

Yadkin River

Navigability and Riverbed Ownership

Who owns the Yadkin River?

- Navigability at the time of statehood gives the State title to the beds under rivers.

Definition of navigability for the purpose of determining title to riverbeds

- A river is navigable for the purpose of title determination if it was used or was susceptible to being used in its natural and ordinary condition as a highway of commerce over which trade and travel were or may have been conducted in the customary modes of trade and travel on water at the time of statehood (NC 1789).
- There is a different test for navigability for public trust rights to boat, swim, fish, and enjoy recreational activities in the waters of the State.

What history says about the
navigability of the Yadkin River

Inland Navigation in North Carolina 1763-1789,

Charles Christopher Crittenden (N. C. Historical Review, April 1931)

- Inland navigation was common during the Colonial period in the eastern part of the state, along the Cape Fear, Roanoke, Tar, and Neuse Rivers. However, “the whole courses of rivers in the piedmont were too rocky, too swift, too flooded during freshets, and too shallow in time of drought to be of great use. ... The rivers and creeks came to be looked upon mainly as barriers to overland travel and transportation, rather than as channels of water-borne commerce.”

Pee Dee River in South Carolina

- 1818-1819. Improvements were made to the Pee Dee River between Cheraw and Winyah Bay at a cost of \$15,000. In late 1819 the first steamboat began operating between Cheraw and Charleston. Cheraw, at the fall line of the river, has ever since been considered the head of the navigable section of the river.

Yadkin Navigation Company

- 1818-1825. The Yadkin Navigation Company was chartered in 1818 to make improvements to the Yadkin River which would make it navigable. A mile long canal was constructed around Bean Shoals on the upper Yadkin. By 1825, in spite of expenditures of more than \$84,000, there had been little progress, and the money had run out.
- There were, from time to time, “Grand Schemes” promoted to make the Yadkin River navigable, but they never gained traction.

Water power on the lower Yadkin

By the mid 1800s, ads began to appear advertising the water power potential of the lower Yadkin.

A. H. C.

SALE OF VALUABLE REAL ESTATE.

BY virtue of a Decree of the Hon. the Court of Equity in and for the County of Montgomery, I will, on the 14th day of August next, expose to Public Sale, to the highest bidder on the premises, (the residence of the Late Col. John Crump,) the very **VALUABLE REAL ESTATE** known as the

NARROWS OF THE YADKIN.

on the Montgomery side of the River, consisting of severable Tracts, containing **14 or 1500** acres in all. The Land including the buildings, improvements, and the Narrows, will be sold in the first place, and the several surrounding Tracts afterwards, separately.

This Land is valuable not only on account of the fertility and productiveness of the soil, being well adapted to the culture of Corn, Wheat, Cotton, Tobacco, &c., but also on account of the excellent **FISHERY** attached to it at the Narrows, where a great number of Shad may be annually caught, and the Water Power afforded by the fall in the River at this place, which enterprise and capital could make useful and profitable by the erection of Mills and Machinery of every description, to any extent that might be desired. Besides these capital advantages, the situation is beautiful, romantic and healthy; in short, desirable in every point of view.

Twelve months credit will be given, the purchasers giving bond and approved sureties.

JAS. L. GAINES, C. M. E.

July 9, 1851. 5w10

A Great Water Power FOR SALE!

The most extraordinary and improved Water Power on the Yadkin River is for sale at low figures. It is situate at the bend of the Narrows in Stanly County, 3 miles from Albemarle, the county seat; 13 miles from Gold Hill, and about 28 miles from Salisbury. It is one mile from the public highway leading to Salisbury, from which road it is easily accessible down to the water's edge. The peculiar feature of this property is, that it is a natural stone dam which makes about a six foot head of available water. The dam runs at an angle of about 20 or 25 deg. up the river, nearly all the way across, gradually diminishing in height, as it approaches the opposite shore. A race of 400 feet in length will add from 12 to 14 additional feet of head, making the grand power of 18 or 20. There is any quantity of building stones and slate of excellent quality on the premises, easily transported by water.

