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12 April 1946

Mr. H. S. Fairbank, Deputy Commissioner
Public Roads Administration
Federal Works Agency
Washington 25, D. C.

Dear Mr. Fairbank:

Reference is made to your recent letter, file No. F-2.4, inclosing a copy of a letter from Mr. B. W. Matteson, Division Engineer, Division 9, who requested a list of streams in that Division, comprising the States of Colorado, New Mexico, Wyoming, and Utah, considered navigable by the War Department. You asked to be supplied with such material as is available for transmission to your Division Engineer.

The navigability of a stream in a jurisdictional sense is a question of fact which can be conclusively settled only by a Federal Court decision. From time to time, however, it is necessary for this Department to conduct investigations with regard to the navigability of various streams throughout the country for the purpose of determining the extent to which the Federal laws governing the preservation and regulation of navigable waters apply in the absence of judicial decisions.

The navigability of many waters is so clear that a court will take judicial notice thereof. Many waters are just as clearly non-navigable. But the navigability of other waters either wholly or in part can be determined only from a study of their physical characteristics and records of their past use or their availability for present or prospective use for navigation. Many of the waters in this class have not been considered by the Department as no questions have arisen requiring that a determination be made.

With the foregoing in mind, the following list is furnished of waterways in the States referred to which have been investigated by the Department and are considered to be navigable. It should be noted that waters wholly within a State which are not physically connected by navigable waters with other navigable waters outside the States are not subject to War Department jurisdiction.

There are no waters in New Mexico or Wyoming considered to be navigable waters of the United States. The Supreme Court has held that the Rio Grande is not navigable within the limits of New Mexico, U. S. v. Rio Grande Dam, etc., Co., 174 U. S. 690.

In Utah, Bear Lake is considered to be a navigable water of the United States as it lies within two States. There are no other lakes in Utah having navigable connections with waters in another State.

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The only other navigable water of the United States in any of the States referred to is the Colorado River, in Utah and Colorado. This stream is navigable from a point in northern Arizona to the downstream end of Cataract Canyon (mouth of Dirty Devil River), 146 miles above the State boundary. It is non-navigable through Cataract Canyon, about 20 miles. It is then navigable from the upstream end of Cataract Canyon (4.5 miles below the mouth of Green River) to the mouth of Castle Creek, 59 miles, and Green River is navigable from its mouth to a point just below Green River Station, 117 miles. However, these waters do not have navigable connections with waters in other States. The Colorado River is again navigable from an undetermined point in Utah near the western boundary to Grand Junction, Colorado, 39.5 miles above the boundary.

This office will be pleased to furnish, on request, any further information available.

FOR THE CHIEF OF ENGINEERS:

Sincerely yours,

/s/ E. G. Harb
E. G. HERB
Colonel, Corps of Engineers
Exec. Asst., Director of Civil Works

cc: South Pacific Div Engr
Los Angeles, Calif., Dist Engr
Sacramento, Calif., Dist Engr

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