

MEMORANDUM FOR THE RECORD

SUBJECT: Reconsideration of Denial of Letter of Permission (LOP) to Mr. Holzmann to Construct a Floating Dock on the Colorado River, in the City of Ehrenberg, La Paz County, Arizona (Corps File No. SPL-2007-00654-MB)

1. SUMMARY

I reevaluated the permit decision to consider the two factors (hazards to navigation related to presence of sandbars and the applicability and reliance on the *Colorado River Guidelines*), in accordance with direction contained in a letter from the South Pacific Division Commander dated 19 May 2008 and its enclosed administrative appeal decision document. Upon consideration of these two factors, I determined that construction of a boat dock at Mr. Holzmann's property is contrary to the public interest because of its adverse impacts, including its contribution to cumulative impacts, on navigation, public recreation, and safety, and therefore, must be denied. This determination is consistent with the Corps' regulations at 33 C.F.R. Parts 320-331 and existing policies and guidance.

2. BACKGROUND

a. Mr. Holzmann owns a single-family residence at 48974 Riviera Place, Lot 24, within the Emerald Springs subdivision in the City of Ehrenberg, La Paz County, Arizona. The property has approximately 50 feet of frontage on the Colorado River, at approximately River Mile (RM) 121. At this location, the Colorado River is approximately 500 feet wide, the shoreline is devoid of vegetation due to rock slope protection installed by Mr. Schmidt, the original developer of the subdivision, and sandbars are present from the center of the channel to the Arizona side of the Colorado River. The deepest portion of the Colorado River is along the California side of the river.

b. On August 5, 2007, Mr. Holzmann submitted an application for a Department of the Army permit to install an 8-foot-wide x 20-foot-long pile-anchored floating dock connected to a concrete pad by a 3.5-foot-wide x 15-foot-long gangway. The concrete pad would be installed above the ordinary high water mark (OHWM) and would not involve any discharge of fill material below the OHWM in the Colorado River. Following evaluation of the application, I denied the permit as contrary to the public interest pursuant to 33 C.F.R. § 325.8 (b). Mr. Holzmann timely appealed the decision under 33 C.F.R. Part 331. The Administrative Appeal Decision was rendered 19 May 2008 by the Corps' South Pacific Division, remanding for reconsideration my permit denial based on instructions provided in its administrative appeal decision document. The administrative appeal decision document directed the District to further consider and address the implications of sandbars at Mr. Holzmann's property on navigation and the applicability of and weight given to the *Colorado River Guidelines* (copy attached) in denying the requested permit.

3. BASIS FOR DECISION

a. Potential Hazards to Navigation Due to Shallow Water Conditions Related to the Presence of Sandbars

(1) Corps regulations at 33 C.F.R. §§ 320-332 describe the requirements and procedures the Corps uses when processing applications for Department of the Army permits. As stated at 33 C.F.R. § 320.1:

.... the program has evolved to one involving the consideration of the full public interest by balancing the favorable impacts against the detrimental impacts. This is known as the 'public interest review.'

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The program is one which reflects the national concerns for both the protection and utilization of important resources.

(2) Corps regulations at 33 C.F.R. § 320.4(a) describes, in pertinent part, the public interest review process, as follows:

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.

(3) The Council on Environmental Quality's regulations at 40 C.F.R. § 1508.9, implementing the National Environmental Policy Act (NEPA), define a cumulative impact as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

(4) On river systems such as the Colorado River with its heavy sediment load, the river could exhibit natural erosion and deposition within the same reach of the river. Mr. Holzmann's property in the Emerald Springs subdivision at RM 121 is located within the Palo Verde Division (RM 106-133 extending from the Palo Verde Diversion Dam to Horace Miller Park). The river is sediment gaining in this extended reach. Sediment moves from upstream reaches and tends to remain in this reach instead of moving to the lower reaches, causing the formation of sandbars typically in the center of the channel, restricting navigation during low water times to sections of sufficient depth.

(5) During periods of high water, boaters can navigate along the shorelines of California and Arizona but avoid the centerline of the river because it is too hazardous due to the presence of sandbars. Although the shoreline in front of Mr. Holzmann's property has an existing sandbar, based on measurements taken by the Arizona Game and Fish Department (AGFD), the water depth in front of Mr. Holzmann's property has sufficient depth for boats to operate during high flows. During low water conditions, the deepest navigation channel in this reach is along the California shoreline. However, based on information provided by the AGFD, boats and jet skis are observed operating near the Arizona bank in this reach. Furthermore, based on photographs submitted by Mr. Holzmann, personal watercraft can operate along this shoreline during low flows.

(6) Proliferation of docks along the shoreline in this area would make navigation a hazard as boat docks would reduce the size of the navigable channel between the docks and the sandbars in the center of the river in this area, and boaters would be required to navigate around individual docks.