This excellent power may be used for

GRIST AND FLOURING MILLS,
COTTON & WOOLEN FACTORIES,
REDUCTION MILL FOR SULPHUR,
RETORTED ONES,

It is conveniently near the mines of Montgomery, Stanly, parts of Cabarrus, Rowan and Davidson Counties to make it a custom mill for the reduction of ores, with the great advantage of being in the centre of the mining district named above. The ores within easy reach could not be worked out in a century.

This water power with 10 acres attached is offered at \$2,500, with the option of 100 acres at \$3,500. The lands are valuable for farming purposes; the situation healthy, the society good, and church and school advantages very good. Persons wishing further information may address Watchman, Salisbury, or Mr. J. R. Linton, Albemarle, N.C.

Map of place furnished on application.

State v. Tyre Glen

- 1859. The North Carolina Supreme Court ruled that the section of the upper Yadkin River, near Enon, where Tyre Glen had constructed a dam was not navigable.

U. S. Army Corps of Engineers survey of upper Yadkin River

- 1878, June 18. Rivers and Harbors Act enacted by Congress called for survey of Yadkin River from rail bridge near Salisbury to Wilkesborough [sic]
- 1879. Survey recommended three alternatives for making improvements which would enable navigation:
 - Light-draft steam – excavation, construction of wing dams, construction of locks and dams, construction of canal around Bean Shoals \$444,653.
 - 6 to 7 ton bateau – excavation and construction of wing dams \$102,635
 - Steam navigation from rail bridge to Bean Shoals, without locks and dams \$81,672 plus cost of removing mill dams.

- Between 1880 and 1892, a federal project excavated a 2½' deep channel from the rail bridge near Salisbury extending north 33 miles to Bailey's Ferry (near Advance). \$101,600 was expended on the project, which was "navigated not even by flat and pole boats." The improvement project was stopped by the Secretary of War in 1892, and abandoned by an act of Congress in 1926.
- This section of the upper Yadkin, before it was improved, was described as "completely obstructed by rock ledges, fishing and mill dams, and numerous shoals, with a greatest depth of 1 foot at ordinary low water on some of its shoals and ledges." (USACE 1893 Annual Report)

U. S. Army Corps of Engineers survey of lower Yadkin/upper Pee Dee River

- 1886, August 5. Rivers and Harbors Act enacted by Congress called for survey of Yadkin River from rail bridge near Salisbury to South Carolina line
- 1887-1888. Survey of River from South Carolina line to Narrows found that section of the river to have a steep descent, a small volume of water, and a large extent of rocky bottom. Survey recommended the cost to make improvements which would allow navigation even for rafts and barges to be too great in comparison with the advantages to be gained, and that the river was not worthy of improvement by the General Government. The report also noted that the river in that section was one of considerable water power and that the people along the river were more interested in fish passage up and down the river than in navigation.
- 1888. Supplementary Report recommended the same be applied without change to the entire section of the river from the rail bridge (near Salisbury) to Cheraw.

Obstructions to navigation described in detail in Army Corps reports

- The Army Corps upper Yadkin survey provided extensive detail, and the lower Yadkin survey noted numerous shoals, falls, and rapids.
- The 1893 Annual Report on the improvement project conducted from the rail bridge near Salisbury northward includes a statement that below and between that project and the river's lower part, "called the Great Pedee, which is navigable from tide water to near the southern boundary of [this] state, there intervenes a section of the river 111 miles in length containing many shoals, rapids, and falls which entirely preclude any attempt to make it navigable."

“Adventurous Voyagers”

Carolina Watchman, June 9, 1887

Carolina Watchman.

THURSDAY, JUNE 9, 1887.

A Farmer's Institute.

