



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

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GEORGE MEHNERT
Executive Director

Meeting Minutes

Phoenix, Maricopa County

October 23, 2002

COMMISSION MEMBERS PRESENT

Jay Brashear, Dolly Echeverria, Earl Eisenhower, and Cecil Miller.

COMMISSION MEMBERS ABSENT

James Henness.

STAFF PRESENT

Curtis Jennings, George Mehnert and Tom Vogt.

1. CALL TO ORDER

Chair Eisenhower called the meeting to order at approximately 10:30 a.m.

2. ROLL CALL

See above.

3. APPROVAL OF MEETING MINUTES

A. June 20, 2002.

Motion by: Dolly Echeverria Second by: Jay Brashear Vote: All aye
Motion: To adopt the minutes as submitted.

A. September 23, 2002.

Motion by: Dolly Echeverria Second by: Jay Brashear Vote: All aye
Motion: To adopt the minutes as submitted.

4. WATERCOURSE HEARINGS AND PRIORITIES

Chair Eisenhower said the next hearings scheduled for the Commission are for December 9, 2002 in Kingman, Arizona for the small and minor watercourses in Mohave County, and December 10, 2002 in Parker, Arizona for the small and minor watercourses in La Paz County. He suggested the Commission hold hearings in February for Santa Cruz and Cochise Counties. He also suggested holding a hearing for the Lower Salt River from Granite Reef Dam to the confluence with the Gila River in April. Mr. Brashear suggested the Commission begin with the Salt River before any more small and minor watercourse hearings are scheduled. Chair Eisenhower said the reasoning behind scheduling two counties of small and minor watercourses in February and the Lower Salt in April is so that the State Land Department (SLD) enough time to consolidate their evidence for the Lower Salt. Cheryl Doyle, representing the SLD, said they will be at whatever hearing the Commission schedules, whether it is a small and minor watercourse hearing or a major watercourse hearing. She also said that is what V. Ottozawa-Chatupron (Mr. Ott) said at the Yuma hearing and it still stands. Mr. Brashear asked if anyone is present representing interests in the Salt and asked for their opinion. Mark McGinnis, representing the Salt River Project, said he has no objections with the schedule just discussed. He suggested tentatively scheduling the Gila River and Verde

River hearings for sometime after April so there is some time for those wishing to present evidence. Chair Eisenhower said at either Kingman or Parker the Commission will establish hearings beyond April. M. James Callahan, representing the City of Phoenix, said he agreed with Mr. McGinnis that advance notice of future hearings would be appreciated. Mr. Mehnert said the Commission's plan was to proceed with the small and minor watercourses first until the Commission learned at the Yuma hearing on the 23rd of September that the SLD said they would up whenever the Commission schedules hearings. Mr. Jennings said he knows that Ms. Doyle and Mr. Ott said the SLD would be at the hearings the Commission schedules, but he asked if the SLD and the experts would be ready by April for the Lower Salt River. Ms. Doyle said the SLD will do the best they can with the available resources at that time. Mr. Jennings said that the experts will need to be present for questioning not only by the Commission, but by others as well. Ms. Doyle said at this point they can't guarantee it, but have the old report which may need some revisions, and said they would do the best they can with what they have.

Chair Eisenhower suggested February 11th for Santa Cruz County and February 12th for Cochise County. The Commissioners had no objections. Chair Eisenhower suggested holding the April hearing for the Lower Salt and plan for the possibility of several days to complete the hearing. Mr. Miller suggested to the Commission beginning on April 7th and there was no objection. Mr. Brashear asked if the Commission needs to advertise the April hearing for the Lower Salt as a possible multi day hearing. After some discussion on the matter, Mr. Callahan suggested the Commission notice the hearing as beginning on April 7th and continues it until concluded. The Commission agreed with the suggestion by Mr. Callahan.

