



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

12 September 2008

MEMORANDUM FOR RECORD

SUBJECT: Traditional Navigable Water - Navigable In Fact Determination for the Green River, from Flaming Gorge to the Price River confluence, Utah and Colorado (SPK-2008-00206)

1. I have determined the reach of the Green River from Flaming Gorge Reservoir to above its confluence with the Price River (20 miles above the Green River station near Interstate 70) is navigable-in-fact (NIF). The subject reach is shown in red on Attachment 1. This determination is made in accordance with Appendix D of the Rapanos Guidance.
2. Aside from the Colorado River, the Green River is Utah's largest river system. The river is an interstate waterway that begins in Wyoming and enters, exits and then re-enters Utah (making a 40 mile loop through northwestern Colorado). The entire river is 730 miles long (this includes the Wyoming reach above Flaming Gorge) with 490 miles located in Utah and Colorado. The Green River drains the entire northeast corner of Utah, or about ¼ of the state. Through Utah, the Green River drops from an elevation of approximately 6,000 feet above sea level at Flaming Gorge Reservoir to about 3,000 feet at its confluence with the Colorado River. Major tributaries of the Green River include the Yampa River (determined to be NIF on 6 Sep 07), White River, and Duchesne River. Of the 490 miles in Utah and Colorado, about 60 miles of the Green River are located in Dinosaur National Monument and 55 miles in the Uintah and Ouray Indian Reservation.
3. Historically, the first recorded navigation and exploration of the Green River was the Dominguez-Escalante Expedition of 1776. Additional recorded navigation trips include expeditions for exploration, trapping, prospecting, steamboat use, mapping and data collection. There were also a number of ferry crossings within the Green River in Utah and Colorado. The first known commercial river running occurred in 1960 and continues to present. Many of the historical boats, photographs, journals, and narratives for historic Green River navigation can be found at the John Wesley Powell River History Museum which is located on the bank of the Green River in the Town of Green River, Utah. See Attachment 2 for an outline of navigation history.
4. In 1931 and 1965, the federal courts weighed in on the navigability of this reach of the Green River (see Attachment 3 for Utah Navigation Map, color coded red and blue). A U.S. Supreme Court decision of May 18, 1931 (283 U.S. 64) identified "navigable" reaches along the Green River in Utah from Mile 312 to Salt Creek Wash (~ 80 miles) and from Mile 12 Rapid to the Colorado River confluence (~ 95 miles). On January 8, 1965, a U.S. District Court decision (Civil No. C-201-62) identified "non-navigable" reaches along the Green River in Utah from Flaming Gorge dam to the Colorado state line (~ 31 miles), from Colorado state line to Mile 312 (~ 26 miles), and through tribal lands from Salt Creek Wash to Mile 12 Rapid (~ 60 miles).

5. Although the above referenced three reaches were determined non-navigable by the district court, there is compelling evidence that they are currently navigable-in-fact. The Green River below Flaming Gorge is a very popular recreation area. The northern portion below Flaming Gorge Dam and through Dinosaur National Monument in Colorado and Utah is especially favored for rafting, camping, and fishing. A 23-mile reach in Utah below Flaming Gorge has over 30 designated river campgrounds, 7 boat ramp locations, and 13 professional river guide operations. The approximately 60-mile reach through Dinosaur National Monument has ranged from 2,500 annual floaters in 1967 to 17,000 annual floaters in 1972. Because of the demand level and a 1980 Wild and Scenic River designation recommendation, river runners are currently limited to 600 lottery permitted trips annually with a maximum group size of 25. Historic and current river use through tribal land exists, but the tribe is reluctant to share statistics. They do identify that the entire reach is culturally significant and has a number of petroglyphs, pottery works, and cliff dwellings that are subject to looting. The tribe also conducts enforcement of non-tribal river runners and has a permit process for non-tribal river users. Commercial rafting by paying customers from out of state occurs in these and other reaches of the Green River, constituting interstate commerce and navigability in fact. Connecting reaches upstream (Flaming Gorge Reservoir) and downstream (upstream of the Colorado River confluence) are already designated as Section 10 navigable waters.

7. Reference:

- Websites: www.utah.com/raft/rivers/labyrinth.htm
www.troutsource.com/RiversFolder/Green.htm
www.gorp.away.com/gorp/resource/us_river/ut_green.htm
www.westernriver.com/trips/green/
www.greenriverutah.com/todo.html
www.utetribe.com
www.jwprhm.com
- The John Wesley Powell River History Museum located in Green River, Utah (Annalee Thayne w/Green River Archives, see also Attachment 2)
- National Park Service, Dinosaur National Monument (Brittany Skelton, river office manager, see also file #2008-00206)
- BLM Price and Vernal Field Offices (Dennis Willis & Jason West, Outdoor Recreation Planners, see also Attachment 3)
- Uintah and Ouray Indian Nation (Mr. Bucky Secakuku, tribal member and BIA employee)

8. Susan Bachini Nall of the Colorado West Regulatory Branch Office is the point-of-contact for this determination and may be reached by telephone at 970-243-1199, extension 16 or e-mail susan.nall@usace.army.mil.



Michael S. Jewell
Chief, Regulatory Division