We are pleased to know that the good farmers of Franklin Township will take steps to hold a Farmer's Institute in this county the last of July or first of August, with all the farmers and farmers' clubs in the county co-operating. The value of these institutes can not be over estimated. The discussion of all topics pertaining to improved methods, such as composting manures, silos, &c., with optical illustrations of grasses, clover, &c., will tend to increase the interest and be a benefit to all.

It would be a good idea to have a cattle and butter show in connection with it.

Rowan county is noted for her cattle and grasses and we venture to say that no county in the State can make a better showing. This is a step in the right direction and we hope our farmer friends will take a great deal of interest in it and all move together.

The columns of the WATCHMAN will always be found open to the interests and welfare of Rowan County Farmers.

The N. Y. Boodlemen.

It does not now appear when, if ever, the New York city authorities will get through with the boodleites who sold out the city in 1881. They have up just now a Mr. Sharp, who was not sharp enough to cover all his tracks. He will also probably go to Sing Sing. New York has set a good example in pursuing these offenders. Her pertinacity is worthy of all praise.

Yellow Fever.

Five new cases reported at Key West, Fla., June 21. Later, seventeen cases reported, and the disease has been declared an epidemic.

We seldom read of more horrors crowded into a smaller space than are given below:

Essex, Pa., June 6.—A frightful sight met the gaze of Coroner Smalley yesterday in responding to a call for an inquest over the body of John Lyons, 70 years of age. Lyons lay on the floor where he had died the day before while intoxicated. Near him lay his aged wife in a drunken stupor and in a shed near by was found their four-year old grandchild dying from poison. The child had been sick several days and in its extremity had eaten a poisonous weed that grew near the shed. The grandmother finding it in convulsions gave it a heavy dose of whiskey. The mother of the child was in jail at the time on a charge of drunkenness.

John Wanamaker of Philadelphia, one of the largest, if not the largest merchant in the United States, attributes his success to printers ink and says:

“To discontinue an advertisement is like taking down your sign. If you want to do business you must let the public know it. Standing advertisements, when changed frequently, are better and cheaper than renting notices. They look more substantial and business like. I would as soon think of doing business without cloths as without advertising.”

The Boston and Providence R. R. Co., one of whose trains went through a bridge, killing and maiming a large number of excursionists, a few weeks ago, will be required to defend themselves before the courts; thirty-two claimants having become plaintiffs in suits for damages.

William Murchison, of Medor, Tenn., is in the 83d day of a compulsory fast, owing to some throat disease. He is waiting for death.

The Drowning of Two Boys Near Raleigh.

Raleigh, June 7.—A most distressing case of drowning occurred here this afternoon, which threw the city into deep grief. The victims of this disaster were James McPherson, and Otto Hunter.

Adventurous Voyagers.

A JOURNEY IN A SMALL SHIP THROUGH THE YADKIN AND PEE DEE RIVERS.

Capt. W. H. Bixby and Lieut. Taylor, of the U. S. Engineers, returned to the city Wednesday evening from an exciting trip down the Yadkin and Great Pee Dee rivers, the purpose of which was to make examinations of the Pee Dee with reference to improvement of the navigation of the river. Mr. Frank Brown of Salisbury accompanied Capt. Bixby and Lieut. Taylor, and these gentlemen with a colored boatman comprised the party of adventurous navigators.

The boat, a flat-bottomed skiff, with two oars, was put in the Yadkin about forty miles above Salisbury and the journey was from this point to Cheraw, S. C., a distance of about 150 miles, which was made in five days. The object in making the Yadkin the starting point, was to obtain a general idea of the character of this river and to reach the “Narrows,” where the Yadkin and Uwharrie rivers come together, and four miles below form the Great Pee Dee, which is now navigable for small steamers of about two and a half feet draught, from its mouth at Georgetown to Cheraw, a distance of 190 miles.

The first day the party made fifty-seven miles, with but little difficulty. The current was very strong and the cascades and rapids numerous; at places the fall was as much as twenty to thirty feet to the mile, making progress very rapid and requiring skilful management of the little craft to avoid disaster. Mr. Brown acted as steersman. The party stopped that night at Mr. V. Manney's place, opposite Milledgeville, near the Yadkin Falls manufactory.

