

ENGOW-ON (13 Mar 64)

1st Ind

SUBJECT: Navigability of Several Reservoirs on Colorado River

HQ, DA, CofEngrs, Washington, D. C., 20315, 7 May 1964

TO: Division Engineer, U. S. Army Engineer Division, South Pacific

1. In United States v. The State of Utah (1931), 283 U.S. 64, the Supreme Court held that the San Juan River from the mouth to Chinle Creek at Mile 133 above the confluence of the San Juan River and the Colorado River down to the mouth of the San Juan River was nonnavigable. While no determination has been made regarding the navigability of the reach of San Juan River above Chinle Creek, it must be assumed that it is nonnavigable on the basis that it does not connect with a navigable water (the reach downstream from Chinle Creek having been declared nonnavigable) and does not therefore form a continuous waterway on which craft may navigate between two or more States or foreign countries.

2. The records in this office also show that the Department has not exercised jurisdiction over the Green River in Utah and Wyoming in administering the laws for the protection and preservation of the navigable waters of the United States.


3. In U.S. v. Appalachian Electric Power Co., 311 U.S. 377, navigable waters of the United States are defined as those waters which form in their ordinary condition or with reasonable improvements, by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or with foreign countries, in the customary mode in which such commerce is conducted by water. Navajo Reservoir and Flaming Gorge Reservoir (Lakes Ashley and O'Mahoney) are located on waterways, as indicated above, considered nonnavigable. However, the lakes are on the Colorado-New Mexico, and Utah-Wyoming borders, respectively, and in theory at least, interstate navigation would be possible. Accordingly, Navajo and Flaming Gorge Reservoirs are considered to be navigable waters of the United States.

4. Our records indicate further that a previous determination has been made that Lake Mead is a navigable water of the United States. This previous determination is reaffirmed.

5. It should be understood that the above merely expresses the views of the Department since the navigable status of a stream is a question of fact that can be conclusively settled only by judicial determination.

FOR THE CHIEF OF ENGINEERS:

Incls w/d


R. J. B. PACE
Colonel, Corps of Engineers
Deputy Director of Civil Works

U. S. Army

1504-37

U. S. ARMY ENGINEER DIVISION, SOUTH PACIFIC
CORPS OF ENGINEERS
630 Sansome Street, Room 1216
San Francisco 11, California

In Reply Refer To

SPDGC-0

13 Mar 64

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TO: Chief of Engineers
Attn: ENGCW-ON

1. On the Colorado River system the Bureau of Reclamation has completed, or is in the process of completing, construction of several reservoirs which, when filled, will provide means whereby commerce may be conducted between adjoining States. These are: Lake Mead (Hoover Dam) on the Colorado River in Arizona and Nevada; Lake Powell (Glen Canyon Dam) on the Colorado River in Arizona and Utah; Navajo Reservoir on the San Juan River in New Mexico and Colorado and the reservoir behind Flaming Gorge Dam on the Green River in Utah and Wyoming.

2. Lake Mead is presently experiencing heavy use by recreational craft, and it is anticipated that in the near future the other new reservoirs will also attract extensive recreational boating activity. In certain areas of Lake Mead some boat traffic congestion is already being experienced and the Superintendent, Lake Mead Recreational Area, National Park Service, has requested that consideration be given to establishing several "Special Anchorage areas" in these areas. In addition, Federal and State officials with responsibilities for boating and boating facilities on the other reservoirs have informally inquired of the District Engineer as to the extent of Department of the Army jurisdiction on these waters.

3. A report concerning the navigability of Lake Powell was submitted to OCE in SPDGP 1st Indorsement, 9 Mar 64, to basic letter ENGCW-ON, 28 Feb 64, subject: Navigability of Lake Powell on Utah-Arizona Border.

4. With respect to the navigability of Lake Mead, in the case of Arizona v. California et al, 283 U.S. 423, the court took notice (from the evidence of history) that a large part of the Colorado River south of Black Canyon (site of Hoover Dam) was formerly navigable, and the main obstacles to navigation have been the accumulations of silt coming from the upper reaches of the river system and the irregularity in the

SPDGC-0

13 Mar 64

SUBJECT: Navigability of Several Reservoirs on Colorado River

flow due to periods of low water; and (from reports of the Committees of Congress recommending the Boulder Canyon Project) that in the opinion of government engineers, the silt will be arrested by the dam, and through the use of the stored water, irregularity in the flow below Black Canyon can be largely overcome, and the navigation for considerable distances both above and below the dam will become feasible. The historical evidence referred to by the court consisted of several reports of Committees of Congress and the annual report of the Chief of Engineers for 1879, pp 1773-85, and the Act of July 5, 1884 c.229, 23 Stat 133, 144, wherein \$25,000 was appropriated for the improvement of navigation on the Colorado River between Fort Yuma and a point 30 miles above Rioville, which was located at the mouth of the Virgin River. The U. S. Coast Guard considers Lake Mead to be navigable waters of the United States and has established an office in Boulder City, Nevada, for a mobile boarding team assigned to law enforcement on Lake Mead and the lower Colorado River.

5. Navajo Dam is located on the San Juan River in northwest New Mexico about 19.5 miles above Blanco, New Mexico, and approximately 20 miles downstream from the Colorado-New Mexico border (Inclosure 2). Water is presently being stored behind this dam and, when full, will extend up the San Juan River approximately 35 miles, the upper 15 miles of which will be in the State of Colorado. Insofar as it has been possible to determine no decision has ever been made as to the navigability of this reach of the San Juan River. However, it is noted that in a letter from OCE to the Federal Works Agency, 12 Apr 46, (Inclosure 1), it was stated that no waters in the State of New Mexico have ever been considered to be navigable waters of the United States.

6. Flaming Gorge Dam is located on the Green River in northeast Utah about 20 miles east of Manila, Utah, and approximately six air miles south of the Utah-Wyoming border. Water is presently being stored in the reservoir formed by this dam (Lakes Ashley and O'Mahoney) and when full will extend some 91 miles upstream to within four or five miles of Green River, Wyoming, (Inclosure 3). As in the case of Navajo Dam, there has been no determination as to the navigability of this reach of the Green River, and the OCE letter mentioned in paragraph 5 also stated that there were no waters in Wyoming considered to be navigable waters of the United States.

7. Irrespective of past conditions it cannot be disputed that Lake Mead and the lakes to be formed by Navajo and Flaming Gorge Dams do or soon will provide means whereby commerce is or maybe carried between States, and as such are navigable waters of the United States.

SPDGC-0

13 Mar 64

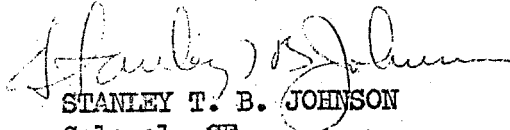
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8. It is therefore recommended that, for the purpose of administering the Federal laws that have been adopted for the protection and preservation of navigation, the following be considered navigable waters of the United States:

- a. Lake Mead
- b. Navajo Reservoir
- c. Flaming Gorge Reservoir (Lakes Ashley & O'Mahoney)

9. Early advice of action taken on this recommendation would be appreciated.

FOR THE DIVISION ENGINEER:



STANLEY T. B. JOHNSON
Colonel, CE
Deputy Division Engineer

3 Incls

1. Cy ltr OCE to FWA
4/12/46
2. Dwg Navajo Res
3. Dwg Flaming Gorge Res