

**TRADITIONAL NAVIGABLE WATERWAYS (TNWs) IN THE BUFFALO DISTRICT
APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): June 20, 2012

B. BACKGROUND INFORMATION: As stated in Appendix D of the US Army Corps of Engineers (Corps) Jurisdictional Determination Form Instructional Guidebook: “when determining whether a water body qualifies as a “traditionally navigable water (TNW)” 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. § 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. In addition, Appendix D affirms that EPA and the Corps will continue to assert jurisdiction over “[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.” 33 C.F.R. § 328.3(a)(1); 40 C.F.R. § 230.3(s)(1).

The following provides the rationale and supporting documentation for TNW designation pursuant to Appendix D for the subject water body occurring within the Buffalo District’s regulatory boundaries in the states of New York and Ohio. Posting of this jurisdictional determination establishes Corps jurisdiction over this TNW under Section 404 of the Clean Water Act. The Buffalo District reserves the right to revise this determination at anytime as additional information warrants. The Buffalo District has determined that a site/project specific jurisdictional determination involving this TNW is not required as a TNW designation has already been completed. This and other approved jurisdictional determinations for TNWs are posted on the Buffalo District’s regulatory website at <http://www.lrb.usace.army.mil/regulatory/jd.htm>. In addition, the current list of TNWs, including extent of each designation, occurring within the geographic limits of the Buffalo District may also be found on the Buffalo District’s regulatory website at <http://www.lrb.usace.army.mil/regulatory/TNWny.pdf> and <http://www.lrb.usace.army.mil/regulatory/TNWoh.pdf>

C. TNW/LOCATION

TNW: **Brady Lake**

State: Ohio County: Portage Village: Brady Lake Township: Franklin

D. REVIEW PERFORMED FOR SITE EVALUATION:

- Office (Desk) Determination. Date: June 20, 2012
 Field Determination. Date(s):

SUMMARY OF FINDINGS

CWA SECTION 404 DETERMINATION OF JURISDICTION.

The subject water body is a “*water of the U.S.*” under Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328).

a. Limits (boundaries) of TNW designation: All areas below the Ordinary High Water Mark (OHWM) of Brady Lake located within the Village of Brady Lake and Franklin Township, Portage County, Ohio at coordinates 41.16444° N (Lat.) and -81.31615° W (Long.). The limits of this TNW designation do not preclude future determinations of the water body if additional information warrants such a determination. The extent of the TNW described herein is depicted on the attached figure.

b. Rationale supporting determination: This determination is based on the review and compilation of published information and reports/studies to characterize the historical, present and/or potential use of this water body for navigation, including consideration of its use or potential susceptibility to use in interstate and foreign commerce. During this process the following information was documented:

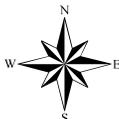
1. The physical characteristics, including its depth and size, indicate that the waterbody has the capacity to be navigated by watercraft. Brady Lake is approximately 75 acres in size with a maximum depth of at least 40 feet. It is a public lake with limited access that is owned by the Village of Brady Lake. Brady Lake is a kettle lake that is landlocked with no inlets or outlets. The principal source of water for the lake is precipitation and runoff from the immediate drainage area. Much of the land surrounding the lake has been developed as residential properties. There is a facility that allows members of the public to access and launch watercraft into Brady Lake. The facility is currently closed but it does have the potential to be re-opened, allowing for future public access.
2. Because of its location relatively close to state boundaries and conduits to interstate travel, Brady Lake is readily accessible to out-of-state travelers. Brady Lake is approximately 41 miles from the Ohio and Pennsylvania border. It is approximately 4 miles away from Interstate 76 and Interstate 80, which are main highways crossing between Ohio and Pennsylvania. The waterbody is currently used for activities involving navigation and interstate commerce, such as recreational navigation and fishing. Several websites provided fishing reports for Brady Lake. Additionally, numerous docks and boats can be seen on aerial photographs.
3. The waterbody has been used for activities involving navigation and interstate commerce in the past. Brady Lake Electric Park, an amusement park, was located and operated along the lake from 1890 until 1943. The park included a 75-passenger steamboat and 40 rowboats that were used on Brady Lake. Brady Lake also provided power to the Northeastern Ohio section of the Pennsylvania and Ohio Canal.

Conclusion: Collectively, the above discussed factors demonstrate that Brady Lake is navigable-in-fact, resulting in its designation as a TNW for purposes of CWA jurisdictional determinations and current use in interstate or foreign commerce associated with commercial recreational navigation activities. This determination establishes Corps jurisdiction over this water body as a TNW under Section 404 of the Clean Water Act, pursuant to 33 C.F.R. Part 328.3(a)(1).

DATA SOURCES.

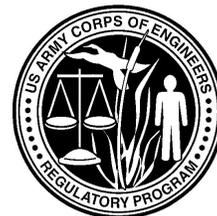
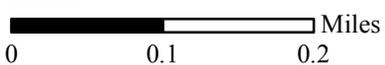
SUPPORTING DATA. Data reviewed for JD (check all that apply):

- Data sheets prepared by the Corps:
- Corps navigable waters' study:.
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute, Kent
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name: 7.5 Minute, Kent
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), Bing.com
or Other (Name & Date):
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): DeLorme Ohio Atlas & Gazetteer (2007), <http://www.kentohio.net/kent-history/brady-lake-electric-park>, <http://www.kentohio.net/kent-history/kent-ohio-history>



Traditional Navigable Water
Brady Lake

 Limit of TNW Designation



US Army Corps of Engineers
Buffalo District