The next day they started at about 6:30 in the morning and stopped at 2:30 in the evening, but made only 14 miles. The river was full of tumbling falls and rapids, and before they had gone three miles the boat struck a rock which made a crack in one side about three feet long and a quarter of an inch wide. When the boat struck it swung around and went down the stream stern foremost, plunging over a fall about four feet high. It was full of water, but had fortunately lodged on a rock which prevented its sinking. Before starting on their journey the party had laid in a store of oakum and coils, and with these they stopped the leak sufficiently to enable them to bail the water out of the boat and get it

- *Capt. W. H. Bixby and Lieut. Taylor, of the U. S. Engineers, Mr. Frank Brown of Salisbury, with a colored boatman. The boat, a flat-bottomed skiff, with two oars. This stage of the journey begins in what is today Tuckertown reservoir.*

The next day they started at about 6:30 in the morning and stopped at 9:30 in the evening, but made only 14 miles. The river was full of tumbling falls and rapids, and before they had gone three miles the boat struck a rock which made a crack in one side about three feet long and a quarter of an inch wide. When the boat struck it swung around and went down the stream stern foremost, plunging over a fall about four feet high. It was full of water, but had fortunately lodged on a rock which prevented its sinking. Before starting on their journey the party had laid in a store of oakum and tools, and with these they stopped the leak sufficiently to enable them to bail the water out of the boat and get it ashore. Further repairs were made and the journey was resumed. About a mile from this stopping-place the river was found to be very shallow with a swift current and full of rocks. It was necessary to turn the boat with the bow upstream, the colored boatman in the water holding the boat to keep it from going down stream too fast and being dashed against the rocks. Three fourths of a mile further they struck deeper water, when the boatman jumped on board straddling the bow. The channel had narrowed to about sixty or eighty feet, and through this the boat went stern-foremost, Lieut. Taylor guiding it with the oars. The river at this point was full of ugly looking rock and the current so swift that the boat was carried along for about a quarter of a mile at a speed that could not have been less than twenty miles an hour. The waves made by the force of the current were about three feet high. A few miles further the voyagers encountered a fall, nearly vertical, of about eight feet. They went down, but when they got through the boat was submerged by the waves and went to the bottom. Mr. Brown was knocked overboard by the waves, and when he rose to the surface the boat had been swept beyond his reach. He managed to gain the shore without suffering more than a wetting. The remainder of the party were also thrown into the water but held on to the boat and finally succeeded in getting ashore. Lieut. Taylor relinquished his hold of the craft before reaching the bank to swim after some of their effects which were floating down the river. After they got ashore the boat was turned over and emptied, and all the baggage of the party secured, with the exception of a small valise belonging to Mr. Brown. Several bundles of clothing, a tin case of maps and some rope, were recovered about two miles down the stream from two colored men who found the things while crossing the river in a boat. After getting the boat ready two of the party went on a short reconnaissance down the stream and found a fall over which it would have been impossible to pass the boat, which was finally lifted over the rocks near the shore and past the dangerous fall. The rowlocks had been lost and the only means of working the boat was with the aid of poles. About one mile further the boat was hauled out and carried around the "Narrows," some five miles, the party stopping as evening then drew on, at Mr. Lowders, at Kirk's ferry.

The next day the boat was thoroughly repaired, and the journey continued. A short distance from the ferry they went through Gunsmith's shoals, with an experience almost equal to that of the day before, but fortunately no accident occurred. ...

Caustic barb in the U. S. Senate

Carolina Watchman, July 12, 1888

The Yadkin “could be made navigable if water were pumped into it from another river.”

The Yadkin River in the Senate.

[Congressional Proceedings, June 27th.]

An amendment [to the river and harbor bill] inserting an item of \$10,000 for the Yadkin river, N. C., was the subject of a long discussion, the amendment being opposed by Mr. Edmunds and advocated by Mr. Ransom.

