



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

REPLY TO
ATTENTION OF

CESPK-RD

4 Feb 2008

MEMORANDUM FOR RECORD

SUBJECT: Traditional Navigable Water (TNW) ; Navigable In Fact Determination for the Lower American River from River Mile 12 to Folsom Lake (Regulatory Branch SPK-2008-00099)

1. We completed a review of the Lower American River, from river mile 12 to Folsom Lake, located at approximate river mile 30.5, in Sacramento County, California, with the intent of completing a determination regarding its navigability. This review includes the Lower American River between river miles 12 and 23, Lake Natoma and Folsom Lake. The enclosed Figure 1 shows the area being evaluated.

2. The Lower American River, from its confluence with the Sacramento River, to river mile 12, was determined to be a navigable water subject to Section 10 of the Rivers and Harbors Act of 1899 in June 1949. Through additional navigation studies, dated January 1965 and October 1975, it was determined that the limits of navigability for the Lower American River would remain at river mile 12. The remaining portion of the Lower American River, including Lake Natoma and Folsom Lake was evaluated to ascertain whether it has provided, currently provides, or has the potential to provide interstate or foreign commerce associated with the water. We considered the following information:

a. **Past Use:** Historically, the Lower American River, from the confluence with the Sacramento River, to river mile 30, was considered a navigable water of the United States, and the river was historically used in interstate and foreign commerce:

(1) In Cardwell v. American Bridge Co., 113 U.S. 205 (1885), the United States Supreme Court determined that the American River was "navigable for small steamboats and barges from its mouth to the Town of Folsom, a distance of thirty miles."

(2) On May 10, 1932, the District Engineer of the Sacramento District issued a statement in the Sacramento Bee, in response to their inquiry as to whether the American River is classified as a navigable stream, stating that "the chief of engineers has notified this office since that date that the American River is considered navigable to Folsom, a distance of thirty miles (See 113 U.S. 205)."

(3) There are historic instances that at least one small steamboat, related to gold mining, traveled 30 miles up the Lower American River.

(4) In October 1964, the United States Coast Guard (USCG) issued an opinion that because of the U.S. Supreme Court decision in Cardwell v. American Bridge Co., the Lower American River

is navigable in law and navigable in fact for 30 miles. In addition, the USCG reviewed whether the creation of Nimbus Dam and Folsom Dam affected this navigability determination for Lake Natoma and Folsom Lake. The USCG stated that “when once found to be navigable, a waterway remains so,” citing a Supreme Court Case, Economy Light Co. v. United States, 256 U.S. 113, 118, which states that “the fact, however, that artificial obstructions exist capable of being abated by due exercise of the public authority, does not prevent the stream from being regarded as navigable in law, if, supposing them to be abated, it is navigable in fact in its natural state.” In addition, both Lake Natoma and Folsom Lake contain hydropower plants, and “water power development from dams in navigable streams is from the public’s standpoint a by-product of the general use of the rivers for commerce.” (United States v. Appalachian Power Co., 311 U.S. 377, 426). Finally, the USCG opinion stated that “prior to 1948 the area of the river above Folsom was susceptible to use by vessels for purposes of navigation, even though, due to uncertain channels and access difficulties, actual use was of a limited nature.”

(5) The Lower American River was important for the gold mining industry, as gold dredging was conducted within the river in the area between miles 12 and 30.

b. **Present Use:** The Lower American River is heavily used for recreation, as well as power generation and water supply.

(1) The Lower American River has been designated as a “Recreational River” under the National Wild and Scenic Rivers Act of 1980, which provides national recognition and protection of the scenic, fish and wildlife, historic, cultural and recreational values of the Lower American River. The remaining portion of the Lower American River, including Lake Natoma and Folsom Lake, are heavily used for recreational fishing, kayaking, canoeing and boating.

(2) The portion of the American River reviewed is located adjacent to the American River Parkway, which was adopted in 1962 and consists of a 4000 acre parkway that extends 30 miles along the American River. The American River Parkway attracts more than 5 million visitors annually and supports fishing, boating, rafting, hiking, biking and picnicking opportunities, as well as other recreational activities. The American River Parkway extends from the mouth of the American River to Folsom Lake.

(3) The American River Parkway, between river mile 12 and 23, is operated by Sacramento County and contains several recreational launches for boats, rafts and kayaks, including those at the Lower and Upper Sunrise Recreation Area and Sailor Bar. This portion of the Lower American River also provides for popular recreational kayaking locations particularly at San Juan rapid.

(4) The American River Parkway between river mile 23 and 30 is operated by the State of California and is part of the Folsom Lake State Recreation Area (FLSRA), which includes Lake Natoma and Folsom Lake. The FLSRA is operated by the State of California under agreement with the United States Bureau of Reclamation.

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(5) Lake Natoma was created from the construction of the Nimbus Dam in 1955, which created 450 acres of open water within the Lower American River. Lake Natoma is a popular location for fishing, crew races, sailing, kayaking and other aquatic sports. The Sacramento State Aquatic Center is an 8 acre facility that offers courses and recreational opportunities for boating within Lake Natoma. In addition, several boat launches provide access to Lake Natoma, including the Willow Creek Boat Launch and the Negro Bar boat launch. The Nimbus Fish Hatchery is located downstream of the Nimbus Dam and was created as a mitigation site for the construction of the Folsom Dam to replace the salmon and steelhead runs that are blocked by the Nimbus and Folsom Dams. The Nimbus Powerplant is located adjacent to Nimbus Dam and provides service station backup for Folsom Powerplant.

