



Army Corps of Engineers
Little Rock District

CIVIL WORKS ISSUE PAPER
as of: 24 Jan 2012

SUBJECT: Rock City Yacht Club § 10 DA permit, SWL No. 2002-17702-1, Little Rock, Arkansas

PRIMARY ISSUES: (1) Navigation safety, i.e. the permit applicant has proposed a marina and dock layout that would extend beyond the dikes into the navigation channel and (2) Definition of the “edge of the navigation channel.”

CURRENT STATUS: Final comments on the Public Notice review period were provided to the applicant, Mr. John Burkhalter, by letter dated 7 November 2011. The applicant has requested additional time to modify his permit and the district approved the additional time.

BACKGROUND/CONTEXT: The applicant has requested authorization for construction and operation of a commercial marina on the downstream right bank of the AR River near mile 117.5 in Little Rock. The marina would include approximately 11 docks and 427 slips as well as electricity, water, a dock store, fueling facilities, a restaurant, and a pump-out station. Summary comments on the Public Notice included: (1) the edge of the navigation channel was defined as where the navigation pool at elevation 231.0 ft (m.s.l.) touches the existing dikes; (2) the marina and boat dock could be set back from the navigation channel at any distance less than the minimum 100-foot set back from the navigation channel if the applicant would prepare and submit for review and approval a systematic risk assessment that identifies potential safety risks and indicates how the risks would be mitigated, eliminated, or controlled for any proposed distance of less than 100 feet; (3) the navigation channel in the area of the proposed Rock City Yacht Club could not be designated as a “no wake zone” for commercial traffic due to safety considerations in the location of the marina.

REFERENCES: Regulatory authority for review and approval of the Rock City Yacht Club and Marina is found in Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403) and Section 404 of the Clean Water Act (33 U.S. Code 1344)

CORPS ASSESSMENT: While the Corps has the latitude to approve construction within what we define as the channel, the Corps cannot approve this permit application (as submitted) because of safety concerns in regards to navigation and the public. Our operational guidance for the system gives us the latitude to require whatever construction setback we believe necessary when conditions in that location warrant, regardless of the location of the edge of the channel. In this location, the setback is necessary for the safety of the public and

to protect commercial navigation interests. The McClellan-Kerr Arkansas River Navigation System is a federally authorized navigation project that the Corps has been charged with maintaining, and we must ensure that any construction along the system does not interfere with its intended commercial navigation purpose. We stand by our requirement of a 100-foot construction setback from the end of the dike. If the applicant can provide a risk assessment that meets our satisfaction showing that construction within the 100-foot setback is safe for the public and navigation industry, the Corps will allow it.

DISCUSSION: The applicant questioned the definition of the edge of the navigation channel and believes the definition should be buoy to buoy. This contradicts the designed and engineered navigation channel designated by the channel control lines (i.e. “-c-c-”) on the construction as-built drawings. Although Corps river maps make a reference to the navigation channel as buoy to buoy, the intent of this document is to alert navigation users of where the Corps will provide the minimum channel depth of 9 feet by 300 feet within the overall Federal project. The buoys are used as navigation aids to help mark the best sailing water that meets the minimum authorized depth.

We found no law or regulation that clearly defines how the lateral extent of a navigation channel is determined. However, our analysis of all related navigation laws and regulations convinces us of our original stance that the channel exists within the authorized limits of the Federal project. These limits are marked by “— c — c —” on the construction as-builts. The navigation buoys placed by the US Coast Guard (USCG) are used as aids to navigation to mark the best water for navigation users and have no impact on Corps of Engineers policies and guidelines. This project and legal analysis were reviewed by HQUSACE as well, who are in agreement.

RECOMMENDATIONS/NEXT STEPS: The permit applicant will furnish a permit modification for review and approval. In addition, the applicant is to furnish a risk analysis and plan to address any safety concerns for construction and operation of the marina within 100 feet of the navigation channel, i.e. end of exiting dikes. The risk mitigation plan will be furnished to the USCG and others for review. The AR Waterways Commission, AR-OK Port Operators Association, and navigation users have expressed concerns in regards to safety and construction of this marina at the location proposed, i.e. there are numerous navigation challenges for tows operating and aligning through six bridges in the Little Rock area.

CONGRESSIONAL INTEREST: The District and HQUSACE have received numerous inquiries from four Congressional members, i.e. Senator Mark Pryor (AR); Senator John Boozman (AR); Congressman Tim Griffin (AR-02); and Congressman Mike Ross (AR-04)

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