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DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

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Washington, D.C. 20590
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16211/5903-11/12
30 NOV 1977

From: Commandant
To : Commander, Eleventh Coast Guard District (dl)
Commander, Twelfth Coast Guard District (dl)

Subj: Navigable Waters of the United States; Green and Colorado Rivers in Utah

Ref : (a) CCGD11 (dl) ltr 16210 dtd 23 Feb 1977
(b) CCGD12 (dl) ltr 16211 dtd 17 Feb 1977

1. References (a) and (b) are proposed findings concerning the jurisdictional status of the Green and Colorado Rivers in the State of Utah. It is proposed that:

a. the following waters are not navigable waters of the United States or waters subject to the jurisdiction of the United States:

(1) the Green River in the State of Utah, except that portion on the Utah-Wyoming border known as Flaming Gorge Reservoir; and

(2) the Colorado River in the State of Utah, north of where the waters of Lake Powell inundate Cataract Canyon (approximately mile 176 on enclosure (1)) to the Utah-Colorado border; and

b. the following waters are navigable waters of the United States and waters subject to the jurisdiction of the United States:

(1) that portion of the Green River on the Utah-Wyoming border known as Flaming Gorge Reservoir; and

(2) the Colorado River from the Utah-Arizona boundary north to the southwestern end of Cataract Canyon at mile 176 (see enclosure (1)), and further upstream to such point as these waters, which are known as Lake Powell, may from time to time inundate Cataract Canyon.

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2. Subject to paragraph 6, these proposed findings are approved and constitute the Coast Guard's opinion as to the extent of its jurisdiction with respect to the specified waters.

3. The basis for the findings in paragraph 1.a. above is that there is no evidence that those waters were, are, or may be susceptible to use as highways of substantial interstate or foreign commerce. Any interstate commercial use, within the meaning of the relevant federal court cases, was sporadic and unsuccessful. Although there is substantial commercial white water rafting on these waters, this use, for purposes of navigable waters jurisdictional determinations, has, in the past, been considered recreational by the Coast Guard. The waters are not waters subject to the jurisdiction of the United States because the lands upon which the waters are located are not within the exclusive or concurrent legislative jurisdiction of the United States.

4. The basis for the finding in paragraph 1.b.(2) above is that these waters were and are used as highways of substantial interstate commerce. The 72 foot paddlewheeler CANYON KING regularly operates on Lake Powell. Lake Powell lies in Arizona and Utah.

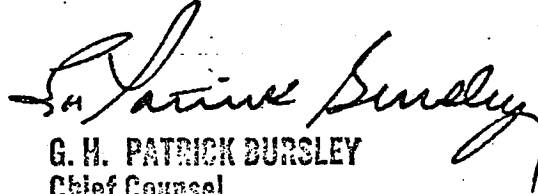
5. The basis for the finding in paragraph 1.b.(1) above is that the Reservoir lies in two states -- Utah and Wyoming -- and it is deep water. There is a significant number of recreational vessels operating on the Reservoir, and this, together with the water depth, demonstrates its susceptibility for use as a highway of substantial interstate commerce.

6. I have reservations concerning Coast Guard precedent that commercial white water rafting is akin to recreational boating rather than "commerce" for purposes of navigability determinations. Nevertheless, this determination adheres to the precedent in the interest of stability because an inter-agency task force has been formed to analyze navigable waters jurisdiction criteria. Since widely applicable changes in criteria may emerge from the task force report, I prefer to defer modification of Coast Guard criteria.

7. This opinion does not apply to the exercise of Coast Guard authority over subject waters under the Federal Water Pollution Control Act. This opinion solely represents the opinion of the Coast Guard as to the extent of its own