Mr. Brashear asked if the Commission should combine the major watercourses from each county on the same trip as the small and minor watercourse hearings. Mr. Jennings said the Commission could hold hearings on the Santa Cruz River on the same trip as the small and minor watercourses for Santa Cruz County as well as the San Pedro River on the same trip as the small and minor watercourses for Cochise County. Chair Eisenhower asked if combining these hearings into a single trip would be equitable for everyone. Mr. Mehnert said before the budgetary problems, it was the idea to combine as many hearings into a single trip as possible. Sandy Bahr, representing the Sierra Club, asked how the Commission decided to hold a hearing on the Lower Salt River next rather than say the Verde River or some other major river in light of the not very solid answer from the SLD about being ready or updated. Chair Eisenhower said after what the Commission learned in Yuma, with enough lead time, the SLD could possibly update the Lower Salt in time. He said the Commission is supposed to hold hearings in order of areas of major interests first. He added the Commission will try to see if this works and if not, we will need to reschedule at a later date. Mr. Jennings said the statutes require the hearings be held in the Commission offices, or in the case where a watercourse is located principally outside of Maricopa County, the Commission shall hold a hearing at the County seat at which the predominant portion of a particular watercourse is located. He said the Commission decided long ago to hold a hearing in each county where any portion of a watercourse flows. Mr. Callahan said nobody is immune from financial constraints and if the Commission were to wait until everyone involved had a surplus of money to throw every document at the Commission, there would never be a hearing. He suggested the Commission should just go forward scheduling hearings and people and parties will submit evidence and participate as they see fit. Ms. Doyle said she agreed with Mr. Callahan. Ms. Bahr said the Land Commissioner has a higher responsibility to act as a trust advocate than everybody else and said the Land Commissioner needs to be ready for these hearings because as mandated as an advocate for the public trust and to diligently promote the public trust interest. She said she wanted to make sure that is part of the record and everybody understands that is a higher level than the rest of us in this room. Chair Eisenhower said with no other comments, the Commission will then proceed for the short term as just discussed.

5. REVIEW OF ATTORNEY CONTRACT

Mr. Mehnert said the reason this item is on the agenda this early is because the Commission has not indicated there would be a business meeting prior to January and the contract is due in early February and wants to make sure this procedure gets done.

Motion by: Jay Brashear Second by: Dolly Echeverria Vote: All aye
Motion: To extend the attorney contract for Jennings, Haug & Cunningham for a period of one year.

6. REPORT FROM DIRECTOR

A. Discussion regarding Arizona Republic as a vendor.

Mr. Mehnert said the reason this item is on the agenda is the Commission has recently been audited by the Auditor General office and they said since we did not have a sole source contract, they suggested we at least had a vote by the Commission be adequate. Mr. Brashear asked if the ads taken out in the Arizona Republic were sent to Yuma County. Mr. Mehnert said the Commission also takes ads in local papers.

Motion by: Cecil Miller Second by: Dolly Echeverria Vote: All aye
Motion: To use the Arizona Republic as a sole source of statutorily required statewide advertising.

B. Approval for payment of attorney fees.

1. Invoice 88925 in the amount of \$615.00 for June services.
2. Invoice 89302 in the amount of \$195.00 for July services.
3. Invoice 89826 in the amount of \$701.00 for August services.
4. Invoice 90137 in the amount of \$2,969.80 for September services.

Motion by: Cecil Miller Second by: Jay Brashear Vote: All aye
Motion: To pay the four invoices for Jennings, Haug & Cunningham.

