

**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):** Nov. 19, 2008

**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: **Buffalo River and Cayuga Creek**  
State: NY County: Erie

Municipalities: South Buffalo, West Seneca, Cheektowaga, and Lancaster

**D. REVIEW PERFORMED FOR SITE EVALUATION:**

<input checked="" type="checkbox"/>	Office (Desk) Determination. Date:	September 26, 2008	File #2008-00925
<input checked="" type="checkbox"/>	Field Determination. Date(s):	July 24, 2008	PM: Joseph Krawczyk

**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 of the Buffalo River, extending from the upstream, Section 10 limit (located at the “Penn Central” bridge crossing 7.1 miles above the mouth of the Buffalo River), northeast to the confluence of Cayuga Creek, just east of Harlem Road, Town of West Seneca. In addition, all areas below the ordinary high water mark of Cayuga Creek extending from the confluence of the Buffalo River, northeast up to the first major obstruction to navigation located at the Como Lake Park Dam, in Como Lake Park, Town of Lancaster. This TNW designation does not extend into any tributaries of these waters, except as noted. The extents (11.75 river miles) of the TNWs described herein are depicted on the attached figure.

**b. Rationale supporting determination:** This determination is based on the review and compilation of published information, reports/studies, and field observations 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.
  - i. The Buffalo River channel (from the “Penn Central” bridge on the downstream end to the confluence of the Buffalo River and Cayuga Creek on the upstream end (1.45 miles in total length)) ranges from a minimum width of approximately 120 feet to a maximum width of approximately 207 feet. The average channel width is approximately 161 feet (where n=12). Water depths in this reach are estimated to range from 8-10 feet. These estimates are based on ordinary flow characteristics.
  - ii. The Cayuga Creek channel (from the confluence of the Buffalo River and Cayuga Creek on the downstream end to the impassable “Como Lake Park Dam” on the upstream end (10.30 miles in total length)) ranges from a minimum width of approximately 35 feet to a maximum width of approximately 140 feet. The average channel width is approximately 85 feet (where n=70). Water depths in this reach are estimated to range from 1 to 6 feet. These estimates are based on ordinary flow characteristics.
2. The waterbody is currently used for activities involving navigation and interstate commerce, such as recreational commercial navigation.

- i. The Buffalo River channel from the east side of the I-90 bridge (West Seneca), to the mouth of the Buffalo River is designated as the “Buffalo River Urban Canoe Trail (West Seneca to Buffalo).”<sup>1</sup> A boat and canoe launch ramp is located off of Harlem Road, on the east side of the I-90 Bridge.<sup>2</sup> This launch area is also the NYSDEC “Buffalo River- Harlem Road Fishing Access Site”<sup>3</sup>, which provides “fair steelhead (trout) fishing”<sup>4</sup> as well as fishing for Bluegill and Pumpkinseed, Bullhead Catfish, and Suckers.<sup>5</sup> The Buffalo River channel remains wide and deep enough to support general boat traffic upstream to the confluence of the Buffalo River and Cayuga Creek.
- ii. The Cayuga Creek channel supports canoeing downstream of the first navigable barrier (the Como Lake Park Dam). According to an ‘Outdoors’ website, “Como Lake Park is very popular for hiking, skiing, biking, and canoeing down the nearby Cayuga Creek.” Additionally, “below the dam ‘...’ you can fish for steelhead, bass, suckers and carp.”<sup>6</sup> Cayuga Creek has near surface and at surface gravel bar features in some creek bends. The deeper sections of the Cayuga Creek channel can be navigated by canoe all the way from Como Lake Park Dam (the first man-made impediment to navigation) at the upstream limit of this TNW designation, to the Cayuga Creek and Buffalo River confluence (on the downstream end of this TNW designation), and finally all the way to the mouth of the Buffalo River, as it outlets into Lake Erie.
- iii. There are historical references which illustrate that commerce occurred at two discreet locations along Cayuga Creek, in the Town of Cheektowaga. First, according to the Town of Cheektowaga history, “Settlement was commenced in Cheektowaga in February, 1808, by Apollos Hitchcock, who came from Schenectady, NY, and located on lot 72. In 1829 he purchased fifty-nine acres at Cheektowaga Station, including a saw mill on Cayuga Creek.” And second, according to the same history, “Philip Zurbrick, built a flouring mill on Cayuga Creek in 1874; it was remodeled into a roller mill in 1882, and on his death in 1888 passed to his sons”<sup>7</sup>

Conclusion: Collectively, the above discussed factors demonstrate that the Buffalo River (above the “Penn Central” bridge) and Cayuga Creek are navigable-in-fact, resulting in the designation as TNW’s for purposes of CWA jurisdictional determinations and are susceptible to use in interstate or foreign commerce associated with commercial recreational navigation activities. This determination establishes Corps jurisdiction over these water bodies 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: Multiple
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): NYSGIS 2002, 2005 orthophotographs, Google Earth imagery  
or  Other (Name & Date):
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

A- PM knowledge and observations of Cayuga Creek

B- Additional References cited above:

- 1 “Take a Paddle: Western New York Quiet Water for Canoes & Kayaks (Take a Paddle)” by Rich and Sue Freeman (Paperback - Jan 2004); pp. 156.
- 2 [http://www.trails.com/tcatalog\\_trail.aspx?trailid=XFP007-035](http://www.trails.com/tcatalog_trail.aspx?trailid=XFP007-035)
- 3 <http://www.trailpeak.com/trail-Buffalo-River-Trail-near-Buffalo-NY-3866>
- 4 [http://www.cabelas.com/cabelas/en/templates/community/inthefield/fieldguides/guidebooks-story-1.jsp?hierarchyId=10556&oiPage=fieldguides&title=A+Guide+To+Eastern+Lake+Erie+Steelhead+Tribs+&contentId=bleech\\_trouguide\\_steelhead](http://www.cabelas.com/cabelas/en/templates/community/inthefield/fieldguides/guidebooks-story-1.jsp?hierarchyId=10556&oiPage=fieldguides&title=A+Guide+To+Eastern+Lake+Erie+Steelhead+Tribs+&contentId=bleech_trouguide_steelhead)
- 5 [http://www.erie.gov/hotspot/site\\_popups/09.html](http://www.erie.gov/hotspot/site_popups/09.html)
- 6 <http://www.classicbuffalo.com/WNYOutdoors/ComoLake.htm>
- 7 <http://history.rays-place.com/ny/cheektowaga-ny.htm>