

**STATEMENT OF LEWIS MACADAMS, PRESIDENT,
FRIENDS OF THE LOS ANGELES RIVER**

**TO THE CALIFORNIA STATE SENATE SUBCOMMITTEE ON URBAN RIVERS AND
THE ASSEMBLY SELECT COMMITTEE ON THE REVITALIZATION OF THE LOS ANGELES RIVER
AND PACOIMA WASH**

October 12, 2011

Legislation to Ensure the Public's Right to Access and Use the Los Angeles River

Senator Pavley and Assemblyman Fuentes:

I appreciate the opportunity to be here today at this pivotal time for the Los Angeles River. I would also like to extend my appreciation to the Environmental Law Clinic at UCLA for its support in preparing for this hearing and recognize those who assisted us and are here today.

For 25 years, Friends of the Los Angeles River (FoLAR) has advocated for enhanced recreational and educational opportunities on the Los Angeles River, but there is a long way to go. It is FoLAR's view that the U.S. Environmental Protection Agency's July 2010 designation of the Los Angeles River as a "traditional navigable water,"¹ based substantially on recreational navigability, requires that the River be managed for public access and use under the California Constitution, as well as the public trust and public use doctrines.

When the River was channelized for flood management purposes starting in 1937, public access and use were not considered. This situation has prevailed for many years. However, we are now witnessing rapidly increasing public interest in the Los Angeles River accompanied by a significant increase in actual use for a number of recreational purposes. These uses undoubtedly will continue to increase, as evidenced by the extremely heavy demand for the recent non-motorized boat program this summer. However, the River's current management policies are not adequate to meet this demand and secure the public's right to use the River.

FoLAR has evaluated the barriers to access and prepared a report with detailed recommendations for changes needed to ensure the public's right to access and use the river in a manner that protects the safety of users.² I will highlight five issues where we believe that action by the California legislature is essential. FoLAR urges the legislature to address these issues in order give the management agencies the guidance and tools needed to allow the public to use those sections of the River suitable for recreation on a year round basis, while also assuring public safety. Furthermore, a piece of proposed legislation to addressing these issues is attached to this statement.

1. Clarifying the Right of Public Access and Use

The USEPA's declaration of the Los Angeles River as a "traditional navigable waterway" is based on both the historic and potential navigability of the River for recreational and other purposes. Over the

¹ United States Environmental Protection Agency, Region IX, Special Case Evaluation Regarding Status of Los Angeles River, California, as a Traditional Navigable Water 4-5 (2010).

² See FoLAR, Recommendations Note 2 (2010).

past several years, recreational boaters have also demonstrated the River's navigability under state law. In addition to rights under the public trust and public use doctrines as developed by state courts, the California Constitution guarantees a right of public access to the navigable waterways of the State.³ While current River management policies under state law were developed in response to important flood management needs, they are not fully consistent with these rights and do not provide the responsible agencies with policy guidance to that end. To remedy this, we are recommending that clear policies for public access and use be incorporated into state law by an amendment to the Los Angeles County Flood Control Act⁴

There are currently three segments of the River suitable for public access and use, and where there is, in fact, significant, year round use: the Sepulveda Basin, Glendale Narrows/Elysian Valley, and the Long Beach Estuary. We recommend that these be declared designated zones for access and use.

2. Interagency Coordination and Responsibility

The public's right to use the River is further complicated by the River's management by a multiplicity of federal, state and local agencies with river-related jurisdiction, often with little or no interagency coordination.⁵ In short, at any point in time and for any activity, no one agency is clearly in charge and accountable. The recent formation of the interagency River Coordination Committee is a move in the right direction, but it is focused on coordinating major projects, doesn't include all the necessary agencies and government units, and doesn't extend to many key access and use issues. We are recommending that the legislature establish a permanent Los Angeles River Interagency Access Council (IAC), which will include all involved agencies and be charged with developing coordinated policies for access and use.