Mr. Edmunds compared the Yadkin to other streams in North Carolina which it was once proposed to improve, and as to which an army engineer reported that it could be made navigable if water were pumped into it from another river.

Mr. Ransom remarked that that was a piece of innuendo on Mr. Edmunds' part and said (jocularly) that if the Senator from Vermont were to see the Yadkin river he would change his mind (as he had done in the Cape Fear river) and would think that a million or two of dollars ought to be spent on it. There was more whiskey made in that country than the Senator from Vermont supposed there was water in the Yadkin.

Mr. Edmunds read and commented on the report of Capt. Bixby, an army engineer, on the Yadkin river, stating that it was not worthy of improvement, that the people were more anxious to have a passage-way cut through the fish-dams (so as to let fish up the river) than they were to have it improved for navigation purposes.

Supreme Court of the United States

Yadkin River Power Company, plaintiff, vs. the Whitney Company

- 1909. Findings of Facts:
 - That the defendant and those under whom it claims, at the date of the entries made by William Smithdeal [grants Nos. 12740, 12741, 12742, 12743, 12744, 12745, and 12746] and of the grants from State of North Carolina to him, are the owners of the bed of the Yadkin River along and opposite the land mentioned and described in the petition and the owners of the bed of said river as described in the said grants to William Smithdeal by virtue of conveyances of lands lying on both sides of said river and contiguous thereto and by virtue of grants covering portions or all of the bed of said river at said places.
 - That all grants offered by the plaintiff are junior to the grants offered by the defendant.
 - That the Yadkin River, as it flows along, by, and opposite the lands sought to be condemned and described in the petition in this cause, is not a navigable stream.
 - That the waters of the Yadkin River, as they flow along and opposite the land mentioned and described in the petition and sought to be condemned, furnish and compose a natural water power.

Federal Power Commission Opinion No. 312

Carolina Aluminum Co. and Carolina Power & Light Co.

- May 19, 1958

“There has been no determination that the stretch of the Yadkin-Pee Dee River in which the proposed and existing hydroelectric developments of the two companies are located is a navigable water of the United States, and we do not now find that stretch to be navigable.”

U. S. Army Corps of Engineers

Yadkin River Basin Navigability Study, Report No. 17

- 1977

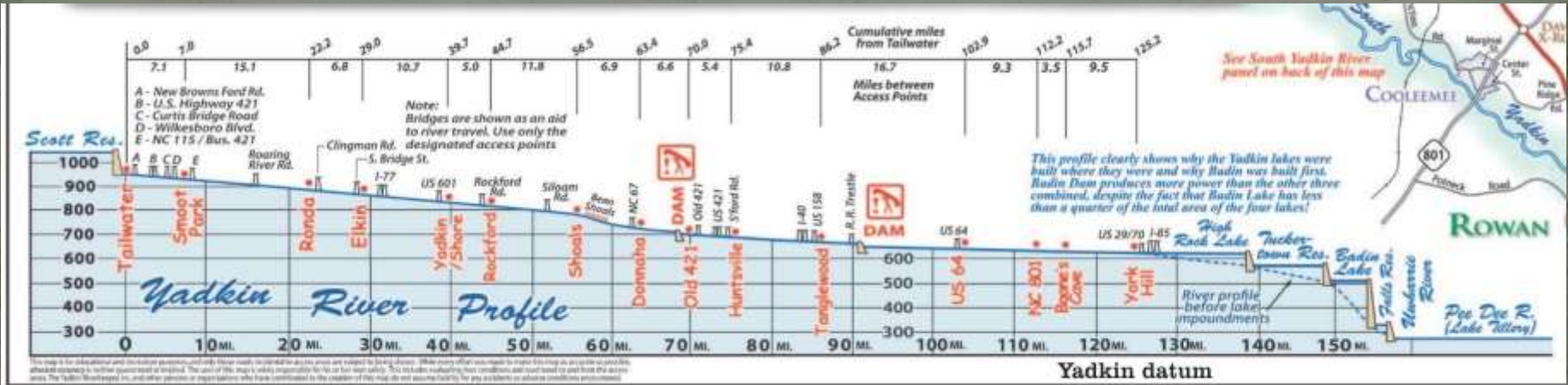
“Currently, neither the Yadkin River nor any of its tributaries are classified as ‘navigable waters of the U. S.’”

