

**TRADITIONAL NAVIGABLE WATERWAYS (TNWs) IN THE BUFFALO, NEW YORK, AND BALTIMORE DISTRICTS
APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): January 11, 2011

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 a TNW designation pursuant to Appendix D for the subject water body occurring within the Buffalo, New York and Baltimore District’s regulatory boundaries in the States of New York and Pennsylvania. Posting of this jurisdictional determination establishes Corps jurisdiction over this TNW under Section 404 of the Clean Water Act. The Buffalo, New York, and Baltimore Districts reserve the right to revise this determination at anytime as additional information warrants. The Buffalo, New York, and Baltimore Districts have determined that a site/project specific jurisdictional determination involving this TNW is not required, as a TNW designation has already been completed for File No. 2009-00852. This and other approved jurisdictional determinations for TNWs are posted on the following regulatory websites: Buffalo District - <http://www.lrb.usace.army.mil/regulatory/jd>; Baltimore District - <http://www.nab.usace.army.mil>; New York District - <http://www.nan.usace.army.mil/business/buslinks/regulat/jurisdet>. In addition, the current list of TNWs, including extent of each designation, occurring within the geographic limits of the Buffalo District in New York may also be found on the Buffalo District’s regulatory website at <http://www.lrb.usace.army.mil/regulatory/NavWatersNY.htm>

C. TNW/LOCATION: Susquehanna River

State: New York

Counties (Buffalo District):
Chenango, Broome, Tioga

Townships (Buffalo District):
Afton, Bainbridge, Barton, Binghamton, Colesville, Conklin, Dickinson, Kirkwood, Nichols, Owego, Tioga, Union, Vestal, Windsor

Counties (NY District):
Delaware, Otsego

Townships (NY District):
Hartwick, Middlefield, Milford, Oneonta, Otsego, Sidney, Unadilla

State: Pennsylvania

Counties (Baltimore District):
Bradford, Susquehanna

Townships/Boroughs (Baltimore District):
Athens, Litchfield, Great Bend, Oakland, Harmony

D. REVIEW PERFORMED FOR SITE EVALUATION: USACE File No. 2009-00852

- Office (Desk) Determination. Date: **May 4, 2010**
 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 of the Susquehanna River are navigable-in- fact throughout its entirety from its source at Otsego Lake in Cooperstown, NY to Athens, PA, at which point the river becomes a previously designated Section 10 TNW. The extent of the TNW described herein is depicted on the attached figures.
- 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. Approximately 444 miles long, ranges in depth and width from converging tributaries from within the Susquehanna watershed basin.
 - ii. Several barriers, i.e. dams, occur on the Susquehanna. These small dams located in Otsego Lake, Goodyear Lake, Oneonta Lake and Binghamton, are easily portaged.
 2. The waterbody is currently used and was historically used for activities involving navigation and interstate commerce, such as recreational commercial navigation.

- i. The Susquehanna River Trail Association and several other outfitters have maps that provide guidance through the Susquehanna and portage locations.
- ii. Several annual canoe regattas occur in the North Branch (main stem) of the Susquehanna (General Clinton Canoe Regatta, Susquehanna River Sojourn, Seventy-mile Championship events). Several university rowing teams (Binghamton, Susquehanna, Bucknell, and Scranton) use the river for practice and championship events.
- iii. The Susquehanna extends from Otsego Lake, NY through PA and terminates in Havre de Grace, MD at the confluence with Chesapeake Bay.
- iv. Native Americans in NY lived at several locations along the river which facilitated trade between explorers and the Native Americans. Timber, coal, and farm produce were transported along the river between states.
- v. New York State Department of Environmental Conservation (NYSDEC) stocks the river with approximately 7,000 tiger muskie (muskellunge) (*Esox. masquinongy x lucius* or *Esox. lucius x masquinongy*) and American shad (*Alosa sapidissima*) annually, which are target species for anglers.
- vi. More than 15 public boat launch sites occur all along the Susquehanna throughout Broome, Chenango, Tioga, Delaware and Otsego Counties.
- vii. There are several state and county parks along the banks of the Susquehanna throughout NY State. (example: Draper Park and Hickories Park in Owego, NY)
- viii. From 1750 to about 1917 the Susquehanna River was used for transportation and trade across state lines. Many canoes and arks were filled with goods and lumber from the surrounding communities for delivery downstream.
- ix. The Susquehanna River falls under Corps jurisdiction under Section 10 of the Rivers and Harbors Act. A Navigation Study completed by the Baltimore District for the portion of the river located in PA determined the river to be navigable from Athens, PA, south of the NY/PA border to the West Branch at Loch Haven, in Clinton County, PA (approximately 7 miles).

Conclusion: Collectively, the above discussed factors demonstrate that the **Susquehanna River** is navigable-in-fact, resulting in its designation as a TNW for purposes of CWA jurisdictional determinations and its current and historic 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).

River Miles in Buffalo District:	90
River Miles in NY District:	47
River Miles in Baltimore District:	22

DATA SOURCES.

SUPPORTING DATA. Data reviewed for JD:

- Data sheets prepared by the Corps:
- Corps navigable waters study: **Baltimore District**
- 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:
- 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):
 - or Other (Name & Date):
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

Susquehanna River Basin Commission: <http://www.srbcb.net/index.htm>

Susquehanna River Basin Hydrologic Observing System: http://srbhos.psu.edu/srb_testbeds/OstegoLake.asp

NYSDEC Boat Launch Sites by County: <http://www.dec.ny.gov/outdoor/7832.html>

Washington Boro Society for Susquehanna River Heritage – a series of articles regarding historical navigation of the Susquehanna River: <http://www.bluerockheritage.com/Arks%20&%20Rafts%20of%20the%20Susquehanna.htm>

Book: Down the Susquehanna to the Chesapeake - Jack Brubaker, 2002, Penn State Univ. Press

Article: Down the Susquehanna by Canoe (article) – Ralph Gray and Walter M. Edwards - National Geographic Magazine, July, 1950, pp 73-120

Book: De Lorme NY Atlas and Gazetteer