3. Inconsistent Access Policies and Restrictions

Access and use of the Los Angeles River by the general public for approved activities is a fundamental right, which members of the public should be able to exercise without the need for a permit, just as they do for other public lands or waters. However, FoLAR recognizes that for certain group activities permits may be needed to ensure group safety and provide local agencies with sufficient notice of the activity. However, the present permit system is time consuming, unclear and inconsistent.⁶ The legislature should charge the IAC with developing a coherent permit system for all uses and agencies, and designate a lead agency for permitting for river activities requiring permits.

Enforcement of River use is similarly inconsistent. Agencies and local government units frequently issue vague citations for activities on the River, without prior notice of their prohibition. This situation is unfair to public users. FoLAR recommends the IAC also be charged with developing coordinate access and use regulations and designate agencies responsible for enforcement of the regulations.

4. Public Safety:

FoLAR recognizes that public safety is a critical factor in providing access. The River is an active flood management channel subject to periodic heavy water flows that can make in-channel uses dangerous. The agencies currently address public safety by relying almost exclusively on over-broad "wet season" prohibitions, in theory relegating activities only to the "dry season." This approach is

³ California Constitution, Article X, Section 4

⁴ . California Water Code Appendix § 28.2. This section specifies that the purpose of the Act is flood control and water conservation.

⁵ US Army Corps of Engineers, the Los Angeles County Flood Control District (LACFCD), the California Department of Fish and Game, the City of Los Angeles as well as other cities along the River.

⁶ At present, permitting is handled either by the US Army Corps of Engineers or the LACFCD, but the division of control and enforcement responsibilities between the two is unclear. Enforcement may involve the county, LA Police Department, Park rangers, and other local agencies.

seriously inadequate. More than 90% of the days in Los Angeles are “dry”, and yet the River has technically been closed about 50% of the year. Equally important, the reality is that the public is using the River for numerous activities during the “wet season,” but without an adequate warning system.

FoLAR recommends that the legislature direct the agencies to develop a more realistic and comprehensive policy through the IAC. This would allow year round access, but with closure sufficiently in advance and after any forecast storm events with visual with warning systems in publically utilized areas of the river.⁷ The capability of doing this, and the importance of a year round system, was recently demonstrated when the boating program was suspended for two days *during the dry season* due to forecast storms which could have caused flooding. This should be coupled with permanent signage in the recreational use zones pointing out the potential dangers of the river.

5. Agency Liability

Agency personnel frequently cite personal injury liability concerns as a reason for denying or limit River access. Whether or not these concerns are fully justified, it is important that agency personnel be immune from liability when diligently exercising their responsibility for river access and use. While current state law provides tort immunity for agencies and officials for some river-related activities, we believe this would benefit from clarification and expansion given the unique conditions pertaining to the Los Angeles River.⁸ Tort immunity should be predicated on adequate signage warning of potential risks. We have included a limited amendment to the California Tort Claims Act in our proposal in order to cover the unique situation of the River.

FoLAR appreciates your actions in furtherance of public access to the Los Angeles River, and thanks you for addressing these concerns.

Lewis MacAdams
Cofounder and President
Friends of the Los Angeles River

⁷ See FoLAR, Recommendations Note 2, pg. 5-7 (2010). The warning system would include highly visual “red flag” warnings displayed at key access points in the use zones, and use of automated electronic notices of river closure, to be given at least two days in advance of any forecast storm event.

⁸ California Government Code § 831.7 grants state agencies immunity from tort claims when individuals engage in hazardous recreational activities (including kayaking and rafting), this immunity is *not* extended to the city *if it fails to warn about a dangerous condition* that would not be reasonably assumed by the participant as inherently part of the activity. Furthermore, the Government Code’s immunity provisions do not clearly protect government officials from liability for non-hazardous recreational activities, such as fishing or jogging, which are currently widespread adjacent to the Los Angeles River.

