

**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): Feb. 13, 2009

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: **Chenango River and Old Chenango Canal**

State: New York

County(ies): Madison, Chenango, Broome

Municipalities: Eaton,

Sherburne, Norwich, Oxford, Greene, Chenango Forks, Chenango Bridge, Binghamton

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination. Date: 12/30/08

USACE File # 2008-00473

Field Determination. Date(s):

Project Manager: Oberst

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:** The extent of this designation begins at the origination of the Chenango River at the confluence of Eaton Brook and Callahan Brook, in the Town of Hamilton, Madison County and continues to the end of the Chenango River, at its discharge into the Susquehanna River, in Binghamton, Broome County. It also includes the remaining section of Old Chenango Canal from Solsville to the river proper in Madison County. 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, 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 Chenango River runs approximately 90 miles before discharging into the Susquehanna River. The River is considered to be at flood stage by the USGS when it has reached a depth of 8 feet upstream and 10 feet downstream, but has a typical action stage of 6 feet upstream and 8 feet downstream. Three gauges are maintained on the river by the USGS, located at Sherburne, Greene, and Chenango Forks. Historical record low flows average 2 feet, while historical record high flows are near 20 feet in depth.
 2. The waterbody is currently used, was historically used, and is susceptible to use for activities involving navigation and interstate commerce, such as recreational commercial navigation.
 - i. Historically, the Chenango River was part of the canal system. The Chenango Canal, completed in 1838, connected the Erie Canal (Oneida County) to the Susquehanna River (Broome County) (Historic Origins of Oxford). The excavation of the canal provided a connection for commerce between Albany and Binghamton (Chenango Canal...). The canal was 42 feet wide at the top, 26 feet wide at the bottom. It had 116 locks, 11 lock houses, 12 dams, 19 aqueducts, 52 culverts, 56 road bridges, 106 farm bridges, and 21 waste weirs (New York Canal Times). The canal consisted of 97 miles which was used for transport of Pennsylvania coal, as well as local lumber, bluestone, and other goods. Water from the canal generally flows to the northeast into Oriskany Creek and the New York State Barge Canal. The southwestern end of the canal contributes water to the Chenango River, which flows south into the Susquehanna River.

Additional areas of the Old Chenango Canal would likely be classified as a TNW as well. Yet, due to the limited in-house resources available, only the section to Solsville was determined at this time. This section of the Old Chenango Canal is clearly still useable.

Conclusion: Collectively, the above discussed factors demonstrate that the Chenango River is navigable-in-fact, resulting in its designation as a TNW for purposes of CWA jurisdictional determinations and is currently, as well as historically, used 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: Greene, Sherburne, Chenango Forks, Binghamton
- 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: 881.63 (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date):
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

Historic Origins of Oxford, NY. www.oxfordny.com

Chenango Canal Binghamton, NY. New York Historical markers on Waymarking.com, www.waymarking.com

New York Canal Times – Online Newspaper. www.nycanaltimes.com

Paddling.net. Chenango River, www.paddling.net/places/showReport.html?1417

New York State Department of Environmental Conservation (DEC), Chenango River, www.dec.ny.gov/docs/wildlife_pdf/chenangoriv.pdf

Whitford, Noble E. "History of the Canal System of the State of New York," Vol. 1, Ch. XVIII. 1905, <http://www.history.rochester.edu/canal/bib/whitford/1906/Chap18.html>