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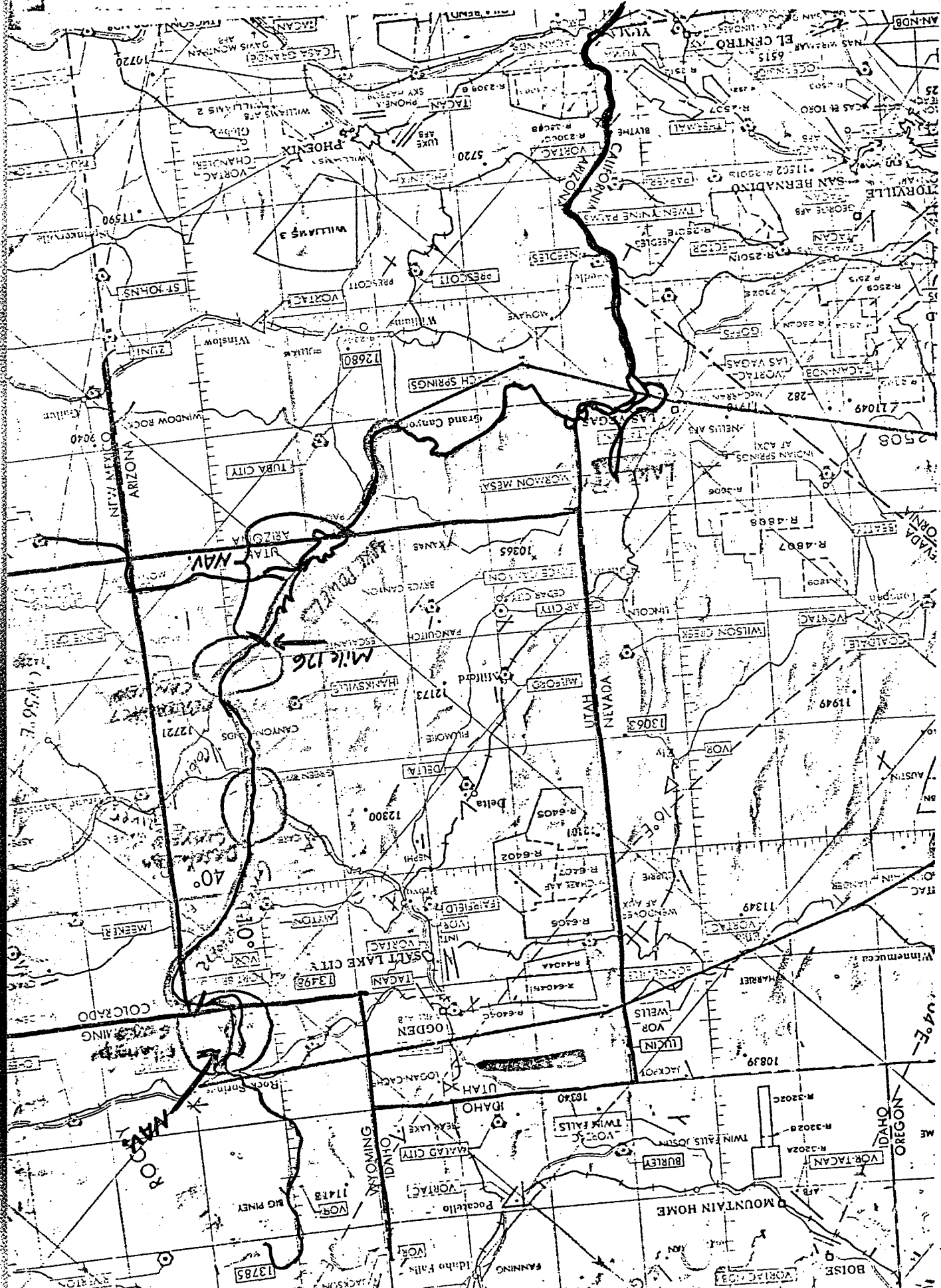
jurisdiction and does not represent an opinion of the extent of the jurisdiction of the United States or any of its other agencies.


G. H. PATRICK BURSLEY
Chief Counsel

Encl: (1) Map of the Green and Colorado River in Utah

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PLATE (1)



Map showing geographical features, cities, and a highlighted route. Key locations include Phoenix, Salt Lake City, Ogden, Boise, and Mountain Home. The highlighted route is labeled "Mile 126" with an arrow pointing to a specific location. The map includes a grid of latitude and longitude lines, with longitude marked at 106°E, 108°E, 110°E, 112°E, 114°E, and 116°E, and latitude marked at 36°N, 38°N, 40°N, 42°N, and 44°N. Major cities and towns are labeled, including Phoenix, Salt Lake City, Ogden, Boise, and Mountain Home. A prominent feature is a thick, hand-drawn black line that starts near Phoenix, follows the Colorado River south, then turns west and north, ending near Salt Lake City. This line is annotated with "Mile 126" and an arrow pointing to a specific location. The map also shows various geographical features like the Grand Canyon, the Colorado Plateau, and the Snake River Plain. Numerous smaller labels for towns and ranches are scattered throughout the map, such as "Tuba City", "Delta", "Fairfield", "Ogden", "Burlley", and "Mountain Home". The map is oriented with North at the top.