(6) Folsom Lake is a man-made lake that covers approximately 2,100 square miles and was created through the construction of 4 dams and 8 dikes between 1948 and 1956 by the U.S. Army Corps of Engineers. The Folsom Facility is a multi-purpose facility operated for flood control, irrigation water supply, municipal and industrial water supply, power generation, fish and wildlife, recreation, and water quality purposes. Folsom Lake is heavily used for recreational fishing for both warm and cold water fish such as rainbow trout, brown trout, black bass, catfish, crappie, and bluegill, and is a popular location for picnicking, swimming and boating. The Folsom Powerplant is a hydropower plant located at the base of the main Folsom Dam and provides power to meet the requirement of Folsom facility and preferred customers. The remaining electricity generated by the plant is marketed to various customers in Northern California. The Folsom Powerplant produces approximately 10% of the power used in Sacramento each year.

3. Because the Lower American River, between river mile 12 and Folsom Lake is important to the economy and tourist industry of Sacramento County, and provides for both interstate and intrastate commerce associated with past and current uses, we have determined it to be navigable-in-fact.

4. This Determination is made in accordance with Appendix D of the Rapanos Guidance.

5. The attached map indicates the location of the traditional navigable waters in the Lower American River, between river mile 12 and Folsom Lake.

5. List of Reference Material:

- a. http://www.parks.ca.gov/?page_id=500
- b. <http://www.arpps.org/>
- c. <http://www.usbr.gov/power/data/sites/nimbus/nimbus.html>
- d. <http://www.dbw.ca.gov/Pubs/Ar/Parkway/INDEX.HTM>
- e. http://www.dfg.ca.gov/fish/Hatcheries/Nimbus/Nimbus_History.asp

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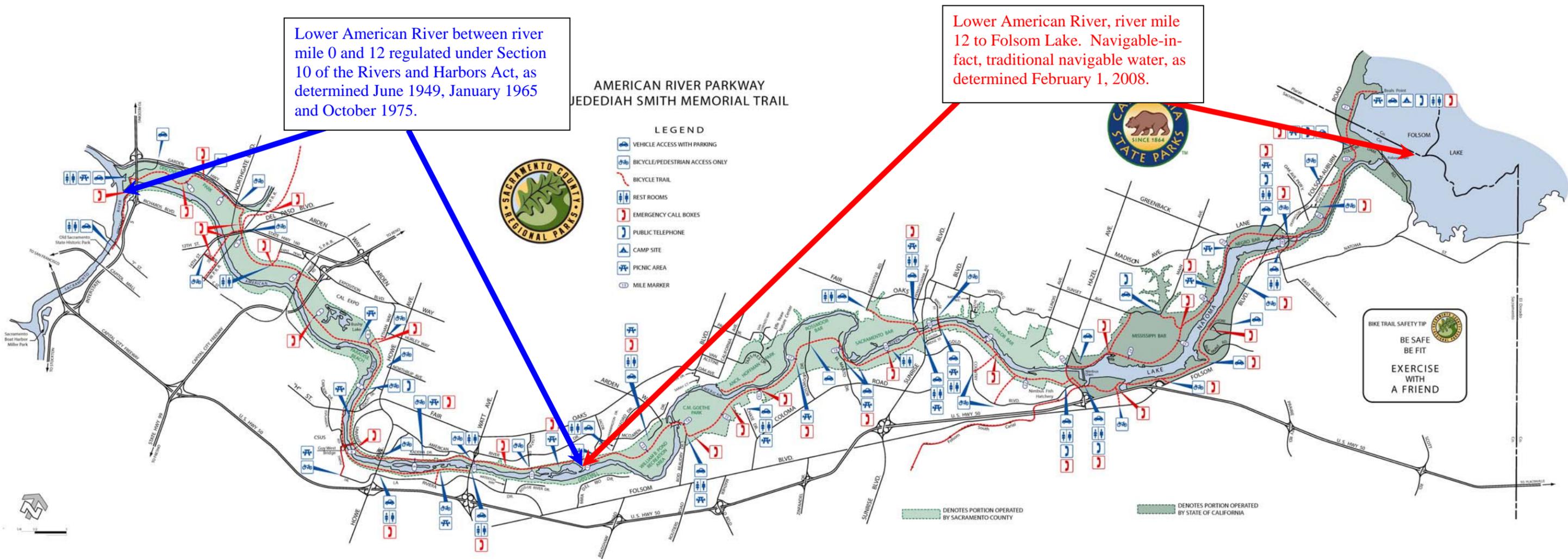
- f. <http://www.sacparks.net/our-parks/american-river-parkway/>
 - g. <http://www.sacstateaquaticcenter.com/>
 - h. Department of the Army Permit Evaluation and Decision Document, for file number SPK-2007-01068, Folsom Dam Safety and Flood Damage Reduction Project.
 - i. Folsom Dam Safety and Flood Damage Reduction, Draft Environmental Impact Study/Environmental Impact Report, from file SPK-1007-01068, Folsom Dam Safety and Flood Damage Reduction Project.
 - j. File for Corps of Engineers Navigability studies for the American River, including Navigability studies dated: June 6, 1949, September 30, 1965, and October 10, 1979, and associated correspondence located in the file.
 - k. *Cardwell v. American River Bridge Co.*, 113 U.S. 205(1885)
 - l. United States Coast Guard memorandum, dated October 9, 1964, from Commandant to Commander, 12th CG District.
6. Lisa M. Gibson of the Sacramento Regulatory Office is the point-of-contact for this determination. She can be reached by phone at 916-557-5288.

FOR THE COMMANDER:



Michael Jewell
Chief, Regulatory Division

Enclosure



Drawing obtained from <http://www.sacparks.net/our-parks/american-river-parkway/docs/ParkwayMap.pdf>