



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
WATER

August 17, 2008

The Honorable John Paul Woodley, Jr.
Assistant Secretary of the Army (Civil Works)
Department of the Army
108 Army Pentagon
Washington, D.C. 20310

Dear Secretary Woodley:

I want to begin by emphasizing my appreciation for your personal efforts to coordinate with me and the U.S. Environmental Protection Agency (EPA) as we work to clarify the scope of Clean Water Act (CWA) jurisdiction following the U.S. Supreme Court decision in *Rapanos v. United States*. I know we share the goal of implementing an effective, efficient, and equitable CWA Section 404 regulatory program for protecting the Nation's vital waterways. Thank you for your leadership as we coordinate to ensure that jurisdictional determinations, administrative enforcement actions, and other relevant agency actions being conducted under CWA Section 404 are both consistent with the *Rapanos* decision and are environmentally protective.

In this regard, the agencies have recently coordinated in assessing the jurisdictional status of two rivers in the Corps Los Angeles District. The Los Angeles River in California and the Santa Cruz River in Arizona have been the focus of legal and policy evaluations in determining their status as traditional navigable waters (TNW) under our regulations. These two cases raise important legal and policy issues in light of the extensive case law regarding the definition of traditional navigable waters and because of special environmental and climatic factors found in the arid Southwest.

Recognizing the issues raised by these two cases and EPA's role under the CWA in establishing the geographic scope of jurisdiction for all programs under this statute, I have decided to invoke the coordination procedures established in the 1989 Army/EPA *Memorandum of Agreement Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions under Section 404(f) of the CWA* (MOA). With this letter, I am designating the Los Angeles and Santa Cruz Rivers as Special Cases under the MOA and, therefore, EPA Headquarters will make the final determination of their jurisdictional status under the CWA. I understand that the Los Angeles District has already made a decision regarding the TNW status of certain segments of the Los Angeles River and EPA will, of course,

respect the Corps decision as a final determination regarding those portions. The Office of Water will coordinate with EPA Region IX, the Office of General Counsel, and your office in assessing the relevant legal and policy issues and ecological characteristics in determining the jurisdictional status of these rivers under 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3 of our regulations. We will work with you to complete this review in a timely manner.

Thank you again for your effective leadership in clarifying the scope of CWA jurisdiction in light of *Rapanos*. I look forward to working closely with your office as we coordinate to complete the CWA determinations that are the subject of the two Special Cases designated by this letter. Please feel free to call me or have your staff contact my Chief of Staff, Greg Peck, with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "B. H. Grumbles", with a stylized flourish at the end.

Benjamin H. Grumbles
Assistant Administrator