

November 19, 2001

Operations Division

J. Richard Aramburu
Jeffrey M. Eustis
Attorneys at Law
Attention: Jeffrey M. Eustis
505 Madison Street, Suite 209
Seattle, Washington 98104

Dear Mr. Eustis:

Reference your Request for Appeal dated October 17, 2001, on behalf of Rome Ventura and Lake Union Crew. Your letter indicate that you appeal the jurisdictional determination made by the Seattle District, U.S. Army Corps of Engineers, that the moorage of two vessels at Lake Union in Seattle, Washington falls within the jurisdiction of Section 10 of the Rivers and Harbors Act of 1899.

I reviewed the information you provided and the Seattle District's administrative record for this case and hereby determine that the request does not meet the criteria to be considered for an appeal, as provided in the Corps Appeals Regulation 33 CFR Part 331 (regulation) for two reasons.

First, the regulation, Part 331.2 defines appealable actions as an approved jurisdictional determination (JD), a permit denial, or a declined permit. A JD is further defined as a "a written Corps determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344) or a written determination that a waterbody is subject to regulatory jurisdiction under Section 9 or 10 of the Rivers and Harbor Act of 1899 (33 U.S.C. 401 et seq.)." Part 331.2 further states: "JDs do not include determinations that a particular activity requires a Department of the Army permit". Therefore, your questions regarding whether the activity (moorage of a floating structure and placement of mooring pilings) requires a permit is not subject to appeal. Please refer to Enclosure 1 for the pertinent parts of the Corps regulations.

Second, the regulation further provides that only "approved JDs" are subject to appeal. Part 331.2 of the regulation defines an approved JD as "a Corps document stating

the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States.” Part 331.6(e) of the regulation, further provides that “Affected parties may appeal approved JDs dated after

March 28, 2000, but may not appeal approved JDs dated on or before March 28, 2000”. The District’s administrative file includes a copy of a letter to Rome Ventura, dated April 1, 1998. This letter provided the District’s determination that the site in question is a navigable water of the United States (Enclosure 2). The April 1, 1998 letter represents the District’s approved JD for this action.

In summary, because the decision on jurisdiction regarding the activity is not subject to the JD appeal procedures and the approved JD was made before the effective date of the appeals regulations, your request for appeal is not accepted.

I understand that the permit application is continuing to be processed as a standard permit by the Seattle District, and recommend your continued cooperation with the district to facilitate their reaching a permit decision. Final standard permit decisions are appealable to the Division Engineer of the Northwestern Division. If you have any questions concerning this determination, please contact Mr. Mores Bergman, the Appeal Review Officer for this action, at 402-697-2533.

Sincerely,

(Signed)

Peter C. Gibson
Chief, Operations Division