7. EVIDENCE AND PROCEDURES RELATING TO HEARINGS

Chair Eisenhower said there are a couple of reasons this item is on the agenda including clearing up some ambiguity and clarifying the intent of what the Commission would like to do. He said one reason for this item is to decide who a 'party' at each hearing is. He said everyone who has an interest is provided the opportunity to do so. He suggested if there is any intention to become a party of the proceedings, please sign in at each hearing. Chair Eisenhower said in the Commission's rules, section R12-17-101, item number 7, "party" means a person who appears before the Commission at a particular hearing. He said to him that means you appear as an interested party, not just as a spectator. He asked for a consensus. Mr. Jennings said the intent was to allow anyone who wishes to participate would have an opportunity to do so. He said anyone who signs in, who files some kind of document or evidence, whether or not they appear, is obviously an interested party. He added if someone attends the hearing to report back to an organization but fails to sign in but has listened to all the evidence, whether or not if they have presented their position by coming to the podium and addressing the Commission, he believes they are also a party. Mr. Jennings gave an example of an attorney who is interested in the proceedings and doesn't have anything to add to the hearing, but after the hearing would like to present a memorandum within the 30 day period, if he has signed in or made known he is an interested party, he would be allowed within the 30 days. Mr. McGinnis said the intent of this process is to have the most public input as possible so if someone either files a notice of appearance, submit evidence, sign in on the sign in sheet, or participates in the hearing some way orally, those people are parties. He said if you try to constrain that anymore it would be contrary to what this process is trying to accomplish. Ms. Echeverria said although the intent is to be as broad and as open as possible, what happens when someone attends the hearing but didn't sign in, reports to their organization, and then wants to present a memorandum, we can't make everyone demand to be a party up front just in

case they might wish to file a memorandum later. Mr. McGinnis said that kind of person wouldn't be in one of the categories he just mentioned. He said the reason it becomes important is if you file a post hearing memorandum, you are supposed to send a copy to everyone who is a party, but if someone sat in the back of the room and didn't sign in, you would have no way to send that person a copy. Mr. Jennings said he agrees with Mr. McGinnis' explanation. Judith Darknall, representing the SLD, asked if someone doesn't speak at the hearing, then goes and writes a memorandum to the Commission on argument not evidence, is that person a party. Mr. Jennings said they have to show some intent that they are interested in these proceedings even if it's just a position to keep the Commission honest and to make good decisions. He said if that person then wishes to give some legal argument on the evidence presented at the hearing or what was said at the hearing, then they could do so. Ms. Darknall said the Commission's rules need to be clear on that. Mr. Mehnert said the rule is much more restrictive than what has been presented here and should be rewritten rather quickly. Ms. Echeverria said anyone who has had any dealings with judicial or pseudo judicial proceedings are going to know they need to sign in somehow and the chair could mention the sign in sheet during the hearing and maybe even allow someone to sign up just after the hearing. She said there needs to be some kind of criteria. Chair Eisenhower said he, counsel and the director will get together to make sure that rule is clear and will do so as rapidly as possible. Mr. Jennings said a person filing a post hearing memorandum shall serve it on all parties and says since the Commission is widening the definition of party, it could be a problem. He said maybe the rule could be rewritten that you shall serve copies on all parties who participated where practicable, but that all of the memoranda will be kept at the Commission office and can be viewed by anyone who wants to appear. He added that in judicial proceedings you are supposed to mail everything to all parties and the court is to mail out its orders and so forth, but as a participating lawyer it is their responsibility to find out what is going on. Chair Eisenhower said each hearing also should be dealt with separately, therefore, you should only have to mail to those interested in each particular hearing, not as a general overall interest in the proceedings.

8. CALL FOR PUBLIC COMMENT

Chair Eisenhower asked for public comment. There was none.

9. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE MEETINGS

Chair Eisenhower said this was pretty much covered earlier in the meeting. He said each session the Commission will be selecting dates for future hearings. He said for example, at one of the December hearings, the Commission will set a date or dates beyond the April hearing, and at one of the February hearings set dates beyond that and so forth.

10. ADJOURNMENT

Motion by: Cecil Miller Second by: Jay Brashear Vote: All aye
Motion: To enter an executive session to obtain legal advise on agenda item 7 at approximately 11:35 a.m.

Chair Eisenhower reconvened the public meeting at approximately 11:55 a.m.

Motion by: Jay Brashear Second by: Cecil Miller Vote: All aye
Motion: To adjourn the meeting at approximately 11:56 a.m.

Respectfully submitted,



George Mehnert, Director

Date: October 24, 2002