What does not say the Yadkin
River is navigable

An act to declare the Great Pee Dee and Yadkin rivers public highways

- March 4, 1885. Ratified by the General Assembly of North Carolina
- This Act does not concern nor mention navigability, nor does it declare state ownership of the Yadkin River bed. It states “That the Yadkin river from the northern boundary line of the county of Davidson to its junction with the Great Pee Dee river, and the Great Pee Dee from said junction to the boundary line of the State of South Carolina, be and the same are hereby declared public highways for the free passage of boats, flats, rafts and other means of transportation.” It guarantees public access to use the rivers’ waters, in accordance with public trust doctrine.
- *Justice Pitney in U S v. Cress , 243 U.S. 316 (1917):*
“Many state courts, including the Court of Appeals of Kentucky, have held also that the legislature cannot, by simple declaration that a stream shall be a public highway, if in fact it be not navigable in its natural state, appropriate to public use the private rights therein without compensation. *Morgan v. King*, 18 Barb. 277, 284, 35 N.Y. 454, 459, 461; *Chenango Bridge Co. v. Paige*, 83 N.Y. 178, 185; *Murray v. Preston*, 106 Ky. 561, 563; *Stuart v. Clark's Lessee*, 32 Tenn. 9, 17; *Walker v. Board of Public Works*, 16 Ohio, 540, 544; *Olive v. State*, 86 Ala. 88, 92; *People ex Rel. Ricks Water Co. v. Elk River Mill & Lumber Co.*, 107 Cal. 221, 224. And see *Thunder Bay River Booming Co. v. Speechly*, 31 Mich. 336, 345; *Koopman v. Blodgett*, 70 Mich. 610, 616.
This Court has followed the same line of distinction. “

Illustration of one factor contributing to the non-navigability of the Yadkin River



From a map on the Yadkin Riverkeeper's website

What this means as far as APGI is concerned

- The Yadkin River was not navigable at the time of statehood.
- The State does not own the riverbed under the Yadkin River.
- Alcoa bought, paid for, owns, and pays property taxes on all the land under their four dams and lakes.
- Alcoa, as a riparian landowner, has the right to reasonable use of the Yadkin River's waters.
- The public has the right to recreational use of the Yadkin River's waters.

report presented in abbreviated version to the
Uwharrie Regional Resources Commission

April 10, 2013

available online at www.trading-ford.org
and www.yadkinviews.com

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Web links to source documents

1879 USACE upper Yadkin survey

Annual Report of the Chief of Engineers to the Secretary of War for the Year 1879. Part I, pp. 627-648.

<http://books.google.com/books?id=7C5RAAAAYAAJ&pg=PA627#v=onepage&q&f=false>

1887 USACE survey lower Yadkin/upper Pee Dee

Annual Report of the Chief of Engineers to the Secretary of War for the Year 1888. Part II

Preliminary examination pp. 948-951

Examination pp. 951-958

RECOMMENDATIONS pp. 952 and 954

<http://books.google.com/books?id=AZoAAAAAMAAJ&dq=editions%3APqguuWpp7i4C&pg=PA948#v=onepage&q&f=false>

Yadkin River Power Company v. the Whitney Company

Findings of Fact and Judgment pp. 93-97

<http://books.google.com/books?id=qzMrAAAAYAAJ&pg=RA1-PA93#v=onepage&q&f=false>

Report #17 – USACE Yadkin River Basin Navigability Study 1977, p. 17-21

<http://www.sac.usace.army.mil/Portals/43/docs/regulatory/Report17YadkinRiverBasin.pdf>