(7) In addition, the construction of boat docks could increase sedimentation and the size of sandbars in the area. Similar situations in other parts of the river have caused accidents and associated mortalities, and increases in obstructions could result in an increased potential for boating accidents. Consequently, construction of boat dock at the applicant's property would pose a navigation hazard.

(8) Mr. Holzmann suggests the Corps authorize seasonal docks. I believe enforcement of this suggestion would be problematic considering variations in flow and water conditions and District workloads

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on public flood control, border security, and other projects. As such, this alternative does not reduce or ameliorate my navigation and public safety concerns.

(9) Authorization of the proposed project would be contrary to the public's interest.

b. Application of and Reliance on the *Colorado River Guidelines*

(1) The *Colorado River Guidelines (Guidelines)* are not being used as the basis of my decision to deny this permit application. The discussion of the *Guidelines* in my original decision was to show that they had been given full consideration in the permitting decision as required by our agreement with the resource agencies. However, denial of the permit application was based, in part, on cumulative effects of the proposed boat dock and its intended use on the public interest. My decision in this case affirms the original decision's findings concerning cumulative effects of the proposed boat dock and is consistent with the *Guidelines* but not based on the *Guidelines*.

(2) In 1995, the Corps, in coordination with the U.S. Fish and Wildlife Service (FWS), AGFD, California Department of Fish and Game (CDFG), Arizona Department of Environmental Quality (ADEQ), and the U.S. Environmental Protection Agency (EPA), developed the *Guidelines* to assist the public in planning its shoreline projects, such as boat docks, in an effort to minimize adverse cumulative effects of such projects on the Colorado River and its important aquatic resources, including the endangered razorback sucker, bonytail chub, and Yuma clapper rail, and designated critical habitat for these species. Experience shows that implementation of the *Guidelines* has proven effective in minimizing the cumulative impacts to the Lower Colorado River.

(3) The *Guidelines* state "[i]n order to maintain native shorelines currently undeveloped or minimally developed, the Corps may limit shoreline developments within subdivisions to a community dock and/or community ramp..." The shoreline at Emerald Springs was a native, vegetated shoreline when Mr. Schmidt, the original developer of the subdivision, initiated construction of the development. Following removal of the vegetation, the native shoreline began to severely erode. To preserve the homes fronting the river, the subsequent developer/owner, Mr. Lambert, requested a permit for and received authorization from the Corps to place rock slope protection along the shoreline. The riprap provides a natural substrate for revegetation and natural recruitment to occur. The shoreline within the Emerald Springs subdivision is considered "minimally disturbed" as there are no recreational facilities other than the community facilities and revegetation has occurred in areas along this shoreline.¹ As such, the *Guidelines* are applicable to the applicant's property.

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¹ The Bureau of Reclamation has used riprap extensively along "native shorelines" where there has been no development in order to prevent erosion. The river in areas such as Bullhead City and the Parker Strip where the shoreline is lined with retaining walls, docks, and boat ramps the shoreline is and are considered more than minimally developed because natural revegetation of the shoreline cannot and does not occur.

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(4) The *Guidelines* identify types of projects on the Colorado River that can be demonstrated to contribute to adverse impacts to riverine functions, and provide a reference for the types of activities that reduce individual and cumulative impacts to the Colorado River. I also note that Corps regulations at 33 C.F.R. § 322.5(d)(1) specifically discuss evaluations of boat dock permits under Section 10 of the Rivers and Harbors Act where it states:

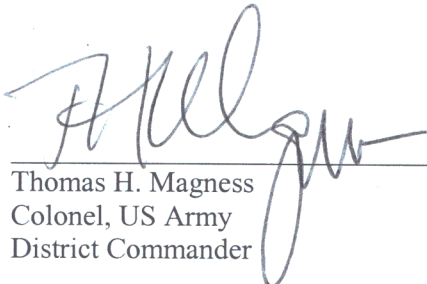
In the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of the waterway and the neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action or other forces which can be expected. District engineers will inform applicants of the hazards involved and encourage safety in location, design, and operation. District engineers will encourage cooperative or group use facilities in lieu of individual proprietary use facilities.

(5) Here, my decision to deny the permit application is based on cumulative effects of the proposed activity and its intended use on the public interest, which is consistent with the *Guidelines*.

4. CONCLUSION

Upon consideration of the two factors analyzed above (hazards to navigation related to presence of sandbars and the applicability of and reliance on the *Colorado River Guidelines*), together with the analysis supporting the original denial, I hereby determine that construction of a boat dock at Mr. Holzmann's property is contrary to the public interest because of its adverse impacts, including its contribution to cumulative impacts on navigation, public recreation, and safety, and therefore, must be denied.

6-11-08
Date



Thomas H. Magness
Colonel, US Army
District Commander