do not have an objection to fishing, bird watching, or walking activities consistent with the parameters identified, but the "Activities" section of the proposal includes a reference to permitted organized activities and performances as deemed appropriate. At this time, the Corps lacks sufficient information to be able to concur with such uses, and proposals for uses such as performances and special events should be coordinated with the Corps on a case-by-case basis. We do not intend that activities such as MRCA's planned school outreach paddling workshops or FOLAR's planned walking tours would be subject to such coordination.

g. Carrying capacity and related matters.

The level of use of the area under this program is unknown. It is possible that, at a certain level of use, operation and maintenance of the project, safety, environmental

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conditions, and/or user experience could be compromised. As discussed by our staffs, we understand that group boating trips or similar activities may be scheduled by MRCA to reduce the potential for conflicts or overloading. We also encourage you to collect information from users about their experience, share reports from rangers about use levels, and identify whether unidentified concerns arise.

2. Other references in the report:

a. Ordinary High Water Mark.

The Corps has been asked to make an Ordinary High Water Mark (OHWM) determination to facilitate the program, but the OHWM determination for Clean Water Act (CWA) purposes may be different than the OHWM applicable for implementing the program; therefore, an OHWM determination by the Corps is not needed for your effort.

b. Traditionally Navigable Waters.

The report in some cases mischaracterizes the role and consequences of the Traditionally Navigable Waters (TNW) determinations made for the river. The Los Angeles River has been protected by the CWA as a water of the United States since its passage in 1972. In 2008, in light of the Rapanos decision, the Corps further determined that two reaches of the river, within the Sepulveda Basin and the tidally influenced portion of the river, were TNWs. On August 17, 2008, EPA invoked procedures established in a memorandum of agreement between the agencies, designating the Los Angeles River as a "special case" to allow EPA to make the final determination of its jurisdictional status. On December 3, 2008, the EPA affirmed that available evidence supported the Corps' TNW determinations for the two study reaches. In 2010, EPA determined that the entire mainstem constitutes a TNW. None of the TNW determinations changed the applicability of the CWA to the Los Angeles River, because the Los Angeles River, as a tributary of the Pacific Ocean, would also meet the Rapanos plurality test or the Kennedy test. The importance of a TNW determination for the CWA is generally in its relation to its tributaries.

The TNW determinations do not alter the Corps's direction by Congress to construct, operate, and maintain the LACDA project. Congress passed laws that specifically directed the Corps, in partnership with local government, to construct, maintain, and operate flood risk management works on the Los Angeles River. We hope that our authorities under these laws, as well as under the Clean Water Act, can be construed harmoniously with state law, including SB 1201, which directs the County to provide for recreational use of waters under its control when not inconsistent with flood risk management. While recreation within the river was historically considered incompatible with operation and maintenance of the LACDA project because of the unusual conditions posed by the system, the Corps has undertaken efforts in recent years to more closely analyze whether some recreational use in the river can be consistent with the project. Our licensing of access for guided trips on the river in Sepulveda Flood Control Basin in 2011 and 2012 have been a part of that effort, as was our examination of

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the Glendale Narrows in our 14 May 2012 letter. The following comments are offered to clarify statements made in the report.

The report states that "A pilot non-motorized boating program was initiated in the Sepulveda Basin stretch of the river in August 2011, which was made possible via the United States Environmental Protection Agency (USEPA) decision that declared the LA River a traditionally-navigable waterway in 2010." The TNW determinations did not require or have as a consequence that the Corps license access to lands not generally open to the public, nor was licensing of access prohibited in the absence of a TNW determination; therefore, this reference should be corrected. Access and use of the lands and waters within Sepulveda Basin is subject to Federal laws, regulations and policies, and the Corps is in the process of examining options for long-term access to the river and adjacent lands within Sepulveda Basin consistent with operation and maintenance of the LACDA project.

The report states that "Both government- and privately-owned river properties are now subject to the Public Trust Doctrine below the river's Ordinary High Water Mark (OHWM) due to the designation of the river as a traditionally-navigable waterway." Because waters navigable as a matter of Federal law as well as waters capable of floating small craft are generally subject to the public trust doctrine, it would be more accurate to state that the Federal determination of navigability, along with the recreational navigability of the river, evidences that that the river is subject to Section 4 of Article X of the California Constitution, which guarantees the public rights to the navigable waters of the state, rather than stating that the TNW determination made the river subject to the public trust doctrine. However, neither the TNW determinations nor the public trust doctrine modifies the Corps' responsibilities to construct, operate, or maintain the LACDA project.

The report states that "The Public Trust Doctrine activities permitted within the Program area will not interfere with the flood control mission of the County Flood Control District or USACE." We recommend that the report be revised to state that such activities "are not expected to" interfere with the flood risk management project.

We thank you for your coordination of this effort with our agency.

If you need additional information or would like to schedule a meeting with the Corps, please contact Ms. Lisa Sandoval, Asset Management Division, P.O. Box 532711, Los Angeles, California 90053-2325. Ms. Sandoval's telephone number is (213) 452-3147, and she can be reached via email at lisa.m.sandoval@usace.army.mil.

I am furnishing a copy of this letter to Gary Hildebrand, Assistant Deputy Director, Watershed Management Division, Los Angeles County Department of Public Works, P.O. Box 1460, Alhambra, CA 91802-1460, Jon Kirk Mukri, General Manager, City of Los Angeles, Department of Recreation and Parks, 221 N. Figueroa St., Suite 100,

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Los Angeles, CA, 90012, Walt Young, Chief Park Ranger, Mountains Recreation and Conservation Authority, 2600 Franklin Canyon Drive, Beverly Hills, CA 90210.

Sincerely,

Theresa M. Kaplan

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Chief, Asset Management Division