

## MEMORANDUM FOR THE RECORD

SUBJECT: DETERMINATION OF TRADITIONAL NAVIGABLE WATERS (TNW) ON CASTAC LAKE

## SUMMARY

I have determined that the 346-acre Castac Lake is a TNW (Castac Lake is also known as Tejon Lake). 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 June 5, 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 June 5, 2007 (Appendix D).

## BACKGROUND

Castac Lake is approximately 346 acres in size and has a maximum depth of approximately 21 feet. Under natural conditions, Castac Lake was subject to seasonal fluctuations and exhibited substantial reductions in area during drought periods. Under existing conditions, Tejon Ranch maintains the lake at 3,503 feet msl through pumping and discharge of well water to the lake (the elevation of the deepest point in the lake is 3,482 feet msl). The lake is partially encircled by hydrophytic vegetation, including arroyo willow, hardstem bulrush, broadleaf cattail, and other aquatic plants and supports approximately 286 acres of adjacent wetland habitat. The lake currently has a single boat dock with infrastructure for launching boats (approximately five to seven moored water craft were observed during a Corps site visit in November 2006). During site visits to the project area in July 2008, Corps staff also observed one or two small recreational boats with people fishing on the lake.

The lake is owned by Tejon Ranch and, in general, the public cannot access the lake without the permission of the land owner. However, currently Tejon Ranch does allow employees and other people to boat, hunt and fish on the lake, subject to their discretion. In addition, approximately ten to fifteen years ago Tejon Ranch allowed people to boat, fish and hunt on the lake for a fee, which generated recreational use of the lake both by local residents and from out of state visitors (e.g. the lake was open for commercial recreational use by the public).

There is limited evidence of historic navigation on Castac Lake, but during wet periods the lake could be used for recreational boating, hunting and fishing. The dynamic nature of the lake was generally not conducive to reliable navigation because sections of the lake could go dry during extended drought periods.

## BASIS FOR DETERMINATION

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.”

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.”

To determine whether Castac Lake is a TNW (the “Study Area”), in accordance to 33 C.F.R. § 328.3(a)(1), a case-specific analysis to evaluate whether the Study Area is navigable-in-fact, including consideration of its potential susceptibility to interstate and foreign commerce, was undertaken. The Corps has determined that the Study Area is a TNW based on the following factors:

1. **Physical Characteristics.** Under natural conditions, the depth and configuration of Castac Lake (Study Area) varied due to seasonal and annual fluctuations in precipitation; however, under existing conditions, the lake level is maintained by Tejon Ranch at 3,503 feet msl through pumping and discharge of well water to the lake. With the current pumping scheme, the maximum depth of the lake is approximately 21 feet. Under both natural and existing conditions, the size and depth of Castac Lake are adequate to provide the depth of water necessary to float small or moderately sized recreational watercraft such as motor boats and sail boats.
2. The Study Area has been used for interstate commerce, is currently used and has the potential to be used for commercial activities involving navigation and interstate commerce in the future. The lake currently has one floating boat dock that can allow several boats to be permanently moored at the lake. Due to the relatively natural conditions on Tejon Ranch, Castac Lake provides high quality fishing, hunting and recreational boating opportunities, attracting visitors from the local area as well as from out-of-state. The basin is located near a major freeway (Interstate 5). Based on information from the property owner and staff observations, the Study Area is used recreationally by people in canoes small motor boats and sail boats, as well as for hunting and fishing. In addition, approximately ten to fifteen years ago Tejon Ranch allowed people to boat, fish and hunt on the lake for a fee, which generated recreational use of the lake both by local residents and from out of state visitors (e.g. the lake was open for commercial recreational use by the public). Although Castac Lake is not currently open to the general public, the above activities demonstrate the lake has the requisite physical characteristics to support the use of recreational watercraft and commercial fishing and hunting. Such use provides evidence of past, present and the susceptibility for commercial use.
3. **Public accessibility to the Study Area.** Although public access within the Study Area is currently discouraged without permission from the land owner, there are no physical barriers restricting public access to Castac Lake (the entrance road to the lake is blocked by a gate, but you can access the lake on foot). In addition, Castac Lake is located within view of Interstate 5 and, as a result, is easily observed by the general public. Currently, the land owner does allow some members of the public access to the lake for recreational boating and fishing (there is an existing infrastructure for boating including a floating dock).

## DETERMINATION

Castac Lake is a TNW. The lake exhibits physical characteristics, such as sufficient depth and area on a routine basis, indicating the lake is susceptible to be used for commercial recreational navigation activities, such as boating, fishing, and hunting. Based on information from the property owner and staff observations, the Study Area is used recreationally by people in canoes small motor boats and sail boats, as well as for hunting and fishing. In addition, approximately ten to fifteen years ago Tejon Ranch allowed people to boat, fish and hunt on the lake for a fee, which generated recreational use of the lake

both by local residents and from out of state visitors (e.g. the lake was open for commercial recreational use by the public). The close proximity to Interstate 5 makes the lake publicly accessible that is susceptible to use in interstate commerce associated with recreational activities, including navigation. The above factors demonstrate Castac Lake is navigable-in-fact, and thus a TNW. Therefore, I hereby determine that the Study Area is subject to the jurisdiction of Section 404 of the CWA, pursuant to 33 C.F.R. § 328.3(a)(1).

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