PROPOSED LEGISLATION

(Submitted in connection with the statement of Friends of the Los Angeles River to the California State Senate Subcommittee on Urban Rivers and the Assembly Select Committee on the Revitalization of the Los Angeles river and Pacoima Wash, October 12, 2011)

This Bill will be called the “The Los Angeles River Public Access and Use Act”

The public has a right to access and use the Los Angeles River as a navigable water under United States and California law. However, the Los Angeles River has been channelized and managed almost exclusively for flood control in a manner which has been generally inconsistent with this right of access and use. This bill would establish a policy of safe public access and use of the Los Angeles River that would apply to California state and local government entities with responsibility for the River. The bill would create a Los Angeles River Interagency Access Council charged with developing procedures for public access, use, and safety in order to remedy the inconsistent and incomplete procedures that result from the a multiplicity of state, local, and federal agencies that have river-related responsibilities. Finally, the bill would extend existing river tort immunity for government agencies and officials to certain sections of the Los Angeles River.

The people of the State of California do enact as follows:

SECTION 1: The Legislature finds and declares all of the following:

- (a) The United States Environmental Protection Agency’s July 2010 designation of the Los Angeles River as a “Traditional Navigable Water” under the federal Clean Water Act, combined with the demonstrated recreational navigability of the River, means that the River is subject to California Constitution Article X, Section 4 which guarantees the public a right of access to the navigable waters of the State, and therefore the River must be held in trust for the public and managed for public access and use;
- (b) There is growing public interest in use of the Los Angeles River for recreational and educational purposes. However, the River has been channelized and managed for flood control purposes without adequate provision for this public access and use;
- (c) The current regulation and inconsistent enforcement of public access to the Los Angeles River by multiple state and federal agencies is inadequate to assure public’s right of access to the River in safe manner, particularly considering the lack of a comprehensive safety warning system;
- (d) The current California Tort Claims does not provide appropriate immunity to government agencies and officials that diligently exercise their responsibilities in managing the River for public access and use.

SECTION 2: Agencies of the State of California and local government units that exercise responsibility for, and control over, the Los Angeles River shall adopt policies for public access and use of the River, while ensuring public safety during such use.

SECTION 3: The Los Angeles Flood Control Act, Section 28.2 of the California Water Code Appendix is amended to read:

The objects and purposes of this act are to provide for the control and conservation of the flood, storm and other waste waters of said district, and to conserve these waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within the district, or to save or conserve in any manner, all or any of these waters, and to protect from damage from flood or storm waters, the harbors, waterways, public

highways and property in the district, *and to provide for public use of navigable waterways under the district's control which are suitable for recreational and educational purposes.*

SECTION 4: Section 831.22 is added to Article 1 of Chapter 2 of Part 2 of Division 3.6 of Title 1 of the California Government Code, to read:

- (a) Stretches of navigable rivers with unpaved riverbeds shall be deemed to be in a natural condition and unimproved notwithstanding that the river has been channelized or otherwise modified.
- (b) Notwithstanding subdivision (a), this section does not limit liability that would otherwise exist for any of the following:
 - (A) Failure of the public entity or employee to guard or warn of the existence of any condition which constitutes a hazard to health or safety in the river area, including, but not limited to flooding danger, known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the activity out of which the damage or injury arose.
 - (B) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the river area out of which the damage or injury arose.
 - (C) An act of gross negligence by a public entity or a public employee that is the proximate cause of the injury.
- (c) This section shall only be applicable to causes of action based upon acts or omissions occurring on or after January 1, 2012.

SECTION 5: (a) There is hereby created in state government the Los Angeles River Interagency Access Council with a mission to coordinate the actions of state and local agencies with jurisdiction over, or otherwise involved in developing and administering public access and safety policies for the Los Angeles River.

- (b) The Council shall do all of the following:
 - (1) Designate areas of the Los Angeles River suitable for public use, considering both recreational and educational activities as well as public safety;
 - (2) Identify and eliminate barriers to public use
 - (3) Provide for coordinated permitting for such uses for which a permit shall be deemed necessary
 - (4) Provide safety warning systems and signage to assure the safety of public users
 - (5) Address environmental justice concerns regarding access to the Los Angeles River.
- (c) The Los Angeles Flood Control District is hereby designated as the lead agency to direct the work of the Council.
- (d) Membership of the Council shall include all of the following: the Los Angeles Flood Control District, the State Lands Commission, the California Environmental Protection Agency, and the California Department of Fish and Game, the City of Los Angeles, and the City of Long Beach. Other local governments may participate upon request.
- (e) The Council shall remain in operation until December 31, 2014.